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B10 (Official Form 10) (12/08) Page 1

UNITED STATES BANKRUPTCY COURT CENTRAL DISTRICT OF CALIFORNIA		PROOF OF CLAIM
Name of Debtor JAMES C GIANULIAS		Case Number 8 08-bk-13150-RK
NOTE This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A request for payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503.		
Name of Creditor (the person or other entity to whom the debtor owes money or property) DEUTSCHE BANK BERKSHIRE MORTGAGE INC		<input type="checkbox"/> Check this box to indicate that this claim amends a previously filed claim
Name and address where notices should be sent Deutsche Bank Berkshire Mortgage Inc One Beacon Street 14th Floor Boston, Massachusetts, 02108		Court Claim Number _____ (If known)
Telephone number SEE ATTACHED RIDER		Filed on _____
Name and address where payment should be sent (if different from above) SEE ATTACHED RIDER		<input type="checkbox"/> Check this box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars.
Telephone number SEE ATTACHED RIDER		<input type="checkbox"/> Check this box if you are the debtor or trustee in this case.
1 Amount of Claim as of Date Case Filed \$ SEE ATTACHED RIDER If all or part of your claim is secured complete item 4 below however if all of your claim is unsecured do not complete item 4. If all or part of your claim is entitled to priority complete item 5.		5 Amount of Claim Entitled to Priority under 11 U.S.C. § 507(a) If any portion of your claim falls in one of the following categories, check the box and state the amount. Specify the priority of the claim
2 Basis for Claim GUARANTY AGREEMENTS - SEE ATTACHED RIDER (See instruction #2 on reverse side)		<input type="checkbox"/> Domestic support obligations under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B)
3 Last four digits of any number by which creditor identifies debtor _____ 3a Debtor may have scheduled account as _____ (See instruction #3a on reverse side)		<input type="checkbox"/> Wages salaries or commissions (up to \$10,950*) earned within 180 days before filing of the bankruptcy petition or cessation of the debtor's business whichever is earlier 11 U.S.C. § 507(a)(4)
4 Secured Claim (See instruction #4 on reverse side) Check the appropriate box if your claim is secured by a lien on property or a right of setoff and provide the requested information. Nature of property or right of setoff <input type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other Describe _____ Value of Property \$ _____ Annual Interest Rate _____ % Amount of arrearage and other charges as of time case filed included in secured claim if any \$ _____ Basis for perfection _____ Amount of Secured Claim \$ _____ Amount Unsecured \$ _____		<input type="checkbox"/> Contributions to an employee benefit plan 11 U.S.C. § 507(a)(5)
6 Credits The amount of all payments on this claim has been credited for the purpose of making this proof of claim.		<input type="checkbox"/> Up to \$2,425 of deposits toward purchase lease or rental of property or services for personal family or household use 11 U.S.C. § 507(a)(7)
7 Documents Attach redacted copies of any documents that support the claim such as promissory notes purchase orders invoices itemized statements or running accounts contracts judgments mortgages and security agreements. You may also attach a summary. Attach redacted copies of documents providing evidence of perfection of a security interest. You may also attach a summary. (See instruction 7 and definition of "redacted" on reverse side.) DO NOT SEND ORIGINAL DOCUMENTS ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING If the documents are not available please explain _____		<input type="checkbox"/> Taxes or penalties owed to governmental units 11 U.S.C. § 507(a)(8)
Date 3/10/09	Signature The person filing this claim must sign it. Sign and print name and title. If any of the creditor or other person authorized to file this claim and state address and telephone number if different from the notice address above. Attach copy of power of attorney if any. Deborah Danegger Director, Deutsche Bank Berkshire Mortgage Inc	<input type="checkbox"/> Other 11 U.S.C. § 507(a)(9) Specify applicable paragraph of 11 U.S.C. § 507(a)(9) _____ Amount entitled to priority \$ _____ Amounts are subject to adjustment on 4/1/10 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.

INSTRUCTIONS FOR PROOF OF CLAIM FORM

The instructions and definitions below are general explanations of the law. In certain circumstances such as bankruptcy cases not filed voluntarily by the debtor, there may be exceptions to these general rules.

ITEMS TO BE COMPLETED IN PROOF OF CLAIM FORM

Court Name of Debtor and Case Number

Fill in the federal judicial district where the bankruptcy case was filed (for example, Central District of California), the bankruptcy debtor's name, and the bankruptcy case number. If the creditor received a notice of the case from the bankruptcy court, all of this information is located at the top of the notice.

Creditor's Name and Address

Fill in the name of the person or entity asserting a claim and the name and address of the person who should receive notices issued during the bankruptcy case. A separate space is provided for the payment address if it differs from the notice address. The creditor has a continuing obligation to keep the court informed of its current address. See Federal Rule of Bankruptcy Procedure (FRBP) 2002(g).

1 Amount of Claim as of Date Case Filed

State the total amount owed to the creditor on the date of the Bankruptcy filing. Follow the instructions concerning whether to complete items 4 and 5. Check the box if interest or other charges are included in the claim.

2 Basis for Claim

State the type of debt or how it was incurred. Examples include goods sold, money loaned, services performed, personal injury/wrongful death, car loan, mortgage note, and credit card. If the claim is based on the delivery of health care goods or services, limit the disclosure of the goods or services so as to avoid embarrassment or the disclosure of confidential health care information. You may be required to provide additional disclosure if the trustee or another party in interest files an objection to your claim.

3 Last Four Digits of Any Number by Which Creditor Identifies Debtor

State only the last four digits of the debtor's account or other number used by the creditor to identify the debtor.

3a Debtor May Have Scheduled Account As

Use this space to report a change in the creditor's name, a transferred claim, or any other information that clarifies a difference between this proof of claim and the claim as scheduled by the debtor.

4 Secured Claim

Check the appropriate box and provide the requested information if the claim is fully or partially secured. Skip this section if the claim is entirely unsecured. (See DEFINITIONS below.) State the type and the value of property that secures the claim, attach copies of lien documentation, and state annual interest rate and the amount past due on the claim as of the date of the bankruptcy filing.

5 Amount of Claim Entitled to Priority Under 11 U.S.C. §507(a) If any portion of your claim falls in one or more of the listed categories, check the appropriate box(es) and state the amount entitled to priority. (See DEFINITIONS below.) A claim may be partly priority and partly non-priority. For example, in some of the categories, the law limits the amount entitled to priority.**6 Credits**

An authorized signature on this proof of claim serves as an acknowledgment that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

7 Documents

Attach to this proof of claim form redacted copies documenting the existence of the debt and of any lien securing the debt. You may also attach a summary. You must also attach copies of documents that evidence perfection of any security interest. You may also attach a summary. FRBP 3001(c) and (d). If the claim is based on the delivery of health care goods or services, see instruction 2. Do not send original documents as attachments may be destroyed after scanning.

Date and Signature

The person filing this proof of claim must sign and date it. FRBP 9011. If the claim is filed electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what constitutes a signature. Print the name and title if any of the creditor or other person authorized to file this claim. State the filer's address and telephone number if it differs from the address given on the top of the form for purposes of receiving notices. Attach a complete copy of any power of attorney. Criminal penalties apply for making a false statement on a proof of claim.

DEFINITIONS

Debtor

A debtor is the person, corporation, or other entity that has filed a bankruptcy case.

Creditor

A creditor is a person, corporation, or other entity owed a debt by the debtor that arose on or before the date of the bankruptcy filing. See 11 U.S.C. §101(10).

Claim

A claim is the creditor's right to receive payment on a debt owed by the debtor that arose on the date of the bankruptcy filing. See 11 U.S.C. §101(5). A claim may be secured or unsecured.

Proof of Claim

A proof of claim is a form used by the creditor to indicate the amount of the debt owed by the debtor on the date of the bankruptcy filing. The creditor must file the form with the clerk of the same bankruptcy court in which the bankruptcy case was filed.

Secured Claim Under 11 U.S.C. §506(a)

A secured claim is one backed by a lien on property of the debtor. The claim is secured so long as the creditor has the right to be paid from the property prior to other creditors. The amount of the secured claim cannot exceed the value of the property. Any amount owed to the creditor in excess of the value of the property is an unsecured claim. Examples of liens on property include a mortgage on real estate or a security interest in a car.

A lien may be voluntarily granted by a debtor or may be obtained through a court proceeding. In some states, a court judgment is a lien. A claim also may be secured if the creditor owes the debtor money (has a right to setoff).

Unsecured Claim

An unsecured claim is one that does not meet the requirements of a secured claim. A claim may be partly unsecured if the amount of the claim exceeds the value of the property on which the creditor has a lien.

Claim Entitled to Priority Under 11 U.S.C. §507(a)
Priority claims are certain categories of unsecured claims that are paid from the available money or property in a bankruptcy case before other unsecured claims.

