



W3289095

WHEN RECORDED MAIL TO:

Citibank, N.A.
Transaction and Asset Management Group/Post Closing
Citi Community Capital
3800 Citibank Center
Tampa, Florida 33610
Re: 25th and Quincy Apartments Deal ID No. 50008140

Tax ID: 01-059-0039
File Number: 150326-MCF

E# 3289095 PG 1 OF 65
Leann H. Kilts, WEBER COUNTY RECORDER
30-Jun-23 0127 PM FEE \$40.00 DEP CF
REC FOR: COTTONWOOD TITLE INSURANCE AGENCY,]
ELECTRONICALLY RECORDED

**FORWARD COMMITMENT FEE MULTIFAMILY DEED OF TRUST,
ASSIGNMENT OF RENTS,
SECURITY AGREEMENT AND FIXTURE FILING
(UTAH)**

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**FORWARD COMMITMENT FEE MULTIFAMILY DEED OF TRUST, ASSIGNMENT
OF RENTS, SECURITY AGREEMENT AND FIXTURE FILING
(UTAH)**

This **FORWARD COMMITMENT FEE MULTIFAMILY DEED OF TRUST, ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND FIXTURE FILING (UTAH)** (this “**Instrument**”) is dated for reference purposes only as of the 1st day of June, 2023, and will not be effective and binding on the parties hereto until the Closing Date (as hereinafter defined), by **JF Q25 PARTNERS, LLC**, a Utah limited liability company, whose address is c/o J. Fisher Company, 1216 W. Legacy Crossing Boulevard, Suite 140, Centerville, Utah 84014, as grantor (“**Grantor**”), to the **COTTONWOOD TITLE INSURANCE AGENCY**, having an address at 1996 East 6400 South, Suite 120, Murray, Utah 84121, as trustee (“**Trustee**”), for the benefit of **CITIBANK, N.A.**, a national banking association, having an address at 388 Greenwich Street, Trading 4th Floor, New York, New York 10013, as beneficiary, and its successors and assigns (“**Beneficiary**”). Grantor’s organizational identification number is 13291272-0160.

A. Grantor applied to Utah Housing Corporation, an independent body politic and corporate constituting a public corporation, organized and existing under the laws of the State of Utah (“**Governmental Lender**”), to issue its Multifamily Mortgage Revenue Note Series 2023 (25th and Quincy Apartments), and to use the proceeds thereof to make a loan (the “**Borrower Loan**”) to Grantor for the acquisition, construction, rehabilitation, development and/or equipping of a 176-unit multifamily rental housing project, located in the City of Ogden, Weber County, Utah, known or to be known as 25th and Quincy Apartments.

B. The Borrower Loan is evidenced by that certain Promissory Note (Borrower Note), dated as of the Closing Date, in the original maximum principal amount of \$27,550,000 (the “**Original Borrower Note**”), made by Grantor payable to the order of Governmental Lender, as endorsed and assigned to UIG BSPI Lender LLC, a Delaware limited liability company, in its capacity as funding lender (the “**Original Funding Lender**”), and that certain Borrower Loan Agreement dated as of the date hereof, by and between Governmental Lender and Grantor (the “**Borrower Loan Agreement**”). Grantor and Original Funding Lender have also entered into that certain Construction Disbursement Agreement, dated as of the Closing Date (the “**Construction Funding Agreement**”), which Construction Funding Agreement provides for the manner, procedures and conditions of disbursements under the Borrower Loan.

C. The Borrower Loan is secured by, among other things, that certain Construction Deed of Trust, With Absolute Assignment of Leases and Rents, Security Agreement and Fixture Filing, dated as of Closing Date, executed by Grantor for the benefit of Governmental Lender and assigned to Original Funding Lender, to be recorded concurrently herewith (the “**Original Security Instrument**”), which Original Security Instrument encumbers the Mortgaged Property (as hereinafter defined).

D. Original Funding Lender entered into that certain Funding Loan Agreement (the “**Funding Loan Agreement**”) dated as of the date hereof, by and among Original Funding Lender, U.S. Bank Trust Company, National Association, a national banking association (“**Fiscal Agent**”), as fiscal agent, and Governmental Lender, pursuant to which Original Funding Lender

has agreed to make a loan to Governmental Lender (the “**Funding Loan**”), the proceeds of which shall be used to make the Borrower Loan. The Original Borrower Note, the Original Security Instrument, the Borrower Loan Agreement and the Funding Loan Documents (as defined in the Funding Loan Agreement) except for the Unassigned Rights (as defined in the Funding Loan Agreement) are each being assigned by Governmental Lender to Original Funding Lender to secure the Funding Loan.

E. In connection with the Borrower Loan and the Funding Loan, Original Funding Lender has agreed to make a taxable loan to Grantor in the maximum principal amount of \$14,417,927 (the “**Original Taxable Loan**”), which Original Taxable Loan is evidenced by that certain Promissory Note (Construction Loan), dated as of the Closing Date, in the maximum principal amount of \$14,417,927 (the “**Original Taxable Note**”), and that certain Construction Loan Agreement (the “**Construction Loan Agreement**”), dated as of the Closing Date, between Grantor and the Original Funding Lender, and secured by, among other things, that certain Construction Deed of Trust, With Absolute Assignment of Leases and Rents, Security Agreement and Fixture Filing, dated as of the Closing Date (the “**Original Taxable Security Instrument**”), which Original Taxable Security Instrument encumbers the Project.

F. At the request of Grantor and Original Funding Lender, a certain Forward Purchase Agreement dated as of the date hereof (the “**Forward Purchase Agreement**”) was entered into by and among Grantor, Original Funding Lender and Beneficiary, pursuant to which Beneficiary agreed to acquire Original Funding Lender’s interests in the Funding Loan and Funding Loan Documents upon satisfaction of the terms and conditions set forth therein.

G. In order to assure performance by Grantor of its obligations under the Forward Purchase Agreement, Grantor has executed and delivered to Beneficiary a certain Promissory Note (Forward Commitment Fee) dated as of the date hereof (the “**Note**”), maturing on the Termination Date (as defined in the Forward Purchase Agreement) (the “**Maturity Date**”) and secured by this Instrument.

NOW THEREFORE:

Granting Clause. Grantor, 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 the City of Ogden, Weber 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 BENEFICIARY and its successors and assigns the repayment of the Indebtedness evidenced by the Note executed by Grantor and maturing on the Maturity Date, and all renewals, extensions and modifications of the Indebtedness, including, without limitation, the payment of all sums advanced by or on behalf of Beneficiary to protect the security of this Instrument under Section 12 and the performance of the covenants and agreements of Grantor contained in the Forward Commitment Fee Documents.

Grantor represents and warrants that Grantor is lawfully seized of the Mortgaged Property and has the right, power and authority to grant, convey and assign the Mortgaged Property, and that the Mortgaged Property is unencumbered except for the Permitted Encumbrances. Grantor covenants that Grantor 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. Grantor and Beneficiary 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) **“Affiliate”** means, as to any Person, any other Person that, directly or indirectly, is in Control of, is Controlled by or is under common Control with such Person.
- (b) **“Bankruptcy Event”** means any one or more of the following:
 - (i) (A) the commencement of a voluntary case under one or more of the Insolvency Laws by the Grantor; (B) the acknowledgment in writing by the Grantor that it is unable to pay its debts generally as they mature; (C) the making of a general assignment for the benefit of creditors by the Grantor; (D) the commencement of an involuntary case under one or more Insolvency Laws against the Grantor; or (E) the appointment of a receiver, liquidator, custodian, sequestrator, trustee or other similar officer who exercises control over the Grantor or any substantial part of the assets of the Grantor provided that any proceeding or case under (D) or (E) above is not dismissed within 90 days after filing;
 - (ii) Any Guarantor or any Affiliate of a Guarantor files an involuntary petition against Grantor under one or more of the Insolvency Laws; or
 - (iii) Both (A) an involuntary petition under any one or more of the Insolvency Laws is filed against Grantor or Grantor directly or indirectly becomes the subject of any bankruptcy, insolvency, reorganization, arrangement, readjustment of debt, dissolution, liquidation or similar proceeding relating to it under the laws of any jurisdiction, or in equity, and (B) Grantor or any Affiliate of Grantor has acted in concert or conspired with such creditors of Grantor (other than Beneficiary) to cause the filing thereof with the intent to interfere with enforcement rights of Beneficiary after the occurrence of an Event of Default.

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

(d) “**Beneficiary Parties**” means Beneficiary, any Servicer and their respective successors and assigns, together with any lawful owner, holder or pledgee of the Note.

(e) “**Business Day**” means any day other than (i) a Saturday or a Sunday, or (ii) a day on which federally insured depository institutions in New York, New York are authorized or obligated by law, regulation, governmental decree or executive order to be closed.

(f) “**Closing Date**” has the meaning ascribed thereto in the Borrower Loan Agreement.

(g) “**Control**” means, with respect to any Person, either (i) ownership directly or through other entities of more than 50% of all beneficial equity interest in such Person, or (ii) the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such Person, through the ownership of voting securities, by contract or otherwise, including the power to elect a majority of the directors of a corporation, to select the managing partner of a partnership, or otherwise to have the power independently to remove and then select a majority of those individuals exercising managerial authority over an entity.

(h) “**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.

(i) “**Environmental Reports**” means those certain environmental reports obtained by, and approved by Beneficiary in connection with the closing of the Borrower Loan.

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

(j) “**Fixtures**” means all property which is so attached to the Land or the Improvements as to constitute a fixture under applicable law, including: machinery, equipment, engines, boilers, incinerators, installed building materials; systems and equipment for the purpose of supplying or distributing heating, cooling, electricity, gas, water, air, or light; antennas, cable, wiring and conduits used in connection with radio, television, security, fire prevention, or fire detection or otherwise used to carry electronic signals; telephone systems and equipment; elevators and related machinery and equipment; fire detection, prevention and extinguishing systems and apparatus; security and access control systems and apparatus; plumbing systems; water heaters, ranges, stoves, microwave ovens, refrigerators, dishwashers, garbage disposers, washers, dryers and other appliances; light fixtures, awnings, storm windows and storm doors; pictures, screens, blinds, shades, curtains and curtain rods; mirrors; cabinets, paneling, rugs and

floor and wall coverings; fences, trees and plants; swimming pools; and exercise equipment.

(k) **“Forward Commitment Fee Documents”** means the Note, this Instrument, the Forward Purchase Agreement, and any other documents or agreements entered into in connection therewith.

(l) **“Forward Purchase Agreement”** means that certain Forward Purchase Agreement by and among Original Funding Lender, Beneficiary, and Grantor, dated as of the date hereof, pursuant to which Beneficiary has agreed to purchase the Borrower Loan and Funding Loan from Original Funding Lender at Conversion (as defined therein) on the terms and conditions set forth therein.

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

(n) **“Governmental Lender”** means Utah Housing Corporation, an independent body politic and corporate constituting a public corporation, organized and existing under the laws of the State of Utah.

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

(p) **“Grantor’s Organizational Documents”** means, collectively: (i) the certificate of limited partnership, certificate or articles of formation or certificate or articles of organization of Grantor filed with the Office of the Secretary of State of Utah on March 3, 2023, as the same may be amended and/or restated from time to time; and (ii) the Amended and Restated Operating Agreement of Grantor, dated as of June 30, 2023, as the same may be amended and/or restated from time to time.

(q) **“Guarantor”** means, F4 Holdings, LLC, a Utah limited liability company, and/or any other person or entity which may hereafter become a guarantor of any of Grantor’s obligations under the Forward Commitment Fee Documents.

(r) **“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.

(s) **“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 Grantor 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 Substances Control Act, 15 U.S.C. Section 2601, et seq., the Clean Water Act, 33 U.S.C. Section 1251, et seq., 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.

(t) **“Impositions”** shall have the meaning ascribed thereto in Section 15(d).

