



TO: Mayor and Council

FROM: Tom Crawford, Interim City Administrator

CC: Derek Delacourt, Community Services Area Administrator
Teresa Gillotti, Director, Washtenaw County OCED
Jennifer Hall, Executive Director, Ann Arbor Housing Commission
Matthew V. Horning, Interim CFO
Craig Hupy, Public Services Area Administrator
Josh Landefeld, Deputy Parks Manager
Brett Lenart, Planning Manager
Remy Long, Greenbelt Program Manager
Molly Maciejewski, Public Works Manager
Susan Pollay, Executive Director, Downtown Development Authority

SUBJECT: August 17, 2020 Council Agenda Responses

DATE: August 13, 2020

CA-3 – Resolution to Approve a Conduit Use Agreement and Reimbursement Agreement for Duct Construction with MCIMETRO ACCESS TRANSMISSION SERVICES CORP (8 Votes Required)

Question: How did the parties establish the price for the use of conduit (\$1.70 per foot for conduit segments located in the Downtown Development Authority (DDA) district and \$1.41 per foot for conduit segments located outside the DDA district). (Councilmember Eaton)

Response: This agreement is with a for-profit private entity, which is different than prior agreements and the applicant will only utilize city conduit, not our fiber. The city obtained outside legal expertise to assist in determining appropriate pricing, which was negotiated with the applicant. The pricing for conduit and (or) fiber varies widely across geographies and different types of installations, and there is no industry standard pricing model. The downtown is a fully built and dense environment with utilities close together and mostly covered with a concrete hardscape, therefore a 20% premium was applied.

Question: Regarding CA-3, are these rates (\$1.70 per foot in DDA and \$1.41 per foot outside DDA) the same as charged other third party users of the conduit infrastructure? Also, can you please remind me what the basis is for the rates? (Councilmember Lumm)

Response: Please see response above.

Question: Also on CA-3, is the different rate in the DDA District (\$1.70 per foot) vs. outside (\$1.41 per foot) based on original cost or something else? (Councilmember Lumm)

Response: Please see response above.

CA-4 – Resolution to Adopt an Affordable Housing Waitlist Policy

Question: Regarding CA-4, can you please elaborate a bit on why HHSAB “passed on providing guidance to staff”? (Councilmember Lumm)

Response: HHSAB discussed the policy at two separate meetings. At the second meeting they agreed to overarching goals and themes, directing staff to finalize the detail of the policy and present it to City Council with those goals/themes incorporated. They held off with getting into a lot of the details, as they were aware that much would be learned iteratively once the waitlist and website were implemented. They did indicate that they wanted the ability to review and recommend adjustments to the policy after learning how it works once in the waitlist was in effect.

CA-5 – Resolution to Approve and Accept Various Grant Fund Opportunities and Appropriate Funding (\$13,274,184) (8 Votes Required)

Question: Regarding EGLE Water & Wastewater Assistance grant, I wonder how this will be administered-- will residents apply for it, will the City be publicizing its availability to qualifying residents? Which “community action agencies” are likely to be partnering with the City to administer the program? (Councilmember Nelson)

Response: Detailed information regarding this program is available here: https://www.michigan.gov/documents/treasury/08.12.2020_COVID_Joint_Webinar_Presentation_699116_7.pdf

The Water Assistance Program information begins on page 38, and a synopsis of how it works begins on page 52. This grant is being administered by Michigan Department of Health and Human Services. Customers who are provided food assistance benefits will be matched with current customers through an automated data matching process currently being established. Customers will not apply and this will be automatically

applied to customers who qualify. The “community action agency” for those customers in Washtenaw County is the Office of Community and Economic Development.

Question: Regarding CA-5, the hazard pay premiums seem straightforward and a direct dollar-for-dollar reimbursement. Is that correct? Also, for the PSPHP, these grant numbers are quite significant (\$5M for each of 2 programs) – does this cover base pay for Police & Fire the city would otherwise be paying out of the General Fund and what is the “best guess” of how much the city would receive? (Councilmember Lumm)

Response: Yes, the hazard pay reimbursement is dollar-for-dollar. The PSPHPR program reimburses the City for salaries and wages, overtime, fringe benefits, and retirement costs that have already been paid from the General Fund. The application for the first round was \$5,048,828.55. The application for the second round will be similar. However, the second round will only be funded to the extent that funds are available. So, the actual award is unknown and may be prorated by the proportion on available funds to total state-wide request.

CA-6 - Resolution to Approve the Fuller Park Parking Lot Land Lease with the University of Michigan (8 Votes Required)

Question: It is my understanding that during negotiations for this agreement there were discussion about including automatic increases and reductions in lease prices if the University changed the rate charged for parking (such as a change from Blue to Yellow parking permit). Why wasn't that addressed in the final agreement? (Councilmember Eaton)

Response: While automatic increases or decrease were discussed during negotiations, it was decided to make any adjustments at the next fiscal year because a decrease would greatly impact the budget for that fiscal year. This is mentioned in Exhibit B of the agreement through the following statement: *“If the University changes any Lot permit plan for a renewal term of this Lease, the lease payment amount for such Lot shall be adjusted proportionate to permit plan change, but subject to the 3% annual increase.”*

Question: Q1. How many spaces does each lot have? (Councilmember Lumm)

Response: There are 250 spots in Lot A, 115 spots in Lot B, and 85 spots in Lot C.

Question: Q2. In a typical summer season, how many Fuller Park patrons are using Lot A in a peak period? Also, how were the 10 spaces reserved for Fuller Park use after 5 p.m. weekdays and on weekends arrived at? (Councilmember Lumm)

Response: During a typical summer season, peak usage (pool and field) of Fuller Park takes place after 5 p.m. when parks have access to both north lots. For the past few years, Parks have not scheduled regular programming on the field near Lot A, which limits the need for dedicated spaces in Lot A. The primary use of Lot A for Fuller Park parking is tied to special events at Fuller.

Parks staff and the University arrived at 10 spaces for park use only in Lot A based anticipated need associated with limited scheduled programming and individuals looking to access the Border to Border trail from that lot.

Question: Q3. Since UM has full use of Lot A now, why is the city still paying for all maintenance other than snow removal? (Councilmember Lumm)

Response: The lot is currently in average shape. Over the last two years, the city has only spent \$2000 on some light repairs for Lot A. While there are no immediate plans to perform major repairs on the lot, should a capital renovation need to occur, cost sharing would be discussed with the University of Michigan.

Question: Q4. Is the only change to the North Lots that UM will have start time of 5AM? What is the start time now? (Councilmember Lumm)

Response: The lease amount increased by 3% over prior year in addition to change in start time. The current start time for the North Lots is 6 am.

Question: Q5. Is it anticipated there will be any time when park patrons will have no place to park, and if so, what is Plan B for them? (Councilmember Lumm)

Response: While staff anticipate that there will almost always be available parking for park patrons as need, we recognize that there may be exceptional times when all available parking may be full. Staff communicate other lots (Island Park, Mitchell Field lots) nearby for users to park.

CA-7 - Resolution to Accept a \$470,000.00 Grant and Approve a Parcel Contract with USDA-NRCS for a Conservation Easement on Property in Northfield Township

Question: Q1. The cover memo indicates that the property “scored in the top 90% of all Greenbelt applications.” Is the “top 90%” another way of saying the “bottom 10%”? If so, why is the purchase being recommended, and have city greenbelt dollars been used for other purchases on properties scoring this low? (Councilmember Lumm)

Response: The property scored in the 91st percentile, meaning the top 9% of all Greenbelt applications. Staff will rephrase this in future memos to be more clear.

Question: Q2. In response to my question in December, it was indicated that a request would be made to the county for funding of 25% - has the county agreed to that? (Councilmember Lumm)

Response: Standard procedure for the local millage-funded conservation programs, including the Greenbelt, is to first secure the federal funding for a project and then make requests from local partners. This is normal practice because (1) partners prefer to know whether or not federal funds will be a part of the transaction prior to evaluating/committing

funds, and (2) do not want to commit funds prior to federal funding allocations are solidified so as to minimize repeat efforts to evaluate requests and adjust funding levels should federal funding not be awarded.

If Council accepts the federal funding, the requests to the potential partners will then be made. Accepting the federal funding does not obligate the City to acquire the conservation easement.

CA-8 - Resolution to Accept a \$1,749,300.00 Grant and Approve a Parcel Contract with USDA-NRCS for a Conservation Easement on Property in Salem Township

Question: Does acceptance of this grant obligate the City to spend Greenbelt funds? If so, how much? (Councilmember Eaton)

Response: No. Accepting the federal funding does not obligate the City to acquire the conservation easement or spend any funds.

Question: Has the Township made any commitment to contribute to the cost of purchasing this easement? (Councilmember Eaton)

Response: Standard procedure for the local millage-funded conservation programs, including the Greenbelt, is to first secure the federal funding for a project and then make requests from local partners. This is normal practice because (1) partners prefer to know whether or not federal funds will be a part of the transaction prior to evaluating/committing funds, and (2) do not want to commit funds prior to federal funding allocations are solidified so as to minimize repeat efforts to evaluate requests and adjust funding levels should federal funding not be awarded.

Question: Q1. As I recall, this is the transaction where about 20% of the acreage is outside the greenbelt boundary. Can you please confirm that, and also remind me under what authority greenbelt tax dollars can be used to purchase easements outside the boundary? (Councilmember Lumm)

Response: 79 out of 375 acres are located outside of the northern Greenbelt District boundary. This is permitted under Chapter 42, section 3:67:

“3:67. - Greenbelt district land; description of greenbelt district.

Land and land rights voluntarily acquired under the provisions of this chapter shall include:

- (1) Land outside the incorporated boundaries of the City of Ann Arbor within the Greenbelt District; except that a parcel either dissected by the Greenbelt District boundaries, or contiguous to the Greenbelt District boundary and a parcel under the same ownership within the Greenbelt District as defined in section 3:62(13) may be acquired in its entirety in the same manner under the provisions of this chapter as if the parcel was within the Greenbelt District.”

Question: Q2. In January, the response to my question about funding indicated the city and county would both be contributing 25% (\$880K) – is that still the plan? Also, that January response indicated that requests for funding contributions would also be made to Salem Township and the Legacy Land Conservancy. Were those requests made and will the entities be contributing? (Councilmember Lumm)

Response: The City still plans to make requests from the County, Township, and Legacy. Standard procedure for the local millage-funded conservation programs, including the Greenbelt, is to first secure the federal funding for a project and then make requests from local partners. This is normal practice because (1) partners prefer to know whether or not federal funds will be a part of the transaction prior to evaluating/committing funds, and (2) do not want to commit funds prior to federal funding allocations are solidified so as to minimize repeat efforts to evaluate requests and adjust funding levels should federal funding not be awarded.

If Council accepts the federal funding, the requests to the potential partners will then be made. Accepting the federal funding does not obligate the City to acquire the conservation easement.

~~CA-9 – Resolution No. 2 – Boardwalk Drive Sidewalk Gap Project – Special Assessment District #63~~

Question: Why was this deleted from the agenda? Is the roadwork still happening (i.e. we should be coordinating work to fill the sidewalk gap)? (Councilmember Nelson)

Response: This item was placed on the agenda in error. The roadwork is currently underway and is expected to be completed this week or early next week. Staff decided to hold off on moving the special assessment forward until after the November vote on the New Sidewalk Millage, which if approved would eliminate the need to specially assess for the work. The road work is being performed in such a way that the sidewalk could be constructed in the future without any disruption to the new pavement.

Question: I don't understand why this item was removed from the agenda. This project rated high "in the City's sidewalk gap prioritization system and is also located on a street that is scheduled for resurfacing in 2020." The area surrounding this project has a lot of service sector employment and as a result, considerable pedestrian traffic. Could you have staff explain why this was removed and when the project will return for Council approval? Is it possible to complete this during the 2020 construction season? (Councilmember Eaton)

Response: Please see response above.

CA-10 – Resolution to Ratify an Emergency Purchase Order with the National Railroad Passenger Corporation (Amtrak) for Railroad Inspection and Flagging Services for the Southside Interceptor Sanitary Diversion Project (\$30,000.00)

Question: I appreciate the explanation that the terms of this agreement are non-negotiable (and the expense is unavoidable), but I'm curious how close we are to Amtrak's original estimate of \$62,920? Do I understand correctly that we approved \$57,370 in February and we're now approving an additional \$30,000? What's the timeline for conclusion of the project, when we might expect refund of unused funds? (Councilmember Nelson)

Response: As of July 31, 2020, Amtrak has expended \$59,675.58 on inspection and flagging related services for the subject project. The original agreement with Amtrak was approved by Council on February 4, 2019. This request is for an additional \$30,000 which will cover railroad inspection, flagging, and other expenses Amtrak incurs related to the project. Currently, the scheduled Substantial Completion date for the project is August 29, 2020. Unfortunately, the Contractor is behind schedule. It appears that the work will be completed by mid- to late-September 2020 and Fuller Street re-opened at that time. We continue to work with the Contractor to complete the work as expediently as possible. Any unspent funds will be reimbursed by Amtrak after the project has been closed out. It is unclear how long that could take, but it is safe to assume about six months or so from the time construction has been completed and Amtrak completes their final inspection of the project area.

Question: Regarding CA-10, seeing this emergency PO with Amtrak reminded me of the Train Station project. Can you please provide an update on where that stands for both the EA and PE phases, the costs incurred to date (and projected), and the anticipated timing for public reviews and votes? (Councilmember Lumm)

Response: Additional time is necessary to prepare the financials requested than is allotted for agenda responses. The financials requested will be made available as soon as possible.

The PE work was completed and accepted by FRA. As to the NEPA or EA, FRA review of the draft EA leading to release to the public for review is still held up in FRA legal. The public reviews would occur after the release by FRA; with a vote to follow.

CA-12 – Resolution to Approve Professional Services Agreement with Eurofins Eaton Analytical, LLC to purchase Certified Laboratory PFAS Testing, RFP #20-25 (estimated \$34,700.00/year)

Question: In the work plan, it's explained that the Eurofins has a monthly capacity of 950 samples— how many samples is the city of Ann Arbor likely to be sending them monthly? Is this a new testing procedure (new to Ann Arbor, I mean)? Am I reading

correctly that our samples will be mailed/shipped to their facilities for testing? (Councilmember Nelson)

Response: Ann Arbor plans to send an average of 10-20 samples per month to Eurofins. The City has been sending samples to a contract lab for PFAS analysis since 2014. Samples will be mailed to Eurofins.

B-1 - An Ordinance to Amend Chapter 55 (Unified Development Code), Zoning of 4.5 Acres from PUD (Planned Unit Development) to C3 (Fringe Commercial district), MMG Plymouth Road Mixed Use Rezoning, 3611-3621 Plymouth Road, (CPC Recommendation: Approval - 9 Yeas and 0 Nays) (Ordinance No. ORD-20-19)

DB-1 – Resolution to Approve MMG Plymouth Road Mixed Use Planned Project Site Plan and Development Agreement, 3611-3621 Plymouth Road (CPC Recommendation: Approval - 9 Yeas and 0 Nays)

Question: Q1. The resolution (B-1) in the packet is still the original one and does not reflect the conditional re-zoning substituted at staff's recommendation July 20th. Doesn't the resolution need to be updated to reflect that this is now a conditional zoning? (Councilmember Lumm)

Response: Yes, thank you for the correction. The Whereas clause in DB-1 has been updated to reflect C3 zoning with conditions.

Question: Q2. At first reading I asked if the large height variance requested (50% variance – 6 stories proposed vs. 4 stories max in C3) suggested that C3 was not the appropriate zoning and the response was “ *Tall, not large/flat buildings are better uses of land – most efficient buildings are more vertically oriented. The large variance speaks more to how antiquated the C3 district standards are compared to modern construction practices.*” Given that response, I'm assuming staff and the Planning Commission plan to revisit the antiquated C3 standards and can you please advise as to when that's planned and if council should provide direction on the matter? (Councilmember Lumm)

Response: The specific analysis of C3 zoning regulations is not currently planned, however, discussion of transit supportive zoning districts will consider similar concepts and opportunities. Given the Planning Commission's interest in pursuing transit supportive zoning, City Council direction is not necessary at this time.

Question: Q3. This proposal (and others recently) are proposals along transit corridors that would not be permitted – in fact are not even close to what would be permitted – based on the Transit District proposal developed by staff and the Planning Commission last Fall. Given that, and the fact that this particular proposal is not a “by right” proposal, it's a bit surprising that staff and the Planning Commission would recommend re-zoning to accommodate a proposal so inconsistent with that Transit District vision – can you please speak to that? (Councilmember Lumm)

Response: This use would be permitted in the drafted transit supportive zoning district, but only in conjunction with conversion of portions of the proposed development, or additional development to meet the mixed-use requirements envisioned. Hotel and restaurant uses are not envisioned as prohibited uses in a transit district, but like all uses, would be complementary to residential uses as well.

Question: Q4. In response to my question on July 20th about traffic exiting the property it was indicated that there was sufficient volume to allow additional controls (such as right in-right out), but not enough volume to require it. Did staff specifically request additional traffic controls and the developer reject them? If council were to add another condition related to traffic controls, do we know if the developer would accept that or abandon the project? (Councilmember Lumm)

Response: Staff suggested the evaluation of additional traffic controls in a review of the traffic study. The petitioner responded that additional trips were not necessary given the distribution of vehicular trips between the Plymouth and Green access points to the site. City staff concurred with this analysis through eventual approval of the traffic study as presented. Adding such a condition would be difficult, as the drive in question is a shared asset by multiple adjacent property owners, of which this petitioner can't make commitments on behalf of.

B-2- An Ordinance to Amend Chapter 55 (Unified Development Code), Zoning of 4.5 Acres from R5 (Hotel District) to C3 (Fringe Commercial District), 2800 Jackson Road Hotels, 2800 Jackson Road, (CPC Recommendation: Approval - 8 Years and 0 Nays)

DB-2 - Resolution to Approve 2800 Jackson Road Hotels Site Plan and Development Agreement, 2800 Jackson (CPC Recommendation: Approval - 8 Years and 0 Nays)

Question: Q. Regarding B-2/DB-2, the cover memo indicates all recent hotels have been approved as C-3 or Office (rather than R5) – can you please provide a list of them for the last 5 years or so, and when was the last R5-zoned hotel? (Councilmember Lumm)

Response: Here are hotels and the corresponding zoning district considered recently:

- Rockbridge hotel project: Approved in 2015 – Zoned C3
- Staybridge Hotel: Approved 2015 – Zoned C2B
- Homewood Suites: Approved in 2016 – Zoned C3
- Hyatt Place: Approved 2016- Zoned C3
- Holiday Inn Express Approved 2017 – Zoned O
- Homewood Suites Approved 2017 – Zoned C3
- The Glen – Approved 2019 – Zoned PUD

Projects Pending/Under Review

- Home 2 Hotel scheduled for City Council September 8th – Zoned O
- 841 Broadway – Scheduled for City Council soon – Zoned PUD
- 300 W. Huron – August Design Review Board – Zoned D1

The last hotel developed under the R5 District regulations was 925 Victors Way in 1985.

Question: Also on B-2/DB-2, I did not see any parks contributions or affordable housing contributions referenced in the development agreement. Were any requested or discussed with the developer? Also, have any comments or objections been received since First Reading on July 20th? (Councilmember Lumm)

Response: The City's voluntary parks contribution formula applies to residential developments only, it is not calculated for non-residential developments. Additionally, no aspects of the proposed rezoning or site plan align with the City's requirements for the provision of affordable housing dwelling units. No additional comments or objections have been received.

DC-2 – Resolution to Approve the Acquisition and Renovation of Lurie Terrace by the Ann Arbor Affordable Housing Corporation, an Affiliated Non-Profit Entity of the Ann Arbor Housing Commission, Approve 5 FTE's and Appropriate Funds (\$260,000) (8 Votes Required)

Question: It says that the DDA will contribute up to \$1,000,000 – how will the amount of their contribution be calculated (higher or lower)? (Councilmember Nelson)

Response: The amount of DDA funds needed will be dependent on the interest rate at the time that we lock in our loan. The AAHC is requesting up to \$1 million because that is the amount needed based on the underwriting standards of our lender and the interest rate in July 2020. If interest rates keep going down, then we can borrow more money and need fewer grant funds. The AAHC is asking for up to \$1 million, but if we need less, then we will only utilize the amount needed. We have submitted a preliminary loan application to HUD, and we have been in communication with them for many months. However, we have not submitted the official application because the purchase agreement and grant funding commitments must be submitted with the formal application. It will take 30-60 days after the loan application is submitted to hear back from HUD that they have approved the loan, and that is when the interest rate gets locked in. It is not anticipated that more than \$1 million will be needed, but if that is the case, then the AAHC will pay for any additional funding needed from its FY21 budget allocation from City Council from the mental health millage.

Question: Q1. The cover memo covers the purchase costs (and funding sources), but not the ongoing operating costs. Can you please provide an operating revenue and cost pro-forma that includes line item detail (as best you have it) as well as the amount of annual required subsidy (if any) from the city and the recommended funding source for that subsidy? (Councilmember Lumm)

Response: Attached is the lender underwriting document that includes more detailed sources and uses on the first page and an operating budget on the 2nd page. The rents will cover the operating expenses. The only subsidy would come from rent subsidies through tenant-based or project-based vouchers and that rent subsidy is paid by HUD.

Question: Q2. The cover memo indicates the total development costs are estimated at \$5.3M, or about \$1.3M over the purchase price. Can you please provide detail on that \$1.3M? (Councilmember Lumm)

Response: See attached.

Question: Q3. The cover memo indicates the primary funding source is a “HUD-Insured 223(f) loan”. Who are the typical lenders of these loans and what are the likely key loan covenants? (Councilmember Lumm)

Response: The typical lender for an FHA 223(f) loan – is a HUD approved FHA lender, which is required to meet minimal capital and experience requirements and many FHA lenders are affiliated with banks or financial companies. Attached are the regulatory agreement and security instrument.

Question: Q4. Has the DDA Board approved the \$1M grant? Also, the language for the DDA is “up to \$1.0 million” so if interest rates are higher and the HUD Loan is less, will the city make up the difference from the 40/40/20 allocation? (Councilmember Lumm)

Response: The DDA board meets on September 2nd. They will be asked to vote on a resolution which was unanimously supported in Committee. If the rates are higher than the attached, the AAHC will utilize funding allocated by city council in the FY21 budget from the 40/40/20 funds.

