

212082

Illinois Anti-Predatory Lending Database Program

Certificate of Exemption



Doc#: 1409744008 Fee: \$194.00
RHSP Fee:\$9.00 RPRF Fee: \$1.00
Karen A. Yarbrough
Cook County Recorder of Deeds
Date: 04/07/2014 10:07 AM Pg: 1 of 79

Report Mortgage Fraud
800-532-8785

The property identified as: PIN: 13-36-427-014

Address:

Street: 2656-2658 W. North Ave., 1616-20 N. Talman Ave and

Street line 2: 1601-19 N. Washtenaw Ave.

City: Chicago

State: IL

ZIP Code: 60647

Lender: Bank of America, N.A.

Borrower: North & Talman III Limited Partnership

Loan / Mortgage Amount: \$410,000.00

This property is located within the program area and is exempt from the requirements of 705 ILCS 77/70 et seq. because it is commercial property.

Certificate number: 4612CD02-8CF4-4712-94F2-739C16C6511E

Execution date: 04/04/2014

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Prepared by, and after recording
return to:

Elvin E. Charity
Charity & Associates, P.C.
20 N. Clark Street, Suite 1150
Chicago, Illinois 60602

**MULTIFAMILY MORTGAGE,
ASSIGNMENT OF RENTS,
SECURITY AGREEMENT
AND FIXTURE FILING**

(ILLINOIS)

This document serves as a Fixture Filing under the Illinois Uniform Commercial Code, Chapter 810 ILCS
5/1-101, et seq.

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MULTIFAMILY MORTGAGE, ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND FIXTURE FILING

THIS MULTIFAMILY MORTGAGE, ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND FIXTURE FILING (the "**Instrument**") is dated as of the 4th day of April, 2014, between North & Talman III Limited Partnership, an Illinois limited partnership, whose address is 325 N. Wells Street, 8th Floor, Chicago, Illinois 60654, as mortgagor ("**Borrower**"), and Bank of America, N.A., a national banking association, whose address is 7800 Forsyth Boulevard, Suite 350, Mail Code: MO1-076-03-06, Clayton, St. Louis County, Missouri 63105, as mortgagee ("**Lender**").

Borrower is indebted to Lender in the principal amount of \$410,000.00, as evidenced by Borrower's Promissory Note (Term Only) payable to Lender, dated as of the date of this Instrument, and maturing on April 3, 2032.

TO SECURE TO LENDER the repayment of the Indebtedness, 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 mortgages, warrants, grants, conveys and assigns to Lender the Mortgaged Property, including the Land located in Cook County, State of Illinois and described in Exhibit A attached to this Instrument.

Borrower represents and warrants that Borrower is lawfully seized of the Mortgaged Property and has the right, power and authority to mortgage, grant, convey and assign the Mortgaged Property, and that, except for the Permitted Exceptions, 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 completion of repairs or improvements specified in that agreement,

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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) **"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.

(d) **"Environmental Reports"** means the reports identified on Exhibit C attached hereto.

(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

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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, *et seq.*, 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) [Intentionally omitted]

(n) "**Key Principal**" means (A) the natural person(s) or entity identified as such at the foot of this Instrument; (B) the natural person or entity who signed either the Acknowledgement and Agreement of Key Principal to Personal Liability for Exceptions to Non-Recourse Liability or the Exceptions to Non-Recourse Guaranty (or is otherwise a guarantor on the Indebtedness); and (C) any person or entity who becomes a Key Principal after the date of this Instrument and is identified as such in an assumption agreement, or another amendment or supplement to this Instrument or who otherwise signs either the Acknowledgement and Agreement of Key Principal to Personal Liability for Exceptions to Non-Recourse Liability or Exceptions to Non-Recourse Guaranty (or any other guaranty of the Indebtedness).

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

(p) "**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.

(q) "**Lender**" means the entity identified as "Lender" in the first paragraph of this Instrument and its successors and assigns, or any subsequent holder of the Note.

(r) "**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

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future executed by Borrower, Key Principal, 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.

(s) **"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.

(t) **"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;

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- (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 (including the payments under any Housing Assistance Payment Contract provided HUD's prior written consent has been first obtained) 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.

(u) "**Note**" means the Promissory Note (Term Only) described on page 1 of this Instrument, including the Acknowledgment and Agreement of Key Principal to Personal Liability for Exceptions to Non-Recourse Liability (if any), and all schedules, riders, allonges and addenda, as such Multifamily Note may be amended from time to time.

(v) "**O&M Program**" is defined in Section 18(a).

(w) "**Permitted Exceptions**" means the exceptions identified on Exhibit D attached hereto.

(x) "**Personalty**" means all equipment, inventory, general intangibles 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, including furniture, furnishings, 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

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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.

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

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

(aa) **"Regulatory Agreements"** means the agreements listed as items 1, 2 and 3 on Exhibit D attached hereto.

(bb) **"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.

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

(dd) **"Bankruptcy Event"** means any one or more of the following: (i) the commencement of a voluntary case under one or more of the Insolvency Laws by the Borrower; (ii) the acknowledgment in writing by the Borrower that it is unable to pay its debts generally as they mature; (iii) the making of a general assignment for the benefit of creditors by the Borrower; (iv) an involuntary case under one or more Insolvency Laws against the Borrower; (v) the appointment of a receiver, liquidator, custodian, sequestrator, trustee or other similar officer who exercises control over the Borrower or any substantial part of the assets of the Borrower provided that any proceeding or case under (iv) or (v) above is not dismissed within 90 days after filing.

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

2. UNIFORM COMMERCIAL CODE SECURITY AGREEMENT; FIXTURE FILING.

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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 hereby authorizes Lender to file financing statements, continuation statements and financing statement amendments in such form as Lender may require to perfect or continue the perfection of this security interest and Borrower agrees, if Lender so requests, to execute and deliver to Lender such financing statements, continuation statements and amendments. Borrower shall pay all filing costs and all costs and expenses of any record searches for financing statements 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 filed as a fixture filing 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, and Borrower shall, upon Borrower's receipt of any Rents from any sources (including, but not limited to subsidy payments under any Housing Assistance Payments Contract), pay the total amount of such receipts to the 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

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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, subject to the applicable requirements of the Regulatory Agreements, 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,

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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, subject to the applicable requirements of the Regulatory Agreements. 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

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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, subject to the applicable requirements of the Regulatory Agreements.

(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 one year, and shall not include options to purchase. If customary in the applicable market, residential Leases with terms of less than six months may be permitted with Lender's prior written consent.

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(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 (unless waived in writing by Lender); (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.

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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. 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, 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

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reasonably estimated by Lender to be necessary, 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

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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 (including a Bankruptcy Event) is commenced which purports to affect the Mortgaged Property, Lender's security or Lender's rights under this Instrument, including eminent domain, insolvency, code enforcement, civil or criminal forfeiture, enforcement of Hazardous Materials Laws, fraudulent conveyance or reorganizations or proceedings involving a bankrupt or decedent, then Lender at Lender's option may make such appearances, 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 written 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:

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- (1) (i) except as provided in clause (ii) below, within 45 days after the end of each fiscal quarter of Borrower, a statement of income and expenses for Borrower's operation of the Mortgaged Property on a year-to-date basis as of the end of each fiscal quarter, (ii) within 120 days after the end of each fiscal year of Borrower, (A) a statement of income and expenses for Borrower's operation of the Mortgaged Property for such fiscal year, (B) a statement of changes in financial position of Borrower relating to the Mortgaged Property for such fiscal year, and (C) when requested by Lender, a balance sheet showing all assets and liabilities of Borrower relating to the Mortgaged Property as of the end of such fiscal year; and (iii) any of the foregoing at any other time upon Lender's request;
- (2) (i) except as provided in clause (ii) below, within 45 days after the end of each fiscal quarter of Borrower, and (ii) within 120 days after the end of each fiscal year of Borrower, and at any other time upon Lender's request, a rent schedule for the Mortgaged Property showing the name of each tenant, and for each tenant, the space occupied, the lease expiration date, the rent payable for the current month, the date through which rent has been paid, and any related information requested by Lender;
- (3) within 120 days after the end of each fiscal year of Borrower, and at any other time 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 the interest held by each, if Borrower is a corporation, all officers and directors of Borrower, and if Borrower is a limited liability company, all managers who are not members;
- (5) 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;
- (6) 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; and
- (7) if required by Lender, within 30 days of the end of each calendar month, a monthly statement of income and expenses for such calendar month on a year-to-date basis for Borrower's operation of the Mortgaged Property.

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(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

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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.

17. PRESERVATION, MANAGEMENT AND MAINTENANCE OF MORTGAGED PROPERTY.

(a) Borrower (1) shall not commit waste or permit impairment or deterioration of the Mortgaged Property (ordinary wear and tear excepted), (2) shall not abandon the Mortgaged Property, (3) 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, (4) shall keep the Mortgaged Property in good repair, including the replacement of Personalty and Fixtures with items of equal or better function and quality, (5) 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 (6) 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.

(b) If, in connection with the making of the loan evidenced by the Note or at any later date, Lender waives in writing the requirement of Section 17(a)(5) above that Borrower enter into a written contract for management of the Mortgaged Property and if, after the date of this Instrument, Borrower intends to change the management of the Mortgaged Property, Lender shall have the right to approve such new property manager and the written contract for the management of the Mortgaged Property and require that Borrower and such new property manager enter into an Assignment of Management Agreement on a form approved by Lender. If required by Lender (whether before or after an Event of Default), Borrower will cause any Affiliate of Borrower to whom fees are payable for the management of the Mortgaged Property to enter into an agreement with Lender, in a form approved by Lender, providing for subordination of those fees and such

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other provisions as Lender may require. "Affiliate of Borrower" means any corporation, partnership, joint venture, limited liability company, limited liability partnership, trust or individual controlled by, under common control with, or which controls Borrower (the term "control" for these purposes shall mean the ability, whether by the ownership of shares or other equity interests, by contract or otherwise, to elect a majority of the directors of a corporation, to make management decisions on behalf of, or independently to select the managing partner of, a partnership, or otherwise to have the power independently to remove and then select a majority of those individuals exercising managerial authority over an entity, and control shall be conclusively presumed in the case of the ownership of 50% or more of the equity interests).

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 or 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.

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(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 the Environmental Reports:

- (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 in the Environmental Reports, 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;

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- (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, except Lender shall be obligated to disclose such reports and information if Lender directs Borrower to

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take any action relating to the Mortgaged Property based upon such results or information. 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 reasonable 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;

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- (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) Lender agrees that the indemnity under this Section 18 shall be limited to the assets of Borrower and Lender shall not seek to recover any deficiency from any natural persons who are general partners of Borrower.

(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 reasonable 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

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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 (provided, however, that such joint and several liability shall not extend to the Borrower's limited partner unless otherwise permitted by law). 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.

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(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 net operating income generated by the Mortgaged Property after completion of the Restoration will be sufficient to support a debt service coverage ratio not less than the greater of (A) the debt service coverage ratio as of the date of this Instrument (based on the final underwriting of the Mortgaged Property) or (B) the debt service coverage ratio immediately prior to the loss (in each case, Lender's determination shall include all operating costs and other expenses, Imposition Deposits, deposits to reserves and loan repayment obligations relating to the Mortgaged Property); (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; and (5) upon Lender's request, Borrower provides Lender evidence of the availability during and after the Restoration of the insurance required to be maintained by Borrower pursuant to this Section 19.

