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RECORDED FOR AFFILIATED FIRST TITLE

**MULTIFAMILY DEED OF TRUST,**  
**ASSIGNMENT OF RENTS**  
**AND SECURITY AGREEMENT**

(UTAH)

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SECURITY AGREEMENT  
(UTAH)**

THIS MULTIFAMILY DEED OF TRUST, ASSIGNMENT OF RENTS AND SECURITY AGREEMENT (the "**Instrument**") is made as of this 9<sup>th</sup> day of June 2015, among **LIBERTY CENTER PROPERTIES, LLC**, a limited liability company organized and existing under the laws of the State of Utah, whose address is c/o Cowboy Partners, L.C., 6440 S. Wasatch Blvd., Suite 100, Salt Lake City, Utah 84121, as grantor ("**Borrower**"), to **AFFILIATED FIRST AMERICAN TITLE INSURANCE AGENCY, INC.**, having an address at 321 East Road, Suite 200, American For, Utah 84003 as trustee ("**Trustee**"), for the benefit of **UTAH HOUSING CORPORATION**, an independent body politic and corporate, constituting a public corporation organized and existing under the laws of the State of Utah, whose address is 2479 South Lake Park Boulevard, West Valley City, Utah 84120, as beneficiary ("**Lender**"). Borrower's organizational identification number, if applicable, is 8782532-0160.

Borrower, in consideration of the Indebtedness and the trust created by this Instrument, irrevocably grants, assigns, conveys and warrants to Trustee, in trust, with power of sale, the Mortgaged Property (as hereinafter defined), including the Land located in County of Utah, State of Utah and described in Exhibit A attached to this Instrument.

TO SECURE TO LENDER the payment of the Indebtedness evidenced by Borrower's Bond Mortgage Note payable to Lender, dated as of the date of this Instrument, and maturing on January 1, 2048 (the "**Maturity Date**"), in the principal amount of \$14,000,000, and all renewals, extensions and modifications of the Indebtedness, the payment of all sums advanced by or on behalf of Lender to protect the security of this Instrument under Section 12, and the performance of the covenants and agreements of Borrower contained in the Bond Mortgage Loan Documents (as hereinafter defined).

Borrower represents and warrants that Borrower is lawfully seized of the Mortgaged Property and has the right, power and authority to grant, convey and assign the Mortgaged Property, and that the Mortgaged Property is unencumbered except as shown on the schedule of exceptions to coverage in the title policy issued to and accepted by Lender contemporaneously with the execution and recordation of this Instrument and insuring Lender's interest in the Mortgaged Property (the "**Schedule of Title Exceptions**"). Borrower covenants that Borrower will warrant and defend generally the title to the Mortgaged Property against all claims and demands, subject to any easements and restrictions listed in the Schedule of Title Exceptions.

## UNIFORM COVENANTS

**Covenants.** In consideration of the mutual promises set forth in this Instrument, Borrower and Lender covenant and agree as follows:

**1. DEFINITIONS.** The following terms, when used in this Instrument (including when used in the above recitals), shall have the meanings set forth below in this Section 1. Any term used in this Instrument and not defined shall have the meaning given to that term in the Indenture.

(a) **"Attorneys' Fees and Costs"** means (i) fees and out-of-pocket costs of Lender's and Loan Servicer's attorneys, as applicable, including costs of Lender's and Loan Servicer's in-house counsel, support staff costs, costs of preparing for litigation, computerized research, telephone and facsimile transmission expenses, mileage, deposition costs, postage, duplicating, process service, videotaping and similar costs and expenses; (ii) costs and fees of expert witnesses, including appraisers; and (iii) investigatory fees.

(b) **"Bonds"** means the \$14,000,000 Multifamily Housing Revenue Bonds (Liberty Center Apartments Project) Series 2015 issued pursuant to the provisions of the Indenture.

(c) **"Bond Mortgage Loan Documents"** means the Financing Agreement, the Bond Mortgage Note, this Instrument, the Regulatory Agreement, all guaranties, all indemnity agreements, all Collateral Agreements and any other documents now or in the future executed by Borrower, any guarantor or any other person in connection with the Indebtedness, including, but not limited to, this Instrument, the CCA, and any other document evidencing, securing or otherwise related to Borrower's obligations to Lender in connection with Lender's making of the Loan and Goldman, Sachs & Co.'s purchase of the Bonds (and sale thereof to Goldman Sachs Bank USA), as such documents may be amended from time to time and any other documents now or in the future executed by Borrower, any guarantor or any other person in connection with the loan evidenced by the Bond Mortgage Note, as such documents may be amended from time to time.

(d) **"Bond Mortgage Note"** means the Bond Mortgage Note described on page 1 of this Instrument, including all schedules, riders, allonges and addenda, as such note may be amended from time to time.

(e) **"Bond Mortgage Loan"** means the loan made to Borrower by the Issuer with the proceeds of the Bonds in the original principal amount of \$14,000,000 pursuant to the Loan Agreement.

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

(g) **“Business Day”** means any day other than a Saturday, a Sunday or any other day on which Lender or the national banking associations are not open for business.

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

(i) **“CCA”** means that certain Continuing Covenants Agreement, dated as of the date hereof, between Goldman Sachs Bank USA and Borrower.

(j) **“Controlling Entity”** means an entity which owns, directly or indirectly through one or more intermediaries, (i) a general partnership interest or a Controlling Interest of the limited partnership interests in Borrower (if Borrower is a partnership or joint venture), (ii) a manager’s interest in Borrower or a Controlling Interest of the ownership or membership interests in Borrower (if Borrower is a limited liability company), (iii) a Controlling Interest of any class of voting stock of Borrower (if Borrower is a corporation), (iv) a trustee’s interest or a Controlling Interest of the beneficial interests in Borrower (if Borrower is a trust), or (v) a managing partner’s interest or a Controlling Interest of the partnership interests in Borrower (if Borrower is a limited liability partnership).

(k) **“Controlling Interest”** means (i) 51% or more of the ownership interests in an entity, or (ii) a percentage ownership interest in an entity of less than 51%, if the owner(s) of that interest actually direct(s) the business and affairs of the entity without the requirement of consent of any other party. The Controlling Interest shall be deemed to be 51% unless otherwise stated in Exhibit B.

(l) **“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.

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

(n) **“Financing Agreement”** means the financing agreement or loan agreement, as the same may have been from time to time amended or modified, together with any other instruments supplemental thereto, pursuant to which the Issuer has used the proceeds of the Bonds to make or acquire, as applicable, the Bond Mortgage Loan to Borrower in connection with the Project.

(o) **“Fixtures”** means all property owned by Borrower 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.

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

(q) **“Hazard Insurance”** is defined in Section 19.

(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; any substance the presence of which on the Mortgaged Property is prohibited by any federal, state or local authority; any substance that requires special handling and any other material or substance now or in the future that (i) is defined as a “hazardous substance,” “hazardous material,” “hazardous waste,” “toxic substance,” “toxic pollutant,” “contaminant,” or “pollutant” 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, administrative rulings and court judgments and decrees in effect now or in the future and including all amendments, that relate to Hazardous Materials or the protection of human health or the environment and apply to Borrower or to the Mortgaged Property. Hazardous Materials Laws include, but are not limited to, the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601, *et seq.*, the Resource Conservation and Recovery Act of 1976, 42 U.S.C. Section 6901, *et seq.*, the Toxic Substance Control Act, 15 U.S.C. Section 2601, *et seq.*, the Clean Water Act, 33 U.S.C. Section 1251, *et seq.*, and the Hazardous Materials Transportation Act, 49 U.S.C. Section 5101 *et seq.*, and their state analogs.

(t) **“Impositions”** and **“Imposition Deposits”** are defined in Section 7(a).

(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 the principal of, interest on, and all other amounts due at any time under the Bond Mortgage Note, this Instrument, the Financing Agreement, or any other Loan Document, including prepayment/substitution premiums, late charges, default interest, and advances as provided in Section 12 of this Instrument to protect the security of this Instrument.

(w) **"Indenture"** means the trust indenture, indenture of trust or bond resolution, as the same may have been from time to time amended or modified, together with any other instruments supplemental thereto, pursuant to which the Issuer has issued the Bonds.

(x) **"Indenture Trustee"** means U.S. Bank National Association and its successors as trustee under the Indenture.

(y) **"Initial Owners"** means, with respect to Borrower or any other entity, the persons or entities that (i) on the Closing Date, or (ii) on the date of a transfer consented to by Lender or Goldman Sachs Bank USA, own in the aggregate 100% of the ownership interests in Borrower or that entity.

(z) **"Issuer"** means the Utah Housing Corporation and its successors.

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

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

(cc) **"Loan Servicer"** means the entity that from time to time is designated by Lender to collect payments and deposits and receive notices under this Instrument, the Financing Agreement and any other Bond Mortgage Loan Document, and otherwise to service the Indebtedness for the benefit of Lender.

(dd) **"MMP"** means a moisture management plan to control water intrusion and prevent the development of Mold or moisture at the Mortgaged Property throughout the term of this Instrument. At a minimum, the MMP must 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.

(ee) **"Lender"** means the entity identified as "Lender" in the first paragraph of this Instrument, or any subsequent holder of the Bond Mortgage Note.

(ff) **“Maturity Date”** means the date on which the Bond Mortgage Note is stated to be due and payable in full.

