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Gary W. Ott
Recorder, Salt Lake County, UT
METRO NATIONAL TITLE
BY: eCASH, DEPUTY - EF 29 P.

PREPARED BY, AND AFTER RECORDING
RETURN TO:

HOMESTREET BANK
135 S. State College Blvd., Suite 600
Brea, CA 92821
Attn: HomeStreet Commercial Capital

Tax Parcel Number(s): 16-18-430-008 and 16-18-430-009

Space Above for Recorder's Use

**DEED OF TRUST,
ASSIGNMENT OF RENTS,
SECURITY AGREEMENT AND FIXTURE FILING**

(UTAH)

A. THIS DEED OF TRUST, ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND FIXTURE FILING (this "Instrument") is dated as of June 8, 2016, and is given by SUMMIT APARTMENTS, LLC, a Utah limited liability company, whose address is 4111 East Madison Street #285, Seattle, WA 98112, as grantor ("Borrower"), to FIDELITY NATIONAL TITLE INSURANCE COMPANY, a California corporation, as trustee ("Trustee"), for the benefit of HOMESTREET BANK, a Washington state chartered commercial bank, whose address is c/o HomeStreet Bank - Commercial Real Estate, 601 Union Street, Suite 2000, Seattle, WA 98101-2326, as beneficiary ("Lender"). Borrower's organizational identification number is 2059362-0160.

B. Borrower in consideration of the indebtedness and the trust created by this Instrument, irrevocably grants, assigns, conveys and warrants to Trustee, in trust, with power of sale, the Mortgaged Property, including the Land located in Salt Lake County, State of Utah and described in Exhibit "A" attached to this Instrument.

C. TO SECURE TO LENDER the repayment of the indebtedness evidenced by Borrower's Promissory Note payable to Lender, dated as of the date of this Instrument, and maturing on the earlier of (i) July 1, 2046, and (ii) the date on which the unpaid principal balance of the Note becomes due and payable by acceleration or otherwise pursuant to the Loan Documents or the exercise by Lender of any right or remedy under any Loan Document (the "Maturity Date"), in the principal amount of NINE HUNDRED THIRTY-FIVE THOUSAND AND 00/100 DOLLARS (US \$935,000.00), and all renewals, extensions and modifications of the indebtedness, and the performance of the covenants and agreements of Borrower contained in the Loan Documents.

D. Borrower represents, warrants covenants and agrees that: (i) Borrower is lawfully seized of the estate hereby conveyed and has full right and power to grant, convey and assign the Mortgaged Property, (ii) the Mortgaged Property is free from liens, encumbrances, exceptions and other charges of any kind whatsoever, except for the exceptions listed in Lender's

Utah Deed of Trust

title insurance policy insuring this Instrument or exceptions otherwise approved in writing by Lender ("**Permitted Exceptions**"), (iii) no other liens or encumbrances, whether superior or inferior to this Instrument, shall be created or suffered to be created by Borrower without the prior written consent of Lender, (iv) no default on the part of Borrower or any other person exists under any of the Permitted Exceptions and all of the Permitted Exceptions are in full force and effect and in good standing, without modification, (v) complete and current copies of the Permitted Exceptions have been furnished to Lender, and none of them have been or will be modified by Borrower without Lender's prior written consent, (vi) Borrower shall fully comply with all the terms of the Permitted Exceptions and shall deliver to Lender a copy of all notices delivered in connection with the Permitted Exceptions, (vii) Lender has the right to contact the other parties to the Permitted Exceptions to confirm the status thereof, and Borrower from time to time shall, at the request of Lender, request of such parties a certificate confirming such information regarding the Permitted Exceptions as Lender may request, and (viii) Borrower shall forever warrant and defend the Mortgaged Property unto Lender against all claims and demands of any other person whatsoever, subject only to non-delinquent taxes and assessments and the Permitted Exceptions.

Covenants. Borrower, and by their acceptance hereof, each of Trustee and Lender covenant and agree as follows:

1. **DEFINITIONS.** The following terms, when used in this Instrument (including when used in the above recitals), shall have the following meanings:

(a) "**Assignment**" means, collectively, the provisions of Sections 3 and 4 of this Instrument relating to the assignment of rents and leases affecting the Mortgaged Property.

(b) "**Attorneys' Fees and Costs**" means (i) fees and out-of-pocket costs of Lender's and Loan Servicer's attorneys, as applicable (whether or not any lawsuit or other proceeding is instituted), including costs of Lender's and Loan Servicer's allocable costs of in-house counsel, support staff costs, costs of preparing for litigation, computerized research, telephone and facsimile transmission expenses, mileage, deposition costs, postage, duplicating, process service, videotaping and similar costs and expenses; (ii) costs and fees of expert witnesses, including appraisers; and (iii) investigatory fees. As used in this Instrument and in the Note, "Attorneys' Fees and Costs" shall include those awarded by an appellate court.

(c) "**Bankruptcy Code**" means the United States Bankruptcy Code, 11 U.S.C. Section 101 et seq., as amended from time to time.

(d) "**Borrower**" means all Persons identified as "Borrower" in paragraph A of this Instrument, together with their successors and assigns.

(e) "**Borrower Certificate**" means that certain Borrower Certificate dated the same date as this Instrument, executed by Borrower in favor of Lender.

(f) "**Collateral Agreement**" means any separate agreement between Borrower and Lender for the purpose of establishing replacement reserves for the Mortgaged Property, establishing a fund to assure the completion of repairs or improvements specified in that agreement, or assuring reduction of the outstanding principal balance of the Indebtedness if the occupancy of or income from the Mortgaged Property does not increase to a level specified in that agreement, or any other agreement or agreements between Borrower and Lender which provide for the establishment of any other fund, reserve or account.

(g) "**Controlling Entity**" means an entity which owns, directly or indirectly through one or more intermediaries, (A) a general partnership interest or a Controlling Interest of the limited partnership interests in Borrower (if Borrower is a partnership or joint venture), (B) a manager's interest in Borrower or a Controlling Interest of the ownership or membership interests in Borrower (if Borrower is a limited liability company), or (C) a Controlling Interest of any class of voting stock of Borrower (if Borrower is a corporation).

(h) "**Controlling Interest**" means (i) 51 percent or more of the ownership interests in an entity, or (ii) a percentage ownership interest in an entity of less than 51 percent, if the owner(s) of that interest actually direct(s) the business and affairs of the entity without the requirement of consent of any other party.

(i) "**Environmental Indemnity**" means that certain Environmental Indemnity Agreement dated the same date as this Instrument, executed by Borrower, as Indemnitor, in favor of Lender, as Indemnitee.

(j) "**Environmental Permit**" means any permit, license, or other authorization issued under any Hazardous Materials Law with respect to any activities or businesses conducted on or in relation to the Mortgaged Property.

(k) "**Event of Default**" means the occurrence of any event listed in Section 22.

(l) **"Fixtures"** means all property now or hereafter owned by Borrower which is so attached to the Land or the Improvements as to constitute a fixture under applicable law, including without limitation: machinery, equipment, engines, boilers, incinerators, installed building materials; systems and equipment for the purpose of supplying or distributing heating, cooling, electricity, gas, water, air, or light; antennas, cable, wiring and conduits used in connection with radio, television, security, fire prevention, or fire detection or otherwise used to carry electronic signals; telephone systems and equipment; escalators and elevators and related machinery and equipment; fire detection, prevention and extinguishing systems and apparatus; security and access control systems and apparatus; plumbing systems; water heaters, ranges, stoves, microwave ovens, refrigerators, dishwashers, garbage disposers, washers, dryers and other appliances; light fixtures, awnings, storm windows and storm doors; pictures, screens, blinds, shades, curtains and curtain rods; mirrors; cabinets, paneling, rugs and floor and wall coverings; fences, trees and plants; swimming pools; and exercise equipment. All such items shall be deemed part of the Land and not severable wholly or in part without material injury to the freehold.

(m) **"Governmental Authority"** means any board, commission, department or body of any municipal, county, state or federal governmental unit, or any subdivision of any of them, that has or acquires jurisdiction over the Mortgaged Property or the use, operation or improvement of the Mortgaged Property or over Borrower.

(n) **"Guarantor"** means **CRAIG H. ROBINSON**, as well as any other or future guarantor of all or any portion of the Indebtedness, and "Guarantors" means all of them collectively.

(o) **"Guaranty"** means that certain Guaranty dated the same date as this Instrument, made and given by the Guarantors identified therein to Lender, and each and every other guaranty executed by any Guarantor in favor of Lender.

(p) **"Hazardous Materials"** means petroleum and petroleum products and compounds containing them, including gasoline, diesel fuel and oil; explosives; flammable materials; radioactive materials; polychlorinated biphenyls ("**PCBs**") and compounds containing them; lead and lead-based paint; asbestos or asbestos-containing materials in any form that is or could become friable; underground or above-ground storage tanks, whether empty or containing any substance; any substance the presence of which on the Mortgaged Property is prohibited by any federal, state or local authority; any substance that requires special handling; and any other material or substance now or in the future defined as a "hazardous substance," "hazardous material," "hazardous waste," "toxic substance," "toxic pollutant," "contaminant," or "pollutant" within the meaning of any Hazardous Materials Law.

(q) **"Hazardous Materials Laws"** means all federal, state, and local laws, ordinances and regulations and standards, rules, policies and other governmental requirements, administrative rulings and court judgments and decrees in effect now or in the future and including all amendments, that relate to Hazardous Materials or the protection of human health or the environment and apply to Borrower or to the Mortgaged Property. Hazardous Materials Laws include, but are not limited to, the Federal Water Pollution Control Act, 33 U.S.C. Section 1251 *et seq.*, the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601, *et seq.*, as amended by the Superfund Amendments Reauthorization Act of 1986, the Materials Transportation Act, 49 U.S.C. Section 1801 *et seq.*, the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, *et seq.*, the Toxic Substance Control Act, 15 U.S.C. Section 2601, *et seq.*, the Clean Water Act, 33 U.S.C. Section 1251, *et seq.*, the Emergency Planning and Community Right-to-Know Act of 1986, as amended, the Solid Waste Disposal Act, as amended, the Clean Air Act, as amended, the Safe Drinking Water Act, as amended, the Occupational Safety and Health Act, as amended, and the Hazardous Materials Transportation Act, 49 U.S.C. Section 5101, and their state analogs.

(r) **"Impositions"** and **"Imposition Deposits"** are defined in Section 7(a).

(s) **"Improvements"** means the buildings, structures, improvements, and alterations now constructed or at any time in the future constructed or placed upon the Land, including any future replacements and additions.

(t) **"Indebtedness"** means the principal of, interest on, and all other amounts due at any time under, the Note, this Instrument or any other Loan Document, including prepayment premiums, late charges, default interest, and advances to protect the security of this Instrument under Section 12 of this Instrument or any other applicable provision of this Instrument or any other Loan Document or as permitted by law.

(u) **"Initial Owners"** means, with respect to Borrower or any other entity, the Person(s) that (i) on the date of the Note, or (ii) on the date of a Transfer to which Lender has consented, own in the aggregate 100% of the ownership interests in Borrower or that entity.

(v) **"Land"** means the land described in Exhibit "A".

(w) **"Leases"** means all present and future leases, subleases, licenses, concessions or grants or other possessory interests now or hereafter in force, whether oral or written, covering or affecting the Mortgaged Property, or any portion of the Mortgaged Property (including proprietary leases or occupancy agreements if Borrower is a cooperative housing corporation), and all modifications, extensions or renewals.

(x) **"Lender"** means the entity identified as "Lender" in paragraph A of this Instrument, together with any subsequent owner or holder of the Note or any interest therein, including pledgees, assignees and participants.

(y) **"Loan"** means the loan evidenced by the Note and secured by this Instrument.

(z) **"Loan Documents"** means the Note, this Instrument, the Assignment, the Borrower Certificate, all indemnity agreements, all Collateral Agreements, O&M Plans, and any other documents now or in the future executed by Borrower, any Guarantor or any other Person in connection with the Loan, as such documents may be amended from time to time, but for purposes of this Instrument only, the term "Loan Documents" *specifically excludes* the Environmental Indemnity and the Guaranty.

(aa) **"Loan Servicer"** means the entity that from time to time is designated by Lender to collect payments and deposits and receive notices under the Note, this Instrument and any other Loan Document, and otherwise to service the Loan for the benefit of Lender. Unless Borrower receives notice to the contrary, the Loan Servicer is the entity identified as "Lender" in paragraph A of this Instrument.

(bb) **"Mortgaged Property"** means all of Borrower's present and future right, title and interest in and to all of the following: (1) the Land; (2) the Improvements; (3) the Fixtures; (4) the Personalty; (5) all current and future rights, including air rights, development rights, zoning rights and other similar rights or interests, easements, tenements, rights-of-way, strips and gores of land, streets, alleys, roads, sewer rights, waters, watercourses, and appurtenances related to or benefiting the Land or the Improvements, or both, and all rights-of-way, streets, alleys and roads which may have been or may in the future be vacated; (6) all proceeds paid or to be paid by any insurer of the Land, the Improvements, the Fixtures, the Personalty or any other part of the Mortgaged Property, whether or not Borrower obtained the insurance pursuant to Lender's requirement; (7) all awards, payments and other compensation made or to be made by any municipal, state or federal authority with respect to the Land, the Improvements, the Fixtures, the Personalty or any other part of the Mortgaged Property, including any awards or settlements resulting from condemnation proceedings or the total or partial taking of the Land, the Improvements, the Fixtures, the Personalty or any other part of the Mortgaged Property under the power of eminent domain or otherwise and including any conveyance in lieu thereof; (8) all contracts, options and other agreements for the sale of the Land, the Improvements, the Fixtures, the Personalty or any other part of the Mortgaged Property entered into by Borrower now or in the future, including cash or securities deposited to secure performance by parties of their obligations; (9) all proceeds from the conversion, voluntary or involuntary, of any of the above into cash or liquidated claims, and the right to collect such proceeds; (10) all Rents and Leases; (11) all earnings, royalties, accounts receivable, issues and profits from the Land, the Improvements or any other part of the Mortgaged Property, and all undisbursed proceeds of the Loan; (12) all funds on deposit pursuant to any separate agreement between Borrower and Lender (including, without limitation, all Imposition Deposits) for the purpose of establishing replacement reserves for the Mortgaged Property, to fund any water and sewer charges, premiums for fire or other hazard insurance, rent loss insurance or other insurance required by Lender, taxes, assessments, vault rentals, or other charges or expenses required by Lender to protect the Mortgaged Property, establishing a fund to assure the completion of repairs or improvements specified in that agreement, or assuring reduction of the outstanding principal balance of the Indebtedness if the occupancy of or income from the Mortgaged Property does not increase to a level specified in that agreement, or any other agreement or agreements between Borrower and Lender which provide for the establishment of any other fund, reserve or account; (13) all refunds or rebates of Impositions by any municipal, state or federal authority or insurance company (other than refunds applicable to periods before the real property tax year in which this Instrument is dated); (14) all tenant security deposits which have not been forfeited by any tenant under any Lease and any bond or other security in lieu of such deposits; and (15) all names under or by which any of the above Mortgaged Property may be operated or known, and all trademarks, trade names, and goodwill relating to any of the Mortgaged Property.