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

(v) **“Indebtedness”** means collectively, the principal of, interest on, and all other amounts due at any time under, the Note, this Instrument or any other Forward Commitment Fee Document, including any 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 Beneficiary on behalf of Grantor to Beneficiary, or any other party to the Forward Commitment Fee Documents or other amounts relating to the Forward Commitment Fee Documents which are paid by Beneficiary.

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

(x) **“Insolvency Laws”** means the United States Bankruptcy Code, 11 U.S.C. § 101, et seq., together with any other federal or state law affecting debtor and creditor rights or relating to the bankruptcy, insolvency, reorganization, arrangement, readjustment of debt, dissolution, liquidation or similar proceeding, as amended from time to time, to the extent applicable to the Grantor.

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

(z) “**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 Grantor is a cooperative housing corporation), and all modifications, extensions or renewals.

(aa) “**Material Property Agreements**” means any agreement which, in Beneficiary’s sole discretion, acting in good faith, materially affects the Mortgaged Property, the use thereof or otherwise materially affects the rights of Grantor 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, (v) any material lease of all or any portion of the Mortgaged Property, (vi) any operating agreements relating to the Land or the Improvements and (vii) any regulatory agreements, declarations, land use restriction agreements or similar instruments affecting the Mortgaged Property including the operation or use thereof.

(bb) “**Maturity Date**” has the meaning ascribed thereto in the recitals to this Instrument.

(cc) “**MMP**” means an operations and maintenance plan, moisture management program and/or microbial operations and maintenance program approved by Beneficiary 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 Beneficiary, 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.

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

(ee) “**Mortgaged Property**” means all of Grantor’s present and future right, title and interest in and to all of the following:

- (i) the Land;
- (ii) the Improvements;
- (iii) the Fixtures;
- (iv) the Personality;

- (v) 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;
- (vi) all proceeds paid or to be paid by any insurer of the Land, the Improvements, the Fixtures, the Personality or any other part of the Mortgaged Property, whether or not Grantor obtained the insurance pursuant to Beneficiary's requirements;
- (vii) 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 Personality 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 Personality or any other part of the Mortgaged Property under the power of eminent domain or otherwise and including any conveyance in lieu thereof;
- (viii) all contracts, options and other agreements for the sale of the Land, the Improvements, the Fixtures, the Personality or any other part of the Mortgaged Property entered into by Grantor now or in the future, including cash or securities deposited to secure performance by parties of their obligations;
- (ix) all Rents and Leases;
- (x) 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 Grantor is a cooperative housing corporation, maintenance charges or assessments payable by shareholders or residents;
- (xi) 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);
- (xii) 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;

- (xiii) 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;
- (xiv) 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
- (xv) 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, and all other cash and non-cash proceeds and products of any of the foregoing.

(ff) **“Note”** means the Promissory Note (Forward Commitment Fee), dated as of the date hereof, executed by Grantor in favor of Beneficiary, including all schedules, riders, allonges and addenda, as the same may be amended, modified, or supplemented from time to time.

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

(hh) **“Permitted Debt”** means any debt of Grantor secured by a deed of trust or mortgage recorded prior to this Instrument of which Beneficiary has knowledge (including, without limitation, the loan secured by the Senior Instrument and the Subordinate Debt). Beneficiary will be presumed to have knowledge of any deed of trust or mortgage listed in the title insurance policy issued to Governmental Lender and/or Original Funding Lender as of the date of recordation of this Instrument.

(ii) **“Permitted Encumbrances”** means any easements, encumbrances or restrictions listed on the schedule of exceptions in the title insurance policy issued to Governmental Lender and/or Original Funding Lender as of the date of recordation of this Instrument, together with the liens securing the Permitted Debt, any extended low-income housing commitment (as such term is defined in Section 42(h)(6)(B) of the Internal Revenue Code) and the Regulatory Agreement (defined herein), customary easements entered into by Grantor in connection with the development and operation of the Property which Beneficiary has determined would have no material adverse effect on the use of the, documents required to be recorded by applicable law which have no material adverse effect on the use or value of the Property and are otherwise acceptable to Beneficiary, and apartment leases executed in connection with the terms of the Project, if applicable.

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

(kk) **“Person”** means any individual, corporation, limited liability company, partnership, joint venture, estate, trust, unincorporated association, any federal, state, county or municipal government or any bureau, department or agency thereof and any fiduciary acting in such capacity on behalf of any of the foregoing.

(ll) **“Personalty”** means all:

- (i) accounts (including deposit accounts) of Grantor related to the Mortgaged Property;
- (ii) equipment, goods, supplies and inventory owned by Grantor 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);
- (iii) other tangible personal property owned by Grantor 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;
- (iv) any operating agreements relating to the Land or the Improvements;
- (v) any surveys, plans and specifications and contracts for architectural, engineering and construction services relating to the Land or the Improvements;
- (vi) 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
- (vii) any rights of Grantor in or under letters of credit.

(mm) **“Project”** means that 176-unit multifamily project known as 25th and Quincy Apartments and located in the City of Ogden, Weber County, Utah.

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

(oo) **“Regulatory Agreement”** means the Tax Regulatory Agreement, dated as of the date hereof, by and among Governmental Lender, Fiscal Agent and Grantor, 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.

(pp) **“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.

(qq) **“Senior Beneficiary”** means Original Funding Lender together with the holder(s) of any other Permitted Debt.

(rr) **“Senior Instrument”** means, collectively, the Original Security Instrument, and the Original Taxable Security Instrument.

(ss) **“Servicer”** means the servicing party that is designated by Beneficiary to service the Indebtedness, together with its successors in such capacity.

(tt) **“Subordinate Debt”** has the meaning ascribed thereto in the Borrower Loan Agreement.

(uu) **“Taxes”** means, collectively, 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.

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

(ww) **“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 Grantor hereby grants to Beneficiary a security interest in the UCC Collateral. Grantor hereby authorizes Beneficiary to prepare and file any and all financing statements, continuation statements and financing statement amendments, in such form as Beneficiary may require to perfect or continue the perfection of this security interest without execution by Grantor. Grantor shall pay all filing costs and all costs and expenses of any record searches for financing

statements and/or amendments that Beneficiary may require. Without the prior written consent of Beneficiary, Grantor shall not create or permit to exist any other lien or security interest in any of the UCC Collateral except for the Permitted Encumbrances. If an Event of Default has occurred and is continuing, Beneficiary 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, Beneficiary may exercise its remedies against the UCC Collateral separately or together, and in any order, without in any way affecting the availability of Beneficiary'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 Grantor gives at least thirty (30) days' prior written notice to Beneficiary and subject to Section 21 hereof, Grantor 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 Beneficiary on the date hereof. Without limiting the foregoing, Grantor hereby authorizes and irrevocably appoints Beneficiary and each of its officers attorneys-in-fact for Grantor to execute, deliver, and file, as applicable, such financing statements, continuation statements or amendments deemed necessary by Beneficiary in its sole discretion for and on behalf of Grantor, without execution by Grantor. Grantor shall also execute and deliver to Beneficiary modifications or supplements of this Instrument as Beneficiary may require in connection with any change described in this Section.

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

(a) Subject to the rights of Senior Beneficiary, as part of the consideration for the Indebtedness, Grantor absolutely and unconditionally assigns and transfers to Beneficiary all Rents. It is the intention of Grantor to establish a present, absolute and irrevocable transfer and assignment to Beneficiary of all Rents and to authorize and empower Beneficiary to collect and receive all Rents without the necessity of further action on the part of Grantor. Promptly upon request by Beneficiary, Grantor agrees to execute and deliver such further assignments of Rents as Beneficiary may from time to time require. Grantor and Beneficiary intend this assignment of Rents to be immediately effective and to constitute an absolute present assignment and not an assignment for additional security only, subject to the rights of Senior Beneficiary and any other holder of Permitted Debt. 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 Grantor that in this circumstance this Instrument create and perfect a lien on Rents in favor of Beneficiary, which lien shall be effective as of the date of this Instrument.

(b) Subject to the rights of Senior Beneficiary, Grantor authorizes Beneficiary to collect, sue for and compromise Rents and directs each tenant of the Mortgaged Property to pay all Rents to, or as directed by, Beneficiary. However, until the occurrence of an Event of Default, Beneficiary hereby grants to Grantor a revocable license to collect and receive all Rents, to hold all Rents in trust for the benefit of Beneficiary 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 Forward Commitment Fee Documents, and to pay the current costs and expenses of managing, operating and maintaining the Mortgaged Property, including utilities, Taxes and insurance premiums, 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 Grantor free and clear of, and released from, Beneficiary's rights with respect to Rents under this Instrument. Upon the occurrence of an Event of Default, and without the necessity of Beneficiary entering upon and taking and maintaining control of the Mortgaged Property directly, or by a receiver, Grantor's license to collect Rents shall automatically terminate and Beneficiary 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 Grantor's cure of the Event of Default to the satisfaction of Beneficiary). Grantor shall pay to Beneficiary upon demand all Rents to which Beneficiary is entitled. At any time on or after the occurrence of an Event of Default, Beneficiary may give, and Grantor hereby irrevocably authorizes Beneficiary to give, notice to all tenants of the Mortgaged Property instructing them to pay all Rents to Beneficiary, no tenant shall be obligated to inquire further as to the right of Beneficiary to collect Rents, and no tenant shall be obligated to pay to Grantor any amounts which are actually paid to Beneficiary in response to such a notice. Any such notice by Beneficiary shall be delivered to each tenant personally, by mail or by delivering such demand to each rental unit. Grantor shall not interfere with and shall cooperate with Beneficiary's collection of such Rents.

(c) Grantor represents and warrants to Beneficiary that Grantor has not executed any prior assignment of Rents (other than in connection with the Permitted Debt), that Grantor has not performed, and Grantor covenants and agrees that it will not perform, any acts and has not executed, and shall not execute, any instrument which would prevent Beneficiary 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). Grantor 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, Beneficiary may, subject to the rights of the Senior Beneficiary, but shall in no event be required to, regardless of the adequacy of Beneficiary's security or the solvency of Grantor 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 Beneficiary 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 Beneficiary in its discretion may deem necessary or desirable. Alternatively, if an Event of Default has occurred and is continuing, regardless of the adequacy of Beneficiary's security, without regard to Grantor's solvency and without the necessity of giving prior notice (oral or written) to Grantor, Beneficiary 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 Beneficiary 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, Grantor, 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. Beneficiary 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 Beneficiary's entering upon and taking possession and control of the Mortgaged Property, Grantor shall surrender possession of the Mortgaged Property to Beneficiary or the receiver, as the case may be, and shall deliver to Beneficiary 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 Beneficiary takes possession and control of the Mortgaged Property, Beneficiary may exclude Grantor and its representatives from the Mortgaged Property. Grantor acknowledges and agrees that the exercise by Beneficiary of any of the rights conferred under this Section 3 shall not be construed to make Beneficiary a mortgagee-in-possession of the Mortgaged Property so long as Beneficiary has not itself entered into actual possession of the Land and Improvements.

(e) If Beneficiary enters the Mortgaged Property, Beneficiary shall be liable to account only to Grantor and only for those Rents actually received. Beneficiary shall not be liable to Grantor, anyone claiming under or through Grantor or anyone having an interest in the Mortgaged Property, by reason of any act or omission of Beneficiary under this Section 3, and Grantor hereby releases and discharges Beneficiary from any such liability to the fullest extent permitted by law, except for the gross negligence or willful misconduct of Beneficiary 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 Beneficiary 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 Beneficiary 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 Beneficiary 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, Grantor absolutely and unconditionally assigns and transfers to Beneficiary all of Grantor's right, title and interest in, to and under the Leases, including Grantor'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 Grantor to establish a present, absolute and irrevocable transfer and assignment to Beneficiary of all of Grantor's right, title and interest in, to and under the Leases. Grantor and Beneficiary 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, subject to the rights of Senior Beneficiary. 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 Grantor that in this circumstance this Instrument create and perfect a lien on the Leases in favor of Beneficiary, which lien shall be effective as of the date of this Instrument.