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

(hh) **“Mortgaged Property”** means all of Borrower’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 Personalty;
- (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 Personalty or any other part of the Mortgaged Property, whether or not Borrower obtained the insurance pursuant to Lender’s requirement;
- (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 Personalty or any other part of the Mortgaged Property, including any awards or settlements resulting from condemnation proceedings or the total or partial taking of the Land, the Improvements, the Fixtures, the Personalty or any other part of the Mortgaged Property under the power of eminent domain or otherwise and including any conveyance in lieu thereof;
- (viii) all contracts, options and other agreements for the sale of the Land, the Improvements, the Fixtures, the Personalty or any other part of the Mortgaged Property entered into by Borrower now or in the future, including cash or securities deposited to secure performance by parties of their obligations;

- (ix) 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;
- (x) all Rents and Leases;
- (xi) all earnings, royalties, accounts receivable, issues and profits from the Land, the Improvements or any other part of the Mortgaged Property, and all undisbursed proceeds of the loan secured by this Instrument and, if Borrower is a cooperative housing corporation, maintenance charges or assessments payable by shareholders or residents;
- (xii) all Imposition Deposits;
- (xiii) 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);
- (xiv) 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;
- (xv) 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;
- (xvi) all right, title and interest of Borrower in, and in any way related to, any declaration of condominium pursuant to the applicable statutes of the State of Utah and all amendments, modifications or replacements thereof or regulations with respect thereto now or hereafter enacted (the "**Condominium Act**"), creating a condominium on the Land (the "**Condominium**"), upon the prior written consent of Lender, which consent shall not be unreasonably withheld, conditioned or delayed, and which declaration is recorded or to be recorded in the County of Utah, the City of Provo and State of Utah; and
- (xvii) any and all Surplus Proceeds.
- (ii) "**O&M Program**" is defined in Section 18(d).
- (jj) "**Personalty**" means all:
  - (i) accounts (including deposit accounts) of Borrower related to the Mortgaged Property;

- (ii) equipment and inventory owned by Borrower, which are used now or in the future in connection with the ownership, management or operation of the Land or Improvements or are located on the Land or Improvements, including furniture, furnishings, machinery, building materials, goods, supplies, tools, books, records (whether in written or electronic form), and computer equipment (hardware and software);
- (iii) other tangible personal property owned by Borrower which is used now or in the future in connection with the ownership, management or operation of the Land or Improvements or is located on the Land or in the Improvements, including ranges, stoves, microwave ovens, refrigerators, dishwashers, garbage disposers, washers, dryers and other appliances (other than Fixtures);
- (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) all 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 Borrower in or under letters of credit.

(kk) **"Permitted Encumbrances"** means any easements, encumbrances or restrictions listed on Schedule B – Part I of the title insurance policy insuring the lien of this Instrument.

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

(ll) **"Regulatory Agreement"** means the Tax Regulatory Agreement among the Issuer, Borrower, and the Indenture Trustee, 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.

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

charges or assessments payable by shareholders or residents under proprietary leases or occupancy agreements, whether now due, past due, or to become due.

(nn) **"Surplus Proceeds"** means any funds, amounts, proceeds or credits derived from the foreclosure of the Mortgaged Property by a holder of this Instrument which exceeds the amount required to satisfy the obligations secured by this Instrument.

(oo) **"Taxes"** means all taxes, assessments, vault rentals and other charges, if any, whether 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.

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

(a) This Instrument is also a security agreement under the Uniform Commercial Code for any of the Mortgaged Property which, under applicable law, may be subjected to a security interest under the Uniform Commercial Code, whether such Mortgaged Property is owned now or acquired in the future, and all products and cash and non-cash proceeds thereof (collectively, **"UCC Collateral"**), and Borrower hereby grants to Lender a security interest in the UCC Collateral. Borrower hereby authorizes Lender to prepare and file financing statements, continuation statements and financing statement amendments in such form as Lender may require to perfect or continue the perfection of this security interest and Borrower agrees, if Lender so requests, to execute and deliver to Lender such financing statements, continuation statements and amendments. Borrower shall pay all filing costs and all costs and expenses of any record searches for financing statements and/or amendments that Lender may require. Without the prior written consent of Lender, Borrower shall not create or permit to exist any other lien or security interest in any of the UCC Collateral.

(b) Unless Borrower gives Notice (as hereinafter defined) to Lender within 30 days after the occurrence of any of the following, and executes and delivers to Lender modifications or supplements of this Instrument (and any financing statement which may be filed in connection with this Instrument) as Lender may require, Borrower shall not (i) change its name, identity, structure or jurisdiction of organization; (ii) change the location of its place of business (or chief executive office if more than one place of business); or (iii) add to or change any location at which any of the Mortgaged Property is stored, held or located.

(c) If an Event of Default has occurred and is continuing, Lender shall have the remedies of a secured party under the Uniform Commercial Code, in addition to all remedies provided by this Instrument or existing under applicable law. In exercising any remedies, Lender may exercise its remedies against the UCC Collateral separately or together, and in any order, without in any way affecting the availability of Lender's other remedies.

(d) This Instrument constitutes a financing statement with respect to any part of the Mortgaged Property that is or may become a Fixture, if permitted by applicable law.

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

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

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

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

(d) If an Event of Default has occurred and is continuing, Lender may, regardless of the adequacy of Lender's security or the solvency of Borrower and even in the absence of waste, enter upon and take and maintain full control of the Mortgaged Property in order to perform all acts that Lender in its discretion determines to be necessary or desirable for the operation and maintenance of the Mortgaged Property, including the execution, cancellation or modification of Leases, the collection of all Rents, the making of repairs to the Mortgaged Property and the execution or termination of contracts providing for the management, operation or maintenance of the Mortgaged Property, for the purposes of enforcing the assignment of Rents pursuant to Section 3(a), protecting the Mortgaged Property or the security of this Instrument, or for such other purposes as Lender in its discretion may deem necessary or desirable. Alternatively, if an Event of Default has occurred and is continuing, regardless of the adequacy of Lender's security, without regard to Borrower's solvency and without the necessity of giving prior notice (oral or written) to Borrower, Lender may apply to any court having jurisdiction for the appointment of a receiver for the Mortgaged Property to take any or all of the actions set forth in the preceding sentence. If Lender elects to seek the appointment of a receiver for the Mortgaged Property at any time after an Event of Default has occurred and is continuing, Borrower, by its execution of this Instrument, expressly consents to the appointment of such receiver, including the appointment of a receiver *ex parte* if permitted by applicable law. If Borrower is a housing cooperative corporation or association, Borrower hereby agrees that if a receiver is appointed, the order appointing the receiver may contain a provision requiring the receiver to pay the installments of interest and principal then due and payable under the Note and the other amounts then due and payable under the other Loan Documents, including Imposition Deposits, it being acknowledged and agreed that the Indebtedness is an obligation of the Borrower and must be paid out of maintenance charges payable by the Borrower's tenant shareholders under their proprietary leases or occupancy agreements. Lender or the receiver, as the case may be, shall be entitled to receive a reasonable fee for managing the Mortgaged Property. Immediately upon appointment of a receiver or immediately upon the Lender's entering upon and taking possession and control of the Mortgaged Property, Borrower shall surrender possession of the Mortgaged Property to Lender or the receiver, as the case may be, and shall deliver to Lender or the receiver, as the case may be, all documents, records (including records on electronic or magnetic media), accounts, surveys, plans, and specifications relating to the Mortgaged Property and all security deposits and prepaid Rents. In the event Lender takes possession and control of the Mortgaged Property, Lender may exclude Borrower and its representatives from the Mortgaged Property. Borrower acknowledges and agrees that the exercise by Lender of any of the rights conferred under this Section 3 shall not be construed to make Lender a mortgagee-in-possession of the Mortgaged Property so long as Lender has not itself entered into actual possession of the Land and Improvements.

(e) If Lender enters the Mortgaged Property, Lender shall be liable to account only to Borrower and only for those Rents actually received. Except to the extent of Lender's gross negligence or willful misconduct, Lender shall not be liable to Borrower, anyone claiming under or through Borrower or anyone having an interest in the Mortgaged Property, by reason of any act or omission of Lender under Section 3(d), and Borrower hereby releases and discharges Lender from any such liability to the fullest extent permitted by law.

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

(g) Any entering upon and taking of control of the Mortgaged Property by Lender or the receiver, as the case may be, and any application of Rents as provided in this Instrument shall not cure or waive any Event of Default or invalidate any other right or remedy of Lender under applicable law or provided for in this Instrument.

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

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

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

(c) Borrower acknowledges and agrees that the exercise by Lender, either directly or by a receiver, of any of the rights conferred under this Section 4 shall not be construed to make Lender a mortgagee-in-possession of the Mortgaged Property so long as Lender has not itself entered into actual possession of the Land and the Improvements. The acceptance by Lender of the assignment of the Leases pursuant to Section 4(a) shall not at any time or in any event obligate Lender to take any action under this Instrument or to expend any money or to incur any expenses. Except to the extent of Lender's gross negligence or willful misconduct, Lender shall not be liable in any way for any injury or damage to person or property sustained by any person or persons, firm or corporation in or about the Mortgaged Property. Prior to Lender's actual entry into and taking possession of the Mortgaged Property, Lender shall not (i) be obligated to perform any of the terms, covenants and conditions contained in any Lease (or otherwise have any obligation with respect to any Lease); (ii) be obligated to appear in or defend any action or proceeding relating to the Lease or the Mortgaged Property; or (iii) be responsible for the operation, control, care, management or repair of the Mortgaged Property or any portion of the Mortgaged Property. The execution of this Instrument by Borrower shall constitute conclusive evidence that all responsibility for the operation, control, care, management and repair of the Mortgaged Property is and shall be that of Borrower, prior to such actual entry and taking of possession.

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

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

(f) Except for laundry facilities, telephone or internet access services, and cable television services for tenants on market terms and conditions, Borrower shall not lease any portion of the Mortgaged Property for non-residential use except with the prior written consent of Lender and Lender's prior written approval of the Lease agreement. Borrower shall not modify the terms of, or extend or terminate, any Lease for non-residential use (including any Lease in existence on the date of this Instrument) without the prior written consent of Lender. However, Lender's consent shall not be required for the modification or extension of a non-residential Lease if such modification or extension is on terms at least as favorable to Borrower as those customary at that time in the applicable market and the income from the extended or modified Lease will not be less than the income received from the Lease as of the date of this Instrument. Borrower shall, without request by Lender, deliver an executed copy of each non-residential Lease to Lender promptly after such Lease is signed. All non-residential Leases,

including renewals or extensions of existing Leases, shall specifically provide that (i) such Leases are subordinate to the lien of this Instrument; (ii) the tenant shall attorn to Lender and any purchaser at a foreclosure sale, such attornment to be self-executing and effective upon acquisition of title to the Mortgaged Property by any purchaser at a foreclosure sale or by Lender in any manner; (iii) the tenant agrees to execute such further evidences of attornment as Lender or any purchaser at a foreclosure sale may from time to time request; (iv) the Lease shall not be terminated by foreclosure or any other transfer of the Mortgaged Property; (v) after a foreclosure sale of the Mortgaged Property, Lender or any other purchaser at such foreclosure sale may, at Lender's or such purchaser's option, accept or terminate such Lease; and (vi) the tenant shall, upon receipt after the occurrence of an Event of Default of a written request from Lender, pay all Rents payable under the Lease to Lender.

