

RD Instruction 2000-000

PART 2000 - GENERAL

Subpart 000 - Memorandum of Understanding between the United States
Secretary of Agriculture and the Federal Home
Loan Mortgage Corporation

§ 2000.3301 General.

The United States Secretary of Agriculture (the "Secretary") has entered into a Memorandum of Understanding (MOU) with the Federal Home Loan Mortgage Corporation (Freddie Mac). The Secretary, through the Rural Housing Service, administers the Guaranteed Rural Rental Housing Program (GRRHP) pursuant to section 538 of the Housing Act of 1949 under which the Secretary partially guarantees the obligations of borrowers under mortgages financing multifamily housing located in rural areas. Freddie Mac was created by Congress for the purposes, among others, of providing stability in and ongoing assistance for the secondary market in residential mortgages. In pursuit of those purposes, Freddie Mac is in the business of purchasing mortgages on multifamily properties. In order to make it possible for Freddie Mac to purchase mortgages guaranteed by the Secretary under the GRRHP, the parties have set forth in a MOU their understanding as to certain issues arising under the Statute, Regulations and Handbook, and their understanding as to certain other matters.

§ 2000.3302 Implementation.

The MOU is attached as Exhibit A of this subpart.

§§ 2000.3303 - 2000.3350 [Reserved]

Attachment: Exhibit A

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Administration
General

MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING is entered into as of June 21, 2001 by and between the United States Secretary of Agriculture (the "Secretary") and the Federal Home Loan Mortgage Corporation, a corporation organized under the laws of the United States ("Freddie Mac").

PRELIMINARY STATEMENT

The Secretary administers a Guaranteed Rural Rental Housing Program (the "Program") pursuant to section 538 of the Housing Act of 1949 as amended by the Housing Opportunity Program Extension Act of 1996, 42 U.S.C. section 1490p-2 ("Section 538" or the "Statute"), under which the Secretary partially guarantees the obligations of borrowers under mortgages financing multifamily housing located in rural areas. The Secretary has issued administrative guidance regarding the Program in the form of regulations at 7 C.F.R. part 3565 (the "Regulations") and the Guaranteed Rural Rental Housing Program Origination and Servicing Handbook (the "Handbook").

Freddie Mac was created by Congress for the purposes, among others, of providing stability in and ongoing assistance for the secondary market in residential mortgages. In pursuit of those purposes, Freddie Mac is in the business of purchasing mortgages on multifamily properties. In order to make it possible for Freddie Mac to purchase mortgages guaranteed by the Secretary under the Program, the parties wish to set forth in this Memorandum of Understanding their understanding as to certain issues arising under the Statute, Regulations and Handbook, and their understanding as to certain other matters.

NOW THEREFORE, in consideration of the mutual promises set forth below, the parties agree as follows:

1. **Definitions.** The following terms shall have the following meanings when used in this Memorandum of Understanding:
 - (a) "Program", "Section 538", "Regulations" and "Handbook" shall have the meanings assigned to them in the above Preliminary Statement.
 - (b) "Claim Denial Standards" shall have the meaning assigned to it in section 9(b).

- (c) "Foreclosure" shall mean the judicial or non-judicial foreclosure of a mortgage, deed of trust or deed to secure debt, or the acceptance of a deed in lieu of foreclosure by the holder of a mortgage, deed of trust or deed to secure debt or by an affiliate of that holder.
- (d) "Guaranteed Mortgage" means a mortgage that has been guaranteed by the Secretary pursuant to the Program.
- (e) "Lender's Agreement" means the Lender's Agreement (Form RD 3565-3, Rev. 6-99) entered into or to be entered into by Freddie Mac and the Secretary.
- (f) "Loan Note Guarantee" refers to the form of Loan Note Guarantee that the Secretary requires be executed to memorialize each guarantee of a Guaranteed Mortgage, presently Form RD 3565-4 (Rev. 6-99). References in this Memorandum of Understanding to specific provisions of the "Loan Note Guaranty" shall be construed as referring to comparable provisions of any other form that the Secretary in the future may employ for the same purposes.
- (g) "RHS-Approved Lender" means a lender which, under the Statute, the Regulations and the Handbook, is both eligible to participate in the Program and approved by the Secretary to do so.
- (h) "Subservicer" means an RHS-approved Lender designated by Freddie Mac under section 6 to subservice a Guaranteed Mortgage held by Freddie Mac.

2. Purposes. Nothing in this Memorandum of Understanding shall obligate Freddie Mac to purchase Guaranteed Mortgages. This Memorandum of Understanding is intended to clarify the meaning of certain provisions of the Loan Note Guarantee, the Lender's Agreement, the Regulations and the Handbook and to clarify how those provisions will apply to Guaranteed Mortgages that Freddie Mac chooses to purchase.

3. Lender Approval.

- (a) Any lender that has been designated by Freddie Mac as a "Program Plus" multifamily seller/servicer and is authorized by Freddie Mac to sell multifamily mortgages to Freddie Mac automatically shall be an RHS-Approved Lender, unless RHS has notified Freddie Mac that that lender is not acceptable to RHS. The requirement of section 538(e) (1) (B) of the Statute that a lender be approved by both Freddie Mac and Fannie Mae is regarded by the Secretary as a scrivener's error, which has been corrected by section 3565.102(b) of the Regulations.
- (b) The Secretary's execution of a Loan Note Guarantee with respect to a mortgage shall be conclusive evidence that the lender originating that mortgage is an RHS-Approved Lender.

4. Transfer of Guaranteed Mortgages to Freddie Mac.

- (a) The Secretary agrees that, as of the date of this Memorandum of Understanding, Freddie Mac is an RHS-Approved Lender and may purchase and own Guaranteed Mortgages.
- (b) The approval in Subsection (a) shall remain in effect until revoked by the Secretary by notice given to Freddie Mac in accordance with this Memorandum of Understanding. If the Secretary revokes the approval, Freddie Mac shall be permitted to consummate any purchases of Guaranteed Mortgages as to which it has already entered into purchase contracts or commitments, and shall not be required to divest itself of any Guaranteed Mortgages that it has previously purchased.
- (c) The form of assignment of a mortgage set forth in Exhibit A to this Memorandum of Understanding is hereby approved by the Secretary for use for the purpose of transferring ownership of any Guaranteed Mortgage from an RHS-Approved Lender to Freddie Mac.
- (d) The Lender's Agreement that shall apply to Freddie Mac's ownership and servicing of any Guaranteed Mortgage shall be the Lender's Agreement entered into by and between Freddie Mac and the Secretary. The Lender's Agreement between RHS and the RHS-

Approved Lender from whom Freddie Mac purchases a Guaranteed Mortgage shall have no force or effect as to either Freddie Mac or that RHS-Approved Lender after Freddie Mac's acquisition of the Guaranteed Mortgage. Nothing herein prevents the Secretary from proceeding against such a Lender for fraud in the origination of the loan or in obtaining the guarantee.

- (e) It is Freddie Mac's general practice to require that the lender from whom it purchases each mortgage make representations and warranties to Freddie Mac concerning the characteristics of the mortgage, the borrower and the property. Freddie Mac has the contractual right to require the lender to repurchase the mortgage if a breach of any representation or warranty later is identified. Recognizing that the representations and warranties and the repurchase remedy are indispensable to Freddie Mac's management of risk, the Secretary agrees that, if Freddie Mac demands that a lender repurchase a Guaranteed Mortgage, Freddie Mac may proceed with the repurchase transaction without any prior transaction-specific approval by the Secretary, so long as the repurchasing lender is still an RHS-Approved Lender at the time of the repurchase. Within 30 days after the completion of any such repurchase, Freddie Mac shall notify the Secretary that the repurchase has taken place.

5. Origination of Guaranteed Mortgages to be Purchased by Freddie Mac.

- (a) The Secretary hereby approves the form of Regulatory Agreement set forth in Exhibit A for use in connection with Guaranteed Mortgages intended for sale to Freddie Mac. The form set forth in Exhibit A may be modified as necessary to meet the requirements of local law in the state where the property securing each Guaranteed Mortgage is located.
- (b) The Secretary hereby confirms its understanding and intention that, upon Foreclosure of a Guaranteed Mortgage, the applicable Regulatory Agreement's requirements as to both (1) reservation of units for occupancy by low and moderate income families and (2) rents that may be charged for units will automatically lapse. After Foreclosure of a Guaranteed Mortgage owned by Freddie Mac, the Secretary shall not seek to enforce any such provision of the applicable Regulatory Agreement.

- (c) The Secretary hereby approves the Freddie Mac standard forms of mortgage note and mortgage, deed of trust, or deed to secure debt, as appropriate to the applicable state (together, the "Freddie Mac Standard Documents") for use in connection with Guaranteed Mortgages intended to be sold to Freddie Mac. There are versions of the Freddie Mac Standard Documents for every state. Specimens of the Freddie Mac Standard Documents for one state are set forth in Exhibit A. The standard form of mortgage, deed of trust or deed to secure debt (also referred to as the "security instrument") may be modified as set forth in Exhibit A.
- (1) Without limiting the generality of the foregoing, the Secretary agrees that the exceptions to exculpation of the borrower set forth in section 9 of the Freddie Mac standard form mortgage note are acceptable for all purposes, including without limitation for purposes of section 3.25(F) of the Handbook.
 - (2) If in the future Freddie Mac updates the Freddie Mac Standard Documents for any state, the updated forms also shall be acceptable for use in connection with Guaranteed Mortgages, with modifications comparable to those set forth in Exhibit A.
- (d) If an originating lender provides construction financing to a Borrower and Freddie Mac does not purchase the related Guaranteed Mortgage until construction has been substantially completed:
- (1) The originating lender may add to the Freddie Mac Standard Documents appropriate provisions concerning construction disbursements and the progress and monitoring of construction. Freddie Mac will not review or approve such provisions, and understands that the Secretary may do so.
 - (2) The Secretary will rely solely on the originating lender to monitor construction of the property, even if Freddie Mac has committed to purchase the Guaranteed Mortgage upon completion. The Secretary may not withhold payment of a guarantee claim submitted by Freddie Mac after Freddie Mac's purchase of the Guaranteed Mortgage based solely upon the originating lender's noncompliance with the Secretary's

requirements as to monitoring of construction, unless the Secretary has given Freddie Mac written notice of such noncompliance prior to Freddie Mac's issuance of a commitment or entry into a purchase agreement for the purchase of the Guaranteed Mortgage.

- (e) If the Notice of Fund Availability (NOFA) pursuant to which a Guaranteed Mortgage will be guaranteed requires that the interest rate of the Guaranteed Mortgage not exceed by more than a specified margin the yield on treasury securities of a specified maturity, but is silent as to the date as of which that test is to be applied, the test will be applied using the yield on the specified treasury securities as of the business day before the day on which the interest rate for the Guaranteed Mortgage was locked.

6. Subservicing Arrangement.

- (a) Freddie Mac will be primarily responsible for the servicing of any Guaranteed Mortgage that it purchases. However, Freddie Mac may contract with an RHS-Approved Lender to subservice any Guaranteed Mortgage. Freddie Mac will remain primarily responsible for the servicing of each Guaranteed Mortgage. The Secretary shall give Freddie Mac notice of any failure to service a Guaranteed Mortgage in accordance with the Secretary's requirements and a 90-day opportunity to cure the failure (or cause the Subservicer to do so) before it takes any other action. If any such failure cannot be cured within a 90-day period, the 90-day cure period automatically shall be extended for as long as is necessary to cure the failure, not to exceed an additional 270 days, so long as Freddie Mac commences curative activities during the 90-day period and diligently pursues such activities thereafter.
- (b) The initial Subservicer of each Guaranteed Mortgage purchased by Freddie Mac will be the Program Plus seller/servicer or other RHS-Approved Lender from whom Freddie Mac purchases the Guaranteed Mortgage, unless and until Freddie Mac gives the Secretary notice to the contrary. Notice by Freddie Mac or the originating RHS-Approved Lender to the Secretary that Freddie Mac has purchased a Guaranteed Mortgage shall also be deemed notice to the Secretary that the primary responsibility for servicing that Guaranteed Mortgage has been transferred to Freddie Mac and that Freddie Mac has designated the RHS-Approved Lender from whom Freddie Mac purchased the Guaranteed Mortgage to be Subservicer of the Guaranteed Mortgage. The servicing plan and capital improvements

plan submitted by the Subservicer prior to origination of the Guaranteed Mortgage shall continue to apply and will be deemed to satisfy the requirement of section IV of the Lender's Agreement that a servicing plan be designed and implemented. Notice by Freddie Mac to the Secretary under section 4(e) that an RHS-Approved Lender has repurchased a Guaranteed Mortgage shall be deemed notice to the Secretary that the primary responsibility for servicing that Guaranteed Mortgage has been transferred from Freddie Mac to the repurchasing RHS-Approved Lender.

- (c) The Secretary may deal with and rely upon the Subservicer of each Guaranteed Mortgage with respect to all servicing matters prior to the Secretary's receipt from the Subservicer or Freddie Mac of notice that a default has occurred under the Guaranteed Mortgage. Prior to the Secretary's receipt of such notice, any notice with respect to a Guaranteed Mortgage that is given by the Secretary to the applicable Subservicer shall be deemed to have been given to Freddie Mac. Without limiting the generality of the foregoing, with respect to each Guaranteed Mortgage:
- (1) The Subservicer will pay the annual fee to RHS.
 - (2) The Subservicer will prepare and file with the Secretary all required reports.
 - (3) The Subservicer will perform all required physical inspections of the property securing the Guaranteed Mortgage and provide the Secretary with all required reports of such inspections.
 - (4) The Subservicer will collect and process all monthly payments of principal and interest and all deposits to escrows for taxes, insurance, and other expenses for which Freddie Mac requires such escrows.
 - (5) The Subservicer will pay all taxes, insurance premiums, and other expenses for which escrows are maintained.
 - (6) The Secretary will pay any interest credit to the Subservicer.

- (7) The Subservicer will approve Borrower requests for release of funds from reserve and escrow accounts, as referred to in section V(C) (2) (e) of the Lender's Agreement. Freddie Mac servicing guidelines will determine the extent to which the Subservicer must obtain Freddie Mac's consent before taking action and, where authority to make such decisions is delegated by Freddie Mac to the Subservicer, the standards the Subservicer must apply in making such decisions. In no case will Freddie Mac preclude the Subservicer's compliance with Program requirements.
 - (8) The Subservicer will obtain from the borrower and forward to the Secretary the financial statements of the borrower and any guarantor that are required by section V(C) (5) and (9) of the Lender's Agreement.
 - (8) The Subservicer will file the quarterly loan status reports with the Secretary as required by section VI(C) (10) of the Lender's Agreement and section 7.10 of the Handbook.
 - (9) If a default occurs, either the Subservicer or Freddie Mac may file a default notice with the Secretary as described in section VI(A) of the Lender's Agreement, as determined by Freddie Mac.
- (d) The inspection requirements contained in Chapter 34 of the Freddie Mac *Multifamily Seller/Servicer Guide*, including any changes that Freddie Mac may make in those requirements in the future, are accepted by the Secretary as the standards for physical inspections required by section 7.12(A) (1) of the Handbook.
- (e) Freddie Mac typically does not use servicers to negotiate workout arrangements and carry out Foreclosures, but instead performs such tasks itself. Therefore, except to the extent that Freddie Mac notifies the Secretary to the contrary, upon receipt of notice from Freddie Mac or the Subservicer that a default has occurred under a Guaranteed Mortgage, the Secretary shall cease dealing with the Subservicer with respect to that Guaranteed Mortgage, and shall deal directly with Freddie Mac. Until Freddie Mac identifies for the Secretary the individual employee of Freddie Mac who will be responsible for special servicing of the Guaranteed Mortgage, the Secretary may direct any communications to the Freddie Mac notice address under section 13. Freddie Mac will provide the special servicing plan required by section VI(C) of the Lender's Agreement and any liquidation plan required by section VII(A) of the Lender's Agreement and section 10.3 of the Handbook.

- (f) Upon curing of any default, unless Freddie Mac notifies the Secretary to the contrary, the Subservicer will resume subservicing of the affected Guaranteed Mortgage.

7. Servicing Requirements.

- (a) The Handbook requires the servicer of a Guaranteed Mortgage to prepare an annual risk assessment using Freddie Mac Form 453. Freddie Mac has discontinued use of Form 453 in the servicing of its conventional mortgage portfolio, and now requires use of Freddie Mac Form 506 instead. With respect to any Guaranteed Mortgaged owned by Freddie Mac, the Secretary will accept Form 506 in lieu of Form 453. The Subservicer of each Guaranteed Mortgage will prepare the annual risk assessments.
- (b) The rate at which a Guaranteed Mortgage bears interest may include the annual fee payable to RHS.
- (c) A Guaranteed Mortgage with respect to which RHS has agreed to pay interest credit subsidies may provide for the benefit of those subsidies to be passed through to the borrower by means of the following mechanism:
 - (1) At origination of the Guaranteed Mortgage, the borrower will deposit in escrow an amount equal to the first 13 months' interest credit subsidy.
 - (2) Each month's installment of principal and interest payable by the borrower will be reduced by the interest credit subsidy projected to be payable by RHS with respect to that installment. The Subservicer will withdraw the amount of the reduction from the escrow and remit it to Freddie Mac with the payment received from the borrower. so that the amount received by Freddie Mac is the same as if the Borrower had paid the full scheduled installment due under the Note.
 - (3) When the annual interest credit subsidy payment is received from RHS each January, the Subservicer will use it to replenish the escrow.
 - (4) Upon retirement of the Guaranteed Mortgage, any remaining balance in the escrow will be paid to the borrower.

- (d) Compliance with Freddie Mac's insurance requirements, as set forth in chapter 25 of the Freddie Mac *Multifamily Seller/Servicer Guide*, including any future amendments of those requirements, will be deemed compliance with the Secretary's requirements for insurance of properties securing Guaranteed Mortgages, including but not limited to sections 9.3 through 9.8 of the Handbook and section V(C) (3) of the Lender's Agreement.