(b) Unless an Event of Default has occurred and is continuing, Grantor shall have all rights, power and authority granted to Grantor 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 Grantor pursuant to the preceding sentence to exercise all rights, power and authority under Leases shall automatically terminate. Grantor shall comply with and observe Grantor's obligations under all Leases, including Grantor's obligations pertaining to the maintenance and disposition of tenant security deposits.

(c) Grantor acknowledges and agrees that the exercise by Beneficiary, either directly or by a receiver, of any of the rights conferred under this Section 4 shall not be construed to make Beneficiary a mortgagee-in-possession of the Mortgaged Property so long as Beneficiary has not itself entered into actual possession of the Land and the Improvements. The acceptance by Beneficiary of the assignment of the Leases pursuant to Section 4(a) shall not at any time or in any event obligate Beneficiary to take any action under this Instrument or to expend any money or to incur any expenses. Beneficiary 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 Beneficiary. Prior to Beneficiary's actual entry into and taking possession of the Mortgaged Property, Beneficiary shall not (i) be obligated to perform any of the terms, covenants and conditions contained in any Lease (or otherwise have any obligation with respect to any Lease); (ii) be obligated to appear in or defend any action or proceeding relating to the Lease or the Mortgaged Property; or (iii) be responsible for the operation, control, care, management or repair of the Mortgaged Property or any portion of the Mortgaged Property. The execution of this Instrument by Grantor shall constitute

conclusive evidence that all responsibility for the operation, control, care, management and repair of the Mortgaged Property is and shall be that of Grantor, prior to such actual entry and taking of possession.

(d) Upon delivery of notice by Beneficiary to Grantor of Beneficiary's exercise of Beneficiary's rights under this Section 4 at any time during the continuance of an Event of Default, and without the necessity of Beneficiary 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, Beneficiary immediately shall have all rights, powers and authority granted to Grantor under any Lease, subject to the rights of Senior Beneficiary, including the right, power and authority to modify the terms of any such Lease, or extend or terminate any such Lease.

(e) Grantor shall, promptly upon Beneficiary's request, deliver to Beneficiary an executed copy of each residential Lease then in effect. All Leases for residential dwelling units shall (i) be on forms approved by Beneficiary, (ii) be for initial terms of at least six (6) months and not more than two (2) years, (iii) not include options to purchase, (iv) be legally valid, binding, and enforceable obligations of the tenants, (v) contain language expressly stating that such Lease is subordinate to the lien of this Instrument and (vi) comply with all applicable laws.

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

(g) Grantor shall not receive or accept Rent under any Lease (whether residential or non-residential) for more than two months in advance (other than a security deposit not in excess of one month's rent).

5. PAYMENT OF INDEBTEDNESS; PERFORMANCE UNDER FORWARD COMMITMENT FEE DOCUMENTS. Grantor shall pay the Indebtedness when due in accordance with the terms of the Note and the other Forward Commitment Fee Documents and shall perform, observe and comply with all other provisions of the Note and the other Forward Commitment Fee Documents.

6. RESERVED.

7. RESERVED.

8. RESERVED.

9. APPLICATION OF PAYMENTS. If at any time Beneficiary receives, from Grantor or otherwise, any amount applicable to the Indebtedness which is less than all amounts due and payable at such time, then Beneficiary may apply that payment to amounts then due and payable in any manner and in any order determined by Beneficiary, in Beneficiary's discretion. Neither Beneficiary's acceptance of an amount that is less than all amounts then due and payable nor Beneficiary'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, Grantor's obligations under this Instrument and the Note shall remain unchanged.

10. COMPLIANCE WITH LAWS. Grantor shall comply with all laws, ordinances, regulations and requirements of any Governmental Authority and all recorded lawful covenants and agreements relating to or affecting the Mortgaged Property, including all laws, ordinances, regulations, requirements and covenants pertaining to health and safety, construction of improvements on the Mortgaged Property, fair housing, disability accommodation, zoning and land use, and Leases. Grantor also shall comply with all applicable laws that pertain to the maintenance and disposition of tenant security deposits. Grantor shall at all times maintain records sufficient to demonstrate compliance with the provisions of this Section 10. Grantor shall take appropriate measures to prevent, and shall not engage in or knowingly permit, any illegal activities at the Mortgaged Property that could endanger tenants or visitors, result in damage to the Mortgaged Property, result in forfeiture of the Mortgaged Property, or otherwise materially impair the lien created by this Instrument or Beneficiary's interest in the Mortgaged Property. Grantor represents and warrants to Beneficiary 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, Grantor shall not (a) allow changes in the use for which all or any part of the Mortgaged Property is being used at the time this Instrument was executed, except for any change in use approved by Beneficiary, (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 Beneficiary.

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

(a) If Grantor fails to perform any of its obligations under this Instrument or any other Forward Commitment Fee 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, Beneficiary's security or Beneficiary'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 Beneficiary at Beneficiary's option may make such appearances, file such documents, disburse such sums and take such actions as Beneficiary deems necessary to perform such obligations of Grantor and to protect Beneficiary'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 (specifically including, without limitation, flood insurance if required by Section 19), and (iv) payment of amounts which Grantor has failed to pay under Sections 15 and 17.

(b) Any amounts disbursed by Beneficiary 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) If the Beneficiary shall elect to pay any sum due with reference to the Project or the Mortgaged Property, the Beneficiary may do so in reliance on any bill, statement or assessment procured from the appropriate Governmental Authority or other issuer thereof without inquiring into the accuracy or validity thereof. Similarly, in making any payments to protect the security intended to be created by this Instrument and/or the other Forward Commitment Fee Documents, the Beneficiary shall not be bound to inquire into the validity of any apparent or threatened adverse title, lien, encumbrance, claim or charge before making an advance for the purpose of preventing or removing the same.

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

13. INSPECTION.

(a) Beneficiary and its agents, representatives, and designees may make or cause to be made entries upon and inspections of the Mortgaged Property (including environmental inspections and tests to the extent permitted under Section 18) during normal business hours, or at any other reasonable time, upon reasonable notice to Grantor if the inspection is to include occupied residential units (which notice need not be in writing). Notice to Grantor shall not be required in the case of an emergency, as

determined in Beneficiary's discretion, or when an Event of Default has occurred and is continuing.

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

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

14. BOOKS AND RECORDS; FINANCIAL REPORTING.

(a) Grantor shall keep and maintain at all times at the Mortgaged Property or the management agent's offices, and upon Beneficiary'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 Beneficiary upon reasonable advance oral notice.

(b) Grantor shall furnish to Beneficiary all of the following:

(i) (1) except as provided in clause (2) below, within 45 days after the end of each fiscal quarter of Grantor, a statement of income and

expenses for Grantor's operation of the Mortgaged Property on a year-to-date basis as of the end of each fiscal quarter, (2) within 120 days after the end of each fiscal year of Grantor, (A) a statement of income and expenses for Grantor's operation of the Mortgaged Property for such fiscal year, (B) a statement of changes in financial position of Grantor relating to the Mortgaged Property for such fiscal year, and (C) when requested by Beneficiary, a balance sheet showing all assets and liabilities of Grantor relating to the Mortgaged Property as of the end of such fiscal year; and (3) any of the foregoing at any other time upon Beneficiary's request;

- (ii) within 45 days after the end of each fiscal quarter of Grantor, and at any other time upon Beneficiary's request, a rent schedule for the Mortgaged Property showing the name of each tenant, and for each tenant, the space occupied, the lease expiration date, the rent payable for the current month, the date through which rent has been paid, and any related information requested by Beneficiary;
- (iii) within 120 days after the end of each fiscal year of Grantor, and at any other time upon Beneficiary's request, an accounting of all security deposits held pursuant to all Leases, including the name of the institution (if any) and the names and identification numbers of the accounts (if any) in which such security deposits are held and the name of the person to contact at such financial institution, along with any authority or release necessary for Beneficiary to access information regarding such accounts;
- (iv) within 120 days after the end of each fiscal year of Grantor, and at any other time upon Beneficiary's request, a statement that identifies all owners of any interest in Grantor and the interest held by each, if Grantor is a corporation, all officers and directors of Grantor, and if Grantor is a limited liability company, all managers who are not members;
- (v) upon Beneficiary's request, a monthly property management report for the Mortgaged Property, showing the number of inquiries made and rental applications received from tenants or prospective tenants and deposits received from tenants and any other information requested by Beneficiary;
- (vi) upon Beneficiary's request, a balance sheet, a statement of income and expenses for Grantor and a statement of changes in financial position of Grantor for Grantor's most recent fiscal year;
- (vii) annually, if applicable, within 60 days of the date required for submission by the agency in the Property Jurisdiction responsible

for monitoring the low income housing tax credit program, a low income housing tax credit compliance report in form and substance acceptable to Beneficiary (provided Beneficiary shall not require compliance information beyond that required by the monitoring agency); and

(viii) if required by Beneficiary, within 30 days of the end of each calendar month, a monthly statement of income and expenses for such calendar month on a year-to-date basis for Grantor's operation of the Mortgaged Property.

(c) Each of the statements, schedules and reports required by Section 14(b) shall be certified to be complete and accurate by an individual having authority to bind Grantor and shall be in such form and contain such detail as Beneficiary may require. Beneficiary also may require that any statements, schedules or reports be audited at Grantor's expense by independent certified public accountants acceptable to Beneficiary.

(d) If Grantor fails to provide in a timely manner the statements, schedules and reports required by Section 14(b), Beneficiary shall give Grantor written notice specifying the statements, schedules and reports required by Section 14(b) that Grantor has failed to provide. If Grantor has not provided the required statements, schedules and/or reports within ten (10) days following such notice, Beneficiary shall have the right to have Grantor's books and records audited, at Grantor's expense, by independent certified public accountants selected by Beneficiary in order to obtain such statements, schedules and reports, and all related costs and expenses of Beneficiary shall become immediately due and payable and shall become an additional part of the Indebtedness as provided in Section 12.

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

(f) Grantor authorizes Beneficiary to obtain a credit report on Grantor at any time.

15. TAXES; OPERATING EXPENSES.

(a) Subject to the provisions of Section 15(c) and Section 15(d), Grantor 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), Grantor shall pay (i) the expenses of operating, managing, maintaining and repairing the Mortgaged Property (including insurance premiums, utilities, repairs and replacements) before the last date upon which each such payment may be made without any penalty or interest charge being added, and (ii) insurance premiums at least 30 days prior to the expiration date of each policy of insurance, unless applicable law specifies some lesser period.

(c) [Reserved].

(d) Grantor, at its own expense, may contest by appropriate legal proceedings, conducted diligently and in good faith, the amount or validity of any Taxes or other utility or similar charges that could become a lien on the Mortgaged Property ("Impositions"), other than insurance premiums, if (i) Grantor notifies Beneficiary of the commencement or expected commencement of such proceedings, (ii) the Mortgaged Property is not in danger of being sold or forfeited, (iii) Grantor deposits with Beneficiary reserves sufficient to pay the contested Imposition, if requested by Beneficiary, and (iv) Grantor furnishes whatever additional security is required in the proceedings or is requested by Beneficiary, which may include the delivery to Beneficiary of the reserves established by Grantor to pay the contested Imposition.

(e) Grantor shall promptly deliver to Beneficiary copies of all notices of, and invoices for, Impositions, and if Grantor pays any Imposition directly, Grantor shall promptly furnish to Beneficiary 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 Grantor to Beneficiary pursuant to this Instrument or any of the Forward Commitment Fee Documents shall be free and clear of any and all tax liabilities whatsoever (other than United States federal income taxation payable by Beneficiary) and, to the extent Beneficiary is required to pay any such tax liabilities, Grantor shall reimburse Beneficiary in respect of any such payment of taxes and, immediately upon request from Beneficiary, shall deliver to Beneficiary copies of receipts evidencing the payment of such taxes.