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

(h) If Borrower is a cooperative housing corporation or association, notwithstanding anything to the contrary contained in this subsection, so long as Borrower remains a cooperative housing corporation or association and is not in breach of any covenant of this Instrument, Lender hereby consents to:

- (i) the execution of leases of apartments for a term in excess of two years from Borrower to a tenant shareholder of Borrower, so long as such leases, including proprietary leases, are and will remain subordinate to the lien of this Instrument; and
- (ii) the surrender or termination of such leases of apartments where the surrendered or terminated lease is immediately replaced or where the Borrower makes its best efforts to secure such immediate replacement by a newly executed lease of the same apartment to a tenant shareholder of the Borrower. However, no consent is hereby given by Lender to any execution, surrender, termination or assignment of a lease under terms that would waive or reduce the obligation of the resulting tenant shareholder under such lease to pay cooperative assessments in full when due or the obligation of the former tenant shareholder to pay any unpaid portion of such assessments.

**5. PAYMENT OF INDEBTEDNESS; PERFORMANCE UNDER BOND MORTGAGE LOAN DOCUMENTS.** Borrower shall pay the Indebtedness when due in accordance with the terms of the Bond Mortgage Note and the other Bond Mortgage Loan Documents and shall perform, observe and comply with all other provisions of the Bond Mortgage Note and the other Bond Mortgage Loan Documents.

**6. EXCULPATION.** Borrower's personal liability for payment of the Indebtedness and for performance of the other obligations to be performed by it under this Instrument is limited in the manner, and to the extent, provided in the Bond Mortgage.

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

(a) Unless this requirement is waived in writing by Lender, which waiver may be contained in this Section 7(a), Borrower shall deposit with Loan Servicer on the day monthly scheduled payments and deposits are due under the CCA (or on another day designated in writing by Loan Servicer), until such time as the Indebtedness has been paid in full, an additional amount sufficient to accumulate with Loan Servicer the entire sum required to pay, when due, the items marked "Collect" below. Lender will not require the Borrower to make Imposition Deposits with respect to the items marked "Deferred" below.

[collect]	Hazard Insurance premiums or other insurance premiums required by Lender under Section 19,
[collect]	Taxes,
[deferred]	water and sewer charges (that could become a lien on the Mortgaged Property),
[N/A]	ground rents,
[deferred]	assessments or other charges (that could become a lien on the Mortgaged Property)

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

(b) Imposition Deposits shall be held in an institution (which may be Loan Servicer, if Loan Servicer is such an institution) whose deposits or accounts are insured or guaranteed by a federal agency. Loan Servicer shall not be obligated to open additional accounts or deposit Imposition Deposits in additional institutions when the amount of the Imposition Deposits exceeds the maximum amount of the federal deposit insurance or guaranty. Loan Servicer shall apply the Imposition Deposits to pay Impositions so long as no Event of Default has occurred and is continuing. Unless applicable law requires, Loan Servicer shall not be required to pay Borrower any interest, earnings or profits on the Imposition Deposits. As additional security for all of Borrower's obligations under this Instrument, the CCA and the other Loan Documents, Borrower hereby pledges and grants to Loan Servicer a security interest in the Imposition Deposits and all proceeds of, and all interest and dividends on, the Imposition Deposits. Any amounts deposited with Loan Servicer under this Section 7 shall not be trust funds, nor shall they operate to reduce the Indebtedness, unless applied by Loan Servicer for that purpose under Section 7(e).

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

(d) If at any time the amount of the Imposition Deposits held by Loan Servicer for payment of a specific Imposition exceeds the amount reasonably deemed necessary by Loan Servicer, the excess shall be credited against future installments of Imposition Deposits. If at any time the amount of the Imposition Deposits held by Loan Servicer for payment of a specific Imposition is less than the amount reasonably estimated by Loan Servicer to be necessary, Borrower shall pay to Loan Servicer the amount of the deficiency within 15 days after Notice from Loan Servicer.

(e) If an Event of Default has occurred and is continuing, Loan Servicer may apply any Imposition Deposits, in any amounts and in any order as Loan Servicer determines, in Loan Servicer's discretion, to pay any Impositions or as a credit against the Indebtedness. At such time as the Indebtedness is paid in full or otherwise discharged, Loan Servicer shall refund to Borrower any Imposition Deposits held by Loan Servicer.

(f) If Loan Servicer does not collect an Imposition Deposit with respect to an Imposition either marked "Deferred" in Section 7(a) or pursuant to a separate written waiver by Loan Servicer, then on or before the date each such Imposition is due, or on the date this Instrument requires each such Imposition to be paid, Borrower must provide Loan Servicer with proof of payment of each such Imposition for which Loan Servicer does not require collection of Imposition Deposits. Loan Servicer may revoke its deferral or waiver and require Borrower to deposit with Loan Servicer any or all of the Imposition Deposits listed in Section 7(a), regardless of whether any such item is marked "Deferred" in such section, upon Notice to Borrower, (i) if Borrower does not timely pay any of the Impositions, (ii) if Borrower fails to provide timely proof to Loan Servicer of such payment, or (iii) at any time during the existence of an Event of Default.

(g) In the event of a transfer of the Mortgaged Property (or any part thereof) or the transfer or change of the direct or indirect interests in Borrower prohibited by or requiring Loan Servicer's approval pursuant to the CCA, Loan Servicer's waiver of the collection of any Imposition Deposit in this Section 7 may be modified or rendered void by Loan Servicer at Loan Servicer's option by Notice to Borrower and the transferee(s) as a condition of Loan Servicer's approval of such transfer.

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

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

**10. COMPLIANCE WITH LAWS AND ORGANIZATIONAL DOCUMENTS.**

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

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

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

(d) Borrower shall at all times comply with all laws, regulations and requirements of any Governmental Authority relating to Borrower's formation, continued existence and good standing in the Property Jurisdiction. Borrower shall at all times comply with its organizational documents, including but not limited to its partnership agreement (if Borrower is a partnership), its by-laws (if Borrower is a corporation or housing cooperative corporation or association) or its operating agreement (if Borrower is a limited liability company, joint venture or tenancy-in-common). If Borrower is a housing cooperative corporation or association, Borrower shall at all times maintain its status as a "cooperative housing corporation" as such term is defined in Section 216(b) of the Internal revenue Code of 1986, as amended, or any successor statute thereto.

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

(b) convert any individual dwelling units or common areas to commercial use, (c) initiate a change in the zoning classification of the Mortgaged Property or acquiesce without Notice to and consent of Lender in a change in the zoning classification of the Mortgaged Property, (d) establish any condominium or cooperative regime with respect to the Mortgaged Property, (e) combine all or any part of the Mortgaged Property with all or any part of a tax parcel which is not part of the Mortgaged Property, or (f) subdivide or otherwise split any tax parcel constituting all or any part of the Mortgaged Property without the prior consent of Lender. Notwithstanding anything contained in this Section to the contrary, if Borrower is a housing cooperative corporation or association, Lender acknowledges and consents to Borrower's use of the Mortgaged Property as a housing cooperative.

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

(a) If Borrower fails to perform any of its obligations under this Instrument, the Bond Mortgage Note or any other Bond Mortgage Loan Document, or if any action or proceeding is commenced which purports to affect the Mortgaged Property, Lender's security or Lender's rights under this Instrument, including eminent domain, insolvency, code enforcement, civil or criminal forfeiture, enforcement of Hazardous Materials Laws, enforcement of the Bond Mortgage Loan Documents, fraudulent conveyance or reorganizations or proceedings involving a bankrupt or decedent, then Lender at Lender's option may make such appearances, file such documents, disburse such sums and take such actions as Lender reasonably deems necessary to perform such obligations of Borrower and to protect Lender's interest, including (i) payment of Attorneys' Fees and Costs, (ii) payment of fees and out-of-pocket expenses of accountants, inspectors and consultants, (iii) entry upon the Mortgaged Property to make repairs or secure the Mortgaged Property, (iv) procurement of the insurance required by Section 19 of this Instrument, and (v) payment of amounts which Borrower has failed to pay under Sections 15 and 17 of this Instrument.

(b) Any amounts disbursed by Lender under this Section 12, or under any other provision of this Instrument that treats such disbursement as being made under this Section 12, shall be secured by this Instrument, shall be added to, and become part of, the principal component of the Indebtedness, shall be immediately due and payable and shall bear interest from the date of disbursement until paid at the default rate of interest payable under the Bond Mortgage Loan Documents.

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

## **13. INSPECTION.**

(a) Lender, its agents, representatives, and designees may make or cause to be made entries upon and inspections of the Mortgaged Property (including environmental inspections and tests) during normal business hours, or at any other reasonable time, upon reasonable notice to Borrower if the inspection is to include occupied residential units (which notice need not be in

writing). Notice to Borrower shall not be required in the case of an emergency, as determined in Lender's discretion, or when an Event of Default has occurred and is continuing.

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

(c) If Lender or Loan Servicer determines not to conduct an annual inspection of the Mortgaged Property, and in lieu thereof Lender requests a certification, Borrower shall be prepared to provide and must actually provide to Lender a factually correct certification each year that the annual inspection is waived to the following effect:

Borrower has not received any written complaint, notice, letter or other written communication from tenants, management agent or governmental authorities regarding mold, fungus, microbial contamination or pathogenic organisms ("Mold") or any activity, condition, event or omission that causes or facilitates the growth of Mold on or in any part of the Mortgaged Property or if Borrower has received any such written complaint, notice, letter or other written communication that Borrower has investigated and determined that no Mold activity, condition or event exists or alternatively has fully and properly remediated such activity, condition, event or omission in compliance with the Moisture Management Plan for the Mortgaged Property.