(cc) **"Note"** means the Promissory Note described in paragraph C of this Instrument, including all schedules, riders, allonges and addenda, as such Promissory Note may be amended from time to time.

(dd) **"O&M Plan"** shall have the meaning as defined in the Environmental Indemnity.

(ee) **"Person"** means any natural person, sole proprietorship, corporation, general partnership, limited partnership, limited liability company, limited liability partnership, limited liability limited partnership, joint venture, association, joint stock company, bank, trust, estate, unincorporated organization, any federal, state, county or municipal government (or any agency or political subdivision thereof), endowment fund or any other form of entity.

(ff) **"Personalty"** means all: (i) accounts (including deposit accounts); (ii) equipment and inventory owned by Borrower which are used now or in the future in connection with the ownership, development, management or operation of the Land or the Improvements or are located on the Land or in the Improvements, including furniture, furnishings, machinery, building materials, appliances, goods, materials, supplies, tools, books, records (whether in written or electronic form), computer equipment (hardware and software), wherever located, whether in the possession of Borrower, warehousemen, bailees or any other person, together with all documents, contract rights and general intangibles related thereto; (iii) other tangible personal property (other than Fixtures) which are used now or in the future in connection with the ownership, development, management or operation of the Land or the Improvements or are located on the Land or in the Improvements; (iv) any operating agreements relating to the Land or the Improvements; (v) any contracts and policies of insurance which insure any Improvements on the Land, or any Fixtures or personal property thereon, against casualty and theft, and all monies and proceeds and rights thereto which may become payable by virtue of any insurance contracts or policies; (vi) any management contracts, surveys, plats, working drawings, reports, tests borings, market surveys, plans and specifications and contracts for architectural, engineering and construction services relating to the Land or the Improvements, together with all performance, payment, completion or other surety bonds in connection with or related to any such contracts which are transferable by Borrower; (vii) all other intangible property and rights relating to the operation of, or used in connection with, the Land or the Improvements, including all governmental permits relating to any activities on the Land and including subsidy or similar payments received from any sources, including a Governmental Authority; and (viii) any rights of Borrower in or under letters of credit.

(gg) **"Property Insurance"** is defined in Section 19.

(hh) **"Property Jurisdiction"** is defined in Section 30(a).

(ii) **"Rents"** means all rents (whether from residential or non-residential space), revenues and other income of the Land or the Improvements, including parking fees, laundry and vending machine income and fees and charges for food, health care and other services provided at the Mortgaged Property, whether now due, past due, or to become due, and deposits forfeited by tenants, and, if Borrower is a cooperative housing corporation or association, maintenance fees, charges or assessments payable by shareholders or residents under proprietary leases or occupancy agreements, whether now due, past due, or to become due.

(jj) **"Taxes"** means all taxes, assessments, vault rentals and other charges, if any, general, special or otherwise, including all assessments for schools, public betterments and general or local improvements, which are levied, assessed or imposed by any public authority or quasi-public authority, and which, if not paid, will become a lien, on the Land or the Improvements.

(kk) **"Transfer"** is defined in Section 21.

2. UNIFORM COMMERCIAL CODE SECURITY AGREEMENT.

(a) This Instrument constitutes a security agreement pursuant to the Uniform Commercial Code with respect to (i) any of the Mortgaged Property which, under applicable law, is not real property or effectively made part of the real property by the provisions of this Instrument; and (ii) any and all other property now or hereafter described on any Uniform Commercial Code Financing Statement naming Borrower as Debtor and Lender as Secured Party and affecting property in any way connected with the use and enjoyment of the Mortgaged Property (any and all such other property constituting **"UCC Collateral"**) for purposes of this Instrument. Borrower hereby grants Lender a security interest in all property described in clauses (i) and (ii) above as security for the Indebtedness. Borrower and Lender agree, however, that neither the foregoing grant of a security interest nor the filing of any such financing statement shall be construed as limiting the parties' stated intention that everything used in connection with the production of income from the Mortgaged Property, or adapted for use therein, or which is described or reflected in this Instrument, is and at all times shall be regarded as part of the Land.

(b) Borrower's exact legal name is correctly set forth on the signature page of this Instrument. If Borrower is not an individual, Borrower is an organization of the type specified in the introductory paragraph of this Instrument. If Borrower is a registered entity, Borrower is incorporated in or organized under the laws of the state specified in the introductory paragraph of this Instrument. If Borrower is an unregistered entity (including a general partnership), it is organized under the laws of the state

specified in the introductory paragraph of this Instrument. Borrower will not cause or permit any change to be made in its name, identity or corporate, company or partnership structure unless Borrower shall have notified Lender in writing of such change at least thirty (30) days prior to the effective date of such change, and shall have first taken all action required by Lender for the purpose of further perfecting or protecting the lien and security interest of Lender in the Mortgaged Property. Borrower's principal place of business and chief executive office, and the place where Borrower keeps its books and records, including recorded data of any kind or nature, regardless of the medium of recording, including software, writing, plans, specifications and schematics concerning the Mortgaged Property, has been for the preceding four months (or less if for the entire existence of Borrower) and will continue to be the address of Borrower set forth in the first paragraph of this Instrument (unless Borrower notifies Lender of any change in writing at least thirty (30) days prior to the date of such change). If Borrower is an individual, Borrower's principal residence has been for the preceding four months and will continue to be the address of the principal residence of Borrower set forth at the end of this Instrument (unless Borrower notifies Lender of any change in writing at least thirty (30) days prior to the date of such change). Borrower's organizational identification number, if any, assigned by the state of incorporation or organization is set forth in paragraph A of this Instrument. Borrower shall promptly notify Lender of any change of its organizational identification number. If Borrower does not now have an organizational identification number and later obtains one, Borrower shall promptly notify Lender of such organizational identification number. Borrower agrees that Lender may file this Instrument, or a reproduction thereof, in the real estate records or other appropriate index, as a financing statement for any of the items specified above as part of the UCC Collateral. Any reproduction of this Instrument or of any other security agreement or financing statement shall be sufficient as a financing statement. Borrower hereby authorizes Lender (and Lender's representatives and agents) to file financing statements (and amendments thereto) relating to the Mortgaged Property. The form and substance of any financing statement filed with respect to this Instrument shall be as Lender, in its sole discretion, may determine. Borrower shall pay all costs of filing such financing statements and any extensions, continuations, renewals, amendments and releases thereof, and shall pay all costs and expenses of any record searches for financing statements which Lender may require.

(c) With respect to the property subject to the foregoing security interest, Lender shall have all the rights and remedies (i) of a secured party under the Uniform Commercial Code, (ii) provided herein, including without limitation the right to cause such Mortgaged Property to be sold by Trustee under the power of sale granted by this Instrument, and (iii) provided by law. In exercising its remedies, Lender may proceed against the items of real property and any items of personal property separately or together and in any order whatsoever, without in any way affecting the availability of Lender's remedies. Upon demand by Lender following an Event of Default hereunder, Borrower shall assemble any items of personal property and make them available to Lender at the Mortgaged Property. Lender shall give Borrower at least five (5) days' prior written notice of the time and place of any public sale or other disposition of such property or of the time of or after which any private sale or any other intended disposition is to be made. Any person permitted by law to purchase at any such sale may do so. The UCC Collateral may be sold at any one or more public or private sales as permitted by applicable law.

3. ASSIGNMENT OF RENTS; APPOINTMENT OF RECEIVER; LENDER IN POSSESSION.

(a) As part of the consideration for the Indebtedness, Borrower absolutely and unconditionally assigns and transfers to Lender all Rents. It is the intention of Borrower to establish a present, absolute and irrevocable transfer and assignment to Lender of all Rents and to authorize and empower Lender to collect and receive all Rents without the necessity of further action on the part of Borrower. Promptly upon request by Lender, Borrower agrees to execute and deliver such further assignments as Lender may from time to time require. Borrower and Lender intend this assignment of Rents to be immediately effective and to constitute an absolute present assignment and not an assignment for additional security only. For purposes of giving effect to this absolute assignment of Rents, and for no other purpose, Rents shall not be deemed to be a part of the "Mortgaged Property" as that term is defined in Section 1. However, if this present, absolute and unconditional assignment of Rents is not enforceable by its terms under the laws of the Property Jurisdiction, then the Rents shall be included as a part of the Mortgaged Property and it is the intention of Borrower that in this circumstance this Instrument create and perfect a lien on Rents in favor of Lender, which lien shall be effective as of the date of this Instrument.

(b) After the occurrence of an Event of Default, Borrower authorizes Lender to collect, sue for and compromise Rents and directs each tenant of the Mortgaged Property to pay all Rents to, or as directed by, Lender. However, until the occurrence of an Event of Default, Lender hereby grants to Borrower a revocable license to collect and receive all Rents, to hold all Rents in trust for the benefit of Lender and to apply all Rents to pay the installments of interest and principal then due and

payable under the Note and the other amounts then due and payable under the other Loan Documents, including Imposition Deposits, and to pay the current costs and expenses of managing, operating and maintaining the Mortgaged Property, including utilities, Taxes and insurance premiums (to the extent not included in Imposition Deposits), tenant improvements and other capital expenditures. So long as no Event of Default has occurred and is continuing, the Rents remaining after application pursuant to the preceding sentence may be retained by Borrower free and clear of, and released from, Lender's rights with respect to Rents under this Instrument. From and after the occurrence of an Event of Default, and without the necessity of Lender entering upon and taking and maintaining control of the Mortgaged Property directly, or by a receiver, Borrower's license to collect Rents shall automatically terminate and Lender shall without notice be entitled to all Rents as they become due and payable, including Rents then due and unpaid. Borrower shall pay to Lender upon demand all Rents to which Lender is entitled. At any time on or after the date of Lender's demand for Rents, Lender may give, and Borrower hereby irrevocably authorizes Lender to give, notice to all tenants of the Mortgaged Property instructing them to pay all Rents to Lender, no tenant shall be obligated to inquire further as to the occurrence or continuance of an Event of Default, and no tenant shall be obligated to pay to Borrower any amounts which are actually paid to Lender in response to such a notice. Any such notice by Lender shall be delivered to each tenant personally, by mail or by delivering such demand to each rental unit. Borrower shall not interfere with and shall cooperate with Lender's collection of such Rents.

(c) Borrower represents and warrants to Lender that Borrower has not executed any prior assignment of Rents (other than an assignment of Rents securing indebtedness that will be paid off and discharged with the proceeds of the Loan), that Borrower has not performed, and Borrower covenants and agrees that it will not perform, any acts and has not executed, and shall not execute, any instrument which would prevent Lender from exercising its rights under this Section 3, and that at the time of execution of this Instrument there has been no anticipation or prepayment of any Rents for more than two (2) months prior to the due dates of such Rents. Borrower shall not collect or accept payment of any Rents more than two (2) months prior to the due dates of such Rents.

(d) Upon any Event of Default hereunder, Lender may, in person, by agent or by a court-appointed receiver, regardless of the adequacy of Lender's security, enter upon and take and maintain full control of the Mortgaged Property in order to perform all acts necessary and appropriate for the operation and maintenance thereof in the same manner and to the same extent as Borrower could do the same, including without limitation the execution, enforcement, cancellation and modification of Leases, the collection of all Rents of the Mortgaged Property, the removal and eviction of tenants and other occupants, the making of alterations and repairs to the Mortgaged Property, and the execution and termination of contracts providing for management or maintenance of the Mortgaged Property, all on such terms as are deemed best by Lender to protect the security of this Instrument. From and after the occurrence of any such Event of Default, if any owner of the Mortgaged Property shall occupy the Mortgaged Property or part thereof such owner shall pay to Lender in advance on the first day of each month a reasonable rental for the space so occupied, and upon failure so to do Lender shall be entitled to remove such owner from the Mortgaged Property by any appropriate action or proceedings. Following an Event of Default hereunder, Borrower hereby irrevocably consents and agrees that Lender shall be entitled (regardless of the adequacy of Lender's security) to the appointment of a custodial receiver or general receiver with power of sale. Said receiver may serve without bond, shall have the usual powers and duties of receivers in like or similar cases, all the powers and duties of Lender set forth in this Instrument or any of the other Loan Documents, and, in the case of a general receiver, a right to sell the Mortgaged Property. Employment by Lender shall not disqualify a person from serving as receiver. The receiver shall be entitled to receive a reasonable fee for all its services rendered in connection with the receivership.

(e) All Rents collected subsequent to delivery of written notice by Lender to Borrower of an Event of Default hereunder shall be applied first to the costs, if any, of taking control of and managing the Mortgaged Property and collecting the Rents, including without limitation Attorneys' Fees and Costs, receiver's fees, premiums on receiver's bonds, costs of maintenance and repairs to the Mortgaged Property, premiums on insurance policies, taxes, assessments and other charges on the Mortgaged Property, and the costs of discharging any obligation or liability of Borrower under the Leases, and then to the Indebtedness. Lender or the receiver shall be liable to account only for those Rents actually received. Lender shall not be liable to Borrower, anyone claiming under or through Borrower or anyone having an interest in the Mortgaged Property by reason of anything done or left undone by Lender under this Section.