Redacted

A document has been redacted when the person filing it has masked, edited out, or otherwise deleted certain information. A creditor should redact and use only the last four digits of any social-security, individual tax-identification, or financial-account number, all but the initials of a minor's name, and only the year of any person's date of birth.

Evidence of Perfection

Evidence of perfection may include a mortgage lien certificate of title, financing statement, or other document showing that the lien has been filed or recorded.

INFORMATION

Acknowledgment of Filing of Claim

To receive acknowledgment of your filing, you may either enclose a stamped self-addressed envelope and a copy of this proof of claim or you may access the court's PACER system (www.pacer.psc.uscourts.gov) for a small fee to view your filed proof of claim.

Offers to Purchase a Claim

Certain entities are in the business of purchasing claims for an amount less than the face value of the claims. One or more of these entities may contact the creditor and offer to purchase the claim. Some of the written communications from these entities may easily be confused with official court documentation or communications from the debtor. These entities do not represent the bankruptcy court or the debtor. The creditor has no obligation to sell its claim. However, if the creditor decides to sell its claim, any transfer of such claim is subject to FRBP 3001(e), any applicable provisions of the Bankruptcy Code (11 U.S.C. §101 et seq.), and any applicable orders of the bankruptcy court.

RIDER TO PROOF OF CLAIM

***In re* JAMES C GIANULIAS**

Case No 8 08-bk-13150-RK

**United States Bankruptcy Court for the Central District of California
Santa Ana Division**

Deutsche Bank Berkshire Mortgage, Inc a Delaware corporation ("Deutsche Bank "), is concurrently filing a Proof of Claim in the above-captioned bankruptcy case. This Rider constitutes an integral part of the Proof of Claim filed by Deutsche Bank and sets forth a detailed explanation of the amounts owed to Deutsche Bank by James C. Gianulias, an individual (the 'Debtor')

Notices regarding this Proof of Claim should be sent to two addresses (the "Notice Individuals")

ERIC DRAEGER

Director
Deutsche Bank Berkshire Mortgage, Inc
One Beacon Street, 14th Floor
Boston, Massachusetts 02108

Telephone (617) 722 - 5017

DANIEL B. DENNY

Gibson, Dunn & Crutcher LLP
333 S. Grand Ave
Los Angeles, CA 90071

Telephone (213) 229 - 7000

Payment should be sent to Deutsche Bank at the address above

A Deutsche Bank is the current holder of a mortgage loan in the original principal amount of \$24,550,000.00 made to Apartments at La Quinta Village L.P., a California limited partnership (the "Borrower ") on June 29, 2007 (the "Loan") which is evidenced by that certain Multifamily Promissory Note, dated as of June 29, 2007, executed by Borrower in favor of Deutsche Bank, in the principal amount of the Loan (the "Note "), and secured by that certain Multifamily Deed of Trust and Security Agreement, dated as of June 29, 2007, between Borrower and Deutsche Bank.

B On or about June 29, 2007, the Debtor and The James Chris Gianulias Trust Dated October 14, 2003 (the "Trust") executed that certain Payment Guaranty in favor of Deutsche Bank pursuant to which the Debtor absolutely and unconditionally guaranteed to Deutsche Bank the prompt and unconditional payment and performance of all of the Guaranteed Obligations (hereinafter defined). A true and correct copy of the Payment Guaranty is attached hereto as Exhibit 1.

C The term "Guaranteed Obligations " as used herein means the outstanding principal balance of the Note, secured by the Mortgage, together with interest at the rate specified in the Note and all other sums other than principal and interest due and payable

pursuant to the provisions of the Note the Mortgage and/or any other document instrument, or material evidencing and/or securing the Loan (the 'Other Loan Documents')

D Pursuant to Section 4 of the Payment Guaranty, Debtor's monetary liability with respect to the Guaranteed Obligations is capped at and shall not exceed \$12,300,000.00

E The Payment Guaranty is a continuing guaranty and shall remain in full force and effect and shall survive the exercise of any remedy by Deutsche Bank under the Mortgage or any of the Other Loan Documents, (except to the extent that the exercise of such remedies results in the payment of the Guaranteed Obligations), including without limitation, any foreclosure or deed in lieu thereof

F On or about June 29, 2007 the Debtor and the Trust executed that certain Guaranty and Indemnity in favor of Deutsche Bank, pursuant to which the Debtor assumed liability for and guaranteed payment to Lender of all Costs (as defined in the Guaranty and Indemnity) which may at any time be imposed upon, incurred by or asserted against Lender as a result of any and all of the Indemnified Matters as defined in Section 1 of the Guaranty and Indemnity. The Debtor also guaranteed payment of the entire Debt pursuant to Section 1(g) of the Guaranty and Indemnity. A true and correct copy of the Guaranty and Indemnity is attached hereto as Exhibit 2.

G The Guaranty and Indemnity is a continuing guaranty and shall remain in full force and effect and shall survive the payment of any and all amounts owed by Borrower under the Note, Mortgage and/or the Other Loan Documents, even if, as a part of such remedy, the Loan is paid or satisfied in full.

H The amounts due and payable to Deutsche Bank by the Debtor under the Payment Guaranty and the Guaranty and Indemnity are referred to herein collectively as the "Claims." Such Claims are unsecured.

I Deutsche Bank hereby reserves its rights to collect all expenses (including reasonable counsel fees) incurred by Lender in connection with (a) the collection of the Guaranteed Obligations or any portion thereof or with the enforcement of the Payment Guaranty and (b) the collection of Costs, the entire Debt, or any portion thereof or with the enforcement of the Guaranty and Indemnity.

J This Proof of Claim is filed to preserve any and all rights and entitlements that Deutsche Bank may have against the Debtor and nothing set forth herein should be construed as an admission that any valid claims or causes of action exist against Deutsche Bank.

K Deutsche Bank reserves the right to amend and/or supplement further this Proof of Claim at any time and in any manner, and to file additional proofs of claim for additional claims that may be based on the respective rights and obligations arising under the documents described above, the relationship described therein or the events and circumstances described herein. In addition, Deutsche Bank reserves the right to attach or bring forth additional documents supporting the Claims, including additional documents that may become available after further investigation and discovery.

L The filing of this Proof of Claim shall not constitute (a) a waiver or release of the rights of Deutsche Bank against the Debtor or any of its affiliates, or any other person or property, (b) a waiver or release of the Trust of its obligations under the Payment Guaranty or the Guaranty and Indemnity, (c) a consent by Deutsche Bank to the jurisdiction of this Court with respect to the subject matter of the Claims set forth herein, any objections or other proceedings commenced with respect thereto or any other proceedings commenced in this case against or otherwise involving Deutsche Bank, (d) a waiver of the right to move to withdraw the reference, or otherwise challenge the jurisdiction of this Court with respect to the subject matter of the Claims, any objection or other proceedings commenced in this case against or otherwise involving Deutsche Bank, or (e) an election of remedies or choice of law

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Exhibit I

Payment Guaranty

PAYMENT GUARANTY

This PAYMENT GUARANTY ("Guaranty"), is made as of June 29, 2007 by JAMES C GIANULIAS, an individual, and THE JAMES CHRIS GIANULIAS TRUST DATED OCTOBER 14, 2003 (hereinafter individually and collectively referred to as the "Guarantor") with an address at 1105 Quail Street, Newport Beach, California 92660, in favor of DEUTSCHE BANK BERKSHIRE MORTGAGE, INC , a Delaware corporation ("Lender"), whose address is One Beacon Street, 14th Floor, Boston, Massachusetts, 02108

WHEREAS, Lender has extended to Apartments at La Quinta Village L P , a California limited partnership ("Borrower"), a loan (the "Loan") evidenced by that certain Multifamily Promissory Note (the "Note") in the principal amount of \$24,550,000.00 and secured by that certain Multifamily Deed of Trust and Security Agreement (the "Mortgage") encumbering the real property in the County of Riverside, State of California, as more particularly described on Exhibit A hereto, and the improvements now or hereafter located thereon (collectively, the "Property") The Note, the Mortgage and all other instruments evidencing, securing or relating thereto are hereinafter referred to, collectively, as the "Loan Documents" Each capitalized term not defined herein shall have the meaning set forth in the Mortgage

NOW, THEREFORE, to induce Lender to make the Loan and in consideration of the foregoing premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Guarantor hereby covenants and agrees for the benefit of Lender, as follows

1 Guarantor hereby absolutely and unconditionally guarantees to Lender the prompt and unconditional payment and performance of the Guaranteed Obligations (hereinafter defined)

2 It is expressly understood and agreed that this is a continuing guaranty and that the obligations of Guarantor hereunder are and shall be absolute under any and all circumstances, without regard to the validity, regularity or enforceability of the Note, the Mortgage, or the other Loan Documents, a true copy of each of said documents Guarantor hereby acknowledges having received and reviewed

