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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

APR 9333-06

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Gary W. Ott

Recorder, Salt Lake County, UT

AFFILIATED FIRST TITLE

BY: eCASH, DEPUTY - EF 50 P.

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

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This **AMENDED AND RESTATED FEE ACCOMMODATION MULTIFAMILY DEED OF TRUST, ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND FIXTURE FILING** (this "**Instrument**") is made as of July 1, 2010, by **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, all having an address at c/o Cowboy Partners, L.C., 6440 S. Wasatch Boulevard, Suite 100 Salt Lake City, Utah 84121, collectively as grantor (collectively, the "**Owner**"), to **AFFILIATED FIRST TITLE INSURANCE AGENCY**, having an 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**").

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 Wells Fargo Bank, National Association, as trustee under the Original Indenture ("**Original Indenture Trustee**"). The proceeds of the Original Bonds were applied by Issuer to fund a loan (the "**Original Loan**") to Liberty Commons Associates, L.C. ("**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, as lessee, and Owner, as fee owner (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 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 Original 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. 9883963 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 Original 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 Fee Accommodation Instrument, it being agreed that the amendment and restatement of the Original Fee Instrument hereby shall neither impair the Indebtedness secured by the Original Fee Accommodation Instrument nor constitute a novation of the Original Fee Accommodation Instrument.

NOW THEREFORE:

Granting Clause. Owner, 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 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.

Owner represents and warrants that Owner is lawfully seized of the Land and, subject to the Ground Lease, the balance of the Mortgaged Property and has the right, power and authority to grant, convey and assign all right title and interest of Owner in and to the Mortgaged Property, and that the Mortgaged Property is unencumbered except for the Permitted Encumbrances. Owner covenants that Owner 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. Owner 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**” has the meaning set forth in the recitals of this Instrument, 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 recitals of this Instrument, together with their successors and assigns.

(g) “**Owner’s Organizational Documents**” means, collectively:

(A) with respect to Triple S Investment Co., LLC, a Utah limited liability company (i) the certificate of limited partnership, certificate or articles of formation or certificate or articles of organization of Owner filed with the Department of Commerce,

Division of Corporations and Commercial Code of the State of Utah on January 5, 1981, as the same may be amended and/or restated from time to time; and (ii) the partnership agreement, agreement of limited partnership, operating agreement or limited liability company agreement of Owner dated as of May 17, 2002, as the same may be amended and/or restated from time to time.

(B) with respect to SCS Clocktower, L.L.C., a Utah limited liability company (i) the certificate of limited partnership, certificate or articles of formation or certificate or articles of organization of Owner filed with the Department of Commerce, Division of Corporations and Commercial Code of the State of Utah on September 25, 2002, as the same may be amended and/or restated from time to time; and (ii) the partnership agreement, agreement of limited partnership, operating agreement or limited liability company agreement of Owner dated as of September 25, 2002, as the same may be amended and/or restated from time to time.

(C) with respect to CPLC Properties, L.C., a Utah limited liability company (i) the certificate of limited partnership, certificate or articles of formation or certificate or articles of organization of Owner filed with the Department of Commerce, Division of Corporations and Commercial Code of the State of Utah on October 4, 2006, as the same may be amended and/or restated from time to time; and (ii) the partnership agreement, agreement of limited partnership, operating agreement or limited liability company agreement of Owner dated as of October 4, 2006, 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 Owner or Guarantor (if Owner or Guarantor is a partnership or joint venture), (B) a manager's or managing member's interest in Owner or Guarantor or a Controlling Interest of the ownership or membership interests in Owner or Guarantor (if Owner or Guarantor is a limited liability company), (C) a Controlling Interest of any class of voting stock of Owner or Guarantor (if Owner or Guarantor is a corporation), (D) a trustee's interest or a Controlling Interest of the beneficial interests in Owner or Guarantor (if Owner or Guarantor is a trust), (E) a manager's or managing partner's interest or a Controlling Interest of the limited partnership interests in Owner or Guarantor (if Owner 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) "**Fixtures**" means all property owned by Owner 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.

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

(u) **“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.

(v) **“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.

(w) **“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 Owner, 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.

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

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

(z) “**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.

(aa) “**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.

(bb) “**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.

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

(dd) “**Initial Owners**” means, with respect to Owner 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 Owner or that entity.

(ee) “**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.