If Borrower is unwilling or unable to provide such certification, Lender may require a professional inspection of the Mortgaged Property at Borrower's expense.

#### **14. BOOKS AND RECORDS; FINANCIAL REPORTING.**

(a) Borrower shall keep and maintain at all times at the Mortgaged Property or the management agent's office, and upon Lender's request shall make available at the Mortgaged Property (or, at Borrower's option, at the management agent's office), 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 by Lender at any reasonable time.

(b) Within 120 days after the end of each fiscal year of Borrower, Borrower shall furnish to Lender a statement of income and expenses for Borrower's operation of the Mortgaged Property for that fiscal year, a statement of changes in financial position of Borrower relating to the Mortgaged Property for that fiscal year and, when requested by Lender, a balance sheet showing all assets and liabilities of Borrower relating to the Mortgaged Property as of the end of that fiscal year. If Borrower's fiscal year is other than the calendar year, Borrower must also submit to Lender a year-end statement of income and expenses within 120 days after the end of the calendar year.

(c) Within 120 days after the end of each calendar year, and at any other time, upon Lender's request, Borrower shall furnish to Lender each of the following. However, Lender shall not require any of the following more frequently than quarterly except when there has been an Event of Default and such Event of Default is continuing, in which case Lender may, upon written request to Borrower, require Borrower to furnish any of the following more frequently:

- (i) a rent schedule for the Mortgaged Property showing the name of each tenant, and for each tenant, the space occupied, the lease expiration date, the rent payable for the current month, the date through which rent has been paid, and any related information requested by Lender;
- (ii) an accounting of all security deposits held pursuant to all Leases, including the name of the institution (if any) and the names and identification numbers of the accounts (if any) in which such security deposits are held and the name of the person to contact at such financial institution, along with any authority or release necessary for Lender to access information regarding such accounts;
- (iii) a statement that identifies all owners of any interest in Borrower and any Controlling Entity and the interest held by each (unless Borrower or any Controlling Entity is a publicly-traded entity in which case such statement of ownership shall not be required), if Borrower or a Controlling Entity is a corporation, all officers and directors of Borrower and the Controlling Entity, and if Borrower or a Controlling Entity is a limited liability company, all managers who are not members; and
- (iv) a certificate from Borrower that the Mortgaged Property is in compliance with the Regulatory Agreement, together with the most current certificates of compliance or other evidence of current compliance issued by the applicable Governmental Authority.

(d) At any time upon Lender's request, Borrower shall furnish to Lender each of the following. However, Lender shall not require any of the following more frequently than quarterly except when there has been an Event of Default and such Event of Default is

continuing, in which case Lender may require Borrower to furnish any of the following more frequently:

- (i) a balance sheet, a statement of income and expenses for Borrower and a statement of changes in financial position of Borrower for Borrower's most recent fiscal year;
- (ii) a quarterly or year-to-date income and expense statement for the Mortgaged Property;
- (iii) a monthly property management report for the Mortgaged Property, showing the number of inquiries made and rental applications received from tenants or prospective tenants and deposits received from tenants and any other information requested by Lender; and
- (iv) a certificate from Borrower that the Mortgaged Property is in compliance with the Regulatory Agreement, together with the most current certificates of compliance or other evidence of current compliance issued by the applicable Governmental Authority.

(e) Upon Lender's request at any time when an Event of Default has occurred and is continuing, Borrower shall furnish to Lender monthly income and expense statements and rent schedules for the Mortgaged Property.

(f) An individual having authority to bind Borrower shall certify each of the statements, schedules and reports required by Sections 14(b) through 14(e) to be complete and accurate. Each of the statements, schedules and reports required by Sections 14(b) through 14(e) shall be in such form and contain such detail as Lender may reasonably require. Lender also may require that any of the statements, schedules or reports listed in Section 14(b) and 14(c)(i) and (ii) be audited at Borrower's expense by independent certified public accountants acceptable to Lender, at any time when an Event of Default has occurred and is continuing or at any time that Lender, in its reasonable judgment, determines that audited financial statements are required for an accurate assessment of the financial condition of Borrower or of the Mortgaged Property.

(g) If Borrower fails to provide in a timely manner the statements, schedules and reports required by Sections 14(b) through (e), Lender shall give Borrower Notice specifying the statements, schedules and reports required by Section 14(b) through (e) that Borrower has failed to provide. If Borrower has not provided the required statements, schedules and reports within 10 Business Days following such Notice, then Lender shall have the right to have Borrower's books and records audited, at Borrower's expense, by independent certified public accountants selected by Lender in order to obtain such statements, schedules and reports, and all related costs and expenses of Lender shall become immediately due and payable and shall become an additional part of the Indebtedness as provided in Section 12. Notice to Borrower shall not be

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

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

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

## **15. TAXES; OPERATING EXPENSES.**

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

(b) Subject to the provisions of Section 15(c), Borrower shall (i) pay the expenses of operating, managing, maintaining and repairing the Mortgaged Property (including 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) pay insurance premiums at least 30 days prior to the expiration date of each policy of insurance, unless applicable law specifies some lesser period.

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

(d) Borrower, at its own expense, may contest by appropriate legal proceedings, conducted diligently and in good faith, the amount or validity of any Imposition other than insurance premiums, if (i) Borrower notifies Lender of the commencement or expected commencement of such proceedings, (ii) the Mortgaged Property is not in danger of being sold or forfeited, (iii) Borrower has not already paid the Imposition, Borrower deposits with Lender reserves sufficient to pay the contested Imposition, if requested by Lender, and (iv) Borrower furnishes whatever additional security is required in the proceedings or is reasonably requested by Lender.

(e) Borrower shall promptly deliver to Lender a copy of all notices of, and invoices for, Impositions, and if Borrower pays any Imposition directly, Borrower shall furnish to Lender,

on or before the date this Instrument requires such Impositions to be paid, receipts evidencing that such payments were made.

**16. LIENS; ENCUMBRANCES.** Except as may be permitted pursuant to the CCA, Borrower acknowledges that 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 or on certain ownership interests in Borrower, whether voluntary, involuntary or by operation of law, and whether or not such Lien has priority over the lien of this Instrument, constitutes an Event of Default and subjects Borrower to personal liability under the CCA or Bond Mortgage Note.

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

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

(b) Borrower shall not abandon the Mortgaged Property.

(c) Borrower shall restore or repair promptly, in a good and workmanlike manner, any damaged part of the Mortgaged Property to the equivalent of its original condition, or such other condition as Lender may approve in writing, whether or not insurance proceeds or condemnation awards are available to cover any costs of such restoration or repair; however, Borrower shall not be obligated to perform such restoration or repair if (i) no Event of Default has occurred and is continuing, and (ii) Lender has elected to apply any available insurance proceeds and/or condemnation awards to the payment of Indebtedness pursuant to Section 19(h)(ii), (iii), (iv) or (v), or pursuant to Section 20 of this Instrument.

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

(e) Borrower shall provide for professional management of the Mortgaged Property by a residential rental property manager satisfactory to Lender at all times under a contract approved by Lender in writing, which contract must be terminable upon not more than 30 days notice without the necessity of establishing cause and without payment of a penalty or termination fee by Borrower or its successors.

(f) Borrower shall give Notice to Lender of and, unless otherwise directed in writing by Lender, shall appear in and defend any action or proceeding purporting to affect the Mortgaged Property, Lender's security or Lender's rights under this Instrument. Borrower shall not (and shall not permit any tenant or other person to) remove, demolish or alter the Mortgaged Property or any part of the Mortgaged Property, including any removal, demolition or alteration occurring in connection with a rehabilitation of all or part of the Mortgaged Property, except (i) in connection with the replacement of tangible Personalty, (ii) if Borrower is a cooperative housing corporation or association, to the extent permitted with respect to individual dwelling

units under the form of proprietary lease or occupancy agreement and (iii) repairs and replacements in connection with making an individual unit ready for a new occupant.

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

(h) If Borrower is a housing cooperative corporation or association, until the Indebtedness is paid in full Borrower shall not reduce the maintenance fees, charges or assessments payable by shareholders or residents under proprietary leases or occupancy agreements below a level which is sufficient to pay all expenses of the Borrower, including, without limitation, all operating and other expenses for the Mortgaged Property and all payments due pursuant to the terms of the Note and any Loan Documents.

## 18. ENVIRONMENTAL HAZARDS.

(a) Except for matters described in Section 18(b), Borrower 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 or any other property of Borrower that is adjacent to the Mortgaged Property;
- (ii) the transportation of any Hazardous Materials to, from, or across the Mortgaged Property;
- (iii) any occurrence or condition on the Mortgaged Property or any other property of Borrower that is adjacent to the Mortgaged Property, which occurrence or condition is or may be in violation of Hazardous Materials Laws;
- (iv) any violation of or noncompliance with the terms of any Environmental Permit with respect to the Mortgaged Property or any property of Borrower that is adjacent to the Mortgaged Property; or
- (v) any violation or noncompliance with the terms of any O&M Program as defined in subsection (d).

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

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

(d) As required by Lender, Borrower shall also have established 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 Section 18 must be approved by Lender and shall be referred to herein as an "**O&M Program**." Borrower shall comply in a timely manner with, and cause all employees, agents, and contractors of Borrower and any other persons present on the Mortgaged Property to comply with each O&M Program. Borrower shall pay all costs of performance of Borrower's obligations under any O&M Program, and Lender's out-of-pocket costs incurred in connection with the monitoring and review of each O&M Program and Borrower's performance shall be paid by Borrower upon demand by Lender. Any such out-of-pocket costs of Lender that Borrower fails to pay promptly shall become an additional part of the Indebtedness as provided in Section 12 of this Instrument.