3 The term "Guaranteed Obligations" as used in this Guaranty (this "Guaranty") shall mean the principal sum evidenced by the Note and secured by the Mortgage up to the Guaranteed Amount (as defined), or so much thereof as may be outstanding from time to time, together with interest thereon at the rate of interest specified in the Note and all other sums other than principal or interest which may or shall become due and payable pursuant to the provisions of the Note, the Mortgage or the Loan Documents and all other obligations of Borrower under the Note, the Mortgage and the Loan Documents, but in no event greater than the Guaranteed Amount

4 The term "Guaranteed Amount" as used in this Guaranty shall mean \$12,300,000.00, provided, however, that such amount shall be reduced by the amount of any Housing Incentive Prepayments (as defined in the Mortgage) made from time to time pursuant to

Section 9 6 of the Mortgage At such time as the entire Guaranteed Amount has been abated in accordance with the terms hereof, this Guaranty shall terminate

5 This Guaranty is an irrevocable, absolute, continuing guaranty and surety of payment and performance and not a guaranty of collection This Guaranty may not be revoked by Guarantor and shall continue to be effective with respect to any Guaranteed Obligations arising or created after any attempted revocation by Guarantor and after (if Guarantor is a natural person) Guarantor's death (in which event this Guaranty shall be binding upon Guarantor's estate and Guarantor's legal representatives and heirs) The fact that at any time or from time to time the Guaranteed Obligations may be increased or reduced shall not release or discharge the obligation of Guarantor to Lender with respect to the Guaranteed Obligations This Guaranty may be enforced by Lender and any subsequent holder of the Note and shall not be discharged by the assignment or negotiation of all or part of the Note

6 Any indebtedness of any Borrower to Guarantor now or hereafter existing (including, but not limited to, any rights to subrogation Guarantor may have as a result of any payment by Guarantor under this Guaranty), together with any interest thereon, shall be, and such indebtedness is, hereby deferred, postponed and subordinated to the prior payment and performance in full of the Guaranteed Obligations Until either (i) termination of this Guaranty in accordance with the terms and provisions of Section 4 hereof or (ii) payment and performance in full of the Guaranteed Obligations (and including interest accruing on any Note after the commencement of a proceeding by or against any Borrower under the Bankruptcy Reform Act of 1978, as amended, 11 U S C Sections 101 et seq , and the regulations adopted and promulgated pursuant thereto (collectively, the "Bankruptcy Code") which interest the parties agree shall remain a claim that is prior and superior to any claim of Guarantor notwithstanding any contrary practice, custom or ruling in cases under the Bankruptcy Code generally), Guarantor agrees not to accept any payment or satisfaction of any kind of indebtedness of any Borrower to Guarantor and hereby assigns such indebtedness to Lender, including the right to file proof of claim and to vote thereon in connection with any such proceeding under the Bankruptcy Code, including the right to vote on any plan of reorganization Further, if Guarantor shall comprise more than one person, firm or corporation, Guarantor agrees that until such payment and performance in full of the Guaranteed Obligations, (a) no one of them shall accept payment or performance from the others by way of contribution on account of any payment made hereunder by such party to Lender, (b) no one of them will take any action to exercise or enforce any rights to such contribution, and (c) if any of Guarantor should receive any payment, satisfaction or security for any indebtedness of any Borrower to any of Guarantor or for any contribution by the others of Guarantor for payment or performance made hereunder by the recipient to Lender, the same shall be delivered to Lender in the form received, endorsed or assigned as may be appropriate for application on account of, or as security for, the payment and performance of the Guaranteed Obligations and until so delivered, shall be held in trust for Lender as security for the payment and performance of the Guaranteed Obligations

7 Guarantor agrees that, with or without notice or demand, Guarantor will reimburse Lender to the extent that such reimbursement is not made by Borrower, for all expenses (including reasonable counsel fees) incurred by Lender in connection with the collection of the Guaranteed Obligations or any portion thereof or with the enforcement of this Guaranty

8 All moneys available to Lender for application in payment or reduction of the Guaranteed Obligations may be applied by Lender in such manner and in such amounts and at such time or times and in such order and priority as Lender may see fit to the payment or reduction of such portion of the Guaranteed Obligations as Lender may elect

9 Guarantor hereby waives notice of the acceptance hereof, presentment, demand for payment, protest, notice of protest, or any and all notice of non-payment, non-performance or non-observance, or other proof, or notice or demand, whereby to charge Guarantor therefor

10 General Provisions

(a) Full Recourse All of the terms and provisions of this Guaranty are recourse obligations of Guarantor and not restricted by any limitation on personal liability provided in any of the other Loan Documents or limited to any collateral securing any of the obligations under this Guaranty, it being the intent of Lender to create separate obligations of Guarantor hereunder which can be enforced against Guarantor without regard to the existence of the Mortgage or other Loan Documents or the liens or security interests created therein

(b) Guarantor Obligations Guarantor hereby acknowledges that Lender's appraisal of the Property is such that Lender is not willing to accept the consequences of the inclusion of Guarantor's indemnity set forth herein among the obligations secured by the Mortgage and the other Loan Documents and that Lender would not make the Loan but for the personal liability undertaken by Guarantor herein

(c) Survival Until termination of this Guaranty in accordance with the terms and provisions of Section 4 hereof, this Guaranty shall be deemed to be continuing in nature and shall remain in full force and effect and shall survive the exercise of any remedy by Lender under the Mortgage or any of the other Loan Documents, (except to the extent that the exercise of such remedies results in the payment of the Guaranteed Obligations), including, without limitation, any foreclosure or deed in lieu thereof

(d) No Subrogation, No Recourse Against Lender Notwithstanding the satisfaction by Guarantor of any liability hereunder, Guarantor shall not have any right of subrogation, contribution, reimbursement or indemnity whatsoever or any right of recourse to or with respect to the assets or property of Borrower or to any collateral for the Loan. In connection with the foregoing, Guarantor expressly waives any and all rights of subrogation to Lender against Borrower, and Guarantor hereby waives any rights to enforce any remedy which Lender may have against Borrower and any right to participate in any collateral for the Loan. In addition to and without in any way limiting the foregoing, Guarantor hereby subordinates any and all indebtedness of Borrower now or hereafter owed to Guarantor to all indebtedness of Borrower to Lender, and agrees with Lender that Guarantor shall not demand or accept any payment of principal or interest from Borrower, shall not claim any offset or other reduction of Guarantor's obligations hereunder because of any such indebtedness and shall not take any action to obtain any of the collateral securing the Loan. Further, Guarantor shall not have any right of recourse against Lender by reason of any action Lender may take or omit to take under the provisions of this Guaranty or under the provisions of any of the Loan Documents

(e) Financial Statements Guarantor hereby agrees, as a material inducement to Lender to make the Loan to Borrower, to furnish to Lender promptly upon demand by Lender based on Lender's reasonable belief of a claim hereunder or of a material adverse change in the condition of Guarantor, current and dated financial statements certified by or on behalf of Guarantor, detailing the assets and liabilities of Guarantor, in form and substance reasonably acceptable to Lender

(f) Rights Cumulative, Payments Lender's rights under this Guaranty shall be in addition to all rights of Lender under the Note, the Mortgage and the other Loan Documents. FURTHER, PAYMENTS MADE BY GUARANTOR UNDER THIS GUARANTY SHALL NOT REDUCE IN ANY RESPECT BORROWER'S OBLIGATIONS AND LIABILITIES UNDER THE NOTE, THE MORTGAGE OR THE OTHER LOAN DOCUMENTS EXCEPT WITH RESPECT TO, AND TO THE EXTENT OF, BORROWER'S OBLIGATION AND LIABILITY FOR THE PAYMENT MADE BY GUARANTOR

(g) No Limitation on Liability Guarantor hereby consents and agrees that Lender may at any time and from time to time without further consent from Guarantor do any of the following events, and the liability of Guarantor under this Guaranty shall be unconditional and absolute and shall in no way be impaired or limited by any of the following events, whether occurring with or without notice to Guarantor or with or without consideration: (i) any extensions of time for performance required by any of the Loan Documents or extension or renewal of the Note, (ii) any sale, assignment or foreclosure of the Note, the Mortgage or any of the other Loan Documents or any sale or transfer of the Property, (iii) any change in the composition of Borrower, including, without limitation, the withdrawal or removal of Guarantor from any current or future position of ownership, management or control of Borrower, (iv) the accuracy or inaccuracy of the representations and warranties made by Guarantor herein or by Borrower in any of the Loan Documents, (v) the release of Borrower or of any other person or entity from performance or observance of any of the agreements, covenants, terms or conditions contained in any of the Loan Documents by operation of law, Lender's voluntary act or otherwise, (vi) the release or substitution in whole or in part of any security for the Loan, (vii) Lender's failure to record the Mortgage or to file any financing statement (or Lender's improper recording or filing thereof) or to otherwise perfect, protect, secure or insure any lien or security interest given as security for the Loan, (viii) the modification of the terms of any one or more of the Loan Documents, or (ix) the taking or failure to take any action of any type whatsoever. No such action which Lender shall take or fail to take in connection with the Loan Documents or any collateral for the Loan, nor any course of dealing with Borrower or any other person, shall limit, impair or release Guarantor's obligations hereunder, affect this Guaranty in any way or afford Guarantor any recourse against Lender. Nothing contained in this Section shall be construed to require Lender to take or refrain from taking any action referred to herein.