(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.

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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.

(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) a Transfer of a Controlling Interest in Borrower;
- (3) a Transfer of a Controlling Interest in any entity which owns, directly or indirectly through one or more intermediate entities, a Controlling Interest in Borrower;
- (4) a Transfer of all or any part of a Key Principal's ownership interests in Borrower, or in any other entity which owns, directly or indirectly through one or more intermediate entities, an ownership interest in Borrower (other than a Transfer of an aggregate beneficial ownership interest in the Borrower of 49% or less of such Key Principal's original ownership interest in the Borrower and which does not otherwise result in a Transfer of the Key Principal's Controlling Interest in such intermediate entities or in the Borrower);

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(5) if Key Principal is an entity, (A) a Transfer of a Controlling Interest in Key Principal, or (B) a Transfer of a Controlling Interest in any entity which owns, directly or indirectly through one or more intermediate entities, a Controlling Interest in Key Principal;

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

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

(8) the merger, dissolution, liquidation, or consolidation of (i) Borrower, (ii) any Key Principal that is a legal entity, or (iii) any legal entity holding, directly or indirectly, a Controlling Interest in the Borrower or in any Key Principal that is an entity;

(9) a conversion of Borrower from one type of legal entity into another type of legal entity (including the conversion of a general partnership into a limited partnership and the conversion of a limited partnership into a limited liability company), whether or not there is a Transfer; if such conversion results in a change in any assets, liabilities, legal rights or obligations of Borrower (or of Key Principal, guarantor, or any general partner of Borrower, as applicable), by operation of law or otherwise; and

(10) a Transfer of the economic benefits or right of cash flows attributable to the ownership interests in Borrower and/or, if Key Principal is an entity, Key Principal, separate from the Transfer of the underlying ownership interests, unless the Transfer of the underlying ownership interests would otherwise not be prohibited by this Agreement

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) except as provided in Section 21(a)(6) and (7), a Transfer that occurs by devise, descent, pursuant to the provisions of a trust, or by operation of law upon the death of a natural person;

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(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, servitude, or restrictive covenant if, before the grant, Lender determines that the easement, servitude, or restrictive covenant will not materially affect the operation or value of the Mortgaged Property or Lender's interest in the Mortgaged Property, and Borrower pays to Lender, upon demand, all costs and expenses incurred by Lender in connection with reviewing Borrower's request;

(6) (i) the creation of a tax lien for taxes that are not yet due and payable or (ii) the creation of a tax lien for taxes that are due and payable or a mechanic's, materialman's, or judgment lien against the Mortgaged Property which is bonded off, released of record, or otherwise remedied to Lender's satisfaction within 45 days after Borrower has actual or constructive notice of the existence of such lien; and

(7) the conveyance of the Mortgaged Property at a judicial or non-judicial foreclosure sale under this Instrument.

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

(1) the submission to Lender of all information required by Lender to make the determination required by this Section 21(c);

(2) the absence of any Event of Default;

(3) the transferee meets all of the eligibility, credit, management, and other standards (including 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 mortgage finance structures on similar multifamily properties, unless partially waived by Lender in exchange for such additional conditions as Lender may require;

(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 mortgage finance structures on similar multifamily properties, unless partially waived by Lender in exchange for such additional conditions as Lender may require;

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(5) if transferor or any other person has obligations under any Loan Document, the execution by the transferee or one or more individuals or entities acceptable to Lender of an assumption agreement (including, if applicable, an Acknowledgement and Agreement of Key Principal to Personal Liability for Exceptions to Non-Recourse Liability) that is acceptable to Lender and that, among other things, requires the transferee to perform all obligations of transferor or such person set forth in such Loan Document, 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;

(6) 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 substitute guaranty in a form acceptable to Lender;

(7) Lender's receipt of all of the following:

(A) a non-refundable review fee in the amount of \$3,000 and a transfer fee equal to 1 percent of the outstanding Indebtedness immediately prior to the Transfer; and

(B) Borrower's reimbursement of all of Lender's out-of-pocket costs (including reasonable attorneys' fees) incurred in reviewing the Transfer request, to the extent such expenses exceed \$3,000; and

(8) Borrower has agreed to Lender's conditions to approve such Transfer, which may include, but are not limited to (A) providing additional collateral, guaranties, or other credit support to mitigate any risks concerning the proposed transferee or the performance or condition of the Mortgaged Property, and (B) amending the Loan Documents to (i) delete any specially negotiated terms or provisions previously granted for the exclusive benefit of transferor and (ii) restore to original provisions of the standard Fannie Mae form multifamily loan documents, to the extent such provisions were previously modified.

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

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

(2) A Transfer of a **"Controlling Interest"** shall mean:

(A) with respect to any entity, the following:

(i) if such entity is a general partner or a joint venture, a Transfer of any general partnership interest or joint venture interest which would

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cause the Initial Owners to own less than 51% of all general partnership or joint venture interests in such entity;

(ii) if such entity is a limited partnership, (A) a Transfer of any general partnership interest, or (B) a Transfer of any partnership interests which would cause the Initial Owners to own less than 51% of all limited partnership interests in such entity;

(iii) if such entity is a limited liability company or a limited liability partnership, (A) a Transfer of any membership or other ownership interest which would cause the Initial Owners to own less than 51% of all membership or other ownership interests in such entity, (B) a Transfer of any membership, or other interest of a manager, in such entity that results in a change of manager, or (C) a change of the non-member manager;

(iv) if such entity is a corporation (other than a Publicly-Held Corporation) with only one class of voting stock, a Transfer of any voting stock which would cause the Initial Owners to own less than 51% of voting stock in such corporation;

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

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

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

(3) "**Publicly-Held Corporation**" shall mean a corporation the outstanding voting stock of which is registered under Section 12(b) or 12(g) of the Securities and Exchange Act of 1934, as amended.

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(4) **“Publicly-Held Trust”** shall mean a real estate investment trust the outstanding voting shares or beneficial interests of which are registered under Section 12 (b) or 12 (g) of the Securities Exchange Act of 1934, as amended.

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

22. EVENTS OF DEFAULT.

The occurrence of any one or more of the following shall constitute an Event of Default under this Instrument:

- (a) any failure by Borrower to pay or deposit within five (5) days after the date when due any amount required by the Note, this Instrument or any other Loan Document, except that no grace period will not apply to the payment due on the Maturity Date (as defined in the Note);
- (b) any failure by Borrower to maintain the insurance coverage required by Section 19;
- (c) any failure by Borrower to comply with the provisions of Section 33;
- (d) fraud or material misrepresentation or material omission by Borrower, or any of its officers, directors, trustees, general partners or managers, Key Principal 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 (i) Event of Default under Section 21 and/or (ii) occurrence of a Bankruptcy Event;
- (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, but 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;

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(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; and

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

23. REMEDIES CUMULATIVE.

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

24. FORBEARANCE.

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

(b) Any forbearance by Lender in exercising any right or remedy under the Note, this Instrument, or any other Loan Document or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any other right or remedy. 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

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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.

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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,

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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.

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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.

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.

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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 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 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 all of the Indebtedness to be immediately due and payable without further demand, and may foreclose this Instrument by judicial proceeding and may invoke any other remedies permitted by Illinois law or provided in this Instrument or in any other Loan Document. The Indebtedness shall include, Lender shall be entitled to collect, and any decree which adjudicates the amount secured by this Instrument shall include, all costs and expenses incurred in pursuing such remedies, including attorneys' fees, costs of documentary evidence, abstracts and title reports, any of which may be estimated to reflect the costs and expenses to be incurred after the entry of such a decree.

44. RELEASE.

Upon payment of the Indebtedness, Lender shall release this Instrument. Borrower shall pay Lender's reasonable costs incurred in releasing this Instrument.

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45. WAIVER OF HOMESTEAD AND REDEMPTION.

Borrower releases and waives all rights under the homestead and exemption laws of the State of Illinois. Borrower acknowledges that the Mortgaged Property does not include "agricultural real estate" or "residential real estate" as those terms are defined in 735 ILCS 5/15-1201 and 5/15-1219. Pursuant to 735 ILCS 5/15-1601(b), Borrower waives any and all rights of redemption from sale under any order of foreclosure of this Instrument, or other rights of redemption, which may run to Borrower or any other Owner of Redemption, as that term is defined in 735 ILCS 5/15-1212. Borrower waives all rights of reinstatement under 735 ILCS 5/15-1602 to the fullest extent permitted by Illinois law.

46. MAXIMUM AMOUNT OF INDEBTEDNESS.

Notwithstanding any provision to the contrary in this Instrument, the Note or any other Loan Document which permits any additional sums to be advanced on or after the date of this Instrument, whether as additional loans or for any payments authorized by this Instrument, the total amount of the principal component of the Indebtedness shall not at any time exceed three hundred percent (300%) of the original principal amount of the Note set forth on the first page of this Instrument.

47. WAIVER OF TRIAL BY JURY.

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

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

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

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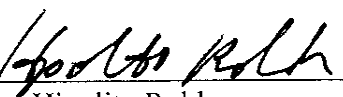
[SIGNATURE PAGE TO PERMANENT MORTGAGE]

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

BORROWER:

NORTH & TALMAN III LIMITED PARTNERSHIP, an Illinois limited partnership

By: North and Talman III Corporation, an Illinois corporation, its sole general partner

By: 
Name: Hipolito Roldan
Title: President

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STATE OF ILLINOIS, COUNTY OF COOK, TO WIT:

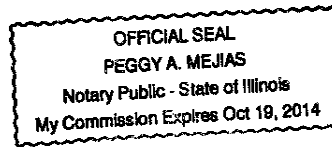
I HEREBY CERTIFY, that on this 3rd day of April, 2014, before me, the undersigned Notary Public of said State, personally appeared Hipolito Roldan, who acknowledged himself to be the President of North and Talman III Corporation, an Illinois corporation ("General Partner"), the general partner of North & Talman III Limited Partnership, an Illinois limited partnership ("Partnership"), known to me (or satisfactorily proven) to be the person whose name is subscribed to the within Mortgage, and acknowledged that he executed the same for the purposes therein contained as the duly authorized President of said General Partner of the Partnership.

WITNESS my hand and Notarial Seal.