(e) Borrower represents and warrants to Lender that, except as previously disclosed by Borrower to Lender in writing (which written disclosure may be in certain environmental assessments and other written reports accepted by Lender in connection with the funding of the Indebtedness and dated prior to the date of this Instrument):

- (i) Borrower has not at any time engaged in, caused or permitted any Prohibited Activities or Conditions on the Mortgaged Property;
- (ii) to the best of Borrower's knowledge after reasonable and diligent inquiry, no Prohibited Activities or Conditions exist or have existed on the Mortgaged Property;

- (iii) the Mortgaged Property does not now contain any underground storage tanks, and, to the best of Borrower's knowledge after reasonable and diligent inquiry, 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 previously disclosed by Borrower to Lender in writing, that tank complies with all requirements of Hazardous Materials Laws;
- (iv) to the best of Borrower's knowledge after reasonable and diligent inquiry, Borrower has complied with all Hazardous Materials Laws, including all requirements for notification regarding releases of Hazardous Materials. Without limiting the generality of the foregoing, Borrower has obtained all Environmental Permits required for the operation of the Mortgaged Property in accordance with Hazardous Materials Laws now in effect and all such Environmental Permits are in full force and effect;
- (v) to the best of Borrower's knowledge after reasonable and diligent 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;
- (vi) there are no actions, suits, claims or proceedings pending or, to the best of Borrower's knowledge after reasonable and diligent inquiry, threatened that involve the Mortgaged Property and allege, arise out of, or relate to any Prohibited Activity or Condition; and
- (vii) Borrower has not received any written complaint, order, notice of violation or other communication from any Governmental Authority with regard to air emissions, water discharges, noise emissions or Hazardous Materials, or any other environmental, health or safety matters affecting the Mortgaged Property or any other property of Borrower that is adjacent to the Mortgaged Property.

The representations and warranties in this Section 18 shall be continuing representations and warranties that shall be deemed to be made by Borrower until such time as the Indebtedness is paid in full or otherwise discharged.

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

- (i) Borrower's discovery of any Prohibited Activity or Condition;
- (ii) Borrower's receipt of or knowledge of any written complaint, order, notice of violation or other communication from any tenant, management agent, Governmental Authority or other person with regard to present or future

alleged Prohibited Activities or Conditions, or any other environmental, health or safety matters affecting the Mortgaged Property or any other property of Borrower that is adjacent to the Mortgaged Property; or

(iii) Borrower's breach of any of its obligations under this Section 18.

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

(g) Borrower shall pay promptly the costs of any environmental inspections, tests or audits, a purpose of which is to identify the extent or cause of or potential for a Prohibited Activity or Condition ("**Environmental Inspections**"), required by Lender in connection with any foreclosure or deed in lieu of foreclosure, or to obtain Lender's consent to any transfer of the Mortgaged Property (or any part thereof) or of any of the direct or indirect interests in Borrower, or required by Lender following a reasonable determination by Lender that Prohibited Activities or Conditions may exist. Any such costs incurred by Lender (including Attorneys' Fees and Costs and the costs of technical consultants whether incurred in connection with any judicial or administrative process or otherwise) that Borrower fails to pay promptly shall become an additional part of the Indebtedness as provided in Section 12. As long as (i) no Event of Default has occurred and is continuing, (ii) Borrower has actually paid for or reimbursed Lender for all costs of any such Environmental Inspections performed or required by Lender, and (iii) Lender is not prohibited by law, contract or otherwise from doing so, Lender shall make available to Borrower, without representation of any kind, copies of Environmental Inspections prepared by third parties and delivered to Lender. Lender hereby reserves the right, and Borrower hereby expressly authorizes Lender, to make available to any party, including any prospective bidder at a foreclosure sale of the Mortgaged Property, the results of any Environmental Inspections made by or for Lender with respect to the Mortgaged Property. Borrower consents to Lender notifying any party (either as part of a notice of sale or otherwise) of the results of any Environmental Inspections made by or for Lender. Borrower acknowledges that Lender cannot control or otherwise assure the truthfulness or accuracy of the results of any 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 that a party may bid at such sale. Borrower agrees that Lender shall have no liability whatsoever as a result of delivering the results to any third party of any Environmental Inspections made by or for Lender, and Borrower hereby releases and forever discharges Lender from any and all claims, damages, or causes of action, arising out of, connected with or incidental to the results of, the delivery of any of Environmental Inspections made by or for Lender.

(h) If any investigation, site monitoring, containment, clean-up, restoration or other remedial work ("**Remedial Work**") is necessary to comply with 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, or is otherwise required by Lender as a consequence of any Prohibited Activity or Condition or to prevent the occurrence of a Prohibited Activity or Condition, Borrower shall, by the earlier of (i) the

applicable deadline required by Hazardous Materials Law or (ii) 30 days after Notice from Lender demanding such action, begin performing the Remedial Work, and thereafter diligently prosecute it to completion, and shall in any event complete the work by the time required by applicable Hazardous Materials Law. If Borrower fails to begin on a timely basis or diligently prosecute any required Remedial Work, Lender may, at its option, cause the Remedial Work to be completed, in which case Borrower shall reimburse Lender on demand for the cost of doing so. Any reimbursement due from Borrower to Lender shall become part of the Indebtedness as provided in Section 12.

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

(j) Borrower shall indemnify, hold harmless and defend (i) Lender, (ii) Loan Servicer, (iii) any other Beneficiary Parties (as defined in the CCA), (iv) the officers, directors, shareholders, partners, employees and trustees of any of the foregoing, and (v) the heirs, legal representatives, successors and assigns of each of the foregoing (collectively, the “**Indemnitees**”) from and against all proceedings, claims, damages, penalties and costs (whether initiated or sought by Governmental Authorities or private parties), including Attorneys’ Fees and Costs and remediation costs, 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 Borrower in this Section 18;
- (ii) any failure by Borrower 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 or in any of the Improvements or on or under any property of Borrower that is adjacent to the Mortgaged Property; and
- (v) the actual or alleged violation of any Hazardous Materials Law.

(k) Counsel selected by Borrower to defend Indemnitees shall be subject to the approval of those Indemnitees. In any circumstances in which the indemnity under this Section 18 applies, Lender may employ its own legal counsel and consultants to prosecute, defend or negotiate any claim or legal or administrative proceeding and Lender, with the prior written consent of Borrower (which shall not be unreasonably withheld, delayed or conditioned) may settle or compromise any action or legal or administrative proceeding.

However, unless an Event of Default has occurred and is continuing, or the interests of Borrower and Lender are in conflict, as determined by Lender in its discretion, Lender shall permit Borrower to undertake the actions referenced in this Section 18 in accordance with this Section 18(k) and Section 18(l) so long as Lender approves such action, which approval shall not be unreasonably withheld or delayed. Borrower shall reimburse Lender upon demand for all costs and expenses incurred by Lender, including all costs of settlements entered into in good faith, consultants' fees and Attorneys' Fees and Costs.

(l) Borrower shall not, without the prior written consent of those Indemnitees who are named as parties to a claim or legal or administrative proceeding (a "**Claim**"), settle or compromise the Claim if the settlement (i) results in the entry of any judgment that does not include as an unconditional term the delivery by the claimant or plaintiff to Lender of a written release of those Indemnitees, satisfactory in form and substance to Lender; or (ii) may materially and adversely affect Lender, as determined by Lender in its discretion.

(m) Borrower's obligation to indemnify the Indemnitees shall not be limited or impaired by any of the following, or by any failure of Borrower or any guarantor to receive notice of or consideration for any of the following:

- (i) any amendment or modification of any Loan Document;
- (ii) any extensions of time for performance required by any Loan Document;
- (iii) any provision in any of the Loan Documents limiting Lender's recourse to property securing the Indebtedness, or limiting the personal liability of Borrower or any other party for payment of all or any part of the Indebtedness;
- (iv) the accuracy or inaccuracy of any representations and warranties made by Borrower under this Instrument, the CCA or any other Loan Document;
- (v) the release of Borrower or any other person, by Lender or by operation of law, from performance of any obligation under any Loan Document;
- (vi) the release or substitution in whole or in part of any security for the Indebtedness; and
- (vii) Lender's failure to properly perfect any lien or security interest given as security for the Indebtedness.

(n) Borrower 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 Indemnites 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 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 Attorneys' Fees and Costs, 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.

(o) The provisions of this Section 18 shall be in addition to any and all other obligations and liabilities that Borrower may have under applicable law or under other Loan Documents, and each Indemnatee shall be entitled to indemnification under this Section 18 without regard to whether Lender or that Indemnatee has exercised any rights against the Mortgaged Property or any other security, pursued any rights against any guarantor, or pursued any other rights available under the Loan Documents or applicable law. If Borrower consists of more than one person or entity, the obligation of those persons or entities to indemnify the Indemnitees under this Section 18 shall be joint and several. The obligation of Borrower to indemnify the Indemnitees under this Section 18 shall survive any repayment or discharge of the Bond Mortgage Loan, any foreclosure proceeding, any foreclosure sale, any delivery of any deed in lieu of foreclosure, and any release of record of the lien of the Bond Mortgage, the redemption of the Bonds, the termination of the Credit Enhancement Agreement, any payment 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. Notwithstanding the foregoing, if Lender has never been a mortgagee-in-possession of, or held title to, the Mortgaged Property, Borrower shall have no obligation to indemnify the Indemnitees under this Section 18 after all of the following shall have occurred: return of the Letter of Credit to Lender undrawn, the release of record of the lien of this Instrument by payment in full of the Indebtedness and all amounts due and owing under the Bond Documents; and termination of the CCA.

## **19. PROPERTY AND LIABILITY INSURANCE.**

(a) Borrower shall keep the Improvements insured at all times against such hazards as Lender may from time to time require, which insurance shall include but not be limited to coverage against loss by fire, windstorm and allied perils, general boiler and machinery coverage, and business interruption including loss of rental value insurance for the Mortgaged Property with extra expense insurance. If Lender so requires, such insurance shall also include sinkhole insurance, mine subsidence insurance, earthquake insurance, and, if the Mortgaged Property does not conform to applicable zoning or land use laws, building ordinance or law coverage. In the event any updated reports or other documentation are reasonably required by Lender in order to determine whether such additional insurance is necessary or prudent, Borrower shall pay for all such documentation at its sole cost and expense. Borrower

acknowledges and agrees that Lender's insurance requirements may change from time to time throughout the term of the Indebtedness. If any of the Improvements is located in an area identified by the Federal Emergency Management Agency (or any successor to that agency) as an area having special flood hazards, Borrower shall insure such Improvements against loss by flood. All insurance required pursuant to this Section 19(a) shall be referred to as "**Hazard Insurance**." All policies of Hazard Insurance must include a non-contributing, non-reporting mortgagee clause in favor of, and in a form approved by, Lender.