Question: Q5. Is the \$260K cost for the five FTE’s the FY21 cost (partial year) or a full year annualized cost. (Councilmember Lumm)

Response: The \$260k cost is for a full year since some are not full-time.

Question: Q6. The language regarding the 5 positions isn’t clear in terms of whether the existing 5 employees will be retained or they can apply for the positions – can you please clarify? (Councilmember Lumm)

Response: Existing employees must apply for any positions created by the City through the City’s normal hiring processes.

Question: Q7. AAHC will “grandfather” existing tenants regardless of income and that’s certainly appropriate. The cover memo indicates that the incomes of the “vast majority” of tenants is under 60% AMI – how many existing tenants have incomes that exceed 60% and 80% of AMI? (Councilmember Lumm)

Response: The Lurie Board has not shared income information of current tenants, but based on previous income information that was shared, less than 10% of tenants exceeded 80% AMI and less than 20% of tenants exceeded 60% AMI.

Question: Q8. The cover memo indicates the state will continue to pay the city property taxes as long as the property continues to be owned by a non-profit and exclusively houses seniors. The State paid the city \$91K in property taxes in 2019. What will the property tax amount be going forward as a result of the \$4.0M sale? (Councilmember Lumm)

Response: Property taxes for 2020 will continue to be paid by the State of Michigan through the current owner PILOT (payment in lieu of taxes for senior and disabled housing). The tax payments are calculated using the 2008 taxable value of the Lurie Terrace property. The tax payment received from the State will be approximately \$91,000. The tax payment received from the State excludes the SET, School Operating Taxes, 1% Administration Fee and Special Assessment Charges.

Regarding tax year 2021 and future tax years that is subject to review by the Assessor's Office with the filing of paperwork by the new owner.

Question: Q9. The cover memo also referenced the AAAHC Board. Can you please remind me who is on that Board? Also, I'm assuming the Board will continue to exist as long as the AAAHC manages the property – correct? (Councilmember Lumm)

Response: The AAAHC board is composed of the 5 AAHC Board members (all are appointed by the Mayor and Council & 1 is a AAHC program participant and resident as required by HUD), the Director of the AAHC, and 1 at-large member. The AAAHC will be the owner of the property, will continue to exist in perpetuity, will not have any employees, and will contract with the AAHC to manage the property.

DC – 3 - Resolution to Approve Outdoor Seating for Drip House Coffee, 1336 South Main Street, for the Rest of the Season as a Special Event Sale

Question: Regarding DC-3, I certainly have no issue with trying to support this business, and it seems this method – Special Event Sales – is the best way to do that. I'm curious though about the basis for the end date – is it simply what Drip House Coffee requested or some other basis? (Councilmember Lumm)

Response: Staff proposed the end date as a reasonable duration for the balance of the year and flexibility to the business, and the petitioner concurred.



Red Mortgage Capital is a division of Orix Real Estate Capital, LLC

**PRELIMINARY LOAN ANALYSIS
EXECUTIVE SUMMARY**

This analysis is very preliminary in nature and is based on information supplied by the Borrower. The rates and costs are estimates based on current market conditions and are subject to change without notice. While we believe the analysis below to be reasonable and accurate, no assurances can be given that the FHA insurance commitment will be issued based on the following information or that actual costs will not differ from below.

Lurie Terrace

Property Location: Ann Arbor, MI	Borrower: Ann Arbor Affordable Housing Corporation
Number of Units: 136	Borrower Contact: Jennifer Hall
Year Built: 1950 & 1963	Telephone: -
Transaction Type: Purchase	Mobile: -
Project Type: affordable (meets MAP Guide definition)	

LOAN STRUCTURE	
Term	35
Amortization (yrs)	35
Mortgage Rate	2.900%
MIP	0.350%
Amortization	<u>1.651%</u>
Debt Service Factor	4.901%
Annual Debt Service	196,913
Monthly Payment	16,409
DSCR X	1.15
LTV	40.1%

UNDERWRITING PARAMETERS			U/W	Appraisal
Gross Rental Income			1,076,292	1,752,600
Ancillary Income (Parking, Laundry, if any)			<u>42,840</u>	<u>42,840</u>
Gross Potential Income			1,119,132	1,795,440
Occupancy			95.0%	95.0%
Effective Gross Income (excl. commercial)			1,063,175	1,705,668
Net Commercial Income (max 90% occupancy)			0	0
Total Effective Gross Income			1,063,175	1,705,668
Estimated Annual Operating Expenses			788,247	1,013,547
Annual Deposit to Replacement Reserve			47,600	40,800
Estimated Annual Expenses	6,146	78.62%	<u>835,847</u>	<u>1,054,347</u>
Estimated Net Income			227,329	651,321
Capitalization Rate				6.50%
Concluded Value				10,020,000

MAXIMUM MORTGAGE COMPUTATION			
87.0% of Value			8,717,400
1.149 minimum Debt Service Coverage			4,035,000
Greater of 87.0% of Transaction Costs	4,488,900		
87.0% of Value	<u>N/A</u>		4,488,900
Maximum Statutory Limits			26,652,200
Borrower's Loan Request			4,017,400
MAXIMUM MORTGAGE			\$4,017,400

SOURCES & USES OF FUNDS

Estimated Sources		
RMC Loan Amount	4,017,400	29,540 per unit. Estimate
Downtown Authority Grant	1,000,000	Per Owner
City Grant	<u>319,000</u>	Per Owner
Total Sources	5,336,400	

Estimated Uses		
Outstanding Bal of Purchase Cost	4,050,000	
Initial Deposit to Reserve Fund	855,009	\$6,287 per unit. Estimate
Estimate of Repair Cost	60,251	\$443 per unit. Estimate
Estimate of Repair Escrow (10%)	1,415	See comments below
Debt Service Reserve	196,913	12 Months of Principal and Interest
FHA Inspection Fee	1,500	
Financing Fee	50,000	Flat Fee
GNMA Issuance Costs/Lender Legal	18,200	
Borrower Legal & Organizational	15,000	RMC Estimated
Title & Recording	25,000	RMC Estimated
FHA Application Fee	12,052	\$3 per 1,000
First Year MIP	14,061	0.35%
Required Third Party Reports	29,500	Estimated Appraisal, PCNA, Phase I
Survey	<u>7,500</u>	RMC Estimated
Total Uses	5,336,400	

COMMENTS

- HUD will require an escrow of 110% of the estimated repair cost. Escrow will be returned to borrower once repairs have been completed.
- A good faith deposit of 0.5% of the loan amount is required to be posted with the lender prior to rate lock once FHA issues its commitment and all other closing requirements such as title, survey, etc., can be met.
- Transaction costs do not include amounts that may need to be escrowed for taxes and insurance.
- Underwritten rent based on current in place rent. Other income underwritten to appraiser's estimates.
- Expenses underwritten to a combination of appraiser's estimates and the borrower's budget.
- Assumes an initial deposit to replacement reserve of \$855,000 with an annual deposit of \$350/unit. Repairs estimated at \$60,251. Amounts are based on the Project Capital Needs Assessment prepared by the independent third party analyst.
- Underwritten cap rate of 6.50% and concluded value based on the appraiser's conclusion.
- Debt service reserve released back to borrower at the later date of 3 consecutive months at 1.15 DSCR or 6 months.
- Assumes rent restrictions in place for at least 15 years restricting 40% of the units at 60% AMI or below.

Lurie Terrace

136

	2017		2018		2019		Budget - 5/1/2020		Appraiser		Appraisal (Restricted)		As Underwritten		Notes
INCOME:															
Gross Rental Income	1,037,702	636	1,033,120	633	1,059,014	649	1,077,445	660	1,752,600	1,074	1,076,292	659	1,076,292	659	In Place Rents
Parking Income	21,037	13	20,468	13	26,269	16	26,269	16	25,840	16	25,840	16	25,840	16	Appraisal Restricted
Other Income	14,820	9	20,769	13	19,260	12	13,850	8	17,000	10	17,000	10	17,000	10	Appraisal Restricted
Less Vacancies (Res.)	(38,304)	3.57%	(27,111)	2.52%	(28,992)	3%	(53,872)	4.82%	(89,772)	5.00%	(55,960)	5.00%	(55,957)	5.00%	5.00%
TOTAL:	\$ 1,035,255	634	\$ 1,047,246	642	\$ 1,075,551	659	\$ 1,063,692	652	\$ 1,705,668	1,045	\$ 1,063,172	651	\$ 1,063,175	651	
EXPENSES:															
Administrative															
Advertising/Renting Exp.	5,930	44	18,260	134	8,320	61	4,696	35	27,200	200	6,800	50	6,800	50	Appraisal Restricted
Office Expenses	50,942	375	71,736	527	87,698	645	50,134	369	47,600	350	68,000	500	54,400	400	\$400/unit
Management Fee	-	0.00%	-	0.00%	-	0.00%	47,896	4.50%	68,227	4.00%	63,795	6.00%	63,791	6.00%	6.00%
Total Administrative:	\$ 56,872	418	\$ 89,996	662	\$ 96,018	706	\$ 102,726	755	\$ 143,027	1,052	\$ 138,595	1,019	\$ 124,991	919	
Utilities															
Electricity	104,916	771	109,531	805	105,045	772	109,417	805	108,800	800	108,800	800	109,417	805	Budget
Water	37,843	278	45,947	338	33,591	247	34,599	254	34,000	250	34,000	250	34,599	254	Budget
Gas/Heating	2,535	19	2,308	17	2,392	18	2,464	18	2,720	20	2,720	20	2,464	18	Budget
Total Utilities	\$ 145,294	1,068	\$ 157,786	1,160	\$ 141,028	1,037	\$ 146,480	1,077	\$ 145,520	1,070	\$ 145,520	1,070	\$ 146,480	1,077	
Operating & Maint.															
Repair Contracts	136,172	1,001	165,869	1,220	178,187	1,310	176,132	1,295	176,800	1,300	176,800	1,300	176,800	1,300	Appraisal Restricted
Payroll	237,004	1,743	271,880	1,999	256,826	1,888	276,009	2,029	176,800	1,300	272,000	2,000	276,009	2,029	Budget
Total Oper. & Maint.	\$ 373,176	2,744	\$ 437,749	3,219	\$ 435,013	3,199	\$ 452,141	3,325	\$ 353,600	2,600	\$ 448,800	3,300	\$ 452,809	3,329	
Taxes & Insurance															
RE Taxes	-	-	-	-	-	-	-	-	317,000	2,331	-	-	-	-	
Insurance	63,298	465	63,870	470	62,104	457	63,967	470	54,400	400	54,400	400	63,967	470	Budget
	\$ 63,298	465	\$ 63,870	470	\$ 62,104	457	\$ 63,967	470	\$ 371,400	2,731	\$ 54,400	400	\$ 63,967	470	
Reserve for Replacements	\$ -	-	\$ 40,800	300	\$ 40,800	300	\$ 47,600	350	\$350/unit						
TOTAL EXPENSES:	\$ 638,640	4,696	\$ 749,401	5,510	\$ 734,163	5,398	\$ 765,314	5,627	\$ 1,054,347	7,753	\$ 828,115	6,089	\$ 835,847	6,146	
NET OPERATING INCOME:	\$ 396,615	2,916	\$ 297,845	2,190	\$ 341,388	2,510	\$ 298,378	2,194	\$ 651,321	4,789	\$ 235,057	1,728	\$ 227,329	1,672	

Public Reporting Burden for this collection of information is estimated to average .75 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Response to this request for information is required in order to receive the benefits to be derived. This agency may not collect this information, and you are not required to complete this form unless it displays a currently valid OMB control number. While no assurance of confidentiality is pledged to respondents, HUD generally discloses this data only in response to a Freedom of Information Act request.

Warning: Federal law provides that anyone who knowingly or willfully submits (or causes to submit) a document containing any false, fictitious, misleading, or fraudulent statement/certification or entry may be criminally prosecuted and may incur civil administrative liability. Penalties upon conviction can include a fine and imprisonment, as provided pursuant to applicable law, which includes, but is not limited to, 18 U.S.C. 1001, 1010, 1012; 31 U.S.C. 3729, 3802, 24 C.F.R. Parts 25, 28 and 30, and 2 C.F.R. Parts 180 and 2424.

Recording Requested by:

After Recording return to:

**U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
 REGULATORY AGREEMENT FOR MULTIFAMILY PROJECTS**

**UNDER SECTIONS 207, 220, 221(d)(3), 221(d)(4), 223(a)(7), 223(f) and 231 OF THE
 NATIONAL HOUSING ACT, AS AMENDED**

Replaces HUD- 92465, 92466, FHA-1730, and 1733

Project Name:

HUD Project No.:
HAP Contract No.:

Project Location:

Lender:

Processed under: JMAP JMAP

Original Principal Amount of Multifamily Note:

Originally endorsed for insurance under Section _____. **Date of Note:**

Residual Receipts Rider: Yes No

**If “yes” is checked, the Surplus Cash provisions of this Agreement are modified by an attached Rider relating to residual receipts account requirements.*

This Regulatory Agreement for Multifamily Projects (“**Agreement**”) is entered into this ____ day of _____, 20__, between _____, a _____ organized and existing under the laws of _____, whose address is _____, its successors, heirs, and assigns (jointly and severally) (**Borrower**) and the United States Department of Housing and Urban Development, acting by and through the Secretary, his or her successors, assigns or designates (**HUD**).

In consideration of, and in exchange for an action by HUD, HUD and Borrower agree to the terms of this Agreement. The HUD action may be one of the following: HUD’s endorsement for insurance of the Note, HUD’s consent to the transfer of the Mortgaged Property, HUD’s sale and conveyance of the Mortgaged Property, or HUD’s consent to other actions related to Borrower or to the Mortgaged Property.

Further, Borrower and HUD execute this Agreement in order to comply with the requirements of the National Housing Act, as amended, and the regulations adopted by HUD pursuant thereto. This Agreement shall continue during such period of time as HUD shall be the owner, holder, or insurer of the Note. Upon satisfaction of such Note, this Agreement shall automatically terminate. However, Borrower shall be responsible for any Violations of this Agreement which occurred prior to termination.

Violation of this Agreement may subject Borrower and other signatories hereto to adverse actions. Refer to Article VII below.

AGREEMENTS: Borrower and HUD covenant and agree as follows:

I. DEFINITIONS

1. **DEFINITIONS.** Any capitalized term or word used herein but not defined shall have the meaning given to such term in the Security Instrument between Borrower and Lender or the Note. The following terms, when used in this Agreement (including when used in the above recitals), shall have the following meanings, whether capitalized or not and whether singular or plural, unless, in the context, an incongruity results:

- a. **“Affiliate”** means any person or business concern that directly or indirectly controls policy of a Principal or has the power to do so. Persons and business concerns controlled by the same third party are also Affiliates.
- b. **“Borrower”** means all entities identified as “Borrower” in the first paragraph of the Security Instrument, together with any successors, heirs, and assigns (jointly and severally). “Borrower” shall include any entity taking title to the Mortgaged Property whether or not such entity assumes the Note. Whenever the term “Borrower” is used herein, the same shall be deemed to include the obligor of the

debt secured by the Security Instrument and shall also be deemed to be the mortgagor as defined by Program Obligations.

- c. **“Business Day”** is defined in Section 46.
- d. **“Construction Contract”** means the construction contract, approved by HUD, between Borrower and the contractor contracting to perform construction or substantial rehabilitation on the Project.
- e. **“Declaration of Default”** is defined in Section 37.
- f. **“Displaced Persons or Families”** means a person, family or families, displaced from (i) an urban renewal area, (ii) as a result of government action, or (iii) as a result of a major disaster determined by the President pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act.
- g. **“Distribution”** means any disbursement, conveyance or transfer of any portion of the Mortgaged Property, including the segregation of cash or assets for subsequent withdrawal as Surplus Cash, other than in payment of Reasonable Operating Expenses, or any other disbursement, conveyance, or transfer provided for in this Agreement.
- h. **“Elderly Person”** means any person, married or single, who is 62 years of age or older.
- i. **“Fixtures”** means all property or goods that become so related or attached to the Land or the Improvements that an interest arises in them under real property law, whether acquired now or in the future, excluding all tenant owned goods and property, and including but not limited to: machinery, equipment, engines, boilers, incinerators, installed building materials; systems and equipment for the purpose of supplying or distributing heating, cooling, electricity, gas, water, air, or light; antennas, cable, wiring and conduits used in connection with radio, television, computers, security, fire prevention, or fire detection or otherwise used to carry electronic signals; telephone systems and equipment; elevators and related machinery and equipment; fire detection, prevention and extinguishing systems and apparatus; security and access control systems and apparatus; plumbing systems; water heaters, ranges, stoves, microwave ovens, refrigerators, dishwashers, garbage disposals, washers, dryers and other appliances; light fixtures, awnings, storm windows and storm doors; pictures, screens, blinds, shades, curtains and curtain rods; mirrors; cabinets, paneling, rugs and floor and wall coverings; fences, trees and plants; swimming pools; playground and exercise equipment and classroom furnishings and equipment.

- j. **“Goods and Services”** is defined in Section 22.
- k. **“HUD”** means the United States Department of Housing and Urban Development acting by and through the Secretary in his or her capacity as insurer or holder of the Loan under the authority of the National Housing Act, as amended, the Department of Housing and Urban Development Act, as amended, or any other federal law or regulation pertaining to the Loan or the Mortgaged Property.
- l. **“Impositions”** and **“Imposition Deposits”** are defined in the Security Instrument.
- m. **“Improvements”** means the buildings, structures, and alterations now constructed or at any time in the future constructed or placed upon the Land, including any future replacements and additions.
- n. **“Indebtedness”** means the principal of, interest on, and all other amounts due at any time under the Note, the Security Instrument, and any other Loan Document, including prepayment premiums, late charges, default interest, and advances to protect the security as provided in the Security Instrument.
- o. **“Land”** means the estate in realty described in Exhibit A.
- p. **“Leases”** means all present and future leases, subleases, licenses, concessions or grants or other possessory interests now or hereafter in force, whether oral or written, covering or affecting the Mortgaged Property, or any portion of the Mortgaged Property (including but not limited to proprietary leases, non-residential leases or occupancy agreements if Borrower is a cooperative housing corporation), and all modifications, extensions or renewals. (Ground leases that create a leasehold interest in the Land and where the Borrower’s leasehold is security for the Loan are not included in this definition.)
- q. **“Lender”** means the entity identified as "Lender" in the first paragraph of the Security Instrument, or any subsequent holder of the Note, and whenever the term “Lender” is used herein, the same shall be deemed to include the Obligee, or the Trustee(s) and the Beneficiary of the Security Instrument and shall also be deemed to be the mortgagee as defined by Program Obligations.
- r. **“Loan”** means the loan initially made by Lender to Borrower, as defined in the Security Instrument.

s. **“Mortgaged Property”** means all of Borrower's present and future right, title and interest in and to all of the following whether now held or later acquired:

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

Property and the right to collect such proceeds, liquidated claims or other consideration;

- (10) all Rents and Leases;
- (11) all earnings, royalties, instruments, accounts, accounts receivable, supporting obligations, issues and profits from the Land, the Improvements or any other part of the Mortgaged Property, and all undisbursed proceeds of the Loan and, if Borrower is a cooperative housing corporation, maintenance charges or assessments payable by shareholders or residents;
- (12) all Imposition Deposits;
- (13) all refunds or rebates of Impositions by any Governmental Authority or insurance company (other than refunds applicable to periods before the real property tax year in which the Security Instrument is dated);
- (14) all forfeited tenant security deposits under any Lease;
- (15) all names under or by which any of the above Mortgaged Property may be operated or known, and all trademarks, trade names, and goodwill relating to any of the Mortgaged Property;
- (16) all deposits and/or escrows held by or on behalf of Lender under Collateral Agreements; and
- (17) all awards, payments, settlements or other compensation resulting from litigation involving the Project.