Peggy A. Mejias
Notary Public

My Commission Expires:

Oct. 19, 2014



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KEY PRINCIPAL IDENTIFICATION

Key Principal

Name: Hispanic Housing Development Corporation, an Illinois not-for-profit corporation

Address: 325 N. Wells Street, 8th Floor
Chicago, IL 60654

UNOFFICIAL COPY**EXHIBIT A****[DESCRIPTION OF THE LAND]*******PARCEL 1A:**

LOTS 27 AND 28, (EXCEPT THE NORTH 8 FEET OF EACH OF SAID LOTS TAKEN OR USED FOR ALLEY) IN CHARLES PROEBSTING'S SUBDIVISION OF LOTS 4, 5, 6 AND THE SOUTH 60 FEET OF LOT 7 IN BLOCK 8 IN BORDEN'S SUBDIVISION OF THE WEST HALF OF THE SOUTHEAST QUARTER OF SECTION 36, TOWNSHIP 40 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS. 13-36-427-032

PARCEL 1B:

THE SOUTH 21.00 FEET OF LOT 9 IN C. BOETTCHER'S SUBDIVISION OF LOTS 8 AND 10 AND THAT PART NORTH OF THE SOUTH 60 FEET OF LOT 7 IN BLOCK 8 IN BORDEN'S SUBDIVISION OF THE WEST HALF OF THE SOUTHEAST QUARTER OF SECTION 36, TOWNSHIP 40 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS. 13-36-427-040

PARCEL 1C:

THE SOUTH 18.50 FEET OF LOT 8 (EXCEPT THE EAST 104.00 FEET THEREOF) IN C. BOETTCHER'S SUBDIVISION OF LOTS 8 AND 10 AND THAT PART NORTH OF THE SOUTH 60 FEET OF LOT 7 IN BLOCK 8 IN BORDEN'S SUBDIVISION OF THE WEST HALF OF THE SOUTHEAST QUARTER OF SECTION 36, TOWNSHIP 40 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS. 13-36-427-040

PARCEL 2:

LOTS 9 AND 10 (EXCEPT THE SOUTH 21.00 FEET OF SAID LOT 9) IN C. BOETTCHER'S SUBDIVISION OF LOTS 8 AND 10 AND THAT PART NORTH OF THE SOUTH 60 FEET OF LOT 7 IN BLOCK 8 IN BORDEN'S SUBDIVISION OF THE WEST HALF OF THE SOUTHEAST QUARTER OF SECTION 36, TOWNSHIP 40 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS. 13-36-427-014

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PARCEL 3:

LOT 6 AND THE NORTH 3.27 FEET OF LOT 7 IN C. BOETTCHER'S SUBDIVISION OF LOTS 8 AND 10 AND THAT PART NORTH OF THE SOUTH 60 FEET OF LOT 7 IN BLOCK 8 IN BORDEN'S SUBDIVISION OF THE WEST HALF OF THE SOUTHEAST QUARTER OF SECTION 36, TOWNSHIP 40 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS. ✓

13-36-427-030 13-36-427-031

PARCEL 4:

LOT 7 (EXCEPT THE NORTH 3.27 FEET THEREOF) AND LOT 8 (EXCEPT THE SOUTH 18.50 FEET THEREOF) IN C. BOETTCHER'S SUBDIVISION OF LOTS 8 AND 10 AND THAT PART NORTH OF THE SOUTH 60 FEET OF LOT 7 IN BLOCK 8 IN BORDEN'S SUBDIVISION OF THE WEST HALF OF THE SOUTHEAST QUARTER OF SECTION 36, TOWNSHIP 40 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS *** ✓

13-36-427-031

Street Addresses: 2656-2658 W. North Avenue, 1616-20 N. Talman Avenue and 1601-19 N Washtenaw Avenue, Chicago, Illinois

P.I.N.s: 13-36-427-014
 13-36-427-030
 13-36-427-031
 13-36-427-032
 13-36-427-040
 13-36-427-041
 13-36-427-042
 13-36-427-043
 13-36-427-044
 13-36-427-045

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EXHIBIT B

MODIFICATIONS TO INSTRUMENT

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

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EXHIBIT B

MODIFICATIONS TO INSTRUMENT (Term Only)

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

1. The first sentence of last paragraph before Section 1 of the Instrument is hereby modified by adding "Except as expressly permitted hereby," to the beginning thereof.

2. Section 1 of the Instrument is hereby modified to add the following definitions:

"Eligible Institution" means an institution whose (i) commercial paper, short-term debt obligations or other short-term deposits are rated at least "A-1" or the equivalent by each rating agency approved by Lender, if the deposits are to be held in the account for less than 30 days or (ii) long-term senior unsecured debt obligations are rated at least "A" or the equivalent by each such rating agency, if the deposits are to be held in the account for more than 30 days.

"Investor Limited Partner" means Bank of America, N.A., a national banking association.

"Mold" means any microbial or fungal contamination or infestation in the Mortgaged Property of a type which may pose a risk to human health or the environment.

"Scheduled Payment Date" shall have the meaning set forth in the Note.

3. The definition of **"Hazardous Materials"** in Section 1(g) is hereby modified to include, without limitation, Mold.

4. The definition of **"Mortgaged Property"** in Section 1(s) of the Instrument is hereby modified to add the following subsections:

- (16) all escrow funds, reserves, deposits and accounts required to be maintained by Borrower under the Loan Documents, including without limitation, all funds required to be maintained pursuant to the Collateral Agreements, together with all interest, earnings and investments thereon;
- (17) all causes of action and claims against any person for damages or injury to the Mortgaged Property or in connection with the loan evidenced by the Note, and the right, in the name and on behalf of Borrower, to commence any action or proceeding to protect the interest of Lender in the Mortgaged Property and while an Event of Default remains uncured, to appear in and defend any action or proceeding brought with respect to the Mortgaged Property;

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- (18) all agreements, contracts, certificates, instruments, franchises, permits, licenses, plans, specifications and other documents, now or hereafter entered into, and all rights therein and thereto, respecting or pertaining to the use, occupation, construction, management or operation of the Land and any part thereof and any Improvements or any business or activity conducted on the Land and any part thereof and all right, title and interest of Borrower therein and thereunder, including, without limitation, the right, upon the happening of any default hereunder, to receive and collect any sums payable to Borrower thereunder; and
- (19) all other rights of Borrower in and to the Mortgaged Property.

5. The fourth sentence of Section 2 of the Instrument is hereby deleted in its entirety and replaced with the following:

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, except as expressly permitted by the Loan Documents.

6. Section 3(c) of the Instrument is hereby modified by adding "Except as expressly permitted by the Loan Documents," to the beginning thereof.

7. Sections 7 and 8 of the Instrument are hereby deleted in their entirety and replaced with the following:

7. DEPOSITS FOR TAXES, INSURANCE AND OTHER CHARGES.

(a) Commencing on the first Scheduled Payment Date and continuing on each Scheduled Payment Date thereafter, Borrower shall deposit with Lender, until the Indebtedness is paid in full, such initial and additional amounts determined by Lender as 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, including without limitation, ground rents, 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. 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 each Imposition Deposit shall be equal to 1/12th of the annual liability amount sufficient to enable Lender to pay each Imposition 30 days prior to 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.

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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 account or sub-account maintained by Lender with an Eligible Institution selected by Lender (which may be Lender, if Lender is such an institution). Lender or a designated representative of Lender shall have the sole right to make withdrawals from such account. 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 may be commingled with any other funds held by Lender (provided that Lender shall maintain separate sub-accounts for such Imposition Deposits) and shall not 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 and Borrower shall be solely responsible for payment of any such deficiency. 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, 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, Borrower shall pay to Lender the amount of the deficiency within 15 days after notice from Lender, but in any event, not less than three (3) business days prior to the next installment of the applicable Imposition is due.

(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. REPLACEMENT RESERVE.

(a) On the Conversion Date, Borrower shall deposit with Lender an amount determined by Lender in its reasonable discretion (the "**Initial Deposit to the Replacement Reserve**") in an account or sub-account maintained by Lender with an Eligible Institution (which may be Lender, if Lender is such an institution) (the "**Replacement Reserve**"). On each Scheduled Payment Date thereafter, Borrower shall make deposits to the Replacement Reserve in an amount equal to \$962.50 (as such amount may be adjusted in accordance herewith, the "**Monthly Deposit to the Replacement Reserve**"). The Initial Deposit to the Replacement

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Reserve, the Monthly Deposits to the Replacement Reserve and all other funds in the Replacement Reserve are referred to collectively as the “**Replacement Reserve Funds.**” Lender or a designated representative of Lender shall have the sole right to make withdrawals from such Replacement Reserve. All investment earnings on funds in the Replacement Reserve shall be calculated by Lender and added to and become part of the Replacement Reserve Funds. If applicable law requires and provided that no default or Event of Default exists under any of the Loan Documents, Lender shall pay to Borrower the interest earned on the Replacement Reserve once each year. Borrower assigns to Lender all of Borrower’s interest in the Replacement Reserve as additional security for all of the Borrower’s obligations under the Loan Documents. Any amounts deposited with Lender under this Section 8 may be commingled with any other funds held by Lender (provided that Lender shall maintain separate sub-accounts for such Replacement Reserve Funds) and shall not operate to reduce the Indebtedness, unless applied by Lender for that purpose under Section 8(1).

(b) No earlier than the 6th month and no later than the 9th month of the year which commences on the 10th anniversary of the date hereof and each subsequent 10th anniversary date thereafter, a physical needs assessment shall be performed on the Mortgaged Property by an engineer approved by Lender at the expense of Borrower, which expense may be paid of out of the Replacement Reserve. If determined necessary by Lender, after review of the physical needs assessment, Borrower’s required Monthly Deposits to the Replacement Reserve set forth above shall be adjusted for the remaining term of the loan evidenced by the Note so that the Monthly Deposits to the Replacement Reserve will create a Replacement Reserve that will in Lender’s determination, be sufficient to meet required Replacements (defined below).

(c) Upon written request from Borrower and satisfaction of the requirements set forth in this Section 8, Lender shall disburse to Borrower amounts from the Replacement Reserve necessary to reimburse Borrower for the approved costs of the those items identified in any subsequent physical needs assessment performed pursuant to Section 8(b) hereof (the “**Replacements**”) in accordance with the following provisions:

- (1) Lender shall not be obligated to make disbursements from the Replacement Reserve to reimburse Borrower for the costs of routine maintenance to the Mortgaged Property or for costs which are to be reimbursed from funds deposited with Lender pursuant to any Collateral Agreement. In no event shall Lender be obligated to disburse funds from the Replacement Reserve if a default or Event of Default exists under this Instrument or any of the other Loan Documents.
- (2) Each request for disbursement from the Replacement Reserve shall be in a form specified or approved by Lender and shall include (i) the specific Replacements for which the disbursement is requested, (ii) the quantity and price of each item purchased, if the Replacement includes the purchase or replacement of specific items, (iii) the price of all materials (grouped by type or category) used in any Replacement other than the purchase or replacement of specific items, and (iv) the cost of all contracted labor or other services applicable to each Replacement for

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which such request for disbursement is made. With each request, Borrower shall certify that all Replacements have been made in accordance with all applicable laws, ordinances, and regulations of any governmental office or authority having jurisdiction over the Mortgaged Property. Each request for disbursement shall include copies of invoices for all items or materials purchased and all contracted labor or services provided and, unless Lender has agreed to issue joint checks pursuant to Section 8(c)(4) in connection with a particular Replacement, each request shall include evidence satisfactory to Lender of payment of all such amounts.

- (3) Each request for disbursement from the Replacement Reserve shall be made only after completion of the Replacement for which disbursement is requested. Borrower shall provide Lender evidence satisfactory to Lender in its reasonable judgment, of completion.
- (4) If the cost of a Replacement exceeds \$25,000.00 and the contractor performing the Replacement requires periodic payments pursuant to the terms of a written contract, Lender at its discretion may approve in writing periodic payments for work performed under such contract. A request for reimbursement from the Replacement Reserve may be made after completion of a portion of the work under such contract, provided (i) such contract requires payment upon completion of such portion of work, (ii) the materials for which the request is made are on site at the Mortgaged Property and are properly secured or have been installed in the Mortgaged Property, (iii) all other conditions in this Section 8 for disbursement have been satisfied, (iv) funds remaining in the Replacement Reserve are, in Lender's judgment, sufficient to complete such Replacement and the other Replacements when required and (v) if required by Lender, each contractor or subcontractor receiving payments under such contract shall provide a waiver of lien with respect to amounts which have been paid to that contractor or subcontractor.
- (5) Borrower shall not make a request for disbursement from the Replacement Reserve more frequently than once in any calendar month and (except in connection with the final disbursement) the total cost of all Replacements in any request shall not be less than \$5,000.00.
- (6) In the event Borrower requests a disbursement from the Replacement Reserve to reimburse Borrower for labor or materials for replacements other than the Replacements identified in any subsequent physical needs assessment performed pursuant to Section 8(b) hereof, Borrower shall disclose in writing to Lender why funds in the Replacement Reserve should be used to pay for such replacements. If Lender determines that such replacements are of the type intended to be covered by this Section 8, the costs for such replacements are reasonable, and all other conditions for

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disbursement under this Section 8 have been met, Lender may at its discretion disburse funds from the Replacement Reserve.

