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WHEN RECORDED MAIL TO

David K. Conrad, Esquire
Bricker & Eckler
100 South Third Street
Columbus, Ohio 43215

95081831

SPACE ABOVE THIS LINE FOR RECORDER'S USE

MULTIFAMILY MORTGAGE, ASSIGNMENT OF RENTS AND SECURITY AGREEMENT

\$567.00

T#0012 TRAN 2213 02/02/95 15:07:00
#4228 # KB *-95-081831
COOK COUNTY RECORDER

THIS MORTGAGE (herein "Instrument") is made as of this 30th day of January, 1995, between the Mortgagor/Grantor, THORNCREEK APARTMENTS II, L.L.C., a Michigan limited liability company, whose address is 36700 Grand River, Farmington Hills, Michigan 48335 (herein "Borrower"), and the Mortgagee, BERKELEY FEDERAL BANK & TRUST FSB, a federal savings bank organized and existing under the laws of the United States of America, whose address is 515 North Flagler Drive, The Pavilion, 4th Floor, West Palm Beach, Florida 33401 (herein "Lender").

WHEREAS, Borrower is indebted to Lender in the principal sum of Five Million Three Hundred Ninety-Two Thousand Five Hundred Dollars (\$5,392,500.00), which indebtedness is evidenced by Borrower's note dated January 30, 1995 (herein "Note"), providing for monthly installments of principal and interest, with the balance of the indebtedness, if not sooner paid, due and payable on February 1, 2005.

TO SECURE TO LENDER (a) the repayment of the indebtedness evidenced by the Note, with interest thereon, and all renewals, extensions and modifications thereof; (b) the repayment of any future advances, with interest thereon, made by Lender to Borrower (herein "Future Advances"); (c) the repayment of the indebtedness evidenced by that certain promissory note (the "Thorncreek Apartments I Note") dated January 30, 1995 in the original principal amount of \$4,580,759.00 executed by Thorncreek Apartments I, L.L.C., a Michigan limited liability company ("Thorncreek Apartments I") and payable to the order of Lender and all renewals, extensions and modifications thereof and the payment and performance of all obligations of Thorncreek Apartments I to Lender in connection with the indebtedness evidenced by such promissory note, including but not limited to the obligations of Thorncreek Apartments I under the documents evidencing, securing and otherwise pertaining to such indebtedness; (d) the repayment of the indebtedness evidenced by that certain promissory note (the "Thorncreek Apartments II Note") dated January 30, 1995 in the original principal amount of \$4,334,720.00 executed by Thorncreek Apartments II, L.L.C., a Michigan limited liability company ("Thorncreek Apartments II") and payable to the order of Lender and all renewals, extensions and modifications thereof and the payment and performance of all obligations of Thorncreek Apartments II to Lender in connection with the indebtedness evidenced by such promissory note, including but not limited to the obligations of Thorncreek Apartments II under the documents evidencing, securing and otherwise pertaining to such indebtedness; (e) the payment of all other sums, with interest thereon, advanced in accordance herewith to protect the security of this Instrument and (e) the performance of the covenants and agreements of Borrower herein contained, Borrower does hereby mortgage, grant, convey and assign to Lender, with power of sale, the following described property located in the City of Park Forest, County of Cook, State of Illinois:

SEE ATTACHED EXHIBIT "A"

Together with all right, title, interest and estate of Borrower now owned, or hereafter acquired, in and to the following property, rights, interest and estates now or hereafter located on the Property, relating to, or to be used in connection with, the acquisition or refinancing, repair, ownership, management and operation of a multifamily rental housing project (the "Project"), located on the Property:

(a) All buildings, improvements and tenements now or hereafter erected on the Property, and all heretofore or hereafter vacated alleys and streets abutting the Property, and all easements, rights, appurtenances, rents (subject however to the assignment of rents to Lender herein), royalties, mineral, oil and gas rights and profits, water, water rights and water stock appurtenant to the Property, and all fixtures, machinery, equipment, engines, boilers, incinerators, building materials, appliances and goods of every nature whatsoever now or hereafter located in, on, or used, or intended to be used in connection with the Property, including, but not limited to, those for the purposes of supplying or distributing heating, cooling, electricity, gas, water, air and light; and all elevators, and related machinery and equipment, fire prevention and extinguishing apparatus, security and access control apparatus, plumbing, bath tubs, water heaters, water closets, sinks, ranges, stoves, refrigerators, dishwashers, disposals, washers, dryers, awnings, storm windows, storm doors, screens, blinds, shades, curtains and curtain rods, mirrors, cabinets, paneling, rugs, attached floor coverings, furniture, pictures, antennas, and trees and plants;

(b) All materials now owned or hereafter acquired by the Borrower and intended for construction, reconstruction, alteration and repair of any building, structure or improvement now or hereafter erected or placed on the Property, all of which materials shall be deemed to be included within the Project immediately upon the delivery thereof to the Project;

(c) All of the walks, fences, driveways, apparatus, fittings, and other goods and other personal property of every kind and description whatsoever, now owned or hereafter acquired by the Borrower and attached to or contained in and used or usable in connection with any present or future

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operation of the Project, or facilities erected or to be erected in or upon the Property; and every renewal or replacement thereof or articles in substitution thereof, whether or not the same are now or hereafter attached to the Property in any manner; all except for any right, title or interest therein owned by any tenant (it being agreed that all personal property owned by the Borrower and placed by it on the Property shall, so far as permitted by law, be deemed to be affixed to the Property, appropriated to its use, and covered by this security interest);

(d) All of the Borrower's right, title and interest in and to any and all judgments, awards of damages (including but not limited to severance and consequential damages), payments, proceeds, settlements or other compensation (collectively, the "Awards") heretofore or hereafter made, including interest thereon, and the right to receive the same, as a result of, in connection with, or in lieu of: (i) any taking of the Property or any part thereof by the exercise of the power of condemnation or eminent domain; (ii) any change or alteration of the grade of any street or (iii) any other injury or decrease in the value of the Property or any part thereof (including but not limited to destruction or decrease in value by fire or other casualty), all of which Awards, rights thereto and shares therein are hereby assigned to the Lender, who is hereby authorized to collect and receive the proceeds thereof and to give receipts and acquittances therefor and to apply, at its option, the net proceeds thereof, after deducting expenses of collection, as a credit upon any portion, as selected by the Lender, of the indebtedness secured by the Loan Documents;

(e) All of the Borrower's right, title and interest in and to any and all payments, proceeds, settlements or other compensation heretofore or hereafter made, including any interest thereon, and the right to receive the same from any and all insurance policies covering the Property or any portion thereof, or any of the other property described herein;

(f) The interest of the Borrower in and to all of the rents, royalties, issues, profits, revenues, income and other benefits of the Property, or arising from the use or enjoyment of all or any portion thereof, or from any lease or agreement pertaining thereto, and all right, title and interest of the Borrower in and to, and remedies under, all contract rights, accounts receivable and general intangibles arising out of the Property, or any part thereof, and of the other property described herein, or any part thereof, both now in existence or hereafter entered into, together with all proceeds (cash and non-cash) thereof; and including, without limitation, all cash or securities deposited thereunder to secure performance by the lessees of their obligations thereunder;

(g) All of the Borrower's rights, options, powers and privileges in and to (but not the Borrower's obligations and burdens under) any construction contract, architectural and engineering agreements and management contracts pertaining to the construction, development, ownership, equipping and management of the Property and all of the Borrower's right, title and interest in and to (but not the Borrower's obligations and burdens under) all architectural, engineering and similar plans, specifications, drawings, reports, surveys, plats, permits and the like, contracts for construction, operation and maintenance of, or provision of services to, the Property or any of the other property described herein, and all sewer taps and allocations, agreements for utilities, bonds and the like, all relating to the Property;

(h) All intangible personal property, accounts, licenses, permits, instruments, contract rights, and chattel paper of the Borrower relating to the Project, including but not limited to cash; accounts receivable; bank accounts; certificates of deposit; securities; promissory notes; rents; rights (if any) to amounts held in escrow; insurance proceeds; condemnation rights; deposits; judgments, liens and causes of action; warranties and guarantees. Provided, however, that the security interest granted herein shall not include any of the foregoing which do not relate to the operation of the Project;

(i) The interest of the Borrower in any cash escrow fund and in any and all funds, securities, instruments, documents and other property which are at any time paid to, deposited with, under the control of, or in the possession of the Lender or any of its agents, branches, affiliates, correspondents or others acting on its behalf, which rights shall be in addition to any right of set-off or right of lien that the Lender may otherwise enjoy under applicable law, regardless of whether the same arose out of or relates in any way, whether directly or indirectly, to the Project located upon the Property;

(j) The interest of the Borrower in and to any and all funds created or established and held by the trustee pursuant to any indenture of trust or similar instrument authorizing the issuance of bonds or notes for the purpose of financing the Project located upon the Property;

(k) All inventory, including raw materials, components, work-in-process, finished merchandise and packing and shipping materials owned by the Borrower and located on the Property;

(l) Proceeds, products, returns, additions, accessions and substitutions of and to any or all of the above, but not including sale proceeds of a permitted transfer of the Project;

(m) All of the records and books of account now or hereafter maintained by or on behalf of the Borrower in connection with the Project;

(n) All names now or hereafter used in connection with the Project and the goodwill associated therewith;

(o) All easements, rights-of-way, strips and gores of land, streets, ways, alleys, passages, sewer rights, water, water courses, water rights and powers, air rights and development rights, and all estates, rights, titles, interests, privileges, liberties, tenements, hereditaments and appurtenances of any nature whatsoever, in any way belonging, relating or pertaining to the Property and the reversion and reversions, remainder and remainders, and all land lying in the bed of any street, road or avenue, opened or proposed, in front of or adjoining the Property to the center line thereof and all the estates, rights, titles, interests, dower and rights of dower, curtesy and rights of curtesy, property, possession, claim and demand whatsoever both at law and in equity, of the Borrower of, in and to the Property and every part and parcel thereof, with the appurtenances thereto;

(p) Any of the above arising or acquired by the Borrower or to which the Borrower may have a legal or beneficial interest in on the date hereof and at any time in the future; and

(q) Any of the above which may become fixtures by virtue of attachment;

all of which, including replacements and additions thereto, shall be deemed to be and remain a part of the real property covered by this Instrument; and all of the foregoing, together with said real property (or the leasehold estate in the event this Instrument is on a leasehold) are herein referred to as the "Property".

Borrower covenants that Borrower is lawfully seized of the estate hereby conveyed and has the right to grant, convey and assign the Property (and, if this Instrument is on a leasehold, that the ground lease is in full force and effect without modification except as noted above and without default on the part of either lessor or lessee thereunder), that the Property is unencumbered, and that Borrower will warrant and defend generally the title to the 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 insuring Lender's interest in the Property.

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Uniforms Covenants. Borrower and Lender covenant and agree as follows:

1. PAYMENT OF PRINCIPAL AND INTEREST. Borrower shall promptly pay when due the principal of and interest on the indebtedness evidenced by the Note, any prepayment and late charges provided in the Note and all other sums secured by this Instrument. The Note may only be prepaid in accordance with the prepayment provisions set forth in the Note.