Notwithstanding items numbered (1) through (17) above, Borrower may hold non-project funds in separate, segregated accounts, specifically labeled as non-project funds, which are not part of the Mortgaged Property. These accounts may hold those assets owned or received by Borrower, through equity contributions, gifts, or loan proceeds that were not required by HUD to become part of the Mortgaged Property and were not made a part of the Mortgaged Property by Borrower and funds released from the Mortgaged Property in compliance with Program Obligations (such as Distributions of Surplus Cash and loan repayments, if allowed). *[If such accounts already exist, it is acceptable to identify them here, for example: The [name of accounts/reserves] are designated non-project fund accounts.]*

- t. **“Note”** means the Note executed by Borrower described in the Security Instrument, including all schedules, riders, allonges and addenda, as such Note may be amended from time to time.
- u. **“Notice”** is defined in Section 46.
- v. **“Personalty”** means all equipment, inventory, and general intangibles. The definition of “Personalty” includes furniture, furnishings, machinery, building materials, appliances, goods, supplies, tools, books, records (whether in written or electronic form), computer equipment (hardware and software) and other tangible or electronically stored personal property (other than Fixtures) that are owned, leased or used by Borrower now or in the future in connection with the ownership, management or operation of the Land or the Improvements or are located on the Land or in the Improvements, and any operating agreements relating to the Land or the Improvements, and any surveys, plans and specifications and contracts for architectural, engineering and construction services relating to the Land or the Improvements, choses in action and all other intangible property and rights relating to the operation of, or used in connection with, the Land or the Improvements, including all certifications, approvals and governmental permits relating to any activities on the Land. Intangibles shall also include all cash and cash escrow funds related to the Project, such as but not limited to: Reserve for Replacement accounts, bank accounts, Residual Receipt accounts, and investments.
- w. **“Principal”** means:
- (1) an individual, joint venture, partnership, corporation, trust, nonprofit association, or any other public or private entity proposing to participate, or participating, in a project as sponsor, owner, prime contractor, turnkey developer, management agent, packager, or consultant; and architects and attorneys who have any interest in the project other than an arms-length fee arrangement for professional services;
 - (2) the term principal also includes: (i) any Affiliates of a principal; (ii) if the principal is a partnership, all general partners, and each limited partner having a 25 percent or more interest in the partnership; (iii) if the principal is a public or private corporation or governmental entity; the president, vice-president, secretary and treasurer and any other executive officers who are directly responsible to the board of directors, or the equivalent thereof; all the directors; and each stockholder having a 10 percent or more interest; and

- (3) specifically excepted from this definition of a principal are: (i) parties whose sole interest is that of purchaser or owner of less than five individual unit(s) in the same condominium or cooperative development; (ii) parties whose sole interest is that of a tenant; and (iii) public housing agencies.

x. **“Project”** and **“Project Assets”** mean the Mortgaged Property.

y. **“Program Obligations”** means (1) all applicable statutes and any regulations issued by the Secretary pursuant thereto that apply to the Project, including all amendments to such statutes and regulations, as they become effective, except that changes subject to notice and comment rulemaking shall become effective only upon completion of the rulemaking process, and (2) all current requirements in HUD handbooks and guides, notices, and mortgagee letters that apply to the Project, and all future updates, changes and amendments thereto, as they become effective, except that changes subject to notice and comment rulemaking shall become effective only upon completion of the rulemaking process, and provided that such future updates, changes and amendments shall be applicable to the Project only to the extent that they interpret, clarify and implement terms in this Agreement rather than add or delete provisions from such document. Handbooks, guides, notices, and mortgagee letters are available on “HUDCLIPS,” at www.hud.gov.

z. **“Property Jurisdiction”** is (are) the jurisdiction(s) in which the Land is located.

aa. **“Reasonable Operating Expenses”** means the reasonable expenses and payments that arise from the purchase of goods or services which are exclusively used for the operation, maintenance, and routine repair of the Project (including all payments and deposits required under this Agreement, the Note, or the Security Instrument), or as otherwise permitted by Program Obligations.

bb. **“Rents”** means all rents (whether from residential or non-residential space), revenues, issues, profits (including carrying charges, maintenance fees, and other cooperative revenues, and fees received from leasing space on the Mortgaged Property), other income of the Land or the Improvements, gross receipts, receivables, parking fees, laundry and vending machine income and fees and charges for food and other services provided at the Mortgaged Property, whether now due, past due, or to become due, Residual Receipts, and escrow accounts, however and whenever funded and wherever held.

cc. **“Reserve for Replacement”** is defined in Section 10.

dd. **“Residual Receipts”** means certain funds which are restricted in their use by Program Obligations and applicable business documents (e.g., HAP Contract, Use Agreement) as may be more specifically described in a Residual Receipts Rider attached hereto.

ee. **“Security Instrument”** means the Multifamily (Mortgage, Deed of Trust, Deed to Secure Debt, or other designation as appropriate in Property Jurisdiction), Assignment of Leases and Rents and Security Agreement (HUD-94000M), and any other security for the Indebtedness between Borrower and Lender, and shall be deemed to be the “mortgage” as defined by Program Obligations.

ff. **“Surplus Cash”** means certain Project cash pursuant to the calculation set forth in Section 13.

gg. **“State”** includes the several states comprising the United States of America, and Puerto Rico, the District of Columbia, Guam, the Commonwealth of the Northern Marianas, American Samoa, and the U.S. Virgin Islands.

hh. **“Taxes”** means all taxes, assessments, vault rentals and other charges, if any, general, special or otherwise, including all assessments for schools, public betterments and general or local improvements, that are levied, assessed or imposed by any public authority or quasi-public authority, and that, if not paid, could become a lien on the Land or the Improvements.

ii. **“Undocumented Expense”** is defined in Section 16.

jj. **“Violation”** is defined in Section 36.

kk. **“Waste”** means a failure to keep the Mortgaged Property in decent, safe and sanitary condition and in good repair. During any period in which HUD insures the Loan or holds a security interest on the Mortgaged Property, Waste is committed when, without Lender’s and HUD’s express written consent, Borrower:

- (1) physically changes the Mortgaged Property, whether negligently or intentionally, in a manner that reduces its value;
- (2) fails to maintain and repair the Mortgaged Property in accordance with Program Obligations;
- (3) fails to pay before delinquency any Taxes secured by a lien having priority over the Security Instrument;

- (4) materially fails to comply with covenants in the Note, the Security Instrument or this Regulatory Agreement respecting physical care, maintenance, construction, abandonment, demolition, or insurance against casualty of the Mortgaged Property; or
- (5) retains possession of Rents to which Lender or its assigns have the right of possession under the terms of the Loan Documents;

II. CONSTRUCTION; REFINANCING

2. *[Check the applicable box(es):]*

a. **CONSTRUCTION FUNDS.** Borrower shall keep funds of the Mortgaged Property to be used for construction or substantial rehabilitation separate and apart from operating funds of the Mortgaged Property. Funds for construction or substantial rehabilitation are identified in the Building Loan Agreement and/or Construction Contract.

b. **DEFERRED REPAIR FUNDS.** Borrower shall keep funds of the Mortgaged Property to be used for non-critical or other deferred repairs separate and apart from operating funds of the Mortgaged Property. Funds for non-critical or other deferred repairs are identified in the Escrow Agreement for Deferred Repairs, if applicable.

3. **UNPAID OR OUTSTANDING OBLIGATIONS.** Borrower certifies, upon final or initial/final endorsement of the Note by HUD, Borrower shall have no unpaid obligations in connection with the purchase of the Mortgaged Property, the construction or repair of the Mortgaged Property, or with respect to the Security Instrument, except such unpaid obligations as have the written approval of HUD as to terms, form and amount; and, except for those obligations approved by HUD in writing, the Land shall be paid for in full and is free from any liens or purchase money obligations, or if the Land is subject to a leasehold interest, it shall be subject to a HUD approved lease, and it shall be free from any lien. As of the date hereof, Borrower has no knowledge of any liens or encumbrances against the Mortgaged Property that are not reflected as exceptions to coverage in the lender's title policy insuring the Security Instrument accepted by HUD or that are not shown on the UCC search. All contractual obligations of Borrower or on behalf of Borrower with any party shall be fully disclosed to HUD.

4. **LENDER'S CERTIFICATE.** Borrower acknowledges receipt of the Lender's Certificate or the Request for Endorsement of Credit Instrument & Certificate of Lender, Borrower & General Contractor, as applicable. To the extent such document establishes or reflects obligations of Borrower, such provisions are incorporated herein by this reference. Borrower agrees that the fees and expenses enumerated in the

applicable document have been fully paid or payment has been provided for as set forth in such document and that all funds deposited with Lender shall be used for the purposes set forth in such document insofar as Borrower has rights and obligations in respect thereto.

5. CONSTRUCTION COMMENCEMENT/REPAIRS.

a. [*Check the box to the left for Construction/Substantial Rehabilitation transactions.*] Borrower certifies that it has not commenced construction or substantial rehabilitation of the Mortgaged Property prior to HUD's initial endorsement of the Note, except that this Section 5a is not applicable if HUD has given prior written approval to an early start of construction, or if this Project is an Insurance Upon Completion or if such work has been disclosed to and approved in writing by HUD. If Borrower has received prior written approval for early start, Borrower shall perform, observe and comply with all Program Obligations for early start prior to initial endorsement, which includes but is not limited to the release of liens in association with the Project, the funding of escrows for change orders, and the payment of an inspection fee.

b. [*Check the box to the left for Refinance/Purchase transactions.*] Borrower shall complete any non-critical or other deferred repairs in accordance with the terms of the Firm Commitment. Borrower is in receipt of HUD's written acknowledgment of the satisfactory completion of any non-critical or other deferred repairs for the Mortgaged Property to the extent such repairs have been completed. Borrower has provided funds to complete any remaining repairs, as evidenced by the Escrow Agreement for Deferred Repairs, in accordance with Program Obligations, if applicable.

6. DRAWINGS AND SPECIFICATIONS. The Mortgaged Property shall be constructed in accordance with the terms of the Construction Contract as approved by HUD, if any, and with the Drawings and Specifications, if any, that have been approved by HUD and deemed attached to the Construction Contract.

7. REQUIRED PERMITS

a. [*Check the box to the left for Construction/Substantial Rehabilitation transactions.*] The Borrower has obtained, or caused to be obtained, all necessary certificates, permits, licenses, qualifications, authorizations, consents and approvals from all necessary Governmental Authorities to own and operate the Project and to carry out all of the transactions required by the Loan Documents and to comply with all applicable federal statutes and regulations of HUD in effect on the date of the Firm Commitment, except for those, if any, which customarily would be obtained at a later date, at an appropriate stage of construction or completion thereof, and which the Borrower shall obtain, or cause to be obtained, in the future. As the construction of the

Project progresses, the Borrower will obtain or cause to be obtained, and submit to HUD and Lender all necessary building and other permits required by Governmental Authorities. The Mortgaged Property shall not be available for occupancy by any tenant without the prior written approval of HUD and of all other legal authorities having jurisdiction of the Mortgaged Property.

b. [*Check the box to the left for Refinancing/Acquisition transactions.*] Borrower has obtained, or cause to be obtained, all necessary certificates, permits, licenses, qualifications, authorizations, consents and approvals from all necessary Governmental Authorities to own and operate the Project, to carry out all of the transactions required by the Loan Documents and to comply with all applicable federal statutes and regulations of HUD in effect on the date of the Firm Commitment. If HUD requires that Borrower execute an Escrow Agreement for Deferred Repairs in connection with HUD's endorsement for insurance of the Note, the licenses and permits that are in effect as of the date hereof are sufficient to allow any repair of the improvements required pursuant to the terms of the Escrow Agreement for Deferred Repairs to proceed to completion in the ordinary course.

8. ACCOUNTING REQUIREMENTS.

a. [*Check the box to the left for Construction/Substantial Rehabilitation transactions.*] Borrower shall submit a cost certification to HUD, if and as required by Program Obligations, for all receipts and disbursements during the period set forth therein. The excess of project income over property disbursements, as determined by HUD, shall be treated as a recovery of construction cost, except as otherwise allowed in Program Obligations.

b. [*Check the box to the left for Refinancing/Acquisition transactions.*] Borrower shall submit a cost certification to HUD, if and as required by Program Obligations, including all receipts and disbursements relating to repairs required pursuant to the Building Loan Agreement and/or the Escrow Agreement for Deferred Repairs. Any funds remaining after completion of the repairs shall be treated in accordance with Program Obligations, and pursuant to the Escrow Agreement for Deferred Repairs, if applicable.

III. FINANCIAL MANAGEMENT

9. PAYMENTS. Borrower shall make promptly all payments due under the Note, Security Instrument, and this Agreement.

10. RESERVE FOR REPLACEMENT. Borrower shall establish and maintain a

Reserve for Replacement account for defraying certain costs of replacing major structural elements and mechanical equipment of the Project or for any other purpose.

- a. The Reserve for Replacement shall be deposited with Lender or in a safe and responsible depository designated by Lender in accordance with Program Obligations. Such funds shall at all times remain under the control of Lender or Lender's designee and shall be held in accounts insured or guaranteed by a federal agency and in accordance with Program Obligations.
- b. Borrower shall deposit a monthly amount of \$_____ concurrently with the Amortization Commencement Date unless a different date or amount is established by HUD. The amount of the monthly deposit may be increased or decreased from time to time at the written direction of HUD without a recorded amendment to this Agreement. At least every ten years, starting from the date of initial or initial/final endorsement of the Note, and more frequently at HUD's sole discretion, Borrower shall submit to HUD a written analysis of its use of the Reserve for Replacement during the prior ten years and the projected use of the Reserve for Replacement in accordance with Program Obligations.
- c. Borrower shall carry the balance in this account on the financial records as a restricted asset. The Reserve for Replacement shall be invested in accordance with Program Obligations, and any interest earned on the investment shall be deposited in the Reserve for Replacement for use by the Project in accordance with this Section 10.
- d. Disbursements from the Reserve for Replacement shall only be made after consent, in writing, of HUD, in its sole discretion, or as otherwise approved by HUD pursuant to Program Obligations. In the event of a Declaration of Default under the terms of the Security Instrument (pursuant to which the Indebtedness has been accelerated) a written notification by HUD to Borrower of a violation of this Agreement or at such other times as determined solely by HUD, HUD may direct the application of the balance in such account to the amount due on the Indebtedness as accelerated or for such other purposes as may be determined solely by HUD.
- e. In the case of a transfer of the Mortgaged Property where the Project is already subject to a Security Instrument insured or held by HUD as of the date hereof, and this Agreement is now being executed by Borrower as of the date hereof, the Reserve for Replacement now to be established shall be equal to the amount due to be in such account under this Agreement, and payments hereunder shall begin with the first payment due on the Security Instrument after acquisition, unless some other method of establishing and maintaining the account is approved in writing by HUD.

f. Upon Borrower's full satisfaction of all HUD obligations, including but not limited to those imposed under this Agreement, Borrower shall receive any monies remaining in the Reserve for Replacement.

11. PROPERTY AND OPERATION; ENCUMBRANCES.

a. Borrower shall deposit all Rents and other receipts of the Project in connection with the financing of the Project, including equity or capital contributions required under the Firm Commitment or otherwise advanced for the purpose and as part of the Mortgaged Property, in the name of the Project in a federally insured depository or depositories and in accordance with Program Obligations. (Such required equity or capital contributions shall not include certain syndication proceeds, such as proceeds from Low Income Housing Tax Credit transactions used to repay bridge loans, all as more fully set forth in Program Obligations.) Such funds shall be withdrawn only in accordance with the provisions of this Agreement for Reasonable Operating Expenses of the Project or for Distribution of Surplus Cash or as reimbursement of advances as permitted by Sections 14 and 15 below; or for permitted deposits authorized by this Agreement or for any other reason authorized under this Agreement. Any person or entity receiving Mortgaged Property other than for payment of Reasonable Operating Expenses, authorized Distributions of Surplus Cash, or for any reason authorized under Section 34 of this Agreement, shall immediately deliver such Mortgaged Property to the Project and failing so to do shall hold such Mortgaged Property in trust.

b. Borrower shall not engage in any business or activity, including the operation of any other project, or incur any liability or obligation not in connection with the Project, nor acquire an Affiliate or contract to enter into any affiliation with any party except as otherwise approved by HUD.

c. Borrower shall satisfy or obtain a release of any mechanic's lien, attachment, judgment lien, or any other lien that attaches to the Mortgaged Property or any part thereof.

d. Penalties, including but not limited to delinquent tax penalties and civil money penalties, shall not be paid from the Project.

e. Borrower shall promptly notify HUD of the appointment of any receiver for the Project, the filing of a petition in bankruptcy or insolvency or for reorganization.

f. Borrower shall keep the Mortgaged Property insured at all times in accordance with the Security Instrument and Program Obligations, and Borrower shall notify HUD of all payments received from an insurer.

g. Borrower shall notify HUD of any action or proceeding relating to any condemnation or other taking, or conveyance in lieu thereof, of all or any part of the Mortgaged Property, whether direct or indirect condemnation.

h. Borrower shall notify HUD of any litigation proceeding filed against Borrower or the Project, or any litigation proceeding filed by Borrower.

12. SECURITY DEPOSITS. Any funds collected as security deposits shall be kept (a) separate and apart from all other funds of the Project; (b) in interest bearing trust accounts, to the extent required by State or local law; and (c) in an amount which shall at all times equal or exceed the aggregate of all outstanding obligations under said account. Security deposit account interest shall be paid on a pro rata basis to tenants or applied to sums due under their leases upon the termination of their tenancy in the Project. The use of tenant security deposits for Project operations is prohibited unless the tenant has forfeited the deposit.

13. SURPLUS CASH.

a. Borrower must calculate Surplus Cash as of the last day of its fiscal year. Borrower may also, at its election, and if permitted pursuant to Program Obligations, calculate Surplus Cash as of the last day of the sixth month of its fiscal year. Borrower shall submit a report of its Surplus Cash calculations to HUD with its required annual financial reports, pursuant to Program Obligations.

b. Surplus Cash shall equal the sum of:

- (1) Project cash and cash equivalents (excluding the Reserve for Replacement account and other HUD-required reserves);
- (2) short-term investments;
- (3) project-based Section 8 Housing Assistance Payments earned but not yet received by Borrower; and
- (4) any amounts approved for withdrawal but not yet withdrawn from the Reserve for Replacements or any other reserves or escrow accounts;

after deducting:

- (5) all sums due or required to be paid within the calendar month following the date as of which Surplus Cash is calculated under the terms of the Note and Security Instrument (including without limitation principal, interest, mortgage insurance premium deposits, deposits to the Reserve for

Replacements and other reserves as may be required by HUD, and tax and insurance escrow deposits);

- (6) all special funds required to be segregated by this Agreement, the Note, the Security Instrument, or Program Obligations, including tenant security deposits and any other amounts held in trust for tenants; and
- (7) all other obligations of the Project payable within the next thirty days, unless the obligation is paid subject to available Surplus Cash or subject funds for payment of the obligation are set aside or HUD has approved deferment of payment.

14. **DISTRIBUTIONS.** Borrower shall not make or take, or receive and retain, nor allow any Affiliate or Principal to receive or retain any Distribution of assets or any income of any kind of the Project, except from Surplus Cash or in accordance with Program Obligations. Distributions are governed by the following conditions:

- a. No Distribution shall be made or taken from borrowed funds. Distributions shall not be taken prior to the completion of the Project. Distributions shall not be taken after HUD has given Notice to Borrower of a Violation under this Agreement or an Event of Default occurs under the Note or Security Instrument. Distributions shall not be taken when a Project is under a forbearance agreement.
- b. No Distribution shall be made or taken when either (i) necessary services (utilities, trash removal, security, lawn service or any other services that Borrower is required to provide) are not being provided on a regular basis, which failure Borrower should have known about in the exercise of due care; (ii) notices of physical repairs or deficiencies (including, but not limited to, building code violations) by Governmental Authorities and/or by HUD have been issued and remain unresolved to the satisfaction of the issuing public body; or (iii) Borrower has been notified by HUD, Lender or a Governmental Authority that physical repairs and/or deficiencies exist and Borrower has not corrected or cured the identified items to HUD's satisfaction. Upon completion of the repairs, HUD may permit a Distribution to be placed in an escrow account until a subsequent inspection has been completed by HUD. If the Project passes a subsequent inspection, HUD may then authorize release of the funds in the escrow account to Borrower. HUD may also permit Distributions when there are minor or contested local code violations on a case-by-case basis.
- c. Any Distribution of any funds of the Project not permitted by this Agreement or Program Obligations shall be returned to the appropriate Project account as specified by HUD immediately.

- d. Any Distributions shall be made or taken only as permitted by the law of the applicable jurisdiction. Distributions, if taken, must be taken out of the appropriate Project account as specified by HUD within the accounting period immediately following the computation of Surplus Cash, and prior to the Borrower's next calculation of Surplus Cash, pursuant to Section 13 above, and if not taken within the identified period, these funds remain as Mortgaged Property and may only be used as permitted by this Agreement.
- e. Equity or capital contributions shall not be reimbursed from Project accounts without the prior written approval of HUD. Borrower advances for Reasonable Operating Expenses shall not be deemed to fall under this subsection but rather shall be treated under Section 15 below.

15. BORROWER ADVANCES.

- a. "**Borrower Advances**" means any advance of funds or loan to the Project made by Borrower or any Affiliate for whatever reason. Borrower Advances do not include equity or capital contributions whether required in conjunction with the financing of the Project or otherwise. Borrower Advances may only be repaid from Project funds pursuant to this Section 15.
- b. Any Borrower Advances must be deposited into the Project's operating account as required by Program Obligations. Interest may accrue on Borrower Advances pursuant to Program Obligations and may only be paid in accordance with this Section 15.
- c. Borrower Advances may only be repaid, and interest on Borrower Advances may only be paid:
 - (1) with prior written approval from HUD, or
 - (2) if and to the extent that Borrower is permitted to take Distributions, from funds allowable for Distributions, and only at times when Distributions are permitted pursuant to Sections 13 and 14 of this Agreement.
- d. Repayments of Borrower Advances, and payments of interest on Borrower Advances, approved by HUD and made pursuant to Section 15(c)(i) shall be considered Reasonable Operating Expenses.
- e. Borrower shall require, as a condition of any agreement to repay Borrower Advances, or to pay interest thereon, with any party making such Borrower

Advances, that such agreement shall recognize the limitations of this Section 15 and, if all of the conditions of this Section 15 are not met, shall hold the Borrower and the Mortgaged Property harmless for failure to pay.

- 16. FINANCIAL ACCOUNTING.** Borrower shall keep the books and accounts of the operation of the Mortgaged Property in accordance with Program Obligations. The books and accounts must be complete, accurate and current at all times. Posting must be made at least monthly to the ledger accounts, and year-end adjusting entries must be posted promptly in accordance with sound accounting principles. Any Undocumented Expense or Distribution shall be an ineligible Project expense, unless otherwise determined in writing by HUD. An **“Undocumented Expense”** is an expense without sufficient documentation that provides reasonable identification of the basis of the expense. Books, accounts and records shall be open and available for inspection by HUD, after reasonable prior notice, during normal office hours, at the Project or another mutually agreeable location.
- 17. BOOKS MAINTAINED BY MANAGEMENT AGENTS.** The books and records of the Project maintained by management agents and Affiliates shall be maintained in accordance with Program Obligations and shall be open and available to inspection by HUD, after reasonable prior notice, during normal office hours, at the Project or another mutually agreeable location. Every agreement executed on behalf of the Project with any management agent or Affiliate shall include the provision that the books and records of the Project shall be properly maintained and open to inspection during normal business hours by HUD at the Project or another mutually agreeable location and that upon the termination of an agreement with management agent and/or Affiliates, the books and records of the Project maintained by the management agent and/or Affiliates shall remain with Borrower.
- 18. ANNUAL FINANCIAL REPORTS.**
- a. Within ninety (90) days, or such period established in writing by HUD, following the end of each fiscal year, Borrower shall prepare a financial report for the Borrower’s fiscal year, or the portion thereof that started with the Borrower’s assumption of financial responsibility (or the portion thereof that ended with Borrower’s permitted transfer pursuant to a HUD-approved transfer of the Project), based on an examination of the books and records of the Borrower in accordance with generally accepted accounting principles (GAAP) and in such other form and substance as specified by HUD in supplemental guidance, and provide such report to HUD in such form and substance as specified by HUD under the Uniform Financial Reporting Standards at 24 C.F.R. Section 5.801 (UFRS), or any successor regulations, and Program Obligations.