(d) Borrower shall make each Replacement when required in order to keep the Mortgaged Property in good order and repair and in a good marketable condition and to keep the Mortgaged Property or any portion thereof from deteriorating. Borrower shall complete all Replacements in a good and workmanlike manner as soon as practicable following the commencement of making each such Replacement. Lender shall have the right to approve all contracts or work orders with materialmen, mechanics, suppliers, subcontractors, contractors or other parties providing labor or materials in connection with the Replacements. Upon Lender's request, Borrower shall assign any contract or subcontract to Lender. In the event Lender determines in its sole discretion that any Replacement is not being performed or completed in a workmanlike or timely manner, Lender shall have the option to withhold disbursement for such unsatisfactory Replacement, and may proceed under existing contracts or contract with third parties to complete such Replacement and to apply the Replacement Reserve toward the labor and materials necessary to complete such Replacement, without providing any prior notice to Borrower and to exercise any and all other remedies available to Lender upon a default or Event of Default.

(e) If at any time during the term of the loan evidenced by the Note, Lender determines that replacements not identified in any subsequent physical needs assessment performed pursuant to Section 8(b) hereof are advisable to keep the Mortgaged Property in good order and repair and in a good marketable condition, or to prevent deterioration of the Mortgaged Property (the "**Additional Replacements**") Lender may send Borrower written notice of the need for making such Additional Replacements. Borrower shall promptly commence making such Additional Replacements in accordance with all the requirements of the Security Instrument. Reimbursement from the Replacement Reserve for such Additional Replacements shall not be made unless Lender has determined to do so pursuant to Section 8(c)(6).

(f) In order to facilitate Lender's completion or making the Replacements pursuant to Sections 8(d) and (e) above, Lender is granted the right to enter onto the Mortgaged Property and perform any and all work and labor necessary to complete or make the Replacements and employ watchmen to protect the Mortgaged Property from damage. All sums so expended by Lender shall be deemed to have been advanced to Borrower and secured by this instrument. For this purpose Borrower constitutes and appoints Lender its true and lawful attorney-in-fact with full power of substitution to complete or undertake the Replacements in the name of Borrower. Borrower empowers said attorney-in-fact as follows: (i) to use any funds in the Replacement Reserve for the purpose of making or completing the Replacements; (ii) to make such additions, changes and corrections to the Replacements as shall be necessary or desirable to complete the Replacements; (iii) to employ such contractors, subcontractors, agents, architects and inspectors as shall be required for such purposes; (iv) to pay, settle or compromise all existing bills and claims which are or may become liens against the Mortgaged Property, or as may be necessary or desirable for the completion of the Replacements, or for the clearance of title; (v) to execute all applications and certificates in the name of Borrower which may be required by any of the contract documents; (vi) to prosecute and defend all actions or proceedings in connection with the Mortgaged Property or the rehabilitation and repair of the Mortgaged Property; and (vii) to

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do any and every act which Borrower might do in its own behalf to fulfill the terms of this Section 8. It is further understood and agreed that this power of attorney, which shall be deemed to be a power coupled with an interest, cannot be revoked. Borrower specifically agrees that all power granted to Lender under this Section 8 may be assigned by it to its successors or assigns as holder of the Note.

(g) Nothing in this Section 8 shall make Lender responsible for making or completing the Replacements, require Lender to expend funds in addition to the Replacement Reserve to make or complete any Replacement, obligate Lender to proceed with the Replacements, or obligate Lender to demand from Borrower additional sums to make or complete any Replacement.

(h) Borrower shall permit Lender or Lender's representatives (including an independent person such as an engineer, architect, or inspector) or third parties making Replacements pursuant to this Section 8, to enter onto the Mortgaged Property during normal business hours (subject to the rights of tenants under their leases) to inspect the progress of any Replacements and all materials being used in connection therewith, to examine all plans and shop drawings relating to such Replacements which are or may be kept at the Mortgaged Property, and to complete any Replacements made pursuant to this Section 8. Borrower agrees to cause all contractors and subcontractors reasonably to cooperate with Lender or Lender's representatives or such other persons described above in connection with inspections described in or the completion of Replacements pursuant to this Section 8.

(i) Lender may, at Borrower's expense, inspect the Mortgaged Property in connection with any Replacement prior to disbursing funds from the Replacement Reserve. Lender, at Borrower's expense, also may require an inspection by an appropriate independent qualified professional selected by Lender and a copy of a certificate of completion by an independent qualified professional acceptable to Lender prior to the disbursement of any amounts from the Replacement Reserve. Borrower shall pay Lender a reasonable inspection fee for each such inspection.

(j) Borrower covenants and agrees that each of the Replacements and all materials, equipment, fixtures, or any other item comprising a part of any Replacement shall be constructed, installed or completed, as applicable, free and clear of all mechanic's, materialman's or other liens (except for those liens existing on the date of this Instrument which have been approved in writing by Lender). Prior to each disbursement from the Replacement Reserve, Lender may require Borrower to provide Lender with a search of title to the Mortgaged Property effective to the date of the release, which search shows that no mechanic's or materialmen's liens or other liens of any nature have been placed against the Mortgaged Property since the date this Instrument (other than liens which Borrower is diligently contesting in good faith and which have been bonded off to the satisfaction of Lender) and that title to the Mortgaged Property is free and clear of all liens (other than the lien of this Instrument and any other liens previously approved in writing by Lender, if any). In addition, as a condition to any disbursement, Lender may require Borrower to obtain from each contractor, subcontractor, or materialman an acknowledgement of payment and release of lien for work performed and materials supplied. Any such acknowledgement and release shall conform to the requirements of applicable law and

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shall cover all work performed and materials supplied (including equipment and fixtures) for the Mortgaged Property by that contractor, subcontractor or materialman through the date covered by the current reimbursement request (or, in the event that payment to such contractor, subcontractor or materialmen is to be made by a joint check, the release of lien shall be effective through the date covered by the previous release of funds request.)

(k) All Replacements shall comply with all applicable laws, ordinances, rules and regulations of all governmental authorities having jurisdiction over the Mortgaged Property and applicable insurance requirements including, without limitation, applicable building codes, special use permits, environmental regulations, and requirements of insurance underwriters.

(l) Upon the occurrence of an Event of Default, Borrower shall immediately lose all of its rights to receive disbursements from the Replacement Reserve unless and until the earlier of (1) a cure of the Event of Default to Lender's reasonable satisfaction occurring prior to the exercise by Lender of its remedies under the Loan Documents, or (ii) all amounts secured by this Instrument have been paid and the lien of this Instrument has been released by Lender. Upon any such Event of Default, Lender may in its sole and absolute discretion, use the Replacement Reserve (or any portion thereof) for any purpose, including but not limited to (i) repayment of any indebtedness secured by the Security Instrument, including but not limited to principal prepayments and the prepayment premium applicable to such full or partial prepayment (as applicable); provided, however, that such application of funds shall not cure or be deemed to cure any default or Event of Default; (ii) reimbursement of Lender for all losses and expenses (including, without limitation, reasonable legal fees) suffered or incurred by Lender as a result of such default or Event of Default; (iii) completion of the Replacement as provided in this Section 8, or for any other repair or replacement to the Mortgaged Property; or (iv) payment of any amount expended in exercising (and exercise) all rights and remedies available to Lender at law or in equity or under this Instrument or under any of the other Loan Documents.

(m) Nothing in this Instrument shall obligate Lender to apply all or any portion of the Replacement Reserve on account of any default or Event of Default by Borrower or to repayment of the indebtedness secured by this Instrument or in any specific order of priority.

(n) The insufficiency of any balance in the Replacement Reserve shall not abrogate the Borrower's agreement to fulfill all preservation and maintenance covenants in the Loan Documents. In the event that the balance of the Replacement Reserve is less than the current estimated cost to make the Replacements required by the Lender, Borrower shall deposit the shortage within 10 days of request by Lender. In the event Lender determines from time to time based on Lender's inspections, that the amount of the Monthly Deposit to the Replacement Reserve is insufficient to fund the cost of likely Replacements and related contingencies that may arise during the remaining term of the loan evidenced by the Note, Lender may require an increase in the amount of the Monthly Deposits to the Replacement Reserve upon 30 days prior written notice to Borrower.

(o) Borrower shall pay within 10 days of request from Lender (i) all reasonable costs and expenses incurred by Lender in connection with collecting, holding and disbursing the Replacement Reserve pursuant to this Section 8, and (ii) all reasonable fees, charges, costs and

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expenses incurred by Lender in connection with inspections made by Lender or Lender's representatives in carrying out Lender's responsibility to make certain determinations under this Section 8.

(p) Lender's approval of any plans for any Replacement, release of funds from the Replacement Reserve, inspection of the Property by Lender or Lender's agents, or other acknowledgment of completion of any Replacement in a manner satisfactory to Lender shall not be deemed an acknowledgment or warranty to any person that the Replacement has been completed in accordance with applicable building, zoning or other codes, ordinances, statutes, laws, regulations or requirements of any governmental agency.

(q) If a Transfer shall occur or be contemplated, which Transfer requires the prior written consent of Lender pursuant to the terms of this Instrument, Lender may review the amount of the Replacement Reserve, the amount of the Monthly Deposits and the likely repairs and replacements required by the Mortgaged Property and the related contingencies which may arise during the remaining term of the loan evidenced by the Note. Based upon that review, Lender may require an additional deposit to the Replacement Reserve, and/or an increase in the amount of the Monthly Deposits to the Replacement Reserve as a condition to Lender's consent to such Transfer. In all events, the transferee shall be required to assume Borrower's duties and obligations under this Section 8.

8. Subsections 14(b) and (c) of the Instrument are hereby deleted in their entirety and replaced with the following:

(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 cash flows of Borrower relating to the Mortgaged Property for that fiscal year, a balance sheet showing all assets and liabilities of Borrower relating to the Mortgaged Property as of the end of that fiscal year and accompanying footnotes thereon. All such statements shall be audited by an independent certified accounting firm acceptable to Lender;
- (2) within 30 days after the end of each fiscal quarter of Borrower a statement of income and expense for Borrower's operation of the Mortgaged Property for that fiscal quarter. In connection with a securitization or sale of the loan evidenced by the Note, Borrower will deliver monthly certified statements of income and expense if requested by Lender;
- (3) within 30 days after the end of each fiscal quarter and 90 days after the end of each fiscal year of Borrower, and at any other time upon Lender's request, a rent roll for the Mortgaged Property showing the name of each tenant, and for each tenant, the space occupied, unit type (i.e., number of bedrooms and bathrooms), the lease expiration date, the rent payable for

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the current month, the date through which rent has been paid, square footage for commercial space, if any, and any related information requested by Lender;

- (4) within 90 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 the percentage interest held by each, if Borrower is a corporation, all officers and directors of Borrower, and if Borrower is a limited liability company, all managers who are not members;
- (5) 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
- (6) within 90 days after the end of each fiscal year of Borrower, and at any other time upon Lender's request, Borrower shall furnish Lender a certification as to continuing program compliance in accordance with Section 42 of the Internal Revenue Code of 1986 and/or other applicable affordable housing compliance requirements to the extent any grants and/or tax credits are in place for Borrower and/or the Mortgaged Property.