2A. FUNDS FOR TAXES, INSURANCE AND OTHER CHARGES. Subject to applicable law or to a written waiver by Lender, Borrower shall pay to Lender on the day monthly installments of principal or interest are payable under the Note (or on another day designated in writing by Lender), until the Note is paid in full, a sum (herein "Funds") equal to one-twelfth of (a) the yearly water and sewer rates and taxes and assessments which may be levied on the Property, (b) the yearly ground rents, if any, (c) the yearly premium installments for fire and other hazard insurance, rent loss insurance and such other insurance covering the Property as Lender may require pursuant to Section 5 hereof, (d) the yearly premium installments for mortgage insurance, if any, and (e) if this Instrument is on a leasehold, the yearly fixed rents, if any, under the ground lease, all as reasonably estimated initially and from time to time by Lender on the basis of assessments and bills and reasonable estimates thereof. Any waiver by Lender of a requirement that Borrower pay such Funds may be revoked by Lender, in Lender's sole discretion, at any time upon notice in writing to Borrower. Lender may require Borrower to pay to Lender, in advance, such other Funds for other taxes, charges, premiums, assessments and impositions in connection with Borrower or the Property which Lender shall reasonably deem necessary to protect Lender's interests (herein "Other Impositions"). Unless otherwise provided by applicable law, Lender may require Funds for Other Impositions to be paid by Borrower in a lump sum or in periodic installments, at Lender's option.

The Funds shall be held in an institution(s) the deposits or accounts of which are insured or guaranteed by a Federal or state agency (including Lender if Lender is such an institution). Lender shall apply the Funds to pay said rates, rents, taxes, assessments, insurance premiums and Other Impositions so long as Borrower is not in breach of any covenant or agreement of Borrower in this Instrument. Lender shall make no charge for so holding and applying the Funds, analyzing said account or for verifying and compiling said assessments and bills, unless Lender pays Borrower interest, earnings or profits on the Funds and applicable law permits Lender to make such a charge. Borrower and Lender may agree in writing at the time of execution of this Instrument that interest on the Funds shall be paid to Borrower and unless such agreement is made or applicable law requires interest, earnings or profits to be paid, Lender shall not be required to pay Borrower any interest, earnings or profits on the Funds. Lender shall give to Borrower, without charge, an annual accounting of the Funds in Lender's normal format showing credits and debits to the Funds and the purpose for which each debit to the Funds was made. The Funds are pledged as additional security for the sums secured by this Instrument.

If the amount of the Funds held by Lender at the time of the annual accounting thereof shall exceed the amount deemed necessary by Lender to provide for the payment of water and sewer rates, taxes, assessments, insurance premiums, rents and Other Impositions, as they fall due, such excess shall be credited to Borrower on the next monthly installment or installments of Funds due. If at any time the amount of the Funds held by Lender shall be less than the amount deemed necessary by Lender to pay water and sewer rates, taxes, assessments, insurance premiums, rents and Other Impositions, as they fall due, Borrower shall pay to Lender any amount necessary to make up the deficiency within thirty days after notice from Lender to Borrower requesting payment thereof.

Upon Borrower's breach of any covenant or agreement of Borrower in this Instrument, Lender may apply, in any amount and in any order as Lender shall determine in Lender's sole discretion, any Funds held by Lender at the time of application (i) to pay rates, rents, taxes, assessments, insurance premiums and Other Impositions which are now or will hereafter become due or (ii) as a lien against sums secured by this Instrument. Upon payment in full of all sums secured by this Instrument, Lender shall promptly refund to Borrower any Funds held by Lender.

2B. COLLATERAL AGREEMENTS. The Borrower shall deposit with the Lender the amounts required by the Replacement Reserve and Security Agreement (the "Replacement Reserve Agreement") and any Completion/Repair and Security Agreement (the "Completion/Repair Agreement") entered into between the Borrower and the Lender, dated as of the date of the Note, at the times required by the Replacement Reserve Agreement and the Completion/Repair Agreement, and shall perform all other obligations as and when required pursuant to the Replacement Reserve Agreement and the Completion/Repair Agreement. As used herein, the term "Collateral Agreement" shall mean any of the Replacement Reserve Agreement, the Completion/Repair Agreement and any similar agreement which has been entered into between the Borrower and the Lender in connection with the loan evidenced by the Note.

3. APPLICATION OF PAYMENTS. Unless applicable law provides otherwise, all payments received by Lender from Borrower under the Note or this Instrument shall be applied by Lender in the following order of priority: (a) amounts payable to Lender by Borrower under Section 2A and 2B hereof; (b) interest payable on the Note; (c) principal of the Note; (d) interest payable on advances made pursuant to Section 8 hereof; (e) principal of advances made pursuant to Section 8 hereof; (f) interest payable on any Future Advances, provided that if more than one Future Advance is outstanding, Lender may apply payments received among the amounts of interest payable on the Future Advances in such order as Lender, in Lender's sole discretion, may determine; (g) principal of any Future Advance, provided that if more than one Future Advance is outstanding, Lender may apply payments received among the principal balances of the Future Advances in such order as Lender, in Lender's sole discretion, may determine; and (h) any other sums secured by this Instrument in such order as Lender, at Lender's option, may determine; provided however, that Lender may, at Lender's option, apply any sums payable pursuant to Section 8 hereof prior to interest on and principal of the Note, but such application shall not otherwise affect the order of priority of application specified in this Section 3. Notwithstanding the preceding sentence, (i) the Lender shall be permitted to apply any partial payment received from the Borrower in any manner determined by the Lender and in any order of priority of application as determined by the Lender, in the Lender's sole discretion and (ii) upon any breach of any covenant or agreement of the Borrower in the Instrument, the Note or any other Loan Document, the Lender shall be permitted to apply any funds held pursuant to any Collateral Agreement in any manner which is permitted pursuant to such Collateral Agreement and in any order of priority of application as determined by the Lender, in the Lender's sole discretion. Notwithstanding any provision hereof to the contrary, all payments received by Lender from Borrower under the Note or this Instrument, shall not be applied to any sums due under the Thorncreek Apartments I Note or the Thorncreek Apartments II Note unless and until the Note has been paid in full and all sums due under the Loan Documents have been paid in full.

4. CHARGES; LIENS. Borrower shall pay all water and sewer rates, rents, taxes, assessments, premiums, and Other Impositions attributable to the Property at Lender's option in the manner provided under Section 2A hereof or, if not paid in such manner, by Borrower making payment, when due, directly to the payee thereof, or in such other manner as Lender may designate in writing. Borrower shall promptly furnish to Lender all notices of amounts due under this Section 4, and in the event Borrower shall make payment directly, Borrower shall promptly furnish to Lender receipts evidencing such payments. Borrower shall promptly discharge any lien which has, or may have, priority over or equality with, the lien of this Instrument, and Borrower shall pay, when due, the claims of all persons supplying labor or materials to or in connection with the Property without Lender's prior written permission. Borrower shall not allow any lien inferior to this Instrument to be perfected against the Property.

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5. **HAZARD INSURANCE.** Borrower shall keep the improvements now existing or hereafter erected on the Property insured by carriers at all times satisfactory to Lender against loss by fire, hazards included within the term "extended coverage", rent loss and such other hazards, casualties, liabilities and contingencies as Lender (and, if this Instrument is on a leasehold, the ground lease) shall require and in such amounts and for such periods as Lender shall require. All premiums on insurance policies shall be paid, at Lender's option, in the manner provided under Section 2A hereof, or by Borrower making payment, when due, directly to the carrier, or in such other manner as Lender may designate in writing.

All insurance policies and renewals thereof shall be in a form acceptable to Lender and shall include a standard mortgage clause in favor of and in form acceptable to Lender. Lender shall have the right to hold the policies, and Borrower shall promptly furnish to Lender all renewal notices and all receipts of paid premiums. At least thirty days prior to the expiration date of a policy, Borrower shall deliver to Lender a renewal policy in form satisfactory to Lender. If this Instrument is on a leasehold, Borrower shall furnish Lender a duplicate of all policies, renewal notices, renewal policies and receipts of paid premiums if, by virtue of the ground lease, the originals thereof may not be supplied by Borrower to Lender.

In the event of loss, Borrower shall give immediate written notice to the insurance carrier and to Lender. Borrower hereby authorizes and empowers Lender as attorney-in-fact for Borrower to make proof of loss, to adjust and compromise any claim under insurance policies, to appear in and prosecute any action arising from such insurance policies, to collect and receive insurance proceeds, and to deduct therefrom Lender's expenses incurred in the collection of such proceeds; provided however, that nothing contained in this Section 5 shall require Lender to incur any expense or take any action hereunder. Borrower further authorizes Lender, at Lender's option, (a) to hold the balance of such proceeds to be used to reimburse Borrower for the cost of reconstruction or repair of the Property or (b) to apply the balance of such proceeds to the payment of the sums secured by this Instrument, whether or not then due, in the order of application set forth in Section 3 hereof (subject, however, to the rights of the lessor under the ground lease if this Instrument is on a leasehold).

If the insurance proceeds are held by Lender to reimburse Borrower for the cost of restoration and repair of the Property, the Property shall be restored to the equivalent of its original condition or such other condition as Lender may approve in writing. Lender may, at Lender's option, condition disbursement of said proceeds on Lender's approval of such plans and specifications of an architect satisfactory to Lender, contractor's cost estimates, architect's certificates, waivers of liens, sworn statements of mechanics and material men and such other evidence of costs, percentage completion of construction, application of payments, and satisfaction of liens as Lender may reasonably require. If the insurance proceeds are applied to the payment of the sums secured by this Instrument, any such application of proceeds to principal shall not extend or postpone the due dates of the monthly installments referred to in Sections 1, 2A and 2B hereof or change the amounts of such installments. If the Property is sold pursuant to Section 27 hereof or if Lender acquires title to the Property, Lender shall have all of the right, title and interest of Borrower in and to any insurance policies and unearned premiums thereon and in and to the proceeds resulting from any damage to the Property prior to such sale or acquisition.

6. **PRESERVATION AND MAINTENANCE OF PROPERTY; LEASEHOLDS.** Borrower: (a) shall not commit or permit impairment or deterioration of the Property; (b) shall not abandon the Property; (c) shall restore or repair promptly and in a good and workmanlike manner all or any part of the Property to the equivalent of its original condition, or such other condition as Lender may approve in writing, in the event of any damage, injury or loss thereto, whether or not insurance proceeds are available to cover in whole or in part the costs of such restoration or repair; (d) shall keep the Property, including improvements, fixtures, equipment, machinery and appliances thereon in good repair and shall replace fixtures, equipment, machinery and appliances on the Property when necessary to keep such items in good repair; (e) shall comply with all laws, ordinances, regulations and requirements of any governmental body applicable to the Property; (f) shall provide for professional management of the Property by a residential rental property manager satisfactory to Lender pursuant to a contract approved by Lender in writing, unless such requirement shall be waived by Lender in writing; (g) shall generally operate and maintain the Property in a manner to ensure maximum rentals and (h) shall give notice in writing to Lender of and, unless otherwise directed in writing by Lender, appear in and defend any action or proceeding purporting to affect the Property, the security of this Instrument or the rights or powers of Lender. Neither Borrower nor any tenant or other person shall remove, demolish or alter any improvement now existing or hereafter erected on the Property or any fixture, equipment, machinery or appliance in or on the Property except when incident to the replacement of fixtures, equipment, machinery and appliances with items of like kind.

