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RECORDING REQUESTED BY AND  
WHEN RECORDED MAIL TO:

Citi Community Capital  
Municipal Securities Division  
1801 California St., Suite 3700  
Denver, Colorado 80202  
Attention: Judy Wessler

Citi # 6509

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Gary W. Ott

Recorder, Salt Lake County, UT

AFFILIATED FIRST TITLE

BY: eCASH, DEPUTY - EF 66 P.

**AMENDED AND RESTATED LEASEHOLD MULTIFAMILY DEED OF TRUST,  
ASSIGNMENT OF RENTS,  
SECURITY AGREEMENT AND FIXTURE FILING  
(UTAH)**

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(UTAH)**

This **AMENDED AND RESTATED LEASEHOLD MULTIFAMILY DEED OF TRUST, ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND FIXTURE FILING** (this "**Instrument**") is made as of July 1, 2010, by **LIBERTY COMMONS ASSOCIATES, L.C.**, a Utah limited liability company, whose address is c/o Cowboy Partners, L.C., 6440 S. Wasatch Boulevard, Suite 100, Salt Lake City, Utah 84121, as grantor ("**Borrower**"), to **AFFILIATED FIRST TITLE INSURANCE AGENCY**, having an address at address at 321 E. State Road, Suite 200, American Fork, Utah 84003, as trustee ("**Trustee**") for the benefit of **WELLS FARGO BANK, NATIONAL ASSOCIATION**, a national banking association, as indenture trustee, whose address is 299 South Main Street, 12th Floor, Salt Lake City, Utah 84101, as beneficiary, and its successors and assigns ("**Indenture Trustee**" or "**Lender**"). Borrower's organizational identification number is 5948540-0160.

The Utah Housing Corporation, a body politic and corporate, duly organized and existing under the laws of the State of Utah ("**Issuer**") issued and sold its Multifamily Housing Revenue Bonds (Liberty Commons Apartments Project) Series 2006A-1 in the original principal amount of \$14,000,000 ("**Series A-1 Bonds**") and its Taxable Multifamily Housing Revenue Bonds (Liberty Commons Apartments Project) Series 2006A-2 in the original aggregate principal amount of \$3,510,000 ("**Series A-2 Bonds**") and together with the Series A-1 Bonds, the "**Original Bonds**") pursuant to a Trust Indenture, dated as of October 1, 2006, by and between Issuer and Indenture Trustee. The proceeds of the Original Bonds were applied by Issuer to fund a loan (the "**Original Loan**") to Borrower in the aggregate principal amounts of the Series A-1 Bonds and Series A-2 Bonds for the purpose of financing the acquisition, construction and equipping of a 209-unit multifamily residential rental housing facility located in West Valley, Salt Lake County, Utah and known as the Liberty Commons Apartments ("**Project**").

Borrower and Triple S Investment Co., LLC, a Utah limited liability company, SCS Clocktower, L.L.C., a Utah limited liability company, and CPLC Properties, L.C., a Utah limited liability company, as fee owners (collectively, the "**Ground Lessor**"), entered into that certain Ground Lease dated as of October 1, 2006 with Borrower, as lessee, with respect to the Project as more particularly described on Exhibit E hereto (as modified, replaced or assigned from time to time, the "**Ground Lease**").

The Original Loan is evidenced by that certain Loan Agreement dated as of October 1, 2006 by and among Issuer, Borrower and Indenture Trustee, that certain Tax-Exempt Promissory Note dated October 23, 2006 in the original principal amount of the Series A-1 Bonds and that certain Taxable Promissory Note dated October 23, 2006 in the original principal amount of the Series A-2 Bonds, and is secured by, among other things, that certain Construction to Permanent Leasehold Deed of Trust with Assignment of Rents, Security Agreement and Fixture Filing made for the benefit of Issuer, dated as of October 1, 2006, recorded on October 23, 2006 with the Salt Lake City Recorder as Entry No. 9883962 in Book 9369 at Page 158, and assigned to the Indenture Trustee pursuant to an instrument, dated as of October 1, 2006, recorded on October 23, 2006 with the Salt Lake City Recorder as Entry No. 983963 in Book 9369 at Page 202 (the

“**Original Leasehold Instrument**”), and by that certain Construction to Permanent Fee Accommodation Deed of Trust with Assignment of Rents, Security Agreement and Fixture Filing, made for the benefit of Issuer, dated as of October 1, 2006, recorded on October 23, 2006 with the Salt Lake City Recorder as Entry No. 9883960 in Book 9369 at Page 108, and assigned to the Indenture Trustee pursuant to an instrument, dated as of October 1, 2006, recorded on October 23, 2006 with the Salt Lake City Recorder as Entry No. 9883963 in Book 9369 at Page 202 (the “**Original Fee Accommodation Instrument**,” and collectively, the “**Original Instrument**”).

At the request of Borrower, Issuer has issued and sold its Multifamily Housing Revenue Refunding Bonds (Liberty Commons Apartments Project) Series 2010A in the original principal amount of \$14,000,000, its Multifamily Housing Revenue Refunding Bonds (Liberty Commons Apartments Project) Series 2010B in the original principal amount of \$2,800,000, and its Taxable Multifamily Housing Revenue Refunding Bonds (Liberty Commons Apartments Project) Series 2010C in the original principal amount of \$240,000 (collectively, the “**Bonds**”) pursuant to a Trust Indenture dated as of the date hereof (the “**Indenture**”) by and between Issuer and Wells Fargo Bank, National Association, a national banking association, as trustee under the Indenture (the “**Indenture Trustee**”). The proceeds of the Bonds are being applied by Issuer pursuant to a Loan Agreement dated as of the date hereof by and among Issuer, Borrower and Indenture Trustee (the “**Loan Agreement**”) to fund a loan (the “**Loan**”) to Borrower in the aggregate principal amounts of the Bonds for the purpose of, among other things, refunding the Original Bonds.

The terms, covenants, agreements, rights, obligations and conditions contained in this Instrument amend, restate, supersede and control the terms, covenants, agreements, rights, obligations and conditions contained in the Original Leasehold Instrument, it being agreed that the amendment and restatement of the Original Leasehold Instrument hereby shall neither impair the Indebtedness secured by the Original Leasehold Instrument nor constitute a novation of the Original Leasehold Instrument.

**NOW THEREFORE:**

**Granting Clause.** Borrower, in consideration of the Indebtedness and the trust created by this Instrument, irrevocably grants, conveys and assigns to Trustee, in trust, with power of sale, the Mortgaged Property, including a Leasehold Estate in the Land located in West Valley, Salt Lake County, Utah, and described in Exhibit A attached to this Instrument, to have and to hold the Mortgaged Property unto Trustee, Trustee’s successor in trust and Trustee’s assigns forever.

TO SECURE TO LENDER and its successors and assigns the repayment of the Indebtedness evidenced by the Amended and Restated Multifamily Note [Series 2010A Bonds-Tax Exempt] executed by Borrower in the principal amount of \$14,000,000, dated as of the date of this Instrument, the Amended and Restated Multifamily Note [Series 2010B Bonds-Tax Exempt] executed by Borrower in the principal amount of \$2,800,000, dated as of the date of this Instrument, and the Amended and Restated Multifamily Note [Series 2010C Bonds-Taxable] executed by Borrower in the principal amount of \$240,000, dated as of the date of this Instrument, which mature on the Maturity Date (the “**Note**”), and all renewals, extensions and

modifications of the Indebtedness, including, without limitation, the payment of all sums advanced by or on behalf of Issuer to protect the security of this Instrument under Section 12 and the performance of the covenants and agreements of Borrower contained in the Loan Documents.

Borrower represents and warrants that Borrower is lawfully seized of the Mortgaged Property and has the right, power and authority to grant, convey and assign the Mortgaged Property, and that the Mortgaged Property is unencumbered except for the Permitted Encumbrances. Borrower covenants that Borrower will warrant and defend generally the title to the Mortgaged Property against all claims and demands, subject to any Permitted Encumbrances.

This Instrument is also a financing statement and a fixture filing under the Uniform Commercial Code of the Property Jurisdiction and the information set forth on Exhibit C is included for that purpose.

**Covenants.** Borrower 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) “**Bankruptcy Event**” shall have the meaning ascribed thereto in the Note.

(b) “**Beneficiary Parties**” means any and all of Issuer, Indenture Trustee, Bondholder Representative and their respective successors and assigns. The term “**Beneficiary Parties**” shall also be deemed to include any lawful owner, holder or pledgee of the Note.

(c) “**Bonds**” means has the meaning set forth in the recitals of this Instrument, including, as the same may be amended, modified, or supplemented from time to time.

(d) “**Bond Documents**” means the Bonds, the Indenture, the Loan Agreement, the Regulatory Agreement (and any other agreement relating to rental restrictions on the Mortgaged Property), any tax certificate issued or delivered pursuant to the Indenture, the BPA, and all other documents, instruments and agreements executed and delivered in connection with the issuance, sale and/or delivery of the Bonds as each such agreement or instrument may be amended, modified or supplemented from time to time.

(e) “**Bondholder Representative**” means Citicorp North America, Inc., a Delaware corporation, which has been appointed as the Bondholder Representative under the Indenture, together with its successors and assigns in such capacity.

(f) “**Borrower**” means all persons or entities identified as “Borrower” in the first paragraph of this Instrument, together with their successors and assigns.

(g) “**Borrower’s Organizational Documents**” means, collectively: (i) the certificate of limited partnership, certificate or articles of formation or certificate or articles of organization of Borrower filed with the Department of Commerce, Division of Corporations and Commercial Code of the State of Utah on June 28, 2005, as the same may be amended and/or restated from time to time; and (ii) the partnership agreement, agreement of limited partnership, operating

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agreement or limited liability company agreement of Borrower dated as of July 20, 2005, as the same may be amended and/or restated from time to time.

(h) “**BPA**” means the Bond Purchase Agreement by and among Issuer, Borrower and the Bond Purchaser (as defined in the Indenture) with respect to the Bonds.

(i) “**Business Day**” shall have the meaning ascribed thereto in the Indenture.

(j) “**Closing Date**” shall have the meaning ascribed thereto in the Indenture.

(k) “**Collateral Agreement**” means any separate agreement between Borrower and Lender, Indenture Trustee, Bondholder Representative and/or Servicer for the purpose of establishing repair escrows or replacement reserves for the Mortgaged Property (including, without limitation, the Replacement Reserve Agreement), or any other agreement or agreements between Borrower and Lender, Indenture Trustee, Bondholder Representative and/or Servicer which provide for the establishment of any other fund, reserve or account.

(l) “**Collateral Assignments**” means, collectively, each of the following assignments dated as of the date hereof in favor of Indenture Trustee: (i) the Assignment of Management Agreement by Borrower and the property manager named therein, (ii) if applicable, an Assignment of Equity Investor Capital Contributions, Pledge and Security Agreement by Borrower, (iii) if applicable, an Assignment of Equity Interests, Pledge and Security Agreement by the general partners of Borrower, and (iv) if applicable, an Assignment of Housing Assistance Payments Agreement by Borrower.

(m) “**Controlling Entity**” means (i) Guarantor or (ii) 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 or Guarantor (if Borrower or Guarantor is a partnership or joint venture), (B) a manager’s or managing member’s interest in Borrower or Guarantor or a Controlling Interest of the ownership or membership interests in Borrower or Guarantor (if Borrower or Guarantor is a limited liability company), (C) a Controlling Interest of any class of voting stock of Borrower or Guarantor (if Borrower or Guarantor is a corporation), (D) a trustee’s interest or a Controlling Interest of the beneficial interests in Borrower or Guarantor (if Borrower or Guarantor is a trust), (E) a manager’s or managing partner’s interest or a Controlling Interest of the limited partnership interests in Borrower or Guarantor (if Borrower or Guarantor is a limited liability partnership).

(n) “**Controlling Interest**” means (i) greater than 50% of the ownership interests in an entity, or (ii) a percentage ownership interest in an entity of 50% or less if the owner(s) of that interest actually direct(s) the business and affairs of the entity without requirement of consent of any other party.

(o) “**Environmental Agreement**” means that certain Amended and Restated Agreement of Environmental Indemnification dated as of the date hereof by Borrower and the Guarantor for the benefit of Beneficiary Parties.

(p) “**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.

(q) “**Event of Default**” means the occurrence of any event listed in Section 22.

(r) “**Fannie Mae DUS Insurance Standards**” means the insurance requirements and standards as set out in the Fannie Mae Multifamily Delegated Underwriting and Servicing Guide, as such Guide may be amended, modified, supplemented or restated from time to time, including by Lender Memos, Guide Updates and Guide Announcements, or any other future written instructions or directives which Fannie Mae may issue under the DUS product line for bond transactions addressing the servicing and underwriting of mortgage loans on properties similar to the Mortgaged Property.

(s) “**Fee Instrument**” means the Amended and Restated Fee Accommodation Multifamily Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing, dated as of the date hereof, given by Ground Lessor in favor of Lender.

(t) “**Fixtures**” means all property which is so attached to the Land or the Improvements as to constitute a fixture under applicable law, including: 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; 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.

(u) “**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.

(v) “**Guarantor**” means Scot C. Safford, an individual, Daniel C. Lofgren, an individual, Mark R. Cornelius, an individual and Cowboy Partners, L.C., a Utah limited liability company, or any other person or entity which may hereafter become a guarantor of any of Borrower’s obligations under the Loan.

(w) “**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; radon; Mold; toxic or mycotoxin spores; 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 (whether or not naturally occurring) now or in the future that (i) is defined as a “hazardous substance,” “hazardous material,” “hazardous waste,” “toxic substance,” “toxic pollutant,” “solid waste”, “pesticide”, “contaminant,” or “pollutant”, or otherwise classified as hazardous or toxic by or within the meaning of any Hazardous Materials Law, or (ii) is regulated in any way by or within the meaning of any Hazardous Materials Law.

(x) “**Hazardous Materials Laws**” means all federal, state, and local laws, ordinances and regulations and standards, rules, policies and other governmental requirements, rule of common law (including, without limitation, nuisance and trespass), consent order, administrative rulings and court judgments and decrees or other government directive in effect now or in the future and including all amendments, that relate to Hazardous Materials or to the protection or conservation of the environment or human health and apply to Borrower or to the Mortgaged Property, including, without limitation, those relating to industrial hygiene, or the use, analysis, generation, manufacture, storage, discharge, release, disposal, transportation, treatment, investigation, or remediation of Hazardous Materials. Hazardous Materials Laws include, but are not limited to, the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601, 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., and the Hazardous Materials Transportation Act, 49 U.S.C. Section 5101, et seq., the Superfund Amendments and Reauthorization Act, the Solid Waste Disposal Act, the Clean Air Act, the Occupational Safety and Health Act, and their state analogs.

(y) “**Immediate Family Members**” means a non-minor child, grandchild, spouse, or parent, of a transferor under Section 21.