(c) Each of the statements, schedules and reports required by Section 14(b) shall be certified to be complete and accurate by an individual having authority to bind Borrower and shall be (1) accompanied by a written certificate of such individual in a form acceptable to Lender verifying as of the date thereof whether, to Borrower's knowledge, there exists an Event of Default, and if such Event of Default exists, the nature thereof, the period of time it existed and the action then being taken to remedy same, and (2) in such form and contain such detail as Lender may reasonably require.

9. [Intentionally Omitted].

10. Sections 16 of the Instrument is hereby deleted in its entirety and replaced with the following:

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16. LIENS; ENCUMBRANCES.

Borrower acknowledges that, to the extent provided in Section 21, the grant, creation or existence of any mortgage, deed of trust, deed to secure debt, security interest or other lien or encumbrance (a "Lien") on the Mortgaged Property (other than the lien of this Instrument and other liens permitted by the Loan Documents, including the Permitted Exceptions) 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.

11. Subsections 18(j)(3) - (5) of the Instrument are hereby deleted in its entirety and replaced with the following:

- (3) the existence or alleged existence of any Prohibited Activity or Condition (except for (i) any Prohibited Activity or Conditions caused by Lender or its agents after the date the date Lender has taken title to, or possession of, the Mortgaged Property, and (ii) any claim arising from the gross negligence or willful misconduct of any indemnified party);
- (4) the presence or alleged presence of Hazardous Materials on or under the Mortgaged Property (except for any Hazardous Materials taken onto the Property by Lender or its agents after the date the date Lender has taken title to, or possession of, 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 (except for the violation of any Hazardous Materials law by Lender or its agents after the date the date Lender has taken title to, or possession of, the Mortgaged Property).

12. Subsection 18(m) of the Instrument is hereby deleted in its entirety.

13. Subsections 19(a)-(d) and (g) of the Instrument are hereby deleted in their entirety and replaced with the following:

(a) Borrower shall obtain and maintain, or cause to be maintained, insurance for Borrower and the Mortgaged Property providing at least the following coverages:

(i) Property Insurance. Insurance with respect to the Improvements and other items of Mortgaged Property which are susceptible to being insured, insuring against any peril now or hereafter included within the classification "Special Cause of Loss" (sometimes referred to as "All Risk of Physical Loss" or "Special Perils"), together with an "Ordinance and Law" endorsement, in amounts at all times equal to an amount which shall be equal to the full insurable value of the Improvements and personal property, the term "full insurable value" to mean the actual replacement cost of the Improvements and personal property (without taking

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into account any depreciation, and exclusive of excavations, footings and foundations, landscaping and paving, and without provision for co-insurance) (the “**Replacement Cost**”);

(ii) Liability Insurance. Commercial general liability insurance on the so called “occurrence” form, including bodily injury, death and property damage liability, insurance against any and all claims, including all legal liability to the extent insurable and imposed upon Borrower and all court costs and legal fees and expenses, arising out of or connected with the possession, use, leasing, operation, maintenance or condition of the Mortgaged Property in such amounts as are generally available at commercially reasonable premiums and are generally required by institutional lenders for properties comparable to the Mortgaged Property. The combined general aggregate limit and coverage under umbrella or excess liability Policies must be at least (A) \$1,000,000 total coverage for 1 to 3 story buildings, (B) \$5,000,000 total coverage for 4 to 10 story buildings, (C) \$10,000,000 total coverage for 11 to 20 story buildings and (D) \$25,000,000 total coverage for buildings with greater than 20 stories. If Borrower has a multi-location policy or loan, such total coverages must be maintained on a per location basis;

(iii) Workers’ Compensation Insurance. If Borrower has employees on site, statutory workers’ compensation insurance as required by law, and including employers liability, with respect to any work on or about the Mortgaged Property;

(iv) Business Interruption. Business interruption- and/or loss of “rental income” insurance in an amount sufficient to avoid any co-insurance penalty and to provide proceeds which will cover a period of not less than twelve (12) months from the date of casualty or loss, containing an extended period of indemnity endorsement which provides that after the physical loss to the Improvements and the Personalty has been repaired, the continued loss of income will be insured for an additional three (3) months or until such income returns to the same level it was prior to the loss, whichever first occurs, and notwithstanding that the policy may expire prior to the end of such period. The term “rental income” means for purposes of this Section the sum of (A) the total then ascertainable Rents payable under the leases at the Mortgaged Property and (B) the total ascertainable amount of all other amounts to be received by Borrower from third parties which are the legal obligation of the tenants, reduced to the extent such amounts would not be received because of operating expenses not incurred during a period of non-occupancy of that portion of the Mortgaged Property then not being occupied;

(v) Boiler and Machinery Insurance. Broad form boiler and machinery insurance (without exclusion for explosion) covering HVAC equipment, or boiler or other pressure-fired vessels, machinery, and equipment located in, on or about the Mortgaged Property that are required to be regulated by the state in which the property is located (including “system breakdown coverage”) and insurance against loss of occupancy or use arising from any breakdown in such amounts as are generally required by institutional lenders for properties comparable to the Mortgaged Property;

(vi) Flood Insurance. If and to the extent any portion of the Improvements is located in an area identified by the Federal Emergency Management Agency or any successor thereto, under the Flood Disaster Protection Act of 1973, as it may be amended from time to time (“**FDPA**”), as an area having special flood hazards within a flood zone designated “A” or “V” in

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a participating community (as defined in the FDPA), a flood insurance policy on the Improvements and any Borrower owned contents in an amount required by Lender, but in no event less than the amount sufficient to meet the requirements of applicable law and the maximum limit of coverage available by the FDPA, as such requirements may from time to time be in effect;

(vii) Builder's Risk Insurance. At all times during which construction, repairs or alterations are being made with respect to the Improvements which affect the structure of the Improvements (A) owner's contingent or protective liability insurance covering claims not covered by or under the terms or provisions of the above mentioned commercial general liability insurance policy; and (B) the insurance provided for in paragraph (i) above written in a so-called builder's risk completed value form (1) on a non-reporting basis, (2) against all risks insured against pursuant to paragraph (i) above, (3) including permission to occupy the Mortgaged Property, and (4) with an agreed amount endorsement waiving co-insurance provisions; and

(viii) Other Insurance. Such other insurance with respect to Borrower or the Mortgaged Property or on any replacements or substitutions or additions or increased coverage limits as may from time to time be required by Lender against other insurable hazards or casualties which at the time are commonly insured against in the case of Borrower's operations or property similarly situated, including, without limitation, hired and non-owned vehicle, employee dishonesty (if Borrower has employees on site), sinkhole, mine subsidence, wind, earthquake and environmental insurance, due regard being given to the height and type of buildings, their construction, location, use and occupancy.

(b) All insurance provided for in subsection (a) shall be for a term of not less than one (1) year and obtained under valid and enforceable policies (the "**Policies**" or in the singular, the "**Policy**"), and shall be issued by one or more other domestic primary insurer(s) acceptable to Lender and with a financial strength and/or claims paying ability of not less than "A" or higher by S&P or "A-VI" by A.M. Best if the loan evidenced by the Note is under \$20,000,000 and "AA" by S&P or "A-IX" by A.M. Best if the loan evidenced by the Note is \$20,000,000 or more (each such insurer shall be referred to below as a "**Qualified Insurer**"). No Policy shall contain any exclusion for Mold (to the extent such coverage is available at commercially reasonable rates, as determined by Lender). All insurers providing insurance required by this Instrument shall be authorized and admitted to issue insurance in the state in which the Mortgaged Property is located. The Policy referred to in subsection (a)(ii) above shall name Lender as an additional insured and the Policies referred to in subsection (a)(i), (iv), (v), (vi) and (vii), and as applicable (viii), above shall provide that all proceeds be payable to Lender. The Policies referred to in subsections (a)(i), (v), (vi) and (vii) shall also contain: (i) a standard "non-contributory mortgagee" endorsement or its equivalent relating, *inter alia*, to recovery by Lender notwithstanding the negligent or willful acts or omissions of Borrower; (ii) to the extent available at commercially reasonable rates, a waiver of subrogation endorsement as to Lender; and (iii) an endorsement providing for a deductible per loss of an amount not more than that which is customarily maintained by prudent owners of similar properties in the general vicinity of the Mortgaged Property, but in no event in excess of \$10,000. All Policies shall contain (i) a provision that such Policies shall not be denied renewal, materially changed (other than to increase the coverage provided), cancelled or terminated, nor shall they expire, without at least

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thirty (30) days' prior written notice to Lender in each instance; and (ii) include effective waivers by the insurer of all claims for applicable premiums ("**Insurance Premiums**") against any mortgagee, loss payees, additional insureds and named insureds (other than Borrower). Evidence of insurance with respect to all renewal and replacement Policies shall be delivered to Lender not less than ten (10) days prior to the expiration date of any of the Policies required to be maintained hereunder which evidence shall bear notations evidencing payment of Insurance Premiums. Originals or evidence of such replacement Policies shall be delivered to Lender promptly after Borrower's receipt thereof but in any case within thirty (30) days after the effective date thereof. If Borrower fails to maintain and deliver to Lender the original Policies or evidence of insurance required by this Instrument, Lender may procure such insurance at Borrower's sole cost and expense.

(c) [Intentionally Omitted.]

(d) [Intentionally Omitted.]

(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) less than 50% of the total floor area of the Improvements has been damaged or destroyed; (3) Lender determines, in its discretion, that there will be sufficient funds to complete the Restoration; (4) Lender shall be satisfied that, upon completion of Restoration, the net cash flow of the Mortgaged Property will be restored to a level sufficient in Lender's sole judgment to cover all carrying costs and operating expenses of the Mortgaged Property, including without limitation, debt service on the Note at a coverage ratio (after deducting all reserves required by Lender from net operating income) of at least equal to the greater of (A) the coverage ratio existing on the Conversion Date, as that term is defined in that certain Delivery Assurance Note given by Borrower as of the date of this Instrument, and (B) the coverage ratio on the date of casualty or condemnation, and all required reserves; (5) 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 the Mortgaged Property will be in compliance with all applicable laws; (6) Lender determines, in its discretion, that the Restoration will be completed before the earlier of (A) one year before the maturity date of the Note or (B) one year after the date of the loss or casualty; and (7) upon Lender's request, Borrower provides Lender evidence of the availability during and after the Restoration of the insurance required to be maintained by Borrower pursuant to this Section 19.