If this Instrument is on a leasehold, Borrower: (i) shall comply with the provisions of the ground lease; (ii) shall give immediate written notice to Lender of any default by lessor under the ground lease or of any notice received by Borrower from such lessor of any default under the ground lease by Borrower; (iii) shall exercise any option to renew or extend the ground lease and give written confirmation thereof to Lender within thirty days after such option becomes exercisable; (iv) shall give immediate written notice to Lender of the commencement of any remedial proceedings under the ground lease by any party thereto and, if required by Lender, shall permit Lender as Borrower's attorney-in-fact to control and act for Borrower in any such remedial proceedings and (v) shall within thirty days after request by Lender obtain from the lessor under the ground lease and deliver to Lender the lessor's restoration certificate required thereunder, in any. Borrower hereby expressly transfers and assigns to Lender the benefit of all covenants contained in the ground lease, whether or not such covenants run with the land, but Lender shall have no liability with respect to such covenants nor any other covenants contained in the ground lease.

Borrower shall not surrender the leasehold estate and interests herein conveyed nor terminate or cancel the ground lease creating said estate and interests, and Borrower shall not, without the express written consent of Lender, alter or amend said ground lease. Borrower covenants and agrees that there shall not be a merger of the ground lease, or of the leasehold estate created thereby, with the fee estate covered by the ground lease by reason of said leasehold estate or said fee estate, or any part of either, coming into common ownership, unless Lender shall consent in writing to such merger; if Borrower shall acquire such fee estate, then this Instrument shall simultaneously and without further action be spread so as to become a lien on such fee estate.

7. **USE OF PROPERTY.** Unless required by applicable law or unless Lender has otherwise agreed in writing, Borrower shall not allow changes in the use for which all or any part of the Property was intended at the time this Instrument was executed. Borrower shall not initiate or acquiesce in a change in the zoning classification of the Property without Lender's prior written consent.

8. **PROTECTION OF LENDER'S SECURITY.** If Borrower fails to perform the covenants and agreements contained in this Instrument, or if any action or proceeding is commenced which affects the Property or title thereto or the interest of Lender therein, including, but not limited to, eminent domain, insolvency, code enforcement, or arrangements or proceedings involving a bankrupt or decedent, then Lender at Lender's option may make such appearances, disburse such sums and take such action as Lender deems necessary, in its sole discretion, to protect Lender's interest, including, but not limited to: (a) disbursement of attorney's fees; (b) entry upon the Property to make repairs; (c) procurement of satisfactory insurance as provided in Section 5 hereof and (d) if this Instrument is on a leasehold, exercise of any option to renew or extend the ground lease on behalf of Borrower and the curing of any default of Borrower in the terms and conditions of the ground lease.

Any amounts disbursed by Lender pursuant to this Section 8, with interest thereon, shall become additional indebtedness of Borrower secured by this Instrument. Unless Borrower and Lender agree to other terms of payment, such amounts shall be immediately due and payable and shall bear interest from the date of disbursement at the rate stated in the Note unless collection from Borrower of interest at such rate would be contrary to applicable law, in which event such amounts shall bear interest at the highest rate which may be collected from Borrower under applicable law. Borrower hereby covenants and agrees that Lender

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shall be subrogated to the lien of any mortgage or other lien discharged, in whole or in part, by the indebtedness secured hereby. Nothing contained in this Section 8 shall require Lender to incur any expense or take any action hereunder.

9. **INSPECTION.** Lender may make or cause to be made reasonable entries upon and inspections of the Property. In the event the Lender or its representative is denied access to the Property, and the Lender provides the Borrower notice of a new date on which an inspection will be made and such date is at least seven (7) days after the date of such notice, and the Lender or its representative is denied access on such new inspection date, then Lender may, at the Lender's option, declare all sums secured by the Instrument immediately due and payable and the Lender may invoke any remedies permitted by Section 27.

10. **BOOKS AND RECORDS.** Borrower shall keep and maintain at all times at Borrower's address stated below, or such other place as Lender may approve in writing, complete and accurate books of accounts and records adequate to reflect correctly the results of the operation of the Property and copies of all written contracts, leases and other instruments which affect the Property. Such books, records, contracts, leases and other instruments shall be subject to examination and inspection at any reasonable time by Lender. Borrower shall furnish to Lender, within ninety (90) days after the end of each fiscal year of Borrower, a balance sheet, a statement of income and expenses of the Property and a statement of changes in financial position, each in reasonable detail and certified by Borrower and if Borrower is in default after any applicable cure period with any provision of this Instrument, audited by an independent certified public accountant. Borrower shall furnish quarterly, within ten (10) business days after the end of each fiscal quarter of Borrower, a rent schedule for the Property, certified by Borrower, showing the name of each tenant, and for each tenant, the space occupied, the lease expiration date, the rent payable and the rent paid. Borrower shall furnish at any time upon Lender's request such other information with respect to the Property, the Borrower, any general partner, or guarantor of the Borrower as the Lender may reasonably request. All statements shall be prepared in accordance with generally accepted accounting principles consistently applied. If the Borrower fails to provide the Lender, in a timely manner, any financial information that the Borrower is required to provide under this Section 10 and if such failure remains uncured for seven (7) days after the Lender provides the Borrower notice of such failure, then the Lender may, at the Lender's option, declare all sums secured by the Instrument immediately due and payable and the Lender may invoke any remedies permitted by Section 27 ("Acceleration; Remedies") of the Instrument.

11. **CONDEMNATION.** Borrower shall promptly notify Lender of any action or proceeding relating to any condemnation or other taking, whether direct or indirect, of the Property, or part thereof, and Borrower shall appear in and prosecute any such action or proceeding unless otherwise directed by Lender in writing. Borrower authorizes Lender, at Lender's option, 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 or other taking of the Property, whether direct or indirect, and to settle or compromise any claim in connection with such condemnation or other taking. The proceeds of any award, payment or claim for damages, direct or consequential, in connection with any condemnation or other taking, whether direct or indirect, of the Property, or part thereof, or for conveyances in lieu of condemnation, are hereby assigned to and shall be paid to Lender subject, if this Instrument is on a leasehold, to the rights of lessor under the ground lease.

Borrower authorizes Lender to apply such awards, payments, proceeds or damages, after the deduction of Lender's expenses incurred in the collection of such amounts, at Lender's option, to restoration or repair of the Property or to payment of the sums secured by this Instrument, whether or not then due, in the order of application set forth in Section 3 hereof, with the balance, if any, to Borrower. Unless Borrower and Lender otherwise agree in writing, any application of proceeds to principal shall not extend or postpone the due date of the monthly installments referred to in Sections 1, 2A and 2B hereof or change the amount of such installments. Borrower agrees to execute such further evidence of assignment of any awards, proceeds, damages or claims arising in connection with such condemnation or taking as Lender may require.

12. **BORROWER AND LIEN NOT RELEASED.** From time to time, Lender may, at Lender's option, without giving notice to or obtaining the consent of Borrower, Borrower's successors or assigns or of any junior lien holder or guarantors, without liability on Lender's part and notwithstanding Borrower's breach of any covenant or agreement of Borrower in this Instrument, extend the time for payment of said indebtedness or any part thereof, reduce the payments thereon, release anyone liable on any of said indebtedness, accept a renewal note or note, alter, modify the terms and time of payment of said indebtedness, release from the lien of this Instrument any part of the Property, take or release other or additional security, reconvey any part of the Property, consent to any map or plan of the Property, consent to the granting of any easement, join in any extension or subordination agreement, and agree in writing with Borrower to modify the rate of interest or period of amortization of the Note or change the amount of the monthly installment payable thereunder. Any actions taken by Lender pursuant to the terms of this Section 12 shall not affect the obligation of Borrower or Borrower's successors or assigns to pay the sums secured by this Instrument and to observe the covenants of Borrower contained herein, shall not affect the guaranty of any person, corporation, partnership or other entity for payment of the indebtedness secured hereby, and shall not affect the lien or priority of lien hereof on the Property. Borrower shall pay Lender a reasonable service charge, together with such title insurance premiums and attorney's fees as may be incurred at Lender's option, for any such action if taken at Borrower's request.

13. **FORBEARANCE BY LENDER NOT A WAIVER.** Any forbearance by Lender in exercising any right or remedy hereunder, or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any right or remedy. The acceptance by Lender of payment of any sum secured by this Instrument after the due date of such payment shall not be a waiver of Lender's right to either require prompt payment when due of all other sums so secured or to declare a default for failure to make prompt payment. The procurement of insurance or the payment of taxes or other liens or charges by Lender shall not be a waiver of Lender's right to accelerate the maturity of the indebtedness secured by this Instrument, nor shall Lender's receipt of any awards, proceeds or damages under Sections 5 and 11 hereof operate to cure or waive Borrower's default in payment of sums secured by this Instrument.

14. **ESTOPPEL CERTIFICATE.** Borrower shall within ten days of a written request from Lender furnish Lender with a written statement, duly acknowledged, setting forth the sums secured by this Instrument and any right of set-off, counterclaim or other defense which exists against such sums and the obligations of this Instrument.

15. **UNIFORM COMMERCIAL CODE SECURITY AGREEMENT.** This Instrument is intended to be a security agreement pursuant to the Uniform Commercial Code for any of the items specified above as part of the Property which, under applicable law, may be subject to a security interest pursuant to the Uniform Commercial Code, and Borrower hereby grants Lender a security interest in said items. Borrower agrees that Lender may file this Instrument, or a reproduction thereof, in the real estate records or other appropriate index, as a financing statement for any of the items specified above as part of the Property. Any reproduction of this Instrument or of any other security agreement or financing statement shall be sufficient as a financing statement. In addition, Borrower agrees to execute and deliver to Lender, upon Lender's request, any financing statements, as well as extensions, renewals and amendments thereof, and reproductions of this Instrument in such form as Lender may require to perfect a security interest with respect to said items. Borrower shall pay all costs of filing such financing statements and any extensions, renewals, amendments and releases thereof, and shall pay all reasonable costs and expenses of any record searches for financing statements Lender may reasonably require. Without the prior written consent of Lender, Borrower shall not create or suffer to be created pursuant to the Uniform Commercial Code any other security interest in said items, including replacements and additions thereto. Upon Borrower's breach of any covenant or agreement of Borrower contained in this Instrument, including the covenants to pay when due all sums secured by this Instrument, Lender shall have the remedies of a secured party under the Uniform Commercial Code and, at Lender's option, may also invoke the remedies provided in Section 27 of this Instrument as to such items. In exercising any of said remedies, Lender may proceed against the items of real property and any items of personal property

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specified above as part of the Property separately or together and in any order whatsoever, without in any way affecting the availability of Lender's remedies under the Uniform Commercial Code or of the remedies provided in Section 27 of this Instrument.