16. LIENS; ENCUMBRANCES. Grantor 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 Grantor, 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 Grantor to personal liability under the Note. Grantor shall maintain the lien created by this Instrument as a 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) Grantor shall not commit waste or permit impairment or deterioration of the Mortgaged Property.

(b) Grantor shall not abandon the Mortgaged Property.

(c) Grantor shall restore or repair promptly, in a good and workmanlike manner, any damaged part of the Mortgaged Property to the equivalent of its original condition, or such other condition as Beneficiary may approve in writing, whether or not

insurance proceeds or condemnation awards are available to cover any costs of such restoration or repair.

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

(e) Grantor shall provide for professional management of the Mortgaged Property by a residential rental property manager satisfactory to Beneficiary at all times, under a contract approved by Beneficiary, in writing, which contract must be terminable upon not more than thirty (30) days' notice without the necessity of establishing cause and without payment of a penalty or termination fee by Grantor or its successors. There shall be no change in the property manager or any contract for the management of the Mortgaged Property without Beneficiary's prior written approval. Beneficiary shall have the right to require that Grantor and any new property manager enter into an Assignment of Management Agreement on a form approved by Beneficiary. If required by Beneficiary (whether before or after an Event of Default), Grantor will cause any Affiliate of Grantor to whom fees are payable for the management of the Mortgaged Property to enter into an agreement with Beneficiary, in a form approved by Beneficiary, providing for subordination of those fees and such other provisions as Beneficiary may require.

(f) Grantor shall give notice to Beneficiary of and, unless otherwise directed in writing by Beneficiary, shall appear in and defend any action or proceeding purporting to affect the Mortgaged Property, Beneficiary's security or Beneficiary's rights under this Instrument. Grantor 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 Personality and (ii) repairs and replacements in connection with making an individual unit ready for a new occupant.

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

18. ENVIRONMENTAL HAZARDS.

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

(i) 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 Grantor that is adjacent to the Mortgaged Property;

- (ii) 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);
- (iii) 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 Grantor that is adjacent to the Mortgaged Property, which occurrence or condition is or may be in violation of Hazardous Materials Laws;
- (iv) any violation of or noncompliance with the terms of any Environmental Permit with respect to the Mortgaged Property or any property of Grantor that is adjacent to the Mortgaged Property;
- (v) the imposition of any environmental lien against the Mortgaged Property; or
- (vi) any violation or noncompliance with the terms of any O&M Program.

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

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

(e) Without limitation of the foregoing, (i) Grantor hereby agrees to implement and maintain during the entire term of the Indebtedness the O&M Program(s), and (ii) if asbestos-containing materials are found to exist at the Mortgaged Property, the O&M Program with respect thereto shall be undertaken consistent with the Guidelines for Controlling Asbestos-Containing Materials in Buildings (USEPA, 1985) and other relevant guidelines and applicable Hazardous Materials Laws.

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

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

- (i) Grantor has not at any time engaged in, caused or permitted any Prohibited Activities or Conditions;
- (ii) to the best of Grantor's knowledge after reasonable and diligent inquiry, no Prohibited Activities or Conditions exist or have existed, and Grantor has provided Beneficiary with copies of all reports and information acquired in such inquiries;
- (iii) the Mortgaged Property does not now contain any underground storage tanks and, to the best of Grantor's knowledge, the Mortgaged Property has not contained any underground storage tanks in the past. If there is an underground storage tank located on the Mortgaged Property that has been disclosed in the Environmental Reports, that tank complies with all requirements of Hazardous Materials Laws;

- (iv) Grantor has complied with and will continue to comply with all Hazardous Materials Laws, including all requirements for notification regarding releases of Hazardous Materials. Without limiting the generality of the foregoing, Grantor has obtained all Environmental Permits required for the operation of the Mortgaged Property in accordance with Hazardous Materials Laws now in effect and all such Environmental Permits are in full force and effect;
- (v) to the best of Grantor's knowledge after due diligence and inquiry, 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;
- (vi) there are no actions, suits, claims or proceedings pending or, to the best of Grantor'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;
- (vii) Grantor 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 Grantor that is adjacent to the Mortgaged Property;
- (viii) no prior Remedial Work (as defined below) has been undertaken, and no Remedial Work is ongoing, with respect to the Mortgaged Property during Grantor's ownership thereof or, to the best of Grantor's knowledge, at any time prior to Grantor's ownership thereof; and
- (ix) Grantor has disclosed in the Environmental Reports all material facts known to Grantor or contained in Grantor's records the nondisclosure of which could cause any representation or warranty made herein to be false or materially misleading.

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

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

- (i) Grantor's discovery of any Prohibited Activity or Condition;

- (ii) Grantor'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 Grantor that is adjacent to the Mortgaged Property;
- (iii) Grantor'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;
- (iv) Grantor's discovery that any representation or warranty in this Section 18 has become untrue after the date of this Instrument; and
- (v) Grantor's breach of any of its obligations under this Section 18.

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

(i) Grantor shall pay promptly the costs of any environmental inspections, tests or audits ("Environmental Inspections") required by Beneficiary or any Beneficiary Party in connection with any foreclosure or deed in lieu of foreclosure, or as a condition of Beneficiary's consent to any Transfer under Section 21, or required by Beneficiary following a determination by Beneficiary that Prohibited Activities or Conditions may exist. Any such costs incurred by Beneficiary (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 Grantor 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 Beneficiary shall at all times remain the property of Beneficiary and Beneficiary shall have no obligation to disclose or otherwise make available to Grantor or any other party such results or any other information obtained by Beneficiary in connection with such Environmental Inspections. Beneficiary hereby reserves the right, and Grantor hereby expressly authorizes Beneficiary, 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 Beneficiary with respect to the Mortgaged Property. Grantor consents to Beneficiary notifying any party (either as part of a notice of sale or otherwise) of the results of any of Beneficiary's Environmental Inspections. Grantor acknowledges that Beneficiary 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. Grantor agrees that Beneficiary shall have no liability whatsoever as a result of delivering the results of any of its Environmental

Inspections to any third party, and Grantor hereby releases and forever discharges Beneficiary 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 Beneficiary'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 Beneficiary as a consequence of any Prohibited Activity or Condition or to prevent the occurrence of a Prohibited Activity or Condition, Grantor shall, by the earlier of (i) the applicable deadline required by such Hazardous Materials Law or (ii) thirty (30) days after notice from Beneficiary demanding such action, begin performing the Remedial Work, and thereafter diligently prosecute it to completion, and shall in any event complete the work by the time required by such Hazardous Materials Law. Grantor shall promptly provide Beneficiary with a cost estimate from an environmental consultant acceptable to Beneficiary to complete any required Remedial Work. If required by Beneficiary, Grantor shall promptly establish with Beneficiary a reserve fund in the amount of such estimate. If in Beneficiary's opinion the amount reserved at any time during the Remedial Work is insufficient to cover the work remaining to complete the Remedial Work or achieve compliance, Grantor shall increase the amount reserved in compliance with Beneficiary's written request. All amounts so held in reserve, until disbursed, are hereby pledged to Beneficiary as security for payment of Grantor's obligations under this Instrument. If Grantor fails to begin on a timely basis or diligently prosecute any required Remedial Work, Beneficiary may, at its option, cause the Remedial Work to be completed, in which case Grantor shall reimburse Beneficiary on demand for the cost of doing so. Any reimbursement due from Grantor to Beneficiary shall become part of the Indebtedness as provided in Section 12.

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

(l) GRANTOR 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:

- (i) ANY BREACH OF ANY REPRESENTATION OR WARRANTY OF GRANTOR IN THIS SECTION 18;
- (ii) ANY FAILURE BY GRANTOR TO PERFORM ANY OF ITS OBLIGATIONS UNDER THIS SECTION 18;
- (iii) THE EXISTENCE OR ALLEGED EXISTENCE OF ANY PROHIBITED ACTIVITY OR CONDITION;
- (iv) 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 GRANTOR THAT IS ADJACENT TO THE MORTGAGED PROPERTY;
- (v) THE ACTUAL OR ALLEGED VIOLATION OF ANY HAZARDOUS MATERIALS LAW;
- (vi) ANY LOSS OR DAMAGE RESULTING FROM A LOSS OF PRIORITY OF THIS INSTRUMENT OR ANY OTHER FORWARD COMMITMENT FEE DOCUMENT DUE TO AN IMPOSITION OF AN ENVIRONMENTAL LIEN AGAINST THE MORTGAGED PROPERTY; AND
- (vii) 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 GRANTOR TO DEFEND INDEMNITEES SHALL BE SUBJECT TO THE APPROVAL OF THOSE INDEMNITEES. IN ANY CIRCUMSTANCES IN WHICH THE INDEMNITY UNDER THIS SECTION 18 APPLIES, ANY BENEFICIARY PARTY MAY EMPLOY ITS OWN LEGAL COUNSEL AND CONSULTANTS TO PROSECUTE, DEFEND OR NEGOTIATE ANY CLAIM OR LEGAL OR ADMINISTRATIVE PROCEEDING AT GRANTOR'S EXPENSE, AND SUCH BENEFICIARY PARTY, WITH THE PRIOR WRITTEN CONSENT OF GRANTOR (WHICH SHALL NOT BE UNREASONABLY

WITHHELD, DELAYED OR CONDITIONED) MAY SETTLE OR COMPROMISE ANY ACTION OR LEGAL OR ADMINISTRATIVE PROCEEDING. GRANTOR 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) GRANTOR 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 BENEFICIARY; OR (2) MAY MATERIALLY AND ADVERSELY AFFECT BENEFICIARY PARTIES, AS DETERMINED BY BENEFICIARY IN ITS DISCRETION.

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

- (i) ANY AMENDMENT OR MODIFICATION OF ANY FORWARD COMMITMENT FEE DOCUMENT;
- (ii) ANY EXTENSIONS OF TIME FOR PERFORMANCE REQUIRED BY ANY FORWARD COMMITMENT FEE DOCUMENT;
- (iii) ANY PROVISION IN ANY FORWARD COMMITMENT FEE DOCUMENT LIMITING BENEFICIARY PARTIES' RECOURSE TO PROPERTY SECURING THE INDEBTEDNESS, OR LIMITING THE PERSONAL LIABILITY OF GRANTOR OR ANY OTHER PARTY FOR PAYMENT OF ALL OR ANY PART OF THE INDEBTEDNESS;
- (iv) THE ACCURACY OR INACCURACY OF ANY REPRESENTATIONS AND WARRANTIES MADE BY GRANTOR UNDER THIS INSTRUMENT OR ANY OTHER FORWARD COMMITMENT FEE DOCUMENT;
- (v) THE RELEASE OF GRANTOR OR ANY OTHER PERSON, BY BENEFICIARY PARTIES OR BY OPERATION OF LAW,

FROM PERFORMANCE OF ANY OBLIGATION UNDER ANY FORWARD COMMITMENT FEE DOCUMENT;

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

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

- (i) 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;
- (ii) 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
- (iii) 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 GRANTOR MAY HAVE UNDER APPLICABLE LAW OR UNDER ANY OTHER FORWARD COMMITMENT FEE 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 FORWARD COMMITMENT FEE DOCUMENTS OR APPLICABLE LAW. IF GRANTOR 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 GRANTOR 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.

(r) Notwithstanding anything herein to the contrary, (i) Grantor shall have no obligation hereunder to indemnify any Indemnitee for any liability under this Section 18 to the extent that the Prohibited Activity or Condition giving rise to such liability resulted solely from the gross negligence or willful misconduct of such Indemnitee, and (ii) Grantor's liability under this Section 18 shall not extend to cover the violation of any Hazardous Materials Laws or Prohibited Activities or Conditions that first arise, commence or occur as a result of actions of Beneficiary, its successors, assigns or designees, after the satisfaction, discharge, release, assignment, termination or cancellation of this Instrument following the payment in full of the Note and all other sums payable under the Forward Commitment Fee Documents or after the actual dispossession from the entire Mortgaged Property of Grantor and all Affiliates of Grantor following foreclosure of this Instrument or acquisition of the Mortgaged Property by a deed in lieu of foreclosure.