(z) “**Impositions**” and “**Imposition Deposits**” shall have the meanings ascribed thereto in Section 7(a).

(aa) “**Improvements**” means the buildings, fixtures, 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.

(bb) “**Indebtedness**” means collectively, 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 as provided in Section 12 to protect the security of this Instrument, and any fees or expenses paid by Lender on behalf of Borrower to Indenture Trustee, the rebate analyst or any other party for the Bonds or other amounts relating to the Bond Documents which are paid by Lender.

(cc) “**Indenture**” means has the meaning set forth in the recitals of this Instrument, including, as the same may be amended, modified, or supplemented from time to time.

(dd) “**Indenture Trustee**” means Wells Fargo Bank, National Association, a national banking association, as trustee under the Indenture, and any successor trustee under the Indenture.

(ee) “**Initial Owners**” means, with respect to Borrower or any other entity, the persons or entities who on the date of the Note, directly or indirectly, own in the aggregate 100% of the ownership interests in Borrower or that entity.

(ff) “**Institutional Lender**” means any entity that is either (a) a real estate investment trust, bank, saving and loan association, investment bank, insurance company, trust company, commercial credit corporation, pension plan, pension fund or pension advisory firm, mutual fund, government entity or plan; (b) Fannie Mae or the Federal Home Loan Mortgage Corporation; (c) an institution substantially similar to any of the foregoing entities described in clauses (a) or (b); (d) an Affiliate of any entity described in clauses (a) or (b) above; or (e) an investment fund, limited liability company, limited partnership or general partnership where a fund manager or an entity that is otherwise an Institutional Lender under clauses (a), (b), (c) or (d) of this definition acts as the general partner, managing member or fund manager and more than fifty percent (50%) of the equity interests in such investment vehicle are owned, directly or indirectly, by one or more entities that are otherwise Institutional Lenders under clauses (a), (b), (c) or (d) of this definition.

(gg) “**Issuer**” means the Utah Housing Corporation, a body politic and corporate, duly organized and existing under the laws of the State of Utah.

(hh) “**Land**” means the land described in Exhibit A.

(ii) “**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.

(jj) “**Lender**” means the entity identified as “Lender” in the first paragraph of this Instrument, or any subsequent holder of the Note.

(kk) “**Loan**” means the loan made by Issuer to Borrower in the original principal amount of the Bonds, which loan is funded with the proceeds of the sale of the Bonds and is evidenced by the Note and secured by, among other things, this Instrument.

(ll) “**Loan Agreement**” has the meaning set forth in the recitals of this Instrument, as the same may be amended, modified, or supplemented from time to time.

(mm) “**Loan Documents**” means collectively, the Note, this Instrument, all guaranties, all indemnity agreements, all Collateral Agreements, all Collateral Assignments, all O&M Programs, the MMP, all Bond Documents, 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.



(nn) “**Material Property Agreements**” means any agreement that, which, in Lender’s sole discretion, acting in good faith, materially affects the Mortgaged Property, the use thereof or otherwise materially affects the rights of Borrower or Beneficiary Parties in, to, and with respect to the Mortgaged Property or the proceeds therefrom, including, without limitation, each of the following: (i) any agreement regarding the payment in lieu of taxes (“PILOT”), (ii) all covenants, conditions and restrictions, including, without limitation, any declaration subjecting the Mortgaged Property to an association of owners or other community governance, (iii) any agreement regarding the abatement or exemption of real estate taxes, (iv) any easement pursuant to which the Mortgaged Property is granted access to a public right of way, and (v) any material lease of all or any portion of the Mortgaged Property.

(oo) “**Maturity Date**” means, with respect to the Amended and Restated Multifamily Note [Series 2010A Bonds-Tax Exempt], January 1, 2041, with respect to the Amended and Restated Multifamily Note [Series 2010B Bonds-Tax Exempt], January 1, 2023, and with respect to the Amended and Restated Multifamily Note [Series 2010C Bonds-Taxable], January 1, 2012, or, in each case, any earlier date on which the unpaid principal balance of the Note becomes due and payable, by acceleration or otherwise.

(pp) “**MMP**” means an operations and maintenance plan, moisture management program and/or microbial operations and maintenance program approved by Lender to control water intrusion and prevent the development of Mold or moisture at the Mortgaged Property throughout the term of this Instrument. If required by Lender, the MMP shall contain a provision for (i) staff training, (ii) information to be provided to tenants, (iii) documentation of the plan, (iv) the appropriate protocol for incident response and remediation and (v) routine, scheduled inspections of common space and unit interiors.

(qq) “**Mold**” means mold, fungus, microbial contamination or pathogenic organisms.

(rr) “**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

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Mortgaged Property, whether or not Borrower obtained the insurance pursuant to Lender's requirements;

- (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, whether the foregoing are now due, past due, or to become due, all undisbursed proceeds of the loan secured by this Instrument, deposits forfeited by tenants, and, if Borrower is a cooperative housing corporation, maintenance charges or assessments payable by shareholders or residents;
- (12) 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);
- (13) 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;
- (14) 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;
- (15) all documents, writings, books, files, records and other documents arising from or relating to any of the foregoing, whether now existing or hereafter created; and
- (16) all proceeds from the conversion, voluntary or involuntary, of any of the foregoing into cash or liquidated claims, and the right to collect such

proceeds, and all other cash and non-cash proceeds and products of any of the foregoing.

(ss) “**Note**” has the meaning set forth in the granting clauses of this Instrument, including all schedules, riders, allonges and addenda, as the same may be amended, modified, or supplemented from time to time.

(tt) “**O&M Program**” has the meaning ascribed thereto in Section 18(d).

(uu) “**Permitted Encumbrances**” means the Fee Instrument and any easements, encumbrances or restrictions listed on the schedule of exceptions in the title insurance policy issued to Lender as of the date of recordation of this Instrument insuring Lender’s interest in the Mortgaged Property and any encumbrances pursuant to the Indenture.

(vv) “**Permitted Transfer**” has the meaning ascribed thereto in Section 21(b).

(ww) “**Personalty**” means all:

- (i) accounts (including deposit accounts) of Borrower related to the Mortgaged Property;
- (ii) Imposition Deposits;
- (iii) equipment, goods, supplies and inventory owned by Borrower that are used now or in the future in connection with the ownership, management or operation of the Land or the Improvements or are located on the Land or in the Improvements (other than Fixtures), including furniture, furnishings, machinery, building materials, tools, books, records (whether in written or electronic form), computer equipment (hardware and software);
- (iv) other tangible personal property owned by Borrower which are used now or in the future in connection with the ownership, management or operation of the Land or Improvements or are located on the Land or in the Improvements (other than Fixtures), including ranges, stoves, microwave ovens, refrigerators, dishwashers, garbage disposers, washers, dryers and other appliances;
- (v) any operating agreements relating to the Land or the Improvements;
- (vi) any surveys, plans and specifications and contracts for architectural, engineering and construction services relating to the Land or the Improvements;
- (vii) documents, instruments, chattel paper, claims, deposits, deposit accounts, payment intangibles, other intangible property, general

intangibles, 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.

(xx) “**Project**” has the meaning set forth in the recitals of this Instrument.

(yy) “**Property Jurisdiction**” means the State of Utah.

(zz) “**Regulatory Agreement**” means the Tax Regulatory Agreement dated as of October 1, 2006, recorded on October 23, 2006 with the Salt Lake City Recorder as Entry No. 9883958 in Book 9369 at Page 70, as amended and restated by an Amended and Restated Tax Regulatory Agreement, dated as of the date hereof, by and among Issuer, Indenture Trustee and Borrower, regulating or restricting the use or manner of operation of the Mortgaged Property and containing requirements that specified percentages of the dwelling units in the Mortgaged Property be occupied by tenants whose incomes are below specified levels, as amended, modified or supplemented from time to time.

(aaa) “**Rents**” means all rents (whether from residential or non-residential space), revenues and other income of the Land or the Improvements, including subsidy payments received from any sources (including, but not limited to payments under any Housing Assistance Payments Contract or similar agreements), 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.

(bbb) “**Replacement Reserve Agreement**” means that certain Replacement Reserve Agreement dated as of the date hereof by and between Borrower and Indenture Trustee.

(ccc) “**Servicer**” means the servicing party that is engaged by Bondholder Representative to service the Loan, together with its successors in such capacity. The initial Servicer is Citicorp Funding, Inc., a Delaware corporation.

(ddd) “**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.

(cee) “**Transfer**” means (A) a sale, assignment, transfer, or other disposition (whether voluntary, involuntary or by operation of law); (B) the grant, creation, or attachment of a lien, encumbrance, or security interest (whether voluntary, involuntary or by operation of law); (C) the issuance or other creation of a direct or indirect ownership interest; or (D) the withdrawal, retirement, removal or involuntary resignation of any owner or manager of a legal entity.

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

## 2. **UNIFORM COMMERCIAL CODE SECURITY AGREEMENT.**

(a) This Instrument is also a security agreement under the Uniform Commercial Code for any of the Mortgaged Property which, under applicable law, may be subjected to a security interest under the Uniform Commercial Code, whether such Mortgaged Property is owned now or acquired in the future, and all products and cash and non-cash proceeds thereof (collectively, “**UCC Collateral**”), and Borrower hereby grants to Lender a security interest in the UCC Collateral. Borrower hereby authorizes Lender to prepare and file any and all financing statements, continuation statements and financing statement amendments, in such form as Lender may require to perfect or continue the perfection of this security interest without execution by Borrower, and Borrower agrees, if Lender so requests, to execute and deliver to Lender such financing statements, continuation statements and amendments. Borrower shall pay all filing costs and all costs and expenses of any record searches for financing statements and/or amendments that Lender may require. Without the prior written consent of Lender, Borrower shall not create or permit to exist any other lien or security interest in any of the UCC Collateral. If an Event of Default has occurred and is continuing, Lender shall have the remedies of a secured party under the Uniform Commercial Code, in addition to all remedies provided by this Instrument or existing under applicable law. In exercising any remedies, Lender may exercise its remedies against the UCC Collateral separately or together, and in any order, without in any way affecting the availability of Lender’s other remedies. This Instrument constitutes a financing statement with respect to any part of the Mortgaged Property which is or may become a Fixture.

(b) Unless Borrower gives at least thirty (30) days’ prior written notice to Lender and subject to Section 21 hereof, Borrower shall not: (i) change its name, identity, or structure of organization; (ii) change its state of organization through dissolution, merger, transfer of assets or otherwise; (iii) change its principal place of business (or chief executive office if more than one place of business); or (iv) add to or change any location at which any of the Mortgaged Property is stored, held or located. Such notice shall be accompanied by new financing statements and/or financing statement amendments in the same form as the financing statements delivered to Lender on the date hereof. Without limiting the foregoing, Borrower hereby authorizes and irrevocably appoints Lender and each of its officers attorneys-in-fact for Borrower to execute, deliver, and file, as applicable, such financing statements, continuation statements or amendments deemed necessary by Lender in its sole discretion for and on behalf of Borrower, without execution by Borrower. Borrower shall also execute and deliver to Lender modifications or supplements of this Instrument as Lender may require in connection with any change described in this Section.

## 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 of Rents 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. 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) 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. Upon 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 (such license shall be reinstated upon Borrower's cure of the Event of Default to the satisfaction of Lender). Borrower shall pay to Lender upon demand all Rents to which Lender is entitled. At any time on or after the occurrence of an Event of Default, 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 right of Lender to collect, 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 months prior to the due dates of such Rents (other than a security deposit not in excess of one month's rent). Borrower shall not collect or accept payment of any Rents more than two months prior to the due dates of such Rents (other than a security deposit not in excess of one month's rent).

(d) If an Event of Default has occurred and is continuing, Lender may, but shall in no event be required, regardless of the adequacy of Lender's security or the solvency of Borrower and even in the absence of waste, enter upon and take and maintain full control of the Mortgaged Property in order to perform all acts that Lender in its discretion determines to be necessary or desirable for the operation and maintenance of the Mortgaged Property, including the execution, cancellation or modification of Leases, the collection of all Rents, the making of repairs to the Mortgaged Property and the execution or termination of contracts providing for the management, operation or maintenance of the Mortgaged Property, for the purposes of enforcing the assignment of Rents pursuant to Section 3(a), protecting the Mortgaged Property or the security of this Instrument, or for such other purposes as Lender in its discretion may deem necessary or desirable. Alternatively, if an Event of Default has occurred and is continuing, regardless of the adequacy of Lender's security, without regard to Borrower's solvency and without the necessity of giving prior notice (oral or written) to Borrower, Lender may apply to any court having jurisdiction for the appointment of a receiver for the Mortgaged Property to take any or all of the actions set forth in the preceding sentence. If Lender elects to seek the appointment of a receiver for the Mortgaged Property at any time after an Event of Default has occurred and is continuing, Borrower, by its execution of this Instrument, expressly consents to the appointment of such receiver, including the appointment of a receiver ex parte if permitted by applicable law. Lender or the receiver, as the case may be, shall be entitled to receive a reasonable fee for managing the Mortgaged Property. Immediately upon appointment of a receiver or immediately upon Lender's entering upon and taking possession and control of the Mortgaged Property, Borrower shall surrender possession of the Mortgaged Property to Lender or the receiver, as the case may be, and shall deliver to Lender or the receiver, as the case may be, all documents, records (including records on electronic or magnetic media), accounts, surveys, plans, and specifications relating to the Mortgaged Property and all security deposits and prepaid Rents. In the event Lender takes possession and control of the Mortgaged Property, Lender may exclude Borrower and its representatives from the Mortgaged Property. Borrower acknowledges and agrees that the exercise by Lender of any of the rights conferred under this Section 3 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 Improvements.

(e) If Lender enters the Mortgaged Property, Lender shall be liable to account only to Borrower and 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 any act or omission of Lender under this Section 3, and Borrower hereby releases and discharges Lender from any such liability to the fullest extent permitted by law, except for the gross negligence or willful misconduct of Lender or its agents.

(f) If the Rents are not sufficient to meet the costs of taking control of and managing the Mortgaged Property and collecting the Rents, any funds expended by Lender for such purposes shall become an additional part of the Indebtedness as provided in Section 12.

(g) Any entering upon and taking of control of the Mortgaged Property by Lender or the receiver, as the case may be, and any application of Rents as provided in this Instrument shall not cure or waive any Event of Default or invalidate any other right or remedy of Lender under applicable law or provided for in 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) Unless an Event of Default has occurred and is continuing, 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. During the continuance 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 or persons, firm or corporation in or about the Mortgaged Property, except to the extent arising from the gross negligence or willful misconduct of Lender. 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 during the continuance 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 (i) be on forms approved by Lender, (ii) be for initial terms of at least six (6) months and not more than two (2) years, (iii) not include options to purchase, (iv) be legally valid, binding, and enforceable obligations of the tenants, (v) contain language expressly stating that such Lease is subordinate to the lien of this Instrument and (vi) comply with all applicable laws.