(b) All premiums on insurance policies required under this Section 19 shall be paid in the manner provided in the CCA, unless Lender has designated in writing another method of payment. All such policies shall also be in a form approved by Lender. Borrower shall deliver to Lender a legible copy of each insurance policy (or duplicate original) and Borrower shall promptly deliver to Lender a copy of all renewal and other notices received by Borrower with respect to the policies and all receipts for paid premiums. At least 5 days prior to the expiration date of any insurance policy, Borrower shall deliver to Lender evidence acceptable to Lender that the policy has been renewed. If Borrower has not delivered a legible copy of each renewal policy (or a duplicate original) prior to the expiration date of any insurance policy, Borrower shall deliver a legible copy of each renewal policy (or a duplicate original) in a form satisfactory to Lender within 120 days after the expiration date of the original policy.

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

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

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

(f) In the event of loss, Borrower shall give immediate written notice to the insurance carrier and to Lender. Borrower hereby authorizes and appoints Lender as attorney-in-fact for Borrower to make proof of loss, to adjust and compromise any claims under policies of Hazard Insurance, to appear in and prosecute any action arising from such Hazard Insurance policies, to collect and receive the proceeds of Hazard Insurance, and to deduct from such proceeds Lender's expenses incurred in the collection of such proceeds. This power of attorney is coupled with an interest and therefore is irrevocable. However, nothing contained in this Section 19 shall require Lender to incur any expense or take any action. Lender may, at Lender's option, (i) require a "repair or replacement" settlement, in which case the proceeds will be used to reimburse Borrower for the cost of restoring and repairing the Mortgaged Property to the equivalent of its original condition or to a condition approved by Lender (the "**Restoration**"), or (ii) require an

“actual cash value” settlement in which case the proceeds may be applied to the payment of the Indebtedness, whether or not then due. To the extent Lender determines to require a repair or replacement settlement and apply insurance proceeds to Restoration, Lender shall apply the proceeds in accordance with Lender’s then-current policies relating to the restoration of casualty damage on similar multifamily properties.

(g) 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,

- (i) in the event of a casualty resulting in damage to the Mortgaged Property which will cost \$10,000 or less to repair, the Borrower 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 Lender so long as the insurance proceeds are used solely for the Restoration of the Mortgaged Property; and
- (ii) in the event of a casualty resulting in damage to the Mortgaged Property which will cost more than \$10,000 but less than \$50,000 to repair, the Borrower is authorized to make proof of loss and adjust and compromise the claim without the prior consent of Lender, and Lender shall hold the applicable insurance proceeds to be used to reimburse Borrower for the cost of Restoration of the Mortgaged Property and shall not apply such proceeds to the payment of sums due under this Instrument.

(h) Lender will have the right to exercise its option to apply insurance proceeds to the payment of the Indebtedness only if Lender determines that at least one of the following conditions is met:

- (i) an Event of Default (or any event, which, with the giving of Notice or the passage of time, or both, would constitute an Event of Default) has occurred and is continuing;
- (ii) Lender determines, in its discretion, that there will not be sufficient funds from insurance proceeds, anticipated contributions of Borrower of its own funds or other sources acceptable to Lender to complete the Restoration;
- (iii) Lender determines, in its discretion, that the rental income from the Mortgaged Property after completion of the Restoration will not 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) Lender determines, in its discretion, that the Restoration will not be completed at least one year before the scheduled Termination Date (or six

months before the scheduled Termination Date if Lender determines in its discretion that re-leasing of the Mortgaged Property will be completed within such six-month period); or

- (v) Lender determines that the Restoration will not be completed within one year after the date of the loss or casualty.

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

(j) Unless Lender otherwise agrees in writing, any application of any insurance proceeds to the Indebtedness shall not extend or postpone the due date of any monthly scheduled payments or deposits referred to in the CCA, Section 7 of this Instrument or any Collateral Agreement, or change the amount of such installments.

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

## 20. CONDEMNATION.

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

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

agrees to execute such further evidence of assignment of any awards or proceeds as Lender may require.

**21. INTENTIONALLY OMITTED.**

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

(a) any failure by Borrower to pay or deposit when due any amount required by this Instrument, the Bond Mortgage Note or any other Bond Mortgage Loan Document;

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

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

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

(e) any failure by Borrower to comply with the provisions of Section 20;

(f) except as permitted pursuant to the CCA, the sale, assignment, or transfer the Mortgaged Property or any part thereof or of any transfer or change in the direct or indirect interest in Borrower;

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

(h) any failure by Borrower to perform any of its obligations under this Instrument (other than those specified in Sections 22(a) through (g)), as and when required, which continues for a period of 30 days after Notice of such failure by Lender to Borrower. However, if Borrower's failure to perform its obligations as described in this Section 22(h) is of the nature that it cannot be cured within the 30 day grace period but reasonably could be cured within 90 days, then Borrower shall have additional time as determined by Lender in its discretion, not to exceed an additional 60 days, in which to cure such default, provided that Borrower has diligently commenced to cure such default during the 30-day grace period and diligently pursues the cure of such default. However, no such Notice or grace periods shall apply in the case of any such failure which could, in Lender's judgment, absent immediate exercise by Lender of a right or remedy under this Instrument, result in harm to Lender, impairment of the Bond Mortgage

Note or this Instrument or any other security given under any other Bond Mortgage Loan Document;

(i) any failure by Borrower to perform any of its obligations as and when required under any Bond Mortgage Loan Document other than this Instrument which continues beyond the applicable cure period, if any, specified in that Bond Mortgage Loan Document;

(j) any exercise by the holder of any other 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) any voluntary filing by Borrower for bankruptcy protection under the United States Bankruptcy Code or any reorganization, receivership, insolvency proceeding or other similar proceeding pursuant to any other federal or state law affecting debtor and creditor rights to which Borrower voluntarily becomes subject, or the commencement of any involuntary case against Borrower by any creditor (other than Lender) of Borrower pursuant to the United States Bankruptcy Code or other federal or state law affecting debtor and creditor rights which case is not dismissed or discharged within 90 days after filing;

(l) any representations and warranties by Borrower in this Instrument which is false or misleading in any material respect;

(m) any default by Borrower under any Bond Mortgage Loan Document; and

(n) any failure by Borrower, or any person or entity acting on behalf of or on the request of Borrower, to perform any of its obligations as and when required under any Bond Document or other document or agreement relating to the Bonds which continues beyond the applicable cure period, if any, specified in such document or agreement.

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

**24. FORBEARANCE.**

(a) Lender may (but shall not be obligated to) agree with Borrower, from time to time, and without giving notice to, or obtaining the consent of, or having any effect upon the obligations of, any guarantor or other third party obligor, to take any of the following actions: extend the time for payment of all or any part of the Indebtedness; reduce the payments due under this Instrument, the Bond Mortgage Note, or any other Bond Mortgage Loan Document; release anyone liable for the payment of any amounts under this Instrument, the Bond Mortgage Note, or any other Bond Mortgage Loan Document; accept a renewal of the Bond Mortgage 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 Bond Mortgage Note or change the amount of the monthly installments payable under the Bond Mortgage Note; and otherwise modify this Instrument, the Bond Mortgage Note, or any other Bond Mortgage Loan Document.

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

**25. LOAN CHARGES.** If any applicable law limiting the amount of interest or other charges permitted to be collected from Borrower is interpreted so that any charge provided for in any Bond Mortgage Loan Document, whether considered separately or together with other charges levied in connection with any other Bond Mortgage Loan Document, violates that law, and Borrower is entitled to the benefit of that law, that charge is hereby reduced to the extent necessary to eliminate that violation. The amounts, if any, previously paid to Lender in excess of the permitted amounts shall be applied by Lender to reduce the principal of the Indebtedness. For the purpose of determining whether any applicable law limiting the amount of interest or other charges permitted to be collected from Borrower has been violated, all Indebtedness which constitutes interest, as well as all other charges levied in connection with the Indebtedness which constitute interest, shall be deemed to be allocated and spread over the stated term of the Bond Mortgage Note. Unless otherwise required by applicable law, such allocation and spreading shall be effected in such a manner that the rate of interest so computed is uniform throughout the stated term of the Bond Mortgage Note.

**26. WAIVER OF STATUTE OF LIMITATIONS.** Borrower hereby waives the right to assert any statute of limitations as a bar to the enforcement of the lien of this Instrument or to any action brought to enforce any Bond Mortgage Loan Document.

**27. WAIVER OF MARSHALLING.** Notwithstanding the existence of any other security interests in the Mortgaged Property held by Lender or by any other party, Lender shall have the right to determine the order in which any or all of the Mortgaged Property shall be subjected to the remedies provided in this Instrument, the Bond Mortgage Note, any other Bond Mortgage Loan Document or applicable law. Lender shall have the right to determine the order in which any or all portions of the Indebtedness are satisfied from the proceeds realized upon the exercise of such remedies. Borrower and any party who now or in the future acquires a security interest in the Mortgaged Property and who has actual or constructive notice of this Instrument waives any and all right to require the marshalling of assets or to require that any of the

Mortgaged Property be sold in the inverse order of alienation or that any of the Mortgaged Property be sold in parcels or as an entirety in connection with the exercise of any of the remedies permitted by applicable law or provided in this Instrument.

**28. FURTHER ASSURANCES.** Borrower shall execute, acknowledge, and deliver, at its sole cost and expense, all further acts, deeds, conveyances, assignments, estoppel certificates, financing statements or amendments, transfers and assurances as Lender may require from time to time in order to better assure, grant, and convey to Lender the rights intended to be granted, now or in the future, to Lender under this Instrument and the Bond Mortgage Loan Documents.