19. PROPERTY AND LIABILITY INSURANCE.

(a) Grantor shall keep the Improvements insured at all times against such hazards as Beneficiary may from time to time require, which insurance shall include but not be limited to coverage against loss by fire and allied perils, general boiler and machinery coverage, business income coverage and extra expense insurance, coverage against acts of terrorism, mold and earthquake coverage. Grantor acknowledges and agrees that Beneficiary's insurance requirements may change from time to time throughout the term of the Indebtedness. If Beneficiary so requires, such insurance shall also include sinkhole insurance, mine subsidence insurance, earthquake insurance, and, if the Mortgaged Property does not conform to applicable zoning or land use laws, building ordinance or law coverage. If any portion of the Improvements is at any time located in an area identified by the Federal Emergency Management Agency (or any successor to that agency) as an area now or hereafter having special flood hazards, and if flood insurance is available in that area, Grantor shall insure such Improvements against loss by flood in an amount equal to the maximum amount available under the National Flood Insurance Program or any successor thereto.

(b) All premiums on insurance policies required under Section 19(a) shall be paid in the manner provided in Section 7, unless Beneficiary has designated in writing another method of payment. All such policies shall also be in a form approved by Beneficiary. All policies of property damage insurance shall include a non-contributing, non-reporting mortgage clause in favor of, and in a form approved by, Beneficiary. Beneficiary shall have the right to hold the original policies or duplicate original policies of all insurance required by Section 19(a). Grantor shall promptly deliver to Beneficiary

a copy of all renewal and other notices received by Grantor with respect to the policies and all receipts for paid premiums. At least 30 days prior to the expiration date of a policy, Grantor shall deliver to Beneficiary the original (or a duplicate original) of a renewal policy in form satisfactory to Beneficiary.

(c) All insurance policies and renewals of insurance policies required by this Section 19 shall be in such amounts and for such periods as Beneficiary may from time to time require consistent with Beneficiary's then current practices and standards, and shall be issued by insurance companies satisfactory to Beneficiary.

(d) During any period of construction and/or rehabilitation, and at all times prior to occupancy of the Project by any tenants following the completion of the construction and/or rehabilitation of the Project in accordance with the Senior Instrument, the following provisions shall apply, in addition to the other provisions of this Section 19 and without limiting the generality of the other provisions of this Section 19:

(i) Grantor shall provide (or cause to be provided), maintain and keep in force, the following insurance coverage:

(A) Builder's "all risk" insurance or the equivalent coverage, including theft, to insure all buildings, machinery, equipment, materials, supplies, temporary structures and all other property of any nature on-site, off-site and while in transit which is to be used in fabrication, erection, installation and construction and/or rehabilitation of the Project, and to remain in effect until the entire Project has been completed and accepted by Grantor and is first occupied by any tenants (provided that in any event, such coverage shall remain in effect until such time as Grantor has provided Beneficiary with evidence of property insurance covering the Improvements and meeting the requirements of this Section 19). Such insurance shall be provided on a replacement cost value basis and shall include foundations, other underground property, tenant improvements and personal property. If tenant improvements and personal property are not included in the above coverage, they may be insured separately by Grantor provided coverage is acceptable to Beneficiary. Builders "all risk" insurance shall (i) be on a nonreporting, completed value form, (ii) cover soft costs, debris removal expense (including removal of pollutants), resulting loss and damage to property due to faulty or defective workmanship or materials and error in design or specification, loss while the property is in the care, custody and control of others to whom the property may be entrusted, (iii) provide that Grantor can complete and occupy the Mortgaged Property without further written

consent from the insurer, and (iv) cover loss of income resulting from delay in occupancy and use of the Mortgaged Property due to loss. During the initial construction and/or rehabilitation of the Project and until such time as the Project is first occupied by any tenants, the Grantor shall not be required to maintain property insurance as required by this Section 19 for so long as Builder's "all risk" insurance or equivalent coverage is maintained in accordance with this paragraph.

(B) If any portion of the Mortgaged Property is or becomes located in an area identified by the United States Secretary of Housing and Urban Development as an area having special flood hazards and in which flood insurance has been made available under the National Flood Insurance Act of 1968 and Flood Disaster Protection Act of 1973, as amended, Grantor shall also keep the improvements and the equipment located thereon insured against loss by flood in an amount at least equal to the principal amount of the Borrower Loan or the maximum limits of coverage available with respect to the Mortgaged Property, whichever is less. All such insurance shall also cover continuing expenses not directly involved in the direct cost of construction, rehabilitation or renovation, including interest on money borrowed to finance construction, rehabilitation or renovation, continuing interest on the Borrower Loan, advertising, promotion, real estate taxes and other assessments, the cost of renegotiating leases, and other expenses incurred as the result of property loss or destruction by the insured peril. Such coverage shall not contain any monthly limitation.

(ii) If Beneficiary fails to receive proof and evidence of the insurance required hereunder, Beneficiary shall have the right, but not the obligation, to obtain or cause to be obtained current coverage and, in its sole discretion, advance funds to pay the premiums for it. If Beneficiary makes an advance for such purpose, Grantor shall repay such advance immediately on demand and such advance shall be considered to be a demand loan to Grantor bearing interest at the Default Rate (as defined in the Note) and secured by the Mortgaged Property.

(e) Grantor shall maintain at all times commercial general liability insurance, workers' compensation insurance and such other liability, errors and omissions and fidelity insurance coverages as Beneficiary may from time to time require, consistent with Beneficiary's then current practices and standards.

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

(g) In the event of loss, Grantor shall give immediate written notice to the insurance carrier and to Beneficiary. Subject to the rights of the Senior Beneficiary Grantor hereby authorizes and appoints Beneficiary as attorney-in-fact for Grantor to make proof of loss, to adjust and compromise any claims under policies of property damage insurance, to appear in and prosecute any action arising from such property damage insurance policies, to collect and receive the proceeds of property damage insurance, and to deduct from such proceeds Beneficiary's expenses incurred in the collection of such proceeds. This power of attorney is coupled with an interest and therefore is irrevocable. However, nothing contained in this Section 19 shall require Beneficiary to incur any expense or take any action. Beneficiary may, at Beneficiary's option, (i) hold the balance of such proceeds to be used to reimburse Grantor for the cost of restoring and repairing the Mortgaged Property to the equivalent of its original condition or to a condition approved by Beneficiary (the "**Restoration**"), or (ii) apply the balance of such proceeds to the payment of the Indebtedness, whether or not then due. To the extent Beneficiary determines to apply insurance proceeds to Restoration, Beneficiary shall apply the proceeds in accordance with Beneficiary's then-current policies relating to the restoration of casualty damage on similar multifamily properties. Notwithstanding any provision to the contrary in this Section 19, as long as no Event of Default, or any event which, with the giving of notice or the passage of time, or both, would constitute an Event of Default, has occurred and is continuing, in the event the Restoration is less than \$10,000, the Grantor shall have the sole right to make proof of loss, adjust and compromise the claim and collect and receive any proceeds directly without the approval or prior consent of the Beneficiary so long as the insurance proceeds are used solely for the Restoration of the Mortgaged Property. In such event, Grantor shall diligently repair such damage or destruction in a good and workmanlike manner in accordance with applicable law.

(h) Beneficiary shall not exercise its option to apply insurance proceeds to the payment of the Indebtedness if all of the following conditions are met: (i) no Event of Default (or any event which, with the giving of notice or the passage of time, or both, would constitute an Event of Default) has occurred and is continuing; (ii) Beneficiary determines, in its discretion, that there will be sufficient funds to complete the Restoration (and complete construction of the Project in accordance with the Borrower Loan Agreement and the Plans and Specifications, as defined therein, if such construction has not been completed at such time); (iii) Beneficiary determines, in its discretion, that the net operating income generated by the Mortgaged Property after completion of the Restoration will be sufficient to meet all operating costs and other expenses, Impositions, deposits to reserves and loan repayment obligations relating to the Mortgaged Property; (iv) Beneficiary determines, in its discretion, that the Restoration will be completed before the earlier of (A) one year before the Termination Date set forth in the Forward Purchase Agreement, or (B) one year after the date of the loss or casualty; and (v) upon Beneficiary's request, Grantor provides Beneficiary evidence of the availability during

and after the Restoration of the insurance required to be maintained pursuant to this Instrument.

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

(j) [Reserved].

(k) Grantor agrees to execute such further evidence of assignment of any insurance proceeds as Beneficiary may require.

(l) Grantor further agrees that to the extent that Grantor 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 Beneficiary, such policy of property damage insurance shall include a standard mortgagee clause and shall name Beneficiary as loss payee and, within ten (10) days following Grantor's purchase of such additional insurance, Grantor shall cause to be delivered to Beneficiary a duplicate original policy of insurance with respect to such policy. Any insurance proceeds payable to Grantor under such policy shall be additional security for the Indebtedness and Beneficiary shall have the same rights to such policy and proceeds as it has with respect to insurance policies required by Beneficiary pursuant to this Section 19.

20. CONDEMNATION.

(a) Grantor shall promptly notify Beneficiary 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"), and shall deliver to the Beneficiary copies of any and all papers served in connection with such Condemnation. Grantor shall appear in and prosecute or defend any action or proceeding relating to any Condemnation unless otherwise directed by Beneficiary in writing. Grantor authorizes and appoints Beneficiary as attorney-in-fact for Grantor to commence, appear in and prosecute, in Beneficiary's or Grantor'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 Beneficiary to incur any expense or take any action. Subject to the rights of the Senior Beneficiary, Grantor hereby transfers and assigns to Beneficiary all right, title and interest of Grantor 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) Subject to the rights of the Senior Beneficiary, Beneficiary may apply such awards or proceeds, after the deduction of Beneficiary's expenses incurred in the

collection of such amounts (including, without limitation, fees and out-of-pocket expenses of attorneys and expert witnesses, investigatory fees, whether incurred in connection with any judicial or administrative process or otherwise), at Beneficiary's option, to the restoration or repair of the Mortgaged Property or to the payment of the Indebtedness in accordance with the provisions of the Note as to application of payments to the Indebtedness, with the balance, if any, to Grantor. Unless Beneficiary otherwise agrees in writing, any application of any awards or proceeds to the Indebtedness shall not extend or postpone the due date of payments due under the Note, Section 7 of this Instrument or any Collateral Agreement or any other Forward Commitment Fee Document, or change the amount of such payments, except as otherwise provided in the Note. Grantor agrees to execute such further evidence of assignment of any awards or proceeds as Beneficiary may require.

(c) Beneficiary shall not exercise its option to apply condemnation awards to the payment of the Indebtedness if all of the following conditions are met: (i) no Event of Default (or any event which, with the giving of notice or the passage of time, or both, would constitute an Event of Default) has occurred and is continuing; (ii) Beneficiary determines, in its discretion, that there will be sufficient funds to complete the Restoration; (iii) Beneficiary determines, in its discretion, that the net operating income generated by the Mortgaged Property after completion of the Restoration will be sufficient to meet all operating costs and other expenses, Imposition Deposits, deposits to reserves and loan repayment obligations relating to the Mortgaged Property; (iv) Beneficiary determines, in its discretion, that the Restoration will be completed before the earlier of (A) six months before the Termination Date set forth in the Note, and (B) one year after the date of the loss or casualty; and (v) upon Beneficiary's request, Grantor provides Beneficiary evidence of the availability during and after the Restoration of the insurance required to be maintained pursuant to this Instrument.