- (e) Section 3565.351 of the Regulations requires that the servicer of a Guaranteed Mortgage "certify annually to the Agency that the borrower is in compliance with...program requirements with respect to all aspects of project management." Condition 4 of the Loan Note Guarantee requires that the holder of a Guaranteed Mortgage "assure that the Borrower is in compliance with Government Standards regarding property management..." Section 3565.351(d) (5) of the Regulations requires that the servicer of a Guaranteed Mortgage "certify that the property is in good financial and physical condition" prior to any distribution of surplus cash to the owner of the property. Section 3565.402(h) of the Regulations and section V(C) (2) (c) of the Lender's Agreement require that the servicer of a Guaranteed Mortgage "ensure that the property securing the guaranteed loan remains in good physical and financial condition." Freddie Mac will be deemed to have complied with all of the foregoing requirements, and shall be deemed to have been diligent in investigating the physical and financial condition of a property, if Freddie Mac or the Subservicer of the Guaranteed Mortgage has taken all of the following steps:
 - (1) Completed an annual property inspection that includes, but is not limited to, inspection of:
 - (A) a sample of the occupied units ;
 - (B) a sample of the vacant units;
 - (C) a representative sample of unit types; and
 - (D) if the Property has commercial space, each commercial space.

 - (2) Analyzed the rent roll and income and expense data, estimated the property's Net Operating Income (NOI), and computed the property's Debt Coverage Ratio (DCR).

- (3) Analyzed the physical condition and management of the Property.
 - (4) Performed an assessment of the Property's rental market, including but not limited to speaking to the property management staff about competing or comparable properties; a drive-through inspection of the Property's market area; and calling or visiting comparable properties
 - (5) Examined the borrower's payment record.
 - (6) Reviewed the adequacy of insurance coverage.
- (f) Section 3565.351 of the Regulations requires that the servicer of a Guaranteed Mortgage "certify annually to the Agency that the Borrower is in compliance with the Regulatory Agreement..." Section 3565.351(d)(5) of the Regulations requires that the servicer of a Guaranteed Mortgage "certify that the property is ...in compliance with the Regulatory Agreement" prior to any distribution of surplus cash to the owner of the property. Section 3565.402(h) of the Regulations requires that the servicer of a Guaranteed Mortgage "ensure that the property securing the guaranteed loan remains in good physical and financial condition." If Freddie Mac has taken the following steps at least annually to evaluate Regulatory Agreement compliance, and such steps have not revealed any instances of noncompliance that have not been cured as of the date of the certification, Freddie Mac shall be deemed to have complied with the foregoing requirements of section 3565.351, and any instance of noncompliance that was not revealed by the following steps but is subsequently discovered to have existed shall not be deemed to render inaccurate or incomplete any certification given by Freddie Mac.
- (1) Freddie Mac will require that the Subservicer examine a rent roll to confirm that, in accordance with section 3565.203 of the Regulations:
 - (A) The rent for each unit, including tenant-paid utilities, does not exceed 30% of 115% of area median income, adjusted for family size, and
 - (B) The average per-unit rent for the property does not exceed 30% of 100% of area median income, adjusted for family size.

- (2) Freddie Mac will require that, for each occupied unit, the Subservicer examine a borrower-provided copy of the income certification signed by the tenant at the time of his or her initial occupancy, to confirm that, at that time, the tenant's income was below 115% of area median income, in accordance with section 3565.202 of the Regulations.
 - (3) Freddie Mac will require the Subservicer to certify annually to Freddie Mac that the Subservicer has performed the examinations described in paragraphs (1) and (2) above, that those examinations have revealed no breaches of the Regulatory Agreement that remain uncured, and that the Subservicer has no knowledge of any uncured breach of the Regulatory Agreement.
- (g) Section 3565.353 of the Regulations requires that the servicer of a Guaranteed Mortgage "ensure that the lender and the borrower are in compliance with the Affirmative Fair Housing Marketing Plan." Freddie Mac will be deemed to have complied with section 3565.353 with respect to a borrower's compliance if Freddie Mac or the Subservicer of the Guaranteed Mortgage:
 - (1) annually obtains a certification of compliance executed by the Borrower indicating that the project meets any and all requirements as described in the Affirmative Fair Housing Marketing Plan;
 - (2) if the Borrower fails to provide such a certification, gives the Borrower notice that if it fails to provide such a certification within 30 days it will be deemed to be in default; and
 - (3) if the Borrower still fails to provide such a certification, informs the Secretary, recommends a course of enforcement action and requests instructions.
- (h) Section 3565.354 of the Regulations requires that the servicer of a Guaranteed Mortgage "ensure that the borrower is in compliance with the applicable fair housing laws in ... the selection of applicants for housing and ongoing management." Freddie Mac will be deemed to have complied with section 3565.354 if Freddie Mac or the Subservicer of the Guaranteed Mortgage:
 - (1) annually obtains a certification of compliance executed by the Borrower indicating that the property and the management of the property have been and are in compliance with any and all applicable state, federal and local housing laws;

- (2) if the Borrower fails to provide such a certification, gives the Borrower notice that if it fails to provide such a certification within 30 days it will be deemed to be in default; and
 - (3) if the Borrower still fails to provide such a certification, informs the Secretary, recommends a course of enforcement action and requests instructions.
- (i) Section 3565.403 of the Regulations requires that during any period of "special servicing" the servicer of a Guaranteed Mortgage "make a special effort to ensure that maintenance of the property meets Agency requirements and the tenants' rights are protected." The Secretary agrees that Freddie Mac will be deemed to have made such a special effort if Freddie Mac or the Subservicer of the Guaranteed Mortgage has completed an annual physical inspection of the Property as described in section 7(e) (1) and an analysis of the property's physical condition and management as described in section 7(e) (4) and, if a default is known to have occurred and be continuing, Freddie Mac has taken or is taking the steps listed in section 8(b) below.
- (j) Section 11.7(b) of the Handbook requires that the servicer of a Guaranteed Mortgage "ensure" compliance with section 306 of the Clean Air Act and 40 CFR Part 15. Freddie Mac will be deemed to have complied with section 11.7(b) if Freddie Mac or the Subservicer of the Guaranteed Mortgage:
 - (1) obtains a certification of compliance executed by the Borrower that the property is in compliance with section 306 of the Clean Air Act and 40 CFR section 15;
 - (2) if the Borrower fails to provide such a certification, gives the Borrower notice that if it fails to provide such a certification within 30 days it will be deemed to be in default; and
 - (3) if the Borrower still fails to provide such a certification, informs the Secretary, recommends a course of enforcement action and requests instructions.

- (k) Freddie Mac will obtain the Secretary's approval before consenting to any transfer of ownership of the property that involves a transfer of title to the property or a transfer of all ownership interests in the borrower entity, which is the intended meaning of the reference in section 7.8(C) of the Handbook to "transfers that involve the entire ownership entity." Freddie Mac may consent to other transfers, including but not limited to any transfer of less than all ownership interests in the borrower entity and any grant by the borrower of a subordinate lien on the property, without seeking the approval of or consulting with the Secretary.

8. Servicing of Defaults.

- (a) Section 538(i)(4) of the Statute provides that, before payment may be made under the Secretary's guarantee of a Guaranteed Mortgage, the holder of the Guaranteed Mortgage "shall exhaust all reasonable possibilities of collection on the loan guaranteed." The Secretary shall treat Freddie Mac as having satisfied this requirement if Freddie Mac or the Subservicer of the Guaranteed Mortgage has done each of the following based on information received from the Subservicer and the borrower:
 - (1) Evaluated the payment history of the Mortgage.
 - (2) Evaluated the reasons for the default.
 - (3) Discussed with the borrower or an authorized borrower representative the reasons for the default and steps necessary to cure the default.
 - (4) If practicable, performed or had the Subservicer perform an on-site inspection to determine the condition of the property.
 - (5) Sent the Borrower a letter demanding that the default be cured.
- (b) Section 3565.451 of the Regulations provides that after a borrower default and before filing a guarantee claim, the holder of a Guaranteed Mortgage must "make every reasonable and prudent effort to resolve the default." Freddie Mac will be deemed to have made such efforts if Freddie Mac or the Subservicer of the Guaranteed Mortgage has taken each of the steps listed in section 8(a) and has done each of the following:

- (1) Pursued legal remedies while attempting to negotiate with the borrower an acceptable default resolution strategy.
 - (2) Used its best efforts to develop a payment plan that will enable the borrower to cure the default over a specified term;
 - (3) Analyzed the economics of the property to determine if a temporary modification of loan terms would enable the borrower to both cure the default and meet its future financial obligations;
 - (4) Identified any improvements in management, any capital improvements to the property, and any other business strategies which would aid the borrower in operating the property at a level adequate to meet its financial obligations;
 - (5) If efforts to cause the borrower to resolve the default have been unsuccessful or are deemed by Freddie Mac to be unlikely to succeed, petitioned a court for a receiver to operate the real property, if such a step is consistent with foreclosure practice in the jurisdiction where the property is located;
 - (6) Pursue Foreclosure if other resolution strategies proved unsuccessful or were deemed by Freddie Mac to be unlikely to succeed.
- (c) Section 3565.403 of the Regulations authorizes the Secretary, as a condition to approval of a workout arrangement with respect to a Guaranteed Mortgage, to require "additional resources from the Lender" that holds the Guaranteed Mortgage. The parties agree that "resources" in section 3565.403 is not intended to mean any financial contribution by the lender to the payment of the Guaranteed Mortgage or to the improvement, maintenance or operations of the property.
- (d) If Freddie Mac acquires title to a property by Foreclosure, Freddie Mac shall liquidate the Property in accordance with the Regulations, the Handbook, the Lender's Agreement and this Memorandum of Understanding.

- (e) Section 3565.453(c) of the Regulations provides that the holder of a Guaranteed Mortgage that is in default must "make every effort to liquidate the property in a manner that will yield the highest market value consistent with the protections afforded to tenants contained in 7 CFR part 1944..." Freddie Mac will be deemed to have made such efforts if it has done all of the following:
- (1) Established through its internal valuation process a market value for the property prior to the foreclosure sale.
 - (2) Obtained one or more broker price opinions from area real estate brokers who have had physical access to the property and have had access to current copies of rent rolls and property operating statements.
 - (3) Selected a qualified real estate broker to market and sell the property.
 - (4) Entered into a listing agreement with the selected broker.
 - (5) Evaluated each prospective purchaser to confirm that the purchaser has a satisfactory track record as an owner and manager of multifamily properties and has sufficient financial resources to close a purchase.
- (f) Section VII(L) of the Lender's Agreement requires the Secretary's written authorization for all protective advances in excess of \$5000. Paragraph 1(b) of the Loan Note Guarantee includes in its definition of a guaranteed "Loss" "principal and interest indebtedness on secured protective advances for protection and preservation of collateral made with USDA's authorization." The Lender's Agreement shall govern with respect to protective advances, prior authorization of the Secretary will not be required for any protective advance of \$5000 or less, and a protective advance of \$5000 or less may not be excluded from the "Loss" covered by a guarantee solely because it was made without the Secretary's prior authorization.

9. Guarantee Claims.

- (a) The Secretary understands that, in order for Freddie Mac to purchase Guaranteed Mortgages, the Secretary's guarantee must be incontestable to an extent comparable to the incontestability of contracts of full multifamily mortgage insurance entered into by the Secretary of Housing and Urban Development under the National Housing Act.
- (b) Condition 2 of RHS Form RD-3565-4, Loan Note Guarantee, reads as follows:

2. This Agreement constitutes an obligation supported by full faith and credit of the United States and incontestable except for fraud or misrepresentation of which the Lender has actual knowledge at the time it becomes such lender or which the Lender participates in or condones...In addition, this Agreement will be unenforceable by the Lender to the extent any loss is occasioned by violation of usury laws, negligent servicing, or failure to obtain the required security regardless of the time at which the Government acquires knowledge of the foregoing. Any losses occasioned will be unenforceable by the Lender to the extent that loan funds are used for purposes other than those approved by the Government. See Form RD 3565-2, "Conditional Commitment.:" Negligent servicing is defined as the failure to perform those services which a reasonably prudent lender would perform in servicing its own loan portfolio of loans that are not guaranteed. The term includes not only the concept of a failure to act, but also not acting in a timely manner or acting contrary to the manner in which a reasonably prudent lender would act up to the time of loan maturity or until a final loss is paid.

The parties agree that the foregoing is an exhaustive and exclusive list of the standards the violation of which may be cited by the Secretary as grounds for the Secretary's refusal to make payment under the guarantee with respect to a Loss that has in fact been occurred and has been calculated in accordance with the Regulations, the Handbook and the Lender's Agreement. 0 The grounds in the foregoing list are referred to in this Memorandum of Understanding as the "Claim Denial Standards." A breach by Freddie Mac of the Regulations, the Handbook, the Lender's Agreement or this Memorandum of Understanding may be a basis upon which the Secretary may bar Freddie Mac from purchasing further Guaranteed Mortgages, but will not constitute grounds upon which the Secretary may cancel a guarantee or refuse to make a guarantee payment unless the breach also constitutes a breach of the Claim Denial Standards.

- (c) Without limiting the generality of Subsection (b), various sections of the Loan Note Guarantee, the Lender's Agreement, the Handbook and the Regulations call for the Lender to "ensure" or "assure" certain events or conditions. The Secretary agrees that the words "ensure" or "assure" are not intended to constitute an absolute guarantee by Freddie Mac that those events or conditions will occur, and that the failure of such an event or condition to occur with respect to a Guaranteed Mortgage will not be grounds upon which the Secretary may refuse to make payment under the related guarantee, unless the failure of the event or condition to occur also constitutes or results from a breach of one or more of the Claim Denial Standards.
- (d) To the extent that the bases for denying a guarantee claim set forth in section I.(B) of the Lender's Agreement to be executed by Freddie Mac are inconsistent with the Claim Denial Standards, the Claim Denial Standards shall apply.
- (e) The rights of the Secretary to cancel or modify a guarantee based on a breach of the Claim Denial Standards above may be exercised only if (A) the Secretary has given Freddie Mac and the Subservicer notice of the acts or omissions that it considers to constitute such grounds, specifying the applicable provisions of the Statute, Handbook, Regulations, Loan Note Guarantee, or Lender's Agreement (B) Freddie Mac has not cured or caused the Subservicer to cure the acts or omissions within 90 days after such notice and (C) the acts or omissions can reasonably be expected to have a material adverse effect on the credit quality of the Guaranteed Mortgage or the physical condition of the

property securing the Guaranteed Mortgage. If any such acts or omissions cannot be cured within a 90-day period, the 90-day cure period automatically shall be extended for as long as is necessary to cure the act or omissions, but not to exceed an additional 270 days, so long as Freddie Mac commences curative activities during the 90-day period and diligently pursues such activities thereafter.

(f) The Secretary has the authority under Regulations section 3565.57 to modify, extend or reinstate a loan guarantee in order to protect its interest or further the objectives of the Program. The Secretary interprets section 3565.57 as intended to permit a unilateral modification by the Secretary that has the effect of reducing the principal amount of a guarantee or reducing the amount of interest or the expenses that are covered by a guarantee only if the affected lender has committed an act or omission that would permit the Secretary to cancel the guarantee or refuse to make payment under the guarantee. In the case of Freddie Mac, in accordance with this Memorandum of Understanding, only a violation of the Claim Denial Standards would permit such cancellation or refusal and, therefore, only a violation of the Claim Denial Standards will permit a unilateral modification having such an effect on a guarantee held by Freddie Mac.

(f) The Secretary shall remit all claim payments to Freddie Mac rather than to the Subservicer.

10. Interest Credit. If Freddie Mac holds a Guaranteed Mortgage with respect to which interest credits are payable by the Secretary and the Secretary cancels such credits due to a borrower default, as provided in section 4.10(E) of the Handbook, only interest credits related to interest accruing after the date of the Secretary's notice to Freddie Mac or the Subservicer of such cancellation will be deemed unearned. Such a cancellation will not deprive Freddie Mac of the right to receive interest credits with respect to interest accrued prior to the cancellation, even if, because interest credits are paid less often than monthly, the credits with respect to such accrued interest are not payable to Freddie Mac until after the cancellation.

11. No Obligation to Purchase. Nothing in this Memorandum of Understanding shall obligate Freddie Mac to purchase any Guaranteed Mortgage. The sole purpose of this Memorandum of Understanding is to establish and clarify the terms and conditions of the Secretary's guarantee of, and the Secretary's requirements with regard to servicing of, any Guaranteed Mortgage that Freddie Mac in its sole discretion elects to purchase.

12. Conflicts. In the event of any conflict between this Memorandum of Understanding and the terms of the Lender's Agreement, the Handbook or the Loan Note Guarantee applicable to any Guaranteed Mortgage, this Memorandum of Understanding shall govern. This Memorandum of Understanding contains various RHS interpretations of the Regulations. If Freddie Mac complies with the interpretation of a Regulation that is set forth in this Memorandum of Understanding, Freddie Mac shall be deemed in compliance with that Regulation.

13. Notices.

(a) All notices under or concerning this Memorandum of Understanding shall be in writing. Each such notice shall be deemed given when received by the addressee or delivered to Federal Express, Network Courier or a comparable overnight courier service, addressed as provided in this section and with charges for next business day delivery paid.

(b) Notices intended for the Secretary shall be addressed to:

United States Department of Agriculture
Rural Housing Service
1400 Independence Ave., S.W.
Washington, D.C. 20250
Attention: _____

(c) Notices intended for Freddie Mac shall be addressed to:

Freddie Mac
8150 Jones Branch Drive
McLean, VA 22102
Attention: Vice President, Multifamily Loan Production

(d) Either party may change the address to which notices intended for that party are to be directed by means of notice given to the other party in accordance with this section.

14. Termination.

(a) Either party may terminate this Memorandum of Understanding by giving at least 90 days' advance written notice to the other party, specifying the effective date of the termination.

(b) Despite any such termination:

- (1) this Memorandum of Understanding shall apply to Guaranteed Mortgages purchased by Freddie Mac after the effective date of the termination but pursuant to commitments issued or purchase agreements entered into by Freddie Mac before the effective date of the termination, and
- (2) this Memorandum of Understanding shall continue to apply to Guaranteed Mortgages purchased by Freddie Mac before the effective date of the termination.

15. Prospective Changes in Standards. The Secretary at any time may notify Freddie Mac in writing that in the future Freddie Mac's compliance with a specified Handbook or Regulation provision referred to in any of sections 7(d) through (j) or sections 8(a), (b) and (e) of this Memorandum of Understanding will be determined according to a new standard different from those set forth in sections 7(d) through (j) and sections 8(a), (b) and (e), which new standard will be stated by the Secretary in the notice. In that event, the new standard will apply to Guaranteed Mortgages purchased by Freddie Mac pursuant [missing from signed copy - "...to commitments issued or purchase agreements entered into by Freddie Mac after its receipt of the notice. The standards set forth in section 7(d) through (j) and sections..."] 8(a), (b) and (e) will continue to apply, in lieu of the new standard, to Guaranteed Mortgage already owned by Freddie Mac on the date it receives the notice or purchased by Freddie Mac after that date but pursuant to commitments issued or purchase agreements entered into by Freddie Mac before that date.