- b. Unless specifically waived or modified by HUD or through government notice (OMB Circular A-133 or any equally applicable notice), Borrower shall: (i) engage an independent, licensed Certified Public Accountant (CPA) to audit the Borrower's annual financial report and to produce an audit report in accordance with both Generally Accepted Government Auditing Standards (GAGAS) and Generally Accepted Auditing Standards (GAAS); (ii) engage an independent, licensed CPA to perform an agreed-upon procedure, in accordance with the American Institute of Certified Public Accountants (AICPA) Statement on Standards for Attestation Engagements (SSAE) Number 4, to compare the financial data template information submitted electronically by the Borrower to HUD against the annual financial report examined by, and the audit report prepared by, the independent, licensed CPA; and (iii) furnish to HUD the audit report, and any other reports relating to the annual financial report or the audit report as required by Program Obligations, by such means and in such form and substance as specified by HUD under UFRS, or any successor regulations, and Program Obligations.
- c. To the extent certain non-profit Borrowers' requirement to submit audited annual financial reports may be waived or modified pursuant to OMB Circular A-133 or any successor notice, no provisions of such notice shall be construed to relieve Borrower of any requirements of this Section 18, except for those requirements specifically waived or modified by such notice.
- d. If Borrower fails to perform as required pursuant to this Section 18, HUD may, at its sole election, and in a manner determined by HUD, and without affecting any other provisions of this Agreement, and without first providing notice of violation of this Agreement pursuant to Section 36 of this Agreement, initiate a forensic audit of the Borrower's books, records, and accounts in such a manner as to provide to HUD with as much of the same information that would have been provided had the Borrower not failed to perform as required. Any such audit initiated by HUD does not relieve Borrower of the requirement to submit to HUD an annual audited financial report as required pursuant to this Agreement.

IV. PROJECT MANAGEMENT

19. PRESERVATION, MANAGEMENT AND MAINTENANCE OF THE MORTGAGED PROPERTY. Borrower (a) shall not commit Waste, (b) shall not abandon the Mortgaged Property, (c) shall restore or repair promptly, in a good and workmanlike manner, any damaged part of the Mortgaged Property to the equivalent of its original condition, or such other condition as HUD may approve in writing, whether or not litigation or insurance proceeds or condemnation awards are available to cover any

costs of such restoration or repair, and (d) shall keep the Mortgaged Property in decent, safe, sanitary condition and good repair, including the replacement of Personalty and Fixtures with items of equal or better function and quality, all in accordance with Program Obligations. By executing this Agreement, Borrower agrees and understands that obligations (a) through (d) of this Section 19 are absolute and unconditional and are not limited by any conditions precedent and are not contingent on HUD's performance of any administrative or contractual obligations. Furthermore, HUD is in no way obligated to provide funding or any financial assistance of any kind to Borrower to repair, rehabilitate, maintain, or make improvements to the Mortgaged Property. The Mortgaged Property must also be maintained in reasonable condition for proper audit and subject to examination by HUD at the Project or another mutually agreeable location. In the event all or any of the Improvements shall be destroyed or damaged by fire, by failure of warranty, or other casualty, the money derived from any settlement, judgment, or insurance on the Mortgaged Property shall be applied in accordance with the terms of the Security Instrument. In the event all or any of the Improvements shall be taken by an exercise of the power of eminent domain, all awards of compensation in connection with condemnation for public use of or a taking of any of the Improvements shall be paid in accordance with the Security Instrument.

20. FLOOD HAZARDS. Borrower shall maintain flood insurance if required by the Security Instrument.

21. MANAGEMENT. Borrower shall provide management of the Mortgaged Property in a manner deemed to be acceptable to HUD. At HUD's sole discretion, HUD may require replacement of the management under any circumstances set forth in subsection (d) of this Section 21 pursuant to Program Obligations, in which case Borrower shall immediately make arrangements for providing management satisfactory to HUD. Borrower shall execute a management agreement or other document outlining procedures for managing or operating the Mortgaged Property. Such agreement or document must comply with Program Obligations. Borrower and management agent (if applicable) shall submit and maintain a current management certification in accordance with Program Obligations. In addition to the requirements of Section 17 above, all management agreements must contain the following provisions:

- a. HUD's rights and requirements prevail in the event of any conflict with the terms of the management agreement.
- b. The management agreement shall not be assigned without the prior written approval of HUD.
- c. Management fees will be computed and paid in accordance with HUD requirements.

- d. HUD may require Borrower to terminate the management agreement:
 - (1) immediately without penalty if an Event of Default occurs under the Security Instrument, Note, or Regulatory Agreement-;
 - (2) upon thirty (30) days written notice to Borrower and management agent, for failure to comply with the provisions of the Management Certification, or for other good cause; or
 - (3) immediately without penalty when HUD takes control of the Mortgaged Property pursuant to its rights under the Loan Documents as mortgagee in possession.
- e. If Borrower terminates the management agreement pursuant to a request from HUD, the management agent must immediately turn over to Borrower all of the cash, accounts, deposits, investments, and records pertaining to the Mortgaged Property.
- f. Borrower may terminate the management agreement for cause with no more than a thirty (30) day notice period.
- g. The management agreement shall not exempt the management agent from liability for damages, injuries or losses, resulting from the management agent's gross negligence or willful misconduct.

22. CONTRACTS FOR GOODS AND SERVICES. Consistent with Program Obligations, Borrower shall obtain contracts for goods, materials, supplies, and services (**Goods and Services**) at costs, amounts, and terms that do not exceed reasonable and necessary levels and those customarily paid in the vicinity of the Land for Goods and Services received. The purchase price of Goods and Services shall be based on quality, durability and scope of work and shall be made upon the most advantageous terms for the Project operation. Reasonable Operating Expenses do not include amounts paid for Improvements and/or betterments, unless approved in writing by HUD. Borrower shall keep copies of all written contracts or other instruments that affect the Mortgaged Property, all or any of which may be subject to inspection and examination by HUD at the Project or another mutually agreeable location.

23. RESPONSIVENESS TO INQUIRIES. At the request of HUD, Borrower shall promptly furnish operating budgets and occupancy, accounting and other reports (including credit reports) and give specific answers to questions relative to income,

assets, liabilities, contracts, operation, and conditions of the Mortgaged Property and the status of the Security Instrument.

24. TENANT ORGANIZATIONS. If the Project is subject to 24 C.F.R. Part 245, Subpart B or any successor regulation covering the rights of tenants to organize, Borrower shall comply with this Section 24. Borrower shall not (a) impede the reasonable efforts of resident tenant organizations to represent their members or the reasonable efforts of tenants to organize, or (b) unreasonably withhold the use of any community room or other available space appropriate for meetings that is part of the Mortgaged Property when requested by: (i) a resident tenant organization in connection with the representational purposes of the organization; or (ii) tenants seeking to organize or to consider collectively any matter pertaining to their living environment, which includes the terms and conditions of their tenancy as well as activities related to housing and community development. Borrower may charge for the use of the Mortgaged Property any fees or costs approved by HUD as may normally be imposed for the use of such facilities or may waive any such fees or costs.

V. ADMISSIONS AND OCCUPANCY

25. RESIDENTIAL UNITS AND SERVICES. If the Project is subject to regulation of rent by HUD, Borrower shall make residential units and services of the Project available to eligible tenants at charges not exceeding those established in accordance with a rental schedule approved in writing by HUD.

26. LEASE TERMS FOR RESIDENTIAL UNITS. Residential units shall not be rented for a period of less than thirty (30) days or for more than 3 years and shall not be used for transient or hotel purposes. Rental for transient or hotel purposes shall mean: (a) rental for a period of less than thirty (30) days or (b) any rental, if the occupants of the residential units are provided customary hotel services such as room service for food and beverages, maid service, furnishings or laundering of linens, and bellhop service. Residential units in projects with Security Instruments initially endorsed for insurance pursuant to Section 231 of the National Housing Act, as amended, may be rented for a period of more than 3 years.

27. COMMERCIAL (NON-RESIDENTIAL) LEASES. No portion of the Mortgaged Property shall be leased for any commercial purpose or use without receiving HUD's prior written approval as to terms, form and amount, except that for lease renewals or extensions or amendments involving no change in terms or use, rent increases are permitted without HUD approval. Borrower must deliver an executed copy of the commercial Lease to HUD.

28. SUBLEASES. All Leases of residential units by Borrower to tenants must also prohibit assignment of the leasehold interest by the tenant without the prior written approval of Borrower. All Leases of residential units by Borrower to tenants must prohibit tenants from entering into any subleases that do not run for at least thirty (30) days and must require that all subleases be approved in advance in writing by Borrower. Leases of residential units must prohibit the tenant from granting the right to occupy the premises for a period of less than thirty (30) days or from furnishing hotel services, as defined in Section 26. Assignment and subleasing of units by other than the tenant thereof without the prior written approval of Borrower shall be prohibited in the Lease. Upon discovery of any unapproved assignment, sublease or occupancy, Borrower shall, to the extent permitted by law, immediately demand cancellation and/or vacation of the premises, as appropriate, and notify HUD thereof.

29. TENANT SELECTION/OCCUPANCY.

- a. If the Security Instrument is originally a HUD-held purchase money mortgage, or is originally endorsed for FHA multifamily insurance under any Section of the National Housing Act, as amended, other than Section 231 units specially designed for use and occupancy of Elderly Persons exclusively, Borrower shall not, in selecting tenants, discriminate against any person or persons by reason of the fact that there are children in the family, unless in accordance with the Fair Housing Act and otherwise approved in writing by HUD in accordance with the Program Obligations.
- b. If the Security Instrument is originally endorsed for insurance under Section 221, Borrower shall, in selecting tenants, give to Displaced Persons or Families an absolute preference or priority of occupancy that shall be accomplished as follows: (1) For a period of sixty (60) days from the date of original offering, unless a shorter period of time is approved in writing by HUD, all units shall be held for such preferred applicants, after which time any remaining unrented units may be rented to non-preferred applicants; (2) thereafter, and on a continuing basis, such preferred applicants shall be given preference over non-preferred applicants in their placement on a waiting list to be maintained by Borrower; and (3) through such further provisions agreed to in writing by the parties to this Agreement.
- c. At least 75% of the units in a Project insured under Section 231 shall be designed for the use and occupancy of Elderly Persons unless prior written approval is given by HUD for a lesser number of units.
- d. All advertising or efforts to rent a project insured under Section 231 shall reflect a bona fide effort of Borrower to obtain occupancy by Elderly Persons.

30. ADDITIONAL OCCUPANCY RESTRICTIONS AND POLICIES:

[a. List any additional occupancy restrictions and policies imposed in connection with the Loan (e.g., for Section 231 or for Affordable Housing MIP) or insert “none”.

b. Additional occupancy restrictions and policies imposed by other programs may be listed here as well, but, if so, also insert a caveat to such restrictions stating: “these provisions are for informational purposes only and are not required under the Loan.”]

31. RENTS. If the Project is subject to regulation of rent by HUD, HUD will at any time entertain a written request for a rent increase that is properly supported by substantiating evidence and HUD will, within a reasonable time: (a) approve a rental schedule that is necessary to compensate for any net increase, occurring since the last approved rental schedule, in taxes (other than income taxes) and operating and maintenance costs over which Borrower has no effective control; or (b) deny the increase and state the reasons for its decision.

32. CHARGES FOR SERVICES AND FACILITIES. If the Project is subject to regulation of rent by HUD, Borrower shall only charge to and receive from any tenant such amounts as have the prior written approval of HUD and are mutually agreed upon between Borrower and the tenant for any facilities and/or services not included in the HUD approved rent schedule that may be furnished by, or on behalf of, Borrower to such tenant upon request.

33. PROHIBITION OF CERTAIN FEES. Borrower shall not charge any Project tenant or prospective Project tenant any fees prohibited under Program Obligations. Such prohibited fees may include an admission fee, a key fee, or similar payment pursuant to any agreement to furnish residential units or services to persons making such payments.

34. SECURITY DEPOSITS AND OTHER FEES. Borrower shall not require as a condition of occupancy or leasing of any unit in the Project, any consideration or deposit other than the prepayment of the first month’s rent plus a security deposit in an amount not in excess of one month’s rent to guarantee the performance of the lease terms. Borrower may charge certain application processing fees such as credit check or criminal background fees or pet deposits.

VI. ACTIONS REQUIRING THE PRIOR WRITTEN APPROVAL OF HUD

35. ACTIONS REQUIRING THE PRIOR WRITTEN APPROVAL OF HUD. Borrower shall not without the prior written approval of HUD:

- a. Convey, assign, transfer, pledge, hypothecate, encumber, or otherwise dispose of the Mortgaged Property or any interest therein, or permit the conveyance, assignment, or transfer of any interest in Borrower (if the effect of such conveyance, assignment or transfer is the creation or elimination of a Principal) unless permitted by Program Obligations. Borrower need not obtain the prior written approval of HUD: (i) for a conveyance of the Mortgaged Property at a judicial or non-judicial foreclosure sale under the Security Instrument; (ii) for inclusion of the Mortgaged Property in a bankruptcy estate by operation of law under the United States Bankruptcy Code; (iii) for acquisition of an interest by inheritance or by Court decree; or (iv) for actions permitted under subsection (g) below.
- b. Enter into any contract, agreement or arrangement to borrow funds or finance any purchase or incur any liability, direct or contingent, other than for Reasonable Operating Expenses.
- c. Pay out any funds of the Mortgaged Property except as provided in this Agreement and Program Obligations.
- d. Except from permissible withdrawals of Surplus Cash, pay any compensation, including wages or salaries, or incur any obligation to do so, to any officer, director, stockholder, trustee, beneficiary, partner, member, manager (in the case of a Borrower formed as a Limited Liability Company or Limited Liability Corporation), or Principal of Borrower, or to any nominee thereof.
- e. Enter into or change any contract, agreement or arrangement for supervisory or managerial services or Leases for operation of the Project in whole or in part except as permitted under Program Obligations.
- f. Convey, assign or transfer any right to receive the Rents of the Mortgaged Property, except as provided in the Security Instrument.
- g. Remodel, add to, subtract from, construct, reconstruct or demolish any part of the Mortgaged Property, except as required by HUD under Section 19(c) and except that Borrower may, without the prior written approval of HUD, dispose of obsolete or deteriorated Fixtures or Personalty if the same are replaced with like items of the same or greater quality or value and make minor alterations that do not impair the security.

- h. Permit the use of the Mortgaged Property for any other purpose except the use for which it was originally intended, or permit commercial use greater than that originally approved by HUD.
- i. Amend the organizational documents of Borrower in a way that materially modifies the terms of the organization, including, but not limited to: any amendment that activates the requirement that a HUD previous participation certification be obtained from any additional partner or member; any amendment that would authorize any officer, partner or member other than the officer(s), general partner(s) or the managing member(s) of the corporation, partnership or company or pre-approved successor officer(s), general partner(s) or managing member(s) to bind the corporation, partnership or company for any matters concerning the Project which requires HUD's consent or approval; a change in the officer(s), general partner(s) or managing member(s) or pre-approved successor officer(s), general partner(s) or managing member(s) of the corporation, partnership or company and any proposed changes to the HUD-required provisions included in the organizational documents. Copies of all fully executed amendments to the organizational documents must be provided to HUD within ten (10) days of the effective date of the amendment. If the amendments to the organizational documents are recorded or filed, copies of the recorded or filed documents must be provided to HUD within ten (10) days of receipt by Borrower.
- j. Reimburse any party from Mortgaged Property for payment of expenses or costs of the Project or for any purpose except for Reasonable Operating Expenses and in a manner consistent with Section 15.
- k. Receive any fee or payment of any kind from any managing agent, employee of the Project or of the managing agent, or other provider of Goods or Services of the Project, except for warranty claims from providers of Goods and Services.
- l. Initiate or acquiesce in a change in the zoning classification of the Mortgaged Property that results in any change in permitted use that was in effect at the time of initial/final endorsement.
- m. Establish any condominium or cooperative regime with respect to the Mortgaged Property.
- n. Materially change any unit configurations or change the number of units in the Mortgaged Property.

VII. ENFORCEMENT

36. VIOLATION OF AGREEMENT. The occurrence of any one or more of the following shall constitute a “**Violation**” under this Agreement:

- a. Any failure by Borrower to comply with any of the provisions of this Agreement;
- b. Any fraud or material misrepresentation or material omission by Borrower, any of its officers, directors, trustees, general partners, members, managers or managing agent in connection with (1) any financial statement, rent roll or other report or information provided to HUD or (2) any request for HUD’s consent to any proposed action, including a request for disbursement of funds from any restricted account for which HUD’s prior written approval is required; and/or
- c. The commencement of a forfeiture action or proceeding, whether civil or criminal, which, in HUD’s reasonable judgment, could result in a forfeiture of the Mortgaged Property or otherwise materially impair the value of the Mortgaged Property.

37. DECLARATION OF DEFAULT.

- a. Upon a Violation, HUD may give written Notice, pursuant to Section 46, of the Violation to Borrower, addressed to the addresses stated in this Agreement, or such other addresses as may subsequently, upon appropriate written Notice to HUD, be designated by Borrower as its legal business address. If, after receiving written Notice of a Violation, that Violation is not corrected to the satisfaction of HUD either within thirty (30) days after the date Notice is mailed, or within such shorter or longer time set forth in said Notice, HUD may declare a default (**Declaration of Default**) under this Agreement without further Notice. Alternatively, in order to protect the health and safety of the tenants, HUD may declare a default at any time during the existence of a Violation without providing prior written Notice of the Violation.
- b. Upon any **Declaration of Default** HUD may:
 - (1) If HUD holds the Note, declare the whole of said Indebtedness immediately due and payable and then proceed with the foreclosure of the Security Instrument;
 - (2) If said Note is not held by HUD, notify the Lender of such default and require the Lender to declare a default under the Note and Security Instrument, and the Lender, after receiving such Notice and demand, may declare the whole Indebtedness due and payable and thereupon proceed

with foreclosure of the Security Instrument or assignment of the Note and Security Instrument to HUD as provided in Program Obligations. Upon assignment of the Note and Security Instrument to HUD, HUD may then proceed with the foreclosure of the Security Instrument;

- (3) Collect all Rents and charges in connection with the operation of the Project and use such collections to pay Borrower's obligations under this Agreement and under the Note and Security Instrument and the necessary expenses of preserving and operating the Mortgaged Property;
- (4) Take possession of the Mortgaged Property, bring any action necessary to enforce any rights of Borrower growing out of the Mortgaged Property's operation, and maintain the Mortgaged Property in decent, safe, and sanitary condition and good repair;
- (5) Apply to any court, state or federal, for specific performance of this Agreement, for an injunction against any Violations of this Agreement, for the appointment of a receiver to take over and operate the Project in accordance with this terms of the Agreement, or for such other relief as may be appropriate, as the injury to HUD arising from a default under any of the terms of this Agreement would be irreparable and the amount of damage would be difficult to ascertain; and,
- (6) Collect reasonable attorney fees related to enforcing Borrower's compliance with this Agreement.

38. FORBEARANCE NO WAIVER. Any forbearance by HUD in exercising any right or remedy under this Agreement or otherwise afforded by applicable law shall not be a waiver of or preclude the exercise of any right or remedy.

39. MEASURE OF DAMAGES. The damage to HUD as a result of Borrower's breach of duties and obligations under this Agreement shall be, in the case of failure to maintain the Mortgaged Property as required by this Agreement, the cost of the repairs required to return the Project to decent, safe and sanitary condition and good repair. This contractual provision shall not abrogate or limit any other remedy or measure of damages available to HUD under any civil, criminal or common law.

VIII. MISCELLANEOUS

40. COMPLIANCE WITH LAWS.

a. Borrower shall comply with all applicable: laws; ordinances; regulations; requirements of any Governmental Authority; lawful covenants and agreements (including the Security Instrument) recorded against the Mortgaged Property; and Program Obligations including lead-based paint maintenance requirements of 24 C.F.R. Part 35, Subpart G, and any successor regulations; including but not limited to those of the foregoing pertaining to: health and safety; construction of improvements on the Mortgaged Property; fair housing; civil rights; zoning and land use; Leases; and maintenance and disposition of tenant security deposits; and, with respect to all of the foregoing, all subsequent amendments, revisions, promulgations or enactments. Borrower shall at all times maintain records sufficient to demonstrate compliance with the provisions of this Section 40. Borrower shall take appropriate measures to prevent, and shall not engage in or knowingly permit, any illegal activities at the Mortgaged Property, including those that could endanger tenants or visitors, result in damage to the Mortgaged Property, result in forfeiture of the Mortgaged Property, or otherwise impair the lien created by the Security Instrument or Lender's interest in the Mortgaged Property. Borrower represents and warrants to HUD that no portion of the Mortgaged Property has been or shall be purchased with the proceeds of any illegal activity.

b. HUD shall be entitled to invoke any remedies available by law to redress any breach or to compel compliance by Borrower with these requirements, including any remedies available hereunder.

41. **BINDING EFFECT.** This Agreement shall bind, and the benefits shall inure to, Borrower, its heirs, legal representative, executors, administrators, successors in office or interest, and assigns, and to HUD and HUD's successors, so long as the Contract of Insurance continues in effect, and during such further time as HUD shall be the Lender, holder, coinsurer, or reinsurer of the Security Instrument, or obligated to reinsure the Security Instrument.

42. **PARAMOUNT RIGHTS AND OBLIGATIONS.** Borrower warrants that it has not, and shall not, execute any other agreement with provisions contradictory of, or in opposition to, the provisions hereof, and that, in any event, the requirements of this Agreement are paramount and controlling as to the rights and obligations set forth and supersede any other requirements in conflict therewith.

43. **SEVERABILITY.** The invalidity of any clause, part, or provision of this Agreement shall not affect the validity of the remaining portions hereof.

44. **RULES OF CONSTRUCTION.** The captions and headings of the Sections of this Regulatory Agreement are for convenience only and shall be disregarded in construing this Regulatory Agreement. Any reference in this Regulatory Agreement to an "**Exhibit**" or a "**Section**" shall, unless otherwise explicitly provided, be construed as

referring, respectively, to an Exhibit attached to this Regulatory Agreement or to a Section of this Regulatory Agreement. All Exhibits attached to or referred to in this Regulatory Agreement are incorporated by reference into this Regulatory Agreement. Use of the singular in this Regulatory Agreement includes the plural and use of the plural includes the singular. As used in this Regulatory Agreement, the term, “including” means “including, but not limited to.” In this Regulatory Agreement, where the context may so require, feminine or masculine pronouns or adjectives shall be substituted for those of the neuter gender, and vice versa.