16. LEASES OF THE PROPERTY. As used in this Section 16, the word "lease" shall mean "sublease" if this Instrument is on a leasehold. Borrower shall comply with and observe Borrower's obligations as landlord under all leases of the Property or any part thereof. Borrower will not lease any portion of the Property for non-residential use except with the prior written approval of Lender. Borrower, at Lender's request, shall furnish Lender with executed copies of all leases now existing or hereafter made of all or any part of the Property, and all leases now or hereafter entered into will be in form and substance subject to the approval of Lender. All leases of the Property shall specifically provide that such leases are subordinate to this Instrument; that the tenant attorns to Lender, such attornment to be effective upon Lender's acquisition of title to the Property; that the tenant agrees to execute such further evidences of attornment as Lender may from time to time request; that the attornment of the tenant shall not be terminated by foreclosure; and that Lender may, at Lender's option, accept or reject such attornments. Borrower shall not, without Lender's written consent, execute, modify, surrender or terminate, either orally or in writing, any lease now existing or hereafter made of all or any part of the Property providing for a term of one year or more, permit an assignment or sublease of such a lease without Lender's written consent, or request or consent to the subordination of any lease of all or any part of the Property to any lien subordinate to this Instrument. If Borrower becomes aware that any tenant proposes to do, or is doing, any act or thing which may give rise to any right of set-off against rent, Borrower shall: (i) take such steps as shall be reasonably calculated to prevent the accrual of any right to a set-off against rent; (ii) notify Lender thereof and of the amount of said set-offs and (iii) within ten days after such accrual, reimburse the tenant who shall have acquired such right to set-off or take such other steps as shall effectively discharge such set-off and as shall assure that rents thereafter due shall continue to be payable without set-off or deduction.

Upon Lender's request, Borrower shall assign to Lender, by written instrument satisfactory to Lender, all leases now existing or hereafter made of all or any part of the Property and all security deposits made by tenants in connection with such leases of the Property. Upon assignment by Borrower to Lender of any leases of the Property, Lender shall have all of the rights and powers possessed by Borrower prior to such assignment and Lender shall have the right to modify, extend or terminate such existing leases and to execute new leases, in Lender's sole discretion.

17. REMEDIES CUMULATIVE. Each remedy provided in this Instrument is distinct and cumulative to all other rights or remedies under this Instrument or afforded by law or equity and may be exercised concurrently, independently, or successively, in any order whatsoever.

18. ACCELERATION IN CASE OF BORROWER'S INSOLVENCY. If Borrower shall voluntarily file a petition under the Federal Bankruptcy Act, as such Act may from time to time be amended, or under any similar or successor Federal statute relating to bankruptcy, insolvency, arrangements or reorganizations, or under any state bankruptcy or insolvency act, or file an answer in an involuntary proceeding admitting insolvency or inability to pay debts, or if Borrower shall fail to obtain a vacation or stay of involuntary proceedings brought for the reorganization, dissolution or liquidation of Borrower, or if Borrower shall be adjudged a bankrupt, or if a trustee or receiver shall be appointed for Borrower or Borrower's property, or if the Property shall become subject to the jurisdiction of a Federal bankruptcy court or a similar state court, or if Borrower shall make an assignment for the benefit of Borrower's creditors, or if there is an attachment, execution or other judicial seizure of any portion of Borrower's assets and such seizure is not discharged within ten days, then Lender may, at Lender's option, declare all of the sums secured by this Instrument to be immediately due and payable without prior notice to Borrower, and Lender may invoke any remedies permitted by Section 27 of this Instrument. Any attorney's fees and other expenses incurred by Lender in connection with Borrower's bankruptcy or any of the other aforesaid events shall be additional indebtedness of Borrower secured by this Instrument pursuant to Section 8 hereof.

19. TRANSFERS OF THE PROPERTY OR SIGNIFICANT INTERESTS IN BORROWER; TRANSFER FEES.

(a) **Definitions.** For purposes of this Instrument, the following terms shall have the respective meanings set forth below:

(i) The term "Key Principal" means the natural person(s) identified in the Exceptions to Non-Recourse guaranty executed or even date herewith in order to induce Lender to make the loan evidenced by the Note, and any natural person who becomes a Key Principal after the date of the Note and are identified as such in an amendment or supplement to the Loan Documents.

(ii) The term "Transfer" means a sale, assignment, transfer or other disposition (whether voluntary or by operation of law) of, or the granting or creating of a lien, encumbrance or security interest in, the Property or in ownership interests, and the issuance or other creation of ownership interests in an entity and the reconstitution of one type of entity to another type of entity.

(iii) A "Significant Interest" in any entity shall mean the following:

(A) If the entity is a general partnership or a joint venture, (1) any partnership interest in the general partnership or (2) any interest of a joint venturer in a joint venture;

(B) If the entity is a limited partnership, (1) any limited partnership interest in the entity which, together with all other limited partnership interests in the entity Transferred since the date of the Note, exceeds 49% of all of the limited partnership interests in the entity or (2) any general partnership interest in the entity;

(C) If the entity is a limited liability company, any membership interest which, together with all other membership interests in the limited liability company Transferred since the date of the Note, exceeds 49% of all of the membership interests in the limited liability company;

(D) If the entity is a corporation, any voting stock in the corporation which, together with all other voting stock of the corporation Transferred since the date of the Note, exceeds 49% of all of the voting stock of the corporation; or

(E) If the entity is a trust, any beneficial interest in such trust which, together with all other beneficial interests in the trust Transferred since the date of the Note, exceeds 49% of all of the beneficial interests in the trust.

(b) **Acceleration of the Loan Upon Transfers of the Property or Significant Interests.** The Lender may, at its option, declare all sums secured by the Instrument immediately due and payable and the Lender may invoke any remedies permitted by Section 27 of the Instrument if, without the Lender's prior written consent, any of the following shall occur:

(i) A Transfer of all or any part of the Property or any interest in the Property;

(ii) A Transfer of any Significant Interest in the Borrower;

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(iii) A Transfer of any Significant Interest in a corporation, partnership, limited liability company, joint venture, or trust which owns a Significant Interest in the Borrower;

(iv) If the Borrower is a trust or if any trust owns a Significant Interest in the Borrower, the addition, deletion or substitution of a trustee of such trust, which addition, deletion or substitution has not been approved by the Lender; or

(v) A Transfer of all or any part of any Key Principal's ownership interest (other than limited partnership interests) in the Borrower, or in any other entity which owns, directly or indirectly, through one or more intermediate entities, an ownership interest in the Borrower.

(c) Transfers Permitted with the Lender's Prior Written Consent. Lender shall consent in writing to a Transfer which would otherwise violate this Section 19 if, prior to the Transfer:

(i) The Borrower causes to be submitted to the Lender all information required by the Lender to evaluate the transferee and the Property as if a new loan were being made to the transferee and secured by the Property, in the case of a Transfer of all or any part of the Property or an interest therein, or to the Borrower (as reconstituted after the proposed Transfer), in the case of a Transfer of Significant Interests;

(ii) The transferee, in the case of a Transfer of all or any part of the Property or interest therein, or the Borrower (as reconstituted after the proposed Transfer), in the case of a Transfer of Significant Interests, meet the eligibility, credit, management and other standards, and the Property meets the physical maintenance and replacement reserve requirements, applied by the Lender in its sole discretion for approval of new borrowers and properties for loans secured by liens on multifamily properties;

(iii) In the case of a Transfer of all or any part of the Property, the proposed transferee: (A) executes an agreement acceptable to the Lender pursuant to which the proposed transferee agrees, upon consummation of the Transfer, to assume and to pay and perform all obligations of the Borrower under the Note, the Instrument, and the Loan Documents; (B) causes one or more individuals acceptable to the Lender to execute and deliver to the Lender an amendment or supplement to the Loan Documents as "Key Principal" and (C) executes such documents and otherwise provides such documents and information as required by the Lender in connection with the Transfer;

(iv) In the case of a Transfer of a Key Principal's ownership interest pursuant to Section 19(b)(v): (A) the Borrower (as reconstituted after the proposed Transfer) executes an agreement acceptable to the Lender that ratifies and confirms the obligations of the Borrower under the Note, the Instrument and the Loan Documents; (B) one or more individuals acceptable to the Lender executes and delivers to the Lender an amendment or supplement to the Loan Documents as "Key Principal" and (C) the Borrower executes such documents and otherwise provides such documents and information as required by the Lender in connection with the Transfer; and

(v) The Borrower pays to the Lender a \$3,000 non-refundable application fee and a transfer fee ("Transfer Fee") equal to one percent (1%) of the sums secured by the Instrument. In addition, the Borrower shall be required to reimburse the Lender for all of the Lender's out of pocket expenses incurred in connection with the assumption, to the extent such expenses exceed \$3,000.

(vi) Notwithstanding paragraph (c) (v) above, Borrower shall not be required to pay Lender a Transfer Fee for a transfer to: (a) a spouse, sibling or lineal descendant of Borrower; (b) an entity in which eighty percent (80%) or more is owned by the Borrower or a spouse, sibling or lineal descendant of the Borrower or (c) a trust whose beneficiaries are a spouse, sibling or lineal descendant of the Borrower; and further provided, however, that the Borrower is not in material default of any of the Loan Documents as of the date of the Transfer.

(d) No Acceleration of the Loan For Transfers Caused By Certain Events. Notwithstanding the foregoing provisions of this Section, the Lender shall not be entitled to declare sums secured by the Instrument immediately due and payable or to invoke any remedy permitted by Section 27 of the Instrument solely upon the occurrence of any of the following:

(i) A Transfer that occurs by inheritance, devise, or bequest or by operation of law upon the death of a natural person who is an owner of the Property or the owner of a direct or indirect ownership interest in the Borrower;

(ii) The grant of a leasehold interest in individual dwelling units for a term of one year or less and leases for commercial uses as long as commercial leases do not exceed ten (10) percent of the rentable space of the Property (measured as required by the Lender) and provided that all such leasehold interests do not contain an option to purchase the Property;

(iii) A sale or other disposition of obsolete or worn out personal property which is contemporaneous, replaced by comparable personal property of equal or greater value which is free and clear of liens, encumbrances and security interests other than those created by the Loan Documents;

(iv) The creation of a mechanic's or materialmen's lien or judgment lien against the Property which is released of record or otherwise remedied to the Lender's satisfaction, within thirty (30) days of the date of creation; or

(v) The creation of a statutory lien for real estate taxes assessed against the Property which are not yet due and payable; or

(vi) The grant of an easement, if prior to the granting of the easement the Borrower causes to be submitted to the Lender all information required by the Lender to evaluate the easement, and if the Lender determines that the easement will not materially affect the operation of the Property or the Lender's interest in the Property and the Borrower pays to the Lender, on demand, all cost and expenses incurred by the Lender in connection with reviewing the Borrower's request.