16. Miscellaneous.

- (a) The captions assigned to provisions of this Memorandum of Understanding are for convenience only and shall be disregarded in construing this Memorandum of Understanding. Any reference in this Memorandum of Understanding to "Section 538" shall be construed as referring to section 538 of the Housing Act of 1949, 42 U.S.C. section 1490p-2. Any other reference in this Memorandum of Understanding to a "section", and any reference to a "Subsection", a "Paragraph" or an "Exhibit" shall, unless otherwise explicitly provided, be construed as referring, respectively, to a section of this Memorandum of Understanding, a subsection of the section of this Memorandum of Understanding in which the reference appears, a

paragraph of the subsection within this Memorandum of Understanding in which the reference appears, or an Exhibit attached to this Memorandum of Understanding. All Exhibits attached to or referred to in this Memorandum of Understanding are incorporated by reference into this Memorandum of Understanding. Any reference in this Memorandum of Understanding to a provision of a statute, a regulation or the Handbook shall be construed as referring to that provision as it has been amended.

- (b) Use of the singular in this Memorandum of Understanding includes the plural, use of the plural includes the singular, and use of one gender includes all other genders, as the context may require.
- (c) Except for Freddie Mac's employment of the Subservicer, neither party to this Memorandum of Understanding may assign its rights or delegate its obligations under this Memorandum of Understanding without the prior written consent of all other parties. This Memorandum of Understanding shall be binding upon and shall inure to the benefit of the parties and their respective heirs, successors, and permitted assigns.
- (d) The invalidity or unenforceability of any provision of this Memorandum of Understanding shall not affect the validity of any other provision, and all other provisions shall remain in full force and effect.
- (e) This instrument contains the entire agreement among the parties as to the rights granted and the obligations assumed in this instrument.
- (f) Any forbearance by a party to this Memorandum of Understanding in exercising any right or remedy given under this Memorandum of Understanding or existing at law or in equity shall not constitute a waiver of or preclude the exercise of that or any other right or remedy. Unless otherwise explicitly provided, no remedy under this Memorandum of Understanding is intended to be exclusive of any other available remedy, but each remedy shall be cumulative and shall be in addition to other remedies given under this Memorandum of Understanding or existing at law or in equity.

- (g) A "Business Day" is any day other than a Saturday or Sunday, a federal holiday, or a day on which banking institutions in the City of Washington, D.C. are permitted or required by law to close. In computing the number of days for purposes of this Memorandum of Understanding, all days shall be counted, including days that are not Business days, unless it is explicitly provided that only Business Days shall be counted. However, if the final day of any time period falls on a day that is not a Business Day, then the final day shall be deemed to be the next Business Day.
- (h) To the extent permitted by law, the parties shall, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements to this Memorandum of Understanding and such further instruments as may reasonably be required for carrying out the intention of or facilitating the performance of this Memorandum of Understanding.

IN WITNESS WHEREOF, the Secretary and Freddie Mac have executed this Memorandum of Understanding.

[SIGNATURES APPEAR ON THE FOLLOWING PAGES]

RD Instruction 2000-000
Exhibit A
Page 24

**MEMORANDUM OF UNDERSTANDING
SIGNATURE PAGE**

**UNITED STATES SECRETARY
OF AGRICULTURE**

By: /s/ _____
James C. Alsop
Acting Administrator
Rural Housing Service

Date: June 21, 2001

**FEDERAL HOME LOAN MORTGAGE
CORPORATION**

By: /s/
Mitchell W. Kiffe
Vice President,
Loan Production

Date: June 20, 2001

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EXHIBIT A

FORMS OF MORTGAGE DOCUMENTS

- | | |
|---|-------------------|
| 1.Note | [pages 23 - 33] |
| 2.Mortgage | [pages 34 - 80] |
| 3.Replacement Reserve Agreement | [pages 81 - 93] |
| 4. Regulatory Agreement | [pages 94 - 100] |
| 5. Modifications to Note | [page 101] |
| 6. Modifications to Mortgage | [pages 102 - 105] |
| 7. Modifications to Replacement Reserve Agreement | [page 106] |

MULTIFAMILY NOTE
(MULTISTATE - REVISION DATE 11-01-2000)

US \$ _____, _____,

FOR VALUE RECEIVED, the undersigned ("**Borrower**") jointly and severally (if more than one) promises to pay to the order of

_____, a _____, the principal sum of

_____ Dollars (US \$ _____), with interest on the unpaid principal balance at the annual rate of _____ percent (____%).

1. Defined Terms. As used in this Note, (i) the term "**Lender**" means the holder of this Note, and (ii) the term "**Indebtedness**" means the principal of, interest on, and any other amounts due at any time under, this Note, the Security Instrument or any other Loan Document, including prepayment premiums, late charges, default interest, and advances to protect the security of the Security Instrument under Section 12 of the Security Instrument. "Event of Default" and other capitalized terms used but not defined in this Note shall have the meanings given to such terms in the Security Instrument.

2. Address for Payment. All payments due under this Note shall be payable at

_____, or such other place as may be designated by written notice to Borrower from or on behalf of Lender.

3. Payment of Principal and Interest. Principal and interest shall be paid as follows:

(a) Unless disbursement of principal is made by Lender to Borrower on the first day of the month, interest for the period beginning on the date of disbursement and ending on and including the last day of the month in which such disbursement is made shall be payable simultaneously with the execution of this Note. Interest under this Note shall be computed on the basis of a 360-day year consisting of twelve 30-day months.

[OR]

**[INSTRUCTIONS TO PREPARER - SELECT CORRECT VERSION OF PARAGRAPH 3(b), AND
DELETE THE INAPPLICABLE VERSIONS]**

(b) Consecutive monthly installments of principal and interest, each in the amount of

Dollars (US \$ _____), shall be payable on the first day of each month beginning on _____, _____, until the entire unpaid principal balance evidenced by this Note is fully paid.

(b) Consecutive monthly installments of interest only, each in the amount of

Dollars (US \$ _____), shall be payable on the first day of each month beginning on _____, _____, until the entire unpaid principal balance evidenced by this Note is fully paid.

[OR]

(b) Consecutive monthly installments of interest only, each in the amount of

Dollars (US \$ _____), shall be payable on the first day of each month beginning on _____, _____, through and including the monthly installment payable on the first day of _____, _____. Consecutive monthly installments of principal and interest, each in the amount of _____ Dollars (US \$ _____), shall be payable on the first day of each month beginning on _____, _____, until the entire unpaid principal balance evidenced by this Note is fully paid.

(c) Any accrued interest remaining past due for 30 days or more may, at Lender's discretion, be added to and become part of the unpaid principal balance and shall bear interest at the rate or rates specified in this Note, and any reference below to "accrued interest" shall refer to accrued interest which has not become part of the unpaid principal balance. Any remaining principal and interest shall be due and payable on

_____ or on any earlier date on which the unpaid principal balance of this Note becomes due and payable, by acceleration or otherwise (the "**Maturity Date**"). The unpaid principal balance shall continue to bear interest after the Maturity Date at the Default Rate set forth in this Note until and including the date on which it is paid in full.

(d) Any regularly scheduled monthly installment of principal and interest that is received by Lender before the date it is due shall be deemed to have been received on the due date solely for the purpose of calculating interest due.

4. 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, 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. Borrower agrees that neither Lender's acceptance of a payment from Borrower in an amount that is less than all amounts then due and payable nor Lender's application of such payment shall constitute or be deemed to constitute either a waiver of the unpaid amounts or an accord and satisfaction.

5. Security. The Indebtedness is secured, among other things, by a multifamily mortgage, deed to secure debt or deed of trust dated as of the date of this Note (the "**Security**

Instrument"), and reference is made to the Security Instrument for other rights of Lender as to collateral for the Indebtedness.

6. Acceleration. If an Event of Default has occurred and is continuing, the entire unpaid principal balance, any accrued interest, the prepayment premium payable under Paragraph 10, if any, and all other amounts payable under this Note and any other Loan Document shall at once become due and payable, at the option of Lender, without any prior notice to Borrower (except if notice is required by applicable law, then after such notice). Lender may exercise this option to accelerate regardless of any prior forbearance.

7. Late Charge. If any monthly amount payable under this Note or under the Security Instrument or any other Loan Document is not received by Lender within ten (10) days after the amount is due (unless applicable law requires a longer period of time before a late charge may be imposed, in which event such longer period shall be substituted), Borrower shall pay to Lender, immediately and without demand by Lender, a late charge equal to five percent (5%) of such amount (unless applicable law requires a lesser amount be charged, in which event such lesser amount shall be substituted). Borrower acknowledges that its failure to make timely payments will cause Lender to incur additional expenses in servicing and processing the loan evidenced by this Note (the "**Loan**"), and that it is extremely difficult and impractical to

determine those additional expenses. Borrower agrees that the late charge payable pursuant to this Paragraph represents a fair and reasonable estimate, taking into account all circumstances existing on the date of this Note, of the additional expenses Lender will incur by reason of such late payment. The late charge is payable in addition to, and not in lieu of, any interest payable at the Default Rate pursuant to Paragraph 8.

8. Default Rate. So long as (a) any monthly installment under this Note remains past due for thirty (30) days or more, or (b) any other Event of Default has occurred and is continuing, interest under this Note shall accrue on the unpaid principal balance from the earlier of the due date of the first unpaid monthly installment or the occurrence of such other Event of Default, as applicable, at a rate (the "**Default Rate**") equal to the lesser of four (4) percentage points above the rate stated in the first paragraph of this Note and the maximum interest rate which may be collected from Borrower under applicable law. If the unpaid principal balance and all accrued interest are not paid in full on the Maturity Date, the unpaid principal balance and all accrued interest shall bear interest from the Maturity Date at the Default Rate. Borrower also acknowledges that its failure to make timely payments will cause Lender to incur additional expenses in servicing and processing the Loan, that, during the time that any monthly installment under this Note is delinquent for more than thirty (30) days, Lender will incur additional costs and expenses arising from its loss of the use of the money due and from the adverse impact on Lender's ability to meet its other obligations and to take advantage of other investment opportunities, and that it is extremely difficult and impractical to determine those additional costs and expenses. Borrower also acknowledges that, during the time that any monthly installment under this Note is delinquent for more than thirty (30) days or any other Event of Default has occurred and is continuing, Lender's risk of nonpayment of this Note will be materially increased and Lender is entitled to be compensated for such increased risk. Borrower agrees that the increase in the rate of interest payable under this Note to the Default Rate represents a fair and reasonable estimate, taking into account all circumstances existing on the date of this Note, of the additional costs and expenses Lender will incur by reason of the Borrower's delinquent payment and the additional compensation Lender is entitled to receive for the increased risks of nonpayment associated with a delinquent loan.

9. Limits on Personal Liability.

(a) Except as otherwise provided in this Paragraph 9, Borrower shall have no personal liability under this Note, the Security Instrument or any other Loan Document for the repayment of the Indebtedness or for the performance of any other obligations of Borrower under the Loan Documents, and Lender's only recourse for the satisfaction of the Indebtedness and the performance of such obligations shall be Lender's exercise of its rights and remedies with respect to the Mortgaged Property and any other collateral held by Lender as security for the Indebtedness. This limitation on Borrower's liability shall not limit or impair Lender's enforcement of its rights against any guarantor of the Indebtedness or any guarantor of any obligations of Borrower.

(b) Borrower shall be personally liable to Lender for the repayment of a portion of the Indebtedness equal to _____ percent (____%) of the _____ principal balance of this Note, plus any other amounts for which Borrower has personal liability under this Paragraph 9.

(c) In addition to Borrower's personal liability under Paragraph 9(b), Borrower shall be personally liable to Lender for the repayment of a further portion of the Indebtedness equal to any loss or damage suffered by Lender as a result of (1) failure of Borrower to pay to Lender upon demand after an Event of Default all Rents to which Lender is entitled under Section 3(a) of the Security Instrument and the amount of all security deposits collected by Borrower from tenants then in residence; (2) failure of Borrower to apply all insurance proceeds and condemnation proceeds as required by the Security Instrument; or (3) failure of Borrower to comply with Section 14(d) or (e) of the Security Instrument relating to the delivery of books and records, statements, schedules and reports.

(d) For purposes of determining Borrower's personal liability under Paragraph 9(b) and Paragraph 9(c), all payments made by Borrower or any guarantor of this Note with respect to the Indebtedness and all amounts received by Lender from the enforcement of its rights under the Security Instrument shall be applied first to the portion of the Indebtedness for which Borrower has no personal liability.

(e) Borrower shall become personally liable to Lender for the repayment of all of the Indebtedness upon the occurrence of any of the following Events of Default: (1) Borrower's acquisition of any property or operation of any business not permitted by Section 33 of the

Security Instrument; (2) a Transfer (including, but not limited to, a lien or encumbrance) that is an Event of Default under Section 21 of the Security Instrument, other than a Transfer consisting solely of the involuntary removal or involuntary withdrawal of a general partner in a limited partnership or a manager in a limited liability company; or (3) fraud or written material misrepresentation by Borrower or any officer, director, partner, member or employee of Borrower in connection with the application for or creation of the Indebtedness or any request for any action or consent by Lender.

(f) In addition to any personal liability for the Indebtedness, Borrower shall be personally liable to Lender for (1) the performance of all of Borrower's obligations under Section 18 of the Security Instrument (relating to environmental matters); (2) the costs of any audit under Section 14(d) of the Security Instrument; and (3) any costs and expenses incurred by Lender in connection with the collection of any amount for which Borrower is personally liable under this Paragraph 9, including fees and out of pocket expenses of attorneys and expert witnesses and the costs of conducting any independent audit of Borrower's books and records to determine the amount for which Borrower has personal liability.

(g) To the extent that Borrower has personal liability under this Paragraph 9, Lender may exercise its rights against Borrower personally without regard to whether Lender has exercised any rights against the Mortgaged Property or any other security, or pursued any rights against any guarantor, or pursued any other rights available to Lender under this Note, the Security Instrument, any other Loan Document or applicable law. For purposes of this Paragraph 9, the term "**Mortgaged Property**" shall not include any funds that (1) have been applied by Borrower as required or permitted by the Security Instrument prior to the occurrence of an Event of Default or (2) Borrower was unable to apply as required or permitted by the Security Instrument because of a bankruptcy, receivership, or similar judicial proceeding. To the fullest extent permitted by applicable law, in any action to enforce Borrower's personal liability under this Paragraph 9, Borrower waives any right to set off the value of the Mortgaged Property against such personal liability.

10. Voluntary and Involuntary Prepayments.

(a) A prepayment premium shall be payable in connection with any prepayment (any receipt by Lender of principal, other than principal required to be paid in monthly installments pursuant to Paragraph 3(b), prior to the scheduled Maturity Date set forth in Paragraph 3(c)) under this Note as provided below:

(1) Borrower may voluntarily prepay all of the unpaid principal balance of this Note on a Business Day designated as the date for such prepayment in a written notice from Borrower to Lender given at least 30 days prior to the date of such prepayment. Such prepayment shall be made by paying (A) the amount of principal being prepaid, (B) all accrued interest, (C) all other sums due Lender at the time of such prepayment, and (D) the prepayment premium calculated pursuant to Paragraph 10(c). For all purposes including the accrual of interest, any prepayment received by Lender on any day other than the last calendar day of the month shall be deemed to have been received on the last calendar day of such month. For purposes of this Note, a "**Business Day**" means any day other than a Saturday, Sunday or any other day on which Lender is not open for business. Unless expressly provided for in the Loan Documents, Borrower shall not have the option to voluntarily prepay less than all of the unpaid principal balance. However, if a partial prepayment is provided for in the Loan Documents or is accepted by Lender in Lender's discretion, a prepayment premium calculated pursuant to Paragraph 10(c) shall be due and payable by Borrower.

(2) Upon Lender's exercise of any right of acceleration under this Note, Borrower shall pay to Lender, in addition to the entire unpaid principal balance of this Note outstanding at the time of the acceleration, (A) all accrued interest and all other sums due Lender, and (B) the prepayment premium calculated pursuant to Paragraph 10(c).

(3) Any application by Lender of any collateral or other security to the repayment of any portion of the unpaid principal balance of this Note prior to the Maturity Date and in the absence of acceleration shall be deemed to be a partial prepayment by Borrower, requiring the payment to Lender by Borrower of a prepayment premium.

(b) Notwithstanding the provisions of Paragraph 10(a), no prepayment premium shall be payable with respect to (A) any prepayment made during the period from _____ () days before the scheduled Maturity Date to the scheduled Maturity Date, or (B) any prepayment occurring as a result of the application of any insurance proceeds or condemnation award under the Security Instrument.

(c) Any prepayment premium payable under this Note shall be computed as follows:

(1) If the prepayment is made between the date of this Note and the date that is _____ months after the first day of the first calendar month following the date of this Note (the "**Yield Maintenance Period**"), the prepayment premium shall be whichever is the greater of subparagraphs (i) and (ii) below:

- (i) 1.0% of the unpaid principal balance of this Note; or
- (ii) the product obtained by multiplying:
 - (A) the amount of principal being prepaid,
by
 - (B) the excess (if any) of the Monthly Note Rate over the Assumed Reinvestment Rate,
by
 - (C) the Present Value Factor.

For purposes of subparagraph (ii), the following definitions shall apply:

Monthly Note Rate: one-twelfth (1/12) of the annual interest rate of this Note, expressed as a decimal calculated to five digits.

Prepayment Date: in the case of a voluntary prepayment, the date on which the prepayment is made; in the case of the application by Lender of collateral or security to a portion of the principal balance, the date of such application; and in any other case, the date on which Lender accelerates the unpaid principal balance of this Note.

Assumed Reinvestment Rate: one-twelfth (1/12) of the yield rate as of the date 5 Business Days before the Prepayment Date, on the _____% U.S. Treasury Security due _____, as reported in *The Wall Street Journal*, expressed as a decimal calculated to five digits. In the event that no yield is published on the applicable date for the Treasury Security used to determine the Assumed Reinvestment Rate, Lender, in its discretion, shall select the non-callable Treasury Security maturing in the same year as the Treasury Security specified above with the lowest yield published in *The Wall Street Journal* as of the applicable date. If the publication of such yield rates in *The Wall Street Journal* is discontinued for any reason, Lender shall select a security with a comparable rate and term to the Treasury Security used to determine the Assumed Reinvestment Rate. The selection of an alternate security pursuant to this Paragraph shall be made in Lender's discretion.