(f) To the extent, if any, that the costs of taking control of and managing the Mortgaged Property, collecting the Rents, and discharging obligations and liabilities of Borrower under the Leases, exceed the Rents of the Mortgaged Property, the

excess sums expended for such purposes shall be Indebtedness secured by this Instrument. Such excess sums shall be payable upon demand by Lender and shall bear interest from the date of disbursement at the greater of the Default Rate under the Note, or the maximum rate permitted by law.

(g) Nothing herein shall constitute Lender a "mortgagee in possession" prior to its actual entry upon and taking possession of the Mortgaged Property. Entry upon and taking possession by a receiver shall not constitute possession by Lender.

(h) Lender may enforce this Assignment without first resorting to or exhausting any security or collateral for the Indebtedness.

(i) Under no circumstances shall Lender have any duty to produce Rents from the Mortgaged Property. Regardless of whether or not Lender, in person or by agent, takes actual possession of the Mortgaged Property, Lender is not and shall not be deemed to be: (a) responsible for any waste committed by tenants or any other parties, any dangerous or defective condition of the Mortgaged Property, or any negligence in the management, upkeep, repair, or control of the Mortgaged Property; (b) responsible for any loss sustained by Borrower resulting from Lender's failure to lease the Mortgaged Property or from any other act or omission of Lender in managing the Mortgaged Property or administering the Leases; or (c) liable in any manner for the Mortgaged Property or the use, occupancy, enjoyment or operation of all or any part of it.

(j) Borrower shall indemnify, defend with counsel selected by Lender in its sole discretion, and hold Lender harmless from and against any and all claims, demands, liabilities, losses, lawsuits, judgments, damages, costs and expenses, including, without limitation, Attorneys' Fees and Costs, to which Lender may be exposed or which Lender may incur arising out of or resulting from this Assignment of Rents or from the Assignment of Leases, including, without limitation, claims or demands for security deposits from tenants deposited with Borrower, and all claims or demands whatsoever asserted against Lender to satisfy any obligations of the landlord under the Leases. This agreement by Borrower to indemnify Lender shall survive the release and cancellation of any or all of the Indebtedness and the full or partial release and or reconveyance of this Instrument.

4. ASSIGNMENT OF LEASES; LEASES AFFECTING THE MORTGAGED PROPERTY.

(a) As part of the consideration for the Indebtedness, Borrower absolutely and unconditionally assigns and transfers to Lender all of Borrower's right, title and interest in, to and under the Leases, including Borrower's right, power and authority to modify the terms of any such Lease, or extend or terminate any such Lease. It is the intention of Borrower to establish a present, absolute and irrevocable transfer and assignment to Lender of all of Borrower's right, title and interest in, to and under the Leases. Borrower and Lender intend this assignment of the Leases to be immediately effective and to constitute an absolute present assignment and not an assignment for additional security only. For purposes of giving effect to this absolute assignment of the Leases, and for no other purpose, the Leases shall not be deemed to be a part of the "Mortgaged Property" as that term is defined in Section 1. However, if this present, absolute and unconditional assignment of the Leases is not enforceable by its terms under the laws of the Property Jurisdiction, then the Leases shall be included as a part of the Mortgaged Property and it is the intention of Borrower that in this circumstance this Instrument create and perfect a lien on the Leases in favor of Lender, which lien shall be effective as of the date of this Instrument.

(b) Until Lender gives notice to Borrower of Lender's exercise of its rights under this Section 4, Borrower shall have all rights, power and authority granted to Borrower under any Lease (except as otherwise limited by this Section or any other provision of this Instrument), including the right, power and authority to modify the terms of any Lease or extend or terminate any Lease. Upon the occurrence of an Event of Default, the permission given to Borrower pursuant to the preceding sentence to exercise all rights, power and authority under Leases shall automatically terminate. Borrower shall comply with and observe Borrower's obligations under all Leases, including Borrower's obligations pertaining to the maintenance and disposition of tenant security deposits.

(c) Borrower acknowledges and agrees that the exercise by Lender, either directly or by a receiver, of any of the rights conferred under this Section 4 shall not be construed to make Lender a mortgagee-in-possession of the Mortgaged Property so long as Lender has not itself entered into actual possession of the Land and the Improvements. The acceptance by Lender of the assignment of the Leases pursuant to Section 4(a) shall not at any time or in any event obligate Lender to take any action under this Instrument or to expend any money or to incur any expenses. Lender shall not be liable in any way for any injury or damage to person or property sustained by any Person in or about the Mortgaged Property. Prior to Lender's actual entry into and taking possession of the Mortgaged Property, Lender shall not (i) be obligated to perform any of the terms, covenants and conditions contained in any Lease (or otherwise have any obligation with respect to any Lease); (ii) be obligated

to appear in or defend any action or proceeding relating to the Lease or the Mortgaged Property; or (iii) be responsible for the operation, control, care, management or repair of the Mortgaged Property or any portion of the Mortgaged Property. The execution of this Instrument by Borrower shall constitute conclusive evidence that all responsibility for the operation, control, care, management and repair of the Mortgaged Property is and shall be that of Borrower, prior to such actual entry and taking of possession.

(d) Upon delivery of notice by Lender to Borrower of Lender's exercise of Lender's rights under this Section 4 at any time after the occurrence of an Event of Default, and without the necessity of Lender entering upon and taking and maintaining control of the Mortgaged Property directly, by a receiver, or by any other manner or proceeding permitted by the laws of the Property Jurisdiction, Lender immediately shall have all rights, powers and authority granted to Borrower under any Lease, including the right, power and authority to modify the terms of any such Lease, or extend or terminate any such Lease.

(e) Borrower shall, promptly upon Lender's request, deliver to Lender an executed copy of each residential Lease then in effect. All Leases for residential dwelling units shall be on forms approved by Lender, shall be for initial terms of at least six months and not more than two years, and shall not include options to purchase.

(f) Borrower shall not lease any portion of the Mortgaged Property for non-residential use except with the prior written consent of Lender and Lender's prior written approval of the Lease agreement. Borrower shall not modify the terms of, or extend or terminate, any Lease for non-residential use (including any Lease in existence on the date of this Instrument) without the prior written consent of Lender. Borrower shall, without request by Lender, deliver an executed copy of each non-residential Lease to Lender promptly after such Lease is signed. All non-residential Leases, including renewals or extensions of existing Leases, shall specifically provide that (1) such Leases are subordinate to the lien of this Instrument; (2) the tenant shall attorn to Lender and any purchaser at a foreclosure sale, such attornment to be self-executing and effective upon acquisition of title to the Mortgaged Property by any purchaser at a foreclosure sale or by Lender in any manner; (3) the tenant agrees to execute such further evidences of attornment as Lender or any purchaser at a foreclosure sale may from time to time request; (4) the Lease shall not be terminated by foreclosure or any other transfer of the Mortgaged Property; (5) after a foreclosure sale of the Mortgaged Property, Lender or any other purchaser at such foreclosure sale may, at Lender's or such purchaser's option, accept or terminate such Lease; and (6) the tenant shall, upon receipt after the occurrence of an Event of Default of a written request from Lender, pay all Rents payable under the Lease to Lender.

(g) Borrower shall not receive or accept Rent under any Lease for more than two (2) months in advance.

5. PAYMENT OF INDEBTEDNESS; PERFORMANCE UNDER LOAN DOCUMENTS; PREPAYMENT PREMIUM. Borrower shall pay the Indebtedness when due in accordance with the terms of the Note and the other Loan Documents and shall perform, observe and comply with all other provisions of the Note and the other Loan Documents. Borrower shall pay a prepayment premium in connection with certain prepayments of the Indebtedness, including a payment made after Lender's exercise of any right of acceleration of the Indebtedness, as provided in the Note.

6. FULL RECOURSE PERSONAL LIABILITY. Borrower shall have full recourse personal liability under the Note, this Instrument and all other Loan Documents for the repayment of the Indebtedness and for the performance of any and all other obligations of Borrower under the Note, this Instrument and all other Loan Documents.

7. DEPOSITS FOR TAXES, INSURANCE AND OTHER CHARGES.

(a) Unless this requirement is waived in writing by Lender, or as otherwise provided in this Section, Borrower shall deposit with Lender on the day monthly installments of principal or interest, or both, are due under the Note (or on another day designated in writing by Lender), until the Indebtedness is paid in full, an additional amount estimated by Lender to be sufficient to accumulate with Lender the entire sum required to pay, when due, the items marked "COLLECT" below, plus, at Lender's discretion, a contingency reserve of up to one-sixth of such estimate. Lender will not initially require Borrower to make Imposition Deposits with respect to any items marked "DEFERRED" or "NOT APPLICABLE" below.

[COLLECT]	Property Insurance premiums or other insurance premiums required by Lender under Section 19
[COLLECT]	Taxes
[DEFERRED]	water and sewer charges (that could become a lien on the Mortgaged Property)
[DEFERRED]	assessments or other charges (that could become a lien on the Mortgaged Property)

The amounts deposited under the preceding sentence are collectively referred to in this Instrument as the "Imposition Deposits". The obligations of Borrower for which the Imposition Deposits are required are collectively referred to in this Instrument as "Impositions". The amount of the Imposition Deposits shall be sufficient to enable Lender to pay each Imposition before the last date upon which such payment may be made without any penalty or interest charge being added. Lender shall maintain records indicating how much of the monthly Imposition Deposits and how much of the aggregate Imposition Deposits held by Lender are held for the purpose of paying Taxes, insurance premiums and each other Imposition.

(b) Imposition Deposits shall be held by Lender and applied in such order as Lender elects to pay such Taxes, assessments, premiums and other Impositions. Unless applicable law requires, Lender shall not be required to pay Borrower any interest, earnings or profits on the Imposition Deposits. As additional security for all of Borrower's obligations under this Instrument and the other Loan Documents, Borrower hereby pledges and grants to Lender a security interest in the Imposition Deposits and all proceeds of, and all interest and dividends on, the Imposition Deposits. Any amounts deposited with Lender under this Section 7 shall not be trust funds, nor shall they operate to reduce the Indebtedness, unless applied by Lender for that purpose under Section 7(e). The arrangement provided for in this Section 7 is solely for the added protection of Lender and entails no responsibility on Lender's part beyond the allowing of due credit, without interest, for the sums actually received by it. Upon any assignment of this Instrument by Lender, any funds on hand shall be turned over to the assignee and any responsibility of Lender with respect thereto shall terminate. Each transfer of the Mortgaged Property in accordance with Section 21 below shall automatically transfer to the transferee all rights of Borrower with respect to any funds deposited hereunder.

(c) If Lender receives a bill or invoice for an Imposition, Lender shall pay the Imposition from the Imposition Deposits held by Lender. Lender shall have no obligation to pay any Imposition to the extent it exceeds Imposition Deposits then held by Lender. Lender may pay an Imposition according to any bill, statement or estimate from the appropriate public office or insurance company without inquiring into the accuracy of the bill, statement or estimate or into the validity of the Imposition.

(d) If at any time the amount of the Imposition Deposits held by Lender for payment of a specific Imposition exceeds the amount reasonably deemed necessary by Lender, plus at Lender's discretion, a contingency reserve of up to one-sixth of such estimate, the excess shall be credited against future installments of Imposition Deposits. If at any time the amount of the Imposition Deposits held by Lender for payment of a specific Imposition is less than the amount reasonably estimated by Lender to be necessary, plus, at Lender's discretion, a contingency reserve of up to one-sixth of such estimate, Borrower shall pay to Lender the amount of the deficiency within 15 days after notice from Lender.

(e) If an Event of Default has occurred and is continuing, Lender may apply any Imposition Deposits, in any amounts and in any order as Lender determines, in Lender's discretion, to pay any Impositions or as a credit against the Indebtedness. Upon payment in full of the Indebtedness, Lender shall refund to Borrower any Imposition Deposits held by Lender.

(f) If Lender does not collect an Imposition Deposit with respect to an Imposition either marked "DEFERRED" in Section 7(a) or pursuant to a separate written waiver by Lender, then at least thirty (30) days before the date each such Imposition is due, or on the date this Instrument requires each such Imposition to be paid, Borrower must provide Lender with proof of payment in full, without financing, of each such Imposition for which Lender does not require collection of Imposition Deposits. Lender may revoke its deferral or waiver and require Borrower to deposit with Lender any or all of the Imposition Deposits listed in Section 7(a), regardless of whether any such item is marked "DEFERRED" in such section, upon notice to Borrower, (i) if Borrower does not timely pay in full, without financing, any of the Impositions as required by this Instrument, (ii) if Borrower fails to provide timely proof to Lender of such payment as required by this Instrument, or (iii) at any time from and after the occurrence of an Event of Default or any event which, with the giving of notice or the passage of time, or both, would constitute an Event of Default.

(g) In the event of a Transfer prohibited by or requiring Lender's approval under Section 21, Lender's waiver or deferral of the collection of any Imposition Deposit in this Section 7 may be modified or rendered void by Lender at Lender's sole option and discretion by notice to Borrower and the transferee(s) as a condition of Lender's approval of such Transfer.

8. COLLATERAL AGREEMENTS. Borrower shall deposit with Lender such amounts as may be required by any Collateral Agreement and shall perform all other obligations of Borrower under each Collateral Agreement.

9. APPLICATION OF PAYMENTS. Except as applicable law or this Instrument may otherwise provide, all payments received by Lender under the Note or this Instrument shall be applied by Lender in the following order of priority: (a) Lender's and Trustee's expenses incurred in any efforts to enforce any terms of this Instrument; (b) interest payable on advances

made to protect the security of this Instrument; (c) principal of such advances; (d) amounts payable to Lender by Borrower under Section 7 for reserves; (e) interest and late charges payable on the Note; (f) principal of the Note; and (g) any other Indebtedness in such order as Lender, at its option, may determine; provided, however, that Lender may, at its option, apply any such payments received to interest on or principal of the Note prior to applying such payments to interest on and principal of advances made to protect the security of this Instrument.