(f) Except for laundry facilities and cable television services for tenants on market terms and conditions, 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 (i) such Leases are subordinate to the lien of this Instrument; (ii) 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; (iii) 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; (iv) the Lease shall not be terminated by foreclosure or any other transfer of the Mortgaged Property; (v) 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 (vi) 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 (whether residential or non-residential) for more than two months in advance (other than a security deposit not in excess of one month's rent).

**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. **EXCULPATION.** The personal liability of Borrower for payment of the Note and for performance of the other obligations to be performed by Borrower under this Instrument is limited in the manner, and to the extent, provided in the Note.

7. **DEPOSITS FOR TAXES, INSURANCE AND OTHER CHARGES.**

(a) 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 sufficient to accumulate with Lender the entire sum required to pay, when due (i) any water and sewer charges which, if not paid, may result in a lien on all or any part of the Mortgaged Property, (ii) the premiums for fire and other hazard insurance, rental loss insurance and such other insurance as Lender may require under Section 19, (iii) Taxes, and (iv) amounts for other charges and expenses which Lender at any time reasonably deems necessary to protect the Mortgaged Property, to prevent the imposition of liens on the Mortgaged Property, or otherwise to protect Lender's interests, all as reasonably estimated from time to time by Lender, plus one-twelfth of such estimate, if required by Lender. 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 in an interest-bearing account at an institution (which may be Lender, if Lender is such an institution) whose deposits or accounts are insured or guaranteed by a federal agency. Lender shall not be obligated to open additional accounts or deposit Imposition Deposits in additional institutions when the amount of the Imposition Deposits exceeds the maximum amount of the federal deposit insurance or guaranty. Lender shall apply the Imposition Deposits to pay Impositions so long as no Event of Default has occurred and is continuing. Any interest, earnings or profits on the Imposition Deposits shall be added to and become part of 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).

(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 one-twelfth of such estimate, if required by Lender, 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 one-twelfth of such estimate, if required by Lender, 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 pursuant to a separate written waiver by Lender, then on or before the date each such Imposition is due, or on the date this Instrument requires each such Imposition to be paid, Borrower shall, if required by Lender, provide Lender with proof of payment of each such Imposition for which Lender does not require collection of Imposition Deposits. Lender may, at any time and in Lender's discretion, revoke its deferral or waiver and require Borrower to deposit with Lender any or all of the Imposition Deposits listed in this Section 7.

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.** If at any time Lender receives, from Borrower or otherwise, any amount applicable to the Indebtedness which is less than all amounts due and payable at such time, then Lender may apply that payment to amounts then due and payable in any manner and in any order determined by Lender, in Lender's discretion. Neither Lender's acceptance of an amount that is less than all amounts then due and payable nor Lender's application of such payment in the manner authorized shall constitute or be deemed to constitute either a waiver of the unpaid amounts or an accord and satisfaction. Notwithstanding the application of any such amount to the Indebtedness, Borrower's obligations under this Instrument and the Note shall remain unchanged.

10. **COMPLIANCE WITH LAWS.** 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, disability accommodation, 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. Borrower shall at all times maintain records sufficient to demonstrate compliance with the provisions of this Section 10. 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.

11. **USE OF PROPERTY.** Unless required by applicable law, Borrower shall not (a) allow changes in the use for which all or any part of the Mortgaged Property is being used at the time this Instrument was executed, except for any change in use approved by Lender, (b) convert any individual dwelling units or common areas to commercial use, (c) initiate a change in the zoning classification of the Mortgaged Property or acquiesce in a change in the zoning classification of the Mortgaged Property, (d) establish any condominium or cooperative regime with respect to the Mortgaged Property; (e) combine all or any part of the Mortgaged Property with all or any part of a tax parcel which is not part of the Mortgaged Property, or (f) subdivide or otherwise split any tax parcel constituting all or any part of the Mortgaged Property without the prior consent of Lender.

12. **PROTECTION OF LENDER'S SECURITY; INSTRUMENT SECURES FUTURE ADVANCES.**

(a) If Borrower fails to perform any of its obligations under this Instrument or any other Loan Document after the expiration of any applicable notice and cure period, or if any action or proceeding (including a Bankruptcy Event) 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, file such documents, 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 (i) payment of fees, expenses and reasonable fees of attorneys, accountants, inspectors and consultants, (ii) entry upon the Mortgaged Property to make repairs or secure the Mortgaged Property, (iii) procurement of the insurance required by Section 19, and (iv) payment of amounts which Borrower has failed to pay under Sections 15 and 17.

(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 secured by this Instrument, 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.**

(a) Lender and 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 to the extent permitted under Section 18) during normal business hours, or at any other reasonable time, upon reasonable notice to Borrower if the inspection is to include occupied residential units (which notice need not be in writing). Notice to Borrower shall not be

required in the case of an emergency, as determined in Lender's discretion, or when an Event of Default has occurred and is continuing.

(b) If Lender determines that Mold has developed as a result of a water intrusion event or leak, Lender, at Lender's discretion, may require that a professional inspector inspect the Mortgaged Property as frequently as Lender determines is necessary until any issue with Mold and its cause(s) are resolved to Lender's reasonable satisfaction. Such inspection shall be limited to a visual and olfactory inspection of the area that has experienced the Mold, water intrusion event or leak. Borrower shall be responsible for the cost of such professional inspection and any remediation deemed to be necessary as a result of the professional inspection. After any issue with Mold, water intrusion or leaks is remedied to Lender's satisfaction, Lender shall not require a professional inspection any more frequently than once every three years unless Lender is otherwise aware of Mold as a result of a subsequent water intrusion event or leak.

(c) If Lender determines not to conduct an annual inspection of the Mortgaged Property, and in lieu thereof Lender requests a certification, Borrower shall be prepared to provide and must actually provide to Lender a factually correct certification each year that the annual inspection is waived to the following effect: that Borrower represents and warrants that Borrower has not received any written complaint, notice, letter or other written communication from tenants, management agent or governmental authorities regarding odors, indoor air quality, Mold or any activity, condition, event or omission that causes or facilitates the growth of Mold on or in any part of the Mortgaged Property, or if Borrower has received any such written complaint, notice, letter or other written communication, that Borrower has investigated and determined that no Mold activity, condition or event exists or alternatively has fully and properly remediated such activity, condition, event or omission in compliance with the MMP for the Mortgaged Property. If Borrower is unwilling or unable to provide such certification, Lender may require a professional inspection of the Mortgaged Property at Borrower's expense.

#### **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 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 upon reasonable advance oral notice.

(b) Borrower shall furnish to Lender all of the following:

- (1) (i) except as provided in clause (ii) below, within 45 days after the end of each fiscal quarter of Borrower, a statement of income and expenses for Borrower's operation of the Mortgaged Property on a year-to-date basis as of the end of each fiscal quarter, (ii) within 120 days after the end of each fiscal year of Borrower, (A) a statement of income and expenses for Borrower's operation of the Mortgaged Property for such fiscal year, (B) a

- statement of changes in financial position of Borrower relating to the Mortgaged Property for such fiscal year, and (C) when requested by Lender, a balance sheet showing all assets and liabilities of Borrower relating to the Mortgaged Property as of the end of such fiscal year; and (iii) any of the foregoing at any other time upon Lender's request;
- (2) (i) except as provided in clause (ii) below, within 45 days after the end of each fiscal quarter of Borrower, and (ii) within 120 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 120 days after the end of each fiscal year of Borrower, and at any other time within ten (10) days of 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 120 days after the end of each fiscal year of Borrower, and at any other time within ten (10) days of 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 such 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 of Lender's request, monthly or quarterly income and expense statements for the applicable calendar month or quarter on a year-to-date basis for Borrower's operation of the Mortgaged Property;
  - (6) within ten (10) days of Lender's request, a rent roll for the Mortgaged Property and a 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;
  - (7) within ten (10) days of Lender's request, a balance sheet, a statement of income and expenses for Borrower and a statement of changes in financial position of Borrower for Borrower's most recent fiscal year;
  - (8) annually, if applicable, within sixty (60) days of the date required for submission by the agency in the Property Jurisdiction responsible for

monitoring the low income housing tax credit program, a low income housing tax credit compliance report in form and substance acceptable to Lender;

- (9) within ten (10) days of Lender's request, a copy of the most recent year's federal tax return for each general partner, managing member or manager of Borrower and Guarantor, and such other statements or documents as Lender may reasonably request from time to time, including, without limitation, any statements, documents or informational forms required by any prospective credit enhancer in connection with any securitization of the Loan or the Bonds;
- (10) if an Event of Default has occurred and is continuing, within ten (10) days of Lender's request, monthly income and expense statements for the Mortgaged Property; and
- (11) if an Event of Default has occurred and Lender has not previously required Borrower to furnish a quarterly statement of income and expense for the Mortgaged Property, Lender may require Borrower to furnish such a statement within forty five (45) days after the end of each fiscal quarter following such Event of Default.

(c) An individual having authority to bind Borrower shall certify each of the statements, schedules and reports required by Section 14(b) to be complete and accurate. Each of the statements, schedules and reports required by Section 14(b) shall be in such form and contain such detail as Lender may reasonably require. Lender also may require that any of the statements, schedules or reports listed in Section 14(b) with respect to Borrower be audited, if applicable, at Borrower's expense, by independent certified public accountants acceptable to Lender.

(d) If Borrower fails to provide in a timely manner the statements, schedules and reports required by Section 14(b), Lender shall have the right to have Borrower's 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 copies of 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 imposition of any interest, fine, penalty or cost for nonpayment.

(b) Subject to the provisions of Section 15(c), Borrower shall pay (i) 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 (ii) insurance premiums at least 30 days prior to the expiration date of each policy of insurance, unless applicable law specifies some lesser period.

(c) If Lender is collecting Imposition Deposits, and to the extent that Lender holds sufficient Imposition Deposits for the purpose of paying a specific Imposition, then Borrower shall not be obligated to pay such Imposition, so long as no Event of Default exists and Borrower has timely delivered to Lender any bills or premium notices that it has received. 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 (i) Borrower notifies Lender of the commencement or expected commencement of such proceedings, (ii) the Mortgaged Property is not in danger of being sold or forfeited, (iii) Borrower deposits with Lender reserves sufficient to pay the contested Imposition, if requested by Lender, and (iv) 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.

(e) Borrower shall promptly deliver to Lender copies of all notices of, and invoices for, Impositions, and if Borrower pays any Imposition directly, Borrower shall promptly furnish to Lender on or before the date this Instrument requires such Impositions to be paid, copies of receipts evidencing that such payments were made.

(f) All payments made by Borrower to Lender pursuant to this Instrument or any of the Loan Documents shall be free and clear of any and all tax liabilities whatsoever (other than United States federal income taxation payable by Lender) and, to the extent Lender is required to pay any such tax liabilities, Borrower shall reimburse Lender in respect of any such payment of taxes and, immediately upon request from Lender, shall deliver to Lender copies of receipts evidencing the payment of such taxes.

16. **LIENS; ENCUMBRANCES.** Borrower acknowledges that, to the extent provided in Section 21, the grant, creation or existence of 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 and the Permitted Encumbrances) 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, is a "Transfer" which constitutes an Event of Default and subjects Borrower to personal liability under the Note. Borrower shall maintain the lien



created by this Instrument as a first mortgage lien upon the Mortgaged Property, subject to no other Liens or encumbrances other than Permitted Encumbrances.

**17. PRESERVATION, MANAGEMENT AND MAINTENANCE OF MORTGAGED PROPERTY.**

(a) Borrower shall not commit waste or permit impairment or deterioration of the Mortgaged Property.

(b) Borrower shall not abandon the Mortgaged Property.

(c) Borrower 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) Borrower shall keep the Mortgaged Property in good repair (normal wear and tear excepted), including the replacement of Personalty and Fixtures with items of equal or better function and quality.

(e) Borrower shall provide for professional management of the Mortgaged Property by a residential rental property manager reasonably satisfactory to Lender at all times, under a contract approved by Lender, in writing, which contract must be terminable upon not more than thirty (30) days notice without the necessity of establishing cause and without payment of a penalty or termination fee by Borrower or its successors. There shall be no change in the property manager or any contract for the management of the Mortgaged Property without Lender's prior written approval, not to be unreasonably withheld, conditioned or delayed. Lender shall have the right to require that Borrower and any new property manager enter into an Assignment of Management Agreement on a form approved by Lender. If required by Lender (whether before or after an Event of Default), Borrower will cause any Affiliate of Borrower to whom fees are payable for the management of the Mortgaged Property to enter into an agreement with Lender, in a form approved by Lender, providing for subordination of those fees and such other provisions as Lender may require. "**Affiliate of Borrower**" means any corporation, partnership, joint venture, limited liability company, limited liability partnership, trust or individual controlled by, under common control with, or which controls Borrower (the term "**control**" for these purposes means the ability, whether by the ownership of shares or other equity interests, by contract or otherwise, to elect a majority of the directors of a corporation, to make management decisions on behalf of, or independently to select the managing partner of, a partnership, or otherwise to have the power independently to remove and then select a majority of those individuals exercising managerial authority over an entity, and control shall be conclusively presumed in the case of the ownership of 50% or more of the equity interests).

(f) Borrower 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. 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, including any removal, demolition or alteration

occurring in connection with a rehabilitation of all or part of the Mortgaged Property, except (i) in connection with the replacement of tangible Personalty and (ii) repairs and replacements in connection with making an individual unit ready for a new occupant.

(g) Unless otherwise waived by Lender in writing, Borrower must have or must establish and must adhere to the MMP. If Borrower is required to have an MMP, Borrower must keep all MMP documentation at the Mortgaged Property or at the management agent's office and available for Lender or its agents to review during any annual assessment or inspection of the Mortgaged Property that is required by Lender.

## 18. ENVIRONMENTAL HAZARDS.

(a) Except for matters described in Section 18(b), Borrower shall not cause or permit any of the following:

- (1) the presence, use, generation, release, treatment, processing, storage (including storage in above ground and underground storage tanks), handling, or disposal of any Hazardous Materials on or under the Mortgaged Property (whether as a result of activities on the Mortgaged Property or on surrounding properties) or any other property of Borrower that is adjacent to the Mortgaged Property;
- (2) the transportation of any Hazardous Materials to, from, or across the Mortgaged Property (whether as a result of activities on the Mortgaged Property or on surrounding properties);
- (3) any occurrence or condition on the Mortgaged Property (whether as a result of activities on the Mortgaged Property or on surrounding properties) or any other property of Borrower that is adjacent to the Mortgaged Property, which occurrence or condition is or may be in violation of Hazardous Materials Laws;
- (4) any violation of or noncompliance with the terms of any Environmental Permit with respect to the Mortgaged Property or any property of Borrower that is adjacent to the Mortgaged Property;
- (5) the imposition of any environmental lien against the Mortgaged Property;  
or
- (6) any violation or noncompliance with the terms of any O&M Program.