(h) Entire Guaranty, Amendment, Severability This Guaranty contains the entire agreement between the parties respecting the matters herein set forth and supersedes all prior agreements, whether written or oral, between the parties respecting such matters. Any amendments or modifications hereto, in order to be effective, shall be in writing and executed by the parties hereto. A determination that any provision of this Guaranty is unenforceable or invalid shall not affect the enforceability or validity of any other provision, and any determination that the application of any provision of this Guaranty to any person or

circumstance is illegal or unenforceable shall not affect the enforceability or validity of such provision as it may apply to any other persons or circumstances

(i) Binding Effect, Waiver of Acceptance This Guaranty shall bind Guarantor and its heirs, personal representatives, successors and assigns and shall inure to the benefit of Lender and the officers, directors, shareholders, agents and employees of Lender and their respective heirs, personal representatives, successors and assigns. Notwithstanding the foregoing, Guarantor shall not assign any of its rights or obligations under this Guaranty without the prior written consent of Lender, which consent may be withheld by Lender in its sole discretion. Guarantor hereby waives any acceptance of this Guaranty by Lender, and this Guaranty shall immediately be binding upon Guarantor.

(j) Notice All notices, demands, requests or other communications to be sent by one party to the other hereunder or required by law shall be in writing and shall be deemed to have been validly given or served by delivery of the same in person to the intended addressee or by depositing the same with Federal Express or another reputable private courier service for next business day delivery to the intended addressee at its address set forth on the first page of this Guaranty or at such other address as may be designated by such party as herein provided, or by depositing the same in the United States mail, postage prepaid, registered or certified mail, return receipt requested, addressed to the intended addressee at its address set forth on the first page of this Guaranty or at such other address as may be designated by such party as herein provided. All notices, demands and requests shall be effective upon such personal delivery, or one (1) business day after being deposited with the private courier service, or two (2) business days after being deposited in the United States mail as required above. Rejection or other refusal to accept or the inability to deliver because of changed address of which no notice was given as herein required shall be deemed to be receipt of the notice, demand or request sent. By giving to the other party hereto at least fifteen (15) days' prior written notice thereof in accordance with the provisions hereof, the parties hereto shall have the right from time to time to change their respective addresses and each shall have the right to specify as its address any other address within the United States of America.

(k) No Waiver; Time of Essence, Business Days The failure of any party hereto to enforce any right or remedy hereunder, or to promptly enforce any such right or remedy, shall not constitute a waiver thereof nor give rise to any estoppel against such party nor excuse any of the parties hereto from their respective obligations hereunder. Any waiver of such right or remedy must be in writing and signed by the party to be bound. This Guaranty is subject to enforcement at law or in equity, including actions for damages or specific performance. Time is of the essence hereof. The term "business day" as used herein shall mean a weekday, Monday through Friday, except a legal holiday or a day on which banking institutions in New York, New York are authorized by law to be closed.

(l) Captions for Convenience The captions and headings of the sections and paragraphs of this Guaranty are for convenience of reference only and shall not be construed in interpreting the provisions hereof.

(m) Reasonable Attorney's Fees In the event it is necessary for Lender to retain the services of an attorney or any other consultants in order to enforce this Guaranty, or

any portion thereof, Guarantor agrees to pay to Lender any and all costs and expenses, including, without limitation, reasonable attorney's fees, incurred by Lender as a result thereof and such costs, fees and expenses shall be included in the Guaranteed Obligations

(n) Successive Actions A separate right of action hereunder shall arise each time Lender acquires knowledge of any matter indemnified or guaranteed by Guarantor under this Guaranty. Separate and successive actions may be brought hereunder to enforce any of the provisions hereof at any time and from time to time. No action hereunder shall preclude any subsequent action, and Guarantor hereby waives and covenants not to assert any defense in the nature of splitting of causes of action or merger of judgments.

(o) Joint and Several Liability Notwithstanding anything to the contrary contained herein, the representations, warranties, covenants and agreements made by Guarantor herein, and the liability of Guarantor hereunder, is joint and several if Guarantor is comprised of more than one person or entity.

(p) Counterparts This Guaranty may be executed in any number of counterparts, each of which shall be effective only upon delivery and thereafter shall be deemed an original, and all of which shall be taken to be one and the same instrument, for the same effect as if all parties hereto had signed the same signature page. Any signature page of this Guaranty may be detached from any counterpart of this Guaranty without impairing the legal effect of any signatures thereon and may be attached to another counterpart of this Guaranty identical in form hereto but having attached to it one or more additional signature pages.

(q) EACH GUARANTOR, TO THE FULL EXTENT PERMITTED BY LAW, HEREBY KNOWINGLY, INTENTIONALLY AND VOLUNTARILY, WITH AND UPON THE ADVICE OF COMPETENT COUNSEL, (A) SUBMITS TO PERSONAL JURISDICTION IN THE STATE IN WHICH THE PROPERTY IS LOCATED OVER ANY SUIT, ACTION OR PROCEEDING BY ANY PERSON ARISING FROM OR RELATING TO THIS GUARANTY, (B) AGREES THAT ANY SUCH ACTION, SUIT OR PROCEEDING MAY BE BROUGHT IN ANY STATE OR FEDERAL COURT OF COMPETENT JURISDICTION SITTING IN THE COUNTY AND STATE, IN WHICH THE PROPERTY IS LOCATED, (C) SUBMITS TO THE JURISDICTION OF SUCH COURTS, AND (D) AGREES THAT NEITHER OF THEM WILL BRING ANY ACTION, SUIT OR PROCEEDING IN ANY OTHER FORUM (BUT NOTHING HEREIN SHALL AFFECT THE RIGHT OF LENDER TO BRING ANY ACTION, SUIT OR PROCEEDING IN ANY OTHER FORUM).

(r) EACH GUARANTOR AND LENDER BY ITS ACCEPTANCE OF THIS GUARANTY, TO THE FULL EXTENT PERMITTED BY LAW, HEREBY KNOWINGLY, INTENTIONALLY AND VOLUNTARILY, WITH AND UPON THE ADVICE OF COMPETENT COUNSEL, WAIVES, RELINQUISHES AND FOREVER FORGOES THE RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING BASED UPON, ARISING OUT OF, OR IN ANY WAY RELATING TO THIS GUARANTY OR ANY CONDUCT, ACT OR OMISSION OF LENDER OR GUARANTOR, OR ANY OF THEIR RESPECTIVE DIRECTORS, OFFICERS, PARTNERS, MEMBERS, EMPLOYEES, AGENTS OR ATTORNEYS, OR ANY OTHER PERSON AFFILIATED WITH LENDER OR GUARANTOR, IN EACH OF THE FOREGOING CASES, WHETHER SOUNDING IN

CONTRACT, TORT OR OTHERWISE EACH GUARANTOR HEREBY CONSENTS AND AGREES TO SERVICE OF ANY SUMMONS, COMPLAINT OR OTHER LEGAL PROCESS, IN CONNECTION WITH ANY SUIT, ACTION OR PROCEEDING ARISING FROM OR RELATING TO THIS GUARANTY BY REGISTERED OR CERTIFIED U S MAIL, POSTAGE PREPAID TO GUARANTOR AT THE ADDRESS SET FORTH HEREINABOVE

(s) Waiver by Guarantor Guarantor covenants and agrees that, upon the commencement of a voluntary or involuntary bankruptcy proceeding by or against Borrower, Guarantor shall not seek or cause Borrower or any other person or entity to seek a supplemental stay or other relief, whether injunctive or otherwise, pursuant to 11 U.S.C. §105 or any other provision of Title 11, United States Code, as amended, or any other debtor relief law, (whether statutory, common law, case law or otherwise) of any jurisdiction whatsoever, now or hereafter in effect, which may be or become applicable, to stay, interdict, condition, reduce or inhibit the ability of Lender to enforce any rights of Lender against Guarantor or the collateral for the Loan by virtue of this Guaranty or otherwise