10. COMPLIANCE WITH LAWS AND ORGANIZATIONAL DOCUMENTS.

(a) Borrower shall comply with all laws, ordinances, regulations and requirements of any Governmental Authority and all recorded lawful covenants and agreements relating to or affecting the Mortgaged Property, including all laws, ordinances, regulations, requirements and covenants pertaining to health and safety, construction of improvements on the Mortgaged Property, fair housing, zoning and land use, and Leases. Borrower also shall comply with all applicable laws that pertain to the maintenance and disposition of tenant security deposits.

(b) Borrower shall at all times maintain records sufficient to demonstrate compliance with the provisions of this Section 10.

(c) Borrower shall take appropriate measures to prevent, and shall not engage in or knowingly permit, any illegal activities at the Mortgaged Property that could endanger tenants or visitors, result in damage to the Mortgaged Property, result in forfeiture of the Mortgaged Property, or otherwise materially impair the lien created by this Instrument or Lender's interest in the Mortgaged Property. Borrower represents and warrants to Lender that no portion of the Mortgaged Property has been or will be purchased with the proceeds of any illegal activity.

(d) Borrower shall at all times comply with all laws, regulations and requirements of any Governmental Authority relating to Borrower's formation, continued existence and good standing in the Property Jurisdiction. If Borrower is a housing cooperative corporation or association, Borrower shall at all times maintain its status as a "cooperative housing corporation" as such term is defined in Section 216(b) of the Internal Revenue Code of 1986, as amended, or any successor statute thereto.

(e) If Borrower is not a natural person: (A) Borrower, and any Sub-Entity, shall maintain its existence as long as any portion of the Indebtedness remains unpaid; and (B) Borrower shall give written notice to Lender within ten (10) days after any dissolution or event triggering dissolution of Borrower or any Sub-Entity (which shall constitute an Event of Default under clause (A) of this sentence). As used in this Section 10, "Sub-Entity" shall include any managing or controlling entities, including any of the following that is not a natural person: (i) any manager or member of a limited liability company and any Sub-Entity thereof, (ii) any general partner of a general or limited partnership or limited liability partnership and any Sub-Entity thereof. To the extent not in conflict with the provisions of this Instrument and the other Loan Documents, Borrower shall at all times comply with its organizational documents, including but not limited to its partnership agreement (if Borrower is a partnership), its by-laws (if Borrower is a corporation or housing cooperative corporation or association) or its operating agreement (if Borrower is a limited liability company, joint venture or tenancy-in-common). If Borrower is not a natural person, then: (A) Borrower shall at all times comply with all laws, regulations and requirements of any Governmental Authority relating to Borrower's formation, continued existence and good standing in the state or commonwealth of Borrower's formation; (B) if the state or commonwealth of Borrower's formation is not the Property Jurisdiction, Borrower shall register or qualify as a foreign entity in the Property Jurisdiction and maintain such registration or qualification in good standing; (C) Borrower shall promptly provide Lender with copies of any amendments or supplements to Borrower's and any Sub-Entity's organizational documents; and (D) within ten (10) days after request by Lender, Borrower shall furnish evidence satisfactory to Lender that Borrower and any Sub-Entity is/are in good standing in its/their state(s) or commonwealth(s) of organization, and, if different, the Property Jurisdiction.

(f) If any part of the automobile parking areas included within the Mortgaged Property is taken by condemnation, and before the parking areas are diminished for any other reason, Borrower shall take all actions as are necessary to provide parking facilities in kind, size and location to comply with all governmental zoning and other regulations and all Leases. Before making any contract for substitute parking facilities, Borrower shall furnish to Lender satisfactory assurance of completion thereof free of liens and in conformity with all government zoning and other regulations. This Instrument shall constitute a first lien on all such substitute parking facilities.

(g) Each requirement under this Section 10 shall remain in effect for so long as any portion of the Indebtedness remains unpaid.

11. USE OF PROPERTY. Unless required by applicable law, Borrower shall not (a) except for any change in use approved by Lender, allow changes in the use for which all or any part of the Mortgaged Property was being used at the time

this Instrument was executed, (b) convert any individual dwelling unit or common area to commercial use, (c) convert, in whole or in part, any non-residential income producing units to non-income producing units, (d) initiate or acquiesce in a change in the zoning classification of the Mortgaged Property, or (e) establish any condominium or cooperative regime with respect to the Mortgaged Property. Borrower acknowledges that Lender has not agreed to grant any partial releases or reconveyances of any portion of the Mortgaged Property, and that the release and reconveyance of the lien of this Instrument shall only be granted by Lender upon full repayment of the Indebtedness. Notwithstanding anything contained in this Section to the contrary, if Borrower is a housing cooperative corporation or association, Lender acknowledges and consents to Borrower's use of the Mortgaged Property as a housing cooperative.

12. PROTECTION OF LENDER'S SECURITY.

(a) If Borrower fails to perform any of its obligations under this Instrument or any other Loan Document, or if any action or proceeding is commenced which purports to affect the Mortgaged Property, Lender's security or Lender's rights under this Instrument, including eminent domain, insolvency, code enforcement, civil or criminal forfeiture, enforcement of Hazardous Materials Laws, fraudulent conveyance or reorganizations or proceedings involving a bankrupt or decedent, then Lender at Lender's option may make such appearances, disburse such sums and take such actions as Lender reasonably deems necessary to perform such obligations of Borrower and to protect Lender's interest, including (1) payment of fees and out of pocket expenses of attorneys, accountants, inspectors and consultants, (2) entry upon the Mortgaged Property to make repairs or secure the Mortgaged Property, (3) procurement of the insurance required by Section 19, (4) payment of amounts which Borrower has failed to pay under Sections 15 and 17, and (5) advances made by Lender to pay, satisfy or discharge any obligation of Borrower for the payment of money that is secured by a pre-existing mortgage, deed of trust or other lien encumbering the Mortgaged Property (a "Prior Lien").

(b) Any amounts disbursed by Lender under this Section 12, or under any other provision of this Instrument that treats such disbursement as being made under this Section 12, shall be added to, and become part of, the principal component of the Indebtedness, shall be immediately due and payable and shall bear interest from the date of disbursement until paid at the "Default Rate", as defined in the Note.

(c) Nothing in this Section 12 shall require Lender to incur any expense or take any action.

13. INSPECTION. Lender, its agents, representatives, and designees may make or cause to be made entries upon and inspections of the Mortgaged Property (including environmental inspections and tests) during normal business hours, or at any other reasonable time. Borrower shall within five (5) days after written request by Lender provide the name, phone number, address and email address of a contact person for Borrower or for a property management company managing the Mortgaged Property to arrange such inspection. Such contact person shall meet Lender's inspector(s) at the Mortgaged Property at the time specified by Lender and shall provide Lender's inspector(s) with access to all areas of the Mortgaged Property as Lender's inspector's may require to complete such inspection. At any time when an Event of Default has occurred and is continuing, the cost of such inspections shall be paid by Borrower upon written demand by Lender and if not paid within thirty (30) days after such written demand, and, until paid, shall be added to and constitute a part of the Indebtedness as provided in Section 12.

14. BOOKS AND RECORDS; FINANCIAL REPORTING.

(a) Borrower shall keep and maintain at all times at the Mortgaged Property or the management agent's offices, and upon Lender's request shall make available at the Mortgaged Property, complete and accurate books of account and records (including copies of supporting bills and invoices) adequate to reflect correctly the operation of the Mortgaged Property and the business of Borrower, and copies of all written contracts, Leases, and other instruments which affect the Mortgaged Property. The books, records, contracts, Leases and other instruments shall be subject to examination and inspection at any reasonable time by Lender.

(b) For as long as Borrower or the Initial Owners, or any Controlling Entity or any Guarantor have any outstanding loans with Lender or any obligations to Lender in connection with the Indebtedness or intend to continue to seek financing from Lender, Borrower and each Guarantor (as applicable) shall furnish to Lender all of the following:

- (1) within ninety (90) days after the end of each fiscal year of Borrower, a statement of income and expenses for Borrower's operation of the Mortgaged Property for that fiscal year and a balance sheet showing all assets and liabilities of Borrower relating to the Mortgaged Property as of the end of that fiscal year;

- (2) within ninety (90) days after the end of each fiscal year of Borrower, and at any other time upon Lender's request, a rent schedule for the Mortgaged Property showing the name of each tenant, and for each tenant, the space occupied, the lease expiration date, the rent payable for the current month, the date through which rent has been paid, and any related information requested by Lender;
- (3) within ninety (90) days after the end of each fiscal year of Borrower, and at any other time upon Lender's request, an accounting of all security deposits held pursuant to all Leases, including the name of the institution (if any) and the names and identification numbers of the accounts (if any) in which such security deposits are held and the name of the person to contact at such financial institution, along with any authority or release necessary for Lender to access information regarding such accounts;
- (4) within ninety (90) days after the end of each fiscal year of Borrower, and at any other time upon Lender's request, a statement that identifies all owners of any interest in Borrower and any Controlling Entity and the interest held by each, if Borrower or a Controlling Entity is a corporation, all officers and directors of Borrower and the Controlling Entity, and if Borrower or a Controlling Entity is a limited liability company, all managers who are not members;
- (5) within ten (10) days after Lender's request, a current monthly property management report for the Mortgaged Property, showing the number of inquiries made and rental applications received from tenants or prospective tenants and deposits received from tenants and any other information requested by Lender;
- (6) within ninety (90) days after the end of each calendar year, (A) a current financial statement of each Guarantor, (B) all documentation required to verify amount of Liquidity shown on each Guarantor's year-end financial statement, and (C) a schedule of real estate owned by each Guarantor. "Liquidity" is defined as cash, including savings and checking accounts, money-market accounts, certificates of deposit and any marketable securities, with any such marketable securities discounted to eighty percent (80%); and
- (7) within thirty (30) days after filing, signed copies of (A) all federal and state income tax returns filed by Borrower and each Guarantor, together with all schedules thereto, and (B) any applications for tax return filing extensions filed by Borrower or any Guarantor.

(c) Each financial statement shall be prepared in accordance with generally accepted accounting principles or prepared in accordance with the accounting principles used in the preparation of the financial statement submitted to and approved by Lender in connection with its initial approval of the Loan. Each of the statements, schedules, documents, items and reports required by Section 14(b) shall be certified to be complete and accurate by each individual Borrower, an individual (or individuals) having authority to bind each entity Borrower and (for Guarantor information and documents) each Guarantor, and shall be in such form and contain such detail as Lender may reasonably require. Lender may, at Lender's discretion, require that any statements, schedules or reports be provided more frequently than stated above, and to be audited at Borrower's expense by independent certified public accountants acceptable to Lender.

(d) In the event Borrower or any Guarantor (as applicable) fails to deliver such statements, schedules, documents, items and reports within the time frames provided in Section 14(b) above, then such failure shall constitute an Event of Default and, in addition to any other remedies which may be available to Lender as a result of such Event of Default, Borrower shall pay a late charge equal to two percent (2%) of the monthly payment amount for each late submission of financial reports to compensate Lender or its servicer for the additional administrative expense caused by such failure or delay whether or not Borrower is entitled to any notice and opportunity to cure such failure prior to the exercise of any of the remedies. Such late charge shall be charged each month that any financial statements remain delinquent. The late charge shall be immediately payable from Borrower upon demand by Lender and, until paid, shall be added to and constitute a part of the Indebtedness as provided in Section 12. In no event shall the financial statement late charge constitute a cure of Borrower's or any Guarantor's (as applicable) default in failing to provide financial statements, nor limit Lender's remedies as a result of such default. In addition to such financial statement late charge and any other remedies which may be available to Lender as a result of such Event of Default, Lender shall have the right: (1) to increase the interest rate under the Note to the Default Rate provided for in

the Note as long as such financial statements remain delinquent, and (2) to have Borrower's or any Guarantor's (as applicable) books and records audited, at Borrower's expense, by independent certified public accountants selected by Lender in order to obtain such statements, schedules and reports, and all related costs and expenses of Lender shall become immediately due and payable and shall become an additional part of the Indebtedness as provided in Section 12.

(e) If an Event of Default has occurred and is continuing, Borrower shall deliver to Lender upon written demand all books and records relating to the Mortgaged Property or its operation.

(f) Borrower authorizes Lender to obtain a credit report on Borrower at any time.

15. TAXES; OPERATING EXPENSES.

(a) Subject to the provisions of Section 15(c) and Section 15(d), Borrower shall pay, or cause to be paid, all Taxes when due and before the addition of any interest, fine, penalty or cost for nonpayment.

(b) Subject to the provisions of Section 15(c), Borrower shall pay in full, without financing, the expenses of operating, managing, maintaining and repairing the Mortgaged Property (including insurance premiums, utilities, repairs and replacements) before the last date upon which each such payment may be made without any penalty or interest charge being added (and, in any event in the case of insurance premiums, before the last day upon which such payment may be made without the applicable insurance coverage lapsing). Borrower shall pay when due the claims of all persons supplying labor or materials to or in connection with the Mortgaged Property. Borrower shall promptly discharge any lien, encumbrance, or other charge, whether superior or inferior to this Instrument, which may be claimed against the Mortgaged Property.

(c) As long as no Event of Default exists and Borrower has timely delivered to Lender any bills or premium notices that it has received, Borrower shall not be obligated to pay Taxes, insurance premiums or any other individual Imposition to the extent that sufficient Imposition Deposits are held by Lender for the purpose of paying that specific Imposition. If an Event of Default exists, Lender may exercise any rights Lender may have with respect to Imposition Deposits without regard to whether Impositions are then due and payable. Lender shall have no liability to Borrower for failing to pay any Impositions to the extent that any Event of Default has occurred and is continuing, insufficient Imposition Deposits are held by Lender at the time an Imposition becomes due and payable or Borrower has failed to provide Lender with bills and premium notices as provided above.

(d) Borrower, at its own expense, may contest by appropriate legal proceedings, conducted diligently and in good faith, the amount or validity of any Imposition other than insurance premiums, if (1) Borrower notifies Lender of the commencement or expected commencement of such proceedings, (2) the Mortgaged Property is not in danger of being sold or forfeited, (3) Borrower deposits with Lender reserves sufficient to pay the contested Imposition, if requested by Lender, (4) Borrower furnishes whatever additional security is required in the proceedings or is reasonably requested by Lender, which may include the delivery to Lender of the reserves established by Borrower to pay the contested Imposition, and (5) on a final determination of such contest, which is not appealable or is not being appealed, Borrower shall pay the amount of Imposition if and when due, and prior to the assessment of any penalties or delinquent interest.