The matters described in clauses (1) through (6) above, except as otherwise provided in Section 18(b), are referred to collectively in this Section 18 as "**Prohibited Activities or Conditions**".

(b) Prohibited Activities or Conditions shall not include lawful conditions permitted by an O&M Program or the safe and lawful use and storage of quantities of (i) pre-packaged supplies, cleaning materials, petroleum products, household products, paints, solvents, lubricants and other materials customarily used in the construction, renovation operation, maintenance or

use of comparable multifamily properties, (ii) cleaning materials, household products, personal grooming items and other items sold in pre-packaged containers for consumer use and used by tenants and occupants of residential dwelling units in the Mortgaged Property; and (iii) petroleum products used in the operation and maintenance of motor vehicles from time to time located on the Mortgaged Property's parking areas, so long as all of the foregoing are used, stored, handled, transported and disposed of in compliance with Hazardous Materials Laws.

(c) Borrower shall take all commercially reasonable actions (including the inclusion of appropriate provisions in any Leases executed after the date of this Instrument) to prevent its employees, agents, and contractors, and all tenants and other occupants from causing or permitting any Prohibited Activities or Conditions. Borrower shall not lease or allow the sublease or use of all or any portion of the Mortgaged Property to any tenant or subtenant for nonresidential use by any user that, in the ordinary course of its business, would cause or permit any Prohibited Activity or Condition.

(d) If and as required by Lender, Borrower shall also establish a written operations and maintenance program with respect to certain Hazardous Materials. Each such operations and maintenance program and any additional or revised operations and maintenance programs established for the Mortgaged Property pursuant to this Instrument must be approved by Lender and shall be referred to herein as an "**O&M Program**." Borrower shall comply in a timely manner with, and cause all employees, agents, and contractors of Borrower and any other persons present on the Mortgaged Property to comply with each O&M Program. Borrower shall pay all costs of performance of Borrower's obligations under any O&M Program, and any Beneficiary Party's out-of-pocket costs incurred by such Beneficiary Party in connection with the monitoring and review of each O&M Program and Borrower's performance shall be paid by Borrower upon demand by such Beneficiary Party. Any such out-of-pocket costs of such Beneficiary Party which Borrower fails to pay promptly shall become an additional part of the Indebtedness as provided in Section 12.

(e) Without limitation of the foregoing, (i) Borrower hereby agrees to implement and maintain during the entire term of the Loan the O&M Program(s) described in Section 17 of that certain Borrower's Certificate and Agreement dated as of the date hereof, and (ii) if asbestos-containing materials are found to exist at the Mortgaged Property, the O&M Program with respect thereto shall be undertaken consistent with the Guidelines for Controlling Asbestos-Containing Materials in Buildings (USEPA, 1985) and other relevant guidelines and applicable Hazardous Materials Laws.

(f) With respect to any O&M Program, Lender may require (i) periodic notices or reports to Lender in form, substance and at such intervals as Lender may specify; (ii) amendments to such O&M Program to address changing circumstances, laws or other matters, including, without limitation, variations in response to reports provided by environmental consultants; and (iii) execution of an Operations and Maintenance Agreement relating to such O&M Program reasonably satisfactory to Lender.

(g) Borrower represents and warrants to Beneficiary Parties that, except as otherwise disclosed in the Environmental Reports (as defined in the Environmental Agreement):

- (1) Borrower has not at any time engaged in, caused or permitted any Prohibited Activities or Conditions;
- (2) to the best of Borrower's knowledge after reasonable and diligent inquiry, no Prohibited Activities or Conditions exist or have existed, and Borrower has provided Lender with copies of all reports and information acquired in such inquiries;
- (3) the Mortgaged Property does not now contain any underground storage tanks, and, the Mortgaged Property has not contained any underground storage tanks in the past. If there is an underground storage tank located on the Mortgaged Property that has been disclosed in Exhibit A to the Environmental Agreement, that tank complies with all requirements of Hazardous Materials Laws;
- (4) Borrower has complied with and will continue to comply with all Hazardous Materials Laws, including all requirements for notification regarding releases of Hazardous Materials. Without limiting the generality of the foregoing, Borrower has obtained all Environmental Permits required for the operation of the Mortgaged Property in accordance with Hazardous Materials Laws now in effect and all such Environmental Permits are in full force and effect;
- (5) no event has occurred with respect to the Mortgaged Property that constitutes, or with the passing of time or the giving of notice would constitute, noncompliance with the terms of any Environmental Permit or Hazardous Materials Law;
- (6) there are no actions, suits, claims or proceedings pending or, to the best of Borrower's knowledge after reasonable and diligent inquiry, threatened that involve the Mortgaged Property and allege, arise out of, or relate to any Prohibited Activity or Condition;
- (7) Borrower has not received any complaint, order, notice of violation or other communication from any Governmental Authority with regard to air emissions, water discharges, noise emissions or Hazardous Materials, or any other environmental, health or safety matters affecting the Mortgaged Property or any other property of Borrower that is adjacent to the Mortgaged Property;
- (8) no prior Remedial Work (as defined below) has been undertaken, and no Remedial Work is ongoing, with respect to the Mortgaged Property during Borrower's ownership thereof or, to the best of Borrower's knowledge, at any time prior to Borrower's ownership thereof; and
- (9) Borrower has disclosed in the Environmental Agreement all material facts known to Borrower or contained in Borrower's records the nondisclosure of which could cause any representation or warranty made herein or any

statement made in the Environmental Agreement to be false or materially misleading.

The representations and warranties in this Section 18 shall be continuing representations and warranties that shall be deemed to be made by Borrower throughout the term of the Loan, until the Indebtedness has been paid in full or otherwise discharged.

(h) Borrower shall promptly notify Lender in writing upon the occurrence of any of the following events:

- (1) Borrower's discovery of any Prohibited Activity or Condition;
- (2) Borrower's receipt of or knowledge of any complaint, order, notice of violation or other communication from any tenant, management agent, Governmental Authority or other person with regard to present or future alleged Prohibited Activities or Conditions or any other environmental, health or safety matters affecting the Mortgaged Property or any other property of Borrower that is adjacent to the Mortgaged Property;
- (3) Borrower's receipt of or knowledge of any personal injury claim, proceeding or cause of action directly or indirectly arising as a result of the presence of asbestos or other hazardous materials on or from the Mortgaged Property;
- (4) Borrower's discovery that any representation or warranty in this Section 18 has become untrue after the date of this Instrument; and
- (5) Borrower's breach of any of its obligations under this Section 18.

Any such notice given by Borrower shall not relieve Borrower of, or result in a waiver of, any obligation under this Instrument, the Note, or any other Loan Document.

(i) Borrower shall pay promptly the costs of any environmental inspections, tests or audits ("**Environmental Inspections**") required by Lender or any Beneficiary Party in connection with any foreclosure or deed in lieu of foreclosure, or as a condition of Lender's consent to any Transfer under Section 21, or required by Lender following a reasonable determination by Lender that Prohibited Activities or Conditions may exist. Any such costs incurred by Lender (including, without limitation, fees and expenses of attorneys, expert witnesses, engineers, technical consultants and investigatory fees, whether incurred in connection with any judicial or administrative process or otherwise) that Borrower fails to pay promptly shall become an additional part of the Indebtedness as provided in Section 12. The results of all Environmental Inspections made by Lender shall at all times remain the property of Lender and Lender shall have no obligation to disclose or otherwise make available to Borrower or any other party such results or any other information obtained by Lender in connection with such Environmental Inspections. Lender hereby reserves the right, and Borrower hereby expressly authorizes Lender, to make available to any party, including any prospective bidder at a foreclosure sale of the Mortgaged Property, the results of any Environmental Inspections made by Lender with respect to the Mortgaged Property. Borrower consents to Lender notifying any

party (either as part of a notice of sale or otherwise) of the results of any of Lender's Environmental Inspections. Borrower acknowledges that Lender cannot control or otherwise assure the truthfulness or accuracy of the results of any of its Environmental Inspections and that the release of such results to prospective bidders at a foreclosure sale of the Mortgaged Property may have a material and adverse effect upon the amount which a party may bid at such sale. Borrower agrees that Lender shall have no liability whatsoever as a result of delivering the results of any of its Environmental Inspections to any third party, and Borrower hereby releases and forever discharges Lender from any and all claims, damages, or causes of action, arising out of, connected with or incidental to the results of, the delivery of any of Lender's Environmental Inspections.

(j) If any investigation, site monitoring, containment, clean-up, restoration or other remedial work ("**Remedial Work**") is necessary to comply with or cure a violation of any Hazardous Materials Law or order of any Governmental Authority that has or acquires jurisdiction over the Mortgaged Property or the use, operation or improvement of the Mortgaged Property under any Hazardous Materials Law, or is otherwise required by Lender as a consequence of any Prohibited Activity or Condition or to prevent the occurrence of a Prohibited Activity or Condition, Borrower shall, by the earlier of (i) the applicable deadline required by such Hazardous Materials Law or (ii) thirty (30) days after notice from Lender demanding such action, begin performing the Remedial Work, and thereafter diligently prosecute it to completion, and shall in any event complete the work by the time required by such Hazardous Materials Law. Borrower shall promptly provide Lender with a cost estimate from an environmental consultant reasonably acceptable to Lender to complete any required Remedial Work. If required by Lender, Borrower shall promptly establish with Lender a reserve fund in the amount of such estimate. If in Lender's reasonable opinion the amount reserved at any time during the Remedial Work is insufficient to cover the work remaining to complete the Remediation or achieve compliance, Borrower shall increase the amount reserved in compliance with Lender's written request. All amounts so held in reserve, until disbursed, are hereby pledged to Lender as security for payment of Borrower's obligations under this Instrument. If Borrower fails to begin on a timely basis or diligently prosecute any required Remedial Work, Lender may, at its option, cause the Remedial Work to be completed, in which case Borrower shall reimburse Lender on demand for the cost of doing so. Any reimbursement due from Borrower to Lender shall become part of the Indebtedness as provided in Section 12.

(k) Borrower shall comply with all Hazardous Materials Laws applicable to the Mortgaged Property. Without limiting the generality of the previous sentence, Borrower shall (i) obtain and maintain all Environmental Permits required by Hazardous Materials Laws and comply with all conditions of such Environmental Permits; (ii) cooperate with any inquiry by any Governmental Authority; and (iii) comply with any governmental or judicial order that arises from any alleged Prohibited Activity or Condition.

**(l) BORROWER SHALL INDEMNIFY, HOLD HARMLESS AND DEFEND BENEFICIARY PARTIES AND THEIR RESPECTIVE OFFICERS, DIRECTORS, SHAREHOLDERS, PARTNERS, EMPLOYEES, AGENTS, ATTORNEYS, TRUSTEES, HEIRS AND LEGAL REPRESENTATIVES (COLLECTIVELY, THE "INDEMNITEES") FROM AND AGAINST ALL LOSSES, PROCEEDINGS, CLAIMS, DAMAGES, PENALTIES AND COSTS (WHETHER INITIATED OR SOUGHT BY**

**GOVERNMENTAL AUTHORITIES OR PRIVATE PARTIES), INCLUDING, WITHOUT LIMITATION, FEES AND OUT-OF-POCKET EXPENSES OF ATTORNEYS AND EXPERT WITNESSES, ENGINEERING FEES, ENVIRONMENTAL CONSULTANT FEES, INVESTIGATORY FEES, AND REMEDIATION COSTS (INCLUDING, WITHOUT LIMITATION, ANY FINANCIAL ASSURANCES REQUIRED TO BE POSTED FOR COMPLETION OF REMEDIAL WORK AND COSTS ASSOCIATED WITH ADMINISTRATIVE OVERSIGHT), AND ANY OTHER LIABILITIES OF WHATEVER KIND AND WHATEVER NATURE, WHETHER INCURRED IN CONNECTION WITH ANY JUDICIAL OR ADMINISTRATIVE PROCESS OR OTHERWISE, ARISING DIRECTLY OR INDIRECTLY FROM ANY OF THE FOLLOWING:**

- (1) ANY BREACH OF ANY REPRESENTATION OR WARRANTY OF BORROWER IN THIS SECTION 18;**
- (2) ANY FAILURE BY BORROWER TO PERFORM ANY OF ITS OBLIGATIONS UNDER THIS SECTION 18;**
- (3) THE EXISTENCE OR ALLEGED EXISTENCE OF ANY PROHIBITED ACTIVITY OR CONDITION;**
- (4) THE PRESENCE OR ALLEGED PRESENCE OF HAZARDOUS MATERIALS ON OR UNDER THE MORTGAGED PROPERTY (WHETHER AS A RESULT OF ACTIVITIES ON THE MORTGAGED PROPERTY OR ON SURROUNDING PROPERTIES) OR IN ANY OF THE IMPROVEMENTS OR ON OR UNDER ANY PROPERTY OF BORROWER THAT IS ADJACENT TO THE MORTGAGED PROPERTY;**
- (5) THE ACTUAL OR ALLEGED VIOLATION OF ANY HAZARDOUS MATERIALS LAW;**
- (6) ANY LOSS OR DAMAGE RESULTING FROM A LOSS OF PRIORITY OF THIS INSTRUMENT OR ANY OTHER LOAN DOCUMENT DUE TO AN IMPOSITION OF AN ENVIRONMENTAL LIEN AGAINST THE MORTGAGED PROPERTY; AND**
- (7) ANY PERSONAL INJURY CLAIM, PROCEEDING OR CAUSE OF ACTION DIRECTLY OR INDIRECTLY ARISING AS A RESULT OF THE PRESENCE OF ASBESTOS OR OTHER HAZARDOUS MATERIALS ON OR FROM THE MORTGAGED PROPERTY.**

**(m) COUNSEL SELECTED BY BORROWER TO DEFEND INDEMNITEES SHALL BE SUBJECT TO THE APPROVAL OF THOSE INDEMNITEES. IN ANY CIRCUMSTANCES IN WHICH THE INDEMNITY UNDER THIS SECTION 18 APPLIES, BENEFICIARY PARTIES MAY EMPLOY LEGAL COUNSEL AND CONSULTANTS TO PROSECUTE, DEFEND OR NEGOTIATE ANY CLAIM OR**

**LEGAL OR ADMINISTRATIVE PROCEEDING AT BORROWER'S EXPENSE, AND SUCH BENEFICIARY PARTY, WITH THE PRIOR WRITTEN CONSENT OF BORROWER (WHICH SHALL NOT BE UNREASONABLY WITHHELD, DELAYED OR CONDITIONED) MAY SETTLE OR COMPROMISE ANY ACTION OR LEGAL OR ADMINISTRATIVE PROCEEDING. BORROWER SHALL REIMBURSE SUCH BENEFICIARY PARTY UPON DEMAND FOR ALL COSTS AND EXPENSES INCURRED BY SUCH BENEFICIARY PARTY, INCLUDING, WITHOUT LIMITATION, ALL COSTS OF SETTLEMENTS ENTERED INTO IN GOOD FAITH, AND THE FEES AND OUT OF POCKET EXPENSES OF SUCH ATTORNEYS AND CONSULTANTS.**