20. NOTICE. No notice or other communication shall be deemed given unless sent in any of the manners, and to the persons, specified in this Section. All notices and other communications hereunder shall be in writing and shall be deemed given: (a) upon receipt if delivered personally (unless subject to clause (b)) or if mailed by registered or certified mail return receipt requested, postage prepaid; (b) at noon on the business day after dispatch if sent by a nationally recognized overnight courier or (c) upon the completion of transmission (which is confirmed by telephone or by a statement generated by the transmitting machine) if transmitted by teletype or other means of facsimile which provides immediate or near immediate transmission to compatible equipment in the possession of the recipient, in any case to the parties at the following addresses or teletype numbers (or at such other address or teletype number for a party as will be specified by like notice):

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if to Borrower:

Thornecreek Apartments III, L.L.C.
36700 Grand River
Farmington Hills, Michigan 48335
Attention: David M. Clapper
Telecopy No: 810-442-1488
Confirmation No: 810-442-2700

or if to Lender:

Berkeley Federal Bank & Trust FSB
515 North Flagler
The Pavilion
4th Floor
West Palm Beach, Florida 33401
Attention: General Counsel
Telecopy Number: 407-659-8206
Confirmation Number: 407-832-2221

21. SUCCESSORS AND ASSIGNS BOUND; JOINT AND SEVERAL LIABILITY; AGENTS; CAPTIONS. The covenants and agreements herein contained shall bind, and the rights hereunder shall inure to, the respective successors and assigns of Lender and Borrower, subject to the provisions of Section 19 hereof. All covenants and agreements of Borrower shall be joint and several. In exercising any rights hereunder or taking any actions provided for herein, Lender may act through its employees, agents or independent contractors as authorized by Lender. The captions and headings of the Sections of this Instrument are for convenience only and are not to be used to interpret or define the provisions hereof.

22. UNIFORM MULTIFAMILY INSTRUMENT; GOVERNING LAW; SEVERABILITY. This form of multifamily instrument combines uniform covenants for national use and non-uniform covenants with limited variations by jurisdiction to constitute a uniform security instrument covering real property and related fixtures and personal property. This Instrument shall be governed by the law of the jurisdiction in which the Property is located. In the event that any provision of this Instrument or the Note conflicts with applicable law, such conflict shall not affect other provisions of this Instrument or the Note which can be given effect without the conflicting provisions, and to this end the provisions of this Instrument and the Note are declared to be severable. In the event that 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 this Instrument or in the Note, whether considered separately or together with other charges levied in connection with this Instrument and the Note, violates such law, and Borrower is entitled to the benefit of such law, such charge is hereby reduced to the extent necessary to eliminate such violation. The amounts, if any, previously paid to Lender in excess of the amounts payable to such charges as reduced shall be applied by Lender to reduce the principal of the indebtedness evidenced by the Note. For the purpose of determining whether any applicable law limiting the amount of interest or other charges permitted to be collected from Borrower has been violated, all indebtedness which is secured by this Instrument or evidenced by the Note and which constitutes interest, as well as all other charges levied in connection with such 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 computed thereby is uniform throughout the stated term of the Note.

23. 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 the Note or any other obligation secured by this Instrument.

24. WAIVER OF MARSHALING. Notwithstanding the existence of any other security interests in the 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 Property shall be subjected to the remedies provided herein. Lender shall have the right to determine the order in which any or all portions of the indebtedness secured hereby are satisfied from the proceeds realized upon the exercise of the remedies provided herein. Borrower, any party who consents to this Instrument and any party who now or hereafter acquires as security interest in the Property and who has actual or constructive notice hereof hereby waives any and all right to require the marshaling of assets in connection with the exercise of any remedies permitted by applicable law or provided herein.

25. CONSTRUCTION LOAN PROVISIONS. Intentionally Deleted.

26. ASSIGNMENT OF RENTS; APPOINTMENT OF RECEIVER; LENDER IN POSSESSION. As part of the consideration for the indebtedness evidenced by the Note, Borrower hereby absolutely and unconditionally assigns and transfers to Lender all the rents and revenues of the Property, including those now due, or to become due by virtue of any lease or other agreement for the occupancy or use of all or any part of the Property, regardless of to whom the rents and revenues of the Property are payable. Borrower hereby authorizes Lender or Lender's agents to collect the aforesaid rents and revenues and hereby directs each tenant of the Property to pay such rents to Lender or Lender's agents; provided, however, that prior to written notice given by Lender to Borrower of the breach by Borrower of any covenant or agreement of Borrower in this Instrument, Borrower shall collect and receive all rents and revenues of the Property as trustee for the benefit of Lender and Borrower, to apply the rents and revenues so collected to the sums secured by this Instrument in the order provided in Section 3 hereof with the balance, so long as no such breach has occurred, to the account of Borrower, it being intended by Borrower and Lender that this assignment of rents constitutes an absolute assignment and not an assignment for additional security only. Upon delivery of written notice by Lender to Borrower of the breach by Borrower of any covenant or agreement of Borrower in this Instrument, and without the necessity of Lender entering upon and taking and maintaining full control of the Property in person, by agent or by a court-appointed receiver, Lender shall immediately be entitled to possession of all rents and revenues of the Property as specified in this Section 26 as the same become due and payable, including but not limited to rents then due and unpaid, and all such rents shall immediately upon delivery of such notice be held by Borrower as trustee for the benefit of Lender only; provided, however, that the written notice by Lender to Borrower of the breach by Borrower shall contain a statement that Lender exercises its rights to such rents. Borrower agrees that commencing upon delivery of such written notice of Borrower's breach by Lender to Borrower, each tenant of the Property shall make such rents payable to and pay such rents to Lender or Lender's agents on Lender's written demand to each tenant therefor, delivered to each tenant personally, by mail or by delivering such demand to each rental unit, without any liability on the part of said tenant to inquire further as to the existence of a default by Borrower.

Borrower hereby covenants that Borrower has not executed any prior assignment of said rents, that Borrower has not performed, and will not perform, any acts or has not executed, and will not execute, any instrument which would prevent Lender from exercising its rights under this Section 26, and that at the time of execution of this Instrument there has been no anticipation or prepayment of any of the rents of the Property for more than two months prior to the due dates of

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such rents. Borrower covenants that Borrower will not hereafter collect or accept payment of any rents of the Property more than two months prior to the due dates of such rents. Borrower further covenants that Borrower will execute and deliver to Lender such further assignments of rents and revenues of the Property as Lender may from time to time request.

Upon Borrower's breach of any covenant or agreement of Borrower in this Instrument, Lender may in person, by agent or by a court-appointed receiver, regardless of the adequacy of Lender's security, enter upon and take and maintain full control of the Property in order to perform all acts necessary and appropriate for the operation and maintenance thereof including, but not limited to, the execution, cancellation or modification of leases, the collection of all rents and revenues of the Property, the making of repairs to the Property and the execution or termination of contracts providing for the management or maintenance of the Property, all on such terms as are deemed best to protect the security of this Instrument. In the event Lender elects to seek the appointment of a receiver for the Property upon Borrower's breach of any covenant or agreement of Borrower in this Instrument, Borrower hereby expressly consents to the appointment of such receiver. Lender or the receiver shall be entitled to receive a reasonable fee for so managing the Property.

All rents and revenues collected subsequent to delivery of written notice by Lender to Borrower of the breach by Borrower of any covenant or agreement of Borrower in this Instrument shall be applied first to the costs, if any, of taking control of and managing the Property and collecting the rents, including, but not limited to, attorney's fees, receiver's fees, premiums on receiver's bonds, costs of repairs to the Property, premiums on insurance policies, taxes, assessments and other charges on the Property, and the costs of discharging any obligation or liability of Borrower as lessor or landlord of the Property and then to the sums secured by this Instrument. Lender or the receiver shall have access to the books and records used in the operation and maintenance of the Property and shall be liable to account 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 Property by reason of anything done or left undone by Lender under this Section 26.

If the rents of the Property are not sufficient to meet the costs, if any, of taking control of and managing the Property and collecting the rents, any funds expended by Lender for such purposes shall become indebtedness of Borrower to Lender secured by this Instrument pursuant to Section 8 hereof. Unless Lender and Borrower agree in writing to other terms of payment, such amounts shall be payable upon notice from Lender to Borrower requesting payment thereof and shall bear interest from the date of disbursement at the rate stated in the Note unless payment of interest at such rate would be contrary to applicable law, in which event such amounts shall bear interest at the highest rate which may be collected from Borrower under applicable law.

Any entering upon and taking and maintaining of control of the Property by Lender or the receiver and any application of rents as provided herein shall not cure or waive any default hereunder or invalidate any other right or remedy of Lender under applicable law or provided herein. This assignment of rents of the Property shall terminate at such time as this Instrument ceases to secure indebtedness held by Lender.

Non-Uniform Covenants. Borrower and Lender further covenant and agree as follows:

27. ACCELERATION; REMEDIES. Upon an Event of Default (as defined in Section 39 hereof) or Borrower's breach of any covenant or agreement of Borrower in this Instrument, including, but not limited to, the covenants to pay when due any sums secured by this Instrument, Lender at Lender's option may declare all of the sums secured by this Instrument 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 applicable law or provided herein. Lender shall be entitled to collect all costs and expenses incurred in pursuing such remedies, including, but not limited to, attorney's fees and costs, costs of documentary evidence, abstracts and title reports.

Upon the breach of any representation, warranty, covenant or agreement by the Borrower in the Instrument, (including, but not limited to, the covenants to pay when due sums secured by the Instrument) or any other Loan Document, the Lender, at the Lender's option may, in addition to any remedies specified in this covenant, invoke any other remedies provided in any Collateral Agreement.

If the Borrower, any Key Principal, or any entity in which any Key Principal has a Significant Interest (as defined in Section 19 herein) is in default under any promissory note (other than the Note) evidencing a loan (the "Subordinate Loan") secured by a security instrument (other than this Instrument) covering all or any portion of the Property (the "Subordinate Instrument") or under any Subordinate Instrument or other loan document executed in connection with the Subordinate Loan, (and whether or not the Borrower has obtained the prior written approval of the Lender to the placement of such Subordinate Instrument on the Property) which default remains uncured after any applicable cure period, the Borrower will be in default under the Note, this Instrument and the other Loan Documents, the entire unpaid principal balance of the Note, accrued interest and any other sums due to the Lender secured by this Instrument will become due and payable, at the Lender's option. If the Lender exercises its option to accelerate the Note, the Lender will do so in accordance with the provisions of the Note and this Instrument, and the Lender may invoke any and all remedies permitted by applicable law, the Note, this Instrument, or any of the other Loan Documents.

28. Intentionally Deleted.

28A. RELEASE. Upon payment of all sums secured by this Instrument, Lender shall discharge this Instrument. Borrower shall pay Lender's reasonable costs incurred in discharging this Instrument.