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

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

- (i) 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;
- (ii) a Transfer of a Controlling Interest in Grantor;
- (iii) a Transfer of a Controlling Interest in any entity which owns, directly or indirectly through one or more intermediate entities, a Controlling Interest in Grantor;
- (iv) a Transfer of all or any part of a Guarantor's ownership interests in Grantor, or in any other entity which owns, directly or indirectly through one or more intermediate entities, an ownership interest in

Grantor (other than a Transfer of an aggregate beneficial ownership interest in Grantor of 49% or less of such Guarantor's original ownership interest in Grantor and which does not otherwise result in a Transfer of the Guarantor's Controlling Interest in such intermediate entities or in Grantor);

- (v) if Guarantor is an entity, (A) a Transfer of a Controlling Interest in Guarantor, or (B) a Transfer of a Controlling Interest in any entity which owns, directly or indirectly through one or more intermediate entities, a Controlling Interest in Guarantor;
- (vi) if Grantor or Guarantor is a trust, the termination or revocation of such trust; unless the trust is terminated as a result of the death of an individual trustor, in which event Beneficiary must be notified and such Grantor or Guarantor must be replaced with an individual or entity acceptable to Beneficiary, 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);
- (vii) if Guarantor is a natural person, the death of such individual; unless the Beneficiary is notified and such individual is replaced with an individual or entity acceptable to Beneficiary, 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);
- (viii) the merger, dissolution, liquidation, or consolidation of (i) Grantor, (ii) any Guarantor that is a legal entity, or (iii) any legal entity holding, directly or indirectly, a Controlling Interest in Grantor or in any Guarantor that is an entity;
- (ix) a conversion of Grantor 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 Grantor (or of any Guarantor, or any general partner of Grantor, as applicable), by operation of law or otherwise;
- (x) a Transfer of the economic benefits or right to cash flows attributable to the ownership interests in Grantor and/or, if Guarantor is an entity, Guarantor, separate from the Transfer of the underlying ownership interests, unless the Transfer of the underlying ownership interests would otherwise not be prohibited by this Instrument; and

- (xi) 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.

Beneficiary 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 (each a “**Permitted Transfer**”):

- (i) a Transfer to which Beneficiary has consented;
- (ii) except as provided in Section 21(a)(vi) and (vii), 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;
- (iii) the grant of a leasehold interest in an individual dwelling unit for a term of two years or less not containing an option to purchase;
- (iv) a Transfer of obsolete or worn out Personality 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 Forward Commitment Fee Documents or consented to by Beneficiary;
- (v) the grant of an easement, servitude, or restrictive covenant if, before the grant, Beneficiary determines that the easement, servitude, or restrictive covenant will not materially affect the operation or value of the Mortgaged Property or Beneficiary’s interest in the Mortgaged Property, and Grantor pays to Beneficiary, upon demand, all costs and expenses incurred by Beneficiary in connection with reviewing Grantor’s request; provided, however, utility easements of a type usually permitted or required to operate a multifamily project in the Property Jurisdiction (such as, by way of example, gas, sewer and electricity supplier easements and easements to provide cable service) shall be deemed to be Permitted Transfers without the need for Beneficiary’s prior review or determination so long as (A) such easement does not obligate Grantor to incur any additional costs, (B) such easement does not grant the grantee of the easement the option to acquire any other estate in the Mortgaged Property, and

(C) Beneficiary is not obligated to subordinate the lien of this Instrument to the proposed easement;

- (vi) the creation of a mechanic's, materialman's, or judgment lien against the Mortgaged Property which is released of record or otherwise remedied to Beneficiary's satisfaction within 45 days after Grantor has actual or constructive notice of the existence of such lien; and
- (vii) the conveyance of the Mortgaged Property at a judicial or non-judicial foreclosure sale under this Instrument.

(c) Beneficiary shall consent to a Transfer that would otherwise violate this Section 21 if, prior to the Transfer, Grantor has satisfied each of the following requirements:

- (i) the submission to Beneficiary of all information required by Beneficiary to make the determination required by this Section 21(c);
- (ii) the absence of any Event of Default;
- (iii) the transferee meets all of the eligibility, credit, management and other standards (including any standards with respect to previous relationships between Beneficiary and the transferee and the organization of the transferee) customarily applied by Beneficiary 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 Beneficiary in exchange for such additional conditions as Beneficiary may require;
- (iv) the Mortgaged Property, at the time of the proposed Transfer, meets all standards as to its physical condition, that are customarily applied by Beneficiary 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 Beneficiary in exchange for such additional conditions as Beneficiary may require;
- (v) if the transferor or any other person has obligations under any Forward Commitment Fee Document, the execution by the transferee or one or more individuals or entities acceptable to Beneficiary of an assumption agreement that is acceptable to Beneficiary and that, among other things, requires the transferee to perform all obligations of transferor or such person set forth in the Forward Commitment Fee Documents, and may require that the

transferee comply with any provisions of this Instrument or any other Forward Commitment Fee Document which previously may have been waived by Beneficiary;

- (vi) if a guaranty has been executed and delivered by the transferor in connection with the Note, this Instrument or any of the other Forward Commitment Fee Documents, Grantor causes one or more individuals or entities acceptable to Beneficiary to execute and deliver to Beneficiary a substitute guaranty in a form acceptable to Beneficiary;
- (vii) Beneficiary's receipt of all of the following:
 - (A) a non-refundable review fee in the amount of \$3,000, and a transfer fee equal to one percent (1%) of the Maximum Permanent Period Amount (as defined in the Note); and
 - (B) Grantor's reimbursement of all of Beneficiary's out-of-pocket costs (including, reasonable attorneys' fees) incurred in reviewing the Transfer request, to the extent such expenses exceed \$3,000;
- (viii) Grantor has agreed to Beneficiary's conditions to approve such Transfer, which may include, but are not limited to (A) providing additional collateral, guaranties, or other credit support to mitigate any risks concerning the proposed transferee or the performance or condition of the Mortgaged Property, and (B) amending the Forward Commitment Fee Documents to (1) delete any specially negotiated terms or provisions previously granted for the exclusive benefit of transferor and (2) restore to original provisions of the standard Beneficiary forms of multifamily loan documents, to the extent such provisions were previously modified; and
- (ix) Beneficiary's receipt of evidence of consent to the Transfer, to the extent required pursuant to the terms of the Regulatory Agreement.

(d) For purposes of this Section, the following terms shall have the meanings set forth below:

- (i) A Transfer of a "**Controlling Interest**" shall mean:
 - (A) with respect to any entity, the following:
 - (1) if such entity is a general partnership or a joint venture, a Transfer of any general partnership interest or joint venture interest which would cause the Initial Owners to own less than a Controlling Percentage of all general partnership or joint venture interests in such entity;

(2) if such entity is a limited partnership, (A) a Transfer of any general partnership interest, or (B) a Transfer of any partnership interests which would cause the Initial Owners to own less than a Controlling Percentage of all limited partnership interests in such entity;

(3) if such entity is a limited liability company or a limited liability partnership, (A) a Transfer of any membership or other ownership interest which would cause the Initial Owners to own less than a Controlling Percentage of all membership or other ownership interests in such entity, (B) a Transfer of any membership, or other interest of a manager, in such entity that results in a change of manager, or (C) a change of the non-member manager;

(4) if such entity is a corporation (other than a Publicly-Held Corporation) with only one class of voting stock, a Transfer of any voting stock which would cause the Initial Owners to own less than a Controlling Percentage of voting stock in such corporation;

(5) if such entity is a corporation (other than a Publicly-Held Corporation) with more than one class of voting stock, a Transfer of any voting stock which would cause the Initial Owners to own less than a sufficient number of shares of voting stock having the power to elect the majority of directors of such corporation; and

(6) if such entity is a trust (other than a Publicly-Held Trust), the removal, appointment or substitution of a trustee of such trust other than (A) in the case of a land trust, or (B) if the trustee of such trust after such removal, appointment, or substitution is a trustee identified in the trust agreement approved by Beneficiary; and/or

(B) any agreement (including provisions contained in the organizational and/or governing documents of Grantor or Guarantor) or Transfer not specified in clause (A), the effect of which, either immediately or after the passage of time or occurrence of a specified event or condition, including the failure of a specified event or condition to occur or be satisfied, would (i) cause a change in or replacement of the Person that controls the management and operations of the Grantor or Guarantor or (ii) limit or otherwise modify the extent of such Person's control over the management and operations of Grantor or Guarantor.

- (ii) **“Controlling Percentage”** shall mean (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.
- (iii) **“Publicly-Held Corporation”** shall mean a corporation the outstanding voting stock of which is registered under Section 12(b) or 12(g) of the Securities and Exchange Act of 1934, as amended.
- (iv) **“Publicly-Held Trust”** shall mean a real estate investment trust the outstanding voting shares or beneficial interests of which are registered under Section 12(b) or 12(g) of the Securities Exchange Act of 1934, as amended.

(e) Beneficiary shall be provided with written notice of all Transfers under this Section 21, whether or not such Transfers are permitted under Section 21(b) or approved by Beneficiary under Section 21(c), no later than 10 days prior to the date of the Transfer.

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

- (a) (i) any failure by Grantor to pay or deposit any payment of principal, interest, principal reserve fund deposit, any payment with a specified due date, or any other scheduled payment or deposit required by the Note, this Instrument or any other Forward Commitment Fee Document when such payment or deposit is due or (ii) any failure by Grantor to pay or deposit any unscheduled payment or deposit, or other payment or deposit without a specified due date, required by the Note, this Instrument or any other Forward Commitment Fee Document, within five (5) days after written notice from Beneficiary;
- (b) any failure by Grantor to maintain the insurance coverage required by Section 19;
- (c) any failure by Grantor to comply with the provisions of Section 32;
- (d) fraud or material misrepresentation or material omission by Grantor or Guarantor, any of their respective officers, directors, trustees, general partners, managing members, managers, agents or representatives in connection with (i) the Forward Commitment Fee Documents or the application for the Borrower Loan, (ii) any financial statement, rent roll, or other report or information provided to Beneficiary during the term of the Indebtedness, or (iii) any request for Beneficiary’s consent to any proposed action, including a request for disbursement of funds under any Collateral Agreement;
- (e) any of Grantor’s representations and warranties in this Instrument is false or misleading in any material respect;

- (f) any Event of Default under Section 21;
- (g) the commencement of a forfeiture action or proceeding, whether civil or criminal, which, in Beneficiary's judgment, could result in a forfeiture of the Mortgaged Property or otherwise materially impair the lien created by this Instrument or Beneficiary's interest in the Mortgaged Property;
- (h) any failure by Grantor to perform or comply with 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 Beneficiary to Grantor; provided, however, if such failure is susceptible of cure but cannot reasonably be cured within such thirty (30) day period, and the Grantor shall have commenced to cure such failure within such thirty (30) day period and thereafter diligently and expeditiously proceeds to cure the same, such thirty (30) day period shall be extended for an additional period of time as is reasonably necessary for the Grantor in the exercise of due diligence to cure such failure, such additional period, not to exceed sixty (60) days. However, no such notice or grace period shall apply to the extent such failure could, in Beneficiary's judgment, absent immediate exercise by Beneficiary of a right or remedy under this Instrument, result in harm to Beneficiary, impairment of the Note or this Instrument or any other security given under any other Forward Commitment Fee Document;
- (i) any failure by Grantor or any Guarantor to perform any of its obligations as and when required under any Forward Commitment Fee Document other than this Instrument which continues beyond the applicable notice and cure period, if any, specified in that Forward Commitment Fee Document;
- (j) any exercise by the holder of any debt instrument secured by a mortgage, deed of trust or deed to secure debt on the Mortgaged Property of a right to declare all amounts due under that debt instrument immediately due and payable;
- (k) the occurrence of a Bankruptcy Event;
- (l) any Event of Default (as defined in any of the Forward Commitment Fee Documents), which continues beyond the expiration of any applicable cure period;
- (m) any breach of, or event of default by Grantor under, any other document or agreement relating to the Borrower Loan, the Forward Commitment Fee Documents or the provision of low income housing tax credits to the Mortgaged Property to which Grantor is a party, which continues beyond the expiration of any applicable notice and cure period thereunder;
- (n) any failure by Grantor or the Project to qualify for low income housing tax credits pursuant to the provisions of Section 42 of the Internal Revenue Code;
- (o) [Reserved];

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

(q) (i) any breach of any Material Property Agreement by Grantor or its officers, directors, employees, agents or tenants that continues beyond any applicable notice and cure period; or (ii) any failure by Grantor 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 Beneficiary with respect to any Material Property Agreement;

(r) if Grantor 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 Beneficiary must be notified and such Grantor or Guarantor must be replaced with an individual or entity acceptable to Beneficiary, 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

(s) if any Guarantor is a natural person, the death of such individual; unless the Beneficiary is notified and such individual is replaced with an individual or entity acceptable to Beneficiary, 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 Forward Commitment Fee 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) Beneficiary may (but shall not be obligated to) agree with Grantor, 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 Forward Commitment Fee Document; release anyone liable for the payment of any amounts under this Instrument, the Note, or any other Forward Commitment Fee 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 Forward Commitment Fee Document.