**(n) BORROWER SHALL NOT, WITHOUT THE PRIOR WRITTEN CONSENT OF THOSE INDEMNITEES WHO ARE NAMED AS PARTIES TO A CLAIM OR LEGAL OR ADMINISTRATIVE PROCEEDING (A "CLAIM"), SETTLE OR COMPROMISE THE CLAIM IF THE SETTLEMENT (1) RESULTS IN THE ENTRY OF ANY JUDGMENT THAT DOES NOT INCLUDE AS AN UNCONDITIONAL TERM THE DELIVERY BY THE CLAIMANT OR PLAINTIFF TO BENEFICIARY PARTIES OF A WRITTEN RELEASE OF THOSE INDEMNITEES, SATISFACTORY IN FORM AND SUBSTANCE TO LENDER; OR (2) MAY MATERIALLY AND ADVERSELY AFFECT BENEFICIARY PARTIES, AS DETERMINED BY LENDER IN ITS DISCRETION.**

**(o) BORROWER'S OBLIGATION TO INDEMNIFY THE INDEMNITEES SHALL NOT BE LIMITED OR IMPAIRED BY ANY OF THE FOLLOWING, OR BY ANY FAILURE OF BORROWER OR ANY GUARANTOR TO RECEIVE NOTICE OF OR CONSIDERATION FOR ANY OF THE FOLLOWING:**

- (1) ANY AMENDMENT OR MODIFICATION OF ANY LOAN DOCUMENT;**
- (2) ANY EXTENSIONS OF TIME FOR PERFORMANCE REQUIRED BY ANY LOAN DOCUMENT;**
- (3) ANY PROVISION IN ANY LOAN DOCUMENT LIMITING BENEFICIARY PARTIES' RECOURSE TO PROPERTY SECURING THE INDEBTEDNESS, OR LIMITING THE PERSONAL LIABILITY OF BORROWER OR ANY OTHER PARTY FOR PAYMENT OF ALL OR ANY PART OF THE INDEBTEDNESS;**
- (4) THE ACCURACY OR INACCURACY OF ANY REPRESENTATIONS AND WARRANTIES MADE BY BORROWER UNDER THIS INSTRUMENT OR ANY OTHER LOAN DOCUMENT;**
- (5) THE RELEASE OF BORROWER OR ANY OTHER PERSON, BY BENEFICIARY PARTIES OR BY OPERATION OF LAW, FROM**



**PERFORMANCE OF ANY OBLIGATION UNDER ANY LOAN DOCUMENT;**

- (6) THE RELEASE OR SUBSTITUTION IN WHOLE OR IN PART OF ANY SECURITY FOR THE INDEBTEDNESS; AND**
- (7) FAILURE BY BENEFICIARY PARTIES TO PROPERLY PERFECT ANY LIEN OR SECURITY INTEREST GIVEN AS SECURITY FOR THE INDEBTEDNESS.**

**(p) BORROWER SHALL, AT ITS OWN COST AND EXPENSE, DO ALL OF THE FOLLOWING:**

- (1) PAY OR SATISFY ANY JUDGMENT OR DECREE THAT MAY BE ENTERED AGAINST ANY INDEMNITEE OR INDEMNITEES IN ANY LEGAL OR ADMINISTRATIVE PROCEEDING INCIDENT TO ANY MATTERS AGAINST WHICH INDEMNITEES ARE ENTITLED TO BE INDEMNIFIED UNDER THIS SECTION 18;**
- (2) REIMBURSE INDEMNITEES FOR ANY AND ALL EXPENSES PAID OR INCURRED IN CONNECTION WITH ANY MATTERS AGAINST WHICH INDEMNITEES ARE ENTITLED TO BE INDEMNIFIED UNDER THIS SECTION 18; AND**
- (3) REIMBURSE INDEMNITEES FOR ANY AND ALL EXPENSES, INCLUDING, WITHOUT LIMITATION, FEES AND OUT OF POCKET EXPENSES OF ATTORNEYS AND EXPERT WITNESSES, PAID OR INCURRED IN CONNECTION WITH THE ENFORCEMENT BY INDEMNITEES OF THEIR RIGHTS UNDER THIS SECTION 18, OR IN MONITORING AND PARTICIPATING IN ANY LEGAL OR ADMINISTRATIVE PROCEEDING.**

**(q) THE PROVISIONS OF THIS SECTION 18 SHALL BE IN ADDITION TO ANY AND ALL OTHER OBLIGATIONS AND LIABILITIES THAT BORROWER MAY HAVE UNDER APPLICABLE LAW OR UNDER ANY OTHER LOAN DOCUMENT, AND EACH INDEMNITEE SHALL BE ENTITLED TO INDEMNIFICATION UNDER THIS SECTION 18 WITHOUT REGARD TO WHETHER ANY OTHER BENEFICIARY PARTY OR THAT INDEMNITEE HAS EXERCISED ANY RIGHTS AGAINST THE MORTGAGED PROPERTY OR ANY OTHER SECURITY, PURSUED ANY RIGHTS AGAINST ANY GUARANTOR, OR PURSUED ANY OTHER RIGHTS AVAILABLE UNDER THE LOAN DOCUMENTS OR APPLICABLE LAW. IF BORROWER CONSISTS OF MORE THAN ONE PERSON OR ENTITY, THE OBLIGATION OF THOSE PERSONS OR ENTITIES TO INDEMNIFY THE INDEMNITEES UNDER THIS SECTION 18 SHALL BE JOINT AND SEVERAL. THE OBLIGATION OF BORROWER TO INDEMNIFY THE INDEMNITEES UNDER THIS SECTION 18**

**SHALL SURVIVE ANY REPAYMENT OR DISCHARGE OF THE INDEBTEDNESS, ANY FORECLOSURE PROCEEDING, ANY FORECLOSURE SALE, ANY DELIVERY OF ANY DEED IN LIEU OF FORECLOSURE, AND ANY RELEASE OF RECORD OF THE LIEN OF THIS INSTRUMENT.**

**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 and allied perils, general boiler and machinery coverage, business income coverage and extra expense insurance, coverage against acts of terrorism, mold and earthquake coverage. Borrower acknowledges and agrees that 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. If any of the Improvements are now or hereafter located in an area identified by the Federal Emergency Management Agency (or any successor to that agency) as an area now or hereafter having special flood hazards, and if flood insurance is available in that area, Borrower shall insure such Improvements against loss by flood in an amount equal to the maximum amount available under the National Flood Insurance Program or any successor thereto.

(b) All premiums on insurance policies required under Section 19(a) 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. All policies of property damage insurance shall include a non-contributing, non-reporting mortgage clause in favor of, and in a form approved by, Lender. Lender shall have the right to hold the original policies or duplicate original policies of all insurance required by Section 19(a). 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 30 days prior to the expiration date of a policy, Borrower shall deliver to Lender the original (or a duplicate original) of a renewal policy in form satisfactory to Lender.

(c) All insurance policies and renewals of insurance policies required by this Section 19 shall comply with the Fannie Mae DUS Insurance Standards. The Fannie Mae DUS Insurance Standards shall apply to the Loan in accordance with this Section 19, irrespective of whether Fannie Mae has any interest in the Loan or the Bonds; *provided, however*, that at any time that Bondholder Representative is an Institutional Lender and Borrower has received at least 30 days prior written notice of such fact, 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 consistent with Bondholder Representative's then current practices and standards, and shall be issued by insurance companies satisfactory to Lender.

(d) 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, consistent with the Fannie Mae

DUS Insurance Standards or Bondholder Representative's then current practices and standards, as applicable.

(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 may, at Lender's option, (i) hold the balance of such proceeds to be used to reimburse Borrower for the cost of restoring and repairing the Mortgaged Property to the equivalent of its original condition or to a condition approved by Lender (the "**Restoration**"), or (ii) apply the balance of such proceeds to the payment of the Indebtedness, whether or not then due. To the extent Lender determines to apply insurance proceeds to Restoration, Lender shall apply the proceeds in accordance with Bondholder Representative's then-current policies relating to the restoration of casualty damage on similar multifamily properties.

(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: (i) no 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) has occurred and is continuing; (ii) Lender determines, in its discretion, that there will be sufficient funds to complete the Restoration; (iii) Lender determines, in its discretion, that the net operating income generated by the Mortgaged Property after completion of the Restoration will be sufficient to support a debt service coverage ratio not less than the greater of (A) the debt service coverage ratio as of the date of this Instrument (based on the final underwriting of the Mortgaged Property) or (B) the debt service coverage ratio immediately prior to the loss (in each case, Lender's determination shall include all operating costs and other expenses, Imposition Deposits, deposits to reserves and loan repayment obligations relating to the Mortgaged Property); (iv) Lender determines, in its discretion, that the Restoration will be completed before the earlier of (A) one year before the maturity date of the Note or (B) one year after the date of the loss or casualty; and (v) upon Lender's request, Borrower provides Lender evidence of the availability during and after the Restoration of the insurance required to be maintained pursuant to this Instrument.

(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.

(i) Unless Lender otherwise agrees in writing, any application of any insurance 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, except as provided in the Note.

(j) Borrower agrees to execute such further evidence of assignment of any insurance proceeds as Lender may require.

(k) Borrower further agrees that to the extent that Borrower obtains any form of property damage insurance for the Mortgaged Property or any portion thereof that insures perils not required to be insured against by Lender, such policy of property damage insurance shall include a standard mortgagee clause and shall name Lender as loss payee and, within ten (10) days following Borrower's purchase of such additional insurance, Borrower shall cause to be delivered to Lender a duplicate original policy of insurance with respect to such policy. Any insurance proceeds payable to Borrower under such policy shall be additional security for the Indebtedness and Lender shall have the same rights to such policy and proceeds as it has with respect to insurance policies required by Lender pursuant to this Section 19 (except that Lender shall not require that the premium for such additional insurance be included among the Imposition Deposits).

## 20. CONDEMNATION.

(a) Borrower shall promptly notify Lender in writing of any action or proceeding or notice relating to any proposed or actual 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 (including, without limitation, fees and out-of-pocket expenses of attorneys and expert witnesses, investigatory fees, whether incurred in connection with any judicial or administrative process or otherwise), 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 payments due under the Note, Section 7 of this Instrument or any Collateral Agreement or any other Loan Document, or change the amount of such payments, except as otherwise provided in the Note. Borrower agrees to execute such further evidence of assignment of any awards or proceeds as Lender may require.

(c) Lender shall not exercise its option to apply condemnation awards or proceeds to the payment of the Indebtedness if all of the following conditions are met: (i) no 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) has occurred and is continuing; (ii) Lender determines, in its discretion, that there will be sufficient funds to complete the Restoration; (iii) Lender determines, in its discretion, that the net operating income generated by the Mortgaged Property after completion of the Restoration will be sufficient to support a debt service coverage ratio not less than the greater of (A) the debt service coverage ratio as of the date of this Instrument (based on the final underwriting of the Mortgaged Property) or (B) the debt service coverage ratio immediately prior to the loss (in each case, Lender's determination shall include all operating costs and other expenses, Imposition Deposits, deposits to reserves and loan repayment obligations relating to the Mortgaged Property); (iv) Lender determines, in its discretion, that the Restoration will be completed before the earlier of (A) one year before the maturity date of the Note or (B) one year after the date of the loss or casualty; and (v) upon Lender's request, Borrower provides Lender evidence of the availability during and after the Restoration of the insurance required to be maintained pursuant to this Instrument.

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

(a) The occurrence of any of the following events shall constitute an Event of Default under this Instrument:

- (1) other than the lien of this Instrument and the Permitted Encumbrances, a Transfer of all or any part of the Mortgaged Property or any interest in the Mortgaged Property;
- (2) if Borrower is a limited partnership, a Transfer of (A) any general partnership interest, or (B) limited partnership interests in Borrower that would cause the Initial Owners of Borrower to own less than a Controlling Interest of all limited partnership interests in Borrower;
- (3) if Borrower is a general partnership or a joint venture, a Transfer of any general partnership or joint venture interest in Borrower;
- (4) if Borrower is a limited liability company, (A) a Transfer of any membership interest in Borrower which would cause the Initial Owners to own less than a Controlling Interest of all the membership interests in Borrower, (B) a Transfer of any membership or other interest of a manager in Borrower, or (C) a change of a nonmember manager;
- (5) if Borrower is a corporation, (A) the Transfer of any voting stock in Borrower which would cause the Initial Owners to own less than a Controlling Interest of any class of voting stock in Borrower or (B) if the outstanding voting stock in Borrower is held by 100 or more shareholders, one or more transfers by a single transferor within a 12-month period affecting an aggregate of 5% or more of that stock;

- (6) if Borrower is a trust, (A) a Transfer of any beneficial interest in Borrower which would cause the Initial Owners to own less than a Controlling Interest of all the beneficial interests in Borrower; or (B) the termination or revocation of the trust; unless the trust is terminated as a result of the death of an individual trustor, in which event Lender must be notified and such Borrower must be replaced with an individual or entity acceptable to Lender, in accordance with the provisions of Section 21(c) hereof, within 90 days of such death (provided however that no property inspection shall be required and a 1% transfer fee will not be charged); or (C) the removal, appointment or substitution of a trustee of Borrower;
- (7) if Borrower is a limited liability partnership, a Transfer of (A) any partnership interest in Borrower which would cause the Initial Owners to own less than a Controlling Interest of all partnership interests in Borrower, or (B) any partnership or other interest of a managing partner in Borrower that results in a change of manager;
- (8) a Transfer of any interest in a Controlling Entity which, if such Controlling Entity were Borrower, would result in an Event of Default under any of Sections 21(a)(1) through (7) above;
- (9) a Transfer of all or any part of a Guarantor's ownership interest in Borrower, or in any other entity which owns, directly or indirectly through one or more intermediate entities, an ownership interest in Borrower (other than a Transfer of an aggregate beneficial ownership interest in Borrower of 49% or less of such Guarantor's original ownership interest in Borrower and which does not otherwise result in a Transfer of such Guarantor's Controlling Interest in such intermediate entities or in the Borrower);
- (10) if Guarantor is a natural person, the death of such individual; unless the Lender is notified and such individual is replaced with an individual or entity acceptable to Lender, in accordance with the provisions of Section 21(c) hereof, within 90 days of such death (provided however that no property inspection shall be required and a 1% transfer fee will not be charged);
- (11) the merger, dissolution, liquidation, or consolidation of (i) Borrower, (ii) any Guarantor that is a legal entity, or (iii) any legal entity holding, directly or indirectly, a Controlling Interest in Borrower or in any Guarantor that is an entity;
- (12) a conversion of Borrower from one type of legal entity into another type of legal entity (including the conversion of a general partnership into a limited partnership and the conversion of a limited partnership into a limited liability company), whether or not there is a Transfer, if such conversion results in a change in any assets, liabilities, legal rights or

obligations of Borrower (or of Guarantor, any general partner of Borrower or other Controlling Entity, as applicable), by operation of law or otherwise;

- (13) notwithstanding anything to the contrary herein or in Borrower's Organizational Documents, without the prior written consent of Lender, a Transfer or pledge of an interest in Borrower or any partner or member of Borrower (or any right to claim any tax credits which Borrower may allocate to any partner or member of Borrower) to Fannie Mae or the Federal Home Loan Mortgage Corporation;
- (14) a Transfer of the economic benefits or right to cash flows attributable to the ownership interests in Borrower and/or, if Guarantor is an entity, Guarantor, separate from the Transfer of the underlying ownership interests, unless the Transfer of the underlying ownership interests would otherwise not be prohibited by this Instrument; and
- (15) the filing, recording, or consent to filing or recording of any plat or map subdividing, replatting or otherwise affecting the Mortgaged Property or any other replat or subdivision of the Mortgaged Property, whether or not any such action affects the priority of the lien of this Instrument.