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

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

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

(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 Owner 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, the Leasehold 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 Owner 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**” “**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 Owner’s present and future right, title and interest in and to all of the following:

- (1) the Land;
- (2) the Improvements;
- (3) the Fixtures;
- (4) the Personalty;
- (5) all current and future rights, including air rights, development rights, zoning rights and other similar rights or interests, easements, tenements, rights-of-way, strips and gores of land, streets, alleys, roads, sewer rights, waters, watercourses, and appurtenances related to or benefiting the Land or the Improvements, or both, and all rights-of-way, streets, alleys and roads which may have been or may in the future be vacated;
- (6) all proceeds paid or to be paid by any insurer of the Land, the Improvements, the Fixtures, the Personalty or any other part of the Mortgaged Property, whether or not Owner 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 Owner 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 Owner 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 Ground Lease, the Leasehold 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 Owner related to the Mortgaged Property;
- (ii) Imposition Deposits;
- (iii) equipment, goods, supplies and inventory owned by Owner 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 Owner 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 Owner 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.

(eee) "**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 Owner hereby grants to Lender a security interest in the UCC Collateral. Owner 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 Owner, and Owner agrees, if Lender so requests, to execute and deliver to Lender such financing statements, continuation statements and amendments. Owner shall cause Borrower to 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, Owner 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 Owner gives at least thirty (30) days' prior written notice to Lender and subject to Section 21 hereof, Owner 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, Owner hereby authorizes and irrevocably appoints Lender and each of its officers attorneys-in-fact for Owner 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 Owner, without execution by Owner. Owner 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, Owner absolutely and unconditionally assigns and transfers to Lender all Rents. It is the intention of Owner 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 Owner. Promptly upon request by Lender, Owner agrees to execute and deliver such further assignments of Rents as Lender may from time to time require. Owner 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 Owner 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) Owner 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 Owner 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 Owner 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, Owner'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 Owner's cure of the Event of Default to the satisfaction of Lender). Owner 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 Owner 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 Owner 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. Owner shall not interfere with and shall cooperate with Lender's collection of such Rents.

(c) Owner represents and warrants to Lender that Owner 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 Owner has not performed, and Owner 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). Owner 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 Owner 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 Owner's solvency and without the necessity of giving prior notice (oral or written) to Owner, 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, Owner, 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, Owner 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 Owner and its representatives from the Mortgaged Property. Owner 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 Owner and only for those Rents actually received. Lender shall not be liable to Owner, anyone claiming under or through Owner or anyone having an interest in the Mortgaged Property, by reason of any act or omission of Lender under this Section 3, and Owner 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, Owner absolutely and unconditionally assigns and transfers to Lender all of Owner's right, title and interest in, to and under the Leases, including Owner'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 Owner to establish a present, absolute and irrevocable transfer and assignment to Lender of all of Owner's right, title and interest in, to and under the Leases. Owner 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 Owner 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, Owner shall have all rights, power and authority granted to Owner 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 Owner pursuant to the preceding sentence to exercise all rights, power and authority under Leases shall automatically terminate. Owner shall comply with and observe Owner's obligations under all Leases, including Owner's obligations pertaining to the maintenance and disposition of tenant security deposits.

(c) Owner 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.

(d) Upon delivery of notice by Lender to Owner 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 Owner 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) Intentionally deleted.

(f) Except for the Ground Lease, Owner shall not lease any portion of the Mortgaged Property except with the prior written consent of Lender.

(g) Owner 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. INTENTIONALLY DELETED.

6. **EXCULPATION.** In any action commenced to enforce the obligations of Owner to pay any obligations of Owner hereunder, the judgment shall not be enforceable personally against Owner, and the recourse of the Lender for the collection of such amounts shall be limited to actions against: (1) the Mortgaged Property; (2) the rents, profits, issues, products, and income from the Mortgaged Property; and (3) any other collateral held by Lender as security for Owner's obligations hereunder. The provisions of this Section shall not (i) constitute a waiver, release or impairment of any obligations evidenced or secured by this Instrument; (ii) impair the right of Lender to bring a foreclosure action, action for specific performance or other appropriate action or proceeding to enable Lender to enforce and realize upon this Instrument, the interest in the Mortgaged Property created hereby and any other collateral given to Lender in connection with the obligations of Owner or Borrower to Lender, and to name the Owner as a party defendant in any such action; (iii) constitute a waiver of any right which Lender may have under any

bankruptcy law to file a claim for the full amount of the indebtedness owing to Lender hereunder or by the Borrower under the Loan Documents or to require that the Mortgaged Property shall continue to secure all of the indebtedness owing to Lender hereunder in accordance with the Loan Documents and this Instrument; or (iv) exonerate or exculpate the Owner from personal liability for the payment of any deficiency, loss or damage suffered by Lender as a result of, or arising out of any fraud, material misrepresentation or waste on the part of Owner.