Present Value Factor: the factor that discounts to present value the costs resulting to Lender from the difference in interest rates during the months remaining in the Yield Maintenance Period, using the Assumed Reinvestment Rate as the discount rate, with monthly compounding, expressed numerically as follows:

$$\frac{1 - \frac{1}{1 + \text{ARR}}}{\text{ARR}}$$

n = number of months remaining in Yield Maintenance Period

ARR = Assumed Reinvestment Rate

(2) If the prepayment is made after the expiration of the Yield Maintenance Period but before the period set forth in Paragraph 10(b) (A) above, the prepayment premium shall be 1.0% of the unpaid principal balance of this Note.

(d) Any permitted or required prepayment of less than the unpaid principal balance of this Note shall not extend or postpone the due date of any subsequent monthly installments or change the amount of such installments, unless Lender agrees otherwise in writing.

(e) Borrower recognizes that any prepayment of the unpaid principal balance of this Note, whether voluntary or involuntary or resulting from a default by Borrower, will result in Lender's incurring loss, including reinvestment loss, additional expense and frustration or impairment of Lender's ability to meet its commitments to third parties. Borrower agrees to pay to Lender upon demand damages for the detriment caused by any prepayment, and agrees that it is extremely difficult and impractical to ascertain the extent of such damages. Borrower therefore acknowledges and agrees that the formula for calculating prepayment premiums set forth in this Note represents a reasonable estimate of the damages Lender will incur because of a prepayment.

(f) Borrower further acknowledges that the prepayment premium provisions of this Note are a material part of the consideration for the Loan, and acknowledges that the terms of this Note are in other respects more favorable to Borrower as a result of the Borrower's voluntary agreement to the prepayment premium provisions.

11. Costs and Expenses. To the fullest extent allowed by applicable law, Borrower shall pay all expenses and costs, including fees and out-of-pocket expenses of attorneys (including Lender's in-house attorneys) and expert witnesses and costs of investigation, incurred by Lender as a result of any default under this Note or in connection with efforts to collect any amount due under this Note, or to enforce the provisions of any of the other Loan Documents, including those incurred in post-judgment collection efforts and in any bankruptcy proceeding (including any action for relief from the automatic stay of any bankruptcy proceeding) or judicial or non-judicial foreclosure proceeding.

12. Forbearance. Any forbearance by Lender in exercising any right or remedy under this Note, the Security Instrument, or any other Loan Document or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of that or any other right or remedy. The acceptance by Lender of any payment 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 or to exercise any right or remedy with respect to any failure to make prompt payment. Enforcement by Lender of any security for Borrower's obligations under this Note shall not constitute an election by Lender of remedies so as to preclude the exercise of any other right or remedy available to Lender.

13. Waivers. Presentment, demand, notice of dishonor, protest, notice of acceleration, notice of intent to demand or accelerate payment or maturity, presentment for payment, notice of nonpayment, grace, and diligence in collecting the Indebtedness are waived by Borrower and all endorsers and guarantors of this Note and all other third party obligors.

14. Loan Charges. Neither this Note nor any of the other Loan Documents shall be construed to create a contract for the use, forbearance or detention of money requiring payment of interest at a rate greater than the maximum interest rate permitted to be charged under applicable law. If any applicable law limiting the amount of interest or other charges permitted to be collected from Borrower in connection with the Loan is interpreted so that any interest or other charge provided for in any Loan Document, whether considered separately or together with other charges provided for in any other Loan Document, violates that law, and Borrower is entitled to the benefit of that law, that interest or 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 unpaid principal balance of this Note. For the purpose of determining whether any applicable law limiting the amount of interest or other charges permitted

to be collected from Borrower has been violated, all Indebtedness that constitutes interest, as well as all other charges made in connection with the Indebtedness that constitute interest, shall be deemed to be allocated and spread ratably over the stated term of the Note. Unless otherwise required by applicable law, such allocation and spreading shall be effected in such a manner that the rate of interest so computed is uniform throughout the stated term of the Note.

15. Commercial Purpose. Borrower represents that the Indebtedness is being incurred by Borrower solely for the purpose of carrying on a business or commercial enterprise, and not for personal, family, household, or agricultural purposes.

16. Counting of Days. Except where otherwise specifically provided, any reference in this Note to a period of "days" means calendar days, not Business Days.

17. Governing Law. This Note shall be governed by the law of the jurisdiction in which the Land is located.

18. Captions. The captions of the paragraphs of this Note are for convenience only and shall be disregarded in construing this Note.

19. Notices; Written Modifications. All notices, demands and other communications required or permitted to be given by Lender to Borrower pursuant to this Note shall be given in accordance with Section 31 of the Security Instrument. Any modification or amendment to this Note shall be ineffective unless in writing signed by the party sought to be charged with such modification or amendment; provided, however, that in the event of a Transfer under the terms of the Security Instrument, any or some or all of the Modifications to

Multifamily Note may be modified or rendered void by Lender at Lender's option by notice to Borrower/transferee.

20. Consent to Jurisdiction and Venue. Borrower agrees that any controversy arising under or in relation to this Note shall be litigated exclusively in the jurisdiction in which the Land is located (the "**Property Jurisdiction**"). The state and federal courts and authorities with jurisdiction in the Property Jurisdiction shall have exclusive jurisdiction over all controversies which shall arise under or in relation to this Note. 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.

21. WAIVER OF TRIAL BY JURY. BORROWER AND LENDER EACH (A) AGREES NOT TO ELECT A TRIAL BY JURY WITH RESPECT TO ANY ISSUE ARISING OUT OF THIS NOTE OR THE RELATIONSHIP BETWEEN THE PARTIES AS LENDER AND BORROWER 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 EXHIBIT. The following Exhibit is attached to this Note:

|_____| Exhibit A Modifications to Multifamily Note

IN WITNESS WHEREOF, Borrower has signed and delivered this Note under seal or has caused this Note to be signed and delivered under seal by its duly authorized representative. Borrower intends that this Note shall be deemed to be signed and delivered as a sealed instrument.

[SIGNATURES, SEALS, WITNESSES (IF REQUIRED)]

Borrower's Social Security/Employer ID Number

EXHIBIT A
MODIFICATIONS TO MULTIFAMILY NOTE

RD Instruction 2000-000
Exhibit A
Page 40

Prepared by, and after recording
return to:

MULTIFAMILY DEED OF TRUST,
ASSIGNMENT OF RENTS
AND SECURITY AGREEMENT

(VIRGINIA - REVISION DATE 11-01-2000)

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

(VIRGINIA - REVISION DATE 11-01-2000)

THIS MULTIFAMILY DEED OF TRUST, ASSIGNMENT OF RENTS AND SECURITY AGREEMENT (the "**Instrument**") is made this ____ day of _____, _____, by _____ a _____ organized and existing under the laws of _____, whose address is _____, as grantor ("**Borrower**"), to _____, a resident of the City/County of _____, Virginia, as trustee ("**Trustee**"), for the benefit of _____, a _____ organized and existing under the laws of _____, whose address is _____, as beneficiary ("**Lender**").

Borrower, in consideration of the Indebtedness and the trust created by this Instrument, irrevocably grants, conveys and assigns to Trustee, in trust, with power of sale, the Mortgaged Property, including the Land located in _____ City/County, Commonwealth of Virginia and described in Exhibit A attached to this Instrument.

TO SECURE TO LENDER the repayment of the Indebtedness evidenced by Borrower's Multifamily Note payable to Lender, dated as of the date of this Instrument, and maturing on _____, _____, the principal amount of \$ _____, and all renewals, extensions and modifications of the Indebtedness, and the performance of the covenants and agreements of Borrower contained in the Loan Documents.

Borrower represents and warrants that Borrower is lawfully seized of the Mortgaged Property, has the right, power and authority to grant, convey and assign the Mortgaged Property, and that the Mortgaged Property is unencumbered. 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 a schedule of exceptions

to coverage in any title insurance policy issued to Lender contemporaneously with the execution and recordation of this Instrument and insuring Lender's interest in the Mortgaged Property.

Covenants. Borrower and Lender covenant and agree as follows:

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

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

(b) **"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.

(c) **"Controlling Entity"** means an entity which owns, directly or indirectly through one or more intermediaries, (A) a general partnership interest or more than 50% of the limited partnership interests in Borrower (if Borrower is a partnership or joint venture), (B) a manager's interest in Borrower or more than 50% of the ownership or membership interests in Borrower (if Borrower is a limited liability company), or (C) more than 50% of any class of voting stock of Borrower (if Borrower is a corporation).

(d) **"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.

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

(f) **"Fixtures"** means all property which is so attached to the Land or the Improvements as to constitute a fixture under applicable law, including: machinery, equipment, engines, boilers, incinerators, installed building materials; systems and equipment for the purpose of supplying or distributing heating, cooling, electricity, gas, water, air, or light; antennas, cable,

wiring and conduits used in connection with radio, television, security, fire prevention, or fire detection or otherwise used to carry electronic signals; telephone systems and equipment; elevators and related machinery and equipment; fire detection, prevention and extinguishing systems and apparatus; security and access control systems and apparatus; plumbing systems; water heaters, ranges, stoves, microwave ovens, refrigerators, dishwashers, garbage disposers, washers, dryers and other appliances; light fixtures, awnings, storm windows and storm doors; pictures, screens, blinds, shades, curtains and curtain rods; mirrors; cabinets, paneling, rugs and floor and wall coverings; fences, trees and plants; swimming pools; and exercise equipment.

(g) **"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.

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

(i) **"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 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, 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, and their state analogs.

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

(k) "**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.

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

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

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

(o) "**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.

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

(q) "**Loan Documents**" means the Note, this Instrument, all guaranties, all indemnity agreements, all Collateral Agreements, O&M Programs, 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 Note, as such documents may be amended from time to time.

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

(s) **"Mortgaged Property"** means all of Borrower's present and future right, title and interest in and to all of the following:

- (1) the Land;
- (2) the Improvements;
- (3) the Fixtures;
- (4) the Personalty;
- (5) all current and future rights, including air rights, development rights, zoning rights and other similar rights or interests, easements, tenements, rights-of-way, strips and gores of land, streets, alleys, roads, sewer rights, waters, watercourses, and appurtenances related to or benefitting the Land or the Improvements, or both, and all rights-of-way, streets, alleys and roads which may have been or may in the future be vacated;
- (6) all proceeds paid or to be paid by any insurer of the Land, the Improvements, the Fixtures, the Personalty or any other part of the Mortgaged Property, whether or not Borrower obtained the insurance pursuant to Lender's requirement;
- (7) all awards, payments and other compensation made or to be made by any municipal, state or federal authority with respect to the Land, the Improvements, the Fixtures, the Personalty or any other part of the Mortgaged Property, including any awards or settlements resulting from condemnation proceedings or the total or partial taking of the Land, the Improvements, the Fixtures, the Personalty or any other part of the Mortgaged Property under the power of eminent domain or otherwise and including any conveyance in lieu thereof;
- (8) all contracts, options and other agreements for the sale of the Land, the Improvements, the Fixtures, the Personalty or any other part of the Mortgaged Property entered into by Borrower now or in the future, including cash or securities deposited to secure performance by parties of their obligations;
- (9) all proceeds from the conversion, voluntary or involuntary, of any of the above into cash or liquidated claims, and the right to collect such proceeds;

- (10) all Rents and Leases;
 - (11) all earnings, royalties, accounts receivable, issues and profits from the Land, the Improvements or any other part of the Mortgaged Property, and all undisbursed proceeds of the loan secured by this Instrument and, if Borrower is a cooperative housing corporation, maintenance charges or assessments payable by shareholders or residents;
 - (12) all Imposition Deposits;
 - (13) all refunds or rebates of Impositions by any municipal, state or federal authority or insurance company (other than refunds applicable to periods before the real property tax year in which this Instrument is dated);
 - (14) all tenant security deposits which have not been forfeited by any tenant under any Lease; and
 - (15) all names under or by which any of the above Mortgaged Property may be operated or known, and all trademarks, trade names, and goodwill relating to any of the Mortgaged Property.
- (t) **"Note"** means the Multifamily Note described on page 1 of this Instrument, including all schedules, riders, allonges and addenda, as such Multifamily Note may be amended from time to time.
- (u) **"O&M Program"** is defined in Section 18(a).
- (v) **"Personalty"** means all furniture, furnishings, equipment, machinery, building materials, appliances, goods, supplies, tools, books, records (whether in written or electronic form), computer equipment (hardware and software) and other tangible personal property (other than Fixtures) which are used now or in the future in connection with the ownership, management or operation of the Land or the Improvements or are located on the Land or in the Improvements, and any operating agreements relating to the Land or the Improvements, and any surveys, plans and specifications and contracts for architectural, engineering and construction services relating to the Land or the Improvements and all other intangible property and rights relating to the operation of, or used in connection with, the Land or the Improvements, including all governmental permits relating to any activities on the Land.

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

(x) **"Rents"** means all rents (whether from residential or non-residential space), revenues and other income of the Land or the Improvements, including parking fees, laundry and vending machine income and fees and charges for food, health care and other services provided at the Mortgaged Property, whether now due, past due, or to become due, and deposits forfeited by tenants.

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

(z) **"Transfer"** means (A) a sale, assignment, transfer or other disposition (whether voluntary, involuntary or by operation of law); (B) the granting, creating or attachment of a lien, encumbrance or security interest (whether voluntary, involuntary or by operation of law); (C) the issuance or other creation of an ownership interest in a legal entity, including a partnership interest, interest in a limited liability company or corporate stock; (D) the withdrawal, retirement, removal or involuntary resignation of a partner in a partnership or a member or manager in a limited liability company; or (E) the merger, dissolution, liquidation, or consolidation of a legal entity or the reconstitution of one type of legal entity into another type of legal entity. "Transfer" does not include (i) a conveyance of the Mortgaged Property at a judicial or non-judicial foreclosure sale under this Instrument or (ii) the Mortgaged Property becoming part of a bankruptcy estate by operation of law under the United States Bankruptcy Code. For purposes of defining the term "Transfer," the term "partnership" shall mean a general partnership, a limited partnership, a joint venture and a limited liability partnership, and the term "partner" shall mean a general partner, a limited partner and a joint venturer.

2. UNIFORM COMMERCIAL CODE SECURITY AGREEMENT.

This Instrument is also a security agreement under the Uniform Commercial Code for any of the Mortgaged Property which, under applicable law, may be subject to a security interest under the Uniform Commercial Code, whether acquired now or 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 shall execute and deliver to Lender, upon Lender's request, financing statements, continuation statements and amendments, in such form as Lender may require to perfect or continue the perfection of this security interest. Borrower shall pay all

filing costs and all costs and expenses of any record searches for financing statements that Lender may require. Without the prior written consent of Lender, Borrower shall not create or permit to exist any other lien or security interest in any of the UCC Collateral. If an Event of Default has occurred and is continuing, Lender shall have the remedies of a secured party under the Uniform Commercial Code, in addition to all remedies provided by this Instrument or existing under applicable law. In exercising any remedies, Lender may exercise its remedies against the UCC Collateral separately or together, and in any order, without in any way affecting the availability of Lender's other remedies. This Instrument constitutes a financing statement with respect to any part of the Mortgaged Property which is or may become a Fixture.

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

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

(b) After the occurrence of an Event of Default, Borrower authorizes Lender to collect, sue for and compromise Rents and directs each tenant of the Mortgaged Property to pay all Rents to, or as directed by, Lender. However, until the occurrence of an Event of Default, Lender hereby grants to Borrower a revocable license to collect and receive all Rents, to hold all Rents in trust for the benefit of Lender and to apply all Rents to pay the installments of interest and principal then due and payable under the Note and the other amounts then due and payable under the other Loan Documents, including Imposition Deposits, and to pay the current costs and expenses of managing,

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

(c) Borrower represents and warrants to Lender that Borrower has not executed any prior assignment of Rents (other than an assignment of Rents securing indebtedness that will be paid off and discharged with the proceeds of the loan evidenced by the Note), 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. 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. Lender shall not be liable to Borrower, anyone claiming under or through Borrower or anyone having an interest in the Mortgaged Property, by reason of any act or omission of Lender under this Section 3, and Borrower hereby releases and discharges Lender from any such liability to the fullest extent permitted by law.

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

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

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

(a) As part of the consideration for the Indebtedness, Borrower absolutely and unconditionally assigns and transfers to Lender all of Borrower's right, title and interest in, to and under the Leases, including Borrower's right, power and authority to modify the terms of any such Lease, or extend or terminate any such Lease. It is the intention of Borrower to establish a present, absolute and irrevocable transfer and assignment to Lender of all of Borrower's right, title and interest in, to and under the Leases. Borrower and Lender intend this assignment of the Leases to be immediately effective and to constitute an absolute present assignment and not an assignment for additional security only. For purposes of giving effect to this absolute assignment of the Leases, and for no other purpose, the Leases shall not be deemed to be a part of the "Mortgaged Property" as that term is defined in Section 1(s). 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. 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) Borrower shall not lease any portion of the Mortgaged Property for non-residential use except with the prior written consent of Lender and Lender's prior written approval of the Lease agreement. Borrower shall not modify the terms of, or extend or terminate, any Lease for non-residential use (including any Lease in existence on the date of this Instrument) without the prior written consent of Lender. Borrower shall, without request by Lender, deliver an executed copy of each non-residential Lease to Lender promptly

after such Lease is signed. All non-residential Leases, including renewals or extensions of existing Leases, shall specifically provide that (1) such Leases are subordinate to the lien of this Instrument; (2) the tenant shall attorn to Lender and any purchaser at a foreclosure sale, such attornment to be self-executing and effective upon acquisition of title to the Mortgaged Property by any purchaser at a foreclosure sale or by Lender in any manner; (3) the tenant agrees to execute such further evidences of attornment as Lender or any purchaser at a foreclosure sale may from time to time request; (4) the Lease shall not be terminated by foreclosure or any other transfer of the Mortgaged Property; (5) after a foreclosure sale of the Mortgaged Property, Lender or any other purchaser at such foreclosure sale may, at Lender's or such purchaser's option, accept or terminate such Lease; and (6) the tenant shall, upon receipt after the occurrence of an Event of Default of a written request from Lender, pay all Rents payable under the Lease to Lender.

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

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

6. 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 Note.