(t) SPECIFIC NOTICE IT IS EXPRESSLY AGREED AND UNDERSTOOD THAT THIS GUARANTY INCLUDES INDEMNIFICATION PROVISIONS WHICH, IN CERTAIN CIRCUMSTANCES, COULD INCLUDE AN INDEMNIFICATION BY GUARANTOR OF LENDER FROM CLAIMS OR LOSSES ARISING AS A RESULT OF LENDER'S OWN NEGLIGENCE

(u) Secondary Market Lender may sell, transfer and deliver the Loan Documents to one or more investors in the secondary mortgage market. In connection with such sale, Lender may retain or assign responsibility for servicing the Loan or may delegate some or all of such responsibility and/or obligations to a servicer, including, but not limited to, any subservicer or master servicer, on behalf of the investors. All references to Lender herein shall refer to and include, without limitation, any such servicer, to the extent applicable

(v) THIS GUARANTY SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OR COMMONWEALTH IN WHICH THE PROPERTY IS LOCATED WITHOUT REGARD TO ITS CONFLICTS OF LAWS RULES

11 State Specific Provisions Notwithstanding anything else in this Guaranty, the following attached state specific provisions shall be controlling

(a) Guarantor hereby also waives and agrees not to assert or take advantage of the following

(i) Any defense of Guarantor based upon Lender's election of any remedy against Guarantor or Borrower or both, including, without limitation, the defense to enforcement of this Agreement (the "Gradsky" defense based upon *Union Bank v Gradsky*, 265 Cal App 2d 40 (1968) or subsequent cases) which, absent this waiver, Guarantor would have by virtue of an election by Lender to conduct a non-judicial foreclosure sale of the Property, it being understood by Guarantor that any such non-

judicial foreclosure sale will destroy, by operation of California Code of Civil Procedure Section 580d, all rights of any party to a deficiency judgment against the Borrower, and, as a consequence, will destroy all rights which Guarantor would otherwise have (including, without limitation, the right of subrogation, the right of reimbursement, and the right of contribution) to proceed against the Borrower and to recover any such amount, and that Lender could be otherwise estopped from pursuing Guarantor for a deficiency judgment after a non-judicial foreclosure sale on the theory that a guarantor should be exonerated if a lender elects a remedy that eliminates the guarantor's subrogation, reimbursement or contribution rights.

(ii) Any rights under California Code of Civil Procedure Sections 580a and 726(b), which provide, among other things that a creditor must file a complaint for deficiency within three (3) months of a nonjudicial foreclosure sale or judicial foreclosure sale, as applicable, that a fair market value hearing must be held, and that the amount of the deficiency judgment shall be limited to the amount by which the unpaid debt exceeds the fair market value of the security, but not more than the amount by which the unpaid debt exceeds the sale price of the security, and

(iii) Without limiting the generality of the foregoing or any other provision hereof, Guarantor expressly waives any and all benefits which might otherwise be available to Guarantor under California Civil Code Sections 2809, 2810, 2819, 2839, 2845, 2849, 2850, 2899 and 3433 and California Code of Civil Procedure Sections 580a, 580b, 580d and 726, or any of such sections

(b) Guarantor's Waiver Pursuant to California Civil Code Section 2856 In addition to all the other waivers agreed to and made by Guarantor as set forth in this Agreement, and pursuant to the provisions of California Civil Code Section 2856, Guarantor hereby waives all rights and defenses that Guarantor may have because the debtor's debt is secured by real property. This means, among other things

(i) The creditor may collect from Guarantor without first foreclosing on any real or personal property collateral pledged by the debtor

(ii) If the creditor forecloses on any real property collateral pledged by the debtor

(A) The amount of the debt may be reduced only by the price for which that collateral is sold at the foreclosure sale, even if the collateral is worth more than the sale price

(B) The creditor may collect from Guarantor even if the creditor, by foreclosing on the real property collateral, has destroyed any right Guarantor may have to collect from the debtor


This is an unconditional and irrevocable waiver of any rights and defenses Guarantor may have because the debtor's debt is secured by real property. These rights and defenses include, but are not limited to, any rights or defenses based upon Section 580a, 580b, 580d, or 726 of the California Code of Civil Procedure

(c) Guarantor further hereby waives all rights and defenses arising out of an election of remedies by the creditor, even though that election of remedies, such as a nonjudicial foreclosure with respect to security for a guaranteed obligation, has destroyed Guarantor's rights of subrogation and reimbursement against the principal by the operation of Section 580d of the Code of Civil Procedure or otherwise

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IN WITNESS WHEREOF, the parties hereto have executed this Payment Guaranty as of the date first written above

GUARANTOR


JAMES C GIANULIAS, an individual



JAMES C GIANULIAS, as Trustee of the James
Chris Gianulias Trust Dated October 14, 2003

EXHIBIT A

Silverhawk

Exhibit "A"

Real property in the City of La Quinta, County of Riverside, State and California, described as follows

PARCEL A

PARCEL 3 OF PARCEL MAP NO 30721 ON FILE IN BOOK 203 PAGES 30 AND 31 OF PARCEL MAPS, RECORDS OF RIVERSIDE COUNTY, CALIFORNIA

PARCEL B

AN EASEMENT FOR UTILITY AND INCIDENTAL PURPOSES, RECORDED OCTOBER 24, 2002 AS INSTRUMENT NO 600847 OF OFFICIAL RECORDS

A DOCUMENT DECLARING MODIFICATIONS THEREOF RECORDED SEPTEMBER 10, 2003 AS INSTRUMENT NO 03-702002 OF OFFICIAL RECORDS

PARCEL C

AN EASEMENT RESERVED FOR ACCESS AND PUBLIC UTILITY PURPOSES AS SHOWN ON PARCEL MAP NO 30721 RECORDED IN BOOK 203 PAGES 30 AND 31 OF PARCEL MAPS, RECORDS OF RIVERSIDE COUNTY, CALIFORNIA

PARCEL D

AN EASEMENT FOR ROADWAY ACCESS, PARKING AND EMERGENCY ACCESS AS DISCLOSED BY A DOCUMENT ENTITLED "EASEMENT FOR ROADWAY ACCESS, PARKING AND EMERGENCY ACCESS" RECORDED APRIL 15, 2004 AS INSTRUMENT NO 04-274385 AND RE-RECORDED JUNE 17, 2005 AS INSTRUMENT NO 05-484696 BOTH OF OFFICIAL RECORDS, RIVERSIDE COUNTY, CALIFORNIA

APN 773-370-028-9

Exhibit 2

Guaranty and Indemnity

This GUARANTY AND INDEMNITY ("Guaranty"), made as of June 29, 2007 by JAMES C GIANULIAS, an individual, and THE JAMES CHRIS GIANULIAS TRUST DATED OCTOBER 14, 2003, each of whose address is 1105 Quail Street, Newport Beach, California 92660 (hereinafter individually and collectively referred to as the "Guarantor"), in favor of DEUTSCHE BANK BERKSHIRE MORTGAGE, INC , a Delaware corporation, whose address is One Beacon Street, 14th Floor, Boston, Massachusetts, 02108 ("Lender")

Lender has extended to Apartments at La Quinta Village L P , a California limited partnership ("Borrower"), a loan (the "Loan") evidenced by a Multifamily Promissory Note (the "Note") in the principal amount of \$24,550,000 00 and secured by a Multifamily Deed of Trust and Security Agreement (the "Mortgage") encumbering the real property in the County of Riverside, State of California, as more particularly described on Exhibit A hereto, and the improvements now or hereafter located thereon (collectively, the "Property") The Note, the Mortgage and all other instruments evidencing, securing or relating thereto are hereinafter referred to, collectively, as the "Loan Documents" Each capitalized term not defined herein shall have the meaning set forth in the Mortgage

NOW, THEREFORE, to induce Lender to make the Loan and in consideration of the foregoing premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Guarantor hereby covenants and agrees for the benefit of Lender, as follows

1 Indemnity and Guaranty Guarantor (i) assumes liability for, (ii) guarantees payment to Lender of, (iii) agrees to pay, protect, defend, save harmless and indemnify Lender from and against any and all liens, damages (including, without limitation, punitive or exemplary damages), losses, liabilities (including, without limitation, strict liability), obligations, settlement payments, penalties, fines, assessments, citations, claims, litigation, demands, defenses, judgments, suits, proceedings, costs, and expenses of any kind whatsoever (including reasonable attorneys', consultants' and experts' fees and disbursements actually incurred in investigating, defending, settling or prosecuting any claim or proceeding or enforcing any term of this Guaranty) (collectively "Costs") which may at any time be imposed upon, incurred by or asserted against Lender as a result of the following "Indemnified Matters"

(a) Rent or other payments received by or on behalf of Borrower from Tenants paid more than one (1) month in advance,

(b) Proceeds of insurance policies, condemnation or other taking received by or on behalf of Borrower and not applied in accordance with the Loan Documents,