45. PRESENT ASSIGNMENT. Borrower irrevocably and unconditionally assigns, pledges, mortgages and transfers to HUD its rights to the Rents, charges, fees, carrying charges, Project accounts, security deposits, and other revenues and receipts of whatsoever sort that it may receive or be entitled to receive from the operation of the Mortgaged Property, subject to the assignment of Rents in the Security Instrument. Until a default is declared under this Agreement, a revocable license is granted to Borrower to collect and retain such Rents, charges, fees, carrying charges, Project accounts, security deposits, and other revenues and receipts, but upon a Declaration of Default under this Agreement or under the Security Instrument, this revocable license is automatically terminated.

46. NOTICE.

- a. All notices, demands and other communications (“**Notice**”) under or concerning this Agreement shall be in writing. A courtesy copy of any Notice given by Borrower or HUD shall be sent simultaneously to Lender. Each Notice shall be addressed to the intended recipients at their respective addresses set forth below, and shall be deemed given on the earliest to occur of (i) the date when the Notice is received by the addressee; (ii) the first or second Business Day after the Notice is delivered to a recognized overnight courier service, with arrangements made for payment of charges for next or second Business Day delivery, respectively; or (iii) the third Business Day after the Notice is deposited in the United States mail with postage prepaid, certified mail, return receipt requested. As used in this Section 46, the term “**Business Day**” means any day other than a Saturday or a Sunday, a federal holiday or holiday in the state where the Project is located or other day on which the federal government or the government of the state where the Project is located is not open for business. When not specifically designated as a Business Day, the term “**day**” shall refer to a calendar day.
- b. Any party to this Agreement and Lender may change the address to which Notices intended for it are to be directed by means of Notice given to the other party in accordance with this Section 46. Each party agrees that it shall not refuse or reject delivery of any Notice given in accordance with this Section 46, that it shall

acknowledge, in writing, the receipt of any Notice upon request by the other party and that any Notice rejected or refused by it shall be deemed for purposes of this Section 46 to have been received by the rejecting party on the date so refused or rejected, as conclusively established by the records of the U.S. Postal Service or the courier service.

BORROWER:

HUD:

LENDER:

47. **CONFLICTS PROVISION.** Borrower shall comply with the requirements set forth in this Agreement as well as any other agreement Borrower enters into with HUD. However, if a conflict exists between this Agreement and any other HUD agreement executed by Borrower, the agreement which imposes the more restrictive requirements on Borrower shall control.

48. **THIRD PARTY BENEFICIARY.** Borrower agrees that it is not a third-party beneficiary to the Contract of Insurance between HUD and Lender, as more fully set forth in 24 C.F.R. Part 207, Subpart B.

49. **EXPLANATION OF ROLES.** HUD is not providing a loan to the Borrower. HUD operates insurance programs under the provisions of the National Housing Act. HUD, through the Federal Housing Administration (FHA) provides insurance to private and public lenders, which it has approved as financially responsible, against loss on mortgages financing multifamily projects. The mortgage insurance is a contract between the approved lender and HUD. These are the only two parties to the FHA insurance contract, the approved mortgage lender and HUD. The approved lender is the only party that is intended to benefit from the contract of mortgage insurance. While borrowers and other program participants may incidentally benefit in some manner from the insured mortgage financing that the approved lender provides, all other program participants are deemed not to be third party beneficiaries of the insurance contract. Thus, program participants have no rights and should not have any expectations in regard to decisions made or actions taken by HUD under the mortgage lender's contract of mortgage insurance, including but not limited to accepting a loan as eligible for insurance or paying a claim.

SECTION IX. NON RECOURSE

50. **NONRECOURSE DEBT.** The addendum (“Section 50 Addendum”) attached hereto is incorporated herein by this reference.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals on the date first herein above written.

Each signatory below hereby certifies that each of their statements and representations contained in this Agreement and all their supporting documentation thereto are true, accurate, and complete and that each signatory has read and understands the terms of this Agreement. This Agreement has been made, presented, and delivered for the purpose of influencing an official action of HUD in insuring the Loan, and may be relied upon by HUD as a true statement of the facts contained therein.

BORROWER

THE UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, ACTING BY OR THROUGH THE SECRETARY

(insert name)

BY: _____
Authorized Agent
Title

BY: _____
Authorized Agent

[ADD ADDITIONAL LINES IF MORE THAN TWO SIGNATORIES]

Warning

Any person who knowingly presents a false, fictitious, or fraudulent statement or claim in a matter within the jurisdiction of the U.S. Department of Housing and Urban Development is subject to criminal penalties, civil liability, and administrative sanctions.

NOTICE: THIS DOCUMENT MUST HAVE A LEGAL DESCRIPTION ATTACHED AND BOTH THIS DOCUMENT AND THE SECTION 50 ADDENDUM MUST BE EXECUTED WITH ALL FORMALITIES REQUIRED FOR RECORDING A DEED TO

REAL ESTATE (e.g., NOTARY/ACKNOWLEDGEMENT, SEAL, WITNESS OR OTHER APPROPRIATE FORMALITIES).

EXHIBIT A

[DESCRIPTION OF THE LAND]

A-1

SECTION 50 ADDENDUM

The Loan is nonrecourse. Each individual/entity (each, a “**Section 50 party**”) as identified below and in the “**Firm Commitment**” (which means the commitment for insurance of advances or commitment for insurance upon completion issued to Lender by HUD under which the debt evidenced by the Note is to be insured pursuant to a Section of the Act, dated _____ [month, date, year], and any amendments thereto):

1. _____
(Individual/Entity Name)

2. _____
(Individual/Entity Name)

does not assume personal liability for payments due under the Note and Security Instrument, or for the payments to the Reserve for Replacements, or for matters not under its control, provided that each Section 50 Party shall be personally liable under this Agreement only with respect to the matters hereinafter stated; namely: (a) for funds or property of the Project coming into its hands which, by the provisions hereof, it is not entitled to retain; (b) for authorizing the conveyance, assignment, transfer, pledge, encumbrance, or other disposition of the Mortgaged Property or any interest therein in violation of Section 35(a) of the Regulatory Agreement to which this addendum is attached (“**Regulatory Agreement**”) without the prior written approval of HUD; and (c) for its own acts and deeds, or acts and deeds of others, which it has authorized in violation of the provisions of this Section 50 Addendum. The obligations of each Section 50 Party shall survive any foreclosure proceeding, any foreclosure sale, any delivery of any deed in lieu of foreclosure, any termination of the Regulatory Agreement, or any release of record of the Security Instrument.

Name

Title

Date

[ADD ADDITIONAL LINES FOR MULTIPLE SIGNATORIES]

Public Reporting Burden for this collection of information is estimated to average .75 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Response to this request for information is required in order to receive the benefits to be derived. This agency may not collect this information, and you are not required to complete this form unless it displays a currently valid OMB control number.

Warning: Federal law provides that anyone who knowingly or willfully submits (or causes to submit) a document containing any false, fictitious, misleading, or fraudulent statement/certification or entry may be criminally prosecuted and may incur civil administrative liability. Penalties upon conviction can include a fine and imprisonment, as provided pursuant to applicable law, which includes, but is not limited to, 18 U.S.C. 1001, 1010, 1012; 31 U.S.C. 3729, 3802, 24 C.F.R. Parts 25, 28 and 30, and 2 C.F.R. Parts 180 and 2424.

Recording requested by:

After recording return to:

**MULTIFAMILY [LEASEHOLD] (MORTGAGE,
DEED OF TRUST, DEED TO SECURE DEBT,
OR OTHER DESIGNATION AS APPROPRIATE IN JURISDICTION)
ASSIGNMENT OF LEASES AND RENTS
AND SECURITY AGREEMENT**
(STATE)

**HUD Project Number:
Project Name:**

**MULTIFAMILY [LEASEHOLD] (MORTGAGE,
DEED OF TRUST, DEED TO SECURE DEBT,
OR OTHER DESIGNATION AS APPROPRIATE IN JURISDICTION)
ASSIGNMENT OF LEASES AND RENTS AND
SECURITY AGREEMENT**

THIS MULTIFAMILY [LEASEHOLD] (MORTGAGE, DEED OF TRUST, DEED TO SECURE DEBT, OR OTHER DESIGNATION AS APPROPRIATE IN JURISDICTION), ASSIGNMENT OF LEASES AND RENTS AND SECURITY AGREEMENT, WHICH, FOR AS LONG AS THE LOAN IS INSURED OR HELD BY HUD, SHALL BE DEEMED TO BE THE MORTGAGE AS DEFINED BY PROGRAM OBLIGATIONS (“**Security Instrument**”), is made as of this _____ day of _____, _____, [among][between]

_____,
a _____ organized and existing under the laws of _____, whose address is _____, as grantor [, trustor,] and borrower (**Borrower**), and _____, [[a _____ organized and existing under the laws of _____,] OR [a natural person,] whose address is _____, as trustee (**Trustee**), for the benefit of _____,]
a _____ organized and existing under the laws of _____, whose address is _____, [as beneficiary and] as Lender (**Lender**). **[DELETE INAPPLICABLE LANGUAGE].**

[Borrower, in consideration of the Indebtedness and the trust created by this Security Instrument, irrevocably grants, conveys and assigns to Trustee and Trustee's successors and assigns, in trust, with power of sale, the Mortgaged Property, including the Land located in _____ County, State of _____ and described in Exhibit A attached to this Security Instrument, to have and to hold the Mortgaged Property unto Trustee and Trustee's successors and assigns.

ALTERNATIVE A DEED OF TRUST GRANTING CLAUSE; DELETE IF NOT APPLICABLE.]

[Borrower, in consideration of the Indebtedness and the security interest created by this Security Instrument, irrevocably mortgages, grants, conveys and assigns to Lender and Lender's successors and assigns, with power of sale, the Mortgaged Property, including the Land located in _____ County, State of _____ and described in Exhibit A attached to this Security Instrument, to have and to hold the

Mortgaged Property unto Lender and Lender's successors and assigns.
ALTERNATIVE B MORTGAGE GRANTING CLAUSE; DELETE IF NOT APPLICABLE.]

[Borrower, in consideration of the Indebtedness and the security interest created by this Security Instrument, irrevocably grants, conveys and assigns to Lender and Lender's successors and assigns, with power of sale, the Mortgaged Property, including the Land located in _____ County, State of Georgia and described in Exhibit A attached to this Security Instrument, to have and to hold the Mortgaged Property unto Lender and Lender's successors and assigns. As used in this Security Instrument, the term "Mortgaged Property" is synonymous with the term "Secured Property," and the term "lien" is synonymous with the term "security interest and title." **ALTERNATIVE C DEED TO SECURE DEBT – GEORGIA ONLY – GRANTING CLAUSE; DELETE IF NOT APPLICABLE.]**

THIS SECURITY INSTRUMENT IS EXECUTED TO SECURE TO LENDER the repayment of the Indebtedness evidenced by Borrower's Note payable to Lender dated as of the date of this Security Instrument, and maturing on _____, _____, in the principal amount of \$_____ ("**Loan**"), and all renewals, extensions and modifications of the Indebtedness, and the performance of the covenants and agreements of Borrower contained in this Security Instrument and the Note.

Borrower represents and warrants that Borrower is lawfully seized of the Mortgaged Property and has the right, power and authority to mortgage, grant, convey and assign the Mortgaged Property, and that the Mortgaged Property is unencumbered except for easements and restrictions listed in a schedule of exceptions to coverage in any title insurance policy issued to Lender contemporaneously with the execution and recordation of this Security Instrument and insuring Lender's interest in the Mortgaged Property. Borrower covenants that Borrower shall warrant and defend generally such title to the Mortgaged Property against all claims and demands, subject to said easements and restrictions.

Covenants. Borrower and Lender covenant and agree as follows:

1. DEFINITIONS. The definition of any capitalized term or word used herein can be found in this Security Instrument, and then if not found in this Security Instrument, then found in the Regulatory Agreement between Borrower and HUD, and/or in the Note. The following terms, when used in this Security Instrument (including when used in the above recitals), shall have the following meanings:

(a) **“Borrower”** means all entities identified as “Borrower” in the first paragraph of this Security Instrument, together with any successors and assigns (jointly and severally). Borrower shall include any entity taking title to the Mortgaged Property whether or not such entity assumes the Note. Whenever the term “Borrower” is used herein, the same shall be deemed to include the obligor of the debt secured by the Security Instrument, and so long as the Note is insured or held by HUD shall also be deemed to be the mortgagor as defined by Program Obligations.

(b) **“Building Loan Agreement”** means the HUD-approved form of the agreement between Borrower and Lender setting forth the terms and conditions for a construction loan.

(c) **“Business Day”** is defined in Section 31.

(d) **“Claim”** is defined in Section 48(m).

(e) **“Collateral Agreement”** means any separate agreement between Borrower and Lender for the purpose of establishing replacement reserves for the Mortgaged Property, establishing an account to assure the completion of repairs or Improvements specified in that agreement, or any other agreement or agreements between Borrower and Lender which provide for the establishment of any other fund, reserve or account including but not limited to those reserves and escrows required by HUD.

(f) **“Contract of Insurance”** is defined in 24 C.F.R. Part 207, Subpart B.

(g) **“Environmental Inspections”** is defined in Section 48(h).

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

(i) **“Fixtures”** means all property or goods that become so related or attached to the Land or the Improvements that an interest arises in them under real property law, whether acquired now or in the future, excluding all tenant owned goods and property, and including but not limited to: machinery, equipment, engines, boilers, incinerators, installed building materials; systems and equipment for the purpose of supplying or distributing heating, cooling, electricity, gas, water, air, or light; antennas, cable, wiring and conduits used in connection with radio, television, computers, security, fire prevention, or fire detection or otherwise used to carry electronic signals; telephone systems and equipment; elevators and related machinery and equipment; fire detection, prevention and extinguishing systems and apparatus; security and access control systems and apparatus; plumbing systems; water heaters, ranges, stoves, microwave

ovens, refrigerators, dishwashers, garbage disposals, washers, dryers and other appliances; light fixtures, awnings, storm windows and storm doors; pictures, screens, blinds, shades, curtains and curtain rods; mirrors; cabinets, paneling, rugs and floor and wall coverings; fences, trees and plants; swimming pools; playground and exercise equipment and classroom furnishings and equipment.

(j) **“Governmental Authority”** means any board, commission, department or body of any municipal, county, state, tribal or federal governmental unit, including any U.S. territorial government, and any public or quasi-public authority, or any subdivision of any of them, that has or acquires jurisdiction over the Mortgaged Property, including the use, operation or improvement of the Mortgaged Property.

(k) **“HUD”** means the United States Department of Housing and Urban Development acting by and through the Secretary in the capacity as insurer or holder of the Loan under the authority of the National Housing Act, as amended, the Department of Housing and Urban Development Act, as amended, or any other federal law or regulation pertaining to the Loan or the Mortgaged Property.

(l) **“Impositions”** and **“Imposition Deposits”** are defined in Section 8(a).

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

(n) **“Indebtedness”** means the principal of, interest on, and all other amounts due at any time under the Note, this Security Instrument, and any other Loan Document, including prepayment premiums, late charges, default interest, and advances to protect the security of this Security Instrument as provided in Section 13.

(o) **“Indemnitees”** is defined in Section 48(k).

(p) **“Land”** means the estate in realty described in Exhibit A.

(q) **“Leases”** means all present and future leases, subleases, licenses, concessions or grants or other possessory interests now or hereafter in force, whether oral or written, covering or affecting the Mortgaged Property, or any portion of the Mortgaged Property (including but not limited to proprietary leases, non-residential leases or occupancy agreements if Borrower is a cooperative housing corporation), and all modifications, extensions or renewals. (Ground leases that create a leasehold interest in the Land and where the Borrower’s leasehold is security for the Loan are not included in this definition.)

(r) **“Lender”** means the entity identified as “Lender” in the first paragraph of this Security Instrument, or any subsequent holder of the Note, and whenever the term “Lender” is used herein, the same shall be deemed to include the obligee, or the beneficiary of this Security Instrument, and so long as the Loan is insured or held by HUD, shall also be deemed to be the mortgagee as defined by Program Obligations.

(s) **“Lien”** is defined in Section 17.

(t) **“Loan”** is defined in the opening paragraphs of this Security Instrument.

(u) **“Loan Application”** is defined in Section 41.

(v) **“Loan Documents”** means the Note, this Security Instrument, the Regulatory Agreement and all other agreements, instruments and documents which are now existing or are in the future required by, delivered to and/or assigned to Lender and/or HUD in connection with or related to the Loan, as such documents may be amended from time to time.

(w) **“Mortgaged Property”** means all of Borrower's present and future right, title and interest in and to all of the following whether now held or later acquired:

- (1) the Land;
- (2) the Improvements;
- (3) the Fixtures;
- (4) the Personalty;
- (5) all current and future rights, including air rights, development rights, zoning rights and other similar rights or interests, easements, tenements, rights-of-way, strips and gores of land, streets, alleys, roads, sewer rights, waters, watercourses, and appurtenances related to or benefiting the Land or the Improvements, or both, and all rights-of-way, streets, alleys and roads which may have been or may in the future be vacated;
- (6) all insurance policies covering the Mortgaged Property, and all proceeds paid or to be paid by any insurer of the Land, the Improvements, the Fixtures, the Personalty or any other part of the Mortgaged Property, whether or not Borrower obtained such insurance policies pursuant to Lender's requirement;

- (7) all awards, payments and other compensation made or to be made by any Governmental Authority with respect to the Land, the Improvements, the Fixtures, the Personalty or any other part of the Mortgaged Property, including any awards or settlements resulting from condemnation proceedings or the total or partial taking of the Land, the Improvements, the Fixtures, the Personalty or any other part of the Mortgaged Property under the power of eminent domain or otherwise and including any conveyance in lieu thereof;
- (8) all contracts, options and other agreements for the sale of the Land, the Improvements, the Fixtures, the Personalty or any other part of the Mortgaged Property entered into by Borrower now or in the future, including cash or securities deposited to secure performance by parties of their obligations;
- (9) all proceeds (cash or non-cash), liquidated claims or other consideration from the conversion, voluntary or involuntary, of any of the Mortgaged Property and the right to collect such proceeds, liquidated claims or other consideration;
- (10) all Rents and Leases;
- (11) all earnings, royalties, instruments, accounts, accounts receivable, supporting obligations, issues and profits from the Land, the Improvements or any other part of the Mortgaged Property, and all undisbursed proceeds of the Loan and, if Borrower is a cooperative housing corporation, maintenance charges or assessments payable by shareholders or residents;
- (12) all Imposition Deposits;
- (13) all refunds or rebates of Impositions by any Governmental Authority or insurance company (other than refunds applicable to periods before the real property tax year in which this Security Instrument is dated);
- (14) all forfeited tenant security deposits under any Lease;
- (15) all names under or by which any of the above Mortgaged Property may be operated or known, and all trademarks, trade names, and goodwill relating to any of the Mortgaged Property;

- (16) all deposits and/or escrows held by or on behalf of Lender under Collateral Agreements; and
- (17) all awards, payments, settlements or other compensation resulting from litigation involving the Project.

Notwithstanding items numbered (1) through (17) above or Section 33 below, Borrower may hold non-project funds in separate, segregated accounts, specifically labeled as non-project funds, which are not part of the Mortgaged Property. These accounts may hold those assets owned or received by Borrower, through equity contributions, gifts, or loan proceeds, that were not required by HUD to become part of the Mortgaged Property and were not made a part of the Mortgaged Property by Borrower and funds released from the Mortgaged Property in compliance with Program Obligations (such as Distributions of Surplus Cash and loan repayments, if allowed). *[If such accounts already exist, it is acceptable to identify them here, for example: The [name of accounts/reserves] are designated non-project fund accounts.]*

(x) **“Note”** means the Note executed by Borrower described in this Security Instrument, including all schedules, riders, allonges and addenda, as such Note may be amended from time to time.

(y) **“Notice”** is defined in Section 31.

(z) **“O&M Program”** is defined in Section 48(b).

(aa) **“Personalty”** means all equipment, inventory, and general intangibles. The definition of “Personalty” includes furniture, furnishings, machinery, building materials, appliances, goods, supplies, tools, books, records (whether in written or electronic form), computer equipment (hardware and software) and other tangible or electronically stored personal property (other than Fixtures) that are owned, leased or used by Borrower now or in the future in connection with the ownership, management or operation of the Land or the Improvements or are located on the Land or in the Improvements, and any operating agreements relating to the Land or the Improvements, and any surveys, plans and specifications and contracts for architectural, engineering and construction services relating to the Land or the Improvements, choses in action and all other intangible property and rights relating to the operation of, or used in connection with, the Land or the Improvements, including all certifications, approvals and governmental permits relating to any activities on the Land. Intangibles shall also include all cash and cash escrow funds related to the Project, such as but not limited to: Reserve for Replacement accounts, bank accounts, Residual Receipts accounts, and investments.

(bb) **“Principal”** is defined in the Regulatory Agreement.

(cc) **“Project”** and **“Project Assets”** mean the Mortgaged Property.

(dd) **“Program Obligations”** means (1) all applicable statutes and any regulations issued by the Secretary pursuant thereto that apply to the Project, including all amendments to such statutes and regulations, as they become effective, except that changes subject to notice and comment rulemaking shall become effective only upon completion of the rulemaking process, and (2) all current requirements in HUD handbooks and guides, notices, and mortgagee letters that apply to the Project, and all future updates, changes and amendments thereto, as they become effective, except that changes subject to notice and comment rulemaking shall become effective only upon completion of the rulemaking process, and provided that such future updates, changes and amendments shall be applicable to the Project only to the extent that they interpret, clarify and implement terms in this Security Instrument rather than add or delete provisions from such document. Handbooks, guides, notices, and mortgagee letters are available on “HUDCLIPS,” at www.hud.gov.

(ee) **“Property Jurisdiction”** is defined in Section 30(a).

(ff) **“Regulatory Agreement”** means the agreement between the Borrower and HUD establishing Borrower’s obligations in the operation of the Mortgaged Property and the rights and powers of HUD.

(gg) **“Remedial Work”** is defined in Section 48(i).