7. DEPOSITS FOR TAXES, INSURANCE AND OTHER CHARGES.

(a) Borrower shall deposit with Lender on the day monthly installments of principal or interest, or both, are due under the Note (or on another day designated in writing by Lender), until the Indebtedness is paid in full, an additional amount sufficient to accumulate with Lender the entire sum required to pay, when due (1) any water and sewer charges which, if not paid, may result in a lien on all or any part of the Mortgaged Property, (2) the premiums for fire and other hazard insurance, rent loss insurance and such other insurance as Lender may require under Section 19, (3) Taxes, and (4) amounts for other charges and expenses which Lender at any time reasonably deems necessary to protect the Mortgaged Property, to prevent the imposition

of liens on the Mortgaged Property, or otherwise to protect Lender's interests, all as reasonably estimated from time to time by Lender, plus one-sixth of such estimate. The amounts deposited under the preceding sentence are collectively referred to in this Instrument as the "**Imposition Deposits**". The obligations of Borrower for which the Imposition Deposits are required are collectively referred to in this Instrument as "**Impositions**". The amount of the Imposition Deposits shall be sufficient to enable Lender to pay each Imposition before the last date upon which such payment may be made without any penalty or interest charge being added. Lender shall maintain records indicating how much of the monthly Imposition Deposits and how much of the aggregate Imposition Deposits held by Lender are held for the purpose of paying Taxes, insurance premiums and each other obligation of Borrower for which Imposition Deposits are required. Any waiver by Lender of the requirement that Borrower remit Imposition Deposits to Lender may be revoked by Lender, in Lender's discretion, at any time upon notice to Borrower.

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

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

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

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

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 which is less than all amounts then due and payable nor Lender's application of such payment in the manner authorized shall constitute or be deemed to constitute either a waiver of the unpaid amounts or an accord and satisfaction. Notwithstanding the application of any such amount to the Indebtedness, Borrower's obligations under this Instrument and the Note shall remain unchanged.

10. COMPLIANCE WITH LAWS. Borrower shall comply with all laws, ordinances, regulations and requirements of any Governmental Authority and all recorded lawful covenants and agreements relating to or affecting the Mortgaged Property, including all laws, ordinances, regulations, requirements and covenants pertaining to health and safety, construction of improvements on the Mortgaged Property, fair housing, zoning and land use, and Leases. Borrower also shall comply with all applicable laws that pertain to the maintenance and disposition of tenant security deposits. Borrower shall at all times maintain records sufficient to demonstrate compliance with the provisions of this Section 10. Borrower shall take appropriate measures to prevent, and shall not engage in or knowingly permit, any illegal activities at the Mortgaged Property that could endanger tenants or visitors, result in damage to the Mortgaged Property, result in forfeiture of the Mortgaged

Property, or otherwise materially impair the lien created by this Instrument or Lender's interest in the Mortgaged Property. Borrower represents and warrants to Lender that no portion of the Mortgaged Property has been or will be purchased with the proceeds of any illegal activity.

11. USE OF PROPERTY. Unless required by applicable law, Borrower shall not (a) except for any change in use approved by Lender, 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, (b) convert any individual dwelling units or common areas to commercial use, (c) initiate or acquiesce in a change in the zoning classification of the Mortgaged Property, or (d) establish any condominium or cooperative regime with respect to the Mortgaged Property.

12. PROTECTION OF LENDER'S SECURITY.

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

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

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

13. INSPECTION. Lender, its agents, representatives, and designees may make or cause to be made entries upon and inspections of the Mortgaged Property (including environmental inspections and tests) during normal business hours, or at any other reasonable time.

14. BOOKS AND RECORDS; FINANCIAL REPORTING.

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

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

- (1) within 120 days after the end of each fiscal year of Borrower, a statement of income and expenses for Borrower's operation of the Mortgaged Property for that fiscal year, 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;
- (2) within 120 days after the end of each fiscal year of Borrower, and at any other time upon Lender's request, a rent schedule for the Mortgaged Property showing the name of each tenant, and for each tenant, the space occupied, the lease expiration date, the rent payable for the current month, the date through which rent has been paid, and any related information requested by Lender;
- (3) within 120 days after the end of each fiscal year of Borrower, and at any other time upon Lender's request, an accounting of all security deposits held pursuant to all Leases, including the name of the institution (if any) and the names and identification numbers of the accounts (if any) in which such security deposits are held and the name of the person to contact at such financial institution, along with any authority or release necessary for Lender to access information regarding such accounts;

- (4) within 120 days after the end of each fiscal year of Borrower, and at any other time upon Lender's request, a statement that identifies all owners of any interest in Borrower and any Controlling Entity and the interest held by each, if Borrower or a Controlling Entity is a corporation, all officers and directors of Borrower and the Controlling Entity, and if Borrower or a Controlling Entity is a limited liability company, all managers who are not members;
- (5) upon Lender's request, quarterly income and expense statements for the Mortgaged Property;
- (6) upon Lender's request at any time when an Event of Default has occurred and is continuing, monthly income and expense statements for the Mortgaged Property;
- (7) upon Lender's request, a monthly property management report for the Mortgaged Property, showing the number of inquiries made and rental applications received from tenants or prospective tenants and deposits received from tenants and any other information requested by Lender; and
- (8) upon Lender's request, a balance sheet, a statement of income and expenses for Borrower and a statement of changes in financial position of Borrower for Borrower's most recent fiscal year.

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

(d) If Borrower fails to provide in a timely manner the statements, schedules and reports required by Section 14(b), Lender shall have the right to have Borrower's books and records audited, at Borrower's expense, by independent certified public accountants selected by Lender in order to obtain such statements, schedules and reports, and all related costs and expenses of Lender shall become immediately due and payable and shall become an additional part of the Indebtedness as provided in Section 12.

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

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

15. TAXES; OPERATING EXPENSES.

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

(b) Subject to the provisions of Section 15(c), Borrower shall pay the expenses of operating, managing, maintaining and repairing the Mortgaged Property (including insurance premiums, utilities, repairs and replacements) before the last date upon which each such payment may be made without any penalty or interest charge being added.

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

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

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

16. LIENS; ENCUMBRANCES. Borrower acknowledges that, to the extent provided in Section 21, the grant, creation or existence of any mortgage, deed of trust, deed to secure debt, security interest or other lien or encumbrance (a "**Lien**") on the Mortgaged Property (other than the lien of this Instrument) or on certain ownership interests in Borrower, whether voluntary, involuntary or by operation of law, and whether or not such Lien has priority over the lien of this Instrument, is a "**Transfer**" which constitutes an Event of Default and subjects Borrower to personal liability under the Note.

17. PRESERVATION, MANAGEMENT AND MAINTENANCE OF MORTGAGED PROPERTY. Borrower (a) shall not commit waste or permit impairment or deterioration of the Mortgaged Property, (b) shall not abandon the Mortgaged Property, (c) shall restore or repair promptly, in a good and workmanlike manner, any damaged part of the Mortgaged Property to the equivalent of its original condition, or such other condition as Lender may approve in writing, whether or not insurance proceeds or condemnation awards are available to cover any costs of such restoration or repair, (d) shall keep the Mortgaged Property in good repair, including the replacement of Personalty and Fixtures with items of equal or better function and quality, (e) shall provide for professional management of the Mortgaged Property by a residential rental property manager satisfactory to Lender under a contract approved by Lender in writing, and (f) shall give notice to Lender of and, unless otherwise directed in writing by Lender, shall appear in and defend any action or proceeding purporting to affect the Mortgaged Property, Lender's security or Lender's rights under this Instrument. Borrower shall not (and shall not permit any tenant or other person to) remove, demolish or alter the Mortgaged Property or any part of the Mortgaged Property except in connection with the replacement of tangible Personalty.

18. ENVIRONMENTAL HAZARDS.

(a) Except for matters covered by a written program of operations and maintenance approved in writing by Lender (an "**O&M Program**") or matters described in Section 18(b), Borrower shall not cause or permit any of the following:

- (1) the presence, use, generation, release, treatment, processing, storage (including storage in above ground and underground storage tanks), handling, or disposal of any Hazardous Materials on or under the Mortgaged Property or any other property of Borrower that is adjacent to the Mortgaged Property;
- (2) the transportation of any Hazardous Materials to, from, or across the Mortgaged Property;
- (3) 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; or
- (4) any violation of or noncompliance with the terms of any Environmental Permit with respect to the Mortgaged Property or any property of Borrower that is adjacent to the Mortgaged Property.

The matters described in clauses (1) through (4) above are referred to collectively in this Section 18 as "**Prohibited Activities or Conditions**".

(b) Prohibited Activities and Conditions shall not include the safe and lawful use and storage of quantities of (1) pre-packaged supplies, cleaning materials and petroleum products customarily used in the operation and maintenance of comparable multifamily properties, (2) 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 (3) petroleum products used in the operation and maintenance of motor vehicles from time to time located on the Mortgaged Property's parking areas, so long as all of the foregoing are used, stored, handled, transported and disposed of in compliance with Hazardous Materials Laws.

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

(d) If an O&M Program has been established with respect to Hazardous Materials, 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 the O&M Program. All costs of performance of Borrower's obligations under any O&M Program shall be paid by Borrower, and Lender's out-of-pocket costs incurred in connection with the monitoring and review of the O&M Program and Borrower's performance shall be paid by Borrower upon demand by Lender. Any such out-of-pocket costs of Lender which Borrower fails to pay promptly shall become an additional part of the Indebtedness as provided in Section 12.

(e) Borrower represents and warrants to Lender that, except as previously disclosed by Borrower to Lender in writing:

- (1) Borrower has not at any time engaged in, caused or permitted any Prohibited Activities or Conditions;
- (2) to the best of Borrower's knowledge after reasonable and diligent inquiry, no Prohibited Activities or Conditions exist or have existed;
- (3) except to the extent previously disclosed by Borrower to Lender in writing, 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 Property which has been previously disclosed by Borrower to Lender in writing, that tank complies with all requirements of Hazardous Materials Laws;
- (4) 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;
- (5) no event has occurred with respect to the Mortgaged Property that constitutes, or with the passing of time or the giving of notice would constitute, noncompliance with the terms of any Environmental Permit;

- (6) there are no actions, suits, claims or proceedings pending or, to the best of Borrower's knowledge after reasonable and diligent inquiry, threatened that involve the Mortgaged Property and allege, arise out of, or relate to any Prohibited Activity or Condition; and
- (7) Borrower has not received any complaint, order, notice of violation or other communication from any Governmental Authority with regard to air emissions, water discharges, noise emissions or Hazardous Materials, or any other environmental, health or safety matters affecting the Mortgaged Property or any other property of Borrower that is adjacent to the Mortgaged Property.

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

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

- (1) Borrower's discovery of any Prohibited Activity or Condition;
- (2) Borrower's receipt of or knowledge of any complaint, order, notice of violation or other communication from any 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; and
- (3) any representation or warranty in this Section 18 becomes untrue after the date of this Agreement.

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

- (g) Borrower shall pay promptly the costs of any environmental inspections, tests or audits ("**Environmental Inspections**") required by Lender in connection with any foreclosure or deed in lieu of foreclosure, or as a condition of Lender's consent to any Transfer under Section 21, or required by Lender following a reasonable determination by Lender that Prohibited Activities or Conditions may exist. Any such costs incurred by Lender

(including the fees and out-of-pocket costs of attorneys and technical consultants whether incurred in connection with any judicial or administrative process or otherwise) which Borrower fails to pay promptly shall become an additional part of the Indebtedness as provided in Section 12. The results of all Environmental Inspections made by Lender shall at all times remain the property of Lender and Lender shall have no obligation to disclose or otherwise make available to Borrower or any other party such results or any other information obtained by Lender in connection with its Environmental Inspections. Lender hereby reserves the right, and Borrower hereby expressly authorizes Lender, to make available to any party, including any prospective bidder at a foreclosure sale of the Mortgaged Property, the results of any Environmental Inspections made by Lender with respect to the Mortgaged Property. Borrower consents to Lender notifying any party (either as part of a notice of sale or otherwise) of the results of any of Lender's Environmental Inspections. Borrower acknowledges that Lender cannot control or otherwise assure the truthfulness or accuracy of the results of any of its Environmental Inspections and that the release of such results to prospective bidders at a foreclosure sale of the Mortgaged Property may have a material and adverse effect upon the amount which a party may bid at such sale. Borrower agrees that Lender shall have no liability whatsoever as a result of delivering the results of any of its Environmental Inspections to any third party, and Borrower hereby releases and forever discharges Lender from any and all claims, damages, or causes of action, arising out of, connected with or incidental to the results of, the delivery of any of Lender's Environmental Inspections.

(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 under any Hazardous Materials Law, Borrower shall, by the earlier of (1) the applicable deadline required by Hazardous Materials Law or (2) 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 cooperate with any inquiry by any Governmental Authority and shall comply with any governmental or judicial order which arises from any alleged Prohibited Activity or Condition.

(j) Borrower shall indemnify, hold harmless and defend (i) Lender, (ii) any prior owner or holder of the Note, (iii) the Loan Servicer, (iv) any prior Loan Servicer, (v) the officers, directors, shareholders, partners, employees and trustees of any of the foregoing, and (vi) 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 fees and out of pocket expenses of attorneys and expert witnesses, investigatory fees, and remediation costs, whether incurred in connection with any judicial or administrative process or otherwise, arising directly or indirectly from any of the following:

- (1) any breach of any representation or warranty of Borrower in this Section 18;
- (2) any failure by Borrower to perform any of its obligations under this Section 18;
- (3) the existence or alleged existence of any Prohibited Activity or Condition;
- (4) the presence or alleged presence of Hazardous Materials on or under the Mortgaged Property or any property of Borrower that is adjacent to the Mortgaged Property; and
- (5) 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. However, any Indemnitee may elect to defend any claim or legal or administrative proceeding at the Borrower's expense.

(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 (1) 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 (2) 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:

- (1) any amendment or modification of any Loan Document;
- (2) any extensions of time for performance required by any Loan Document;
- (3) any provision in any 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;
- (4) the accuracy or inaccuracy of any representations and warranties made by Borrower under this Instrument or any other Loan Document;
- (5) the release of Borrower or any other person, by Lender or by operation of law, from performance of any obligation under any Loan Document;
- (6) the release or substitution in whole or in part of any security for the Indebtedness; and
- (7) 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:

- (1) pay or satisfy any judgment or decree that may be entered against any Indemnitee or Indemnitees in any legal or administrative proceeding incident to any matters against which Indemnitees are entitled to be indemnified under this Section 18;
- (2) reimburse Indemnitees for any expenses paid or incurred in connection with any matters against which Indemnitees are entitled to be indemnified under this Section 18; and
- (3) reimburse Indemnitees for any and all expenses, including fees and out of pocket expenses of attorneys and expert witnesses, paid or incurred in connection with the enforcement by Indemnitees of their rights under this Section 18, or in monitoring and participating in any legal or administrative proceeding.

(o) 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. Borrower shall reimburse Lender upon demand for all costs and expenses incurred by Lender, including all costs of settlements entered into in good faith, and the fees and out of pocket expenses of such attorneys and consultants.

(p) 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 Indemnitee shall be entitled to indemnification under this Section 18 without regard to whether Lender or that Indemnitee has exercised any rights against the Mortgaged Property or any other security, pursued any rights against any guarantor, or pursued any other rights available under the Loan Documents or applicable law. If Borrower consists of more than one person or entity, the obligation of those persons or entities to indemnify the Indemnitees under this Section 18 shall be joint and several. The obligation of Borrower to indemnify the Indemnitees under this Section 18 shall survive any repayment or discharge of the Indebtedness, any foreclosure proceeding, any foreclosure sale, any delivery of any deed in lieu of foreclosure, and any release of record of the lien of this Instrument.

19. PROPERTY AND LIABILITY INSURANCE.

(a) Borrower shall keep the Improvements insured at all times against such hazards as Lender may from time to time require, which insurance shall include but not be limited to coverage against loss by fire and allied perils, general boiler and machinery coverage, and business income coverage. Lender's insurance requirements may change from time to time throughout the term of the Indebtedness. If Lender so requires, such insurance shall also include sinkhole insurance, mine subsidence insurance, earthquake insurance, and, if the Mortgaged Property does not conform to applicable zoning or land use laws, building ordinance or law coverage. If any of the Improvements is located in an area identified by the Federal Emergency Management Agency (or any successor to that agency) as an area having special flood hazards, and if flood insurance is available in that area, Borrower shall insure such Improvements against loss by flood.

(b) All premiums on insurance policies required under Section 19(a) shall be paid in the manner provided in Section 7, unless Lender has designated in writing another method of payment. All such policies shall also be in a form approved by Lender. All policies of property damage insurance shall include a non-contributing, non-reporting mortgage clause in favor of, and in a form approved by, Lender. Lender shall have the right to hold the original policies or duplicate original policies of all insurance required by Section 19(a). Borrower shall promptly deliver to Lender a copy of all renewal and other notices received by Borrower with respect to the policies and all receipts for paid premiums. At least 30 days prior to the expiration date of a policy, Borrower shall deliver to Lender the original (or a duplicate original) of a renewal policy in form satisfactory to Lender.

(c) 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.

(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 property damage insurance, to appear in and prosecute any action arising from such property damage insurance policies, to collect and receive the proceeds of property damage insurance, and to deduct from such proceeds Lender's expenses incurred in the collection of such proceeds. This power of attorney is coupled with an interest and therefore is irrevocable. However, nothing contained in this Section 19 shall require Lender to incur any expense or take any action. Lender may, at Lender's option, (1) hold the balance of such proceeds to be used to reimburse Borrower for the cost of restoring and repairing the Mortgaged Property to the equivalent of its original condition or to a condition approved by Lender (the "**Restoration**"), or (2) apply the balance of such proceeds to the payment of the Indebtedness, whether or not then due. To the extent Lender determines to apply insurance proceeds to Restoration, Lender shall do so in accordance with Lender's then-current policies relating to the restoration of casualty damage on similar multifamily properties.

(g) Lender shall not exercise its option to apply insurance proceeds to the payment of the Indebtedness if all of the following conditions are met: (1) 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; (2) Lender determines, in its discretion, that there will be sufficient funds to complete the Restoration; (3) Lender determines, in its discretion, that the rental income from the Mortgaged Property after completion of the Restoration will be sufficient to meet all operating costs and other expenses, Imposition Deposits, deposits to reserves and loan repayment obligations relating to the Mortgaged Property; and (4) Lender determines, in its discretion, that the Restoration will be completed before the earlier of (A) one year before the maturity date of the Note or (B) one year after the date of the loss or casualty.

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

20. CONDEMNATION.

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

(b) Lender may apply such awards or proceeds, after the deduction of Lender's expenses incurred in the collection of such amounts, at Lender's option, to the restoration or repair of the Mortgaged Property or to the payment of the Indebtedness, with the balance, if any, to Borrower. Unless

Lender otherwise agrees in writing, any application of any awards or proceeds to the Indebtedness shall not extend or postpone the due date of any monthly installments referred to in the Note, Section 7 of this Instrument or any Collateral Agreement, or change the amount of such installments. Borrower agrees to execute such further evidence of assignment of any awards or proceeds as Lender may require.