7. **INTENTIONALLY DELETED.**

8. **INTENTIONALLY DELETED.**

9. **APPLICATION OF PAYMENTS.** If at any time Lender receives, from Owner 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, Owner's obligations under this Instrument and the Note shall remain unchanged.

10. **COMPLIANCE WITH LAWS.** Owner shall comply, or shall cause Borrower to 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. Owner shall cause Borrower to 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. Owner 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, Owner shall not nor allow the Borrower to (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 Owner 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 Owner 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 Owner 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.

(b) Intentionally deleted.

14. BOOKS AND RECORDS; FINANCIAL REPORTING.

(a) Owner shall cause Borrower to 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) Owner shall furnish to Lender within 120 days after the end of each fiscal year of Owner, and at any other time within ten (10) days of Lender's request, a statement that identifies

all owners of any interest in Owner and any Controlling Entity and the interest held by each, if Owner or a Controlling Entity is a corporation, all officers and directors of Owner and such Controlling Entity, and if Owner or a Controlling Entity is a limited liability company, all managers who are not members.

(c) An individual having authority to bind Owner 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.

(d) Intentionally deleted.

(e) Intentionally deleted.

(f) Intentionally deleted.

15. TAXES; OPERATING EXPENSES.

(a) Subject to the provisions of Section 15(c) and Section 15(d), Owner 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), Owner shall cause Borrower to 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) Owner shall promptly deliver, or cause Borrower to promptly deliver, to Lender a copy of all notices of, and invoices for, all such taxes and operating expenses, and if Owner pays any such taxes or operating expenses directly, Owner shall furnish to Lender receipts evidencing such payments, on or before the date this Instrument requires such taxes or operating expenses to be paid, receipts evidencing that such payments were made.

(d) Owner, 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) Owner 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) Owner deposits or causes Borrower to deposit with Lender reserves sufficient to pay the contested Imposition, if requested by Lender, and (iv) Owner furnishes or cause Borrower to furnish 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 Owner to pay the contested Imposition.

(e) Owner shall promptly deliver, or cause Borrower to deliver, to Lender copies of all notices of, and invoices for, Impositions, and if Owner pays any Imposition directly, Owner

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 Owner 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, Owner 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.** Owner 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 Owner, 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 Owner to personal liability under the Note. Owner 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) Owner shall not commit waste or permit impairment or deterioration of the Mortgaged Property.

(b) Owner shall not abandon the Mortgaged Property.

(c) Owner shall cause Borrower to 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) Owner shall cause Borrower to 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) Intentionally deleted.

(f) Owner shall give notice to Lender of and, unless otherwise directed in writing by Lender, shall appear in and defend, or cause Borrower to appear in and defend, any action or proceeding purporting to affect the Mortgaged Property, Lender's security or Lender's rights under this Instrument. Owner 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) Intentionally deleted

18. **ENVIRONMENTAL HAZARDS.**

(a) Except for matters described in Section 18(b), Owner 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 Owner 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 Owner 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 Owner 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) Owner shall cause Borrower to 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. Owner 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) Intentionally deleted.

(e) Intentionally deleted.

(f) Intentionally deleted.

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

- (1) Owner has not at any time engaged in, caused or permitted any Prohibited Activities or Conditions;
- (2) to the best of Owner's knowledge, no Prohibited Activities or Conditions exist or have existed;
- (3) to the best of Owner's knowledge, 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;
- (4) Owner has complied with and will continue to comply or cause Borrower to comply with all Hazardous Materials Laws, including all requirements for notification regarding releases of Hazardous Materials;
- (5) to the best of Owner's knowledge, 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 Owner'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) Owner 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 Owner that is adjacent to the Mortgaged Property;

- (8) no prior Remedial Work (as defined below) has been undertaken, and, to the best of Owner's knowledge, no Remedial Work is ongoing, with respect to the Mortgaged Property during Owner's ownership thereof or, to the best of Owner's knowledge, at any time prior to Owner's ownership thereof.
- (9) Intentionally deleted.