Lender shall not be required to demonstrate any actual impairment of its security or any increased risk of default in order to exercise any of its remedies with respect to an Event of Default under this Section 21.

(b) The occurrence of any of the following events shall not constitute an Event of Default under this Instrument, notwithstanding any provision of Section 21(a) to the contrary (a "**Permitted Transfer**"):

- (1) a Transfer to which Lender has consented;
- (2) except as provided in Section 21(a)(6), a Transfer that occurs by devise, descent, pursuant to the provisions of a trust, or by operation of law upon the death of a natural person;
- (3) the grant of a leasehold interest in an individual dwelling unit for a term of two years or less not containing an option to purchase;
- (4) 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 or permitted pursuant to the Loan Documents or consented to by Lender;
- (5) the grant of an easement, servitude, or restrictive covenant if, before the grant, Lender determines that the easement, servitude, or restrictive covenant will not materially affect the operation or value of the Mortgaged

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Property or Lender's interest in the Mortgaged Property, and Borrower pays to Lender, upon demand, all costs and expenses incurred by Lender in connection with reviewing Borrower's request;

- (6) 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 45 days after Borrower has actual or constructive notice of the existence of such lien;
- (7) the conveyance of the Mortgaged Property at a judicial or non-judicial foreclosure sale under this Instrument; and
- (8) a Transfer of the Mortgaged Property or of ownership interests held by an individual or entity Guarantor in Borrower, or in any other entity which owns, directly or indirectly through one or more intermediate entities, an ownership interest in Borrower, to (i) other Guarantors; (ii) Immediate Family Members; or (iii) trusts established for the benefit of the transferor and/or Immediate Family Members; provided, however, that such Transfer of ownership interests will not cause a change in the management and control of Borrower (or other intermediate entity), and after which Transfer, the transferor Guarantor shall maintain the same right and ability to manage and control Borrower (or other intermediate entity) as existed prior to the Transfer.

(c) Lender may in its discretion consent to a Transfer that would otherwise violate this Section 21 if, prior to the Transfer, Borrower has satisfied each of the following requirements:

- (1) the submission to Lender of all information required by Lender to make the determination required by this Section 21(c);
- (2) the absence of any Event of Default;
- (3) the transferee meets all of the eligibility, credit, management and other standards of Bondholder Representative (including but not limited to any standards with respect to previous relationships between Bondholder Representative and the transferee and the organization of the transferee) at the time of the proposed Transfer to the approval of borrowers in connection with the origination or purchase of similar mortgage finance structures on similar multifamily properties, unless partially waived by Lender in exchange for such additional conditions as Lender may require;
- (4) the transferee's organization, credit and experience in the management of similar properties are deemed by Lender, in its discretion, to be appropriate to the overall structure and documentation of the existing financing;



- (5) the Mortgaged Property, at the time of the proposed Transfer, meets all standards as to its physical condition, occupancy, net operating income and the collection of reserves that are customarily applied by Bondholder Representative at the time of the proposed Transfer to the approval of properties in connection with the origination or purchase of similar mortgage finance structures on similar multifamily properties, unless partially waived by Lender in exchange for such additional conditions as Lender may require;
- (6) if the transferor or any other person has obligations under any Loan Document, (A) the execution by the transferee of an assumption agreement that is acceptable to Lender and that, among other things, requires the transferee to perform all obligations of Borrower set forth in the Note, this Instrument and any other Loan Documents, and may require that the transferee comply with any provisions of this Instrument or any other Loan Document which previously may have been waived by Lender, and (B) if a guaranty has been executed and delivered in connection with the Note, this Instrument or any of the other Loan Documents, the transferee causes one or more individuals or entities acceptable to Lender to execute and deliver to Lender a guaranty in a form acceptable to Lender;
- (7) if a guaranty has been executed and delivered in connection with the Note, this Instrument or any of the other Loan Documents, Borrower causes one or more individuals or entities acceptable to Lender to execute and deliver to Lender a substitute guaranty in a form acceptable to Lender;
- (8) Lender's receipt of all of the following:
  - (A) a non-refundable deposit in the amount of \$3,000.00, which shall be credited to the 1% transfer fee in subsection (B) below;
  - (B) a transfer fee in an amount equal to 1% of the unpaid principal balance of the Indebtedness immediately before the applicable Transfer; and
  - (C) the amount of Lender's out-of-pocket costs (including, without limitation, reasonable attorneys' fees) incurred in reviewing the Transfer request.
- (9) Borrower has agreed to Lender's conditions to approve such Transfer, which may include, but are not limited to (A) providing additional collateral, guaranties, or other credit support to mitigate any risks concerning the proposed transferee or the performance or condition of the Mortgaged Property, and (B) amending the Loan Documents to (i) delete any specially negotiated terms or provisions previously granted for the exclusive benefit of transferor and (ii) restore to original provisions of the

standard Lender forms of multifamily loan documents, to the extent such provisions were previously modified; and

- (10) Lender's receipt of evidence of Issuer's consent to the Transfer, to the extent required pursuant to the terms of the Regulatory Agreement.

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

(a) (i) any failure by Borrower to pay or deposit any payment of principal, interest, principal reserve fund deposit, any payment with a specified due date, or any other scheduled payment or deposit required by the Note, this Instrument or any other Loan Document when such payment or deposit is due, (ii) any failure by Borrower to pay any Additional Payment (as defined in the Indenture) when such payment is due or (iii) any failure by Borrower to pay or deposit any unscheduled payment or deposit, or other payment or deposit without a specified due date, required by the Note, this Instrument or any other Loan Document, within five (5) days after written notice from Lender;

(b) any failure by Borrower to maintain the insurance coverage required by Section 19;

(c) any failure by Borrower to comply with the provisions of Section 33;

(d) fraud or material misrepresentation or material omission by Borrower or Guarantor, any of their respective officers, directors, trustees, general partners, managing members, managers, agents or representatives in connection with (i) the application for the Loan, (ii) the application for the Bonds, (iii) any financial statement, rent roll, or other report or information provided to Lender during the term of the Indebtedness, or (iv) any request for Lender's consent to any proposed action, including a request for disbursement of funds under any Collateral Agreement;

(e) any of Borrower's representations and warranties in this Instrument is false or misleading in any material respect;

(f) any Event of Default under Section 21;

(g) 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;

(h) any failure by Borrower to perform any of its obligations under this Instrument (other than those specified in this Section 22), as and when required, which continues for a period of thirty (30) days after written notice of such failure by Lender to Borrower; provided, however, in the event that Borrower commences to cure such default within such thirty (30) day period and thereafter diligently proceeds to cure such default, such thirty (30) day period shall be extended for an additional sixty (60) day period, but the total grace period after notice shall not exceed ninety (90) days. However, no such notice or grace period shall apply to the extent such

failure 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;

(i) 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 which continues beyond the applicable cure period, if any, specified in that Loan Document;

(j) any exercise by the holder of any debt instrument secured by a mortgage, deed of trust or deed to secure debt on the Mortgaged Property of a right to declare all amounts due under that debt instrument immediately due and payable;

(k) the occurrence of a Bankruptcy Event;

(l) any Event of Default or Loan Agreement Default (each, as defined in the Loan Agreement), which continues beyond the expiration of any applicable cure period;

(m) any Event of Default (as defined in any of the Bond Documents);

(n) any breach of the Regulatory Agreement by Borrower or any person or entity acting on behalf of or on the request of Borrower which continues after the expiration of any applicable cure period thereunder;

(o) any amendment, modification, waiver or termination of any of the provisions of Borrower's Organizational Documents without the prior written consent of Lender, other than (i) modifications necessary to reflect the occurrence of a Permitted Transfer or (ii) modifications that do not: (A) impose any additional or greater obligations on Borrower or any of the partners, managers or members of Borrower, (B) reduce or relieve Borrower or any of the partners, managers or members of Borrower of any of their obligations, (C) modify the timing, amounts, number, conditions or other terms of the installments or other payment obligations of the partners or members of Borrower or (D) impair the collateral for the Loan; provided, however, that Borrower shall promptly provide to Lender a copy of any modifications to Borrower's Organizational Documents that do not require Lender's consent;

(p) (i) any breach of any Material Property Agreement by Borrower or its officers, directors, employees, agents or tenants that continues beyond any applicable notice and cure period; (ii) any failure by Borrower or its officers, directors, employees or agents or any other party to deliver concurrently (in case of notices given) or promptly (in case of notices received) copies of any and all notices received or given thereby to Lender with respect to any Material Property Agreement; or (iii) any breach of the representations, warranties, or covenants set forth in Section 19 of the Borrower's Certificate and Agreement;

(q) if Borrower or any Guarantor is a trust, the termination or revocation of any such trust; unless the trust is terminated as a result of the death of an individual trustor, in which event Lender must be notified and such Borrower or Guarantor must be replaced with an individual or entity acceptable to Lender, in accordance with the provisions of Section 21(c) hereof, within 90 days of such death (provided however that no property inspection shall be required and a 1% transfer fee will not be charged); or

(r) if any Guarantor is a natural person, the death of such individual; unless the Lender is notified and such individual is replaced with an individual or entity acceptable to Lender, in accordance with the provisions of Section 21(c) hereof, within 90 days of such death (provided however that no property inspection shall be required and a 1% transfer fee will not be charged).

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 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 other right or remedy, or the subsequent 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 applied by Lender to reduce the principal of the Indebtedness. 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.

**26. WAIVER OF STATUTE OF LIMITATIONS. BORROWER HEREBY WAIVES THE RIGHT TO ASSERT ANY STATUTE OF LIMITATIONS AS A BAR TO THE ENFORCEMENT OF THE LIEN OF THIS INSTRUMENT OR TO ANY ACTION BROUGHT TO ENFORCE ANY LOAN DOCUMENT.**

**27. WAIVER OF MARSHALLING.** 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 marshalling 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. FURTHER ASSURANCES.** Borrower shall execute, acknowledge, and deliver, at its sole cost and expense, all further acts, deeds, conveyances, assignments, estoppel certificates, financing statements or amendments, transfers and assurances as Lender may reasonably require from time to time in order to better assure, grant, and convey to Lender the rights intended to be granted, now or in the future, to Lender under this Instrument and the Loan Documents and Bond Documents. In furtherance thereof, on the request of Lender, Borrower shall re-execute or ratify any of the Loan Documents or Bond Documents or execute any other documents or take such other actions as may be reasonably necessary to effect the assignment, pledge or other transfer of the Loan or Bonds to any party that may purchase, insure, credit enhance or otherwise finance all or any part of the Loan or Bonds, including, without limitation, Freddie Mac, Fannie Mae, the U.S. Department of Housing and Urban Development, or any insurance company, conduit lender or any other lender or investor.

**29. ESTOPPEL CERTIFICATE.** Within 10 days after a request from Lender, Borrower shall deliver to 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 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 jurisdiction over all controversies that 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 to which it might be entitled by virtue of domicile, habitual residence or otherwise. However, nothing in this Section 30 is intended to limit Lender's right to bring any suit, action or proceeding relating to matters under this Instrument in any court of any other jurisdiction.

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 the first paragraph of this Instrument (except that no notice shall be required as a result of the assignment by Issuer of its interest as beneficiary under this Instrument to Indenture Trustee immediately following the recordation of this Instrument) and any and all notices to "Lender" shall be addressed as follows: **Wells Fargo Bank, National Association**, a national banking association whose address is 299 South Main Street, 12th Floor, Salt Lake City, Utah 84101, and shall be deemed given on the earliest to occur of (i) the date when the notice is received by the addressee; (ii) 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 (iii) 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. Borrower acknowledges that, immediately following recordation hereof, Issuer is assigning its interest as beneficiary under this Instrument to Indenture Trustee and, accordingly, the address set forth in Section 31(a) above shall be used for notices to Lender. 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 that does not specify how notices are to be given shall be given in accordance with this Section 31.

32. **SALE OF RESTATED NOTE OR BONDS; CHANGE IN SERVICER.** The Note or the Bonds or a partial interest in the Note or the Bonds (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 in the Servicer. There also may be one or more changes of the Servicer unrelated to a sale of the Note. If there is a change of the Servicer, Borrower will be given notice of the change.

33. **SINGLE ASSET BORROWER.** Until the Indebtedness is paid in full, Borrower (a) shall not acquire any real or personal property other than the Mortgaged Property and personal property related to the operation and maintenance of the Mortgaged Property; (b) shall not operate any business other than the management and operation of the Mortgaged Property; and (c) shall not maintain its assets in a way difficult to segregate and identify.

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. Borrower expressly acknowledges and consents to the assignment by Issuer of its interests in this Instrument and the other Loan Documents to Indenture Trustee under the terms of and pursuant to the Indenture. A Transfer not permitted by Section 21 shall be an Event of Default.

35. **JOINT AND SEVERAL LIABILITY.** If more than one person or entity signs this Instrument as Borrower, the obligations of such persons and entities shall be joint and several.

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 (other than a holder of the Bonds, Indenture Trustee, Bondholder Representative and Servicer) shall be a third party beneficiary of this Instrument or any other Loan Document. Without limiting the generality of the preceding sentence, (i) any arrangement (a "Servicing Arrangement") between Lender and any Servicer for loss sharing or interim advancement of funds shall constitute a contractual obligation of such Servicer that is independent of the obligation of Borrower for the payment of the Indebtedness, (ii) Borrower shall not be a third party beneficiary of any Servicing Arrangement, and (iii) no payment by Servicer under any Servicing Arrangement will reduce the amount of the Indebtedness.

37. **SEVERABILITY; AMENDMENTS.** The invalidity or unenforceability of any provision of this Instrument shall not affect the validity or enforceability of any other provision, and all other provisions shall remain in full force and effect. This Instrument contains the entire agreement among the parties as to the rights granted and the obligations assumed in this Instrument. This Instrument may not be amended or modified except by a writing signed by the party against whom enforcement is sought; provided, however, that in the event of a Transfer any or some or all of the Modifications to Instrument set forth in Exhibit B (if any) may be

modified or rendered void by Lender at Lender's option by notice to Borrower or such transferee.