(hh) **“Rents”** means all rents (whether from residential or non-residential space), revenues, issues, profits, (including carrying charges, maintenance fees, and other cooperative revenues, and fees received from leasing space on the Mortgaged Property), and other income of the Land or the Improvements, gross receipts, receivables, parking fees, laundry and vending machine income and fees and charges for food and other services provided at the Mortgaged Property, whether now due, past due, or to become due, Residual Receipts, and escrow accounts, however and whenever funded and wherever held.

(ii) **“Residual Receipts”** is defined in the Regulatory Agreement.

(jj) **“Taxes”** means all taxes, assessments, vault rentals and other charges, if any, general, special or otherwise, including all assessments for schools, public betterments and general or local improvements, which are levied, assessed or imposed

by any public authority or quasi-public authority, and which, if not paid, could become a lien on the Land or the Improvements.

(kk) **“Waste”** means a failure to keep the Mortgaged Property in decent, safe and sanitary condition and in good repair. During any period in which HUD insures this Loan or holds a security interest on the Mortgaged Property, Waste is committed when, without Lender’s and HUD’s express written consent, Borrower:

- (1) physically changes the Mortgaged Property, whether negligently or intentionally, in a manner that reduces its value;
- (2) fails to maintain and repair the Mortgaged Property in accordance with Program Obligations;
- (3) fails to pay before delinquency any Taxes secured by a lien having priority over this Security Instrument;
- (4) materially fails to comply with covenants in the Note, this Security Instrument or the Regulatory Agreement respecting physical care, maintenance, construction, abandonment, demolition, or insurance against casualty of the Mortgaged Property; or
- (5) retains possession of Rents to which Lender or its assigns have the right of possession under the terms of the Loan Documents.

2. UNIFORM COMMERCIAL CODE SECURITY AGREEMENT.

This Security Instrument is also a security agreement under the Uniform Commercial Code for any of the Mortgaged Property which, under applicable law, may be subject to a security interest under the Uniform Commercial Code, whether acquired now or in the future, and all products and cash proceeds and non-cash proceeds thereof (collectively, **“UCC Collateral”**), and Borrower hereby grants to Lender a security interest in the UCC Collateral. Borrower hereby authorizes Lender to file financing statements, continuation statements and amendments, in such form as Lender may require to perfect or continue the perfection of this security interest. Borrower agrees to enter into any agreements, in form as Lender may require, that the Uniform Commercial Code requires to perfect and continue perfection of Lender’s security interest in the portion of UCC Collateral that requires Lender control to attain such perfection. Borrower shall pay all filing costs and all costs and expenses of any record searches for financing statements that Lender may require. Without the prior written consent of Lender, Borrower shall not create or permit to exist any other lien or security interest in any of the UCC Collateral. Except for such UCC filings disclosed to

Lender and HUD that are to be released in connection with the financing of the Loan or that are otherwise consented to in writing by Lender and HUD, Borrower represents and warrants to Lender that no UCC filings have been made against Borrower, the Project or the Project Assets prior to the initial or initial/final endorsement of the Note by HUD, and Borrower has taken and shall take no action that would give rise to such UCC filings, except for any UCC filings in connection with the acquisition of any Personalty that has been approved in writing by HUD. Borrower also represents and warrants to Lender that it has not entered into, and will not enter into, any agreement with any party other than Lender in conjunction with the present Loan transaction that allows for the perfection of a security interest in any portion of the UCC Collateral. Borrower will promptly notify Lender of any change in its business or principal location, name, or other organizational change that would require a filing under the UCC to continue perfection of Lender's interest, and hereby authorizes Lender to file, and will assist Lender in filing, any forms necessary to continue the effectiveness of existing financing statements or for perfection of Lender's security interest. If an Event of Default has occurred and is continuing, Lender shall have the remedies of a secured party under the Uniform Commercial Code, in addition to all remedies provided by this Security Instrument or existing under applicable law. In exercising any remedies, Lender may exercise its remedies against the UCC Collateral separately or together, and in any order, without in any way affecting the availability of Lender's other remedies. This Security Instrument constitutes a fixture filing financing statement with respect to any part of the Mortgaged Property which is or may become a Fixture and which shall be filed in the local real estate records.

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

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

Rents in favor of Lender, which lien shall be effective as of the date of this Security Instrument.

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

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

payment of any Rents more than two months prior to the due dates of such Rents (other than collections in connection with transactions as approved by HUD).

(d) If an Event of Default has occurred and is continuing, Lender may, regardless of the adequacy of Lender's security or the solvency of Borrower and even in the absence of Waste (but only with the prior written approval of HUD in the event of Covenant Defaults), enter upon and take and maintain full control of the Mortgaged Property in order to perform all acts that Lender in its discretion determines to be necessary or desirable for the operation and maintenance of the Mortgaged Property, including the execution, cancellation or modification of Leases, the collection of all Rents, the making of repairs to the Mortgaged Property and the execution or termination of contracts providing for the management, operation or maintenance of the Mortgaged Property, for the purposes of enforcing the assignment of Rents pursuant to Section 3(a), protecting the Mortgaged Property or the security of this Security Instrument, or for such other purposes as Lender in its discretion may deem necessary or desirable. Alternatively, if an Event of Default has occurred and is continuing, regardless of the adequacy of Lender's security, without regard to Borrower's solvency and without the necessity of giving prior Notice (oral or written) to Borrower, Lender may apply to any court having jurisdiction for the appointment of a receiver for the Mortgaged Property to take any or all of the actions set forth in the preceding sentence. If Lender elects to seek the appointment of a receiver for the Mortgaged Property at any time after an Event of Default has occurred and is continuing, Borrower, by its execution of this Security Instrument, expressly consents to the appointment of such receiver, including the appointment of a receiver *ex parte* if permitted by applicable law. Lender or the receiver, as the case may be, shall be entitled to receive a reasonable fee for managing the Mortgaged Property. Immediately upon appointment of a receiver or immediately upon Lender's entering upon and taking possession and control of the Mortgaged Property, Borrower shall surrender possession of the Mortgaged Property to Lender or the receiver, as the case may be, and shall deliver to Lender or the receiver, as the case may be, all documents, records (including records on electronic or magnetic media), accounts, surveys, plans, and specifications relating to the Mortgaged Property and all security deposits and prepaid Rents. In the event Lender takes possession and control of the Mortgaged Property, Lender may exclude Borrower and its representatives from the Mortgaged Property. Borrower acknowledges and agrees that the exercise by Lender of any of the rights conferred under Section 3 shall not be construed to make Lender a lender-in-possession of the Mortgaged Property so long as Lender, or authorized agent of Lender, has not entered into actual possession of the Land and Improvements.

(e) If Lender enters the Mortgaged Property, Lender shall be liable to account only to Borrower and only for those Rents actually received. Lender shall not otherwise be liable to Borrower, anyone claiming under or through Borrower or anyone having an

interest in the Mortgaged Property, by reason of any act or omission of Lender under Section 3, and Borrower hereby releases and discharges Lender from any such liability to the fullest extent permitted by law.

(f) If the Rents are not sufficient to meet the costs of taking control of and managing the Mortgaged Property and collecting the Rents, any funds expended by Lender for such purposes shall become an additional part of the Indebtedness as provided in Section 13; provided that Lender shall have the right, but no obligation to make any such advances; and provided further that so long as the Loan is insured by HUD, no such advances by Lender shall become an additional part of the Indebtedness unless such advances receive the prior written approval of HUD.

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

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

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

(b) Until Lender gives Notice to Borrower of Lender's exercise of its rights under this Section 4, Borrower shall have all rights, power and authority granted to Borrower under any Lease (except as otherwise limited by this Section or any other provision of this Security Instrument), including the right, power and authority to modify

the terms of any Lease or extend or terminate any Lease. Upon the occurrence of an Event of Default and throughout its continuation, the permission given to Borrower pursuant to the preceding sentence to exercise all rights, power and authority under Leases shall automatically terminate. Borrower shall comply with and observe Borrower's obligations under all Leases, including Borrower's obligations pertaining to the maintenance and disposition of tenant security deposits.

(c) Borrower acknowledges and agrees that the exercise by Lender, either directly or by a receiver, of any of the rights conferred under this Section 4 shall not be construed to make Lender a lender-in-possession of the Mortgaged Property so long as Lender, or an authorized agent of Lender, has not entered into actual possession of the Land and the Improvements. The acceptance by Lender of the assignment of the Leases pursuant to Section 4(a) shall not at any time or in any event obligate Lender to take any action under this Security Instrument or to expend any money or to incur any expenses. Lender shall not be liable in any way for any injury or damage to person or property sustained by any person or persons, firm or corporation in or about the Mortgaged Property unless Lender is a lender-in-possession. Prior to Lender's actual entry into and taking possession of the Mortgaged Property, Lender shall not (1) be obligated to perform any of the terms, covenants and conditions contained in any Lease (or otherwise have any obligation with respect to any Lease); (2) be obligated to appear in or defend any action or proceeding relating to the Lease or the Mortgaged Property; or (3) be responsible for the operation, control, care, management or repair of the Mortgaged Property or any portion of the Mortgaged Property. The execution of this Security Instrument by Borrower shall constitute conclusive evidence that all responsibility for the operation, control, care, management and repair of the Mortgaged Property is and shall be that of Borrower, prior to such actual entry and taking of possession.

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

(e) Borrower shall, promptly upon Lender's request, deliver to Lender an executed copy of each residential Lease then in effect. All Leases for residential dwelling units shall be acceptable to Lender and shall comply with Program Obligations.

(f) Borrower shall not enter into any Lease for any portion of the Mortgaged Property for non-residential use except with the prior written consent of Lender, and Lender's prior written approval of the Lease agreement, consistent with Program Obligations. Borrower shall not modify the terms of, or extend or terminate, any Lease for non-residential use (including any Lease in existence on the date of this Security Instrument) without the prior written consent of Lender. Borrower shall, without request by Lender, deliver an executed copy of each non-residential Lease to Lender promptly after such Lease is signed. All non-residential Leases, including renewals or extensions of existing Leases, shall specifically provide that (i) such Leases are subordinate to the lien of this Security Instrument, except when approved in writing by Lender in accordance with Program Obligations, and (ii) the tenant shall, upon receipt after the occurrence of an Event of Default of a written request from Lender, pay all Rents payable under the Lease to Lender.

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

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

6. EXCULPATION. Except for personal liability expressly provided for in this Security Instrument or in the Note or in the Regulatory Agreement, the execution of the Note shall impose no personal liability upon Borrower or those parties listed in the Section 50 Addendum to the Regulatory Agreement for payment of the Indebtedness evidenced thereby, and in the Event of Default, the holder of the Note shall look solely to the Mortgaged Property in satisfaction of the Indebtedness and will not seek or obtain any deficiency or personal judgment against Borrower or those parties listed in the Section 50 Addendum to the Regulatory Agreement, except such judgment or decree as may be necessary to foreclose or bar its interest in the Mortgaged Property and all other property mortgaged, pledged, conveyed or assigned to secure payment of the Indebtedness; provided, that nothing in this Section 6 of this Security Instrument and no action so taken shall operate to impair any obligation under the Regulatory Agreement of Borrower or those parties listed in the Section 50 Addendum to the Regulatory Agreement.

7. DEPOSITS FOR TAXES, INSURANCE AND OTHER CHARGES.

(a) Borrower shall pay to and deposit with Lender, together with and in addition to the monthly payments of interest or of principal and interest payable under the terms of the Note on the first day of each month after the commencement of amortization under the Note, and continuing until the debt secured hereby is paid in full, the following sums:

- (1) an amount sufficient to provide Lender with funds to pay the next mortgage insurance premium if this Security Instrument and the Note are insured by HUD, or a monthly service charge, if they are held by HUD, as follows:
 - (i) If and so long as the Note is insured under the provisions of the National Housing Act, as amended, an amount sufficient to accumulate in the hands of Lender one month prior to its due date the annual mortgage insurance premium; or
 - (ii) If and so long as the Note and this Security Instrument are held by HUD, a monthly service charge in an amount equal to the lesser of the amount permitted by law or the amount set forth in Program Obligations computed for each successive year beginning with the first day of the month following the date of this Security Instrument, or the first day of the month following assignment, if the Note and this Security Instrument are assigned to HUD without taking into account delinquencies or prepayment; and
- (2) a sum equal to the ground rents, if any, next due, plus the premiums that will next become due and payable on policies of fire and other property insurance covering the premises covered hereby, plus water rates, Taxes, municipal/government utility charges and special assessments next due on the premises covered hereby (all as estimated by Lender) less all sums already paid therefore divided by the number of months to the date when such ground rents, premiums, water rates, Taxes, municipal/utility charges and special assessments will become delinquent, such sums to be held by Lender in trust to pay said ground rents, premiums, water rates, Taxes, and special assessments; and
- (3) all payments and deposits mentioned in the two preceding paragraphs of this subsection and all payments to be made under the Note shall be added together and the aggregate amount thereof

shall be paid each month in a single payment or deposit to be applied by Lender to the following items in the order set forth:

- (i) mortgage insurance premium charges under the Contract of Insurance;
 - (ii) ground rents, if Lender has required them to be escrowed with Lender, Taxes, special assessments, water rates, municipal/government utility charges, fire and other property insurance premiums;
 - (iii) interest on the Note; and
 - (iv) amortization of the principal of the Note.
- (b) Borrower shall pay to and deposit with Lender all other escrows and deposits, including any Reserve for Replacements.

(c) Borrower shall deposit with Lender such amounts as may be required by any Collateral Agreement and shall perform all other obligations of Borrower under each Collateral Agreement. Collateral Agreement deposits shall be held in an institution (which may be Lender, if Lender is such an institution) whose deposits or accounts are insured or guaranteed by a federal agency and in accordance with Program Obligations.

8. IMPOSITION DEPOSITS.

(a) In the event Borrower fails to pay any sums provided for in this Security Instrument, Lender, at its option, may pay the same. Any excess funds accumulated under Section 7(a) remaining after payment of the items therein mentioned, shall be credited to subsequent monthly payments of the same nature required thereunder; but if any such item shall exceed the estimate therefore, or if Borrower shall fail to pay any other governmental or municipal charge, Borrower shall forthwith make good the deficiency or pay the charge before the same become delinquent or subject to interest or penalties and in default thereof Lender may pay the same. All sums paid or advanced by Lender and any sums which Lender may be required to advance to pay mortgage insurance premiums shall be added to the Indebtedness and shall bear interest from the date of payment at the rate specified in the Note and shall be due and payable on demand. In case of termination of the Contract of Insurance by prepayment of the Indebtedness in full or otherwise (except as hereinafter provided), accumulations under Section 7(a) not required to pay sums due under Section 7(a)(3) shall be credited to Borrower. If the Mortgaged Property is sold under foreclosure or is otherwise acquired by Lender after an Event of Default, any remaining balance of the

accumulations under Section 7(a) shall be credited to the principal under the Note as of the date of the commencement of foreclosure proceedings or as of the date the Mortgaged Property is otherwise acquired; and accumulations under Section 7 shall be likewise credited unless required to pay sums due HUD under Section 7(a)(3). The amounts deposited under Section 7 and Section 8 are collectively referred to in this Security Instrument as the “**Imposition Deposits**”. The obligations of Borrower for which the Imposition Deposits are required are collectively referred to in this Security Instrument as “**Impositions**”. The amount of the Imposition Deposits shall be sufficient to enable Lender to pay applicable Impositions before the last date upon which such payment may be made without any penalty or interest charge being added. Lender shall maintain records indicating how much of the monthly Imposition Deposits and how much of the aggregate Imposition Deposits held by Lender are held for the purpose of paying Taxes, insurance premiums and each other obligation of Borrower for which Imposition Deposits are required. Any waiver by Lender of the requirement that Borrower remit Imposition Deposits to Lender may be revoked by Lender, in Lender's discretion, at any time upon Notice to Borrower.

(b) Imposition Deposits shall be held in accounts insured or guaranteed by a federal agency and in accordance with Program Obligations. Lender shall apply the Imposition Deposits to pay Impositions so long as no Event of Default has occurred and is continuing. Unless required by Program Obligations, Lender shall not be required to pay Borrower any interest, earnings or profits on the Imposition Deposits with the exception of the Reserve for Replacement account or Residual Receipts account (if any). Borrower hereby pledges and grants to Lender a security interest in the Imposition Deposits as additional security for all of Borrower's obligations under this Security Instrument and the Note. Any amounts deposited with Lender under Section 7 shall not be trust funds, nor shall they operate to reduce the Indebtedness.

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

(d) If at any time the amount of the Imposition Deposits held by Lender (other than the Reserve for Replacement or Residual Receipts, if any) for payment of a specific Imposition exceeds the amount reasonably deemed necessary by Lender plus one-sixth of such estimate, the excess shall be credited against future installments of Imposition Deposits. If at any time the amount of the Imposition Deposits held by Lender for payment of a specific Imposition is less than the amount reasonably

estimated by Lender to be necessary plus one-sixth of such estimate, Borrower shall pay to Lender the amount of the deficiency within 15 days after Notice from Lender.

9. REGULATORY AGREEMENT. Borrower and HUD have executed a Regulatory Agreement, which is being recorded simultaneously with this Security Instrument, and is incorporated in and made a part of this Security Instrument. Upon Default of the Regulatory Agreement and at the direction of HUD, Lender shall declare the whole of the Indebtedness to be due and payable.

10. APPLICATION OF PAYMENTS. If at any time Lender receives, from Borrower or otherwise, any amount applicable to the Indebtedness which is less than all amounts due and payable at such time, Lender must apply that payment to amounts then due and payable in the manner and in the order set forth in Section 7(a)(3). Neither Lender's acceptance of an amount that is less than all amounts then due and payable nor Lender's application of such payment in the manner authorized shall constitute or be deemed to constitute either a waiver of the unpaid amounts or an accord and satisfaction. Notwithstanding the application of any such amount to the Indebtedness, Borrower's obligations under this Security Instrument and the Note shall remain unchanged.

11. COMPLIANCE WITH LAWS. Borrower shall comply with all applicable: laws; ordinances; regulations; requirements of any Governmental Authority; lawful covenants and agreements recorded against the Mortgaged Property; so long as the Loan is insured or held by HUD, the Regulatory Agreement, and Program Obligations including lead-based paint maintenance requirements of 24 C.F.R. Part 35, Subpart G, and any successor regulations; including but not limited to those of the foregoing pertaining to: health and safety; construction of Improvements on the Mortgaged Property; fair housing; civil rights; zoning and land use; Leases; and maintenance and disposition of tenant security deposits; and, with respect to all of the foregoing, all subsequent amendments, revisions, promulgations or enactments. Borrower shall at all times maintain records sufficient to demonstrate compliance with the provisions of this Section 11. Borrower shall take appropriate measures to prevent, and shall not engage in or knowingly permit, any illegal activities at the Mortgaged Property, including those that could endanger tenants or visitors, result in damage to the Mortgaged Property, result in forfeiture of the Mortgaged Property, or otherwise impair the lien created by this Security Instrument or Lender's interest in the Mortgaged Property. Borrower represents and warrants to Lender that no portion of the Mortgaged Property has been or will be purchased with the proceeds of any illegal activity.

12. USE OF PROPERTY. Unless permitted by applicable law and approved by Lender, Borrower shall not (a) allow changes in the use for which all or any part of the Mortgaged Property is being used at the time this Security Instrument was

executed, (b) convert any individual dwelling units or common areas to commercial use, (c) initiate or acquiesce in a change in the zoning classification of the Mortgaged Property that results in any change in permitted use that was in effect at the time of initial/final endorsement, (d) establish any condominium or cooperative regime with respect to the Mortgaged Property, (e) materially change any unit configurations or change the number of units in the Mortgaged Property, (f) combine all or any part of the Mortgaged Property with all or any part of a tax parcel which is not part of the Mortgaged Property, (g) subdivide or otherwise split any tax parcel constituting all or any part of the Mortgaged Property, or (h) so long as the Note is insured or held by HUD, permit the Mortgaged Property to be used as transient housing or as a hotel in violation of Section 513 of the National Housing Act, as amended.

13. PROTECTION OF LENDER'S SECURITY.

(a) If Borrower fails to perform any of its obligations under this Security Instrument, Note or Regulatory Agreement, or if any action or proceeding is commenced which purports to affect the Mortgaged Property, Lender's security or Lender's rights under this Security Instrument, including eminent domain, insolvency, Waste, code enforcement, civil or criminal forfeiture, enforcement of Hazardous Materials Laws, fraudulent conveyance or reorganizations or proceedings involving a bankrupt or decedent, then Lender at Lender's option may make such appearances, advance such sums and take such actions as Lender reasonably deems necessary to perform such obligations of Borrower and to protect Lender's interest, including (1) payment of fees and out-of-pocket expenses of attorneys (including fees for litigation at all levels), accountants, inspectors and consultants, (2) entry upon the Mortgaged Property to make repairs or secure the Mortgaged Property, (3) procurement of the insurance required by Section 19, and (4) payment of amounts which Borrower has failed to pay under Section 16 or any other Section of this Security Instrument.

(b) Any amounts advanced by Lender for taxes, special assessments, or water rates (which are liens prior to the Security Instrument), for insuring the Project, or for mortgage insurance premiums, which amounts are paid after an Event of Default, shall be added to, and become part of the Indebtedness, and shall be immediately due and payable and shall bear interest from the date of the advance until paid at the Interest Rate specified in the Note. So long as the Loan is insured or held by HUD, Lender does not have any obligation to make advances except as required under Program Obligations, and any advance by Lender other than as required by Program Obligations requires prior written HUD approval before such advance can be added to the Indebtedness.

(c) Nothing in Section 13 shall require Lender to incur any expense or take any action to protect its security.

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

15. BOOKS AND RECORDS; FINANCIAL REPORTING.

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

(b) If an Event of Default has occurred and is continuing, Borrower shall, at Borrower's expense, deliver to Lender upon written demand all books and records relating to the Mortgaged Property or its operation, which shall be maintained at the Mortgaged Property.

(c) Borrower authorizes Lender to obtain a credit report on Borrower, at Borrower's expense, at any time.