29. Intentionally Deleted.

29A. WAIVER OF HOMESTEAD AND REDEMPTION. Borrower hereby waives all right of homestead exemption in the Property. If Borrower is a limited liability company, Borrower hereby waives all right of redemption on behalf of Borrower and on behalf of all other persons acquiring any interest or title in the Property subsequent to the date of this Instrument, except decree or judgment creditors of Borrower.

30. Intentionally Deleted.

30A. Intentionally Deleted.

31. Intentionally Deleted.

32. Intentionally Deleted.

33. TIME OF ESSENCE. Time shall be of the essence with respect to all obligations of Borrower now or hereafter arising under this Instrument, the Note and the documents and instruments delivered in connection with this Instrument or the Note.

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34. BORROWER'S EXCULPATION. Subject to the provisions of Section 35 and notwithstanding any other provision in the Note, the personal liability of the Borrower, any general partner of the Borrower, and any Key Principal (as defined in Section 19) to pay any and all amounts due and owing on the debt evidenced by the Note (including, without limitation, principal and interest, costs of collection and attorney's fees) set forth in any of the Loan Documents shall be limited to: (a) the Property, (b) the rents, profits, issues, products and income of the Property received or collected by or on behalf of the Borrower (the "Rents and Profits") to the extent such receipts are necessary first, to pay the reasonable expenses of operating, managing, maintaining and repairing the Property, including but not limited to real estate taxes, utilities, assessments, insurance premiums, repairs, replacements and ground rents, if any (the "Operating Expenses") then due and payable as of the time of receipt of such Rents and Profits, and then, to pay the principal and interest due under the Note and any other sums due under the Instrument or any other Loan Document (including but not limited to deposits or reserves due under any Collateral Agreement as defined in Section 21) except to the extent that the Borrower did not have the legal right because of a bankruptcy, receivership or similar judicial proceeding, to direct the disbursement of such sums; (c) the personal property described in or pledged under any Collateral Agreement executed in connection with the loan evidenced by the Note and (d) any other collateral given to secure the Note.

Except as provided in Section 35, the Lender shall not seek: (a) any judgment for a deficiency against the Borrower, any general partner of the Borrower, any Key Principal or the Borrower's or any general partner's or Key Principal's heirs, legal representatives, successors or assigns, in any action to enforce any right or remedy under the Instrument or (b) any judgment on the Note except as may be necessary in any action brought under the Instrument to enforce the lien against the Property or to exercise any remedies under any Collateral Agreement.

35. EXCEPTIONS TO NON-RECOURSE LIABILITY. If, without obtaining the Lender's prior written consent: (a) a transfer shall occur which, pursuant to Section 19, gives the Lender the right, at its option, to declare all sums secured by the Instrument immediately due and payable; (b) the Borrower shall encumber the Property with the lien of any subordinate instrument in connection with any financing by the Borrower or (c) the Borrower shall violate the single asset covenant of Section 36, and if any such breach shall continue for thirty (30) days after notice from Lender, then, Section 34 of this Instrument shall not apply and the Borrower, any general partner of the Borrower (if the Borrower is a partnership) and any Key Principal (each individually on a joint or several basis if more than one) shall be personally liable on a joint and several basis for full recourse liability under the Note and the other Loan Documents.

Notwithstanding Section 34 of the Instrument, Borrower and any general partner of the Borrower and any Key Principal, (each individually on a joint and several basis if more than one) shall be personally liable to Lender in the amount of any loss, damage or cost (including but not limited to attorney's fees) resulting from: (a) fraud or intentional misrepresentation by the Borrower or the Borrower's agents or employees or any Key Principal or general partner of the Borrower in connection with obtaining the loan evidenced by the Note or in complying with any of the Borrower's obligations under the Loan Documents; (b) insurance proceeds, condemnation awards, security deposits from tenants or other sums or payments attributable to the Property not applied in accordance with the provisions of this Instrument, except to the extent that the Borrower did not have the legal right, because of a bankruptcy, receivership or similar judicial proceeding, to direct disbursement of such sums or payments; (c) all Rents and Profits (except to the extent that the Borrower did not have the legal right, because of a bankruptcy, receivership or similar judicial proceeding, to direct the disbursement of such sums) not applied, first, to the payment of the reasonable Operating Expenses as such Operating Expenses become due and payable, and then, to the payment of principal and interest then due and payable under the Note and any other sums due under the Instrument and any other Loan Documents (including but not limited to deposits or reserves payable under any Collateral Agreement); (provided, however, that Borrower, any general partner of Borrower and Key Principal shall have no liability for Rents and Profits which were distributed in any previous fiscal year, if Borrower paid: (i) all of the Operating Expenses; (ii) all other amounts due under this Instrument and any other Loan Documents and (iii) all other debt service relating to the Property and the Borrower for that fiscal year); (d) the Borrower's failure to pay transfer fees and charges due to the Lender under the Note or the Instrument in connection with any transfer of all or any part of the Property, or any interest therein, from the Borrower to the Borrower's transferee, or transfer of beneficial interest in the Borrower (if the Borrower is not a natural person or persons but is a corporation, partnership, trust or other legal entity); (e) failure by the Borrower, or any general partner of the Borrower, to comply with the covenants, obligations, liabilities, warranties and representations contained in Section 38 ("Environmental Hazards") due to the intentional or grossly negligent acts or omissions of the Borrower or the Borrower's agents or employees or any Key Principal or any general partner of the Borrower or (f) the Borrower's failure following a default under any of the Loan Documents to deliver to the Lender on demand all Rents and Profits, security deposits, books and records relating to the Property.

No provision of Section 34 or of this Section 35 shall: (a) affect any guaranty or similar agreement executed in connection with the debt evidenced by the Note; (b) release or reduce the debt evidenced by the Note; (c) impair the lien of this Instrument; (d) impair the rights of the Lender to enforce the provisions of Section 38 ("Environmental Hazards") or subparagraphs (f) through (i) of Section 37 ("Indemnification"); (e) impair the lien of this Instrument or (f) impair the right of the Lender to enforce the provisions of any of the Loan Documents or Collateral Agreement.

36. SINGLE PURPOSE ENTITY. The Borrower does not own any real property other than the Property and does not operate any business other than the management and operation of the Property. The Borrower shall not during the term of the loan, including any extensions, modifications, renewals or refinancings thereof, acquire any real property or assets other than the Property, operate any business other than the management and operation of the Property or incur any liability or obligation other than those incurred in the ownership and operation of the Property. The limitations contained in this Section shall not apply to the general or limited partners or officers, directors, or shareholders of the Borrower.

37. INDEMNIFICATION. Subject to the provisions of Section 34, the Borrower shall protect, defend, indemnify and save harmless the Lender from and against all liabilities, obligations, claims, damages, penalties, causes of action, costs and expenses (including without limitation reasonable attorneys' fees and expenses), imposed upon or incurred by or asserted against the Lender by reason of: (a) any accident, injury to or death of persons or loss of or damage to property occurring in, on or about the Property or any part thereof or on the adjoining sidewalks, curbs, adjacent property or adjacent parking areas, streets or ways; (b) any use, non-use or condition in, on or about the Property or any part thereof or on the adjoining sidewalks, curbs, adjacent property or adjacent parking areas, streets or ways; (c) any failure on the part of the Borrower to perform or comply with any of the terms of this Instrument or any other Loan Documents; (d) performance of any labor or services or the furnishing of any materials or other property in respect of the Property or any part thereof; (e) the failure of any person to file timely with the Internal Revenue Service an accurate Form 1099-B, Statement for Recipients of Proceeds from Real Estate, Broker and Barter Exchange Transactions, which may be required in connection with this Instrument, or to supply a copy thereof in a timely fashion to the recipient of the proceeds of the transaction in connection with which this Instrument is made; (f) the presence, disposal, escape, seepage, leakage, spillage, discharge, emission, release, or threatened release of any Hazardous Materials on, from, or affecting the Property or any other property; (g) any personal injury (including wrongful death) or property damage (real or personal) arising out of or related to such Hazardous Material; (h) any lawsuit brought or threatened, settlement reached, or Government Action relating to such Hazardous Materials or (i) any violation of laws, orders, regulations, requirements, or demands of government authorities, which are based upon or in any way related to such Hazardous Materials including, without limitation, the costs and expenses of any remedial action, attorney and consultant fees, investigation and laboratory fees, court costs, and litigation expenses. Any amounts payable to the Lender by reason of the application of this Section 37, shall become immediately due and payable and shall bear interest at the rate provided for in the Note from the date loss or damage is sustained by the Lender until paid. The obligations and liabilities of the Borrower under this Section shall survive any termination, satisfaction, assignment, entry of a judgment of foreclosure or exercise of a power of sale or delivery of a deed in lieu of foreclosure of this Instrument.

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The Borrower hereby waives to the maximum extent permitted by law: (a) notice of acceptance hereof and of any action taken or omitted in reliance hereon; (b) presentment for payment, demand of payment, protest or notice of nonpayment or failure to perform or observe, or other proof, or notice of demand and (c) all homestead exemption rights against the obligations hereunder and the benefits of any statutes of limitations or repose.

38. ENVIRONMENTAL HAZARDS. In addition to the Borrower's covenants and agreements under Section 6, the Borrower further covenants and agrees that it shall not: (a) cause or permit the presence, use, generation, manufacture, production, processing, installation, release, discharge, storage (including above and underground storage tanks for petroleum or petroleum products, but excluding small containers of gasoline used for maintenance equipment or similar purposes), treatment, handling, or disposal of any Hazardous Materials (as defined below) on, under, in or about the Property, or in any way affecting the Property or its value or which may form the basis for any present or future claim, demand or liability relating to contamination, release, exposure, cleanup or other remediation of the Property (excluding the safe and lawful use and storage of quantities of Hazardous Materials customarily used in the operation and maintenance of comparable multifamily properties or for normal household purposes); (b) cause or permit the transportation to, from or across the Property of any Hazardous Materials or (c) cause or exacerbate any occurrence or condition on the Property that is or may be in violation of any Hazardous Materials Law (as defined below). The Borrower shall take all appropriate steps to ensure compliance by all tenants and subtenants on the Property with the Borrower's covenants and agreements in this Section 38. The matters described in Section 38 (a), (b) and (c) above are referred to collectively below as "Prohibited Activities or Conditions."

Except with respect to any matters which have been disclosed in writing by the Borrower to the Lender prior to the date of this Instrument, or matters which have been disclosed in an environmental hazard assessment report of the Property received by the Lender prior to the date of this Instrument, the Borrower represents and warrants that it has not at any time caused or permitted any Prohibited Activities or Conditions and to the best of its knowledge after due inquiry, no Prohibited Activities or Conditions exist or have existed on or under the Property. The Borrower shall take all appropriate steps (including but not limited to appropriate lease provisions) to prevent its employees, agents, and contractors, and all tenants and other occupants on the Property, from causing, permitting or exacerbating any Prohibited Activities or Conditions. The Borrower shall not lease or allow the sublease of all or any portion of the Property for non-residential use to any tenant or subtenant that, in the ordinary course of its business, would cause, permit or exacerbate any Prohibited Activities or Conditions, and all non-residential leases and subleases shall provide that tenants and subtenants shall not cause, permit or exacerbate any Prohibited Activities or Conditions.