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

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

- (1) Owner's discovery of any Prohibited Activity or Condition;
- (2) Owner'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 Owner that is adjacent to the Mortgaged Property;
- (3) Owner'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) Owner's discovery that any representation or warranty in this Section 18 has become untrue after the date of this Instrument; and
- (5) Owner's breach of any of its obligations under this Section 18.

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

(i) Owner shall cause Borrower to 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 Owner 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 Owner 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. Owner 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. Owner 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. Owner 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 Owner 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, Owner shall cause Borrower, 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, to begin performing the Remedial Work, and thereafter to diligently prosecute it to completion, and shall in any event complete the work by the time required by such Hazardous Materials Law. Owner shall cause Borrower to 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, Owner shall cause Borrower to 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, Owner shall cause Borrower to 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 Owner's and 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 Owner shall cause Borrower to reimburse Lender on demand for the cost of doing so. Any reimbursement due from Owner or Borrower to Lender shall become part of the Indebtedness as provided in Section 12.

(k) Owner shall comply, and shall cause Borrower to comply, with all Hazardous Materials Laws applicable to the Mortgaged Property. Without limiting the generality of the previous sentence, Owner shall (i) obtain and maintain, or cause Borrower to obtain and maintain, all Environmental Permits required by Hazardous Materials Laws and comply with all

conditions of such Environmental Permits; (ii) cooperate, cause Borrower to cooperate, with any inquiry by any Governmental Authority; and (iii) comply, cause Borrower to comply, with any governmental or judicial order that arises from any alleged Prohibited Activity or Condition.

(1) 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) Intentionally deleted.

(b) Intentionally deleted.

(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 Owner 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) Owner shall cause Borrower to 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) Owner shall cause Borrower to comply with all insurance requirements and shall not permit any condition to exist on the Mortgaged Property that would invalidate any part of the insurance coverage described above.

(f) Intentionally deleted.

(g) Intentionally deleted.

(h) Intentionally deleted.

(i) Intentionally deleted.

(j) Intentionally deleted.

(k) Owner further agrees that to the extent that Owner 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 Owner's purchase of such additional insurance, Owner shall cause to be delivered to Lender a duplicate original policy of insurance with respect to such policy. Any insurance proceeds payable to Owner 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.

20. CONDEMNATION.

(a) Owner 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**"). Owner shall appear in and prosecute or defend, or cause Borrower to appear in and prosecute or defend, any action or proceeding relating to any Condemnation unless otherwise directed by Lender in writing. Owner authorizes and appoints Lender as attorney-in-fact for Owner to commence, appear in and prosecute, in Lender's or Owner'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. As further security for the obligations of the Owner hereunder and the obligations of the Borrower under the Loan Documents, Owner hereby transfers and assigns to Lender all right, title and interest of Owner 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), as provided in the Leasehold 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 Owner is a limited partnership, a Transfer of (A) any general partnership interest, or (B) limited partnership interests in Owner that would cause the

Initial Owners of Owner to own less than a Controlling Interest of all limited partnership interests in Owner;

- (3) if Owner is a general partnership or a joint venture, a Transfer of any general partnership or joint venture interest in Owner;
- (4) if Owner is a limited liability company, (A) a Transfer of any membership interest in Owner which would cause the Initial Owners to own less than a Controlling Interest of all the membership interests in Owner, (B) a Transfer of any membership or other interest of a manager in Owner which results in a transfer of a controlling interest in such manager, or (C) a change of a nonmember manager;
- (5) if Owner is a corporation, (A) the Transfer of any voting stock in Owner which would cause the Initial Owners to own less than a Controlling Interest of any class of voting stock in Owner or (B) if the outstanding voting stock in Owner 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 Owner is a trust, (A) a Transfer of any beneficial interest in Owner which would cause the Initial Owners to own less than a Controlling Interest of all the beneficial interests in Owner; 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 Owner 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 Owner;
- (7) if Owner is a limited liability partnership, a Transfer of (A) any partnership interest in Owner which would cause the Initial Owners to own less than a Controlling Interest of all partnership interests in Owner, or (B) any partnership or other interest of a managing partner in Owner that results in a change of manager;
- (8) a Transfer of any interest in a Controlling Entity which, if such Controlling Entity were Owner, 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 Owner, or in any other entity which owns, directly or indirectly through one or more intermediate entities, an ownership interest in Owner (other than a Transfer of an aggregate beneficial ownership interest in Owner of 49% or less of such Guarantor's original ownership interest in Owner and which

does not otherwise result in a Transfer of such Guarantor's Controlling Interest in such intermediate entities or in the Owner);