14. Section 21(b) of the Instrument is hereby modified to add the following subsection:

- (8) a Transfer of an interest in a Key Principal or the Borrower as described in Section 21(a)(2), (3) or (4) resulting from any transfer described below, provided that Borrower owns the Mortgaged Property and remains the Borrower under the Note and Investor Limited Partner is at least a 51% limited partner in Borrower:

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(A) the removal of North and Talman III Corporation, an Illinois corporation, as general partner of Borrower (“**Borrower General Partner**”) and its replacement as general partner by Investor Limited Partner or by an affiliate of Investor Limited Partner in accordance with the terms of the limited partnership agreement of Borrower, provided that after such replacement, the Initial Owners of the Investor Limited Partner will own no less than 51% of the general partner interests in the entity which replaces the Borrower General Partner; or

(B) a Transfer of any Key Principal’s interest in Borrower, provided that Borrower shall provide prior written notice to Lender of such proposed transfer, Investor Limited Partner shall identify an individual or entity meeting the requirements of the Lender to serve as substitute Key Principal and such individual or entity is substituted as Key Principal under this Instrument at the time of such Transfer, and Borrower shall pay all of Lender’s expenses in connection therewith;

provided that (1) Borrower must provide Lender with advance written notice of the identity of any entity replacing the Borrower General Partner and (2) upon request by Lender from time to time, Borrower will provide Lender with the names of all owners of interests in Borrower, whether such interests are owned directly or indirectly.

- (9) The transfer by the Borrower’s Investor Limited Partner of 100% of its limited partner interest in the Borrower to an entity that is owned and controlled by, or is under common control with, the Investor Limited Partner, (the “Related Equity Investor”) provided that (A) Lender has received prior written notice of the transfer, together with (1) the documents transferring the Investor Limited Partner’s limited partner interest in the Borrower to the Related Equity Investor, and (2) the organizational documents of the transferee Related Equity Investor, (B) at the time of the proposed transfer, no Event of Default shall have occurred and be continuing, and (C) and a 1% transfer fee will not be charged; and
- (10) The Transfer of any limited partnership or non-managing investor membership interest in the Investor Limited Partner or the Related Equity Investor, provided that there shall be no change in the general partner or managing member, as the case may be, of the Investor Limited Partner or Related Equity Investor.

15. Section 21(c)(7)(B) of the Instrument is hereby deleted in its entirety and replaced with the following:

- (B) In addition, Borrower shall be required to reimburse Lender for all of Lender’s out-of-pocket costs (including, without limitation,

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reasonable attorneys' fees and costs and fees charged by any trustee, master servicer, special servicer, rating agency or other person required to consent to or approve such Transfer request) incurred in reviewing the Transfer request.

16. Section 21(c) of the Instrument is hereby further modified to add the following subsection:

- (9) Lender's receipt of such opinions as Lender may reasonably require in connection with the closing of the loan evidenced by the Note.

17. Section 22 of the Instrument is hereby modified to add the following subsection:

- (j) any failure to timely deliver the financial reports and information required by Section 14 hereof, which continues for a period of 10 days after notice of such failure by Lender to Borrower.

18. Section 28 of the Instrument is hereby modified to add the following language to the end thereof:

In addition, in the event any further documentation or information is (a) required by any Investor (as defined herein), in order to enable Lender to sell the loan evidenced by the Note to Investor or comply with the requirements of Investor, or (b) deemed necessary or appropriate by Lender in the exercise of its rights to correct patent mistakes in the Loan Documents, materials relating to mortgagee's land title insurance or the funding of the loan evidenced by the Note, Borrower shall provide, or cause to be provided to Lender and/or Investor at Borrower's cost and expense, such documentation or information. Borrower shall execute and deliver to Lender and/or Investor such documentation, including but not limited to any amendments, corrections, deletions or additions to the Note, this Instrument and the other Loan Documents as is required by Lender or Investor; provided, however, that Borrower shall not be required to do anything that has the effect of (a) changing the essential economic terms of the loan evidenced by the Note, or (b) imposing greater personal liability under the Loan Documents. In the event Borrower is requested to: (a) furnish any documentation or information; (b) execute and deliver any documentation; (c) correct or amend any documents previously executed; or (d) perform any acts, as provided herein, and Borrower fails to do so such that Investor refuses to purchase the loan evidenced by the Note, or if previously purchased, Investor requires that Lender repurchase the loan evidenced by the Note, then such failure by Borrower shall be, at the sole option of Lender, an Event of Default under this Instrument and the other Loan Documents.

19. Section 32 of the Instrument is hereby deleted in its entirety and replaced with the following:

32. SALE OF NOTE; CHANGE IN SERVICER.

Lender may, at any time, sell, transfer or assign the Loan Documents, or grant participations therein (the "Participations") or issue mortgage pass-through certificates or other

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securities (the “**Securities**”) evidencing a beneficial interest in a rated or unrated public offering or private placement (a “**Securitization**”). Lender may, at any time, transfer any and all of the servicing rights with respect to the loan evidenced by the Note, or delegate any or all of its responsibilities as Lender under the Loan Documents. Lender may forward to each purchaser, transferee, assignee, servicer, participant, investor, or their respective successors in such Participations and/or Securities (collectively, the “**Investor**”) or any rating agency rating the loan evidenced by the Note, or any such Participations and/or Securities, each prospective Investor, and any organization maintaining databases on the underwriting and performance of commercial mortgage loans, all documents and information which Lender now has or may hereafter acquire relating to the Indebtedness and to Borrower, Key Principal and the Mortgaged Property, including financial statements, whether furnished by Borrower, Key Principal, or otherwise, as Lender determines necessary or desirable. Borrower irrevocably waives any and all rights it may have under applicable laws to prohibit such disclosure, including but not limited to any right of privacy. Borrower agrees to cooperate with Lender in connection with any transfer made or any Participation and/or Securities created pursuant to this Section, including, without limitation, (i) the delivery of an estoppel certificate with respect to the loan evidenced by the Note and such other documents as may be reasonably requested by Lender, (ii) amending or causing the amendment of (x) this Instrument and the other Loan Documents, or executing such additional documents, instruments and agreements, which do not materially increase Borrower’s obligations hereunder or thereunder or impose material adverse tax consequences upon Borrower, and (y) Borrower’s organizational documents to comply with rating agency criteria regarding special purpose entity provisions, and (iii) promptly and reasonably providing such information as may be requested in connection with the preparation of a private placement memorandum, prospectus or a registration statement required to place privately or to distribute publicly the Securities in a manner which does not conflict with federal or state securities laws. Borrower shall also furnish, and Borrower consents to Lender furnishing, to such Investors or such prospective Investors or any rating agency any and all information concerning the Mortgaged Property, the Leases, the financial condition of Borrower, Key Principal as may be requested by Lender, any Investor or any prospective Investor or rating agency in connection with any sale or transfer of the loan evidenced by the Note or any Participations or Securities.

20. Section 40 of the Instrument is hereby deleted in its entirety and replaced with the following:

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, and any holders or potential holders of any securities or debt secured directly or indirectly by the loan evidenced by the Note, 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 any right of privacy. Borrower shall execute, acknowledge and deliver any and all instruments reasonably requested by Lender in connection therewith, and to the extent, if any, specified in any assignment or participation, such assignee(s) or participant(s) shall have the

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same rights and benefits with respect to the Loan Documents as such person(s) would have if such person(s) were Lender hereunder. Lender may disseminate any information it now has or hereafter obtains pertaining to the Loan, including any security for the Loan, any credit or other information on the Mortgaged Property (including environmental reports and assessments), Borrower, any of Borrower's principals, to any actual or prospective assignee or participant, to Lender's affiliates, including Banc of America Securities LLC, to any regulatory body having jurisdiction over Lender, or to any other party as necessary or appropriate in Lender's reasonable judgment.

21. The Instrument is hereby modified to add the following Sections to the end thereof:

48. PERFORMANCE AT BORROWER'S EXPENSE; LEGAL FEES FOR ENFORCEMENT.

Borrower acknowledges and agrees that in connection with each request by Borrower to modify or waive any provision of the Loan Documents, release or substitute Mortgaged Property or obtain Lender's approval or consent under any Loan Document, Lender may collect a review or processing fee from Borrower. Borrower agrees to pay such fee along with all reasonable legal fees and expenses incurred by Lender, including without limitation, any rating agency fees, if the loan evidenced by the Note has been securitized, irrespective of whether the matter is approved, denied or withdrawn. Any amounts payable by Borrower hereunder, shall be deemed a part of the Indebtedness, shall be secured by this Instrument and shall bear interest at the default rate set forth in the Note if not fully paid within ten (10) days of written demand for payment. Borrower shall pay to Lender on demand any and all expenses, including special servicing fees and reasonable legal fees incurred or paid by Lender in protecting its interest in the Mortgaged Property or in collecting any amount payable under the Loan Documents, or in enforcing its rights hereunder with respect to the Mortgaged Property, whether or not any legal proceeding is commenced hereunder or thereunder, together with interest thereon at the default rate set forth in the Note from the date paid or incurred by Lender until such expenses are paid by Borrower.

49. INDEMNIFICATION.

Borrower shall, at its sole cost and expense, protect, defend, indemnify, release and hold harmless Lender, its successors and assigns, any owner or prior owner or holder of the Note, any servicer of the Indebtedness, any receiver or other fiduciary appointed in a foreclosure or other creditors' rights proceeding, any officers, directors, shareholders, partners, members, employees, agents, servants, representatives, contractors, subcontractors or affiliates of any of the foregoing, whether during the term of the loan evidenced by the Note or as part of, or following, a foreclosure of this Instrument, from and against any and all claims, suits, liabilities (including, without limitation, strict liabilities), actions, proceedings, obligations, debts, damages, losses, costs, expenses, fines, penalties, charges, fees, judgments, awards, amounts paid in settlement (including but not limited to legal fees and other costs of defense) directly or indirectly arising out of or in any way relating to (a) any accident, injury to or death of persons or loss of or damage to property, any use, nonuse or condition, occurring in, on or about the Mortgaged Property or any part thereof or on the adjoining sidewalks, curbs, adjacent property or adjacent

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parking areas, streets or ways; (b) performance of any labor or services or the furnishing of any materials or other property in respect of the Mortgaged Property; (c) any failure of the Mortgaged Property to be in compliance with any applicable laws; (d) any claims and demands asserted against Lender with respect to any lease; (e) the payment of any commission, charge or brokerage fee in connection with the funding of the loan evidenced by the Note; or (f) any tax on the making and/or recording of any of the Loan Documents; except to the extent any of the foregoing are caused by or the result of the gross negligence or willful misconduct of Lender. Any amounts payable to any indemnified party hereunder shall become immediately due and payable and shall bear interest at the default rate set forth in the Note from the date loss or damage is sustained until paid. Upon written request by any party indemnified hereunder, Borrower shall defend such party (if requested by any such party, in the name of such party) by attorneys and other professionals approved by such party. Notwithstanding the foregoing, any party indemnified hereunder may, in its sole and absolute discretion, engage its own attorneys and other professionals to defend or assist them, and, at its option, its attorneys shall control the resolution of any claim or proceeding. Upon demand, Borrower shall pay or, in the sole and absolute discretion of such party, reimburse, such party for the payment of reasonable fees and disbursements of attorneys, engineers, environmental consultants, laboratories and other professionals in connection therewith. . Notwithstanding the foregoing, this Section is not intended to create any recourse liability of the Lender for the payment of principal and accrued interest with respect to the Loan.