**29. ESTOPPEL CERTIFICATE.** Within 10 days after a request from Lender, Borrower shall deliver to Lender a written statement, signed and acknowledged by Borrower, certifying to Lender or any person designated by Lender, as of the date of such statement, (i) that the Bond Mortgage Loan Documents are unmodified and in full force and effect (or, if there have been modifications, that the Bond Mortgage Loan Documents are in full force and effect as modified and setting forth such modifications); (ii) the unpaid principal balance of the Bond Mortgage Note; (iii) that Borrower is not in default under the Bond Mortgage Loan Documents (or, if the Borrower is in default, describing such default in reasonable detail); (iv) whether or not there are then existing any setoffs or defenses known to Borrower against the enforcement of any right or remedy of Lender under the Bond Mortgage Loan Documents; and (v) any additional facts requested by Lender.

**30. GOVERNING LAW; CONSENT TO JURISDICTION AND VENUE.**

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

(b) Borrower agrees that any controversy arising under or in relation to this Instrument, the Bond Mortgage Note or any other Bond Mortgage Loan Document may be litigated in the Property Jurisdiction. The state and federal courts and authorities with jurisdiction in the Property Jurisdiction shall have jurisdiction over all controversies that shall arise under or in relation to the Bond Mortgage Note, any security for the Indebtedness, or any other Bond Mortgage Loan Document. Borrower irrevocably consents to service, jurisdiction, and venue of such courts for any such litigation and waives any other venue to which it might be entitled by virtue of domicile, habitual residence or otherwise. However, nothing in this Section 30 is intended to limit Lender's right to bring any suit, action or proceeding relating to matters under this Instrument in any court of any other jurisdiction.

**31. NOTICE.**

(a) All notices, demands and other communications ("**Notice**") under or concerning this Instrument shall be in writing. Each Notice shall be addressed to the intended recipient at its address set forth in this Instrument, and shall be deemed given on the earliest to occur of (i) the

date when the Notice is received by the addressee; (ii) the first Business Day after the Notice is delivered to a recognized overnight courier service, with arrangements made for payment of charges for next Business Day delivery; or (iii) the third Business Day after the Notice is deposited in the United States mail with postage prepaid, certified mail, return receipt requested.

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

(c) Any Notice under the Bond Mortgage Note and any other Bond Mortgage Loan Document that does not specify how Notices are to be given shall be given in accordance with this Section 31.

**32. CHANGE IN SERVICER; LOAN SERVICING.** There may be one or more changes of the Loan Servicer until such time as the Lender's obligations under the Financing Agreement are terminated and the Indebtedness is paid in full or otherwise discharged. If there is a change of the Loan Servicer, Borrower will be given Notice of the change. All actions regarding the servicing of the Bond Mortgage Loan, including the collection of payments, the giving and receipt of Notice, inspections of the Mortgaged Property, inspections of books and records, and the granting of consents and approvals, may be taken by the Loan Servicer unless Borrower receives Notice to the contrary. If Borrower receives conflicting Notices regarding the identity of the Loan Servicer or any other subject, any such Notice from Lender shall govern.

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

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

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

**36. RELATIONSHIP OF PARTIES; NO THIRD PARTY BENEFICIARY.**

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

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

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

**38. CONSTRUCTION.** The captions and headings of the Sections of this Instrument are for convenience only and shall be disregarded in construing this Instrument. Any reference in this Instrument to an "Exhibit" or a "Section" shall, unless otherwise explicitly provided, be construed as referring, respectively, to an Exhibit attached to this Instrument or to a Section of this Instrument. All Exhibits attached to or referred to in this Instrument are incorporated by reference into this Instrument. Any reference in this Instrument to a statute or regulation shall be construed as referring to that statute or regulation as amended from time to time. Use of the singular in this Agreement includes the plural and use of the plural includes the singular. As used in this Instrument, the term "including" means "including, but not limited to."

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

**40. NO CHANGE IN FACTS OR CIRCUMSTANCES.** Borrower warrants that (a) all information in the application for the loan submitted to Lender or Loan Servicer (the "**Loan Application**") and in all financial statements, rent schedules, reports, certificates and other documents submitted in connection with the Loan Application are complete and accurate in all material respects; and (b) 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 loan evidenced by the Bond Mortgage Note, or subsequent advances under Section 12, are used to pay, satisfy or discharge any obligation of Borrower for the payment of money that is secured by a pre-existing mortgage, deed of trust or other lien encumbering the Mortgaged Property (a "**Prior Lien**"), such loan proceeds or advances shall be deemed to have been advanced by Lender at Borrower's request, and Lender shall automatically, and without further action on its part, be subrogated to the rights, including lien priority, of the owner or holder of the obligation secured by the Prior Lien, whether or not the Prior Lien is released.

**42. INTENTIONALLY DELETED.**

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

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

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

**44. RECONVEYANCE.** Upon the payment in full of the Indebtedness and satisfaction of the Borrower's obligations under the Bond Mortgage Loan Documents, Lender shall request Trustee to reconvey the Mortgaged Property and shall surrender this Instrument 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.

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

**46. REQUEST FOR NOTICES.** Borrower requests that copies of the notice of default and notice of sale be sent to him at Borrower's address stated in the first paragraph on page 1 of this Instrument.

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

**ATTACHED EXHIBITS.** The following Exhibits are attached to this Instrument:

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

(Signatures continued on next page)

IN WITNESS WHEREOF, Borrower has signed and delivered this Instrument or has caused this Instrument to be signed and delivered by its duly authorized representative.

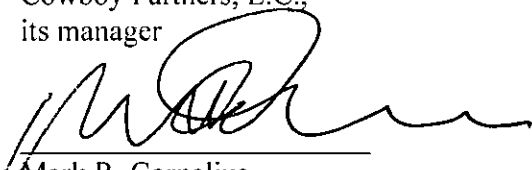
**BORROWER**

**LIBERTY CENTER PROPERTIES, LLC**

A Utah limited liability company

By: Liberty Center Partners, LLC,  
its managing member

By: Cowboy Partners, L.C.,  
its manager

By:   
Name: Mark R. Cornelius  
Title: Vice President

STATE OF UTAH )

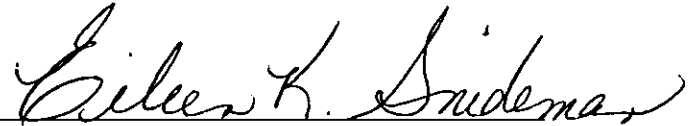
COUNTY OF SALT LAKE )

ss:

On this 1 day of June 2015, before me, the undersigned officer, personally appeared Mark R. Cornelius, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in her/his capacity, and that by his/her signature on the instrument, the individual, the person or the entity upon behalf of which the individual acted, executed the instrument.

(Seal)



  
Notary Public

**EXHIBIT A****[DESCRIPTION OF THE LAND]**

A portion of Block 70, Plat "A", Provo City Survey of Building Lots located in the Southeast Quarter of Section 1, Township 7 South, Range 2 East, Salt Lake Base and Meridian, described as follows:

Beginning at the Southeast Corner of Block 70, Plat "A", Provo City Survey of Building Lots located N0°18'48"E along the Centerline of 300 West Street 66.00 feet and N89°38'19"W 41.25 feet from the Center of 300 West and Center Streets (from which the South 1/4 Corner of Section 1, T7S, R2E, SLB&M bears S36°02'42"W 896.85 feet); thence N89°38'19"W along the south line of said Block, 108.41 feet; thence N0°19'24"E 99.74 feet; thence N89°38'23"W 29.41 feet; thence N0°19'33"E 20.73 feet; thence S89°43'52"W 61.92 feet to the west line of Lot 2, of said Block; thence N0°19'54"E along the west line of Lots 2 & 7 of said Block, 151.87 feet; thence S89°38'29"E 45.15 feet; thence N0°19'38"E 127.31 feet to the north line of said Block; thence S89°38'34"E along said north line 154.48 feet to the east line of said Block; thence S0°18'48"W along said east line 398.98 feet to the point of beginning.

(04-065-0029)

**EXHIBIT B****MODIFICATIONS TO SECURITY INSTRUMENT  
(Tax Credit Properties)**

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

1. Definitions. The following terms shall be added to Section 1 (Definitions) of the Instrument:
  - (a) **“Agency”** means the Utah Housing Corporation, in its capacity as the designated agency of the Property Jurisdiction to allocate Tax Credits, acting through any authorized representative.
  - (b) **“Borrower GP/Manager”** means individually or collectively the managing general partner(s), managing member(s) or controlling shareholder(s) of Borrower.
  - (c) **“Borrower GP/Manager Principal”** means Cowboy Partners, L.C., a Utah limited liability company.
  - (d) **“Code”** means the Internal Revenue Code of 1986, as amended from time to time, or any corresponding provision or provisions of succeeding law.
  - (e) **“Equity Investor”** means Liberty Center LIHTC Investor LLC, a Delaware limited liability company.
  - (f) **“Equity Investor GP/Manager”** means individually or collectively the managing general partner(s), managing member(s) or controlling shareholder(s) of the Equity Investor.
  - (g) **“Operating Agreement”** means that certain Amended and Restated Operating Agreement of Borrower dated as of December 30, 2014, as amended from time to time.
  - (h) **“Tax Credit Regulatory Agreement”** means the extended low-income housing commitment, regulatory agreement or restrictive covenants executed or to be executed by Borrower and the Agency and properly recorded in the appropriate land records for the Property Jurisdiction, setting forth certain terms and conditions under which the Mortgaged Property is to be operated and which shall meet the requirements of Code Section 42(h)(6)(B).