(e) Borrower shall promptly deliver to Lender a copy of all notices of, and invoices for, Impositions, and if Borrower pays any Imposition directly, Borrower shall promptly furnish to Lender receipts evidencing such payments in accordance with Section 7(f).

(f) If, at any time after the date of this Instrument, any law is enacted or changed (including any interpretation thereof) which subjects Lender to any increase in any tax (except federal, state or local income taxes), assessments, or other charge, in any form measured by or based on any portion of the Indebtedness, Borrower shall pay such increased amount to Lender on demand; provided that if any such payment would be unlawful, then such circumstance shall constitute an Event of Default and Lender may at Lender's option and discretion declare the entire Indebtedness to be immediately due and payable.

16. LIENS; ENCUMBRANCES. Borrower shall not grant, create or permit to exist any mortgage, deed of trust, deed to secure debt, security interest or other lien or encumbrance (a "Lien") on the Mortgaged Property (other than the lien of this Instrument) or on certain ownership interests in Borrower, whether voluntary, involuntary or by operation of law, and whether or not such Lien has priority over the lien of this Instrument, except for the following permitted liens: (i) liens for taxes, assessments, and governmental charges not delinquent or being contested in good faith; (ii) liens of the kinds arising in the ordinary course of business of Borrower in respect to obligations unrelated to the Mortgaged Property that are not due or are being contested in good faith; (iii) liens in respect to judgments against Borrower for which Borrower has posted a bond or otherwise secured payment in a manner acceptable to Lender and with respect to which Borrower shall, in good faith, be

prosecuting an appeal or proceeding for review, and a stay of execution shall have been secured; and (iv) liens in respect of indebtedness owed to Lender or to any affiliate of Lender.

17. PRESERVATION, MANAGEMENT AND MAINTENANCE OF MORTGAGED PROPERTY. Borrower (a) shall not commit waste or permit impairment or deterioration of the Mortgaged Property, (b) shall not abandon the Mortgaged Property, (c) shall restore or repair promptly, in a good and workmanlike manner, any damaged part of the Mortgaged Property to the equivalent of its original condition, or such other condition as Lender may approve in writing, whether or not insurance proceeds or condemnation awards are available to cover any costs of such restoration or repair, (d) shall keep the Mortgaged Property in good repair, including the replacement of Personality and Fixtures with items of equal or better function and quality, (e) shall provide for professional management of the Mortgaged Property by a residential rental property manager satisfactory to Lender under a contract approved by Lender in writing, (f) shall give notice to Lender of and, unless otherwise directed in writing by Lender, shall appear in and defend any action or proceeding purporting to affect the Mortgaged Property, Lender's security or Lender's rights under this Instrument, and (g) if Borrower is a housing cooperative corporation or association, until the Indebtedness is paid in full Borrower shall not reduce the maintenance fees, charges or assessments payable by shareholders or residents under proprietary leases or occupancy agreements below a level which is sufficient to pay all expenses of Borrower, including, without limitation, all operating and other expenses for the Mortgaged Property and all payments due pursuant to the terms of the Note and any Loan Documents. Borrower shall not (and shall not permit any tenant or other Person to) remove, demolish or alter the Mortgaged Property or any part of the Mortgaged Property except in connection with the replacement of tangible Personality. Borrower shall not enter into, modify, amend, terminate, or cancel any management agreement for the Mortgaged Property or agreements with agents or brokers, without the prior written approval of Lender. Upon Lender's request, Borrower shall provide Lender with copies of all inspections, reports, test results, and other information received by any Borrower that in any way relate to the Mortgaged Property or any part of the collateral.

18. ENVIRONMENTAL HAZARDS. Borrower shall comply with all covenants, conditions, provisions and obligations of Borrower (as Indemnitor) under the Environmental Indemnity.

19. PROPERTY AND LIABILITY INSURANCE.

(a) Borrower shall keep the Improvements insured at all times against such hazards as Lender may from time to time require, which insurance shall include but not be limited to coverage against loss by fire, windstorm and allied perils, general boiler and machinery coverage, and business income coverage. Lender's insurance requirements may change from time to time throughout the term of the Indebtedness. If Lender so requires, such insurance shall also include sinkhole insurance, mine subsidence insurance, earthquake insurance, and, if the Mortgaged Property does not conform to applicable zoning or land use laws, building ordinance or law coverage. In the event any updated reports or other documentation are reasonably required by Lender in order to determine whether such additional insurance is necessary or prudent, Borrower shall pay for all such documentation at its sole cost and expense. If any of the Improvements is located in an area identified by the Federal Emergency Management Agency (or any successor to that agency) as an area having special flood hazards, and if flood insurance is available in that area, Borrower shall insure such Improvements against loss by flood. If Lender so requires, such insurance shall also include business income/rental value insurance for all relevant perils to be covered in the amount required by Lender, but in no case less than the effective gross income attributable to the Mortgaged Property for the preceding 12 months, as determined by Lender in lender's discretion. All insurance required pursuant to this Section 19(a) shall be referred to as "**Property Insurance**". All policies of Property Insurance must include a non-contributing, non-reporting mortgagee clause in favor of, and in a form approved by, Lender, and shall provide that the insurer will notify Lender in writing of cancellation of policies at least 10 days before the cancellation of the policy by the insurer for nonpayment of the premium or nonrenewal and at least 30 days before cancellation by the insurer for any other reason. As security for the Indebtedness, Borrower hereby assigns to Lender all required insurance policies, together with all proceeds thereof, rights thereto and all unearned premiums returnable upon cancellation.

(b) All premiums on insurance policies required under this Section 19 shall be paid in the manner provided in Section 7, unless Lender has designated in writing another method of payment. All such policies shall also be in a form approved by Lender. Borrower shall deliver to Lender a legible copy of each insurance policy (or duplicate original) and Borrower shall promptly deliver to Lender a copy of all renewal and other notices received by Borrower with respect to the policies and all receipts for paid premiums. At least thirty (30) days prior to the expiration date of a policy, Borrower shall deliver to Lender a legible copy of each renewal policy (or a duplicate original) in a form satisfactory to Lender.

(c) Borrower shall maintain at all times commercial general liability insurance, workers' compensation insurance and such other liability, errors and omissions and fidelity insurance coverages as Lender may from time to time require. All policies for general liability insurance must contain a standard additional insured provision, in favor of, and in a form approved by, Lender.

(d) All insurance policies and renewals of insurance policies required by this Section 19 shall be in such amounts and for such periods as Lender may from time to time require, shall be in such form and contain such endorsements as Lender may from time to time require, and shall be issued by insurance companies satisfactory to Lender.

(e) Borrower shall comply with all insurance requirements and shall not permit any condition to exist on the Mortgaged Property that would invalidate any part of any insurance coverage that this Instrument requires Borrower to maintain.

(f) In the event of loss, Borrower shall give immediate written notice to the insurance carrier and to Lender. Borrower hereby authorizes and appoints Lender as attorney-in-fact for Borrower to make proof of loss, to adjust and compromise any claims under policies of property damage insurance, to appear in and prosecute any action arising from such property damage insurance policies, to collect and receive the proceeds of property damage insurance, and to deduct from such proceeds Lender's expenses incurred in the collection of such proceeds. This power of attorney is coupled with an interest and therefore is irrevocable. However, nothing contained in this Section 19 shall require Lender to incur any expense or take any action. Lender shall apply any insurance proceeds received by it hereunder first to the payment of the costs and expenses incurred in the collection of the proceeds and then, in its absolute discretion and without regard to the adequacy of its security, to: (1) the payment of the Indebtedness, whether then due and payable or not. Any such application of proceeds to principal on the Note shall be without imposition of any prepayment fee otherwise payable under the Note, but shall not extend or postpone the due dates of the installment payments under the Note, or change the amounts thereof; or (2) the reimbursement of Borrower, under Lender's prescribed disbursement control procedures for disbursement of construction loan proceeds, for the cost of restoration or repair of the Mortgaged Property. Lender may, at its option, condition the reimbursement on Lender's approval of the plans and specifications of the reconstruction, contractor's cost estimates, architect's certificates, waivers of liens, sworn statements of mechanics and materialmen, and such other evidence of costs, percentage completion of construction, application of payments and satisfaction of liens as Lender may reasonably require. Except to the extent that insurance proceeds are applied to payment of the Indebtedness, nothing herein contained shall be deemed to excuse Borrower from restoring, repairing or maintaining the Mortgaged Property as provided in Section 17, regardless of whether or not there are insurance proceeds available or whether any such proceeds are sufficient in amount.

(g) Lender shall not exercise its option to apply insurance proceeds to the payment of the Indebtedness if all of the following conditions are met: (1) there is no Event of Default hereunder nor does any event or condition then exist which with the giving of notice, the passage of time, or both, will constitute an Event of Default and (2) Borrower shall have furnished to Lender and Lender shall have approved a detailed budget and cost breakdown for the restoration and rebuilding work, describing the nature and type of expenses and the cost thereof estimated by Borrower for such restoration and rebuilding work, including without limitation, the cost of materials and supplies, architect's, engineer's and designer's fees, general contractor's fees, and the anticipated monthly disbursement schedule; (iii) Lender shall have reviewed and approved the construction contract for the repair and restoration, and if required by Lender, Lender shall have received payment and performance bonds with dual obligee rider; (iv) Lender shall have received evidence satisfactory to it that the insurance proceeds are adequate to restore the Mortgaged Property to its condition immediately prior to the casualty, and if the proceeds are insufficient, Lender shall have received from Borrower the amount of the deficiency for disbursement with the insurance proceeds; (v) Lender shall have received evidence satisfactory to it that Borrower has funds available to it sufficient to pay all operating expenses, taxes, debt service and other carrying costs of the Mortgaged Property through the period of repair or restoration; (vi) Borrower shall have furnished to Lender and Lender shall have approved plans and specifications for the restoration or rebuilding work, and written evidence satisfactory to it that the same have been approved by all governmental authorities having jurisdiction over the Mortgaged Property; (vii) in Lender's judgment, the rebuilding and restoration work can be completed at least six (6) months prior to the maturity date of the Note; and (viii) Lender must be satisfied that the leases of the Mortgaged Property will remain in full force and effect pending the completion of the repairs, or Lender shall have received evidence satisfactory to it that upon completion of the repair or restoration work, the Mortgaged Property will produce sufficient income and be of sufficient value to be adequate security for the Indebtedness.

(h) If the Mortgaged Property is sold at a foreclosure sale or Lender acquires title to the Mortgaged Property, Lender shall automatically succeed to all rights of Borrower in and to any insurance policies and unearned insurance premiums and in and to the proceeds resulting from any damage to the Mortgaged Property prior to such sale or acquisition.

20. CONDEMNATION.

(a) Borrower shall promptly notify Lender of any action or proceeding relating to any condemnation or other taking, or conveyance in lieu thereof, of all or any part of the Mortgaged Property, whether direct or indirect (a "Condemnation"). Borrower shall appear in and prosecute or defend any action or proceeding relating to any Condemnation unless otherwise directed by Lender in writing. Borrower authorizes and appoints Lender as attorney in fact for Borrower to commence, appear in and prosecute, in Lender's or Borrower's name, any action or proceeding relating to any Condemnation and to settle or compromise any claim in connection with any Condemnation. This power of attorney is coupled with an interest and therefore is irrevocable. However, nothing contained in this Section 20 shall require Lender to incur any expense or take any action. Borrower hereby transfers and assigns to Lender all right, title and interest of Borrower in and to any award or payment with respect to (i) any Condemnation, or any conveyance in lieu of Condemnation, and (ii) any damage to the Mortgaged Property caused by governmental action that does not result in a Condemnation.

(b) Lender may apply such awards or proceeds, after the deduction of Lender's expenses incurred in the collection of such amounts, at Lender's option, to the restoration or repair of the Mortgaged Property or to the payment of the Indebtedness, with the balance, if any, to Borrower. Unless Lender otherwise agrees in writing, any application of any awards or proceeds to the Indebtedness shall not extend or postpone the due date of any monthly installments referred to in the Note, Section 7 of this Instrument or any Collateral Agreement, or change the amount of such installments. Borrower agrees to execute such further evidence of assignment of any awards or proceeds as Lender may require.

21. TRANSFERS OF THE MORTGAGED PROPERTY OR INTERESTS IN BORROWER.

(a) "Transfer" means (A) a sale, assignment, transfer or other disposition (whether voluntary, involuntary or by operation of law); (B) the granting, creating or attachment of a lien, encumbrance or security interest (whether voluntary, involuntary or by operation of law); (C) the issuance or other creation of an ownership interest in a legal entity, including a partnership interest, interest in a limited liability company or corporate stock; (D) the withdrawal, retirement, removal or involuntary resignation of a partner in a partnership or a member or manager in a limited liability company; or (E) the merger, dissolution, liquidation, or consolidation of a legal entity or the reconstitution of one type of legal entity into another type of legal entity. For purposes of defining the term "Transfer," the term "partnership" shall mean a general partnership, a limited partnership, a joint venture and a limited liability partnership, and the term "partner" shall mean a general partner, a limited partner and a joint venturer.

(b) "Transfer" does not include: (i) a conveyance of the Mortgaged Property at a judicial or non-judicial foreclosure sale under this Instrument, (ii) the Mortgaged Property becoming part of a bankruptcy estate by operation of law under the Bankruptcy Code, or (iii) a lien against the Mortgaged Property for local taxes and/or assessments not then due and payable.

(c) The occurrence of any of the following events shall not constitute an Event of Default under this Instrument, notwithstanding any provision of this Section 21 to the contrary:

- (i) a Transfer to which Lender has consented;
- (ii) a Transfer that occurs by devise, descent, or by operation of law upon the death of a natural person (unless such death itself is an Event of Default under Section 22(s) of this Instrument);
- (iii) the grant of a leasehold interest in an individual dwelling unit, so long as such leasehold interest (A) is for a term of two years or less, (B) does not contain an option to purchase and (C) is otherwise in accordance with the terms of this Instrument;
- (iv) a Transfer of obsolete or worn out Personalty or Fixtures that are contemporaneously replaced by items of equal or better function and quality, which are free of liens, encumbrances and security interests other than those created by the Loan Documents or consented to by Lender;
- (v) the creation of a mechanic's, materialman's, or judgment lien against the Mortgaged Property which is released of record or otherwise remedied to Lender's satisfaction within sixty (60) days of the date of creation; and

- (vi) if Borrower is a housing cooperative, corporation or association, the Transfer of more than 49 percent of the shares in the housing cooperative or the assignment of more than 49 percent of the occupancy agreements or leases relating thereto by tenant shareholders of the housing cooperative or association to other tenant shareholders.