21. TRANSFERS OF THE MORTGAGED PROPERTY OR INTERESTS IN BORROWER. [NO RIGHT TO TRANSFER].

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

- (1) a Transfer of all or any part of the Mortgaged Property or any interest in the Mortgaged Property;
- (2) if Borrower is a limited partnership, a Transfer of (A) any general partnership interest, or (B) limited partnership interests in Borrower that would cause the Initial Owners of Borrower to own less than 51% of all limited partnership interests in Borrower;
- (3) if Borrower is a general partnership or a joint venture, a Transfer of any general partnership or joint venture interest in Borrower;
- (4) if Borrower is a limited liability company, a Transfer of (A) any membership interest in Borrower which would cause the Initial Owners to own less than 51% of all the membership interests in Borrower, or (B) any membership or other interest of a manager in Borrower;
- (5) if Borrower is a corporation, (A) the Transfer of any voting stock in Borrower which would cause the Initial Owners to own less than 51% of any class of voting stock in Borrower or (B) if the outstanding voting stock in Borrower is held by 100 or more shareholders, one or more transfers by a single transferor within a 12-month period affecting an aggregate of 5% or more of that stock;
- (6) if Borrower is a trust, (A) a Transfer of any beneficial interest in Borrower which would cause the Initial Owners to own less than 51% of all the beneficial interests in Borrower, or (B) the termination or revocation of the trust, or (C) the removal, appointment or substitution of a trustee of Borrower; and

- (7) a Transfer of any interest in a Controlling Entity which, if such Controlling Entity were Borrower, would result in an Event of Default under any of Sections 21(a) (1) through (6) above.

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

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

- (1) a Transfer to which Lender has consented;
- (2) a Transfer that occurs by devise, descent, or by operation of law upon the death of a natural person;
- (3) the grant of a leasehold interest in an individual dwelling unit for a term of two years or less not containing an option to purchase;
- (4) a Transfer of obsolete or worn out Personalty or Fixtures that are contemporaneously replaced by items of equal or better function and quality, which are free of liens, encumbrances and security interests other than those created by the Loan Documents or consented to by Lender;
- (5) the grant of an easement, if before the grant Lender determines that the easement will not materially affect the operation or value of the Mortgaged Property or Lender's interest in the Mortgaged Property, and Borrower pays to Lender, upon demand, all costs and expenses incurred by Lender in connection with reviewing Borrower's request; and
- (6) the creation of a mechanic's, materialman's, or judgment lien against the Mortgaged Property which is released of record or otherwise remedied to Lender's satisfaction within 30 days of the date of creation.

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

- (1) the submission to Lender of all information required by Lender to make the determination required by this Section 21(c);
- (2) the Mortgaged Property and the transferee meet all of the eligibility, credit, management and other standards (including but not limited to any standards with respect to previous relationships between Lender and the transferee and the organization of the transferee) customarily applied by Lender to the approval of borrowers and properties in connection with the origination or purchase of similar mortgages on multifamily properties;
- (3) the absence of any Event of Default;
- (4) the execution of an assumption agreement that is acceptable to Lender and that, among other things, requires the transferee to perform all obligations of Borrower set forth in the Note, this Instrument and any other Loan Documents, and may require that the transferee comply with any provisions of this Instrument or any other Loan Document which previously may have been waived by Lender; and
- (5) Lender's receipt of all of the following:
 - (A) a review fee in the amount of \$_____;
 - (B) a transfer fee in an amount equal to _____% of the unpaid principal balance of the Indebtedness immediately before the Transfer; and
 - (C) the amount of Lender's out-of-pocket costs (including reasonable attorneys' fees) incurred in reviewing the Transfer request.

**21. TRANSFERS OF THE MORTGAGED PROPERTY OR INTERESTS IN BORROWER.
[RIGHT TO ONE TRANSFER ONLY -- WITH LENDER APPROVAL].**

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

- (1) a Transfer of all or any part of the Mortgaged Property or any interest in the Mortgaged Property;

- (2) if Borrower is a limited partnership, a Transfer of (A) any general partnership interest, or (B) limited partnership interests in Borrower that would cause the Initial Owners of Borrower to own less than 51% of all limited partnership interests in Borrower;
- (3) if Borrower is a general partnership or a joint venture, a Transfer of any general partnership or joint venture interest in Borrower;
- (4) if Borrower is a limited liability company, a Transfer of (A) any membership interest in Borrower which would cause the Initial Owners to own less than 51% of all the membership interests in Borrower, or (B) any membership or other interest of a manager in Borrower;
- (5) if Borrower is a corporation, (A) the Transfer of any voting stock in Borrower which would cause the Initial Owners to own less than 51% of any class of voting stock in Borrower or (B) if the outstanding voting stock in Borrower is held by 100 or more shareholders, one or more transfers by a single transferor within a 12-month period affecting an aggregate of 5% or more of that stock;
- (6) if Borrower is a trust, (A) a Transfer of any beneficial interest in Borrower which would cause the Initial Owners to own less than 51% of all the beneficial interests in Borrower, or (B) the termination or revocation of the trust, or (C) the removal, appointment or substitution of a trustee of Borrower; and
- (7) a Transfer of any interest in a Controlling Entity which, if such Controlling Entity were Borrower, would result in an Event of Default under any of Sections 21(a)(1) through (6) above.

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

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

- (1) a Transfer to which Lender has consented;
- (2) a Transfer that occurs by devise, descent, or by operation of law upon the death of a natural person;
- (3) the grant of a leasehold interest in an individual dwelling unit for a term of two years or less not containing an option to purchase;
- (4) a Transfer of obsolete or worn out Personalty or Fixtures that are contemporaneously replaced by items of equal or better function and quality, which are free of liens, encumbrances and security interests other than those created by the Loan Documents or consented to by Lender;
- (5) the grant of an easement, if before the grant Lender determines that the easement will not materially affect the operation or value of the Mortgaged Property or Lender's interest in the Mortgaged Property, and Borrower pays to Lender, upon demand, all costs and expenses incurred by Lender in connection with reviewing Borrower's request; and
- (6) the creation of a mechanic's, materialman's, or judgment lien against the Mortgaged Property which is released of record or otherwise remedied to Lender's satisfaction within 30 days of the date of creation.

(c) Lender shall consent, *one time only* and without any adjustment to the rate at which the Indebtedness secured by this Instrument bears interest, to a Transfer that would otherwise violate this Section 21 if, prior to the Transfer, Borrower has satisfied each of the following requirements:

- (1) the submission to Lender of all information required by Lender to make the determination required by this Section 21(c);
- (2) the absence of any Event of Default;

- (3) the transferee meets all of the eligibility, credit, management and other standards (including but not limited to any standards with respect to previous relationships between Lender and the transferee and the organization of the transferee) customarily applied by Lender at the time of the proposed Transfer to the approval of borrowers in connection with the origination or purchase of similar mortgages on multifamily properties;
- (4) the Mortgaged Property, at the time of the proposed Transfer, meets all standards as to its physical condition that are customarily applied by Lender at the time of the proposed Transfer to the approval of properties in connection with the origination or purchase of similar mortgages on multifamily properties;
- (5) the loan to value ratio at the time of the proposed Transfer is 70% or less ("loan to value ratio" means the ratio of (A) the outstanding principal balance of the Indebtedness to (B) the value of the Mortgaged Property, as determined by Lender, expressed as a percentage);
- (6) the debt service coverage ratio for the last twelve full months preceding the proposed Transfer was 1.35 or more ("debt service coverage ratio" means the ratio of (A) the annual net operating income from the Mortgaged Property's operations during that month which is available for repayment of debt, after deducting operating expenses, to (B) the annual principal and interest payable under the Note); and
- (7) in the case of a Transfer of all or any part of the Mortgaged Property, (A) the execution by the transferee of an assumption agreement that is acceptable to Lender and that, among other things, requires the transferee to perform all obligations of Borrower set forth in the Note, this Instrument and any other Loan Documents, and may require that the transferee comply with any provisions of this Instrument or any other Loan Document which previously may have been waived by Lender, and (B) if a guaranty has been

executed and delivered in connection with the Note, this Instrument or any of the other Loan Documents, the transferee causes one or more individuals or entities acceptable to Lender to execute and deliver to Lender a guaranty in a form acceptable to Lender;

- (8) in the case of a Transfer of any interest in a Controlling Entity, if a guaranty has been executed and delivered in connection with the Note, this Instrument or any of the other Loan Documents, the Borrower causes one or more individuals or entities acceptable to Lender to execute and deliver to Lender a guaranty in a form acceptable to Lender; and
- (9) Lender's receipt of all of the following:
 - (A) a review fee in the amount of \$_____;
 - (B) a transfer fee in an amount equal to ____% of the unpaid principal balance of the Indebtedness immediately before the applicable Transfer; and
 - (C) the amount of Lender's out-of-pocket costs (including reasonable attorneys' fees) incurred in reviewing the Transfer request.

**21. TRANSFERS OF THE MORTGAGED PROPERTY OR INTERESTS IN BORROWER.
[RIGHT TO UNLIMITED TRANSFERS -- WITH LENDER APPROVAL].**

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

- (1) a Transfer of all or any part of the Mortgaged Property or any interest in the Mortgaged Property;
- (2) if Borrower is a limited partnership, a Transfer of (A) any general partnership interest, or (B) limited partnership interests in Borrower that would cause the Initial Owners of Borrower to own less than 51% of all limited partnership interests in Borrower;
- (3) if Borrower is a general partnership or a joint venture, a Transfer of any general partnership or joint venture interest in Borrower;

- (4) if Borrower is a limited liability company, a Transfer of (A) any membership interest in Borrower which would cause the Initial Owners to own less than 51% of all the membership interests in Borrower, or (B) any membership or other interest of a manager in Borrower;
- (5) if Borrower is a corporation, (A) the Transfer of any voting stock in Borrower which would cause the Initial Owners to own less than 51% of any class of voting stock in Borrower or (B) if the outstanding voting stock in Borrower is held by 100 or more shareholders, one or more transfers by a single transferor within a 12-month period affecting an aggregate of 5% or more of that stock;
- (6) if Borrower is a trust, (A) a Transfer of any beneficial interest in Borrower which would cause the Initial Owners to own less than 51% of all the beneficial interests in Borrower, or (B) the termination or revocation of the trust, or (C) the removal, appointment or substitution of a trustee of Borrower; and
- (7) a Transfer of any interest in a Controlling Entity which, if such Controlling Entity were Borrower, would result in an Event of Default under any of Sections 21(a)(1) through (6) above.

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

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

- (1) a Transfer to which Lender has consented;
- (2) a Transfer that occurs by devise, descent, or by operation of law upon the death of a natural person;
- (3) the grant of a leasehold interest in an individual dwelling unit for a term of two years or less not containing an option to purchase;

- (4) a Transfer of obsolete or worn out Personalty or Fixtures that are contemporaneously replaced by items of equal or better function and quality, which are free of liens, encumbrances and security interests other than those created by the Loan Documents or consented to by Lender;
- (5) the grant of an easement, if before the grant Lender determines that the easement will not materially affect the operation or value of the Mortgaged Property or Lender's interest in the Mortgaged Property, and Borrower pays to Lender, upon demand, all costs and expenses incurred by Lender in connection with reviewing Borrower's request; and
- (6) the creation of a mechanic's, materialman's, or judgment lien against the Mortgaged Property which is released of record or otherwise remedied to Lender's satisfaction within 30 days of the date of creation.

(c) Lender shall consent, without any adjustment to the rate at which the Indebtedness secured by this Instrument bears interest or to any other economic terms of the Indebtedness, to a Transfer that would otherwise violate this Section 21 if, prior to the Transfer, Borrower has satisfied each of the following requirements:

- (1) the submission to Lender of all information required by Lender to make the determination required by this Section 21(c);
- (2) the absence of any Event of Default;
- (3) the transferee meets all of the eligibility, credit, management and other standards (including but not limited to any standards with respect to previous relationships between Lender and the transferee and the organization of the transferee) customarily applied by Lender at the time of the proposed Transfer to the approval of borrowers in connection with the origination or purchase of similar mortgages on multifamily properties;

- (4) the Mortgaged Property, at the time of the proposed Transfer, meets all standards as to its physical condition that are customarily applied by Lender at the time of the proposed Transfer to the approval of properties in connection with the origination or purchase of similar mortgages on multifamily properties;
- (5) in the case of a Transfer of all or any part of the Mortgaged Property, (A) the execution by the transferee of an assumption agreement that is acceptable to Lender and that, among other things, requires the transferee to perform all obligations of Borrower set forth in the Note, this Instrument and any other Loan Documents, and may require that the transferee comply with any provisions of this Instrument or any other Loan Document which previously may have been waived by Lender, and (B) if a guaranty has been executed and delivered in connection with the Note, this Instrument or any of the other Loan Documents, the transferee causes one or more individuals or entities acceptable to Lender to execute and deliver to Lender a guaranty in a form acceptable to Lender;
- (6) in the case of a Transfer of any interest in a Controlling Entity, if a guaranty has been executed and delivered in connection with the Note, this Instrument or any of the other Loan Documents, the Borrower causes one or more individuals or entities acceptable to Lender to execute and deliver to Lender a guaranty in a form acceptable to Lender; and
- (7) Lender's receipt of all of the following:
- (A) a review fee in the amount of \$_____;
 - (B) a transfer fee in an amount equal to _____% of the unpaid principal balance of the Indebtedness immediately before the applicable Transfer; and
 - (C) the amount of Lender's out-of-pocket costs (including reasonable attorneys' fees) incurred in reviewing the Transfer request.

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

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

(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 (A) the application for or creation of the Indebtedness, (B) any financial statement, rent roll, or other report or information provided to Lender during the term of the Indebtedness, or (C) any request for Lender's consent to any proposed action, including a request for disbursement of funds under any Collateral Agreement;

(e) any Event of Default under Section 21;

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

(g) any failure by Borrower to perform any of its obligations under this Instrument (other than those specified in Sections 22(a) through (f)), as and when required, which continues for a period of 30 days after notice of such failure by Lender to Borrower. 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 Note or this Instrument or any other security given under any other Loan Document;

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

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

(j) Borrower voluntarily files for bankruptcy protection under the United States Bankruptcy Code or voluntarily becomes subject to any reorganization, receivership, insolvency proceeding or other similar proceeding pursuant to any other federal or state law affecting debtor and creditor rights, or an involuntary case is commenced against Borrower 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 and is not dismissed or discharged within 60 days after filing.

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

24. FORBEARANCE.

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

(b) Any forbearance by Lender in exercising any right or remedy under the Note, this Instrument, or any other Loan Document or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any right or remedy. The acceptance by Lender of payment of all or any part of the Indebtedness after the due date of such payment, or in an amount which is less than the required payment, shall not be a waiver of Lender's right to require prompt payment when due of all

other payments on account of the Indebtedness or to exercise any remedies for any failure to make prompt payment. Enforcement by Lender of any security for the Indebtedness shall not constitute an election by Lender of remedies so as to preclude the exercise of any other right available to Lender. Lender's receipt of any awards or proceeds under Sections 19 and 20 shall not operate to cure or waive any Event of Default.

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

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

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

28. FURTHER ASSURANCES. Borrower shall execute, acknowledge, and deliver, at its sole cost and expense, all further acts, deeds, conveyances, assignments, estoppel certificates, financing statements, 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 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 Loan Documents are unmodified and in full force and effect (or, if there have been modifications, that the Loan Documents are in full force and effect as modified and setting forth such modifications); (ii) the unpaid principal balance of the Note; (iii) the date to which interest under the Note has been paid; (iv) that Borrower is not in default in paying the Indebtedness or in performing or observing any of the covenants or agreements contained in this Instrument or any of the other Loan Documents (or, if the Borrower is in default, describing such default in reasonable detail); (v) whether or not there are then existing any setoffs or defenses known to Borrower against the enforcement of any right or remedy of Lender under the Loan Documents; and (vi) any additional facts requested by Lender.

30. GOVERNING LAW; CONSENT TO JURISDICTION AND VENUE.

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

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

31. NOTICE.

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

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

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

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

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

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

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

36. RELATIONSHIP OF PARTIES; NO THIRD PARTY BENEFICIARY.

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

(b) No creditor of any party to this Instrument and no other person shall be a third party beneficiary of this Instrument or any other Loan Document. Without limiting the generality of the preceding sentence, (1) any arrangement (a "**Servicing Arrangement**") between 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, (2) Borrower shall not be a third party beneficiary of any Servicing Arrangement, and (3) no payment by the Loan Servicer under any Servicing Arrangement will reduce the amount of the Indebtedness.

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

38. CONSTRUCTION. The captions and headings of the sections of this Instrument are for convenience only and shall be disregarded in construing this Instrument. Any reference in this Instrument to an "Exhibit" or a "Section" shall, unless otherwise explicitly provided, be construed as referring, respectively, to an Exhibit attached to this Instrument or to a Section of this Instrument. All Exhibits attached to or referred to in this Instrument are incorporated by reference into this Instrument. Any reference in this Instrument to a statute or regulation shall be construed as referring to that statute or regulation as amended from time to time. Use of the singular in this 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. LOAN SERVICING. All actions regarding the servicing of the loan evidenced by the Note, including the collection of payments, the giving and receipt of notice, inspections of the Property, inspections of books and records, and the granting of consents and approvals, may be taken by the Loan Servicer unless Borrower receives notice to the contrary. If Borrower receives conflicting notices regarding the identity of the Loan Servicer or any other subject, any such notice from Lender shall govern.

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

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

42. SUBROGATION. If, and to the extent that, the proceeds of the loan evidenced by the Note are used to pay, satisfy or discharge any obligation of Borrower for the payment of money that is secured by a pre-existing mortgage, deed of trust or other lien encumbering the Mortgaged Property (a "**Prior Lien**"), such loan proceeds shall be deemed to have been advanced by Lender at Borrower's request, and Lender shall automatically, and without further action on its part, be subrogated to the rights, including lien priority, of the owner or holder of the obligation secured by the Prior Lien, whether or not the Prior Lien is released.