If the Borrower has disclosed to the Lender in writing that Prohibited Activities or Conditions exist on the Property, the Borrower shall comply in a timely manner with, and cause all employees, agents and contractors of the Borrower and any other persons present on the Property to so comply with (a) any program of operations and maintenance ("O&M Program") relating to the Property that is acceptable to Lender with respect to one or more Hazardous Materials (which O&M Program may be set forth in an agreement of Borrower (an "O&M Agreement")) and all other obligations set forth in any O&M Agreement and (b) all Hazardous Materials Laws. Any O&M Program shall be performed by qualified personnel. All costs and expenses of the O&M Program shall be paid by the Borrower, including without limitation the Lender's fees and costs incurred in connection with the monitoring and review of the O&M Program and the Borrower's performance thereunder. If the Borrower fails to timely commence or diligently continue and complete the O&M Program and comply with any O&M Agreement, then the Lender may, at the Lender's option, declare all of the sums secured by the Instrument to be immediately due and payable, and the Lender may invoke any remedies permitted by Section 27.

The Borrower represents that it has not received and has no knowledge of the issuance of, any claim, citation or notice of any pending or threatened suits, proceeding, orders, notices of violation, or governmental inquiries, requests for information, or opinions involving the Property that allege the violation of any Hazardous Material Law (collectively "Governmental Actions").

The Borrower shall promptly notify the Lender in writing of: (a) the occurrence of any Prohibited Activity or Condition on the Property; (b) the Borrower's actual knowledge of the presence on or under any adjoining property of any Hazardous Materials which can reasonably be expected to have a material adverse impact on the Property or the value of the Property, discovery of any occurrence or condition on the Property or any adjoining real property that could cause any restrictions on the ownership, occupancy, transferability or use of the Property under Hazardous Materials Law and the Borrower shall cooperate with any governmental inquiry, and shall comply with any governmental or judicial order which arises from any alleged Prohibited Activities or Conditions; (c) any Governmental Action and (d) any claim made or threatened by any third party against the Borrower, the Lender or the Property relating to loss or injury resulting from any Hazardous Materials. Any such notice by the Borrower shall not relieve the Borrower of, or result in a waiver of any obligation of the Borrower under this Section 38.

The Borrower shall promptly pay the costs of any environmental audits, studies or investigations (including but not limited to advice of legal counsel) and the removal of any Hazardous Materials from the Property required by the Lender as a condition of its consent to any sale or transfer under Section 19 of all or any part of the Property or any transfer occurring upon a foreclosure or a deed in lieu of foreclosure or any interest therein, or required by the Lender following a reasonable determination by the Lender and its employees, agents and contractors to enter onto the Property for the purpose of conducting such environmental audits, studies and investigations. Any such costs and expenses incurred by the Lender (including but not limited to fees and expenses of attorneys and consultants, whether incurred in connection with any judicial or administrative process or otherwise) which the Borrower fails to promptly pay shall become immediately due and payable and shall become additional indebtedness secured by this Instrument pursuant to Section 8.

The Borrower shall hold harmless, defend and indemnify the Lender and its officers, directors, trustees, employees, and agents from and against all losses (including diminution in the value of the Property), proceedings (including but not limited to Government Actions), claims, damages, penalties, liabilities, fines, costs and expenses (including without limitation fees and expenses of attorneys and expert witnesses, sums paid in settlement of claims and any fees and expenses incurred in collecting any sums due hereunder, investigatory fees, and cleanup and remediation expenses, whether or not incurred within the context of the judicial process), arising directly or indirectly from: (a) any breach of any representation, warranty, or obligation of the Borrower contained in this Section 38; (b) the presence or alleged presence of Hazardous Materials on or under the Property; (c) any lawsuit brought or threatened, settlement reached, or Governmental Actions relating to Hazardous Materials and (d) any personal injury (including wrongful death) or property damage (real or personal) arising out of or related to Hazardous Materials. The Borrower's liability to the Lender under this Section 38 shall arise upon the earlier to occur of (a) the discovery of, or threat or suspected presence of any Hazardous Materials on, under or about the Property or (b) upon the institution of any action for which the Borrower has agreed to indemnify the Lender, and not upon the realization of loss or damage. The Lender agrees that the Borrower's liability created under this paragraph shall be limited to the assets of the Borrower except for when the Borrower's liability arises as a result of the intentional or grossly negligent acts or omissions of the Borrower or the Borrower's agents or employees or any Key Principal or any general partner of the Borrower.

The term "Hazardous Materials," for purposes of this Section 38, includes petroleum and petroleum products (excluding a small quantity of gasoline used in maintenance equipment on the Property), flammable explosives, radioactive materials (excluding radioactive materials in smoke detectors), polychlorinated biphenyls, asbestos in any form that is or could become friable, hazardous waste, toxic or hazardous substances or other related materials whether in the form of a chemical, element, compound solution, mixture or otherwise including, but not limited to, those materials defined as "hazardous substances," "extremely hazardous substances," "hazardous chemicals," "hazardous materials," "toxic substances," "toxic chemicals," "air pollutants," "toxic pollutants,"

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"hazardous wastes," "extremely hazardous waste," or "restricted hazardous waste" by any Hazardous Materials Law or regulated by any Hazardous Materials Law in any manner whatsoever.

The term "Hazardous Materials Law," for the purposes of this Section 38, means any federal, state, or local law, ordinance or regulation or any court judgment applicable to the Borrower or to the Property relating to industrial hygiene or to environmental or unsafe conditions including, but not limited to, those relating to the generation, manufacture, storage, handling, transportation, disposal, release, emission or discharge of Hazardous Materials, those in connection with the construction, fuel supply, power generation and transmission, waste disposal or any other operations or processes relating to the Property, and those relating to the atmosphere, soil, surface and ground water, wetlands, stream sediments and vegetation on, under, in or about the Property. "Hazardous Materials Law" also shall include, but not be limited to, the Comprehensive Environmental Response, Compensation and Liability Act, the Superfund Amendment and Reauthorization Act, the Emergency Planning and Community Right-to-Know Act of 1986, the Hazardous Materials Transportation Act, the Resource Conservation and Recovery Act, the Solid Waste Disposal Act, the Clean Water Act, the Clean Air Act, the Toxic Substance Control Act, the Safe Drinking Water Act and the Occupational Safety and Health Act, and all regulations adopted with respect to the foregoing laws.

The representations, warranties, covenants, agreements, indemnities and undertakings of the Borrower contained in this Section 38 shall be in addition to any and all other obligations and liabilities that the Borrower may have to the Lender under applicable law. The Lender may enforce the obligations of the Borrower contained in this Section 38 without first resorting to or exhausting any security or collateral or without first having recourse to the Note, the Instrument, or Loan Documents or security documents or any of the Property, through foreclosure proceedings or otherwise.

The representations, warranties, covenants, agreements, indemnities and undertakings of the Borrower contained in this Section 38 shall continue and survive notwithstanding the satisfaction, discharge, release, assignment, termination, subordination or cancellation of the Instrument or the payment in full of the principal of and interest on the Note and all other sums payable under the Loan Documents or the foreclosure of the Instrument or the tender or delivery of a deed in lieu of foreclosure or the release of any portion of the Property from the lien of the Instrument, except with respect to any Prohibited Activities or Conditions or violation of any of the Hazardous Materials Laws which first commences and occurs after the satisfaction, discharge, release, assignment, termination or cancellation of the Instrument following the payment in full of the principal of and interest on the Note and all other sums payable under the Loan Documents or which first commences or occurs after the actual dispossession from the entire Property of the Borrower and all entities which control, are controlled by, or are under common control with the Borrower (each of the foregoing persons or entities is hereinafter referred to as a "Responsible Party") following foreclosure of the Instrument or acquisition of the Property by deed in lieu of foreclosure. Nothing in the foregoing sentence shall relieve the Borrower from any liability with respect to any Prohibited Activities or Conditions or violation of Hazardous Materials Laws where such Prohibited Activities or Conditions or violation of Hazardous Materials Laws commences or occurs, or is present as a result of, any act or omission by any Responsible Party or by any person or entity acting on behalf of a Responsible Party.

39. EVENT OF DEFAULT. The Borrower shall be in default under the Note, this Instrument and the other Loan Documents upon the occurrence of any of the following events, circumstances, or conditions (an "Event of Default"): (a) a failure by the Borrower to pay when due after any applicable grace period any amount required to be paid by the Borrower to the Lender or to any third party under the Note, this Instrument or any other Loan Document; (b) the Borrower's default, breach or failure to comply with any of the covenants, terms or conditions of the Note, this Instrument, or any other Loan Document; (c) the making or furnishing of any verbal or written representation, statement or warranty by or on behalf of the Borrower to the Lender, in connection with the loan evidenced by the Note which is known by Borrower or shall have been known by Borrower to be false or incorrect in any material respect; or (d) a default, breach or failure to comply with any of the covenants, terms or conditions of either the Thorncreek Apartments I Note or the Thorncreek Apartments II Note or any of the documents evidencing, securing or otherwise pertaining to the indebtedness evidenced by the Thorncreek Apartments I Note or the Thorncreek Apartments II Note.

40. NOTICE AND CURE. Notwithstanding any provision in any of the Loan Documents, the Lender agrees to provide the Borrower with five (5) days notice (and opportunity to cure within said five [5] day period) of any default other than the defaults described in Sections 18 and 39(c) of this Instrument prior to exercising any of Lender's remedies under this Instrument or any other Loan Document.

41. WAIVER OF JURY TRIAL. The Borrower and Key Principal (each for himself if more than one): (a) covenant and agree not to elect a trial by jury with respect to any issue arising under any of the Loan Documents triable by a jury and (b) waive any right to trial by jury to the extent that any such right shall now or hereafter exist. This waiver of the right to trial by jury is separately given, knowingly and voluntarily with the benefit of competent legal counsel by the Borrower and each Key Principal, and this waiver is intended to encompass individually each instance and each issue as to which the right to a jury trial would otherwise accrue. The Borrower and each Key Principal hereby certify that no representative or agent of the Lender (including, but not limited to, the Lender's counsel) has represented, expressly or otherwise, to the Borrower or any Key Principal that the Lender will not seek to enforce the provisions of this Section.