(d) The occurrence of any of the following Transfers shall not constitute an Event of Default under this Instrument, provided that Borrower has notified Lender in writing within thirty (30) days following the occurrence of any of the following, and such Transfer does not constitute an Event of Default under any other Section of this Instrument:

- (i) a change of Borrower's name, provided that UCC financing statements and/or amendments sufficient to continue the perfection of Lender's security interest have been properly filed and copies have been delivered to Lender;
- (ii) a change of the form of Borrower not involving a transfer of Borrower's assets and not resulting in any change in liability of any Initial Owner, provided that: (A) UCC financing statements and/or amendments sufficient to continue the perfection of Lender's security interest have been properly filed and copies have been delivered to Lender, (B) Lender has been provided, in advance, for Lender's review and approval, all proposed filings, amendments and other documents pertaining to such change in form, and (C) Borrower shall pay for attorneys' fees, and other out of pocket costs of Lender for the review of such documents and any filings, including any title endorsement costs if Lender in its discretion requires an endorsement or endorsements to Lender's title policy;
- (iii) the merger of Borrower with another entity when Borrower is the surviving entity;
- (iv) [intentionally omitted];
- (v) the grant of an easement, if before the grant Lender determines that the easement will not materially affect the operation or value of the Mortgaged Property or Lender's interest in the Mortgaged Property, and Borrower pays to Lender, upon demand, all costs and expenses, including Attorneys' Fees and Costs, incurred by Lender in connection with reviewing Borrower's request; and
- (vi) the granting, creating or attachment of a lien, encumbrance or security interest against the Mortgaged Property or any part thereof (unless such lien, encumbrance or security interest results in an Event of Default under Section 22(g) of this Instrument).

(e) Except as expressly provided by this Instrument, neither the Mortgaged Property nor any part thereof or interest therein shall be Transferred by Borrower; nor shall there be any change in (i) the ownership or control of any of Borrower's stock if Borrower is a corporation, (ii) the ownership or control of any general partnership interest in Borrower if Borrower is a partnership, (iii) the ownership or control of any membership interest or other beneficial interest in Borrower if Borrower is not otherwise a natural person or persons, (iv) the manager of Borrower (or removal of the manager of Borrower), and (v) the ownership or control of any stock, any general partnership interest, membership interests or any other beneficial interest in any corporation, partnership, limited liability company or other entity that has an ownership interest in Borrower. Any such action without Lender's prior written consent shall be deemed to increase the risk of Lender, and shall constitute an Event of Default. Lender may, in its sole discretion, consent to any such action subject to such terms and conditions as Lender may require, including without limitation, the payment of a non-refundable transfer review/processing fee, an increase in the interest rate applicable to the Note, and an assumption fee equal to one percent (1%) of the outstanding principal balance of the Loan. In such event Lender shall not be required to release the original obligor or any other party liable for the Indebtedness.

(f) Provided that the conditions set forth in Section 21(g) are satisfied, Lender will give its written consent to transfers of interests in an entity with an ownership interest in Borrower, to the transferor's spouse (or registered domestic partner) or lineal descendent (including legally adopted children) or to an estate planning trust whose trustees and beneficiaries are the transferor or the transferor's spouse (or registered domestic partner) or lineal descendant (including legally adopted children), if Borrower gives Lender prior written notice of the transfer.

(g) For any Transfer permitted under this Section 21, Lender may condition its consent upon: (1) the Mortgaged Property having been and assurances that it shall continue to be well maintained and managed in a manner reasonably satisfactory to Lender; (2) Lender's approval of the Transfer terms, documents and background materials; (3) there being no uncured Event of Default under this Instrument; and/or (4) Borrower furnishing an endorsement to Lender's title insurance policy

or a new title policy, in form and content acceptable to Lender, insuring the continued validity and priority of the lien of this Instrument following the Transfer and such subordination agreements and other documents as may be required by Lender or its title company to issue the endorsement or policy. Unless Lender in its sole discretion otherwise agrees in writing at that time, no Transfer shall release the transferor and any Guarantors from any liability under the Loan Documents, the Environmental Indemnity or any guaranty. By accepting a Transfer, the transferee assumes any and all liability of the transferor under the Loan Documents and the Environmental Indemnity arising from and after the date of the Transfer. Regardless of whether Lender consents to a Transfer request, Borrower agrees to pay all of Lender's out-of-pocket expenses incurred in connection with any Transfer request, including without limitation documentation fees, title fees and Attorneys' Fees and Costs, and Lender may condition its willingness to consider a Transfer request upon a deposit to pay for Lender's expenses.

22. EVENTS OF DEFAULT. The occurrence of any one or more of the following shall constitute an Event of Default under this Instrument:

(a) any failure by Borrower to pay or deposit when due any amount required by the Note, this Instrument or any other Loan Document and such failure is not cured within ten (10) days after the date on which such payment is due;

(b) any failure by Borrower to maintain the insurance coverage required by Section 19 or to provide any financial information or documents required by Section 14;

(c) [Intentionally Omitted];

(d) fraud or material misrepresentation or material omission by Borrower, any of its officers, directors, trustees, general partners or managers or any Guarantor in connection with (A) the application for or creation of the Indebtedness, (B) any financial statement, rent roll, or other report or information provided to Lender during the term of the Indebtedness, or (C) any request for Lender's consent to any proposed action, including a request for disbursement of funds under any Collateral Agreement;

(e) any event or condition that under the terms of this Instrument is specified as constituting an Event of Default, including, without limitation, any Event of Default under Section 21;

(f) the commencement of a forfeiture action or proceeding, whether civil or criminal, which, in Lender's reasonable judgment, could result in a forfeiture of the Mortgaged Property or otherwise materially impair the lien created by this Instrument or Lender's interest in the Mortgaged Property;

(g) an unauthorized lien or encumbrance is recorded against the Mortgaged Property, unless within twenty (20) days of written notice by Lender to Borrower of the existence of such claim, lien or encumbrance, Borrower (i) obtains a release and satisfaction of such lien, claim of lien, judgment or encumbrance, or (ii) provides Lender with a bond (or other security) acceptable to Lender, or such other lesser amount as Lender may require in writing. If Borrower does not post the bond or other security reasonably satisfactory to Lender within said twenty (20) days, Lender, at its option, may pay such lien, claim of lien, judgment or other encumbrance against the Mortgaged Property and Borrower shall reimburse Lender, on demand, for any such disbursement made. Lender's rights under this paragraph shall not be affected by any claim of Borrower that the lien, judgment or encumbrance is invalid, it being understood that the decision of Lender to pay or withhold is to be made by Lender in its sole discretion, subject only to Borrower's right to provide a bond or other security satisfactory to Lender as provided above;

(h) there is a material adverse change in the financial condition of Borrower or any Guarantor or the Mortgaged Property;

(i) [Intentionally Omitted];

(j) if there is an uninsured casualty with respect to any material portion of the Mortgaged Property and Borrower fails to immediately repair such damage (whether or not Lender has disbursed any available insurance proceeds for such repair), Borrower fails to satisfy the conditions set forth in this Instrument for the release of insurance proceeds or any condemnation award, or, whether or not Lender has received and applied insurance proceeds or any condemnation award to the obligations arising under the Loan Documents in accordance with this Instrument, Lender reasonably determines that its security is impaired by such casualty or condemnation, and Borrower fails to immediately deposit with Lender an amount determined by Lender as necessary to restore such security;

(k) if the Mortgaged Property, or any part thereof is condemned or taken in any eminent domain or other like proceeding, or such proceeding is pending that, in Lender's judgment, would have a material adverse effect on the Mortgaged Property;

(l) if any material change occurs in the beneficial ownership, structure, or management of any corporate, partnership, or limited liability company Borrower or Guarantor without Lender's prior written consent, and such change is not corrected within five (5) days after Lender's delivery of written demand to Borrower, or in the event any Borrower or Guarantor that is not a natural person is voluntarily or administratively dissolved;

(m) if there exists any material default by Borrower, as lessor, under the terms of any lease covering or affecting the Mortgaged Property following the expiration of any applicable notice and cure period, provided that if the lease does not provide a notice and cure period, the applicable cure period shall be ten (10) days for a payment default and thirty (30) days for any other default (which respective periods will commence upon the earlier of written notice of default from Lender or the applicable tenant);

(n) any failure by Borrower to perform any of its obligations under this Instrument (other than those specified in Sections 22(a) through (m)), as and when required, which continues for a period of thirty (30) days after notice of such failure by Lender to Borrower. However, (1) no such notice or cure period shall apply in the case of any such failure which could, in Lender's judgment, absent immediate exercise by Lender of a right or remedy under this Instrument, result in harm to Lender, impairment of the Note or this Instrument or any other security given under any other Loan Document, and (2) except in circumstances described in subclause (1) of this sentence (where no cure period shall apply), if such failure is capable of being cured but cannot reasonably be cured within the thirty (30) day cure period, such cure period shall be extended up to ninety (90) days so long as Borrower has commenced action to cure within the thirty (30) day cure period and, in Lender's judgment, Borrower is proceeding to cure the default with due diligence;

(o) any failure by Borrower or any Guarantor to perform any of its obligations as and when required under any Loan Document (other than this Instrument), the Environmental Indemnity or the Guaranty which continues beyond the applicable cure period, if any, specified in that Loan Document, the Environmental Indemnity or the Guaranty;

(p) Borrower, any Guarantor, any entity owned or controlled by Borrower, any entity commonly owned or controlled by the members or owners of Borrower, or any entity commonly owned or controlled by Guarantors (each an "Affiliate") is in default with respect to any other loan or financial accommodation from Lender to Borrower, any Guarantor or any Affiliate, and such default is not cured within the time periods provided in the agreement(s) governing such loan or financial accommodation;

(q) should any representation or warranty contained in this Instrument, the Borrower Certificate, any other Loan Document, the Environmental Indemnity, or any other document submitted by Borrower to Lender be or become false or misleading in any material respect;

(r) Borrower or any Guarantor makes a general assignment for the benefit of creditors, voluntarily files for bankruptcy protection under the Bankruptcy Code or voluntarily becomes subject to any reorganization, receivership, insolvency proceeding or other similar proceeding pursuant to any other federal or state law affecting debtor and creditor rights, or an involuntary case is commenced against Borrower or any Guarantor by any creditor (other than Lender) of Borrower or any Guarantor pursuant to the Bankruptcy Code or other federal or state law affecting debtor and creditor rights to which Borrower or any Guarantor voluntarily becomes subject, and is not dismissed or discharged within forty-five (45) days after filing (unless such event occurs with respect to a Guarantor, and within thirty (30) days thereafter, Borrower provides a cure that is acceptable to Lender, including but not limited to providing a replacement guarantor acceptable to Lender); and

(s) Borrower (if Borrower is a natural person) or any member, general partner or trustee of Borrower, or any Guarantor who is a natural person, dies, or becomes incompetent, or purports to revoke or dispute the validity of, or liability under, any of the Loan Documents or the Guaranty; provided, however, that in the event of the death of any such person, Borrower (or such deceased person's executor, administrator or successor trustee) may within ninety (90) days after such death, present to Lender credit application(s) for proposed substitute borrower(s), member(s), general partner(s) or guarantor(s) on Lender's required forms, together, with such supporting financial information as Lender may require, and in such event Lender, in its sole, absolute and unfettered discretion after review of such application(s) and supporting information, may permit such substitute borrower(s), member(s), general partner(s) or guarantor(s) to assume unconditionally the obligations of such deceased person under the Loan Documents and/or Guaranty, in a manner satisfactory to Lender, and, in doing so, cure such Event of Default. In such event Borrower or the successor Borrower(s) shall execute such documentation as Lender may require and shall pay all of Lender's Attorneys' Fees and Costs and other out of pocket costs in connection with such assumption.

23. REMEDIES CUMULATIVE. Each right and remedy provided in this Instrument is distinct from all other rights or remedies under this Instrument or any other Loan Document or afforded by applicable law, and each shall be cumulative and may be exercised concurrently, independently, or successively, in any order.

24. FORBEARANCE.

(a) Lender may (but shall not be obligated to) agree with Borrower, from time to time, and without giving notice to, or obtaining the consent of, or having any effect upon the obligations of, any Guarantor or any other third party obligor, to take any of the following actions: extend the time for payment of all or any part of the Indebtedness; reduce the payments due under this Instrument, the Note, or any other Loan Document; release anyone liable for the payment of any amounts under this Instrument, the Note, or any other Loan Document; accept a renewal of the Note; modify the terms and time of payment of the Indebtedness; join in any extension or subordination agreement; release any Mortgaged Property; take or release other or additional security; modify the rate of interest or period of amortization of the Note or change the amount of the monthly installments payable under the Note; and otherwise modify this Instrument, the Note, or any other Loan Document.

(b) Any forbearance by Lender in exercising any right or remedy under the Note, this Instrument, or any other Loan Document or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any right or remedy. The acceptance by Lender of payment of all or any part of the Indebtedness after the due date of such payment, or in an amount which is less than the required payment, shall not be a waiver of Lender's right to require prompt payment when due of all other payments on account of the Indebtedness or to exercise any remedies for any failure to make prompt payment. Enforcement by Lender of any security for the Indebtedness shall not constitute an election by Lender of remedies so as to preclude the exercise of any other right available to Lender. Lender's receipt of any awards or proceeds under Sections 19 and 20 shall not operate to cure or waive any Event of Default.