(c) Rents, issues, profits, revenues of the Property and tenant security deposits relating to the Property received or applicable to a period after the occurrence of an Event of Default or Default, which are received by or on behalf of Borrower and not applied to the ordinary and necessary expenses of owning and operating the Property or paid to Lender,

(d) All obligations, requirements and indemnities of Borrower under the Loan Documents relating to Hazardous Substances or compliance with Environmental Laws to the full extent of any losses or damages (including those resulting from diminution in value of any

property, including the Property) incurred by Lender as a result of the existence of such Hazardous Substances or failure by either Borrower or Lender to comply with Environmental Laws,

(e) Fraud, material misrepresentation or failure to disclose a material fact by Borrower or any of its principals, officers, general partners or members, any guarantor, any indemnitor, or any agent, employee or other person authorized or apparently authorized to make statements, representations or disclosures on behalf of such persons,

(f) Waste committed on the Property by, or damage to the Property as a result of the intentional misconduct or gross negligence of, Borrower or any of its principals, officers, general partners or members or any agent or employee of such persons, or any removal of the Property in violation of the terms of the Loan Documents, to the full extent of the losses or damages incurred by Lender on account of such occurrence, and

(g) In addition, Guarantor hereby unconditionally and irrevocably guarantees payment of the entire Debt if any of the following occurs after the date hereof (i) a voluntary bankruptcy filing by, or an involuntary bankruptcy filing against, Borrower or any general partner or managing member or majority shareholder of Borrower; or (ii) the Property becomes an asset in any bankruptcy proceeding

This is a guaranty of payment and performance and not of collection. The liability of Guarantor under this Guaranty shall be direct and immediate and not conditional or contingent upon the pursuit of any remedies against Borrower or any other person (including, without limitation, other guarantors, if any), nor against the collateral for the Loan. In the event of a Default, Lender shall have the right to enforce any and all rights, powers and remedies available to Lender which shall be non-exclusive and cumulative. If the indebtedness and obligations guaranteed hereby are partially paid or discharged by reason of the exercise of any of the remedies available to Lender, this Guaranty shall nevertheless remain in full force and effect, and Guarantor shall remain liable for all remaining indebtedness and obligations guaranteed hereby.

2 Indemnification Procedures

(a) If any action is brought against Lender involving an Indemnified Matter, Lender shall notify Guarantor in writing and Guarantor shall promptly assume the defense thereof, including, the employment of counsel acceptable to Lender and, subject to clause (b) below, the negotiation of any settlement. Lender's failure to notify Guarantor of such matter shall not impair or reduce Guarantor's obligations. Lender may, at Guarantor's expense, employ separate counsel in any action and participate in the defense thereof. If Guarantor fails to defend Lender with respect to an Indemnified Matter, Lender may, at its sole option, defend or settle same. Guarantor's liability to Lender hereunder shall be conclusively established by such settlement, provided such settlement is made in good faith, the amount of such liability includes both the settlement consideration and all of Lender's Costs incurred to effect the settlement. Lender's good faith in any settlement shall be conclusively established if the settlement is made on the advice of Lender's independent legal counsel.

(b) Guarantor shall not, without Lender's prior written consent (i) settle or compromise any action, suit, proceeding or claim (each, an "Action") or consent to the entry of any judgment that does not include as an unconditional term thereof the delivery by the claimant or plaintiff to Lender of a full and complete written release of Lender (in form, scope and substance satisfactory to Lender in its sole discretion) from all liability in respect of such Action and a dismissal with prejudice of such Action, or (ii) settle or compromise any Action in any manner that may adversely affect Lender (including, without limitation, Lender's reputation) or obligate Lender to pay any sum or perform any obligation as determined by Lender in its sole discretion

(c) All Costs shall be immediately reimbursable to Lender when and as incurred and without any requirement of waiting for the ultimate outcome of any Action, and Guarantor shall pay to Lender any and all Costs within ten (10) days after notice from Lender itemizing the amounts thereof incurred to the date of such notice. Without limiting any other available remedy, such Costs, if not paid within said ten-day period, shall bear interest at the Default Rate (as defined in the Note)

3 Reinstatement of Obligations If at any time all or any part of any payment made to Lender under this Guaranty must be rescinded or returned for any reason whatsoever (including, but not limited to, the bankruptcy of Guarantor), then Guarantor's obligations hereunder shall, to the extent of the payment rescinded or returned, be deemed to have continued in existence, notwithstanding such previous payment to Lender, and the obligations of Guarantor hereunder shall continue or be reinstated, as the case may be, as to such payment, as if such previous payment had never been made

4 Waivers by Guarantor To the extent permitted by law, Guarantor hereby waives and agrees not to assert or take advantage of (a) any right to require Lender to proceed against any other person or to proceed against or exhaust any security held by Lender at any time or to pursue any other remedy in Lender's power or under any other agreement before proceeding against Guarantor hereunder, (b) any defense that may arise by reason of the incapacity, lack of authority, death or disability of any other person or persons or the failure of Lender to file or enforce a claim against the estate (in administration, bankruptcy or any other proceeding) of any other person or persons, (c) demand, presentment for payment, notice of nonpayment, protest, notice of protest and all other notices of any kind, or the lack of any thereof, including, without limitation, notice of the existence, creation or incurring of any new or additional indebtedness or obligation (including any Subordinate Financing) or of any action or non-action on the part of Lender, any endorser or creditor of either Guarantor or any other person whomsoever under this or any other instrument in connection with any obligation or evidence of indebtedness held by Lender; (d) any defense based upon an election of remedies by Lender, (e) any right or claim of right to cause a marshaling of the assets of either Guarantor or Borrower; (f) any principle or provision of law, statutory or otherwise, which is or might be in conflict with the terms and provisions of this Guaranty, (g) any duty on the part of Lender to disclose to Guarantor any facts Lender may know about the Property or Borrower, regardless of whether Lender has reason to believe that any such facts materially increase the risk beyond that which Guarantor intends to assume or has reason to believe that such facts are unknown to Guarantor or has a reasonable opportunity to communicate such facts to Guarantor, it being understood and agreed that Guarantor is fully responsible for being and keeping informed of the condition of the

Property or Borrower and of any and all circumstances bearing on the risk that liability may be incurred by Guarantor; (h) any lack of notice of disposition or of manner of disposition of any collateral for the Loan, (i) any invalidity, irregularity or unenforceability, in whole or in part, of any of the Loan Documents, (j) any deficiencies in the collateral for the Loan or any deficiency in the ability of Lender to collect or to obtain performance from any persons or entities now or hereafter liable for the payment and performance of any obligation hereby guaranteed, (k) any assertion or claim that the automatic stay provided by 11 U.S.C. §362 or any other stay provided under any other debtor relief law of any jurisdiction whatsoever, now or hereafter in effect, shall operate to stay or inhibit the ability of Lender to enforce any of its rights which Lender may have against Guarantor, or the collateral for the Loan, (l) any modifications of the Loan Documents or any obligation of Borrower relating to the Loan by operation of law or by action of any court, whether pursuant to Title 11 of the United States Code, as amended, or any other debtor relief law of any jurisdiction whatsoever, now or hereafter in effect, or otherwise, and (m) any action, occurrence, event or matter consented to by Guarantor under Section 5(i) or any other provision hereof, or otherwise

5 General Provisions

(a) Fully Recourse All of the terms of this Guaranty are recourse obligations of Guarantor and not restricted by any limitation on personal liability provided in any of the other Loan Documents or limited to any collateral securing any of the obligations under this Guaranty, it being the intent of Lender to create separate obligations of Guarantor hereunder which can be enforced against Guarantor without regard to the existence of the Mortgage or other Loan Documents

(b) Guarantor Obligations Guarantor acknowledges that Lender would not make the Loan but for the personal liability undertaken by Guarantor herein

(c) Right to Indemnification Not Affected by Knowledge Lender's rights and remedies based on this Guaranty shall not be diminished or affected in any way by any investigation conducted by Lender or other knowledge acquired (or capable of being acquired) in any way by Lender at any time

(d) Survival This Guaranty shall be deemed to be continuing in nature and shall remain in full force and effect and shall survive the payment of the Debt and the exercise of any remedy by Lender under the Mortgage or any of the other Loan Documents, even if, as a part of such remedy, the Loan is paid or satisfied in full, provided, however, that Guarantor shall be released from and relieved of any personal liability hereunder for any acts or events occurring or obligations arising after the transfer of title to Lender in connection with any foreclosure or deed-in-lieu thereof (a "Foreclosure Event") which are not caused by or arising out of any acts or events occurring or obligations arising prior to or simultaneously with such Foreclosure Event, provided further that no such Foreclosure Event shall not be construed so as to relieve Guarantor of any personal liability hereunder for any acts or events occurring or obligations arising prior to or simultaneously with such Foreclosure Event, whether or not same is discovered prior or subsequent to the closing of such Foreclosure Event

(e) No Subrogation, No Recourse Against Lender Notwithstanding the satisfaction by Guarantor of any liability hereunder, Guarantor shall not have any right of subrogation, contribution, reimbursement or indemnity whatsoever or any right of recourse to or with respect to the assets or property of Borrower or to any collateral for the Loan. In connection with the foregoing, Guarantor expressly waives any and all rights of subrogation to Lender against Borrower, and Guarantor hereby waives any rights to enforce any remedy which Lender may have against Borrower and any right to participate in any collateral for the Loan. In addition to and without in any way limiting the foregoing, Guarantor hereby subordinates any and all indebtedness of Borrower now or hereafter owed to Guarantor to all indebtedness of Borrower to Lender, and agrees with Lender that Guarantor shall not demand or accept any payment of principal or interest from Borrower, shall not claim any offset or other reduction of Guarantor's obligations hereunder because of any such indebtedness and shall not take any action to obtain any of the collateral securing the Loan. Further, Guarantor shall not have any right of recourse against Lender by reason of any action Lender may take or omit to take under the provisions of this Guaranty or any of the other Loan Documents.