(d) Within 120 days after the end of each fiscal year of Borrower, Borrower shall furnish to Lender a statement of income and expenses of Borrower's operation of the Mortgaged Property for that fiscal year, a statement of changes in financial position of Borrower relating to the Mortgaged Property for that fiscal year and, when requested by Lender, a balance sheet showing all assets and liabilities of Borrower relating to the Mortgaged Property as of the end of that fiscal year. If Borrower's fiscal year is other than the calendar year, Borrower must also submit to Lender a year-end statement of income and expenses within 120 days after the end of the calendar year. Lender also may require that any statements, schedules or reports required to be delivered to Lender under this Section 15 be audited at Borrower's expense by independent certified public accountants acceptable to Lender. If Borrower fails to provide in a timely manner the statements, schedules and reports required by this Section 15, Lender shall have the right to have Borrower's books and records audited, at Borrower's expense, by independent certified public accountants selected by Lender in order to obtain such statements, schedules and reports, and all related costs and expenses of Lender shall become immediately due and payable and shall become an additional part of the Indebtedness. Notwithstanding the foregoing, however, so long as the Loan is insured

or held by HUD, Borrower's obligation under this subsection (d) shall be satisfied by the delivery to Lender, concurrently with its delivery to HUD, of a copy of the annual financial statement required to be delivered to HUD in accordance with the Regulatory Agreement.

(e) Borrower shall deliver to Lender, within 15 days, copies of all operating budgets, capital budgets, and other records or documents concerning the Mortgaged Property or Borrower, reasonably requested by Lender.

16. TAXES; OPERATING EXPENSES.

(a) Subject to the provisions of Section 16(c) and Section 16(d), Borrower shall pay, or cause to be paid, all Taxes when due and before the addition of any interest, fine, penalty or cost for nonpayment.

(b) Subject to the provisions of Section 16(c), Borrower shall pay the expenses of operating, managing, maintaining and repairing the Mortgaged Property (including insurance premiums, utilities, repairs and replacements) before the last date upon which each such payment may be made without any penalty or interest charge being added.

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

(d) Borrower, at its own expense, and, so long as the Loan is insured or held by HUD, in accordance with the Regulatory Agreement, may contest by appropriate legal proceedings, conducted diligently and in good faith, the amount or validity of any Imposition other than insurance premiums, if (1) Borrower notifies Lender of the commencement or expected commencement of such proceedings, (2) the Mortgaged Property is not in danger of being sold or forfeited, (3) Borrower deposits with Lender reserves sufficient to pay the contested Imposition, if requested by Lender, and (4)

Borrower furnishes whatever additional security is required in the proceedings or is reasonably requested by Lender, which may include the delivery to Lender of the reserves established by Borrower to pay the contested Imposition.

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

17. LIENS; ENCUMBRANCES. (a) Borrower shall not permit the grant, creation or existence of any mortgage, deed of trust, deed to secure debt, security interest or other lien or encumbrance (“**Lien**”) on the Mortgaged Property (other than the lien of this Security Instrument, any tax liens which are imposed before payment is due, or any inferior liens which are approved in writing by HUD and Lender), whether voluntary, involuntary or by operation of law, and whether or not such Lien has priority over the lien of this Security Instrument. (b) Borrower shall not repay any HUD-approved inferior Lien from proceeds of the Loan nor from Project Assets other than from Surplus Cash (as defined in the Regulatory Agreement) or Residual Receipts, except, with the prior written approval of HUD, in the case of an inferior Lien created in an operating loss loan insured pursuant to Section 223(d) of the Act or a supplement loan insured pursuant to Section 241 of the Act.

18. PRESERVATION, MANAGEMENT AND MAINTENANCE OF MORTGAGED PROPERTY. Borrower (a) shall not commit Waste, (b) shall not abandon the Mortgaged Property, (c) shall restore or repair promptly, in a good and workmanlike manner, any damaged part of the Mortgaged Property to the equivalent of its original condition, or such other condition as Lender may approve in writing, whether or not litigation or insurance proceeds or condemnation awards are available to cover any costs of such restoration or repair, (d) shall keep the Mortgaged Property in decent, safe, and sanitary condition and good repair, including the replacement of Personalty and Fixtures with items of equal or better function and quality, all in accordance with Program Obligations, (e) shall provide for qualified management of the Mortgaged Property by a residential rental property manager, (f) shall give Notice to Lender of and, unless otherwise directed in writing by Lender, shall appear in and defend, any action or proceeding that could impair the Mortgaged Property, Lender's security or Lender's rights under this Security Instrument, (g) shall not (and shall not permit any tenant or other person to) remove, demolish or alter the Mortgaged Property or any part of the Mortgaged Property except that Borrower may dispose of obsolete or deteriorated Fixtures or Personalty if the same are replaced with like items of the same or greater quality or value, or make minor alterations which do not impair the Mortgaged Property, and (h) so long as the Loan is insured or held by HUD, shall not expend any Project funds except from permissible withdrawals of Surplus Cash and except for Reasonable Operating Expenses and necessary repairs without the prior written approval of HUD.

So long as the Loan is insured or held by HUD, all expenses incurred by Borrower in connection with the Mortgaged Property shall be incurred in compliance with Program Obligations.

19. PROPERTY AND LIABILITY INSURANCE.

(a) Borrower shall keep the Mortgaged Property insured at all times against such hazards as Lender may from time to time require, which insurance shall include but not be limited to coverage against loss by fire and allied perils, general boiler and machinery coverage, builders all-risk and business income coverage. Lender's insurance requirements may change from time to time throughout the term of the Indebtedness. If Lender so requires, such insurance shall also include sinkhole insurance, mine subsidence insurance, earthquake insurance, and, if the Mortgaged Property does not conform to applicable zoning or land use laws, building ordinance or law coverage. If any of the Improvements are located in an area identified by the Federal Emergency Management Agency (or any successor to that agency) as an area having special flood hazards, Borrower shall maintain flood insurance covering such Improvements and any machinery, equipment, Fixtures and furnishings contained therein that are funded, in whole or in part, with Loan proceeds in an amount at least equal to its development or project cost (less estimated land cost) or to the maximum limit of coverage made available with respect to the particular type of property under the National Flood Insurance Act of 1968, as amended, or its successor statute, whichever is less, provided that the amount of flood insurance need not exceed the outstanding principal balance of the Note, and flood insurance need not be maintained beyond the term of the Note. If Lender determines that flood insurance has not been obtained in the required amount, Lender must notify Borrower of Borrower's obligations to obtain the proper flood insurance. If Borrower does not obtain such insurance within 45 days of the date of this notification, Lender shall purchase such flood insurance on behalf of Borrower and may charge Borrower for the cost of premiums and fees incurred by Lender in purchasing the flood insurance.

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

of a policy, Borrower shall deliver to Lender evidence of continuing coverage in form satisfactory to Lender.

(c) Borrower shall maintain at all times commercial general liability insurance, workers' compensation insurance and such other liability, errors and omissions and fidelity insurance coverages as Lender may from time to time require, or shall require any appropriate party to maintain at all times commercial general liability insurance, workers' compensation insurance and such other liability, errors and omissions and fidelity insurance coverages as Lender may from time to time require or such other insurance coverage as required by Program Obligations.

(d) All insurance policies and renewals of insurance policies required by this Section 19 shall be in such amounts and for such periods as Lender may from time to time require, and shall be issued by insurance companies satisfactory to Lender and in accordance with Program Obligations. Lender shall have the right to effect insurance in the event Borrower fails to comply with this Section.

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

(f) In the event of loss, Borrower shall give immediate written Notice to the insurance carrier and to Lender. Borrower hereby authorizes and appoints Lender as attorney-in-fact for Borrower to make proof of loss, to adjust and compromise any claims under policies of property damage insurance, to appear in and prosecute any action arising from such property damage insurance policies, to collect and receive the proceeds of property damage insurance, and to deduct from such proceeds Lender's expenses incurred in the collection of such proceeds. This power of attorney is coupled with an interest and therefore is irrevocable. Borrower shall notify Lender of any payment received from any insurer. Lender shall (1) hold the balance of such proceeds to be used to reimburse Borrower for the cost of restoring and repairing the Mortgaged Property to the equivalent of its original condition or to a condition approved by Lender, or (2) apply the balance of such proceeds to the payment of the Indebtedness, whether or not then due. No amount applied to the reduction of the principal amount of the Indebtedness in accordance with this Section 19(f) shall be considered an optional prepayment as the term is used in this Security Instrument and the Note secured hereby, nor relieve Borrower from continuing to make regular monthly payments in the amount required by the Note. To the extent Lender determines to apply insurance proceeds to restoration, Lender shall do so in accordance with Lender's then-current policies relating to the restoration of casualty damage on similar multifamily properties; provided that so long as the Loan is insured or held by HUD, insurance proceeds shall

be applied as approved by HUD and in accordance with Program Obligations pursuant to Section 19(g) below.

(g) Lender shall not exercise its option to apply insurance proceeds to the payment of the Indebtedness if all of the following conditions are met: (1) no Event of Default (or any event which, with the giving of Notice or the passage of time, or both, would constitute an Event of Default) has occurred and is continuing; (2) Lender determines, in its discretion, that there will be sufficient funds to complete the restoration; (3) Lender determines, in its discretion, that the rental income from the Mortgaged Property after completion of the restoration will be sufficient to meet all operating costs and other expenses, Imposition Deposits, deposits to reserves and loan repayment obligations relating to the Mortgaged Property; and (4) Lender determines, in its discretion, that the restoration will be completed before the earlier of (A) one year before the maturity date of the Note or (B) one year after the date of the loss or casualty. Further, so long as the Loan is insured by HUD, Lender may not exercise its option to apply insurance proceeds to the payment of the Indebtedness without the prior written approval of HUD. In seeking this approval, Lender shall provide evidence acceptable to HUD that there has been a total loss of the Mortgaged Property such that complete restoration is improbable. If HUD fails to give its approval to the use or application of such funds within 60 days after the written request by Lender, Lender may use or apply such funds for any of the purposes specified herein without the approval of HUD.

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

20. CONDEMNATION.

(a) Borrower shall promptly notify Lender of any action or proceeding relating to any condemnation or other taking, or conveyance in lieu thereof, of all or any part of the Mortgaged Property, whether direct or indirect condemnation. Borrower shall appear in and prosecute or defend any action or proceeding relating to any condemnation unless otherwise directed by Lender in writing. Borrower authorizes and appoints Lender as attorney-in-fact for Borrower to commence, appear in and prosecute, in Lender's or Borrower's name, any action or proceeding relating to any condemnation and to settle or compromise any claim in connection with any condemnation. This power of attorney is coupled with an interest and therefore is irrevocable. However, nothing contained in this Section 20 shall require Lender to incur

any expense or take any action. Borrower hereby transfers and assigns to Lender all right, title and interest of Borrower in and to any award or payment with respect to (1) any condemnation, or any conveyance in lieu of condemnation, and (2) any damage to the Mortgaged Property caused by governmental action that does not result in a condemnation.

(b) All awards of compensation in connection with condemnation for public use of or a taking of any of the Mortgaged Property shall be paid to Lender to be applied (1) to fees, costs and expenses (including reasonable attorneys' fees) incurred by Lender; and (2) to the amount due under the Note secured hereby in (i) amounts equal to the next maturing installment or installments of principal and (ii) with any balance to be credited to the next payment due under the Note. After payment to Lender of all fees, costs and expenses (including reasonable attorneys' fees) incurred by Lender under this Section 20, all awards of damages in connection with any condemnation for public use of or damage to the Mortgaged Property, shall be paid to Lender to be applied to an account held for and on behalf of Borrower, which account shall, at the option of Lender, either be applied to the amount due under the Note as specified in the preceding sentence, or be disbursed for the restoration. No amount applied to the reduction of the principal amount due in accordance with this Section 20(b) shall be considered an optional prepayment as the term is used in this Security Instrument and the Note secured hereby, nor relieve Borrower from making regular monthly payments commencing on the first day of the first month following the date of receipt of the award. Lender is hereby authorized in the name of Borrower to execute and deliver necessary releases or approvals or to appeal from such awards.

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

(a) So long as the Loan is insured or held by HUD, Borrower shall not, without the prior written approval of HUD, convey, assign, transfer, pledge, hypothecate, encumber or otherwise dispose of the Mortgaged Property or any interest therein or permit the conveyance, assignment or transfer of any interest in Borrower (if the effect of such conveyance, assignment or transfer is the creation or elimination of a Principal), unless permitted by Program Obligations. Lender may charge Borrower a fee, in accordance with Program Obligations, for Lender's additional responsibilities related to Borrower's actions in this Section 21. Borrower need not obtain the prior written approval of HUD for: (1) a conveyance of the Mortgaged Property at a judicial or non-judicial foreclosure sale under this Security Instrument, (2) inclusion of the Mortgaged Property in a bankruptcy estate by operation of law under the United States Bankruptcy Code, or (3) acquisition of an interest by inheritance or by Court decree.

(b) If the Loan is no longer insured or held by HUD, Borrower shall not convey, assign, transfer, pledge, hypothecate, encumber or otherwise dispose of the Mortgaged Property or any interest therein or permit the conveyance, assignment or transfer of any interest in Borrower without the prior written approval of Lender in its sole discretion.

22. EVENTS OF DEFAULT. The occurrence of any one or more of the following shall constitute either a Monetary Event of Default or a Covenant Event of Default under this Security Instrument:

(a) **Monetary Event of Default:** Any failure by Borrower to pay or deposit when due any amount required by the Note or Section 7(a) of this Security Instrument.

(b) **Covenant Events of Default shall include:**

- (1) fraud or material misrepresentation or material omission by Borrower, any of its officers, directors, trustees, general partners, members, managers or any guarantor in connection with (i) the Loan Application for or creation of the Indebtedness, (ii) any financial statement, rent roll, or other report or information provided to Lender during the term of the Indebtedness, or (iii) any request for Lender's consent to any proposed action under this Security Instrument or the Note;
- (2) the commencement of a forfeiture action or proceeding, whether civil or criminal, which, in Lender's reasonable judgment, could result in a forfeiture of the Mortgaged Property or otherwise materially impair the lien created by this Security Instrument or Lender's interest in the Mortgaged Property;
- (3) any material failure by Borrower to perform or comply with any of its obligations under this Security Instrument (other than those specified in Section 22(a) and Section 22(b)(1) and (b)(2)), as and when required, which continues for a period of 30 days after Notice of such failure by Lender to Borrower. However, no such Notice shall apply in the case of any such material failure which could, in Lender's judgment, absent immediate exercise by Lender of a right or remedy under this Security Instrument, result in harm to Lender or impairment of the Note or this Security Instrument; and,

(4) so long as the Loan is insured or held by HUD, any failure by Borrower to perform any of its obligations as and when required under the Regulatory Agreement, which failure continues beyond the applicable cure period, if any, specified in the Regulatory Agreement; however, Violations under the terms of the Regulatory Agreement may only be treated as a default under this Security Instrument if HUD instructs Lender to treat them as such.

(c) Lender shall deliver Notice to any Principal(s) of Borrower identified in Section 31, within five (5) Business Days in each case where Lender has delivered Notice to Borrower of an Event of Default, in order to provide such Principal(s) an opportunity to cure either a Monetary Event of Default or a Covenant Event of Default.

23. REMEDIES CUMULATIVE. Each right and remedy provided in this Security Instrument is distinct from all other rights or remedies under this Security Instrument, the Note, or so long as the Loan is insured or held by HUD, HUD's remedies under the Regulatory Agreement or afforded by applicable law, and each shall be cumulative and may be exercised concurrently, independently, or successively, in any order.

24. FORBEARANCE.

(a) So long as the Loan is insured by HUD, Lender shall not without obtaining the prior written consent of HUD, take any of the following actions: extend the time for payment of all or any part of the Indebtedness; reduce the payments due under this Security Instrument or the Note; release anyone liable for the payment of any amounts under this Security Instrument or the Note; accept a renewal of the Note; modify the terms and time of payment of the Indebtedness; join in any extension or subordination agreement; release any Mortgaged Property; take or release other or additional security; modify the rate of interest or period of amortization of the Note or change the amount of the monthly installments payable under the Note; and otherwise modify this Security Instrument or the Note. However, if the Contract of Insurance has been terminated, Lender may (but shall not be obligated to) agree with Borrower to any of the aforementioned actions in this Section and Lender shall not have to give Notice to or obtain the consent of any guarantor or third-party obligor.

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

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

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

26. WAIVER OF STATUTE OF LIMITATIONS. To the extent permitted by law, Borrower hereby waives the right to assert any statute of limitations as a bar to the enforcement of the lien of this Security Instrument or to any action brought to enforce any of the Loan Documents.

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

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

29. ESTOPPEL CERTIFICATE. Within ten (10) days after a request from Lender, Borrower shall deliver to Lender a written statement, signed and acknowledged by Borrower, certifying to Lender or any person designated by Lender, as of the date of such statement, (a) that the Note, the Regulatory Agreement (so long as the Loan is insured or held by HUD), and this Security Instrument are unmodified and in full force and effect (or, if there have been modifications, that the Note, the Regulatory Agreement (so long as the Loan is insured or held by HUD), and this Security Instrument are in full force and effect as modified and setting forth such modifications); (b) the unpaid principal balance of the Note; (c) the date to which interest under the Note has been paid; (d) that Borrower is not in default in paying the Indebtedness or in performing or observing any of the covenants or agreements contained in the Note, the Regulatory Agreement (so long as the Loan is insured or held by HUD), and this Security Instrument (or, if Borrower is in default, describing such default in reasonable detail); (e) whether or not there are then existing any setoffs or defenses known to Borrower against the enforcement of any right or remedy of Lender under the Note, the Regulatory Agreement (so long as the Loan is insured or held by HUD), and this Security Instrument; and (f) any additional facts requested by Lender.

30. GOVERNING LAW; CONSENT TO JURISDICTION AND VENUE.

(a) This Security Instrument and the Note, if it does not itself expressly identify the law that is to apply to it, shall be governed by the laws of the jurisdiction in which the Land is located (“**Property Jurisdiction**”), except so long as the Loan is insured or held by HUD, and solely as to rights and remedies of HUD, as such local or state laws may be preempted by federal law.

(b) Borrower agrees that any controversy arising under or in relation to the Note or this Security Instrument shall be litigated exclusively in the Property Jurisdiction except as, so long as the Loan is insured or held by HUD and solely as to rights and remedies of HUD, federal jurisdiction may be appropriate pursuant to any federal requirements. The state courts, and with respect to HUD’s rights and remedies, federal courts, and Governmental Authorities in the Property Jurisdiction shall have exclusive jurisdiction over all controversies which shall arise under or in relation to the Note, any security for the Indebtedness, or this Security Instrument. Borrower irrevocably

consents to service, jurisdiction, and venue of such courts for any such litigation and waives any other venue to which it might be entitled by virtue of domicile, habitual residence or otherwise.

31. NOTICE.

(a) All notices, demands and other communications (“**Notice**”) under or concerning this Security Instrument shall be in writing. Each Notice shall be addressed to the intended recipients at their respective addresses set forth in this Security Instrument, and shall be deemed given on the earliest to occur of (1) the date when the Notice is received by the addressee; (2) the first Business Day after the Notice is delivered to a recognized overnight courier service, with arrangements made for payment of charges for next Business Day delivery; or (3) the third Business Day after the Notice is deposited in the United States mail with postage prepaid, certified mail, return receipt requested. As used in this Section 31, the term (“**Business Day**”) means any day other than a Saturday or a Sunday, a federal holiday or holiday in the state where the Project is located or other day on which the federal government or the government of the state where the Project is located is not open for business. When not specifically designated as a Business Day, the term “**day**” shall refer to a calendar day. Failure of Lender to send Notice to Borrower or its Principal(s) shall not prevent the exercise of Lender’s rights or remedies under this Security Instrument or under the Loan Documents.

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

(c) Any Notice under the Note which does not specify how Notice is to be given shall be given in accordance with this Section 31.

BORROWER:

PRINCIPAL(S)/RELATED PARTIES: *[add any principals or related entities Borrower requests]*

LENDER:

32. SALE OF NOTE; CHANGE IN SERVICER. The Note or a partial interest in the Note (together with this Security Instrument) may be sold one or more times without prior Notice to Borrower. A sale may result in a change of the loan servicer. There also may be one or more changes of the loan servicer unrelated to a sale of the Note. If there is a sale or transfer of all or a partial interest in the Note or a change of the loan servicer, Lender shall be responsible for ensuring that Borrower is given Notice of the sale, transfer and/or change. Any loan servicer, including any loan servicer resulting from any changes mentioned above, must be approved by HUD in accordance with Program Obligations.

33. SINGLE ASSET BORROWER. Until the Indebtedness is paid in full or unless otherwise approved in writing by HUD so long as the Loan is insured or held by HUD, (a) Borrower shall be a single purpose entity and shall maintain the assets of the Mortgaged Property in segregated accounts and (b) Borrower (1) shall not acquire any real or personal property other than the Mortgaged Property and personal property related to the operation and maintenance of the Mortgaged Property, and so long as the Loan is insured or held by HUD, except pursuant to the Regulatory Agreement and Program Obligations and (2) shall not own or operate any business other than the management and operation of the Mortgaged Property, and so long as the Loan is insured or held by HUD, except pursuant to the Regulatory Agreement and Program Obligations.

34. SUCCESSORS AND ASSIGNS BOUND. This Security Instrument shall bind, and the rights granted by this Security Instrument shall inure to, the respective successors and assigns of Lender and Borrower.

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

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

(a) The relationship between Lender and Borrower shall be solely that of creditor and debtor, respectively, and nothing contained in this Security Instrument shall create any other relationship between Lender and Borrower. Borrower agrees that it is not a third-party beneficiary to the Contract of Insurance between HUD and Lender, as more fully set forth in 24 C.F.R. Part 207, Subpart B.

(b) No creditor of any party to this Security Instrument and no other person (the term “person” includes, but is not limited to, any commercial or governmental entity or institution) shall be a third-party beneficiary of this Security Instrument, the Note, or so long as the Loan is insured or held by HUD, the Regulatory Agreement. Without limiting the generality of the preceding sentences, (1) any servicing arrangement between Lender and any loan servicer for loss sharing or interim advancement of funds shall constitute a contractual obligation of such loan servicer that is independent of the obligation of Borrower for the payment of the Indebtedness, (2) Borrower shall not be a third-party beneficiary of any servicing arrangement, and (3) no payment by the loan servicer under any servicing arrangement shall reduce the amount of the Indebtedness.