50. ADDITIONAL REPRESENTATIONS AND WARRANTIES.

Without limiting any other representations or warranties made by Borrower in this Instrument, Borrower hereby represents and warrants to Lender as follows:

- (a) The execution, delivery and performance of the obligations imposed on Borrower under the Loan Documents will not cause Borrower to be in default under the provisions of any agreement, judgment or order to which Borrower is a party or by which Borrower is bound.
- (b) No defaults exist under the loan evidenced by the Note, and all of the following items regarding the Mortgaged Property which have become due and payable have been paid or, with the approval of Lender, an escrow fund sufficient to pay them has been established: taxes; government assessments; insurance premiums; water, sewer and municipal charges; leasehold payments; ground rents; and any other charges affecting the Mortgaged Property.
- (c) All improvements to the Mortgaged Property and the use of the Mortgaged Property comply with all applicable statutes, rules and regulations, including all applicable statutes, rules and regulations pertaining to requirements for equal opportunity, anti-discrimination, fair housing, environmental protection, zoning and land use. Improvements on the Mortgaged Property comply with applicable health, fire, and building codes. There is no evidence of any illegal activities relating to controlled substances on the Mortgaged Property. All required permits, licenses and certificates for the lawful use and operation of the Mortgaged Property, including, but limited to, certificates of occupancy, apartment licenses, or the equivalent, have been obtained and are current and in full force and effect.

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(d) The Mortgaged Property has not been damaged by fire, water, wind or other cause of loss or any previous damage to the Mortgaged Property has been fully restored.

(e) Neither Borrower, nor any general partner or managing member of Borrower, nor any Key Principal is currently (a) the subject of or a party to any completed or pending bankruptcy, reorganization or insolvency proceeding; or (b) the subject of any judgment unsatisfied of record or docketed in any court of the state in which the Mortgaged Property is located or in any court located in the United States.

(f) No part of the Mortgaged Property has been taken in condemnation or other like proceeding, nor is any proceeding pending, threatened or known to be contemplated for the partial or total condemnation or taking of the Mortgaged Property.

(g) Except for the Permitted Exceptions and as otherwise expressly permitted by the Loan Documents or otherwise approved by Lender in writing, no part of the Mortgaged Property is, or will become, subject to a second mortgage, deed of trust or other type of subordinate lien, and Borrower is not and will not engage in any subordinate financing with respect to the Mortgaged Property.

(h) All parties furnishing labor and materials have been paid in full and, except for such liens or claims insured against by the policy of title insurance to be issued in connection with the loan evidenced by the Note, there are no mechanics', laborers' or materialmen's liens or claims outstanding for work, labor or material's affecting the Mortgaged Property, whether prior to, equal with or subordinate to the lien of this Instrument.

(i) No person, party, firm or corporation has (a) any possessory interest in the Mortgaged Property or right to occupy the same except under and pursuant to the provisions of existing leases by and between tenant and Borrower, the material terms of all such leases having been previously disclosed to Lender, or (b) an option to purchase the Mortgaged Property or an interest therein, except for the purchase option in favor of the Borrower's general partner as expressly provided in Section 8.14 of the Borrower's amended and restated limited partnership agreement dated as of December 1, 2011 (the "Partnership Agreement") and of the right of first refusal in favor of Hispanic Housing Development Corporation, an Illinois not-for-profit corporation, as expressly provided in Section 8.15 of the Borrower's Partnership Agreement, provided that any such option and right of first refusal shall be expressly subordinated in all respects to the lien of this Instrument, including any restrictions on transfers herein contained, and subject to all transfer restrictions contained in this Instrument.

(j) Except as otherwise expressly approved by Lender in writing, Borrower does not own any real property or assets other than the Mortgaged Property and does not operate any business other than the management and operation of the Mortgaged Property. Borrower's organizational documents provide and shall continue to provide substantially to the effect that it was formed and organized solely for the purpose of owning and operating the Mortgaged Property.

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(k) Borrower has filed all federal, state, county and municipal tax returns required to have been filed by Borrower, and has paid all taxes which have become due pursuant to such returns or to any notice of assessment received by Borrower, and Borrower has no knowledge of any basis for additional assessment with respect to such taxes. To the best of Borrower's knowledge, there are not presently pending any special assessments against the Mortgaged Property or any part thereof.

(l) As of the date of the recording of this Mortgage with the Recorder of Cook County, Illinois, no part of the Mortgaged Property is included or assessed under or as part of another tax lot or parcel, and no part of any other property is included or assessed under or as part of the tax lot or parcels for the Mortgaged Property. The Mortgaged Property is served by all utilities required for the current use thereof and has access to public roads. All existing material Improvements lie within the boundaries of the Land.

(m) No material adverse change in the financial condition of Borrower, any general partner of Borrower (if Borrower is a partnership) or its managing member (if Borrower is a limited liability company) or its controlling shareholder (if Borrower is a corporation), or any Key Principal has occurred between the respective dates of the financial statements which were furnished to Lender relating to such entities or persons and the date hereof.

(n) The financial statements of Borrower, any general partner of Borrower (if Borrower is a partnership), any managing member (if Borrower is a limited liability company), and any Key Principal furnished to Lender prior to the date of this Instrument, reflect in each case a positive net worth as of the date thereof.

(o) Borrower is not presently insolvent, and the loan evidenced by the Note will not render Borrower insolvent. As used herein, the term "insolvent" means that the sum total of all of an entity's liabilities (whether secured or unsecured, contingent or fixed, or liquidated or unliquidated) is in excess of the value of all such entity's non-exempt assets, i.e., all of the assets of the entity that are available to satisfy claims of creditors.

(p) After the loan evidenced by the Note is made, Borrower will have sufficient working capital, including cash flow from the Mortgaged Property or other assets, not only to adequately maintain the Mortgaged Property, but also to pay all of Borrower's outstanding debts as they come due.

(q) There has been no material change in the occupancy of the Mortgaged Property or the business, financial condition or results of operations of Borrower, the Mortgaged Property or to the best of Borrower's knowledge, any tenant of the Mortgaged Property, from the date of the commitment letter issued by Lender in connection with the loan evidenced by the Note.

(r) Borrower has good and marketable title to the Mortgaged Property and has the right to mortgage, grant, bargain, sell, pledge, assign, warrant, transfer and convey the same and Borrower possesses an unencumbered fee simple absolute or leasehold estate in the Land and the Improvements and it owns the Mortgaged Property free and clear of all liens, encumbrances and charges whatsoever except for those exceptions shown in the title insurance policy insuring the

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lien of this Instrument and any liens, encumbrances or security interests contemplated or permitted by the Loan Documents (the “**Permitted Exceptions**”). Except to the extent of the income and rent restrictions in the Regulatory Agreements, none of the Permitted Exceptions, individually or in the aggregate, materially interferes with the benefits of the security intended to be provided by the Loan Documents, materially and adversely affects the value of the Mortgaged Property, impairs the use or the operation of the Mortgaged Property or impairs Borrower’s ability to pay its obligations in a timely manner.

(s) Borrower (a) is duly organized, validly existing and in good standing under the laws of its state of organization or incorporation; (b) is duly qualified to transact business and is in good standing in the state where the Mortgaged Property is located; and (c) has all necessary approvals, governmental and otherwise, and full power and authority to own, operate and lease the Mortgaged Property. Borrower has full power, authority and legal right to execute, deliver and perform its obligations under the Loan Documents.

(t) There is no action, suit or proceeding, judicial, administrative or otherwise (including any condemnation or similar proceeding), pending or, to the best of Borrower’s knowledge, threatened or contemplated against Borrower or Key Principal or against or affecting the Mortgaged Property that has not been disclosed to Lender by Borrower in writing.

(u) The most recent rent roll for the Mortgaged Property delivered to and approved by Lender in connection with the closing of the loan evidenced by the Note was true and correct in all material respects as of the date thereof.

51. ADDITIONAL COVENANTS.

Without limiting any other covenant or agreement of Borrower contained in this Instrument, Borrower hereby covenants and agrees with Lender as follows:

(a) Borrower shall comply with Section 42 of the Internal Revenue Code of 1986 and/or other applicable affordable housing compliance requirements to the extent any grants and/or tax credits are in place for Borrower and/or the Mortgaged Property.

(b) Borrower shall use the proceeds of the Indebtedness to purchase, develop or redevelop the Mortgaged Property or refinance or recapitalize any existing financing with respect to the Mortgaged Property in accordance with the terms of this Instrument.

(c) From and after the date of the recording of this Mortgage with the Recorder of Cook County, Illinois, Borrower shall maintain the Mortgaged Property as one or more separate tax lots and comply with all applicable subdivision laws of the state where the Mortgaged Property is located.

(d) Borrower shall assign to Lender its rights under any property management agreement relating to the Mortgaged Property pursuant to the Assignment of Management Agreement.

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52. EXTENDED LOW-INCOME HOUSING COMMITMENT.

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

53. USA PATRIOT ACT NOTICE.

Lender hereby notifies Borrower that pursuant to the requirements of the USA Patriot Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the “**Act**”), Lender is required to obtain, verify and record information that identifies Borrower, which information includes the name and address of Borrower and other information that will allow Lender to identify Borrower in accordance with the Act.

54. ERISA AND PROHIBITED TRANSACTIONS.

As of the date hereof and throughout the term of the Loan: (a) Borrower is not and will not be (i) an “employee benefit plan,” as defined in Section 3(3) of ERISA, (ii) a “governmental plan” within the meaning of Section 3(32) of ERISA, or (iii) a “plan” within the meaning of Section 4975(e) of the Code; (b) the assets of Borrower do not and will not constitute “plan assets” within the meaning of the United States Department of Labor Regulations set forth in Section 2510.3-101 of Title 29 of the Code of Federal Regulations; (c) transactions by or with Borrower are not and will not be subject to state statutes applicable to Borrower regulating investments of fiduciaries with respect to governmental plans; and (d) Borrower will not engage in any transaction that would cause any Obligation or any action taken or to be taken hereunder (or the exercise by Lender of any of its rights under the Mortgage or any of the other Loan Documents) to be a non-exempt (under a statutory or administrative class exemption) prohibited transaction under ERISA or Section 4975 of the Code. Borrower agrees to deliver to Lender such certifications or other evidence of compliance with the provisions of this Section as Lender may from time to time request.

55. LENDER’S STANDARD OF CONDUCT.

Nothing contained in this Agreement or any other Loan Document shall limit the right of Lender to exercise its business judgment or to act, in the context of the granting or withholding of any advance or consent under this Agreement or any other Loan Document, in a subjective manner, whether or not objectively reasonable under the circumstances, so long as Lender’s exercise of its business judgment or action is made or undertaken in good faith. Borrower and Lender intend by the foregoing to set forth and affirm their entire understanding with respect to the standard pursuant to which Lender’s duties and obligations are to be judged and the parameters within which Lender’s discretion may be exercised hereunder and under the other Loan Documents. As used herein, “good faith” means honesty in fact in the conduct and transaction concerned.

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56. NO PARTNERSHIP.

Nothing contained in this Agreement shall be construed in a manner to create any relationship between Borrower and Lender other than the relationship of borrower and lender and Borrower and Lender shall not be considered partners or co-venturers for any purpose on account of this Agreement.