43. 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 Virginia law or provided in this Instrument or in any other Loan Document. Borrower acknowledges that the power of sale granted by this Instrument may be exercised by Lender without prior judicial hearing. Borrower has the right to bring an action to assert that an Event of Default does not exist or to raise any other defense Borrower may have 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 Lender invokes the power of sale, Lender or Trustee shall deliver a copy of a notice of sale to Borrower in the manner prescribed by Virginia law. Trustee shall give public notice of the sale in the manner prescribed by Virginia law and shall sell the Mortgaged Property in accordance with Virginia law. Trustee, without demand on Borrower, shall sell the Mortgaged Property at public auction to the highest bidder at the time and place and under the terms designated in the notice of sale in one or more parcels and in such order as Trustee may determine. Trustee may postpone the sale of all or any part of the Mortgaged Property by public announcement at the time and place of any previously scheduled sale or by advertising in accordance with Virginia law. 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 with special warranty of title. The recitals in Trustee's deed shall be prima facie evidence of the truth of the statements made in the recitals. 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 sale price, attorneys' fees and costs of title evidence; (b) to the discharge of all Taxes, if any, as provided by Virginia law; (c) to the

Indebtedness in such order as Lender, in Lender's discretion, directs; and (d) the excess, if any, to the person or persons legally entitled to the excess, including, if any, the holders of liens inferior to this Instrument in the order of their priority, provided that Trustee has actual notice of such liens. Trustee shall not be required to take possession of the Mortgaged Property before the sale or to deliver possession of the Mortgaged Property to the purchaser at the sale.

44. RELEASE. Upon payment of the Indebtedness, Lender shall request Trustee to release this Instrument and shall deliver the Note to Trustee. Trustee shall release this Instrument. Borrower shall pay Trustee's reasonable costs incurred in releasing this Instrument.

45. SUBSTITUTE TRUSTEE. Lender may from time to time, in Lender's discretion, 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 predecessor Trustee and by applicable law.

46. STATUTORY PROVISIONS. The following provisions of Section 55-60, Code of Virginia (1950), as amended, are made applicable to this Instrument:

Exemptions waived
Subject to all upon default
Renewal or extension permitted
Substitution of trustee permitted
Any trustee may act

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 type="checkbox"/>	Exhibit B	Modifications to Instrument

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.

[SIGNATURES AND ACKNOWLEDGMENTS]

EXHIBIT A

[DESCRIPTION OF THE LAND]



EXHIBIT B

MODIFICATIONS TO INSTRUMENT

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

REPLACEMENT RESERVE AGREEMENT
(REVISION DATE 11-01-2000)

This REPLACEMENT RESERVE AGREEMENT ("Agreement") is made and entered into as of _____, _____, by and between _____, a _____ ("Borrower"), and _____ ("Lender") and its successors and assigns.

W I T N E S S E T H:

WHEREAS, Lender has agreed to make and Borrower has agreed to accept the Loan, which is to be evidenced by the Note and secured by the Security Instrument encumbering the Property described on Exhibit "A" attached to, and incorporated into, this Agreement by reference;

WHEREAS, as a condition to the closing of the Loan, Lender has required Borrower to establish the Replacement Reserve Fund at the time of closing for the funding of Capital Replacements throughout the Loan term; and

WHEREAS, Lender and Borrower are desirous of reducing to writing all of their agreements regarding the Replacement Reserve Fund.

NOW, THEREFORE, for and in consideration of the Loan, the mutual promises and covenants herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Lender and Borrower agree as follows:

1. Definitions. The following terms used in this Agreement shall have the meanings set forth below in this Paragraph 1:

- (a) "Capital Replacement" means the replacement of those items listed on Exhibit "B" of this Agreement and such other replacements as may be approved in writing or required by Lender.
- (b) "Disbursement Period" means the interval between disbursements from the Replacement Reserve Fund, which interval shall be no shorter than once a

[select applicable period and initial beside selected period]

Lender and Borrower initials:

_____ month _____ / _____
_____ quarter. _____ / _____

- (c) "Jurisdiction" means the State in which the Property is located.
- (d) "Loan" means the loan from Lender to Borrower in the original principal amount of Dollars (\$_____), as evidenced by the Note and secured by the Security Instrument.
- (e) "Loan Documents" means, collectively, the Note, Security Instrument and all other instruments and documents executed in connection with the Loan.
- (f) "Minimum Disbursement Request Amount" means Dollars (\$_____).
- (g) "Note" means the promissory note from Borrower to Lender evidencing the Loan.
- (h) "Property" means the real property described on Exhibit "A" of this Agreement.
- (i) "Replacement Reserve Deposit" means the initial deposit in the amount of Dollars (\$_____) made as of the date of this Agreement, together with the sum of Dollars (\$_____) per month to be deposited into the Replacement Reserve Fund, as such monthly deposit amount may increase from time to time in accordance with the schedule attached to this Agreement as Exhibit "C".
- (j) "Replacement Reserve Fund" means the account established pursuant to this Agreement to defray the costs of Capital Replacements.
- (k) "Security Instrument" means the mortgage, deed of trust, deed to secure debt, or other similar security instrument encumbering the Property and securing Borrower's performance of its Loan obligations.

2. Replacement Reserve Fund.

- (a) Establishment; Funding. Upon the closing of the Loan, the parties shall establish the Replacement Reserve Fund and, if required by Lender, Borrower shall pay to Lender for deposit into the Replacement Reserve Fund, the amount of the initial Replacement Reserve Deposit. Commencing on the date the first installment of principal and/or interest is due under the Note and continuing on the same day of each successive month during the Loan term, Borrower shall pay to Lender for deposit into the Replacement Reserve Fund the monthly Replacement Reserve Deposit, together with its regular monthly payments of principal and interest as required by the Note and Security Instrument. The Replacement Reserve Fund shall be maintained and governed in accordance with this Agreement.
- (b) Investment of Deposits. Borrower and Lender agree that all moneys deposited into the Replacement Reserve Fund shall be held by Lender in an interest bearing account, and any interest earned on such moneys shall be added to the principal balance of the Replacement Reserve Fund and disbursed in accordance with the provisions of this Agreement. Lender shall not be responsible for any losses resulting from investment of moneys in the Replacement Reserve Fund or for obtaining any specific level or percentage of earnings on such investment. Lender shall be entitled to deduct from the Replacement Reserve Fund a one time fee for establishing the Replacement Reserve Fund in an amount not to exceed \$_____.
- (c) Use. Subject to the pledge and security interest and other rights of Lender set forth in this Agreement, the Replacement Reserve Fund shall be maintained for the payment of the costs of the Capital Replacements identified on Exhibit B attached to this Agreement.

[delete the following subsection (d) if the Commitment requires immediate monthly deposits to the Replacement Reserve Fund]

- (d) Deferral of Deposits. Notwithstanding subsections 2(a) through (c) above, Lender defers its right to require Borrower to make the monthly Replacement Reserve Deposit. Lender, however, reserves the right to require, in its reasonable discretion and upon written notice to Borrower, at any time and from time to time, that Borrower begin making the monthly Replacement Reserve Deposit upon the occurrence of any of the following events:

- (1) Borrower's default under the Note, Security Instrument, or any other document delivered in connection with the Loan, or
- (2) the occurrence of a Transfer which is prohibited under the terms of the Security Instrument or which requires Lender's consent, or
- (3) Borrower's failure to maintain the Property in a satisfactory manner and/or in accordance with the requirements of the Security Instrument.

3. Disbursements.

- (a) Requests for Disbursement. Lender shall disburse funds from the Replacement Reserve Fund, in its sole discretion, as follows:
 - (i) Borrower's Request. If Borrower determines, at any time or from time to time, that a Capital Replacement is necessary or desirable, Borrower shall perform such Capital Replacement and request from Lender, in writing, reimbursement for such Capital Replacement. Borrower's request for reimbursement shall include (A) a detailed description of the Capital Replacement performed, together with evidence, satisfactory to Lender, that the cost of such Capital Replacement has been paid and (B) lien waivers from each contractor and material supplier supplying labor or materials for such Capital Replacement, if required by Lender.
 - (ii) Lender's Request. If Lender shall determine, at any time or from time to time, that Capital Replacements are necessary or desirable, it shall so notify Borrower, in writing, requesting that Borrower obtain and submit to Lender bids for all labor and materials required in connection with such Capital Replacement. Borrower shall submit such bids and a time schedule for completing each Capital Replacement to Lender within thirty (30) days after Borrower's receipt of Lender's notice.
- (b) Conditions Precedent. Disbursement from the Replacement Reserve Fund shall be made no more frequently than once every Disbursement Period and, except for the final disbursement, no disbursement shall be made in an amount less than the Minimum Disbursement Request Amount. Disbursements shall be made only if the following conditions precedent have been satisfied, as reasonably determined by Lender:

- (i) Payment for Capital Replacement. The Capital Replacement has been performed and/or installed on the Property in a good and workmanlike manner with suitable materials (or in the case of a partial disbursement, performed and/or installed on the Property to an acceptable stage) and paid for by Borrower as evidenced by copies of all applicable paid invoices or bills submitted to Lender by Borrower at the time Borrower requests disbursement from the Replacement Reserve Fund.
 - (ii) No Default. There shall exist no condition, event or act which would constitute a default (with or without notice and/or lapse of time) under this Agreement or any other Loan Document.
 - (iii) Representations and Warranties. All representations and warranties of Borrower set forth in this Agreement and in the Loan Documents are true.
 - (iv) Continuing Compliance. Borrower shall be in full compliance with the provisions of this Agreement, the other Loan Documents and any request or demand by Lender permitted hereby.
 - (v) No Lien Claim. No lien or claim based on furnishing labor or materials has been filed or asserted against the Property or the Improvements, unless Borrower has properly provided bond or other security against loss in accordance with applicable law.
 - (vi) Approvals. All licenses, permits, and approvals of governmental authorities required for the Capital Replacement as completed to the applicable stage have been obtained.
 - (vii) Legal Compliance. The Capital Replacement as completed to the applicable stage does not violate any laws, ordinance, rules or regulations, or building lines or restrictions applicable to the Property.
4. Right to Complete Capital Replacements. If Borrower abandons or fails to proceed diligently with and complete any Capital Replacement in a timely fashion or is otherwise in default under this Agreement, Lender shall have the right (but not the obligation) to enter upon the Property and take over and cause the completion of such Capital Replacement. Any contracts entered into or indebtedness incurred upon the exercise of such right may be in the name of Borrower, and Lender is hereby irrevocably appointed the attorney in fact of Borrower, such appointment being coupled with an interest, to enter into such contracts, incur such obligations, enforce any contracts or agreements made by or on behalf of

Borrower (including the prosecution and defense of all actions and proceedings in connection with the Capital Replacement and the payment, settlement or compromise of all bills and claims for materials and work performed in connection with the Capital Replacement) and do any and all things necessary or proper to complete any Capital Replacement including signing Borrower's name to any contracts and documents as may be deemed necessary by Lender. In no event shall Lender be required to expend its own funds to complete any Capital Replacement, but Lender may, in its sole discretion, advance such funds. Any funds advanced shall be added to the outstanding balance of the Loan, secured by the Security Instrument and payable to Lender by Borrower in accordance with the provisions of the Security Instrument pertaining to the protection of Lender's security and advances made by Lender. Borrower waives any and all claims it may have against Lender for materials used, work performed or resultant damage to the Property.

5. Inspection. Lender or any representative of Lender may periodically inspect any Capital Replacement in process and upon completion during normal business hours or at any other reasonable time. Lender shall be entitled to deduct from the Replacement Reserve Fund reasonable fees for performing any such inspection, which fee shall not exceed \$ per inspection. If Lender, in its sole discretion, retains a professional inspection engineer or other qualified third party to inspect any Capital Replacement, Lender also shall be entitled to deduct from the Replacement Reserve Fund an amount sufficient to pay all reasonable fees and expenses charged by such third party inspector.
6. Insufficient Account. If Borrower requests disbursement from the Replacement Reserve Fund for a Capital Replacement in accordance with this Agreement in an amount which exceeds the amount on deposit in the Replacement Reserve Fund, Lender shall disburse to Borrower only the amount on deposit in the Replacement Reserve Fund. All additional amounts required in connection with any such Capital Replacement shall be paid by Borrower from Borrower's own funds.
7. Security Agreement. Borrower hereby conveys, pledges, transfers and grants to Lender a security interest pursuant to the Uniform Commercial Code of the Jurisdiction or any other applicable law in and to all money in the Replacement Reserve Fund, as same may increase or decrease from time to time, for the purpose of securing Borrower's obligations under this Agreement and to further secure Borrower's obligations under the Note, Security Instrument and other Loan Documents.

8. Post Default. If Borrower defaults in the performance of its obligations under this Agreement or under the Note, Security Instrument or any other Loan Document, Lender and its successors and assigns shall have all remedies available to them under Article 9 of the Uniform Commercial Code of the Jurisdiction and under any other applicable law and, in addition, may retain all money in the Replacement Reserve Fund, including interest, and in Lender's discretion, may apply such amounts, without restriction and without any specific order of priority, to the payment of any and all indebtedness or obligations of Borrower set forth in the Note, Security Instrument or any other Loan Document, including, but not limited to, principal, interest, taxes, insurance, reasonable attorneys' fees actually incurred and/or repairs to the Property.
9. Termination. If not sooner terminated by written concurrence of the parties, this Agreement shall terminate upon the payment in full of the Loan and all indebtedness incurred in connection therewith and upon such termination, Lender shall pay to Borrower all funds remaining in the Replacement Reserve Fund.
10. No Amendment. Nothing contained in this Agreement shall be construed to amend, modify, alter, change or supersede the terms and provisions of the Note, Security Instrument or any other Loan Document; and, if there is a conflict between the terms and provisions of this Agreement and those of the Note, Security Instrument, or any other Loan Document then the terms and provisions of the Note, Security Instrument or such other Loan Document shall control.
11. Release; Indemnity.
 - (a) Release. Borrower covenants and agrees that, in performing any of its duties under this Agreement, neither Lender nor its successors and assigns shall be liable for any losses, costs or damages which may be incurred by any of them as a result of such performance, except for any losses, costs or damages arising out of the willful misconduct or gross negligence of such party.
 - (b) Indemnity. Borrower hereby agrees to indemnify and hold harmless Lender and its successors and assigns from and against any and all losses, claims, damages, liabilities and expenses including, without limitation, reasonable attorneys' fees and disbursements, which may be imposed or incurred by any of them in connection with this Agreement.

12. Choice of Law. This Agreement shall be construed and enforced in accordance with the laws of the Jurisdiction.
13. Successors and Assigns. Borrower acknowledges and agrees that Lender, at its option, may assign or otherwise transfer the Loan and any or all Loan Documents including, but not limited to, this Agreement, to other parties subsequent to the execution of this Agreement. This Agreement shall be binding upon the respective successors and assigns of Borrower and Lender. Borrower may not assign its rights, interests or obligations under this Agreement without first obtaining Lender's prior written consent.
14. Attorneys' Fees. In the event that Lender or its successors or assigns shall engage the services of an attorney at law to enforce the provisions of this Agreement against Borrower, then Borrower shall pay all costs of such enforcement, including any reasonable attorneys' fees actually incurred.
15. Compliance with Laws; Insurance Requirements.
 - (a) Compliance with Laws. All Capital Replacements shall comply with all applicable laws, ordinances, rules and regulations of all governmental authorities having jurisdiction over the Property and applicable insurance requirements including, without limitation, applicable building codes, special use permits, environmental regulations, and requirements of insurance underwriters.
 - (b) Insurance Requirements. In addition to any insurance required under the Loan Documents, Borrower shall provide or cause to be provided workers' compensation, builder's risk (if required by Lender), and public liability insurance and other insurance required under applicable law in connection with any of the Capital Replacements. All such policies which can be endorsed with standard mortgage clauses making losses payable to Lender or its assigns shall be so endorsed. The originals of such policies shall be deposited with Lender.
16. Remedies Cumulative. In the event of Borrower's default under this Agreement, Lender may exercise all or any one or more of its rights and remedies available under this Agreement, at law or in equity. Such rights and remedies shall be cumulative and concurrent, and may be enforced separately, successively or together, and Lender's exercise of any particular right or remedy shall not in any way prevent Lender from exercising any other right or remedy available to Lender. Lender may exercise any such remedies from time to time as often as may be deemed necessary by Lender.

17. Determinations by Lender. In any instance where the consent or approval of Lender may be given or is required, or where any determination, judgment or decision is to be rendered by Lender under this Agreement, the granting, withholding or denial of such consent or approval and the rendering of such determination, judgment or decision shall be made or exercised by Lender (or its designated representative) at its sole and exclusive option and in its sole and absolute discretion.
18. Completion of Capital Replacements. Lender's disbursement of moneys from the Replacement Reserve Fund or other acknowledgment of completion of any Capital Replacement in a manner satisfactory to Lender shall not be deemed a certification by Lender that the Capital Replacement has been completed in accordance with applicable building, zoning or other codes, ordinances, statutes, laws, regulations or requirements of any governmental authority or agency. Borrower shall at all times have the sole responsibility for insuring that all Capital Replacements are completed in accordance with all such governmental requirements.
19. No Agency or Partnership. Nothing contained in this Agreement shall constitute Lender as a joint venturer, partner or agent of Borrower, or render Lender liable for any debts, obligations, acts, omissions, representations or contracts of Borrower.
20. Entire Agreement. This writing, together with references to this Agreement contained in the Security Instrument, constitutes the entire agreement of the parties relative to the Replacement Reserve Fund. Any modification or amendment of this Agreement shall be ineffective unless in writing and signed by Lender and Borrower; provided, however, that in the event of a Transfer under the terms of the Security Instrument, any or some or all of the Modifications to Agreement set forth in Exhibit D (if any) may be modified or rendered void by Lender at Lender's option by notice to Borrower/transferee.

ATTACHED EXHIBITS. The following Exhibits are attached to this Agreement:

- Exhibit A Property Description (required)
- Exhibit B Capital Replacements (required)
- Exhibit C Replacement Reserve Deposit (required)
- Exhibit D Modifications to Agreement

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the day and year first above written.

BORROWER:

Borrower's Social Security
or Taxpayer Identification No.

By: _____
Name: _____
Title: _____

LENDER:

By: _____
Name: _____
Title: _____

EXHIBIT A

Property Description

EXHIBIT B

Capital Replacements

EXHIBIT C

Replacement Reserve Deposit

The following amounts shall be paid to Lender by Borrower each month in accordance with the provisions of Paragraph 2(a) for deposit into the Replacement Reserve Fund ***[delete the following if the Commitment requires immediate funding of the Replacement Reserve:*** subject to the provisions of Paragraph 2(d):

From: _____ to _____, _____ \$

[complete the following only if the amount of the Replacement Reserve Deposit will change during the loan term]

From: _____, _____ to _____, _____ \$

EXHIBIT D

Modifications to Agreement

REGULATORY AGREEMENT

THIS AGREEMENT ("Agreement") is executed as of _____, 20__ by and between _____, a _____ organized under the laws of the State of _____ ("Borrower") and _____, a _____ organized under the laws of the State of _____ ("Lender")

PRELIMINARY STATEMENT

Borrower has requested that Lender make a loan to Borrower in the amount of \$ _____ (the "Loan") for the construction of the _____ Apartments to be located in _____, on a site more particularly described in Exhibit A. (the "Property"). The Loan will be evidenced by a Multifamily Note dated as of _____, 20__, executed by Borrower and payable to Lender (the "Note") and will be secured by, among other things, a Multifamily **[Mortgage] [Deed of Trust] [Deed to Secure Debt]**, Assignment of Rents and Security Agreement dated as of _____, 20__ (the "Security Instrument"), to be recorded in the land records of _____. Borrower and Lender also will enter into a Replacement Reserve Agreement (the "Replacement Reserve Agreement") dated as of _____, 20__ relating to the establishment and funding of a reserve for future repairs to and replacement of components of the Property.