(f) Reservation of Rights Nothing contained in this Guaranty shall prevent, diminish or interfere with any rights or remedies, including the right to contribution or cost recovery, which Lender may have against Guarantor or any other party under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (codified at Title 42 U.S.C. §9601 *et seq.*), as it may be amended from time to time, or any other applicable federal, state or local laws, all such rights being hereby expressly reserved.

(g) Financial Statements Guarantor shall furnish to Lender promptly upon demand by Lender current and dated financial statements, certified by Guarantor, detailing the assets and liabilities of Guarantor, in form and substance acceptable to Lender. Guarantor represents that any and all balance sheets, net worth statements and other financial data which have been or may be given to Lender with respect to Guarantor did or will at the time of such delivery fairly and accurately present the financial condition of Guarantor.

(h) Rights Cumulative, Payments Lender's rights under this Guaranty shall be in addition to all rights of Lender under the Note, the Mortgage and the other Loan Documents. FURTHER, PAYMENTS MADE BY GUARANTOR UNDER THIS GUARANTY SHALL NOT REDUCE IN ANY RESPECT BORROWER'S OBLIGATIONS AND LIABILITIES UNDER THE NOTE, THE MORTGAGE OR THE OTHER LOAN DOCUMENTS EXCEPT WITH RESPECT TO, AND TO THE EXTENT OF, BORROWER'S OBLIGATION AND LIABILITY FOR THE PAYMENT MADE BY GUARANTOR.

(i) No Limitation on Liability Guarantor consents and agrees that Lender may at any time and from time to time without further consent from Guarantor do any of the following, and the liability of Guarantor under this Guaranty shall be unconditional and absolute and shall in no way be impaired or limited by any of the following, whether occurring with or without notice to Guarantor or with or without consideration: (i) any extensions of time for performance required by any of the Loan Documents or extension or renewal of the Note, (ii) any sale, assignment or foreclosure of the Note, the Mortgage or any of the other Loan Documents or any sale or transfer of the Property, (iii) any change in the composition of Borrower, including, without limitation, the withdrawal or removal of Guarantor from any

current or future position of ownership, management or control of Borrower, (iv) the accuracy or inaccuracy of the representations and warranties made by Borrower; (v) the release of Borrower or of any other person or entity from performance or observance of any of the provisions of any of the Loan Documents by operation of law, Lender's voluntary act or otherwise, (vi) the release or substitution in whole or in part of any security for the Loan, (vii) Lender's failure to properly record the Mortgage or file any financing statement or to otherwise perfect, protect, secure or insure any lien or security interest given as security for the Loan, (viii) the modification of the terms of any one or more of the Loan Documents, or (ix) the taking or failure to take any action of any type whatsoever. No such action or inaction, nor any course of dealing with Borrower or any other person, shall limit, impair or release Guarantor's obligations hereunder, affect this Guaranty in any way or afford Guarantor any recourse against Lender. Nothing contained in this Section shall be construed to require Lender to take or refrain from taking any action referred to herein.

(j) Notice. All notices, demands, requests or other communications to be sent by one party to the other hereunder or required by law shall be in writing and shall be deemed to have been validly given or served by delivery of the same in person to the intended addressee, or by depositing the same with Federal Express or another reputable private courier service for next business day delivery to the intended addressee at its address set forth on the first page of this Guaranty or at such other address as may be designated by such party as herein provided, or by depositing the same in the United States mail, postage prepaid, registered or certified mail, return receipt requested, addressed to the intended addressee at its address set forth on the first page of this Guaranty or at such other address as may be designated by such party as herein provided. All notices, demands and requests shall be effective upon such personal delivery, or one (1) business day after being deposited with the private courier service, or two (2) business days after being deposited in the United States mail as required above. Rejection or other refusal to accept or the inability to deliver because of changed address of which no notice was given as herein required shall be deemed to be receipt of the notice, demand or request sent. By giving to the other party hereto at least fifteen (15) days' prior written notice thereof in accordance with the provisions hereof, the parties hereto shall have the right from time to time to change their respective addresses and each shall have the right to specify as its address any other address within the United States of America.

(k) Successive Actions. A separate right of action shall arise each time Lender acquires knowledge of any Indemnified Matter and may be brought to enforce any provision hereof at any time and from time to time. No action hereunder shall preclude any subsequent action, and Guarantor waives and agrees not to assert any defense to or split causes of action or merge judgments.

(l) Joint and Several Liability. If Guarantor consists of more than one person and/or entity, the representations, warranties, covenants and liability of each such persons and/or entities shall be joint and several under this Guaranty.

(m) SUBMISSION TO JURISDICTION, WAIVER OF JURY TRIAL

(1) EACH GUARANTOR, TO THE FULL EXTENT PERMITTED BY LAW, HEREBY KNOWINGLY, INTENTIONALLY AND VOLUNTARILY,

WITH AND UPON THE ADVICE OF COMPETENT COUNSEL, (A) SUBMITS TO PERSONAL JURISDICTION IN THE STATE IN WHICH THE PROPERTY IS LOCATED OVER ANY SUIT, ACTION OR PROCEEDING BY ANY PERSON ARISING FROM OR RELATING TO THIS GUARANTY, (B) AGREES THAT ANY SUCH ACTION, SUIT OR PROCEEDING MAY BE BROUGHT IN ANY STATE OR FEDERAL COURT OF COMPETENT JURISDICTION SITTING IN THE COUNTY AND STATE, IN WHICH THE PROPERTY IS LOCATED, (C) SUBMITS TO THE JURISDICTION OF SUCH COURTS, AND (D) AGREES THAT NEITHER OF THEM WILL BRING ANY ACTION, SUIT OR PROCEEDING IN ANY OTHER FORUM (BUT NOTHING HEREIN SHALL AFFECT THE RIGHT OF LENDER TO BRING ANY ACTION, SUIT OR PROCEEDING IN ANY OTHER FORUM)

(2) EACH GUARANTOR AND LENDER BY ITS ACCEPTANCE OF THIS GUARANTY, TO THE FULL EXTENT PERMITTED BY LAW, HEREBY KNOWINGLY, INTENTIONALLY AND VOLUNTARILY, WITH AND UPON THE ADVICE OF COMPETENT COUNSEL, WAIVES, RELINQUISHES AND FOREVER FORGOES THE RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING BASED UPON, ARISING OUT OF, OR IN ANY WAY RELATING TO THIS GUARANTY OR ANY CONDUCT, ACT OR OMISSION OF LENDER OR GUARANTOR, OR ANY OF THEIR RESPECTIVE DIRECTORS, OFFICERS, PARTNERS, MEMBERS, EMPLOYEES, AGENTS OR ATTORNEYS, OR ANY OTHER PERSON AFFILIATED WITH LENDER OR GUARANTOR, IN EACH OF THE FOREGOING CASES, WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE EACH GUARANTOR HEREBY CONSENTS AND AGREES TO SERVICE OF ANY SUMMONS, COMPLAINT OR OTHER LEGAL PROCESS, IN CONNECTION WITH ANY SUIT, ACTION OR PROCEEDING ARISING FROM OR RELATING TO THIS GUARANTY BY REGISTERED OR CERTIFIED U S MAIL, POSTAGE PREPAID TO GUARANTOR AT THE ADDRESS SET FORTH HEREINABOVE

(n) Waiver by Guarantor Guarantor agrees that upon the commencement of a voluntary or involuntary bankruptcy proceeding by or against Borrower, Guarantor shall not seek or cause Borrower or any other person or entity to seek a supplemental stay, pursuant to 11 U S C §105 or any other provision of Title 11 United States Code, as amended, or any other debtor relief law (whether statutory, common law, case law, or otherwise) of any jurisdiction whatsoever, now or hereafter in effect, which may be or become applicable, to stay, interdict, condition, reduce or inhibit the ability of Lender to enforce any rights of Lender against Guarantor by virtue of this Guaranty or otherwise

(o) SPECIFIC NOTICE IT IS EXPRESSLY AGREED AND UNDERSTOOD THAT THIS GUARANTY INCLUDES INDEMNIFICATION PROVISIONS WHICH, IN CERTAIN CIRCUMSTANCES, COULD INCLUDE AN INDEMNIFICATION BY GUARANTOR OF LENDER FROM CLAIMS OR LOSSES ARISING AS A RESULT OF LENDER'S OWN NEGLIGENCE

(p) Secondary Market Lender may sell, transfer and deliver the Loan Documents to one or more investors in the secondary mortgage market, and may retain or assign

responsibility for servicing the Loan or delegate some or all of such responsibility and/or obligations to one or more servicers on behalf of the investors. All references to Lender herein shall include any servicers, as applicable.