(b) Any forbearance by Beneficiary in exercising any right or remedy under the Note, this Instrument, or any other Forward Commitment Fee 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 Beneficiary 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 Beneficiary'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 Beneficiary of any security for the Indebtedness shall not constitute an election by Beneficiary of remedies so as to preclude the exercise of any other right available to Beneficiary. Beneficiary's receipt of any awards or proceeds under Sections 19 and 20 shall not operate to cure or waive any Event of Default.

25. WAIVER OF STATUTE OF LIMITATIONS. GRANTOR 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 FORWARD COMMITMENT FEE DOCUMENT.

26. WAIVER OF MARSHALLING. Notwithstanding the existence of any other security interests in the Mortgaged Property held by Beneficiary or by any other party, Beneficiary 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 Forward Commitment Fee Document or applicable law. Beneficiary 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. Grantor 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.

27. FURTHER ASSURANCES. Grantor 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 Beneficiary may require from time to time in order to better assure, grant, and convey to Beneficiary the rights intended to be granted, now or in the future, to Beneficiary under this Instrument and the Forward Commitment Fee Documents. In furtherance thereof, on the request of Beneficiary, Grantor shall re-execute or ratify any of the Forward Commitment Fee Documents or execute any other documents or take such other actions as may be necessary to effect the assignment, pledge or other transfer of the Indebtedness to any party that may purchase, insure, credit enhance or otherwise finance all or any part of the Indebtedness, including, without limitation,

any insurance company, conduit lender or any other lender or investor. Notwithstanding the foregoing sentence, in no event shall Grantor be required to execute and deliver any document or perform any act otherwise required pursuant to the foregoing sentence to the extent such document or act imposes a material additional obligation or liability on Grantor or materially adversely affects the rights of Grantor under any Forward Commitment Fee Document.

28. ESTOPPEL CERTIFICATE. Within 10 days after a request from Beneficiary, Grantor shall deliver to Beneficiary a written statement, signed and acknowledged by Grantor, certifying to Beneficiary or any person designated by Beneficiary, as of the date of such statement, (i) that the Forward Commitment Fee Documents are unmodified and in full force and effect (or, if there have been modifications, that the Forward Commitment Fee Documents are in full force and effect as modified and setting forth such modifications); (ii) the unpaid principal balance of the Note; (iii) the date to which interest under the Note has been paid; (iv) that Grantor is not in default in paying the Indebtedness or in performing or observing any of the covenants or agreements contained in this Instrument or any of the other Forward Commitment Fee Documents (or, if Grantor is in default, describing such default in reasonable detail); (v) whether or not there are then existing any setoffs or defenses known to Grantor against the enforcement of any right or remedy of Beneficiary under the Forward Commitment Fee Documents; and (vi) any additional facts requested by Beneficiary.

29. GOVERNING LAW; CONSENT TO JURISDICTION AND VENUE.

(a) This Instrument, and any Forward Commitment Fee 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) Grantor agrees that any controversy arising under or in relation to the Note, this Instrument, or any other Forward Commitment Fee 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 Forward Commitment Fee Document. Grantor 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 29 is intended to limit Beneficiary's right to bring any suit, action or proceeding relating to matters arising under this Instrument in any court of any other jurisdiction.

30. **NOTICE.**

(a) All notices, demands and other communications ("notice") under or concerning this Instrument shall be in writing and addressed as set forth below. Each notice 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.

If to Grantor:

JF Q25 Partners, LLC
c/o J. Fisher Company
1216 W. Legacy Crossing Blvd., Suite 140
Centerville, Utah 84014
Attention: Jake Wood

With a copy to :

Fennemore Law
2394 E. Camelback Road, Suite 600
Phoenix, Arizona 85016
Attention: Brett Siglin, Esq.

If to Beneficiary:

Citibank, N.A.
388 Greenwich Street, Trading 4th Floor
New York, New York 10013
Attention: Transaction and Asset Management Group
Re: 25th and Quincy Apartments Deal ID No. 50008140
Facsimile: (212) 723-8209

With a copy to:

Citibank, N.A.
325 East Hillcrest Drive, Suite 160
Thousand Oaks, California 91360
Attention: Operations Manager/Asset Manager
Re: 25th and Quincy Apartments Deal ID No. 50008140
Facsimile: (805) 557-0924

With a copy to:

Citibank, N.A.
c/o Berkadia Commercial Servicing Department
323 Norristown Road, Suite 300
Ambler, Pennsylvania 19002
Attention: Client Relations Manager
Re: 25th and Quincy Apartments Deal ID No. 50008140
Facsimile: (215) 328-0305

And a copy of any
notices of default

Citibank, N.A.
388 Greenwich Street, 17th Floor

sent to: New York, New York 10013
 Attention: General Counsel's Office
 Re: 25th and Quincy Apartments Deal ID No. 50008140
 Facsimile: (646) 291 5754

(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 30. Each party agrees that it will not refuse or reject delivery of any notice given in accordance with this Section 30, 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 30 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 Forward Commitment Fee Document that does not specify how notices are to be given shall be given in accordance with this Section 30.

31. CHANGE IN SERVICER. If there is a change of the Servicer, Grantor will be given notice of the change.

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

33. SUCCESSORS AND ASSIGNS BOUND. This Instrument shall bind, and the rights granted by this Instrument shall inure to, the successors and assigns of Beneficiary and the permitted successors and assigns of Grantor.

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

35. RELATIONSHIP OF PARTIES; NO THIRD PARTY BENEFICIARY.

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

(b) No creditor of any party to this Instrument and no other person (other than a holder of the Note and Servicer) shall be a third party beneficiary of this Instrument or any other Forward Commitment Fee Document. Without limiting the generality of the preceding sentence, (i) any arrangement (a "Servicing Arrangement") between Beneficiary 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 Grantor for the payment of the Indebtedness, (ii) Grantor 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.

36. 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 Beneficiary at Beneficiary's option by notice to Grantor or such transferee.

37. 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."

38. SERVICER.

(a) Grantor further acknowledges that Beneficiary may from time to time appoint a Servicer or a replacement servicer to collect payments, escrows and deposits, to give and receive notices under the Note, this Instrument, or the other Forward Commitment Fee Documents, and to otherwise service the Indebtedness. Grantor hereby acknowledges and agrees that, unless Grantor receives written notice from Beneficiary to the contrary, any action or right which shall or may be taken or exercised by Beneficiary may be taken or exercised by Servicer with the same force and effect, including, without limitation, the collection of payments, the giving of notice, the holding of escrows, inspection of the Mortgaged Property, inspections of books and records, the request for documents or information, and the granting of consents and approvals. Grantor further agrees that, unless Beneficiary instructs Grantor to the contrary in writing, (i) any notices, books or records, or other documents or information to be delivered under this Instrument, the Note, or any other Forward Commitment Fee Document shall also be simultaneously delivered to the Servicer at the address provided for notices to Servicer pursuant to Section 30 hereof, 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 Forward Commitment Fee Documents shall be made to Servicer. In the event Grantor receives conflicting notices regarding the identity of the Servicer or any other subject, any such notice from Beneficiary shall govern.

(b) Grantor 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 Forward Commitment Fee Documents shall be deemed to be held by Beneficiary.

39. DISCLOSURE OF INFORMATION. Beneficiary may furnish information regarding Grantor 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. Without limiting the generality of the foregoing, without notice to or the consent of Grantor, Beneficiary may disclose to any title insurance company which insures any interest of Beneficiary under this Instrument (whether as primary insurer, coinsurer or reinsurer) any information, data or material in its possession relating to Grantor, the Indebtedness, the Improvements or the Mortgaged Property. Grantor 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.

40. NO CHANGE IN FACTS OR CIRCUMSTANCES. Grantor warrants that all information in Grantor's application for the Borrower Loan and the Forward Commitment Fee Documents and in all financial statements, rent rolls, reports, certificates and other documents submitted in connection with Grantor's application for the Borrower Loan and the Forward Commitment Fee Documents are complete and accurate in all material respects. There has been no material adverse change in any fact or circumstance that would make any such information incomplete or inaccurate.

41. SUBROGATION. If, and to the extent that, the proceeds of the Forward Commitment Fee Documents are used to pay, satisfy or discharge any obligation of Grantor 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 proceeds shall be deemed to have been advanced by Beneficiary at Grantor's request, and Beneficiary 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.

42. 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 Grantor and the Secured Party shall be Beneficiary; (b) the addresses of Grantor as Debtor and of Beneficiary as Secured Party are as specified above in the first paragraph of this Instrument; (c) the name of the record owner is Grantor; (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 Grantor (if any) as Debtor is set forth on Exhibit C.

43. STATE SPECIFIC PROVISIONS (UTAH).

(a) **ACCELERATION; REMEDIES.** At any time during the existence of an Event of Default, Beneficiary, at Beneficiary'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. Grantor acknowledges that the power of sale granted in this Instrument may be exercised by Beneficiary without prior judicial hearing. Grantor has the right to bring an action to assert the non-existence of an Event of Default or any other defense of Grantor to acceleration and sale. Beneficiary 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 Beneficiary'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. Beneficiary or Trustee shall mail notice of default in the manner provided by the laws of Utah to Grantor 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. Beneficiary or Beneficiary's designee may purchase the Mortgaged Property at any sale.

Trustee shall deliver to the purchaser at the sale, within three (3) business days after Trustee's receipt of the payment of the price bid, 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 and attorneys' fees and costs of title evidence actually incurred not to exceed 5% of the gross sales price; (b) to the Indebtedness in such order as Beneficiary, in Beneficiary's discretion, directs; and (c) the excess, if any, to the person or persons legally entitled thereto or to the clerk of the district court of the county in which the sale took place.

(b) RECONVEYANCE. Upon payment of the Indebtedness, Beneficiary 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. Beneficiary, at Beneficiary'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. Grantor requests that copies of the notice of default and notice of sale be sent to him at Grantor's address stated in the first paragraph in Section 30 of this Instrument.

(c) **INTEGRATION.** THE WRITTEN LOAN AGREEMENT AND THE OTHER LOAN DOCUMENTS REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES. PURSUANT TO UTAH CODE ANNOTATED SECTION 25-5-4, GRANTOR IS NOTIFIED THAT THE WRITTEN LOAN AGREEMENT, THIS DEED OF TRUST AND THE OTHER LOAN DOCUMENTS REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF ANY ALLEGED PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.

44. **WAIVER OF TRIAL BY JURY.** TO THE FULLEST EXTENT PERMITTED BY LAW, GRANTOR AND BENEFICIARY 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 GRANTOR AND BENEFICIARY 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.

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:

- Exhibit A Description of the Land.
- Exhibit B Modifications to Instrument.
- 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.

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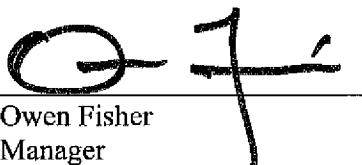
IN WITNESS WHEREOF, the undersigned has duly executed and delivered this Instrument or caused this Instrument to be duly executed and delivered by its authorized representative as of the date first set forth above.