42. THORNCREEK APARTMENTS I NOTE, THORNCREEK APARTMENTS II NOTE, MODIFICATIONS AND RELEASES UPON CERTAIN TRANSFERS. Notwithstanding any provision contained herein or in any of the other Loan Documents to the contrary, upon any transfer of all of the Property which is both approved by Lender in advance and consummated in accordance with the requirements of Section 19(c) hereof, Lender shall execute such documents as are necessary to confirm that following such Transfer, (a) the Loan Documents shall no longer secure the Thorncreek Apartments I Note and the Thorncreek Apartments II Note or any of the other obligations of Thorncreek Apartments I or Thorncreek Apartments II to Lender relating to or arising in connection with the indebtedness evidenced by the Thorncreek Apartments I Note or the Thorncreek Apartments II Note or any of the documents evidencing, securing or otherwise pertaining to the indebtedness evidenced by the Thorncreek Apartments I Note or the Thorncreek Apartments II Note and (b) the occurrence of an event of default (regardless of how such default may be defined or described) under the Thorncreek Apartments I Note or the Thorncreek Apartments II Note shall no longer constitute a default or Event of Default under the Loan Documents; provided, however, Lender shall have no obligation to execute or enter into any such documents at any time when either Thorncreek Apartments I or Thorncreek Apartments II is in default under either the Thorncreek Apartments I Note or the Thorncreek Apartments II Note respectively or any of the documents evidencing, securing or otherwise pertaining to the indebtedness evidenced by the Thorncreek Apartments I Note or the Thorncreek Apartments II Note. For additional provisions see Exhibit "B" attached hereto.

43. DEFINITION OF LOAN DOCUMENTS. For purposes of this Instrument, the term "Loan Documents" shall mean, collectively, the following documents: (a) the Note, (b) this Instrument, and (c) all other documents or agreements, including any Collateral Agreements or O&M Agreements, arising under, related to, or made in connection with the loan evidenced by the Note, as such documents may be amended from time to time.

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IN WITNESS WHEREOF, Borrower has executed this Instrument or has caused the same to be executed by its representatives thereunto duly authorized.

THORNCREEK APARTMENTS III, L.L.C., a Michigan limited liability company

By: Thorncreek Management, L.L.C., a Michigan limited liability company, manager of Thorncreek Apartments III, L.L.C.

By: [Signature]
David M. Clapper, manager of Thorncreek Management, L.L.C.

[Signature]
Witness

Karen R. Pifer
Print Name of Witness

[Signature]
Witness

Cheryl L. Karoluk
Print Name of Witness

Borrower's Address:
36700 Grand River, Farmington Hills, Oakland County, Michigan 48335

STATE OF MICHIGAN)
) ss
COUNTY OF OAKLAND)

The foregoing instrument was acknowledged before me this 25 day of January, 1995, by David M. Clapper, manager of Thorncreek Management, L.L.C., a Michigan limited liability company, manager of Thorncreek Apartments III, L.L.C., a Michigan limited liability company, on behalf of the limited liability company, on behalf of the limited liability company.

[Signature]
Notary Public

HOWARD N. LUCKOFF
Notary Public, Oakland County, MI
My Commission Expires July 27, 1996

Commission Expiration: _____

DRAFTED BY AND WHEN RECORDED RETURN TO:

David K. Conrad, Esquire
Bricker & Eckler
100 South Third Street
Columbus, Ohio 43215

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EXHIBIT "A"

DESCRIPTION OF PREMISES

5. THE LAND REFERRED TO IN THIS COMMITMENT IS DESCRIBED AS FOLLOWS:

UNIT NUMBERS "H"6-25, "H"6-27, "H"6-29, "H"6-31, "H"6-33, "H"6-35, "H"6-37, "H"6-39, "H"6-41, "H"6-43, "H"6-45-"A", "H"6-45-"B", "H"6-47, "H"6-49, "H"6-51-"A", "H"6-51-"B", "H"6-53, "H"6-55, "H"6-57, "H"6-59, "H"6-61, "H"6-63, "H"6-65, "H"6-67, "H"6-69-"A", "H"6-69-"B", "H"6-71, "H"6-73, "H"6-75, "H"6-77, "H"6-79-"A", "H"6-79-"B", "H"6-81-"A", "H"6-81-"B", "H"6-83, "H"6-85, "H"6-87-"A", "H"6-87-"B", "H"6-89, "H"6-91, "H"6-93, "H"6-95, "H"6-97, "H"6-99, "H"6-101, "H"6-103, "H"6-105, "H"6-107, "H"6-109, "H"6-111, "H"6-113, "H"6-115, "H"6-117, "H"6-119, "H"6-121, "H"6-123, "H"6-125, "H"6-127, "H"6-129, "H"6-131, "H"6-133, "H"6-135, "H"7-1, "H"7-3, "H"7-5, "H"7-7, "H"7-9, "H"7-11, "H"7-13, "H"7-15, "H"7-17, "H"7-19, "H"7-20, THROUGH "H"7-36, "H"7-38, "H"7-40, "H"7-42, "H"7-113, "H"7-115, "H"7-117, "H"7-119, "H"7-121, "H"7-123, "H"8-100-"A", "H"8-100-"B", "H"8-102, "H"8-104, "H"8-106, "H"8-108, "H"8-110-"A", "H"8-110-"B", "H"8-112, "H"8-114, "H"8-116, "H"8-118, "H"8-120, "H"8-122, "H"8-124, "H"8-126, "H"8-128, "H"8-130, "H"9-132, "H"9-134, "H"9-136, "H"9-138, "H"9-140, "H"9-142, "H"9-144-"A", "H"9-144-"B", "H"9-146, "H"9-148, "H"9-150, "H"9-152, "H"9-154-"A", "H"9-154-"B", "H"10-44, "H"10-46, "H"10-48, "H"10-50, "H"10-52, "H"10-54, "H"10-56, "H"10-58, "H"10-60, "H"10-62, "H"10-64, "H"10-66, "H"10-68, "H"10-70, "H"10-72, "H"10-74, "H"10-76, "H"10-78, "H"10-125, "H"10-127, "H"10-129, "H"10-131, "H"10-133, "H"10-135, "H"10-137, "H"10-139, "H"10-141, "H"10-143, "H"10-145, "H"10-147, "H"10-149, "H"10-151, "H"10-153, "H"10-155, "H"10-157, "H"10-159, "H"11-80, "H"11-82, "H"11-84, "H"11-86, "H"11-88, "H"11-90, "H"11-92, "H"11-94, "H"11-96, "H"11-98, "H"11-100, "H"11-102, "H"11-104, "H"11-106, "H"11-108, "H"11-110, "H"11-161, "H"11-163, "H"11-165, "H"11-167, "H"11-169, "H"11-171, "H"11-173, "H"11-175, "H"11-177, "H"11-179, "H"11-181, "H"11-183, "H"11-185-"A", "H"11-185-"B", "H"11-187, "H"11-189, "H"11-191-"A", "H"11-191-"B", "H"11-193, "H"11-195, "H"11-197, "H"11-199, "H"11-201, "H"11-203, "H"11-205, "H"11-207, "H"11-112-"A", "H"11-112-"B", "H"11-114, "H"11-116, "H"11-118-"A", "H"11-118-"B", "H"11-120, "H"11-122, "H"11-124, "H"11-126, "H"11-128, "H"11-130, "H"11-132, "H"11-134, IN PARK FOREST TOWNHOME CONDOMINIUM AREA "H", AS DELINEATED ON SURVEY OF THE FOLLOWING DESCRIBED REAL ESTATE:

THAT PART OF THE SUBDIVISION OF AREA "H" A SUBDIVISION OF PART OF THE SOUTHEAST 1/4 AND PART OF THE NORTHEAST 1/4 OF SECTION 36, TOWNSHIP 35 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN ACCORDING TO THE PLAT THEREOF RECORDED OCTOBER 24, 1963 AS DOCUMENT 18951798, WHICH SURVEY IS ATTACHED AS EXHIBIT "D" TO THE DECLARATION OF CONDOMINIUM RECORDED AS DOCUMENT NUMBER 26624751, TOGETHER WITH WITH THEIR UNDIVIDED PERCENTAGE INTEREST IN THE COMMON ELEMENTS IN COOK COUNTY, ILLINOIS.

Address: 20-135 Hemlock, 1-35 Leims Road 100(A) - 207 Lester, Park Forest, Illinois 60466

Tax Nos.: 31-36-200-035-1001 through 31-36-200-035-1222

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EXHIBIT "B"

Notwithstanding any provisions hereof or in any of the other Loan Documents to the contrary and upon payment in full of the Note, Lender shall provide a release of this Mortgage and all of the other Loan Documents (other than those provisions of the Environmental Indemnity Agreement which pursuant to its terms are to survive the payoff of the Loan) so long as:

1. There shall exist no uncured default or Event of Default, (or any condition or state of facts which would give rise to a default or an Event of Default upon passage of time or notice or both) under the Note, the Thorncreek Apartments I Note, or the Thorncreek Apartments II Note, or any of the Loan Documents relating to any of said Notes; and
2. The property which is owned by Thorncreek Apartments I ("Thorncreek Apartments I Property") which secures the Thorncreek Apartments I Note must satisfy the following:
 - A. A current appraisal of the Thorncreek Apartments I Property ("Thorncreek I Appraisal") is provided in form reasonably acceptable to Lender which indicates a loan to value ratio (of the Thorncreek Apartments I Property to the outstanding balance on the Thorncreek Apartments I Note) of not greater than 75%;
 - B. Lender has received a current rent roll ("Thorncreek I Rent Roll") for the Thorncreek Apartments I Property in form and content reasonably acceptable to Lender;
 - C. The previous twelve months operating expenses for the Thorncreek I Property ("Thorncreek I Operating Expenses") must be provided in form reasonably acceptable to Lender; together with a report of other income from the Thorncreek Apartments I Property (less any extraordinary items) ("Thorncreek I Other Income");
 - D. The Thorncreek I Rent Roll, Thorncreek I Other Income, Thorncreek I Operating Expenses, and Thorncreek I Appraisal shall be subject to reasonable verification by Lender; and

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E. The annualized Thorncreek I Rent Roll plus the Thorncreek I Other Income minus the Thorncreek I Operating Expenses must result in a net operating income that yields a debt service coverage for the Thorncreek Apartments I Note and related Loan Documents of not less than 1.25 to 1; and

3. A. A current appraisal of the Thorncreek Apartments II Property ("Thorncreek II Appraisal") is provided in form reasonably acceptable to Lender which indicates a loan to value ratio (of the Thorncreek Apartments II Property to the outstanding balance on the Thorncreek Apartments II Note) of not greater than 75%;

B. Lender has approved a current rent roll ("Thorncreek II Rent Roll") for the Thorncreek Apartments II Property in form and content reasonably acceptable to Lender;

C. The previous twelve months operating expenses for the Thorncreek II Property ("Thorncreek II Operating Expenses") must be provided in form reasonably acceptable to Lender; together with a report of other income from the Thorncreek Apartments II Property (less any extraordinary items) ("Thorncreek II Other Income");

D. The Thorncreek II Rent Roll, Thorncreek II Other Income, Thorncreek II Operating Expenses, and Thorncreek II Appraisal shall be subject to reasonable verification by Lender; and

E. The annualized Thorncreek II Rent Roll plus the Thorncreek II Other Income minus the Thorncreek II Operating Expenses must result in a net operating income that yields debt service coverage for the Thorncreek Apartments II Note and related Loan Documents of not less than 1.25 to 1.

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