(q) Miscellaneous

(i) This Guaranty contains the entire agreement between the parties respecting the matters herein set forth and supersedes all prior agreements, whether written or oral, between the parties respecting such matters. Any amendments or modifications hereto, in order to be effective, shall be in writing and executed by the parties hereto. A determination that any provision of this Guaranty is unenforceable or invalid shall not affect the enforceability or validity of any other provision, and any determination that the application of any provision of this Guaranty to any person or circumstance is illegal or unenforceable shall not affect the enforceability or validity of such provision as it may apply to any other persons or circumstances.

(ii) THIS GUARANTY SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE IN WHICH THE PROPERTY IS LOCATED WITHOUT REGARD TO ITS CONFLICTS OF LAWS RULES.

(iii) This Guaranty shall bind each Guarantor and its personal representatives, successors and assigns and shall inure to the benefit of Lender, its officers, directors, shareholders, agents and employees of Lender and their respective heirs, personal representatives, successors and assigns. Notwithstanding the foregoing, Guarantor shall not assign any of its rights or obligations under this Guaranty without the prior written consent of Lender, which consent may be withheld by Lender in its sole discretion.

(iv) The failure of any party hereto to enforce any right or remedy hereunder, or to promptly enforce any such right or remedy, shall not constitute a waiver thereof or give rise to any estoppel against such party nor excuse any of the parties hereto from their respective obligations hereunder. Any waiver of such right or remedy must be in writing and signed by the party to be bound.

(v) Time is of the essence hereof.

(vi) This Guaranty may be executed in any number of counterparts, all of which shall be taken to be one instrument.

6 State Specific Provisions Notwithstanding anything else in this Guaranty, the following attached state specific provisions shall be controlling.

(a) Guarantor hereby also waives and agrees not to assert or take advantage of the following:

(1) Any defense of Guarantor based upon Lender's election of any remedy against Guarantor or Borrower or both, including, without limitation, the defense to enforcement of this Agreement (the "Gradsky" defense based upon *Union Bank v Gradsky*, 265 Cal App 2d 40 (1968) or subsequent cases) which, absent this waiver,

Guarantor would have by virtue of an election by Lender to conduct a non-judicial foreclosure sale of the Property, it being understood by Guarantor that any such non-judicial foreclosure sale will destroy, by operation of California Code of Civil Procedure Section 580d, all rights of any party to a deficiency judgment against the Borrower, and, as a consequence, will destroy all rights which Guarantor would otherwise have (including, without limitation, the right of subrogation, the right of reimbursement, and the right of contribution) to proceed against the Borrower and to recover any such amount, and that Lender could be otherwise estopped from pursuing Guarantor for a deficiency judgment after a non-judicial foreclosure sale on the theory that a guarantor should be exonerated if a lender elects a remedy that eliminates the guarantor's subrogation, reimbursement or contribution rights,

(2) Any rights under California Code of Civil Procedure Sections 580a and 726(b), which provide, among other things that a creditor must file a complaint for deficiency within three (3) months of a nonjudicial foreclosure sale or judicial foreclosure sale, as applicable, that a fair market value hearing must be held, and that the amount of the deficiency judgment shall be limited to the amount by which the unpaid debt exceeds the fair market value of the security, but not more than the amount by which the unpaid debt exceeds the sale price of the security, and

(3) Without limiting the generality of the foregoing or any other provision hereof, Guarantor expressly waives any and all benefits which might otherwise be available to Guarantor under California Civil Code Sections 2809, 2810, 2819, 2839, 2845, 2849, 2850, 2899 and 3433 and California Code of Civil Procedure Sections 580a, 580b, 580d and 726, or any of such sections

(b) Guarantor's Waiver Pursuant to California Civil Code Section 2856 In addition to all the other waivers agreed to and made by Guarantor as set forth in this Agreement, and pursuant to the provisions of California Civil Code Section 2856, Guarantor hereby waives all rights and defenses that Guarantor may have because the debtor's debt is secured by real property This means, among other things

(1) The creditor may collect from Guarantor without first foreclosing on any real or personal property collateral pledged by the debtor

(2) If the creditor forecloses on any real property collateral pledged by the debtor

(A) The amount of the debt may be reduced only by the price for which that collateral is sold at the foreclosure sale, even if the collateral is worth more than the sale price

(B) The creditor may collect from Guarantor even if the creditor, by foreclosing on the real property collateral, has destroyed any right Guarantor may have to collect from the debtor

This is an unconditional and irrevocable waiver of any rights and defenses Guarantor may have because the debtor's debt is secured by real property These rights and defenses include, but are

not limited to, any rights or defenses based upon Section 580a, 580b, 580d, or 726 of the California Code of Civil Procedure

(c) Guarantor further hereby waives all rights and defenses arising out of an election of remedies by the creditor, even though that election of remedies, such as a nonjudicial foreclosure with respect to security for a guaranteed obligation, has destroyed Guarantor's rights of subrogation and reimbursement against the principal by the operation of Section 580d of the Code of Civil Procedure or otherwise

[NO FURTHER TEXT ON THIS PAGE]

Executed as of the day and year first written above

GUARANTOR


JAMES C GIANULIAS, an individual



JAMES C GIANULIAS, as Trustee of the James
Chris Gianulias Trust Dated October 14, 2003

EXHIBIT A
Legal Description

Silverhawk

Exhibit "A"

Real property in the City of La Quinta, County of Riverside, State and California, described as follows

PARCEL A

PARCEL 3 OF PARCEL MAP NO 30721 ON FILE IN BOOK 203 PAGES 30 AND 31 OF PARCEL MAPS, RECORDS OF RIVERSIDE COUNTY, CALIFORNIA

PARCEL B

AN EASEMENT FOR UTILITY AND INCIDENTAL PURPOSES, RECORDED OCTOBER 24, 2002 AS INSTRUMENT NO 600847 OF OFFICIAL RECORDS

A DOCUMENT DECLARING MODIFICATIONS THEREOF RECORDED SEPTEMBER 10, 2003 AS INSTRUMENT NO 03-702002 OF OFFICIAL RECORDS

PARCEL C

AN EASEMENT RESERVED FOR ACCESS AND PUBLIC UTILITY PURPOSES AS SHOWN ON PARCEL MAP NO 30721 RECORDED IN BOOK 203 PAGES 30 AND 31 OF PARCEL MAPS, RECORDS OF RIVERSIDE COUNTY, CALIFORNIA

PARCEL D

AN EASEMENT FOR ROADWAY ACCESS, PARKING AND EMERGENCY ACCESS AS DISCLOSED BY A DOCUMENT ENTITLED "EASEMENT FOR ROADWAY ACCESS, PARKING AND EMERGENCY ACCESS" RECORDED APRIL 15, 2004 AS INSTRUMENT NO 04-274385 AND RE-RECORDED JUNE 17, 2005 AS INSTRUMENT NO 05-484696 BOTH OF OFFICIAL RECORDS, RIVERSIDE COUNTY, CALIFORNIA

APN 773-370-028-9

Central District Of California Claims Register

8 08-bk-13150-RK James C Gianulias **Converted** 07/02/2008

Judge Robert N Kwan **Chapter** 11

Office Santa Ana **Last Date to file claims** 11/12/2008

Trustee **Last Date to file (Govt)**

<i>Creditor</i> (23454409) Deutsche Bank Berkshire Mortgage Inc One Beacon St 14th Fl Boston MA 02108	Claim No 55 <i>Original Filed</i> Date 03/10/2009 <i>Original Entered</i> Date 03/25/2009	<i>Status</i> Filed by CR Entered by Mccall, Audrey Modified
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Total claimed

History

Details 55-1 03/10/2009 Claim #55 filed by Deutsche Bank Berkshire Mortgage Inc, total amount
claimed \$0 (Mccall, Audrey)

Description

Remarks (55-1) No amount stated

Claims Register Summary