GRANTOR:

JF Q25 PARTNERS, LLC, a Utah limited liability company

By: JF Q25 Member, LLC, a Utah limited liability company, its managing member

By: J. Fisher Companies, LLC, a Utah limited liability company, its manager

By: 
Name: Owen Fisher
Title: Manager

STATE OF UTAH

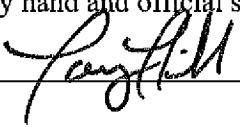
COUNTY OF DAVIS

On JUNE 8, 2023 before me, TONY HILL, NOTARY (here insert name and title of the officer), personally appeared **Owen Fisher**, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

UTAH

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature  (Seal)

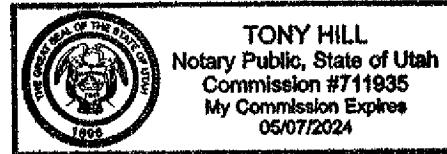


EXHIBIT A

DESCRIPTION OF THE LAND

Lot 1 and Lot 2 of Block 8, Plat B, Ogden City Survey, or more particularly described as:

Beginning at a point which is on the Southeast corner of Block 8, Plat B Ogden City Survey said point being North 01°18'13" East 49.50 feet, and North 88°41'46" West 49.50 feet, from the found monument at the intersection of 25th Street and Quincy Ave. and running thence along the North right-of-way line of 25th Street, North 88°41'46" West 268.96, to the Southwest corner of Lot 2, Block 8 Plat B; thence along the Western line of said Lot 2, North 01°18'23" East 333.89 feet, to the Northwest corner of said Lot 2; thence along the North line of said Lot 2 and Lot 1 of the Block 8, Plat B, South 88°41'30" East 268.94 feet, to the Western right-of-way line of Quincy Ave; thence along said Western right-of-way, South 01°18'13" West 333.87 feet, to the point of beginning.

Located in the Southeast quarter of Section 28, Township 6 North, Range 1 West.

The basis of bearing is North 01°18'13" East 766.74 feet measured between the found monuments at the intersection of 25th Street and Quincy Ave. and the monument at the intersection of 24th Street and Quincy Ave.

Tax Id No.: 01-059-0039

EXHIBIT B**MODIFICATIONS TO INSTRUMENT**

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

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

“(xii) notwithstanding anything to the contrary herein or in Grantor’s Organizational Documents, a Transfer or pledge of a managing membership interest in Grantor or an interest in any managing member of Grantor to a 501(c)(3) nonprofit corporation, or a limited liability company whose sole managing member is a 501(c)(3) nonprofit corporation, without the prior written consent of Beneficiary following full review and underwriting by Beneficiary of the proposed transferee.”

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

“(viii) Provided that (i) JF Q25 Partners, LLC owns the Mortgaged Property and remains the grantor under the Note, (ii) JF Q25 Member, LLC (“**Managing Member**”) is the sole managing member of Grantor and (iii) Q25 Apartments LIHTC Investor QOF LLC, a Delaware limited liability company, or its permitted transferee (the “**Equity Investor**”), has not less than a 99.99% membership interest in Grantor:

- (A) the removal by Equity Investor of Managing Member as managing member of Grantor and its replacement as managing member by The Goldman Sachs Group, Inc. (“**Equity Investor Sponsor**”), or by a wholly-owned affiliate of Equity Investor Sponsor, which removal shall be in accordance with the terms of the operating agreement of Grantor, provided that (i) the entity replacing the removed Managing Member must be a single purpose entity, (ii) after such replacement, Equity Investor Sponsor or the Initial Owners of Equity Investor Sponsor must own directly or indirectly not less than a Controlling Percentage of the general partnership or managing membership interests, as applicable, in the entity which replaced the removed Managing Member and (iii) each Guarantor shall be replaced as Guarantor by an individual or entity that is approved by Beneficiary and satisfies Beneficiary’s mortgage credit standards for guarantors; or
- (B) (i) a Transfer of investor membership interests of Equity Investor in Grantor to (A) a wholly-owned affiliate of Equity Investor or a wholly-owned affiliate of Equity Investor Sponsor, or (B) an entity whose management is controlled by Equity Investor Sponsor, by a wholly-owned affiliate of Equity Investor or by Equity Investor

Sponsor, or (ii) so long as Equity Investor Sponsor or an affiliate of Equity Investor Sponsor remains the sole managing member, sole manager or sole general partner, as applicable, of Equity Investor, the transfer of non-managing membership interests or limited partnership interests, as applicable, in Equity Investor; provided, however, if the Transfer under Section 21(b)(viii)(B)(i) would cause the Initial Owners of Borrower to own less than a Controlling Percentage of all membership or other ownership interests in Borrower or the Transfer under Section 21(b)(viii)(B)(ii) would cause the Equity Investor or the Equity Investor Sponsor to own directly or indirectly less than a Controlling Percentage of all membership or other ownership interests in Equity Investor, then Lender shall be provided with advance written notice of such proposed Transfer no later than 30 days before the date of the proposed Transfer along with evidence that the transferee is not (and does not have a principal who is) (w) a person identified on the U.S. Treasury Department Office of Foreign Assets Control (OFAC) List, (x) any other person or foreign country or agency thereof with whom a U.S. person may not conduct business or transactions by prohibition of Federal law or Executive Order of the President of the United States of America, (y) a person whom is prohibited from doing business with the City of Ogden, Utah, and (z) is not a person that the Lender and/or Servicer is prohibited from doing business with in accordance with its customary business practices; provided, further, to the extent that any Person acquires a collective direct or indirect equity interest in Borrower equal to or greater than 25%, such transferee shall be subject to the satisfactory completion by Lender of U.S. Treasury Department Office of Foreign Assets Control (OFAC), know-your-customer (KYC) and similar reviews.

- (C) a Transfer of membership interests of Equity Investor in Grantor to
 - (i) any financial institution, corporation, financial service firm or insurance company that is investment grade (defined as BBB- or better rating by S&P or similar rating agency) or has net assets of \$250,000,000 or more or is a wholly-owned subsidiary of such an entity, or
 - (ii) a syndicated tax credit fund whose manager has at least five (5) years of prior experience in tax credit funds which have totaled in the aggregate at least \$50,000,000 in equity; provided, however, the transferee is not (and does not have a principal who is) (w) a person identified on the U.S Treasury Department Office of Foreign Assets Control (OFAC) List, (x) any other person or foreign country or agency thereof with whom a U.S. person may not conduct business or transactions by prohibition of Federal law or Executive Order of the President of the United States of America, (y) a person whom is prohibited from doing business with the City of Ogden, Utah, and (z) is not a

person that the Beneficiary and/or Servicer is prohibited from doing business with in accordance with its customary business practices; provided, further, Beneficiary shall be provided with advance written notice of any proposed Transfer permitted under this Section 21(b)(viii)(D) no later than 30 days before the date of the proposed Transfer.

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

3. Section 30(a) of the Instrument is amended to add the following at the end of such Paragraph:

“Beneficiary agrees that, so long as Equity Investor has a continuing ownership interest in Grantor, effective notice to Grantor under the Forward Commitment Fee Documents shall require delivery of a copy of such notice to Equity Investor. Such notice shall be given in the manner provided in this Section 30(a), at Equity Investor’s address set forth below:

Q25 Apartments LIHTC Investor QOF LLC
 Urban Investment Group
 c/o Goldman Sachs Group
 200 West Street
 New York, New York 10282
 Attention: Urban Investment Group Portfolio Manager
 Email: gs-uig-portfolio-manager@gs.com

with a copy to:

Q25 Apartments LIHTC Investor QOF LLC
 Urban Investment Group
 c/o Goldman Sachs Group
 200 West Street
 New York, NY 10282
 Attention: Michael Lohr
 Email: michael.lohr@gs.com

and to:

Q25 Apartments LIHTC Investor QOF LLC
 Urban Investment Group
 c/o Goldman Sachs Bank USA
 2001 Ross Avenue #2800
 Dallas, Texas 75201
 Attention: Kelly Turner

Email: kelly.turner@gs.com

With a copy to:

Sidley Austin LLP
 555 West Fifth Street, Suite 4000
 Los Angeles, California 90013
 Attention: Cynthia J. Christian
 Email: cchristian@sidley.com

Beneficiary agrees that, notwithstanding its rights to invoke the remedies permitted by Section 43 of this Instrument, upon the breach of any covenant or agreement by Grantor in this Instrument (including, but not limited to, the covenants to pay when due sums secured by this Instrument) or any other Forward Commitment Fee Document, Beneficiary shall not, so long as Equity Investor has a continuing ownership interest in Grantor, conduct a foreclosure sale of the Mortgaged Property or receive a deed-in-lieu of foreclosure, until such time as Equity Investor has first been given 30 days written notice of such default and has failed, within such 30-day period to cure such default; provided, however, that Beneficiary shall be entitled, during such 30-day period, to continue to accelerate the Note and to pursue its remedies. Any cure tendered by Equity Investor will be accepted or rejected on the same basis as cures tendered by Grantor.”

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

“46. RESERVED.

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

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

49. CROSS-DEFAULT. Grantor acknowledges and agrees that (a) any failure by Grantor or the Project to qualify for low income housing tax credits pursuant to the provisions of Section 42 of the Internal Revenue Code and (b) any default, event of default, or breach (however such terms may be defined) after the expiration of any applicable notice and/or cure periods under the Extended Use Agreement shall be an Event of Default under this Instrument

and that any costs, damages or other amounts, including reasonable attorney's fees incurred by Beneficiary as a result of such an Event of Default by Grantor, including amounts paid to cure any default or event of default, under the Extended Use Agreement shall be an obligation of Grantor and become a part of the Indebtedness secured by this Instrument.

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

51. RESERVED.

52. REGULATORY AGREEMENT. Notwithstanding anything in this Instrument to the contrary, the Beneficiary hereby acknowledges and consents to the lien of the Regulatory Agreement and agrees that, irrespective of the order of recordation or date of effectiveness, the lien of this Instrument shall be subordinate to the Regulatory Agreement. Grantor acknowledges and agrees that any default, event of default, or breach (however such terms may be defined) after the expiration of any applicable notice and/or cure periods under the Regulatory Agreement shall be an Event of Default under this Instrument and that any costs, damages or other amounts, including reasonable attorney's fees incurred by the Beneficiary as a result of such an Event of Default by Grantor, including amounts paid to cure any default or event of default, under the Regulatory Agreement shall be an obligation of Grantor and become a part of the Indebtedness secured by this Instrument.

53. SUBORDINATION; STANDSTILL. This Instrument, the other Forward Commitment Fee Documents and all of the rights of Beneficiary and obligations of Grantor are subject and subordinate to the obligations of Grantor to, and rights of, Senior Beneficiary under the Senior Instrument and the other Permitted Debt documents. Until such time as any of the Senior Instrument has been released and discharged, Beneficiary shall not without the prior written consent of Original Funding Lender, which may be withheld in Original Funding Lender's sole and absolute discretion, exercise any of Beneficiary's remedies under this Instrument (including, without limitation, the commencement of any judicial or non-judicial action of proceeding (a) to have a receiver appointed to collect any monies payable to Grantor; or (b) to foreclose the lien(s) created by this Instrument; or (c) to file or join in the filing of any involuntary Bankruptcy Proceeding against Grantor or any person or entity which owns a direct or indirect interest in Grantor)."

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

EXHIBIT C

FINANCING STATEMENT INFORMATION

1. Name and Address of Debtor: JF Q25 Partners, LLC
c/o J. Fisher Companies, LLC
1216 W. Legacy Crossing Blvd., Suite 140
Centerville, Utah 84014
2. Debtor's State of Organization and Organizational I.D.#:

State of Formation: Utah

Type of Entity: limited liability company

Organizational I.D.#: 13291272-0160
3. Name and Address of Secured Party: Citibank, N.A.
388 Greenwich Street, Trading 4th Floor
New York, New York 10013
4. 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.