25. LOAN CHARGES. If any applicable law limiting the amount of interest or other charges permitted to be collected from Borrower is interpreted so that any charge provided for in any Loan Document, whether considered separately or together with other charges levied in connection with any other Loan Document, violates that law, and Borrower is entitled to the benefit of that law, that charge is hereby reduced to the extent necessary to eliminate that violation. The amounts, if any, previously paid to Lender in excess of the permitted amounts shall be refunded. Lender may refund such excess either by treating the excess as a prepayment of principal under the Note or by making a direct payment to Borrower. If Lender elects to treat the excess as a prepayment of principal, Borrower shall not be obligated to pay any prepayment premium required under the Note. For the purpose of determining whether any applicable law limiting the amount of interest or other charges permitted to be collected from Borrower has been violated, all Indebtedness which constitutes interest, as well as all other charges levied in connection with the Indebtedness which constitute interest, shall be deemed to be allocated and spread over the stated term of the Note. Unless otherwise required by applicable law, such allocation and spreading shall be effected in such a manner that the rate of interest so computed is uniform throughout the stated term of the Note. The provisions of this paragraph shall control over any inconsistent provision in the Loan Documents.

26. WAIVER OF STATUTE OF LIMITATIONS. To the full extent Borrower may do so, Borrower hereby waives the right to assert any statute of limitations as a defense to the enforcement of the lien of this Instrument or to any action brought to enforce the Note or any other obligation secured by this Instrument.

27. WAIVER OF MARSHALING. Notwithstanding the existence of any other security interests in the Mortgaged Property held by Lender or by any other party, Lender shall have the right to determine the order in which any or all of the Mortgaged Property shall be subjected to the remedies provided in this Instrument, the Note, any other Loan Document or applicable law. Lender shall have the right to determine the order in which any or all portions of the Indebtedness are satisfied from the proceeds realized upon the exercise of such remedies. Borrower and any party who now or in the future acquires a security interest in the Mortgaged Property and who has actual or constructive notice of this Instrument waives any and all right to require the marshaling of assets or to require that any of the Mortgaged Property be sold in the inverse order of alienation or that any of the Mortgaged Property be sold in parcels or as an entirety in connection with the exercise of any of the remedies permitted by applicable law or provided in this Instrument.

28. ADDITIONAL DOCUMENTS; POWER OF ATTORNEY. Borrower, from time to time, shall execute, acknowledge and deliver to Lender upon request, and hereby irrevocably appoints Lender its attorney-in-fact to execute, acknowledge, deliver and if appropriate file and record, such security agreements, assignments for security purposes, assignments absolute, financing statements, affidavits, certificates and other documents, in form and substance satisfactory to

Lender, as Lender may request in order to perfect, preserve, continue, extend or maintain the assignments herein contained, the lien and security interest under this Instrument, and the priority thereof. Borrower shall pay to Lender upon request therefor all costs and expenses incurred in connection with the preparation, execution, recording and filing of any such document.

29. ESTOPPEL CERTIFICATE. Borrower shall, within ten (10) days of a written request from Lender and at no charge to Lender, deliver to Lender or any other party designated by Lender a written statement, signed and acknowledged by Borrower, certifying to Lender or any Person designated by Lender, as of the date of such statement, (i) that the Loan Documents are unmodified and in full force and effect (or, if there have been modifications, that the Loan Documents are in full force and effect as modified and setting forth such modifications); (ii) the unpaid principal balance of the Note; (iii) the date to which interest under the Note has been paid; (iv) that Borrower is not in default in paying the Indebtedness or in performing or observing any of the covenants or agreements contained in this Instrument or any of the other Loan Documents (or, if Borrower is in default, describing such default in reasonable detail); (v) whether or not there are then existing any setoffs or defenses known to Borrower against the enforcement of any right or remedy of Lender under the Loan Documents; and (vi) any additional facts requested by Lender.

30. GOVERNING LAW; CONSENT TO JURISDICTION AND VENUE.

(a) This Instrument, and any Loan Document which does not itself expressly identify the law that is to apply to it, shall be governed by the laws of the jurisdiction in which the Land is located (the "**Property Jurisdiction**").

(b) Borrower agrees that any controversy arising under or in relation to the Note, this Instrument, or any other Loan Document may be litigated in the Property Jurisdiction. The state and federal courts and authorities with jurisdiction in the Property Jurisdiction shall have non-exclusive jurisdiction over all controversies which shall arise under or in relation to the Note, any security for the Indebtedness, or any other Loan Document. Borrower irrevocably consents to service, jurisdiction, and venue of such courts for any such litigation and waives any other venue, or defense to venue to which it might be entitled by virtue of domicile, habitual residence, inconvenient forum or otherwise.

31. NOTICE.

(a) All notices, demands and other communications ("**notice**") under or concerning this Instrument shall be in writing. Each notice shall be addressed to the intended recipient at its address set forth in paragraph A of this Instrument, and shall be deemed given on the earliest to occur of (1) the date when the notice is received by the addressee; (2) the first Business Day after the notice is delivered to a recognized overnight courier service, with arrangements made for payment of charges for next Business Day delivery; or (3) the third Business Day after the notice is deposited in the United States mail with postage prepaid, certified mail, return receipt requested. As used in this Section 31, the term "Business Day" means any day other than a Saturday, a Sunday or any other day on which Lender is not open for business.

(b) Any party to this Instrument may change the address to which notices intended for it are to be directed by means of notice given to the other party in accordance with this Section 31. Each party agrees that it will not refuse or reject delivery of any notice given in accordance with this Section 31, that it will acknowledge, in writing, the receipt of any notice upon request by the other party and that any notice rejected or refused by it shall be deemed for purposes of this Section 31 to have been received by the rejecting party on the date so refused or rejected, as conclusively established by the records of the U.S. Postal Service or the courier service.

(c) Any notice under the Note and any other Loan Document which does not specify how notices are to be given shall be given in accordance with this Section 31.

32. SALE OF NOTE; CHANGE IN SERVICER. The Note or a partial interest in the Note (together with this Instrument and the other Loan Documents) may be sold one or more times without prior notice to Borrower. A sale may result in a change of the Loan Servicer. There also may be one or more changes of the Loan Servicer unrelated to a sale of the Note. If there is a change of the Loan Servicer, Borrower will be given notice of the change.

33. [Intentionally Omitted]

34. SUCCESSORS AND ASSIGNS BOUND. This Instrument shall bind, and the rights granted by this Instrument shall inure to, the respective successors and assigns of Lender and Borrower. However, a Transfer not permitted by Section 21 shall constitute an Event of Default.

35. JOINT AND SEVERAL LIABILITY. If more than one Person signs this Instrument as Borrower, the obligations of such Persons under this Instrument, the Note and other Loan Documents shall be joint and several. In exercising any rights hereunder or taking actions provided for herein, Lender and Trustee may act through their respective employees, agents or independent contractors as authorized by Lender and Trustee. Upon the occurrence of any default, Lender may proceed against any Borrower, any Guarantor, or any of Lender's security for the Loan in such order and manner as Lender in its sole discretion may elect.

36. RELATIONSHIP OF PARTIES; NO THIRD PARTY BENEFICIARY.

(a) The relationship between Lender and Borrower shall be solely that of creditor and debtor, respectively, and nothing contained in this Instrument shall create any other relationship between Lender and Borrower.

(b) No creditor of any party to this Instrument and no other Person shall be a third party beneficiary of this Instrument or any other Loan Document. Without limiting the generality of the preceding sentence, (1) any arrangement (a "Servicing Arrangement") between Lender and any Loan Servicer for loss sharing or interim advancement of funds shall constitute a contractual obligation of such Loan Servicer that is independent of the obligation of Borrower for the payment of the Indebtedness, (2) Borrower shall not be a third party beneficiary of any Servicing Arrangement, and (3) no payment by the Loan Servicer under any Servicing Arrangement will reduce the amount of the Indebtedness.

37. SEVERABILITY; ENTIRE AGREEMENT. The parties intend that the provisions of this Instrument and all other Loan Documents shall be legally severable. If any term or provision of this Instrument, or any other Loan Document, to any extent, be determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Instrument or of such other Loan Document shall not be affected thereby, and each term and provision shall be valid and be enforceable to the fullest extent permitted by law. This Instrument contains the entire agreement among the parties as to the rights granted and the obligations assumed in this Instrument.

38. CONSTRUCTION. The captions and headings of the Sections of this Instrument are for convenience only and shall be disregarded in construing this Instrument. Any reference in this Instrument to an "Exhibit" or a "Section" shall, unless otherwise explicitly provided, be construed as referring, respectively, to an Exhibit attached to this Instrument or to a Section of this Instrument. All Exhibits attached to or referred to in this Instrument are incorporated by reference into this Instrument. Any reference in this Instrument to a statute or regulation shall be construed as referring to that statute or regulation as amended from time to time. Use of the singular in this Instrument includes the plural and use of the plural includes the singular. As used in this Instrument, the term "including" means "including, but not limited to" and the term "includes" means "includes without limitation." The use of one gender includes the other gender, as the context may require. Unless the context requires otherwise, (a) any definition of or reference to any agreement, instrument or other document in this Instrument shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth in this Instrument or any other Loan Document), and (b) any reference in this Instrument to any Person shall be construed to include such Person's successors and assigns.

39. LOAN SERVICING. All actions regarding the servicing of the Loan, including the collection of payments, the giving and receipt of notice, inspections of the Mortgaged Property, inspections of books and records, and the granting of consents and approvals, may be taken by the Loan Servicer unless Borrower receives notice to the contrary. If Borrower receives conflicting notices regarding the identity of the Loan Servicer or any other subject, any such notice from Lender shall govern.

40. DISCLOSURE OF INFORMATION. Lender may furnish information regarding Borrower or the Mortgaged Property to third parties with an existing or prospective interest in the servicing, enforcement, evaluation, performance, purchase or securitization of the Indebtedness, including but not limited to trustees, master servicers, special servicers, rating agencies, and organizations maintaining databases on the underwriting and performance of similar mortgage loans, as well as governmental regulatory agencies having regulatory authority over Lender. Borrower irrevocably waives any and all rights it may have under applicable law to prohibit such disclosure, including but not limited to any right of privacy.

41. NO CHANGE IN FACTS OR CIRCUMSTANCES. All information in the application for the loan submitted to Lender (the "Loan Application") and in all financial statements, rent rolls, reports, certificates and other documents submitted in connection with the Loan Application are complete and accurate in all material respects. There has been no material adverse change in any fact or circumstance that would make any such information incomplete or inaccurate.

42. SUBROGATION. If, and to the extent that, the proceeds of the Loan, or subsequent advances under Section 12, are used to pay, satisfy or discharge a Prior Lien, such Loan proceeds or advances shall be deemed to have been advanced by Lender at Borrower's request, and Lender shall automatically, and without further action on its part, be subrogated to the rights, including lien priority, of the owner or holder of the obligation secured by the Prior Lien, whether or not the Prior Lien is released.

43. [Intentionally Omitted]

44. ACCELERATION; REMEDIES. At any time during the existence of an Event of Default, Lender, at Lender's option, may declare the Indebtedness to be immediately due and payable without further demand and may invoke the power of sale and any other remedies permitted by applicable law or provided in this Instrument or in any other Loan Document. Borrower acknowledges that the power of sale granted in this Instrument may be exercised by Lender without prior judicial hearing. Borrower has the right to bring an action to assert the non-existence of an Event of Default or any other defense of Borrower to acceleration and sale. Lender shall be entitled to collect all costs and expenses incurred in pursuing such remedies, including Attorneys' Fees and Costs, and costs of documentary evidence, abstracts and title reports.

If the power of sale is invoked, Trustee shall execute a written notice of the occurrence of an Event of Default and of Lender's election to cause the Mortgaged Property to be sold and shall record such notice in each county in which the Mortgaged Property is located. Lender or Trustee shall mail notice of default in the manner provided by the laws of Utah to Borrower and to such other Persons as the laws of Utah prescribe. Trustee shall give public notice of sale and shall sell the Mortgaged Property according to the laws of Utah. Trustee may sell the Mortgaged Property at the time and place and under the terms designated in the notice of sale in one or more parcels. Trustee may postpone sale of all or any part of the Mortgaged Property by public announcement at the time and place of any previously scheduled sale. Lender or Lender's designee may purchase the Mortgaged Property at any sale.

Within a reasonable time after the sale, Trustee shall deliver to the purchaser at the sale, a deed conveying the Mortgaged Property so sold without any covenant or warranty, express or implied. The recitals in Trustee's deed shall be prima facie evidence of the truth of the statements made therein. Trustee shall apply the proceeds of the sale in the following order: (a) to all costs and expenses of the sale, including Trustee's fees not to exceed 5% of the gross sales price, Attorneys' Fees and Costs and costs of title evidence; (b) to the Indebtedness in such order as Lender, in Lender's discretion, directs; and (c) the excess, if any, to the Person or Persons legally entitled thereto or to the county clerk of the county in which the sale took place.

45. FIXTURE FILING. This Instrument is also a fixture filing under the Uniform Commercial Code of Utah.

46. RECONVEYANCE. Upon payment of the Indebtedness, Lender shall request Trustee to reconvey the Mortgaged Property and shall surrender this Instrument and the Note to Trustee. Trustee shall reconvey the Mortgaged Property without warranty to the Person or Persons legally entitled thereto. Such Person or Persons shall pay Trustee's reasonable costs incurred in so reconveying the Mortgaged Property.

47. SUBSTITUTE TRUSTEE. Lender, at Lender's option, may from time to time remove Trustee and appoint a successor trustee to any Trustee appointed under this Instrument. Without conveyance of the Mortgaged Property, the successor trustee shall succeed to all the title, power and duties conferred upon the Trustee in this Instrument and by applicable law.

48. REQUEST FOR NOTICES. Borrower requests that copies of the notice of default and notice of sale be sent to him at Borrower's address stated in paragraph A of this Instrument.

49. MODIFICATIONS AND WAIVERS. This Instrument cannot be waived, changed, discharged or terminated orally, but only by an instrument in writing signed by the party against whom enforcement of any waiver, change, discharge or termination is sought.