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

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

39. LOAN SERVICING. All actions regarding the servicing of the Note, including the collection of payments, the giving and receipt of Notice, inspections of the Mortgaged Property, inspections of books and records, and the granting of consents and approvals, may be taken by the HUD-approved loan servicer unless Borrower receives Notice to the contrary. If Borrower receives conflicting Notices regarding the identity of the loan servicer or any other subject, any such Notice from Lender shall

govern; provided that so long as the Loan is insured or held by HUD, if Borrower receives conflicting Notice regarding the identity of the loan servicer or any other subject, any such Notice from Lender shall govern unless there is a Notice from HUD and, in all cases, any Notice from HUD governs notwithstanding any Notice from any other party.

40. DISCLOSURE OF INFORMATION. To the extent permitted by law, Lender may furnish information regarding Borrower or the Mortgaged Property to third parties with an existing or prospective interest in the servicing, enforcement, evaluation, performance, purchase or securitization of the Indebtedness, including but not limited to trustees, master servicers, special servicers, rating agencies, and organizations maintaining databases on the underwriting and performance of multifamily mortgage loans.

41. NO CHANGE IN FACTS OR CIRCUMSTANCES. Borrower certifies that all information in the application for the Loan submitted to Lender (the “**Loan Application**”) and in all financial statements, rent rolls, reports, certificates and other documents submitted in connection with the Loan Application are complete and accurate in all material respects and that there has been no material adverse change in any fact or circumstance that would make any such information incomplete or inaccurate. The submission of false or incomplete information shall be a Covenant Event of Default.

42. ESTOPPEL. The Lender is not the agent of HUD. Any action by Lender in exercising any right or remedy under this Security Instrument shall not be a waiver or preclude the exercise by HUD of any right or remedy which HUD might have under the Regulatory Agreement or other Program Obligations.

43. ACCELERATION; REMEDIES. If a Monetary Event of Default occurs and is continuing for a period of thirty (30) days, Lender, at Lender's option, may declare the Indebtedness to be immediately due and payable without further demand, and may invoke the power of sale and any other remedies permitted by applicable law or provided in this Security Instrument or in the Note. Following a Covenant Event of Default, Lender, at Lender's option, but so long as the Loan is insured or held by HUD, only after receipt of the prior written approval of HUD, may declare the Indebtedness to be immediately due and payable without further demand, and may invoke the power of sale and any other remedies permitted by applicable law or provided in this Security Instrument or in the Note. Borrower acknowledges that the power of sale granted in this Security Instrument may be exercised by Lender without prior judicial hearing. Lender shall be entitled to collect all costs and expenses incurred in pursuing such remedies, including reasonable attorneys' fees (including but not limited to appellate litigation), costs of documentary evidence, abstracts and title reports.

[INSERT PROVISIONS PERTAINING TO SALE AS APPROPRIATE UNDER STATE LAW IF NOT OTHERWISE ADDRESSED BY AN ATTACHED FORM STATE ADDENDUM]

44. FEDERAL REMEDIES. In addition to any rights and remedies set forth in the Regulatory Agreement, HUD has rights and remedies under federal law so long as HUD is the insurer or holder of the Loan, including but not limited to the right to foreclose pursuant to the Multifamily Mortgage Foreclosure Act of 1981, 12 U.S.C. Section 3701, *et seq.*, as amended, when HUD is the holder of the Note.

45. REMEDIES FOR WASTE. In addition to any other rights and remedies set forth in the Note and this Security Instrument or those available under applicable law, including exemplary damages where permitted, the following remedies for Waste by Borrower are available to Lender as necessary to give complete redress to Lender for Lender's loss or damage:

(a) the exercise of the remedies available to Lender during the existence of a Covenant Event of Default, as set forth in Section 43 of this Security Instrument;

(b) an injunction prohibiting future Waste or requiring correction of Waste already committed, but only to the extent that Waste has impaired or threatens to impair Lender's security; and

(c) recovery of damages, limited by the amount of Waste, to the extent that Waste has impaired Lender's security. So long as the Loan is insured or held by HUD, any recovery of damages by Lender or HUD for Waste shall be applied, at the sole discretion of HUD, (1) to fees, costs and expenses (including reasonable attorneys' fees) incurred by Lender; (2) to remedy Waste of the Mortgaged Property, (3) to the Indebtedness or (4) for any other purpose designated by HUD.

46. TERMINATION OF HUD RIGHTS AND REFERENCES. At such time as HUD no longer insures or holds the Note, (a) all rights and responsibilities of HUD shall conclude, all mortgage insurance and references to mortgage insurance premiums, all references to HUD, GNMA and Program Obligations and related terms and provisions shall cease, and all rights and obligations of HUD shall terminate; (b) all obligations and responsibilities of Borrower to HUD shall likewise terminate; and (c) all obligations and responsibilities of Lender to HUD shall likewise terminate; provided, however, nothing contained in this Section 46, shall in any fashion discharge Borrower from any obligations to HUD under the Regulatory Agreement or Program Obligations or Lender from any obligations to HUD under Program Obligations, which occurred prior to termination of the Contract of Insurance. The provisions of this Section 46 shall be

given effect automatically upon the termination of the Contract of Insurance or the transfer of this Security Instrument by HUD to another party, provided that upon the request of Borrower, Lender or the party to whom the Security Instrument has been transferred, at no cost to HUD, HUD shall execute such documents as may be reasonably requested to confirm the provisions of this Section 46.

47. CONSTRUCTION FINANCING [IF APPLICABLE]. The Indebtedness represents funds to be used in the construction of certain Improvements on the Land, in accordance with the Building Loan Agreement which is incorporated herein by reference to the same extent and effect as if fully set forth and made herein (provided, however, that if and to the extent that the Building Loan Agreement is inconsistent herewith, this Security Instrument shall govern). If the construction of the Improvements to be made pursuant to the Building Loan Agreement are not made in accordance with the terms of said Building Loan Agreement, or Borrower otherwise defaults under the Building Loan Agreement, Lender, after due Notice to Borrower, or any subsequent owner, is hereby vested with full and complete authority to enter upon the Land to employ watchmen to protect such Improvements from depredation or injury and to preserve and protect the Personalty therein, to continue any and all outstanding contracts for the erection and completion of said Improvements, to make and enter into any contracts and obligations wherever necessary, either in its own name or in the name of Borrower, or other owner, and to pay and discharge all debts, obligations, and liabilities incurred thereby. All such sums so advanced by Lender (exclusive of advances of the principal of the Indebtedness) shall be added to the principal of the Indebtedness secured hereby and all shall be secured by this Security Instrument and shall be due and payable on demand with interest at the rate provided in the Note, but no such advances shall be insured unless same are specifically approved by HUD prior to the making thereof. The Indebtedness shall, at the option of Lender or holder of this Security Instrument and the Note, become due and payable on the failure of Borrower, or other owner, to keep and perform any of the covenants, conditions and agreements of the Building Loan Agreement. This covenant shall be terminated upon the completion of the Improvements to the satisfaction of Lender and the making of the final advance as provided in the Building Loan Agreement.

48. ENVIRONMENTAL HAZARDS.

(a) Definitions:

- (1) **“Hazardous Materials”** means petroleum and petroleum products and compounds containing them, including gasoline, diesel fuel and oil; explosives; flammable materials; radioactive materials; polychlorinated biphenyls (**“PCBs”**) and compounds containing them; lead and lead-based paint; asbestos or asbestos-containing

materials in any form that is or could become friable; underground or above-ground storage tanks, whether empty or containing any substance; any substance the presence of which on the Mortgaged Property is prohibited by any Governmental Authority; any substance that requires special handling; and any other material or substance now or in the future defined as a “hazardous substance,” “hazardous material,” “hazardous waste,” “toxic substance,” “toxic pollutant,” “contaminant,” or “pollutant” within the meaning of any Hazardous Materials Law.

- (2) **“Hazardous Materials Laws”** means all federal, state, and local laws, ordinances and regulations and standards, rules, policies and other governmental requirements, administrative rulings and court judgments and decrees in effect now or in the future and including all amendments that relate to Hazardous Materials and apply to Borrower or to the Mortgaged Property. Hazardous Materials Laws include, but are not limited to, the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601, *et seq.*, the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, *et seq.*, the Toxic Substance Control Act, 15 U.S.C. Section 2601, *et seq.*, the Clean Water Act, 33 U.S.C. Section 1251, *et seq.*, and the Hazardous Materials Transportation Act, 49 U.S.C. Section 5101, *et seq.*, and their state analogs.
- (3) **“Environmental Permit”** means any permit, license, or other authorization issued under any Hazardous Materials Law with respect to any activities or businesses conducted on or in relation to the Mortgaged Property.

(b) Except for (1) matters covered by a written program of operations and maintenance approved in writing by Lender (**“O&M Program”**); (2) matters described in subsection (c) of this Section 48; or (3) (for so long as the Loan is insured or held by HUD) matters covered by Program Obligations that may differ from this Section 48 (with respect to lead based paint requirements, for example), Borrower shall not cause or permit any of the following:

- (i) any occurrence or condition on the Mortgaged Property or any other property of Borrower that is adjacent to the Mortgaged Property, which occurrence or condition is or may be in violation of Hazardous Materials Laws; or

- (ii) any violation of or noncompliance with the terms of any Environmental Permit with respect to the Mortgaged Property or any property of Borrower that is adjacent to the Mortgaged Property.

The matters described in clauses (i) and (ii) above are referred to collectively in this Section 48 as “**Prohibited Activities or Conditions.**”

(c) Prohibited Activities and Conditions shall not include the safe and lawful use and storage of quantities of (1) supplies, cleaning materials and petroleum products customarily used in the operation and maintenance of comparable multifamily properties; (2) cleaning materials, personal grooming items and other items sold in containers for consumer use and used by tenants and occupants of residential dwelling units in the Mortgaged Property; and (3) petroleum products used in the operation and maintenance of motor vehicles and motor-operated equipment from time to time located on the Mortgaged Property’s parking areas, so long as all of the foregoing are used, stored, handled, transported and disposed of in compliance with Hazardous Materials Laws.

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

(e) If an O&M Program has been established with respect to Hazardous Materials, Borrower shall comply in a timely manner with, and cause all employees, agents, and contractors of Borrower and any other persons encompassed by the O&M Program and present on the Mortgaged Property to comply with the O&M Program. All costs of performance of Borrower's obligations under any O&M Program shall be paid by Borrower, and Lender's out-of-pocket costs incurred in connection with the monitoring and review of the O&M Program and Borrower's performance shall be paid by Borrower upon demand by Lender. Any such out-of-pocket costs of Lender which Borrower fails to pay promptly shall become an additional part of the Indebtedness as provided in Section 13; provided that so long as the Loan is insured by HUD, no advances made by Lender under this subsection (e) shall become an additional part of the Indebtedness unless such advances receive the prior written approval of HUD and provided further that unless approved by HUD, Lender shall have no obligation to make any such advances.

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

- (1) Borrower has not at any time engaged in, caused or permitted any Prohibited Activities or Conditions;
- (2) to the best of Borrower's knowledge after reasonable and diligent inquiry, no Prohibited Activities or Conditions exist or have existed;
- (3) the Mortgaged Property does not now contain any underground storage tanks, and, to the best of Borrower's knowledge after reasonable and diligent inquiry, the Mortgaged Property has not contained any underground storage tanks in the past. If there is an underground storage tank located on the Mortgaged Property that has been previously disclosed by Borrower to Lender in writing, that tank complies with all requirements of Hazardous Materials Laws;
- (4) Borrower has complied with all Hazardous Materials Laws, including all requirements for notification regarding releases of Hazardous Materials. Without limiting the generality of the foregoing, Borrower has obtained all Environmental Permits required for the operation of the Mortgaged Property in accordance with Hazardous Materials Laws now in effect and all such Environmental Permits are in full force and effect;
- (5) no event has occurred with respect to the Mortgaged Property that constitutes, or with the passing of time or the giving of Notice would constitute, noncompliance with the terms of any Environmental Permit;
- (6) to the best of Borrower's knowledge after reasonable and diligent inquiry, there are no actions, suits, claims or proceedings, pending or threatened, that involve the Mortgaged Property and allege, arise out of, or relate to any Prohibited Activity or Condition; and
- (7) Borrower has not received any complaint, order, notice of violation or other communication from any Governmental Authority with regard to air emissions, water discharges, noise emissions or Hazardous Materials, or any other environmental, health or safety matters affecting the Mortgaged Property or any other property of

Borrower that is adjacent to the Mortgaged Property that have not previously been resolved legally.

The representations and warranties in this Section 48 shall be continuing representations and warranties that shall be deemed to be made by Borrower throughout the term of the Loan, until the Indebtedness has been paid in full.

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

- (1) Borrower's discovery of any Prohibited Activity or Condition;
- (2) Borrower's receipt of or knowledge of any complaint, order, notice of violation or other communication from any Governmental Authority or other person with regard to present or future alleged Prohibited Activities or Conditions or any other environmental, health or safety matters affecting the Mortgaged Property or any other property of Borrower that is adjacent to the Mortgaged Property; and
- (3) any representation or warranty in this Section 48 becoming untrue after the date of this Security Instrument.

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

(h) Borrower shall pay promptly the costs of any environmental inspections, tests or audits ("**Environmental Inspections**") required by Lender in connection with any foreclosure or deed in lieu of foreclosure, or as a condition of Lender's consent to any transfer under Section 21, or required by Lender following a reasonable determination by Lender that Prohibited Activities or Conditions may exist. Any such costs incurred by Lender (including the fees and out-of-pocket costs of attorneys and technical consultants whether incurred in connection with any judicial (appellate or otherwise) or administrative process or otherwise) which Borrower fails to pay promptly shall become an additional part of the Indebtedness as provided in Section 13; provided that so long as the Loan is insured by HUD, no advances made by Lender under this subsection (h) shall become an additional part of the Indebtedness unless such advances receive the prior written approval of HUD and provided further that unless approved by HUD, Lender shall have no obligation to make such further advances. The results of all Environmental Inspections made by Lender shall at all times remain the property of Lender and Lender shall have no obligation to disclose or otherwise make available to any party other than Borrower, and so long as the Loan is insured by HUD,

to HUD, such results or any other information obtained by Lender in connection with its Environmental Inspections. Lender hereby reserves the right, and Borrower hereby expressly authorizes Lender, to make available to any party, including any prospective bidder at a foreclosure sale of the Mortgaged Property, the results of any Environmental Inspections made by Lender with respect to the Mortgaged Property. Borrower consents to Lender notifying any party (either as part of a notice of sale or otherwise) of the results of any of Lender's Environmental Inspections. Borrower acknowledges that Lender cannot control or otherwise assure the truthfulness or accuracy of the results of any of its Environmental Inspections and that the release of such results to prospective bidders at a foreclosure sale of the Mortgaged Property may have a material and adverse effect upon the amount which a party may bid at such sale. Borrower agrees that Lender shall have no liability whatsoever as a result of delivering the results of any of its Environmental Inspections to any third party, and Borrower hereby releases and forever discharges Lender from any and all claims, damages, or causes of action, arising out of, connected with or incidental to the results of, the delivery of any of Lender's Environmental Inspections.

(i) If any investigation, site monitoring, containment, clean-up, restoration or other remedial work (“**Remedial Work**”) is necessary to comply with any Hazardous Materials Law applicable to the Mortgaged Property or to its use, operation or improvement, Borrower shall, by the earlier of (1) the applicable deadline required by the Hazardous Materials Law or (2) thirty (30) days after Notice from Lender demanding such action, begin performing the Remedial Work, and thereafter diligently prosecute it to completion, and shall in any event complete the work by the time required by applicable Hazardous Materials Law. If Borrower fails to begin on a timely basis or diligently prosecute any required Remedial Work, Lender may, at its option, cause the Remedial Work to be completed, in which case Borrower shall reimburse Lender on demand for the cost of doing so. So long as the Loan is insured by HUD, no advances made by Lender under this subsection (i) shall become part of the Indebtedness as provided in Section 13 unless such advances receive the prior written approval of HUD and provided further that unless approved by HUD, Lender shall have no obligation to make any such advances.

(j) Borrower shall cooperate with any inquiry by any Governmental Authority and shall comply with any governmental or judicial order which arises from any alleged Prohibited Activity or Condition.

(k) Borrower shall indemnify [if Borrower is located in a State that requires an indemnification agreement separate and apart from this Security Instrument, Borrower shall provide said indemnification agreement to Lender], hold harmless and defend (1) Lender, (2) any prior owner or holder of the Note, (3) the loan servicer, (4) any prior loan servicer, (5) the officers, directors, shareholders, partners, employees and trustees of

any of the foregoing, and (6) the heirs, legal representatives, successors and assigns of each of the foregoing (collectively, “**Indemnitees**”) from and against all proceedings, claims, damages, penalties and costs (whether initiated or sought by Governmental Authorities or private parties), including fees and out of pocket expenses of attorneys and expert witnesses, investigatory fees, and remediation costs, whether incurred in connection with any judicial (including appellate) or administrative process or otherwise, arising directly or indirectly from any of the following except where the Mortgaged Property became contaminated subsequent to any transfer of ownership which was approved in writing by Lender (and so long as the Loan is insured or held by HUD, by HUD), provided such transferee assumes in writing all obligations of Borrower with respect to Prohibited Activities or Conditions:

- (i) any breach of any representation or warranty of Borrower in this Section 48;
- (ii) any failure by Borrower to perform or comply with any of its obligations under this Section 48;
- (iii) the existence or alleged existence of any Prohibited Activity or Condition;
- (iv) the actual or alleged violation of any Hazardous Materials Law.

(l) Counsel selected by Borrower to defend Indemnitees shall be subject to the approval of those Indemnitees. However, any Indemnitee may elect to defend any claim or legal or administrative proceeding at Borrower’s expense.

(m) Borrower shall not, without the prior written consent of those Indemnitees who are named as parties to a claim or legal or administrative proceeding (“**Claim**”), settle or compromise the Claim if the settlement (1) results in the entry of any judgment that does not include as an unconditional term the delivery by the claimant or plaintiff to Lender of a written release of those Indemnitees, satisfactory in form and substance to Lender; or (2) may materially and adversely affect Lender, as determined by Lender in its discretion.

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

- (1) any amendment or modification of any Loan Document;

- (2) any extensions of time for performance required by any Loan Document;
 - (3) the accuracy or inaccuracy of any representations and warranties made by Borrower under this Security Instrument or any other Loan Document;
 - (4) the release of Borrower or any other person, by Lender or by operation of law, from performance of any obligation under any Loan Document;
 - (5) the release or substitution in whole or in part of any security for the Indebtedness; and
 - (6) Lender's failure to properly perfect any lien or security interest given as security for the Indebtedness.
- (o) Borrower shall, at its own cost and expense, do all of the following:
- (1) pay or satisfy any judgment or decree that may be entered against any Indemnitee or Indemnitees in any legal or administrative proceeding incident to any matters against which Indemnitees are entitled to be indemnified under this Section 48;
 - (2) reimburse Indemnitees for any expenses paid or incurred in connection with any matters against which Indemnitees are entitled to be indemnified under this Section 48; and
 - (3) reimburse Indemnitees for any and all expenses, including fees and out-of-pocket expenses of attorneys and expert witnesses, paid or incurred in connection with the enforcement by Indemnitees of their rights under this Section 48, or in monitoring and participating in any legal (including appellate) or administrative proceeding.

(p) In any circumstances in which the indemnity under this Section 48 applies, Lender may employ its own legal counsel and consultants to prosecute, defend or negotiate any claim or legal or administrative proceeding and Lender, with the prior written consent of Borrower (which shall not be unreasonably withheld, delayed or conditioned), may settle or compromise any action or legal or administrative proceeding. Borrower shall reimburse Lender upon demand for all costs and expenses incurred by Lender, including all costs of settlements entered into in good faith, and the fees and out

of pocket expenses of such attorneys (including but not limited to appellate litigation) and consultants.

(q) The provisions of this Section 48 shall be in addition to any and all other obligations and liabilities that Borrower may have under applicable law or under other Loan Documents, and each Indemnitee shall be entitled to indemnification under this Section 48 without regard to whether Lender or that Indemnitee has exercised any rights against the Mortgaged Property or any other security, pursued any rights against any guarantor, or pursued any other rights available under the Loan Documents or applicable law. If Borrower consists of more than one entity, the obligation of those entities to indemnify the Indemnitees under this Section 48 shall be joint and several. The obligation of Borrower to indemnify the Indemnitees under this Section 48 shall survive any repayment or discharge of the Indebtedness, any foreclosure proceeding, any foreclosure sale, any delivery of any deed in lieu of foreclosure, and any release of record of the lien of this Security Instrument. Notwithstanding anything in Section 48 to the contrary, so long as the Loan is insured or held by HUD, indemnification costs and reimbursements to Lender or to any or all Indemnitees shall be paid only from the available proceeds of an appropriate insurance policy or from Surplus Cash or other escrow accounts.

(r) So long as the Loan is insured or held by HUD, all references to Lender in this Section 48 shall also be construed to refer to HUD as its interest appears (solely as determined by HUD) and all notifications to Lender must also be made to HUD and all Lender approvals and exercises of discretion by Lender under this Section 48 must first have the prior written approval of HUD, provided, that, so long as the Loan is insured or held by HUD, the reference to Lender as an Indemnitee shall be construed to refer to HUD, and Borrower's obligations to indemnify HUD as an Indemnitee shall remain in effect in accordance with this Section 48, notwithstanding the termination or expiration of insurance of the Loan by HUD.

(s) To the extent any HUD environmental requirements or standards are inconsistent or conflict with the provisions of this Section 48, the HUD requirements or standards shall control so long as the Loan is insured or held by HUD.

49. [Add state requirements for future advances, credit line or open-end mortgages if not otherwise addressed by an attached form state Addendum]

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

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

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

[SIGNATURES AND ACKNOWLEDGMENTS]

EXHIBIT A

[DESCRIPTION OF THE LAND]

A-1

EXHIBIT B**MODIFICATIONS TO SECURITY INSTRUMENT**

The following modifications are made to the text of the Security Instrument of which this Exhibit is a part: [INCLUDE ANY APPROVED MODIFICATIONS TO THE SECURITY INSTRUMENT. IF A FORM STATE ADDENDUM IS OTHERWISE VALIDLY ATTACHED TO AND INCORPORATED IN THIS SECURITY INSTRUMENT PURSUANT TO APPLICABLE STATE LAW, THE PROVISIONS OF SUCH ADDENDUM NEED NOT BE INCLUDED SEPERATELY UNDER THIS EXHIBIT B.]

B-1