- (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) Owner, (ii) any Guarantor that is a legal entity, or (iii) any legal entity holding, directly or indirectly, a Controlling Interest in Owner or in any Guarantor that is an entity;
- (12) a conversion of Owner 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 Owner (or of Guarantor, any general partner of Owner or other Controlling Entity, as applicable), by operation of law or otherwise;
- (13) notwithstanding anything to the contrary herein or in Owner's Organizational Documents, without the prior written consent of Lender, a Transfer or pledge of an interest in Owner or any partner or member of Owner (or any right to claim any tax credits which Owner may allocate to any partner or member of Owner) to Fannie Mae or the Federal Home Loan Mortgage Corporation;
- (14) 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 fee 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 Property or Lender's interest in the Mortgaged Property, and Owner pays to Lender, upon demand, all costs and expenses incurred by Lender in connection with reviewing Owner'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 Owner has actual or constructive notice of the existence of such lien; and
- (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 in Owner, or in any other entity which owns, directly or indirectly through one or more intermediate entities, an ownership interest in Owner, to (i) other members of any Owner; (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 Owner (or other intermediate entity), and after which Transfer, the transferor Guarantor shall maintain the same right and ability to manage and control Owner (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, Owner 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 Owner 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, Owner 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;
 - (B) the amount of Lender's out-of-pocket costs (including, without limitation, reasonable attorneys' fees) incurred in reviewing the Transfer request.
- (9) 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) any failure by Owner to maintain the insurance coverage required to be provided by Owner (to the extent not provided by Borrower) by Section 19;

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

(c) any Event of Default under Section 21;

(d) 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;

(e) any failure by Owner 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 Owner; provided, however, in the event that Owner 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;

(f) 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;

(g) the occurrence of a Bankruptcy Event;

(h) 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;

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

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

(k) (i) any breach of any Material Property Agreement by Owner or its officers, directors, employees, agents or tenants that continues beyond any applicable notice and cure period; or (ii) any failure by Owner 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;

(l) if Owner 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 Owner 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); or

(m) 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 Owner, 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 Owner 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. OWNER 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. Owner 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. Owner 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.

29. ESTOPPEL CERTIFICATE. Within 10 days after a request from Lender, Owner shall deliver to Lender a written statement, signed and acknowledged by Owner, certifying to Lender or any person designated by Lender, as of the date of such statement, (i) that this Instrument is unmodified and in full force and effect (or, if there have been modifications, that this Instrument is in full force and effect as modified and setting forth such modifications); (ii) that Owner is not in default in performing or observing any of the covenants or agreements contained in this Instrument (or, if Owner is in default, describing such default in reasonable detail); (iii) whether or not there are then existing any setoffs or defenses known to Owner against the enforcement of any right or remedy of Lender under this Instrument; and (iv) 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) Owner agrees that any controversy arising under or in relation to 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. Owner 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. Owner 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 Owner. 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, Owner will be given notice of the change.

33. **INTENTIONALLY DELETED].**

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 Owner. Owner 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 Owner, 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 Owner shall be solely that of creditor and debtor, respectively, and nothing contained in this Instrument shall create any other relationship between Lender and Owner.

(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 Owner for the payment of the Indebtedness, (ii) Owner 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 Owner 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) Owner 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. Owner 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. Owner 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) Owner 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. Owner hereby acknowledges and agrees that, unless Owner 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. Owner further agrees that, unless Bondholder Representative instructs Owner 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 Owner receives conflicting notices regarding the identity of the Servicer or any other subject, any such notice from Bondholder Representative shall govern.

(c) Owner 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 Owner 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. Owner 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. **INTENTIONALLY DELETED.**

42. **SUBROGATION.** If, and to the extent that, the proceeds of the Loan are used to pay, satisfy or discharge any obligation of Owner 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 Owner'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 Owner and the Secured Party shall be Lender; (b) the addresses of Owner 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 Owner; (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 Owner (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. Owner acknowledges that the power of sale granted in this Instrument may be exercised by Lender without prior judicial hearing. Owner has the right to bring an action to assert the non-existence of an Event of Default or any other defense of Owner 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 Owner 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.** Owner requests that copies of the notice of default and notice of sale be sent to him at Owner'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.