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."

39. **SERVICER AND BONDHOLDER REPRESENTATIVE.**

(a) Borrower hereby acknowledges and agrees that, pursuant to the terms of the Indenture, all consents, elections, approvals, waivers, acceptances and determinations to be provided hereunder and under the Note and the other Loan Documents by Indenture Trustee (whether in its capacity as Indenture Trustee under the Indenture or as assignee of Issuer), shall be at the direction of Bondholder Representative and shall not be valid unless directed by Bondholder Representative. Borrower further agrees that all references herein and in the Note and the other Loan Documents to the "Lender" shall also refer to Bondholder Representative and that any action or right which shall or may be taken or exercised by Lender may be taken or exercised by Bondholder Representative with the same force and effect as if taken by Lender, including, without limitation, the collection of payments, the holding of escrows, the giving of notice, inspection of the Mortgaged Property, inspections of books and records, the request for documents or information, and the granting of consents and approvals. Borrower further agrees that all notices, books, records, requests for consent, documents or other information to be delivered to Lender hereunder or under the Note or any other Loan Documents shall also be simultaneously delivered to such Bondholder Representative at the address provided for notices in the Indenture.

(b) Borrower further acknowledges that Bondholder Representative may from time to time and in accordance with the terms of the Indenture appoint Servicer or a replacement servicer to collect payments and deposits, to receive notices under the Note, this Instrument, or the other Loan Documents, and to otherwise service the Loan. Borrower hereby acknowledges and agrees that, unless Borrower receives written notice from Bondholder Representative to the contrary, any action or right which shall or may be taken or exercised by Bondholder Representative or Lender may be taken or exercised by Servicer with the same force and effect, including, without limitation, the collection of payments, the holding of escrows, the giving of notice, inspection of the Mortgaged Property, inspections of books and records, the request for documents or information, and the granting of consents and approvals. Borrower further agrees that, unless Bondholder Representative instructs Borrower to the contrary in writing, (i) any notices, books or records, or other documents or information to be delivered to Lender or Bondholder Representative under this Instrument, the Note, or any other Loan Document shall also be simultaneously delivered to Servicer at the address provided for notices in the Indenture, and (ii) any payments to be made under the Note or for escrows under Section 7 of this



Instrument or under any of the other Loan Documents shall be made to Servicer. In the event Borrower receives conflicting notices regarding the identity of the Servicer or any other subject, any such notice from Bondholder Representative shall govern.

(c) Borrower further acknowledges and agrees that, for the purpose of determining whether a security interest is created or perfected under the Uniform Commercial Code of the Property Jurisdiction, any escrows or other funds held by Servicer pursuant to the Loan Documents or the Bond Documents shall be deemed to be held by Lender.

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 multifamily mortgage loans. 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.** Borrower warrants that all information in Borrower's application for the Loan and in all financial statements, rent rolls, reports, certificates and other documents submitted in connection with Borrower's application for the Loan 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 are used 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**"), such loan proceeds 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. **FINANCING STATEMENT.** As provided in Section 2, this Instrument constitutes a financing statement with respect to any part of the Mortgaged Property which is or may become a Fixture and for the purposes of such financing statement: (a) the Debtor shall be Borrower and the Secured Party shall be Lender; (b) the addresses of Borrower as Debtor and of Lender as Secured Party are as specified above in the first paragraph of this Instrument; (c) the name of the record owner is Borrower; (d) the types or items of collateral consist of any part of the Mortgaged Property which is or may become a Fixture; and (e) the organizational identification number of Borrower (if any) as Debtor is set forth on Exhibit C.

44. **STATE SPECIFIC PROVISIONS (UTAH).**

(a) **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 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.

Trustee shall deliver to the purchaser at the sale, within a reasonable time after 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 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.

(b) **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.

(c) **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 herein and by applicable law.

(d) **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 the first paragraph on page 1 of this Instrument.

45. **ATTACHED EXHIBITS.** The following Exhibits are attached to this Instrument and are incorporated by reference herein as if more fully set forth in the text hereof:

- |                                     |           |                              |
|-------------------------------------|-----------|------------------------------|
| <input checked="" type="checkbox"/> | Exhibit A | Description of the Land.     |
| <input checked="" type="checkbox"/> | Exhibit B | Modifications to Instrument. |

- 
- |                                     |           |   |
|-------------------------------------|-----------|---|
| <input checked="" type="checkbox"/> | Exhibit C | Financing Statement Information.            |
| <input checked="" type="checkbox"/> | Exhibit D | Modifications to Instrument (Ground Lease). |
| <input checked="" type="checkbox"/> | Exhibit E | Description of Ground Lease.                |

The terms of this Instrument are modified and supplemented as set forth in said Exhibits. To the extent of any conflict or inconsistency between the terms of said Exhibits and the text of this Instrument, the terms of said Exhibits shall be controlling in all respects.

46. **WAIVER OF TRIAL BY JURY.**

**BORROWER AND LENDER EACH (A) COVENANTS AND AGREES NOT TO ELECT A TRIAL BY JURY WITH RESPECT TO ANY ISSUE ARISING OUT OF THIS INSTRUMENT OR THE RELATIONSHIP BETWEEN THE PARTIES AS BORROWER AND LENDER THAT IS TRIABLE OF RIGHT BY A JURY AND (B) WAIVES ANY RIGHT TO TRIAL BY JURY WITH RESPECT TO SUCH ISSUE TO THE EXTENT THAT ANY SUCH RIGHT EXISTS NOW OR IN THE FUTURE. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS SEPARATELY GIVEN BY EACH PARTY, KNOWINGLY AND VOLUNTARILY WITH THE BENEFIT OF COMPETENT LEGAL COUNSEL.**

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]**


IN WITNESS WHEREOF, the undersigned has duly executed and delivered this Amended and Restated Multifamily Leasehold Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing or caused this Amended and Restated Multifamily Leasehold Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing to be duly executed and delivered by its authorized representative as of the date first set forth above. The undersigned intends that this instrument shall be deemed to be signed and delivered as a sealed instrument.

**BORROWER:**

**LIBERTY COMMONS ASSOCIATES, L.C.,**

a Utah limited liability company

By: Cowboy Partners, L.C.,  
a Utah limited liability company  
its Manger

By:   
Name: Mark Cornelius  
Title: V.P.

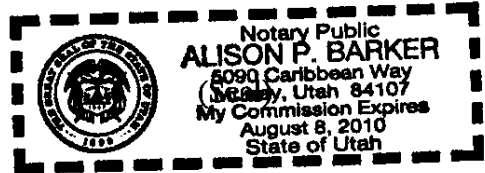
STATE OF UTAH )

COUNTY OF SALT LAKE )

On June 29th 2010 before me, Alison P. Barker,  
Notary Public, personally appeared Mark Cornelius,  
personally known to me or proved to me on the basis of satisfactory evidence to be the person  
whose name(s) is subscribed to the within instrument and acknowledged to me that he/she  
executed the same in his/her authorized capacity, and that by his/her signature on the instrument  
the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

[Signature]  
Signature of Notary Public



**EXHIBIT A**

**DESCRIPTION OF THE LAND**

**(See Attached)**

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Property Description

Lot 4, Highbury Commons at Lake Park Subdivision, West Valley City, Utah,  
according to the official plat thereof on file in the office of the Salt Lake County Recorder.

(14-25-102-001)

## EXHIBIT B

### MODIFICATIONS TO INSTRUMENT

The following modifications are made to the text of the Instrument that precedes this Exhibit:

- 1.
2. Section 21(b) of the Instrument is amended by adding the following at the end of such Section:

“(9) Provided that (i) Liberty Commons Associates, L.C. owns the Mortgaged Property and remains the borrower under the Note, (ii) Cowboy Partners, L.C. (“**Manager**”) is the sole manager of Borrower and (iii) TCF WF-4, LLC, a Delaware limited liability company, or its permitted transferee (the “**Equity Investor**”), has not less than a 99% investor member interest in Borrower:

(a) the removal by Equity Investor of Manager as manager of Borrower and its replacement as manager by Wachovia Affordable Housing Corp. (“**Equity Investor Sponsor**”), or by a wholly-owned affiliate of Equity Investor Sponsor, which removal shall be in accordance with the terms of the operating agreement of Borrower, provided that (i) the entity replacing the removed Manager must be a single purpose entity, and (ii) after such replacement, Equity Investor Sponsor or the Initial Owners of Equity Investor Sponsor must own not less than 51% of the general partnership or managing membership interests, as applicable, in the entity which replaced the removed Manager; and

(b) (i) a Transfer of membership interests in Borrower by Equity Investor (A) a wholly-owned affiliate of Equity Investor or a wholly-owned affiliate of Equity Investor Sponsor, or (B) an entity whose management is controlled by Equity Investor, by a wholly-owned affiliate of Equity Investor or by Equity Investor Sponsor, or (ii) so long as Equity Investor Sponsor remains the sole managing member, sole manager or sole general partner, as applicable, of Equity Investor, the transfer of non-managing membership interests or limited partnership interests, as applicable, in Equity Investor.

Borrower must provide Lender with: (i) advance written notice of the identity of any entity replacing the Manager pursuant to this Section 21(b), and (ii) upon request by Lender from time to time, the names of all owners of interests in Borrower, whether such interests are owned directly or indirectly.”

3. Section 31(a) of the Instrument is amended to add the following at the end of such Section:

“Lender agrees that, so long as Equity Investor has a continuing ownership interest in Borrower, effective notice to Borrower under the Loan Documents shall require delivery of a copy of such notice to Equity Investor. Such notice shall be given in the manner provided in Section 31(a), at Equity Investor’s address set forth below:



Wachovia Affordable Housing Corp.  
c/o Wachovia Affordable Housing Corp.  
301 South College Street, TW-17  
Charlotte, NC 28288-0173  
Attention: Michael Lavine

Lender agrees that, notwithstanding its rights to invoke the remedies permitted by Section 44 of the Instrument, upon the breach of any covenant or agreement by Borrower in the Instrument (including, but not limited to, the covenants to pay when due sums secured by the Instrument) or any other Loan Document, Lender shall not, so long as Equity Investor has a continuing ownership interest in Borrower, conduct a foreclosure sale of the Mortgaged Property or receive a deed-in-lieu of foreclosure, until such time as Equity Investor has first been given 30 days written notice of such default and has failed, within such 30-day period to cure such default; provided, however, that Lender shall be entitled, during such 30-day period, to continue to accelerate the Note and to pursue its remedies.”

4. The following new Sections are added to the Instrument after the last numbered Section:

47. **RECOURSE LIABILITY.** So long as Equity Investor has a continuing ownership interest in Borrower, the provisions of Paragraph 9 of the Note, as they relate to Events of Default described in Paragraph 9(d), shall be operative only after Equity Investor has been given 30 days notice of the applicable Event(s) of Default described in Paragraph 9(a), together with an opportunity within such 30-day period to remedy the applicable Event(s) of Default. In all events, Lender shall be entitled during such 30-day period to exercise all of its rights and remedies under this Instrument upon the occurrence of such Event of Default other than foreclosure of the Mortgaged Property.

48. **EXTENDED LOW INCOME HOUSING COMMITMENT.** Lender agrees that the lien of this Instrument shall be subordinate to any extended low income housing commitment (as such term is defined in Section 42(h)(6)(B) of the Internal Revenue Code) (the “**Extended Use Agreement**”) recorded against the Mortgaged Property; provided that such Extended Use Agreement, by its terms, must terminate upon foreclosure under this Instrument or upon a transfer of the Mortgaged Property by instrument in lieu of foreclosure, in accordance with Section 42(h)(6)(E) of the Internal Revenue Code.

49. **ANNUAL LIHTC REPORTING REQUIREMENTS.** Borrower must submit to Lender each year at the time of annual submission of Borrower’s financial analysis of operations, a copy of the following sections of Borrower’s federal tax return: Internal Revenue Forms 1065, 8586, 8609 and Form 8609, Schedule A, which must reflect the total low income housing tax credits (“**LIHTCs**”) allocated to the Mortgaged Property and the LIHTCs claimed for the Mortgaged Property in the preceding year.

50. **CROSS-DEFAULT.** Borrower acknowledges and agrees that (a) any failure by Borrower or the Project to qualify for low income housing tax credits pursuant to the provisions of Section 42 of the Internal Revenue Code and (b) any default, event of default, or breach (however such terms may be defined) after the expiration of any applicable notice and/or cure periods under the Extended Use Agreement shall be an Event of Default under this Instrument and that any costs, damages or other amounts, including reasonable attorney’s fees incurred by Lender as a result of such an Event of Default by Borrower, including amounts paid to cure any

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default or event of default, under the Extended Use Agreement shall be an obligation of Borrower and become a part of the Indebtedness secured by this Instrument.

51. **ANNUAL COMPLIANCE.** Borrower shall submit to Lender on an annual basis, evidence that the Mortgaged Property is in ongoing compliance with all income, occupancy and rent restrictions under the Extended Use Agreement relating to the Mortgaged Property. Such submissions shall be made contemporaneously with Borrower's reports required to be made to the regulator under the Extended Use Agreement.

52. **[Intentionally Omitted].**

53. **[Intentionally Omitted].**

**EXHIBIT C**

**FINANCING STATEMENT INFORMATION**

1. Name and Address of Debtor: Liberty Commons Associates, L.C.  
c/o Cowboy Partners, L.C.  
6440 S. Wasatch Boulevard, Suite 100  
Salt Lake City, Utah 84115
  
2. Debtor's State of Organization and Organizational I.D.#:  
  
State of Formation: Utah  
  
Type of Entity: Limited liability company  
  
Organizational I.D.#: 5948540-0160
  
3. Name and Address of Secured Party: Wells Fargo Bank, National Association  
299 South Main Street  
12th Floor  
Salt Lake City, Utah 84101  
Attention: Corporate Trust Department
  
4. Name and Address of Assignee of Secured Party: N/A
  
5. Name and Address of Additional Secured Party: N/A
  
6. The Collateral is: Fixtures (as that term is described in the Uniform Commercial Code of Utah) attached to the Land described in Exhibit A attached to this Instrument.
  
7. This filing is made in connection with a public finance transaction as described in Sections 9-102(a) and 9-515(b) of the Uniform Commercial Code of Utah.

**EXHIBIT D**

**MODIFICATIONS TO INSTRUMENT**

**(Ground Lease)**

The following modifications are made to the text of the Instrument that precedes this Exhibit:

1. The granting clause on page 1 is deleted in its entirety and the following new granting clause is inserted in its place:

**Granting Clause.** Borrower, in consideration of the Indebtedness and the trust created by this Instrument, irrevocably grants, conveys and assigns to Trustee, in trust, with power of sale, the Mortgaged Property, including the Leasehold Estate in the Land located in Salt Lake County, Utah and described in Exhibit A attached to this Instrument, to have and to hold the Mortgaged Property unto Trustee, Trustee's successor in trust and Trustee's assigns forever."