- (i) **“Tax Credits”** means the low-income housing tax credits allocated by the Agency pursuant to Section 42 of the Code.
- 2. Intentionally Omitted.
- 3. Events of Default. Section 22(h) is amended to read as follows:
  - (h) any failure by Borrower to perform any of its obligations under this Instrument (other than those specified in Sections 22(a) through (g)), as and when required, which continues for a period of 30 days after Notice of such failure by Lender (A) to Borrower, and (B) as long as the Equity Investor is a Controlling Entity in Borrower, to the Equity Investor. However, if Borrower’s failure to perform its obligations as described in this Section 22(h) is of the nature that it cannot be cured within the thirty (30) day grace period but reasonably could be cured within 90 days, then Borrower and/or Equity Investor shall have additional time as determined by Lender in its discretion, not to exceed an additional 60 days, in which to cure such default, provided that Borrower and/or Equity Investor has diligently commenced to cure such default during the 30-day grace period and diligently pursues the cure of such default. However, no such notice or grace period shall apply in the case of any such failure which could, in Lender’s judgment, absent immediate exercise by Lender of a right or remedy under this Instrument, result in harm to Lender, impairment of the Lender’s rights and remedies under this Instrument or any other security given under any other Bond Mortgage Loan Document;
- 4. Notice. Section 31 is amended to add the following new Section 31(d):

(d) Lender agrees that, as long as the Equity Investor is a Controlling Entity in Borrower, effective notice to Borrower under this Instrument and the other Bond Mortgage Loan Documents shall require delivery of a copy of such notice to the Equity Investor. Such notice shall be given in the manner provided in this Section, at the Equity Investor’s address set forth below:

Liberty Center LIHTC Investor LLC  
 200 West Street  
 New York, New York 10282  
 Attention: Michael Lohr

The Equity Investor may change the address to which notices intended for it are to be directed by means of notice given to Lender in accordance with this Section 31.

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

**48. SALE OF BOND MORTGAGE NOTE.** The Bond Mortgage Note or a partial interest in the Bond Mortgage Note (together with this Instrument and the other Bond Mortgage Loan Documents) may be sold one or more times without prior Notice to Borrower.

**49. TAX CREDIT REGULATORY AGREEMENT.** Lender agrees that, so long as and only if, the Tax Credit Regulatory Agreement recorded against the Mortgaged Property, by its terms, terminates upon foreclosure under this Instrument or upon a transfer of the Mortgaged Property by instrument in lieu of foreclosure, in accordance with Code Section 42(h)(6)(E), the lien of this Instrument shall be subordinate to such Tax Credit Regulatory Agreement.

**50. ANNUAL TAX CREDIT REPORTING REQUIREMENTS.** Borrower must submit to Lender, each year at the time of annual submission of Borrower's financial analysis of operations, a copy of the following sections of Borrower's federal tax return: Internal Revenue Forms 1065, 8586, 8609 and Form 8609, Schedule A, which must reflect the total Tax Credits allocated to the Mortgaged Property and the Tax Credits claimed for the Mortgaged Property in the preceding year.

**51. CROSS-DEFAULT.** Borrower 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 Tax Credit 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 Lender as a result of such an Event of Default by Borrower, including amounts paid to cure any default or event of default, under the Tax Credit Regulatory Agreement shall be an obligation of Borrower and become a part of the Indebtedness secured by this Instrument.

**52. ANNUAL COMPLIANCE.** Borrower shall submit to Lender on an annual basis, evidence that the Mortgaged Property is in ongoing compliance with all income, occupancy and rent restrictions under the Tax Credit Regulatory Agreement relating to the Mortgaged Property. Such submissions to Lender shall be made contemporaneously with the submission of reports to the Agency as required under the Tax Credit Regulatory Agreement.

**53. CONDOMINIUM.** In the event that the Borrower elects, pursuant to the Condominium Act, to create the Condominium pursuant to a condominium declaration (the "**Condominium Declaration**"), which Condominium will consist of the following five (5) condominium units: (i)

a condominium unit that will contain the portion of the parking area that will provide one hundred twenty (120) parking stalls to tenants of the Project; (ii) a condominium unit that will contain the portion of the parking area that will provide twenty (20) parking stalls to the Redevelopment Agency of the City of Provo); (iii) a condominium unit that will provides forty seven (47) commercial parking stalls, (iv) a condominium unit that will contain the one hundred twenty (120) residential rental units; and (v) a condominium unit that will contain the approximately 6,209 square feet of commercial space (collectively, the "**Units**"), the Borrower shall first obtain the written consent of the Lender and Loan Servicer, which consent shall not be unreasonably withheld, to the Condominium Documents (as hereinafter defined). Upon the granting of such consent, the following provisions shall apply:

(a) The Mortgaged Property includes any Unit owned by the Borrower that comprises a portion of the Condominium. If the owner's association, board of managers or other entity which acts for the Condominium holds title to property for the benefit or use of its members or shareholders, the definition of Mortgaged Property shall also include Borrower's interest in the owner's association, board of managers or other entity which acts for the Condominium (the "**Board of Managers**") and the uses, proceeds and benefits of Borrower's interest.

(b) The Borrower covenants and agrees to promptly and faithfully observe the covenants and restrictions and to promptly comply in all material respects with, and perform the obligations and duties imposed by, all of the documents necessary for the operation and ownership of all or portions of the Land as a condominium project, including, but not limited to, the subdivision maps, the Condominium Declaration of Condominium, articles of incorporation, by-laws and rules and regulations of a condominium association or corporation, a management agreement, and all other documents relating to the creation on the Land, or a part thereof, of a valid condominium project under the Condominium Act and the regulation and administration thereof after such creation (collectively, the "**Condominium Documents**"), as the same are in force and effect from time to time. The Borrower will fully enforce all rights, powers, remedies and privileges given to the Borrower as owner of the Units. The Borrower shall deliver to the Lender, within ten (10) days after its receipt thereof, a copy of any notice given under the Condominium Documents received from the Board of Managers or the managing agent of the Condominium which in any way materially adversely affects the Units owned by the Borrower. In the event the Borrower does not diligently proceed to cure a default under the Condominium Documents, the Lender shall have the right to cure such default upon not less than twenty (20) days prior written notice thereof to the Borrower and any reasonable amount or expense incurred in curing

such default, together with the Default Rate (as defined in the Note) of interest, shall be payable to the Lender on demand, shall be added to the Indebtedness and shall be secured by this Instrument.

(c) The Borrower covenants and agrees that it will only use, or permit to be used, all or any portion of the Units or its appurtenant interest in the common elements as is appropriate for residential and non-residential use, as provided in, and which shall comply with, all requirements of the Condominium Documents and all applicable zoning laws.

(d) The Borrower shall not, except with the prior written consent of the Lender, either subdivide or partition a Unit into two or more tax lots or permit or consent to (i) the abandonment or termination of the Condominium, or (ii) any amendment or modification to any of the Condominium Documents or other alteration of the condominium regime which would, in Lender's sole but reasonable judgment, adversely effect the rights or interests of the Lender.

(e) If the Borrower does not pay any common charges, assessments or other amounts imposed on the Units pursuant to the Condominium Documents within ten (10) days of when they are due, then the Lender, with not less than twenty (20) days prior written notice to the Borrower shall have the right, but shall not be obligated, to pay the same and the Borrower shall pay to the Lender all such amounts so paid by the Lender with the Default Rate thereon from the date of payment until reimbursed by Borrower. Any such payment by the Lender, until reimbursed by the Borrower, shall be secured by this Instrument and shall be collectible in like manner as the Indebtedness.

(f) Provided that the following right may be exercised only during such time as an Event of Default shall have occurred, the Borrower hereby absolutely, irrevocable and unconditionally appoints, empowers and designates the Lender as its attorney-in-fact to designate the Borrower's representatives, as owners of the Units, to serve, act and sit on the Board of Managers of the Condominium, such appointment being coupled with an interest. Any representatives on the Board of Managers acting for the Lender, after an Event of Default shall have occurred, shall act in such manner as the Lender deems to be in the Lender's best interests without any liability or accountability to the Borrower for any actions taken thereon reasonably and in good faith notwithstanding the fact that the Borrower may disagree with any actions taken. In the event that no Event of Default shall have occurred and be continuing, the Borrower's representatives on the Board of Managers shall be free to act in such manner as the Borrower, in its reasonable discretion, deems best. The Borrower hereby indemnifies and holds the Lender and its representatives harmless from and against any liability, damage, cost, loss or expense

arising out of the Borrower's representatives serving on the Board of Managers, except to the extent caused by the negligence, willful misconduct or fraud of the Lender or its representatives.

(g) The Borrower further covenants as follows: (i) to submit the Land to the provisions of the Condominium Act and to satisfy all of the requirements thereof and any other applicable law, restriction, rule, or ordinance necessary to create a valid condominium with respect to the Land; (ii) to duly perform or cause to be duly performed, in all material respects, all obligations of developers or sponsors under the Condominium Documents, and to do or cause to be done all things necessary to operate and maintain the Land as a Condominium; (iii) to comply with all laws and regulations of any governmental authorities, including securities laws and regulations, which may apply to the ownership of the Units and furnish such evidence of compliance therewith as the Lender may reasonably request; and (v) to deliver to the Lender a certified copy of the recorded declaration of condominium pertaining to the Condominium promptly upon its availability.

(h) Mortgagor's obligations to insure hereunder any portion of the Mortgaged Property may be satisfied and discharged by the procurement of insurance by the Board of Managers with respect to such property with substantially the same type, quality and amount of coverage as provided herein available to the restoration and repair of such property; provided that Lender is named as the insurance trustee in the Condominium Documents, the insurance proceeds paid to the Lender are held in its capacity as such, and Section 19 is otherwise complied with. Any of Lender's rights under Section 19 to apply insurance proceeds to repayment of the Indebtedness are subject to the By-Laws of the Condominium and the Condominium Act; and the obligation of the Board of Managers, any Unit Owner other than the Borrower, and the insurance trustee to apply insurance proceeds to the restoration of the Mortgaged Property under the By-Laws of the Condominium and the Condominium Act shall not be limited by anything contained in Section 19. The amount to be paid in escrow by Borrower pursuant to this Instrument shall be based in part on any insurance coverages required by this Instrument which are obtained by the Board of Managers for the entire Condominium.

(i) Any of Lender's rights under Section 19 hereof to apply insurance proceeds to repayment of the Indebtedness are subject to the By-Laws of the Condominium and the Condominium Act; and the obligation of the Board of Managers, any Unit Owner other than the Borrower, and the insurance trustee to apply insurance proceeds to the restoration of the Mortgaged Property under the By-Laws of the Condominium and the Condominium Act shall not be limited by Section 19.

(j) The lien of this Instrument shall be subordinate to the lien of the Condominium Declaration.

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