57. NOTICES.

All Notices required or which any party desires to give hereunder or under any other Loan Document shall be in writing and, unless otherwise specifically provided in such other Loan Document, shall be deemed sufficiently given or furnished if delivered by personal delivery, by nationally recognized overnight courier service or by certified United States mail, postage prepaid, addressed to the party to whom directed at the applicable address set forth below (unless changed by similar notice in writing given by the particular party whose address is to be changed) or by facsimile. Any Notice shall be deemed to have been given either at the time of personal delivery or, in the case of courier or mail, as of the date of first attempted delivery at the address and in the manner provided herein, or, in the case of facsimile, upon receipt; provided that service of a Notice required by any applicable statute shall be considered complete when the requirements of that statute are met. Notwithstanding the foregoing, no notice of change of address shall be effective except upon actual receipt. This Section shall not be construed in any way to affect or impair any waiver of notice or demand provided in this Agreement or in any other Loan Document or to require giving of notice or demand to or upon any Person in any situation or for any reason.

The address and fax number of Borrower are:

North & Talman III Limited Partnership
325 N. Wells Street, Suite 800
Chicago, Illinois 60654
Attention: Mark Kruse
Facsimile: 312-602-6530

with a copy to:

Applegate & Horne-Thomsen
626 W. Jackson Blvd.
Suite 400
Chicago, Illinois 60651
Attention: William Skalitzky
Facsimile: (312) 491-4411

With a copy to:

Bank of America, N.A.
Mail Code: WA1-501-37-67
Fifth Avenue Plaza, Floor 37
800 5th Avenue
Seattle, WA 98104-3176
Attention: Todd McCain, Vice President
Facsimile: 206/585-8404

With a copy to:

Banc of America CDC Special Holding
Company, Inc.
c/o Bank of America Merrill Lynch
Tax Credit Equity Investment Asset
Management
NC1-007-11-25
100 North Tryon Street
Charlotte, NC 28202
Attention: Nicole Baldon, Vice President

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Facsimile: 980/386-6662

The address and fax number of Lender are:

Bank of America, N.A.
 135 S. LaSalle St., Suite 611
 Chicago, IL 60604
 Attention: Kristine L. Jurmu
 Fax Number: (312) 453-4736

With a copy to:

Bank of America, N.A.
 Loan Administration
 Mail Code: MO1-076-03-06
 7800 Forsyth Blvd, Suite 350
 Clayton, MO 63105
 Attention: Loan Administration Manager
 Fax Number: 214-290-9612

58. PERMITTED SUCCESSORS AND ASSIGNS.

(a) Each and every one of the covenants, terms, provisions and conditions of this Agreement and the Loan Documents shall apply to, bind and inure to the benefit of Borrower, its successors and those assigns of Borrower consented to in writing by Lender, and shall apply to, bind and inure to the benefit of Lender and the endorsees, transferees, successors and assigns of Lender, and all Persons claiming under or through any of them.

(b) Borrower agrees not to transfer, assign, pledge or hypothecate any right or interest in any payment or advance due pursuant to this Agreement, or any of the other benefits of this Agreement, without the prior written consent of Lender, which consent may be withheld by Lender in its sole and absolute discretion. Any such transfer, assignment, pledge or hypothecation made or attempted by Borrower without the prior written consent of Lender shall be void and of no effect. No consent by Lender to an assignment shall be deemed to be a waiver of the requirement of prior written consent by Lender with respect to each and every further assignment and as a condition precedent to the effectiveness of such assignment.

59. INVESTOR LIMITED PARTNER.

(a) Borrower acknowledges and agrees that Lender may, in Lender's sole discretion, provide the Investor Limited Partner with any notices required to be delivered to Borrower hereunder and that Lender may from time to time, in Lender's sole discretion, communicate directly with the Investor Limited Partner with regard to the loan evidenced by the Note, the Property and the Loan Documents. The notice address for the Investor Limited Partner is as follows:

Investor Member:

Bank of America, N.A.
 Mail Code: WA1-501-37-67
 Fifth Avenue Plaza, Floor 37
 800 5th Avenue
 Seattle, WA 98104-3176
 Attention: Todd McCain, Vice President

With a copy to:

Banc of America CDC Special Holding
 Company, Inc.
 c/o Bank of America Merrill Lynch
 Tax Credit Equity Investment Asset
 Management
 NC1-007-11-25

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Facsimile: 206/585-8404

100 North Tryon Street
Charlotte, NC 28202
Attention: Nicole Baldon, Vice President
Facsimile: 980/386-6662

(b) Borrower shall promptly notify Lender of any change in the notice address of the Investor Limited Partner.

(c) Borrower shall, upon request by Lender, provide Lender with the names of all owners of direct interests in Borrower, Investor Limited Partner and Borrower's Managing Limited Partner(s).

(d) Borrower shall provide Lender prior written notice of any transfer of a direct or indirect interest in Borrower.

(e) Notwithstanding anything to the contrary contained herein or in any other Loan Document, Lender agrees that it shall not complete a foreclosure sale of the Property or record a deed-in-lieu of foreclosure with respect to the Property (each, a "Foreclosure Remedy") unless and until Investor Limited Partner has first been given thirty (30) days written notice of the Event(s) of Default or the defaults, giving rise to Lender's right to complete such Foreclosure Remedy, and Investor Limited Partner has failed, within such thirty (30) day period, to cure such Event(s) of Default and/or defaults; provided, however, that Lender shall be entitled during such thirty (30) day period to continue to pursue all of its rights and remedies under the Loan Documents, including but not limited to acceleration of the Note (subject to any de-acceleration provisions specifically set forth in the Loan Documents, commencement and pursuit of foreclosure (but not completion of the foreclosure sale), any guaranty (subject to any notice and cure provisions contained therein), and/or any other Loan Document. The timely cure of any such Event(s) of Default and/or defaults by Investor Limited Partner shall be accepted by Lender to the same extent as if such cure was caused or performed by the Borrower. During such cure period, Lender shall also be entitled to interest at the Default Rate as provided in Section 8 of the Note and to late charges as provided in Section 7 of the Note. In the event Lender has accelerated the Note and the Investor Limited Partner cures all Events of Default giving rise to such acceleration within the thirty (30) day cure period described above, such cure shall have the effect of de-accelerating the Note; provided, however, that such de-acceleration shall not waive or limit any of Lender's rights to accelerate the Note or exercise any other remedies under the Loan Documents as to any future or continuing Events of Default. It is the express intent of the parties hereunder that Lender shall have the right to pursue all rights and remedies except completion of a Foreclosure Remedy without liability to Investor Limited Partner for failure to provide notice to Investor Limited Partner, and that Lender's liability hereunder shall be expressly limited to actual damages to Investor Limited Partner directly caused by Lender's completion of a Foreclosure Remedy without Investor Limited Partner receiving the notice and opportunity to cure described above. Lender's failure to give any such notice for any reason shall not act to impair or waive any remedy or right of Lender under this Instrument or any other Loan Document. Unless expressly prohibited by law, Investor Limited Partner agrees to record a "Request for Notice," or similar appropriate document requesting notice of any foreclosure sale, in the Official Records of the County in which the Property is located, and in the event the Lender has failed to sooner provide notice to Investor Limited Partner, the receipt of such notice

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of foreclosure sale shall be deemed to be notice to the Investor Limited Partner as contemplated hereunder.

60. LIMITED RECOURSE. This indebtedness evidenced by the Note secured by this Mortgage is nonrecourse to the Borrower to the extent expressly provided in the Note.

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EXHIBIT C

ENVIRONMENTAL REPORTS

Conditions disclosed in the following reports:

1. Phase I Environmental Site Assessment by GSG Consultants, Inc. dated March 23 2009.
2. Phase I Environmental Site Assessment by Benchmark Environmental Services, Ltd. dated November 15, 2011.
3. Phase II Subsurface Investigation by Benchmark Environmental Services, Ltd. dated September 19, 2011.
4. Asbestos Removal and Lead-Based Paint Inspection by Benchmark Environmental Services, Ltd. dated August 11, 2011
5. Updated All Appropriate Inquiry Phase I Environmental Site Assessment (Project No. 11402) by Benchmark Environmental Services, Ltd. dated November 16, 2011.
6. The following documents evidencing the proper removal and disposal of the above ground storage tank previously located on the Property in accordance with applicable Laws: (i) the Above Ground Tank Removal Permit issued by the City of Chicago, (ii) uniform Hazardous Waste Manifest No 003752104-JJK dated November 15, 2011; and (iii) Certificate of Storage Tank Disposal.

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EXHIBIT D

PERMITTED EXCEPTIONS

1. Low-Income Housing Tax Credit Extended Use Agreement dated as of December 22, 2011 (the "Extended Use Agreement") between Borrower and the Illinois Housing Development Authority, a body politic and corporate of the State of Illinois ("IHDA").
2. Illinois Affordable Housing Tax Credit Regulatory Agreement dated as of December 22, 2011 between Borrower and IHDA.
3. Regulatory Agreement dated as of December 22, 2011 between the Chicago Low-Income Housing Trust Fund, an Illinois not-for-profit corporation ("CLIHTF"), and Borrower
4. North & Talman III Limited Partnership Redevelopment Agreement dated as of December 22, 2011 (the "TIF RDA") by and among the City of Chicago, an Illinois municipal corporation (the "City"), Borrower, Hispanic Housing NT III, LLC, an Illinois limited liability company ("HH NT III"), and Hispanic Housing Development Corporation, an Illinois not-for-profit corporation ("HHDC").
5. Junior Mortgage, Security Agreement and Financing Statement (the "CLIHTF Mortgage") by the Partnership in favor of CLIHTF, provided that such junior mortgage is expressly subordinated to the lien of this Mortgage.
6. Junior Mortgage, Assignment of Rents and Security Agreement dated as of December 22, 2011 (the "TIF Mortgage"), from Borrower in favor of HH NT III, to secure a note dated as of December 22, 2011 from Borrower to HH NT III in the principal sum of Two Million Three Hundred Fifty-Eight Thousand Four Hundred Ninety-Six and No/100 Dollars (\$2,358,496.00), provided that such junior mortgage is expressly subordinated to the lien of this Mortgage
7. Junior Mortgage, Assignment of Rents and Security Agreement dated as of December 22, 2011 (the "SF Mortgage"), from Borrower in favor of HHDC, to secure a purchase money note dated as of December 22, 2011 from Borrower to HHDC in the principal sum of Three Hundred Five Thousand Three Hundred Seven and No/100 Dollars (\$305,307.00), provided that such junior mortgage is expressly subordinated to the lien of this Mortgage.
8. Junior Mortgage, Assignment of Rents and Security Agreement dated as of December 22, 2011 (the "Sponsor Mortgage"), from Borrower in favor of HHDC, to secure a note dated as of December 22, 2011 from Borrower to HHDC in the principal sum of One Hundred Thirty-Nine Thousand Seven Hundred Fifty-Five and No/100 Dollars (\$139,755.00), provided that such junior mortgage is expressly subordinated to the lien of this Mortgage.
9. The unrecorded purchase option in favor of the General Partner and the unrecorded right of first refusal in favor of HHDC, provided that such purchase option and right of first

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refusal is expressly subordinated to the lien of this Mortgage, and subject to all transfer restrictions contained in this Mortgage.

10. Subordination Agreement between and among Lender, CLIHTF and Borrower, whereby the CLIHTF Mortgage is subordinated to this Mortgage, among other provisions;
11. Subordination Agreement between and among Lender, HH NT III and Borrower, whereby the TIF Mortgage is subordinated to this Mortgage, among other provisions;
12. Subordination Agreement between and among Lender, HHDC and Borrower whereby the SF Mortgage and Sponsor Mortgage are subordinated to the BofA Mortgage, among other provisions;

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