Lender is agreeable to making the Loan if the Loan is the subject of a 90% guarantee from the United States Secretary of Agriculture, acting through the United States Department of Agriculture, Rural Housing Service ("RHS") under section 538 of the Housing Act of 1949, 12 U.S.C. section 1490p-2 (the "RHS Guarantee"). As a condition precedent to providing the Guarantee, RHS requires that Borrower enter into this Agreement.

NOW, THEREFORE, in consideration of Lender making the Loan, and of the mutual undertakings set forth below, Lender and Borrower agree as follows:

1. **Definitions.** As used in this Agreement, **"Lender"** means the entity identified as "Lender" in the first paragraph of this Instrument, or any subsequent holder of the Note. Any other capitalized terms that are used in this Agreement but not defined in this Agreement shall have the meanings assigned to them by the Security Instrument.

2. **Covenants of Borrower.**

Borrower shall do all of the following:

- (a) Make all payments due under the Note, all deposits to escrows required for Impositions and annual RHS guarantee fees as required by the Security Instrument and all deposits to the replacement reserve required by the Replacement Reserve Agreement of
- (b) Maintain the Property in good physical and financial condition at all times.
- (c) Maintain a complete set of books and financial records for the Property, as required by Section 12 of the Security Instrument.
- (d) Provide Lender audited financial statements for each fiscal year of Borrower as required by Section 12 of the Security Instrument, and simultaneously provide RHS a copy of such statements.
- (e) Make the Property's books and financial records available for review by the United States Department of Agriculture Inspector General, RHS and the General Accounting office or their representatives, upon appropriate notification.
- (f) Comply with the Affirmative Fair Housing Marketing Plan provided to Lender in conjunction with the Loan and with all other applicable federal, state and local laws regarding fair housing, including but not limited to provisions of such laws that are applicable to federally assisted multifamily housing.
- (g) Comply with 7 CFR part 3560, Subparts (C) and (D), with regard to (i) fair housing and equal opportunities, (ii) lease and grievance procedures, (iii) tenant appeals of adverse actions and (iv) informing tenants of such procedures. (Revised 02-24-05, SPECIAL PN.)
- (h) Comply with all other applicable federal, state and local laws.
- (i) Maintain the Property, and all Personalty associated with it, as its sole asset.
- (j) Manage the Property in a manner that complies with the Security Instrument and is satisfactory to RHS, including but not limited to compliance with the Management Plan submitted to Lender in conjunction with the Loan.

- (k) Give written notice to Lender of any violation of Borrower's obligations under this Agreement within five (5) days after first discovering any such violation,

2. Covenants of Borrower regarding Occupancy. Borrower shall do all of the following:

- (a) Maintain the Property in accordance with 7 C.F.R. Section 3565.352.
- (b) Without limiting the generality of Subsection (a), make the Property available for occupancy only by families or individuals whose incomes at the time of initial occupancy do not exceed one hundred fifteen percent (115%) of the area median income. After initial occupancy, a tenant's income may exceed these limits.
- (c) Lease each dwelling unit in the Property for a rental that does not exceed 30% of 115% of area median income, adjusted for family size.
- (d) Establish rents for dwelling units in the Property so that, on an annual basis, the average rent for dwelling units in the Property does not exceed 30% of 100% of area median income, adjusted for family size.
- (c) Lease dwelling units only to tenants who are United States citizens or a non-citizens who is a qualified alien as defined in [7 C.F.R. Section 3565.3.]

"Area median income" shall be determined and adjusted for family size in accordance with guidance on the subject issued by RHS. To the extent utilities are paid by the tenant, "rent" or "rental" shall consist of the rent for the dwelling unit payable under the lease plus an allowance for utilities determined in accordance with administrative guidance issued by RHS.

3. Income Verification. Borrower will obtain, complete, and maintain on file a certification by each prospective tenant of its income, using a form acceptable to Lender. Borrower shall make a good faith effort to verify that the income information provided by a prospective tenant is accurate by taking one or more of the following steps as a part of the verification process: (1) obtain a pay stub for the most recent pay period, (2) obtain an income tax

return for the most recent tax year, (3) conduct a credit report or similar search, (4) obtain an income verification from the applicant's current employer, (5) obtain an income verification from the Social Security Administration if the applicant receives assistance from either of such agencies, or (6) if the applicant is unemployed and does not have an income tax return, obtain another form of independent verification.

4. Covenants to Run With the Land. Borrower hereby subjects the Property to the covenants, reservations and restrictions set forth in this Agreement. Lender and Borrower hereby declare their express intent that the covenants, reservations and restrictions set forth in this Agreement shall be deemed covenants running with the land and shall pass to and be binding upon the Owner's successors in title to the Property, until the termination of this Agreement under Section 6. Every contract, deed or other instrument hereafter executed covering or conveying the Property or any portion of the Property shall be deemed to have been executed, delivered and accepted subject to such covenants, reservations and restrictions, regardless of whether such covenants, reservations and restrictions are set forth in that contract, deed or other instrument.

5. Burden and Benefit. Borrower and Lender intend that the burdens of the covenants set forth in this Agreement touch and concern the land in that Borrower's interest in the Property is rendered less valuable as a result of them. Borrower and Lender intend that the benefits of the covenants touch and concern the land by enhancing and increasing the enjoyment and use of the Property by tenants whose incomes are below the levels set forth in Section 3, who are the intended beneficiaries of the covenants.

6. Term of Agreement. This Agreement shall remain in effect until the first of the following to occur, at which time this Agreement shall automatically terminate:

- (a) The Loan and all related amounts owed to Lender by Borrower have been paid in full.
- (b) A Foreclosure.

7. Event of Default. Any failure by Borrower to perform any of its obligations under this Agreement as and when required, which continues for a period of 30 days after notice of such failure by Lender to Borrower, shall constitute an Event of Default under this Agreement. However:

- (a) If the Security Instrument imposes the same obligation and provides for a shorter cure period or no cure period for breach of that obligation, then Borrower, in lieu of the above-specified 30-day cure period, shall be allowed, respectively, the same cure period provided for in the Security Instrument or no cure period; and
- (b) No such notice or cure period shall apply in the case of any such failure which could, in Lender's judgment, absent immediate exercise by Lender of a right or remedy under this Agreement, result in harm to Lender, impairment of this Agreement or the RHS guarantee.

8. Remedies of Lender. If an Event of Default under this Agreement has occurred and is continuing, either Lender may, at its option, take any one or more of the following steps, in addition to all other remedies provided at law or in equity:

- (a) By mandamus or other proceeding at law or in equity, including but not limited to an action seeking injunctive relief or a declaratory judgment, require Borrower to perform its obligations under this Agreement or enjoin any acts which may be unlawful or in violation of this Agreement.
- (b) Declare that an Event of Default has occurred and is continuing under the Security Instrument, as authorized by Section 22 of the Security Instrument, and exercise any and all remedies available to Lender under the Security Instrument and any of the other Loan Documents.
- (c) Take such other action at law or in equity as may appear necessary or desirable to enforce the obligations of Borrower under this Agreement.

9. Remedies of RHS. If an Event of Default under this Agreement has occurred and is continuing, RHS, as a third party beneficiary of this Agreement, may by mandamus or other proceeding at law or in equity, including but not limited to an action seeking injunctive relief or a declaratory judgment, require Borrower to perform its obligations under this Agreement or enjoin any acts which may be unlawful or in violation of this Agreement.

10. Release. Upon termination of this Agreement, Lender shall execute such instruments as Borrower may reasonably request to evidence such termination, so long as such instruments are prepared, delivered and recorded at no expense to Lender.

11. Notices.

(a) All notices under or concerning this Agreement shall be in writing. Each such notice shall be deemed given when received by the addressee or delivered to Federal Express, Network Courier or a comparable overnight courier service, addressed as provided in this Section and with charges for next business day delivery paid.

(b) Notices intended for Borrower shall be addressed to:

(c) Notices intended for Lender shall be addressed to the Loan Servicer as defined in the Security Instrument.

(d) Either party may change the address to which notices intended for that party are to be directed by means of notice given to all other parties in accordance with this Section.

12. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the state in which the Property is located.

13. Captions, Cross References and Exhibits. The captions assigned to provisions of this Agreement are for convenience only and shall be disregarded in construing this Agreement. Any reference in this Agreement to an "Exhibit", a "Section", a "Subsection" or a "Paragraph" shall, unless otherwise explicitly provided, be construed as referring, respectively, to an Exhibit attached to this Agreement, a section of this Agreement, a subsection of the section of this Agreement in which the reference appears and a paragraph of the subsection within this Agreement in which the reference appears. All Exhibits attached to or referred to in this Agreement are incorporated by reference into this Agreement.

14. Number and Gender. Use of the singular in this Agreement includes the plural, use of the plural includes the singular, and use of one gender includes all other genders, as the context may require.

15. Statutes and Regulations. Any reference in this Agreement to a statute or regulation shall include all amendments to and successors to such statute or regulation, whether adopted before or after the date of this Agreement.

16. No Partnership. This Agreement is not intended to, and shall not, create a partnership or joint venture among the parties, and no party to this Agreement shall have the power or authority to bind any other party except as explicitly provided in this Agreement.

17. Successors and Assigns. No party to this Agreement may assign its rights or delegate its obligations under this Agreement without the prior written consent of all other parties. This Agreement shall be binding upon and shall inure to the benefit of the parties and their respective heirs, successors, and permitted assigns.

18. Severability. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity of any other provision, and all other provisions shall remain in full force and effect.

19. Integration. This Agreement represents the final agreement between the parties with respect to the matters addressed in this Agreement, and may not be contradicted by evidence of prior, contemporaneous or subsequent oral agreements. There are no unwritten oral agreements between the parties. All prior or contemporaneous agreements, understandings, representations, and statements, oral or written, are merged into this Agreement.

20. Waiver; No Remedy Exclusive. Any forbearance by a party to this Agreement in exercising any right or remedy given under this Agreement or existing at law or in equity shall not constitute a waiver of or preclude the exercise of that or any other right or remedy. Unless otherwise explicitly provided, no remedy under this Agreement is intended to be exclusive of any other available remedy, but each remedy shall be cumulative and shall be in addition to other remedies given under this Agreement or existing at law or in equity.

21. Third Party Beneficiaries. Except for RHS, which the parties intend to be a third party beneficiary, neither any creditor of any party to this Agreement, nor any other person, is intended to be a third party beneficiary of this Agreement.

22. Further Assurances and Corrective Instruments. To the extent permitted by law, the parties shall, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements to this Agreement and such further instruments as may reasonably be required for carrying out the intention of or facilitating the performance of this Agreement. Without limiting the generality of the foregoing, Borrower shall execute such amendments to this Agreement as may be required by RHS in order to ensure the validity of the RHS Guarantee.

23. Attorneys' Fees. If either party to this Agreement brings suit against the other as a result of any alleged breach of this Agreement by the other or failure by the other to perform its obligations under this Agreement or under any other instrument delivered pursuant to this Agreement, or to seek declaratory relief as to the rights or obligations of either party to this Agreement, then the prevailing party in such action, in addition to any other relief which may be granted in such action, shall be entitled to judgment for reasonable attorneys' fees incurred by reason of such action and all costs of such action (including but not limited to reasonable fees of expert witnesses) and costs incurred in preparation of such action, at both trial and appellate levels.

24. No Party Deemed Drafter. No party shall be deemed the drafter of this Agreement, and this Agreement shall not be construed against either party as the drafter of the Agreement.

? [ADD SIGNATURES, ACKNOWLEDGMENTS AND PROPERTY DESCRIPTION]

**MODIFICATIONS TO MULTIFAMILY NOTE,
SECURITY INSTRUMENT AND
REPLACEMENT RESERVE AGREEMENT**

MODIFICATIONS TO NOTE:

- A. The following is added at the end of Paragraph 3(b):

Notwithstanding the foregoing, the interest component of each monthly installment shall be reduced by the amount of the interest credit subsidy with respect to that installment that is projected by Lender to be payable by the United States Department of Agriculture, Rural Housing Service ("RHS"), but only to the extent that Lender has on deposit in the Interest Credit Escrow established under the Security Instrument (the "Interest Credit Escrow") funds deposited in escrow by Maker or received from RHS in the form of past years' interest credit subsidy payments that are sufficient to cover such reduction. The Lender's projection of interest credit subsidies shall be made in its sole discretion and shall be conclusive.

- B. A second subparagraph is added to Paragraph 9(c) of the Note, as follows:

In addition, Borrower shall be personally liable for the amount of the interest credit subsidy with respect to any monthly installment that is projected by Lender to be payable by RHS, to the extent such projected amount exceeds the balance on deposit in the Interest Credit Escrow.

- C. Any prepayment premium shall be calculated under Paragraph 10 based on the full annual interest rate of this Note, without regard to the reduction of monthly installment payments by the amount of projected interest credit subsidies under Paragraph 3(b).

MODIFICATIONS TO SECURITY INSTRUMENT:

A. The following new section is added:

___ ___. FEDERAL GUARANTEE.

(a) It is the intention of the parties that the Indebtedness be guaranteed (the "RHS Guarantee") by the United States Secretary of Agriculture, acting through the United States Department of Agriculture, Rural Housing Service ("RHS") under 12 U.S.C. Section 1490p-2. This section sets forth additional obligations of Borrower that relate to the RHS Guarantee.

(b) The financial statements required by Section 14(b)(1) shall be prepared in accordance with Generally Accepted Government Audit Standards and shall be delivered by Borrower to both Lender and RHS.

(c) Lender will establish an Interest Credit Escrow in which it will deposit and hold all interest credit subsidies received from RHS, for application in accordance with Paragraph 3(b) of the Note. The Interest Credit Escrow shall be part of the Mortgaged Property. If an Event of Default has occurred and is continuing, Lender may apply any balance in the Interest Credit Escrow in any amounts and in any order as Lender determines, in Lender's discretion, as a credit against the Indebtedness. Upon payment in full of the Indebtedness, Lender shall remit to Borrower any balance in the Interest Credit Escrow.

(d) Borrower shall not withdraw from the Mortgaged Property's operating accounts or distribute to the partners, members, shareholders or holders of beneficial interests in borrower any income of any kind of the Mortgaged Property, without the prior written approval of Lender, except for surplus cash. No such withdrawal or distribution shall be made from borrowed funds or when there has occurred and is continuing any Event of Default or any event that, with the giving of notice or the passage of time or both, will become an Event of Default. "Surplus Cash" means any cash remaining after the payment of:

- (i) all sums due or currently required to be paid under the Note, this Instrument or any other Loan Document;
- (ii) all amounts required to be deposited in the Replacement Reserve;
- (iii) all obligations with respect to the Mortgaged Property other than the Indebtedness unless funds for payment are set aside or deferral of payment has been approved by the RHS and Lender; and the segregation of:
- (iv) an amount equal to the aggregate of all special funds required to be maintained for the Mortgaged Property and all tenant security deposits.

At the end of each fiscal year of the Mortgaged Property, the Mortgagor may request Lender's consent to withdraw or distribute surplus cash. The following shall be conditions precedent to any such consent:

- (1) Borrower must have submitted the annual audited financial statements required by Section 14(b)(1) (as modified above) and the content of such statements and the financial condition of the Mortgaged Property must be satisfactory to Lender in its discretion.
- (2) Borrower must submit to Lender with its consent request a certification that:
 - (A) Borrower is in full compliance with the Regulatory Agreement;
 - (B) Tenants have been informed of their rights with respect to grievance procedures and tenant appeals of adverse actions, as required by Section 1(g);

- (C) The property manager will conduct its activities without regard to race, color, religion, sex, familial status, national origin or disability;
 - (D) The Borrower is in full compliance with the Affirmative Fair Housing Marketing Plan provided to Lender in conjunction with the Loan and with all other applicable federal, state and local laws regarding fair housing, including but not limited to provisions of such laws that are applicable to federally assisted multifamily housing; and
 - (E) The Borrower is in full compliance with Section 306 of the Clean Air Act and 40 C.F.R. Section 15.
- (e) Borrower shall submit both of the following to Lender, with the audited financial statements under Section 14(b)(1):
- (i) A report regarding Borrower's compliance with fair housing laws and regulations, which shall include the information required by Section 7.13 of the RHS Guaranteed Rural Rental Housing Program Origination and Servicing Handbook (or any future replacement of that Handbook) and shall include a certification by Borrower that it is in compliance with all such laws except for any instances of noncompliance that are set forth in the report.
 - (ii) A certification that Borrower is in full compliance with the Regulatory Agreement.

(f) Borrower shall apply the proceeds of the Indebtedness only to uses listed in 7 C.F.R. Section 3565.205 and, without limiting the generality of the foregoing, shall not apply any proceeds of the Indebtedness to any use prohibited by 7 C.F.R. Section 3565.206.

B. Section 21(a)(2) is modified to read as follows:

(2) if Borrower is a limited partnership, a Transfer of (A) any general partnership interest, or (B) any limited partnership interest exceeding 10%;

C. Lender will consent pursuant to Section 21(c) to a Transfer of all or any part of the Mortgaged Property or any interest in the Mortgaged Property or a Transfer of 100% of the ownership interests in Borrower only if it receives RHS's written approval of the proposed Transfer.

D. Each of the following shall be an Event of Default, in addition to the Events of Default listed in Section 22:

- (1) An Event of Default as defined in the Regulatory Agreement.
- (2) A material inaccuracy or omission in any report submitted to Lender by Borrower.

MODIFICATIONS TO REPLACEMENT RESERVE AGREEMENT:

A new Paragraph (viii) is added to Section 3(b), as follows:

- (viii) If the total cost of the Capital Replacement exceeds \$10,000, Borrower must have submitted to Lender evidence satisfactory to Lender that Borrower has obtained at least three bids from independent contractors for the performance of the Capital Replacement and, if the bid accepted by Borrower was not the lowest bid, Borrower shall have provided Lender a justification, satisfactory to Lender, for Borrower's acceptance of that bid.