2. The definition of Mortgaged Property in Section 1(rr) is amended by deleting paragraph (1) and inserting the following new paragraph in its place: "(1) the Ground Lease and the Leasehold Estate;"

3. The definition of Mortgaged Property in Section 1(rr)(8) is amended by deleting the word "Land" and inserting the words "Leasehold Estate" in its place.

4. Section 22(d) is amended in its entirety to read as follows:

"(d) fraud or material misrepresentation or material omission by Borrower or Guarantor, any of their respective officers, directors, trustees, general partners, managing members, managers, agents or representatives in connection with (i) the application for the Loan, (ii) the application for the Bonds, (iii) any financial statement, rent roll, or other report or information provided to Lender during the term of the Indebtedness, (iv) any request for Lender's consent to any proposed action, including a request for disbursement of funds under any Collateral Agreement, or (v) any of the representations and warranties contained in Section 54;"

5. Section 22 is amended by inserting the following new provision as additional subsection (t):

"any failure by Borrower to comply with the provisions of Sections 54, 55, 56, 58, 59(b), 60(a) or 61;"

6. Section 1 is amended by adding the following new paragraphs at the end:

(hhh) "**Event of Ground Lessor Bankruptcy**" means either of the following actions taken by or with respect to Ground Lessor: (i) Ground Lessor pursuant to or within the meaning of the United States Bankruptcy Code (x) commences a voluntary case, or (y) consents to the entry of an order for relief against it in an involuntary case; or

(ii) a court of competent jurisdiction enters an order or decree under the United States Bankruptcy Code that is for relief against Ground Lessor in an involuntary case.

(iii) "**Ground Lease**" means the lease described in Exhibit E pursuant to which Borrower leases the Land, as such lease may from time to time be amended, modified, supplemented, renewed and extended.

(jjj) "**Ground Lessee Default**" means (i) a default by Borrower in making any payment of rent, additional rent or other sum of money payable by Borrower to Ground Lessor under the Ground Lease on the date such payment is due and payable, or (ii) a default by Borrower in performing or observing any of the terms, covenants or conditions of the Ground Lease (other than the payments referred to in clause (i)) required to be performed or observed by Ground Lessee.

(kkk) "**Ground Lessor**" means the lessor from time to time under the Ground Lease.

(lll) "**Ground Lessor Default**" means a default by Ground Lessor in performing or observing any of the terms, covenants or conditions of the Ground Lease required to be performed or observed by Ground Lessor.

(mmm) "**Ground Rent**" means the base or minimum rent payable in fixed monthly or other periodic installments under the Ground Lease.

(nnn) "**Leased Premises**" means the Land and any other real property leased by Borrower pursuant to the Ground Lease.

(ooo) "**Leasehold Estate**" means Borrower's interest in the Land and any other real property leased by Borrower pursuant to the Ground Lease, including (i) all rights of Borrower to renew or extend the term of the Ground Lease, (ii) all amounts deposited by Borrower with Ground Lessor under the Ground Lease, (iii) Borrower's right or privilege to terminate, cancel, surrender, modify or amend the Ground Lease, and (iv) all other options, privileges and rights granted and demised to Borrower under the Ground Lease and all appurtenances with respect to the Ground Lease."

7. The following new Sections are added at the end of the Instrument after the last numbered Section:

**"54. REPRESENTATIONS AND WARRANTIES REGARDING GROUND LEASE.** Borrower warrants and represents to Lender that, as of the date of this Instrument: (i) the Ground Lease is in full force and effect in accordance with its terms; (ii) Borrower has not waived, canceled or surrendered any of its rights under the Ground Lease; (iii) Borrower is the sole owner of, and has good and marketable title to, the Leasehold Estate; (iv) the Leasehold Estate, the Leased Premises and the Mortgaged Property are free and clear of all liens, encumbrances and other matters affecting title, other than the lien of this Instrument and the Permitted Encumbrances; (v) there is no existing Ground Lessee Default and no event has occurred which, with the passage of time or the giving of notice, or both, would constitute a Ground Lessee Default; and (vi)

to the best of Borrower's knowledge, there is no existing Ground Lessor Default and no event has occurred which, with the passage of time or the giving of notice, or both, would constitute a Ground Lessor Default.

**55. NOTICES UNDER GROUND LEASE.** Borrower shall deliver to Lender, within ten (10) days after Borrower's receipt, a true and correct copy of each notice, demand, complaint or request from Ground Lessor under, or with respect to, the Ground Lease.

**56. BORROWER'S OBLIGATIONS TO COMPLY WITH GROUND LEASE.** Borrower shall (i) pay the Ground Rent and all other sums of money due and payable at any time and from time to time under the Ground Lease as and when such sums become due and payable, but in any event before the expiration of any grace period provided in the Ground Lease for the payment of any such sum, and (ii) at all times fully perform, observe and comply with all other terms, covenants and conditions of the Ground Lease to be performed, observed or complied with by Borrower as lessee under the Ground Lease. If the Ground Lease does not provide for a grace period for the payment of a sum of money, Borrower shall make the payment on or before the date on which the payment becomes due and payable. Borrower shall deliver evidence of the payment to Lender within ten (10) days after receipt of a written request from Lender for evidence of the payment.

**57. LENDER'S RIGHT TO CURE GROUND LESSEE DEFAULTS.** At any time after Lender receives notice of a Ground Lessee Default, (i) Lender may (but shall not be obligated to do so), make any payment, perform any obligation and take any other action Borrower would have the right to pay, perform or take under the Ground Lease which Lender deems necessary or desirable to cure the Ground Lessee Default, and (ii) Lender and its authorized agents shall have the right at any time or from time to time to enter the Land and Improvements, or any part thereof, to such extent and as often as Lender, in its discretion, deems necessary or desirable in order to cure the Ground Lessee Default, subject to the rights of the tenants and occupants of the Mortgaged Property. Lender may exercise its rights under this Section immediately after receipt of notice of a Ground Lessee Default and without regard to any grace period provided to Borrower in the Ground Lease to cure the Ground Lessee Default. For purposes of exercising its rights under this Section, Lender shall be fully protected for any action taken or omitted to be taken by Lender, in good faith, in reliance on any written notice from Ground Lessor stating that a Ground Lessee Default has occurred and is continuing even though Borrower may question or deny the existence or nature of the Ground Lessee Default. All expenditures made by Lender pursuant to this Section to cure a Ground Lessee Default shall become an additional part of the Indebtedness as provided in Section 12.

**58. COVENANTS TO PROTECT LEASEHOLD ESTATE.** Borrower shall not, without the written consent of Lender (which may be given or withheld by Lender in its discretion), (i) surrender the Leasehold Estate to Ground Lessor or terminate or cancel the Ground Lease, (ii) amend, modify or change the Ground Lease, either orally or in writing, or waive any of Borrower's rights under the Ground Lease, (iii) subordinate the Ground Lease or the Leasehold Estate to any mortgage, deed of trust or other lien on

Ground Lessor's fee title to the Leased Premises, or (iv) except as otherwise provided in Section 59(b), reject or assume the Ground Lease or assign the Leasehold Estate pursuant to Section 365(h) of the United States Bankruptcy Code. Borrower absolutely and unconditionally transfers and assigns to Lender all of Borrower's rights to surrender, terminate, cancel, modify and change the Ground Lease, and any such surrender, termination, cancellation, modification or change made without the prior written consent of Lender shall be void and have no legal effect.

**59. GROUND LESSEE'S BANKRUPTCY.**

(a) Borrower assigns to Lender, as additional security for the Indebtedness, Borrower's right to reject the Ground Lease under Section 365 of the United States Bankruptcy Code after the occurrence of an Bankruptcy Event, subject to Section 59(b).

(b) If, after the occurrence of an Bankruptcy Event, Borrower decides to reject the Ground Lease, Borrower shall give Lender written notice, at least ten (10) days in advance, of the date on which Borrower intends to apply to the Bankruptcy Court for authority and permission to reject the Ground Lease. Lender shall have the right, but not the obligation, within ten (10) days after receipt of Borrower's notice, to deliver to Borrower a notice ("**Lender's Assumption Notice**") in which (i) Lender demands that Borrower assume the Ground Lease and assign the Ground Lease to Lender, or its designee, in accordance with the United States Bankruptcy Code, and (ii) Lender agrees to cure or provide adequate assurance of prompt cure of all Ground Lessee Defaults reasonably susceptible of being cured by Lender and of future performance under the Ground Lease. If Lender timely delivers Lender's Assumption Notice to Borrower, Borrower shall not reject the Ground Lease and shall, within fifteen (15) days after receipt of Lender's notice, comply with the demand contained in clause (i) of Lender's notice. If Lender does not timely deliver Lender's Assumption Notice to Borrower, Borrower shall have the right to reject the Ground Lease.

**60. GROUND LESSOR'S BANKRUPTCY.**

(a) If, after the occurrence of an Event of Ground Lessor Bankruptcy, Ground Lessor rejects the Ground Lease pursuant to Section 365(h) of the United States Bankruptcy Code (i) Borrower, immediately after obtaining notice of the rejection, shall deliver a copy of the notice to Lender, (ii) Borrower shall not, without Lender's prior written consent (which may be given or withheld in Lender's discretion), elect to treat the Ground Lease as terminated pursuant to Section 365(h) or any other applicable provision of the United States Bankruptcy Code, and (iii) this Instrument and the lien created by this Instrument shall extend to and encumber Borrower's retained rights under the Ground Lease that are appurtenant to the Leased Premises for the balance of the term of the Ground Lease and for any renewal or extension of those rights under the Ground Lease. Borrower transfers and assigns to Lender, as additional security for the Indebtedness, Borrower's rights, after Ground Lessor's rejection of the Ground Lease, to treat the Ground Lease as terminated, and any termination of the Ground Lease made by Borrower without Lender's prior written consent shall be void and have no legal effect.

(b) Borrower transfers and assigns to Lender, as additional security for the Indebtedness, all of Borrower's rights to damages caused by Ground Lessor's rejection of the Ground Lease after the occurrence of an Event of Ground Lessor Bankruptcy and all of Borrower's rights to offset such damages against rent payable under the Ground Lease. As long as no Event of Default has occurred and is continuing, Lender agrees that it will not enforce its rights under the preceding sentence, but will permit Borrower to exercise such rights with Lender's prior written consent. Any amounts received by Lender as damages arising out of Ground Lessor's rejection of the Ground Lease shall be applied in the manner set forth in Section 9.

**61. OPTION TO RENEW OR EXTEND GROUND LEASE.** Borrower shall give Lender written notice of Borrower's intention to exercise each option to renew or extend the term of the Ground Lease at least ninety (90) days, but not more than one hundred fifty (150) days, before the last day on which the option may be timely exercised. If Borrower intends to renew or extend the term of the Ground Lease, it shall deliver to Lender, together with the notice of such decision, a copy of the notice of renewal or extension it delivers to Ground Lessor. If Borrower does not intend to renew or extend the term of the Ground Lease or, if Borrower fails to deliver its written notice of exercise of its option to renew or extend the term of the Ground Lease at least ninety (90) days before the last day on which the option may be timely exercised, Lender shall have the right, but shall not be obligated, to renew or extend the term of the Ground Lease for and on behalf of Borrower.

**62. NO MERGER OF ESTATES.** If Borrower acquires the fee estate of Ground Lessor under the Ground Lease (the "**Fee Estate**") (i) there shall be no merger between the Fee Estate and the Leasehold Estate unless all persons, including Lender, having an interest in the Ground Lease consent in writing to the merger, and (ii) simultaneously with Borrower's acquisition of the Fee Estate, the lien of this Instrument shall automatically, without the necessity of any further conveyance, be spread to cover the Fee Estate and as so spread shall be prior to the lien of any mortgage, deed of trust or other lien placed on the Fee Estate after the date of this Instrument. Promptly after Borrower's acquisition of the Fee Estate, Borrower, at its sole cost and expense, including payment of Lender's attorneys' fees and out-of-pocket disbursements, shall execute and deliver all documents and instruments necessary to subject the Fee Estate to the lien of this Instrument, and shall provide to Lender a title insurance policy insuring the lien of this Instrument as a first lien on the Fee Estate and the Leasehold Estate. If Lender acquires the Fee Estate and the Leasehold Estate (whether pursuant to the provisions of the Ground Lease, by foreclosure of this Instrument, or otherwise), the Fee Estate and the Leasehold Estate shall not merge as a result of such acquisition and shall remain separate and distinct for all purposes after such acquisition unless and until Lender shall elect to merge the Fee Estate and the Leasehold Estate.

**63. NEW LEASE.** If (i) the Ground Lease is canceled or terminated for any reason before the natural expiration of its term, and (ii) Lender (or its designee) obtains from Ground Lessor a new lease in accordance with the term of the Ground Lease, Borrower shall have no right, title or interest in and to the new lease or the leasehold estate created by the new lease.



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**64. APPOINTMENT OF LENDER AS BORROWER'S ATTORNEY-IN-FACT.** Borrower makes, constitutes and appoints Lender as Borrower's attorney-in-fact, in Borrower's name, place and stead, with full power of substitution, to take all actions and to sign all documents and instruments which Lender, in its discretion, considers to be necessary or desirable to (i) prevent or cure a Ground Lessee Default pursuant to Section 57, (ii) perform or carry out any of Borrower's covenants under Section 56, (iii) renew or extend the term of the Ground Lease pursuant to Section 61, (iv) appoint arbitrators and conduct arbitration proceedings pursuant to the Ground Lease, and (v) request and obtain estoppel certificates from Ground Lessor pursuant to the Ground Lease. Borrower gives and grants to Lender, as Borrower's attorney-in-fact, full power and authority to do and perform every act and sign every document and instrument necessary and proper to be done in the exercise of the foregoing power as fully as Borrower might or could do, and Borrower hereby ratifies and confirms all acts that Lender, as Borrower's attorney-in-fact, shall lawfully do or cause to be done by virtue of this power of attorney. This power of attorney, being coupled with an interest, shall be irrevocable as long as any of the Indebtedness remains unpaid."

8. All capitalized terms used in this Exhibit not specifically defined herein shall have the meanings set forth in the text of the Instrument that precedes this Exhibit.

**EXHIBIT E**

**MODIFICATIONS TO INSTRUMENT  
(Description of Ground Lease)**

Ground Lease dated as of October 1, 2006, by and between Triple S Investment Co., LLC, a Utah limited liability company, SCS Clocktower, LLC, a Utah limited liability company and CLPC Properties, LLC, a Utah limited liability company, as Ground Lessors, and Liberty Commons Associates, L.C., a Utah limited liability company, as Ground Lessee, a memorandum of which was recorded on October 23, 2006 with the Salt Lake City Recorder as Entry No. 9883961 in Book 9369 at Page 154.