50. NO CONDOMINIUM. Borrower hereby covenants and agrees not to file or record any declaration or constituent condominium document which would subject the Mortgaged Property to the Condominium Ownership Act codified in Title 57, Chapter 8 of the Utah Code, or any other law later enacted or effective related to condominiums (the "Act"), without Lender's prior written consent. As to any portion of the Mortgaged Property which is later submitted to the Act, this Instrument shall continue in effect and extend to all of Borrower's right, title and interest in and to any and all units and apartments created thereby and Borrower's interest in the underlying land and common elements, and all other interests and easements pertaining thereto, without further action.

51. INTERPRETATION. It is the intention of Borrower and Lender that if any provision of this Instrument or any other Loan Document is capable of two (2) constructions, one of which would render the provision void, and the other of which would render the provision valid, then the provision shall have the meaning which renders it valid. Borrower acknowledges that Lender has attempted in good faith to assure that this Instrument, the Note and all other Loan Documents are in compliance with applicable laws of the Property Jurisdiction and federal laws. Nevertheless, in the event that any provision of this Instrument, the Note or any other Loan Document is not in compliance with any such laws, then the non-complying provision shall be deemed to be deleted or modified to the extent necessary to assure legal compliance. Similarly, in the event any language or disclosure required by applicable laws of the Property Jurisdiction is not contained in the Loan Documents, then the Loan Documents shall be deemed to have been supplemented to add such language or disclosure, or, at Lender's option, Lender may provide such additional language or disclosure. In either event, such legal requirement shall thereby be satisfied and such noncompliance shall be deemed to have been cured for all purposes. Within ten (10) days after written request by Lender, Borrower agrees to execute such documentation as Lender may require to cure any legal compliance issues or deficiencies in the Loan Documents.

52. FUTURE ADVANCES. In addition to the indebtedness, this Instrument shall (to the extent allowed by applicable law) also secure payment of the principal, interest and other charges due on all other future loans or advances made by Lender to Borrower (or any successor in interest to Borrower as the owner of all or any part of the Mortgaged Property) or any entity controlled by Borrower or any Guarantor unless the promissory note evidencing such loan or advance specifically states that it is not secured by this Instrument ("Future Advances"), including all extensions, renewals and modifications of any such Future Advances.

53. AGREEMENT TO PROVIDE ADDITIONAL DOCUMENTS. Borrower agrees to execute and acknowledge such additional documents as may be necessary or desirable in order to carry out the intent and purpose of this Instrument and the other Loan Documents, to confirm or establish the lien hereof, or to correct any clerical errors or legal deficiencies. Without limiting the foregoing, Borrower agrees to execute a replacement Note in the event the Note is lost or destroyed and to execute an amended or corrected and restated substitute Note to correct any clerical or other errors which may be discovered in the original Note. Failure of Borrower to comply with any request by Lender pursuant to this Section or under Section 28 above within ten (10) days after written request by Lender shall constitute a material Event of Default hereunder.

54. EXECUTION IN COUNTERPARTS. This Instrument may be executed in multiple counterparts, and the separate signature pages and notary acknowledgments may then be combined into a single original document for recordation.

55. LEGAL AND INCIDENTAL FEES AND EXPENSES; PAYMENT OF CLOSING COSTS. Borrower shall pay or reimburse Lender for all legal, appraisal, and inspection fees; title insurance and survey costs; recording and filing fees; hazard and liability insurance for the Mortgaged Property; and any and all other charges or expenses incurred by Lender in connection with the Loan, including, without limitation, all such costs and fees involved in processing Borrower's loan application, preparing the Loan Documents, and closing, administering, collecting or enforcing the Loan. Borrower shall indemnify with counsel selected by Lender in its sole discretion and hold Lender harmless against any and all claims for fees, charges, real estate commissions, broker fees, taxes, or other expenses of any kind in any way connected with the Loan or the Mortgaged Property. Borrower's obligation to pay such expenses shall not be dependent on the closing of the Loan and shall survive any termination of any loan commitment executed by Lender. In addition, Borrower agrees to reimburse Lender for all of its reasonable costs, charges, expenses, and Attorneys' Fees and Costs that Lender incurs, with or without litigation: (i) in connection with the enforcement of any remedy contained in this Instrument or any other Loan Document, or (ii) in connection with any action taken by Lender in accordance with the terms of any of the Loan Documents to protect its interests or to recover amounts owed under the Loan, including, without limitation, any actions necessitated by the bankruptcy of Borrower or any Guarantor or the exercise by any other creditor of Borrower or any Guarantor of its right against Borrower, any Guarantor or the Mortgaged Property. Borrower specifically acknowledges that Lender may recover its reasonable costs, charges, expenses, and Attorneys' Fees and Costs in any litigation, appeal of any trial court decision, any arbitration proceeding, any action contesting or seeking to restrain, enjoin, stay or postpone the exercise of any remedy, and any bankruptcy or other insolvency proceeding involving Borrower, any Guarantor, or the Mortgaged Property. Such costs, expenses, and fees shall be due and payable upon demand and, if not paid within ten (10) days thereafter, shall bear interest from the date of such demand to and including the date of collection at the Default Rate set forth in the Note. If for any reason the escrow or closing agent fails to reserve and pay for all of Lender's fees, legal, documentation, appraisal, title, recording and other closing costs incurred in connection with the closing and funding of the Loan, then Borrower shall pay or reimburse Lender for any such unpaid fees or costs within ten (10)

days after written demand by Lender itemizing the unpaid fees and costs. Failure of Borrower to so pay or reimburse Lender for any such unpaid fees and costs within ten (10) days after written demand by Lender shall constitute an Event of Default and, without limiting any other remedies of Lender, Lender may immediately instate the Default Rate under the Note until such amounts are received by Lender.

56. APPRAISALS AND INSPECTIONS. (a) In the event of: (i) an Event of Default, (ii) a material change in market conditions or the physical aspects of the Mortgaged Property, or (iii) a failure of the Mortgaged Property to achieve the performance expectations of the original appraisal, or (b) as may otherwise be required by any applicable laws or regulatory authority, Lender may obtain an appraisal or appraisal update for all or any part of the Mortgaged Property prepared in accordance with written instructions from Lender by a third party appraiser engaged directly by Lender. Each such appraiser and appraisal (or appraisal update) shall be satisfactory to Lender (including satisfaction of applicable regulatory requirements). If Lender obtains an appraisal (or appraisal update), Borrower will fully cooperate with Lender and the appraiser, and will provide the information necessary to prepare the appraisal (or appraisal update). Borrower will pay the cost of any such appraisal or appraisal update within ten (10) days following demand by Lender; provided, however, that Borrower's obligation for appraisal costs shall not exceed one appraisal within any 12-month period unless an Event of Default has occurred. Lender shall at all times have the right to enter upon the Mortgaged Property to inspect the Mortgaged Property, which right shall not terminate unless and until the Loan is paid in full. Borrower agrees to pay the reasonable costs of annual inspections by third party consultants hired by Lender. Inspection by Lender of the Mortgaged Property is for the purpose of protecting the security of Lender.

57. ASSIGNMENT AND PARTICIPATION.

(a) Lender shall have the right, at any time and from time to time, to assign or sell the Loan, and/or enter into one or more participations in the Loan, accompanied by an assignment and/or delegation of any or all related rights or obligations of Lender under the Loan Documents, without the need for any form of consent from Borrower or any Guarantor. Borrower agrees to cooperate with Lender's efforts to do any of the foregoing, to provide such further or additional financial or other documentation as Lender may reasonably request in connection with any such sale, assignment or participation, and to execute all documents reasonably required by Lender in connection therewith that do not materially adversely affect Borrower's rights under the Loan Documents, and provided such cooperation shall be at no material expense or liability to Borrower.

(b) The terms, covenants and conditions of the Loan Documents shall be binding upon and inure to the benefit of the heirs, executors, administrators, permitted successors and permitted assigns of the parties thereto.

58. NO SETOFF BY BORROWER. Borrower's obligation to timely pay and perform all obligations under the Note, this Instrument, and the other Loan Documents shall be absolute and unconditional and shall not be affected by any event or circumstance, including, without limitation, any setoff, counterclaim, abatement, suspension, recoupment, deduction, defense or any other right that Borrower or any Guarantor may have or claim against Lender or any other Person.

59. NONWAIVER. No failure of Lender to enforce its rights, remedies, or options in the Event of Default shall be deemed to be a waiver of any of its rights, remedies, or options hereunder or at law, and it may at any time that such Default exists or continues to exist, enforce any or all of its rights, remedies, and options arising by reason of such default. Furthermore, no waiver of Lender's rights or remedies in one or more instances shall establish a course of dealing or other agreement that will bind Lender or prohibit Lender from enforcing the terms of the Loan Documents in another instance.

60. SURVIVAL OF WARRANTIES. All agreements, representations, and warranties made in the Loan Documents shall survive execution, delivery, and the making of the Loan hereunder and shall continue in full force and effect until the obligations of Borrower evidenced by the Loan Documents have been fully paid and performed.

61. ELECTRONIC TRANSMISSION OF DATA. Lender and Borrower agree that certain data related to the Loan (including confidential information, documents, applications and reports) may be transmitted electronically, including over the Internet. This data may be transmitted to, received from or circulated among agents and representatives of Borrower and/or Lender and their affiliates, and other Persons involved with the subject matter of this Instrument or any of the other Loan Documents. Borrower acknowledges and agrees that (a) there are risks associated with the use of electronic transmission and that Lender does not control the method of transmittal or service providers, (b) Lender has no obligation or responsibility whatsoever and assumes no duty or obligation for the security, receipt, or third party interception of such transmissions, and (c) Borrower will release, hold harmless and indemnify Lender from any claim, damage or loss, including that arising in whole or part from Lender's strict liability or sole, comparative or contributory negligence, which is related to the electronic transmittal of data.

62. **PUBLICATION AND RELEASE OF INFORMATION.** Upon closing of the Loan, Lender may publicize financing of the Mortgaged Property by media of Lender's choice and Lender may use Borrower's name and the name of the Mortgaged Property in any such release.

63. **BALLOON PAYMENT NOTICE.** The Note secured hereby provides for a balloon payment of the entire Indebtedness upon the Maturity Date of the Note.

64. **WAIVER OF TRIAL BY JURY.** BORROWER HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING BASED UPON, OR RELATED TO, THE SUBJECT MATTER OF THE LOAN DOCUMENTS. THIS WAIVER IS KNOWINGLY, INTENTIONALLY, AND VOLUNTARILY MADE BY BORROWER, AND BORROWER ACKNOWLEDGES THAT NO PERSON ACTING ON BEHALF OF LENDER HAS MADE ANY REPRESENTATIONS OF FACT TO INDUCE THIS WAIVER OF TRIAL BY JURY OR IN ANY WAY TO MODIFY OR NULLIFY ITS EFFECT. BORROWER FURTHER ACKNOWLEDGES THAT BORROWER HAS BEEN REPRESENTED (OR HAS HAD THE OPPORTUNITY TO BE REPRESENTED) IN THE SIGNING OF THE LOAN DOCUMENTS AND IN THE MAKING OF THIS WAIVER BY INDEPENDENT LEGAL COUNSEL SELECTED OF BORROWER'S OWN FREE WILL, AND THAT BORROWER HAS HAD THE OPPORTUNITY TO DISCUSS THIS WAIVER WITH COUNSEL.

ATTACHED EXHIBIT. The following Exhibit is attached to this Instrument:
Exhibit "A" Description of the Land

THIS DEED OF TRUST SECURES A VARIABLE RATE PROMISSORY NOTE. THIS DEED OF TRUST IS A FIRST DEED OF TRUST. NO FURTHER ENCUMBRANCES MAY BE RECORDED AGAINST THE MORTGAGED PROPERTY WITHOUT THE PRIOR WRITTEN CONSENT OF LENDER. FAILURE TO COMPLY WITH THIS PROVISION SHALL CONSTITUTE AN EVENT OF DEFAULT AND AT LENDER'S OPTION THE LOAN SHALL IMMEDIATELY BECOME DUE AND PAYABLE. CONSENT TO ONE FURTHER ENCUMBRANCE SHALL NOT BE DEEMED TO BE A WAIVER OF THE RIGHT TO REQUIRE SUCH CONSENT TO FUTURE OR SUCCESSIVE ENCUMBRANCES.

IN WITNESS WHEREOF, Borrower has signed and delivered this Instrument under seal (where applicable) or has caused this Instrument to be signed and delivered by its duly authorized representative under seal (where applicable). Where applicable law so provides or allows, Borrower intends that this Instrument shall be deemed to be signed and delivered as a sealed instrument.

BORROWER:

SUMMIT APARTMENTS, LLC,
a Utah limited liability company

By: 

CRAIG H. ROBINSON, Manager

(SEAL)

State of Washington

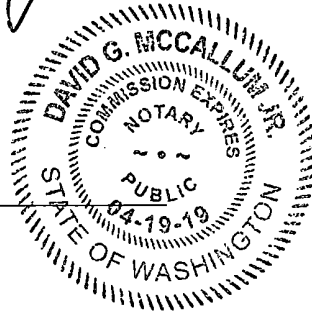
County of King

I certify that I know or have satisfactory evidence that **CRAIG H. ROBINSON** is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute the instrument and acknowledged it as **Manager of SUMMIT APARTMENTS, LLC**, a Utah limited liability company, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: JUNE 13th, 2016

[Signature]
Signature

Seal or Stamp



MANAGER
Title

My appointment expires 4-19-19

EXHIBIT "A"
DESCRIPTION OF THE LAND

THE LAND REFERRED TO HEREIN IS SITUATED IN SALT LAKE COUNTY, STATE OF UTAH, AND IS DESCRIBED AS FOLLOWS:

PARCEL 1:

Beginning 18.4 rods West of the Northeast corner of Lot 12, Block 3, Five Acre Plat "A", Big Field Survey and running thence West 75.9 feet; thence South 17.4 rods; thence East 75.9 feet; thence North 17.4 rods to the point of beginning.

PARCEL 2:

Beginning at a point 379.5 feet West and 207.1 feet South from the Northeast corner of Lot 12, Block 3, Five Acre Plat "A", Big Field Survey, and running thence West 37.9 feet; thence South 80 feet; thence East 37.9 feet; thence North 80 feet to the point of beginning.

APN: 16-18-430-008 and 16-18-430-009

PROPERTY ADDRESS: 646 EAST 1700 SOUTH, SALT LAKE CITY, UTAH 84105