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.**

OWNER 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 OWNER 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

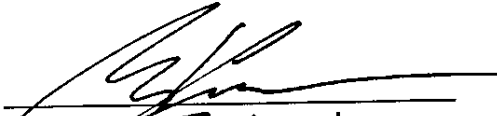
**RIGHT TO TRIAL BY JURY IS SEPARATELY GIVEN BY EACH PARTY,
KNOWINGLY AND VOLUNTARILY WITH THE BENEFIT OF COMPETENT LEGAL
COUNSEL.**

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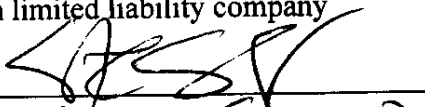
IN WITNESS WHEREOF, the undersigned has duly executed and delivered this Amended and Restated Multifamily Fee Accommodation Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing or caused this Amended and Restated Multifamily Fee Accommodation Deed of Trust, Assignment of Rents, Security 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.

OWNER:

TRIPLE S INVESTMENT CO., LLC,
a Utah limited liability company


By: 
Name: Boyd Anderson
Title: mgr

SCS CLOCKTOWER, L.L.C.,
a Utah limited liability company

By: 
Name: Scot C. Stafford
Title: mgr.

CPLC PROPERTIES, LLC,
a Utah limited liability company

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

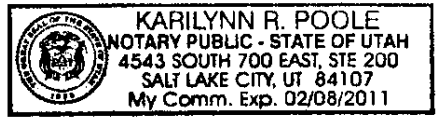
By: 
Name: Mark Cornelius
Title: v.p.

STATE OF UTAH)
)
COUNTY OF SALT LAKE)

On June 28th, 2010 before me, Karilynn R. Poole,
Notary Public, personally appeared Boyd Anderson,
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.

Karilynn R. Poole
Signature of Notary Public



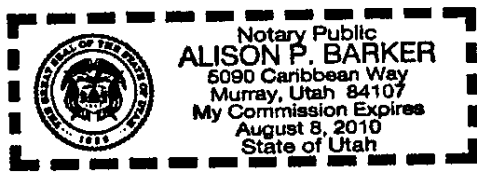
(Seal)

STATE OF UTAH)
)
COUNTY OF SALT LAKE)

On June 29th, 2010 before me, alison P. Barker,
Notary Public, personally appeared Bob Seltford,
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.

Alison P. Barker
Signature of Notary Public

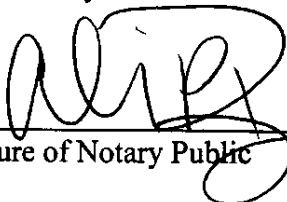


(Seal)

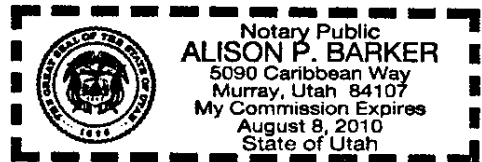
STATE OF UTAH)
)
COUNTY OF SALT LAKE)

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 of Notary Public



(Seal)

EXHIBIT A

DESCRIPTION OF THE LAND

(See Attached)

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:

47. **ACCOMMODATION INSTRUMENT.** Without limiting the provisions of Section 6 of this Instrument, Lender acknowledges and agrees that this Instrument is an accommodation only. Furthermore, notwithstanding anything to the contrary in this Instrument, neither Owner nor any elected official, officer, employee, attorney or other agent of Owner shall be personally liable for the payment of any sums required to be paid under this Instrument or under the Notes or other Loan Documents or any other agreement the obligations under which are secured by this Instrument. The liability of Owner or any elected official, officer, employee, attorney, or other agent of Owner for any failure to pay any amounts due hereunder shall be limited to, and be satisfied solely out of, the Mortgaged Property. Lender shall have the right, in the event of nonperformance or nonpayment of any obligation contained in or secured by this Instrument, to perform or pay or advance such obligation on Owner's behalf and include any amounts expended by Lender in such performance, payment or advance in the Indebtedness secured hereunder. If an Event of Default shall occur hereunder, Lender shall have the right to foreclose this Instrument and to include any such amounts in its credit bid at foreclosure, but Owner shall not be obligated to pay or reimburse any such amount or for any deficiency judgments a result of nonpayment of any such amount.

EXHIBIT C

FINANCING STATEMENT INFORMATION

1. Name and Address of Debtor: Triple S Investment Co., LLC
SCS Clocktower, L.L.C.,
CPLC Properties, 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 companies

Organizational I.D.#: Triple S Investment Co., LLC: 2109499-0160

SCS Clocktower, L.L.C.: 598021-0160

CPLC Properties, L.C.: 6348075-0160

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.