
**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**
Washington, DC 20549

FORM 10-Q

Quarterly Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

For the quarterly period ended June 30, 2012

OR

Transition Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

Commission File Number 001-07172

BRT REALTY TRUST

(Exact name of Registrant as specified in its charter)

Massachusetts
(State or other jurisdiction of
incorporation or organization)

13-2755856
(I.R.S. Employer
Identification No.)

60 Cutter Mill Road, Great Neck, NY
(Address of principal executive offices)

11021
(Zip Code)

516-466-3100
(Registrant's telephone number, including area code)

Indicate by check mark whether the Registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the Registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes No

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulations S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes No

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See definition of "large accelerated filer," "accelerated filer" and "small reporting company" in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer

Accelerated filer

Non-accelerated filer
(Do not check if a smaller reporting company)

Smaller reporting company

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes No

Indicate the number of shares outstanding of each of the issuer's classes of stock, as of the latest practicable date.

14,056,212 Shares of Beneficial Interest,
\$3 par value, outstanding on August 5, 2012

[Table of Contents](#)

BRT REALTY TRUST AND SUBSIDIARIES
Table of Contents

	<u>Page No.</u>
Part I - Financial Information	
Item 1. Financial Statements	
Consolidated Balance Sheets – June 30, 2012 and September 30, 2011	1
Consolidated Statements of Operations – Three and nine months ended June 30, 2012 and 2011	2
Consolidated Statements of Comprehensive (Loss) Income – Three and nine months ended June 30, 2012 and 2011	3
Consolidated Statement of Equity – Nine months ended June 30, 2012	4
Consolidated Statements of Cash Flows – Nine months ended June 30, 2012 and 2011	5
Notes to Consolidated Financial Statements	6
Item 2. Management’s Discussion and Analysis of Financial Condition and Results of Operations	21
Item 3. Quantitative and Qualitative Disclosures About Market Risks	30
Item 4. Controls and Procedures	30
Part II – Other Information	
Item 2. Unregistered sales of equity securities and use of proceeds	31
Item 6. Exhibits	32

Part 1 - FINANCIAL INFORMATION
Item 1. Financial Statements

BRT REALTY TRUST AND SUBSIDIARIES
CONSOLIDATED BALANCE SHEETS
(Dollars in thousands, except share data)

	June 30, 2012 (Unaudited)	September 30, 2011
ASSETS		
Real estate loans, all earning interest	\$ 65,780	\$ 67,266
Deferred fee income	(927)	(576)
	<u>64,853</u>	<u>66,690</u>
Real estate loan held-for-sale	—	8,446
Real estate properties net of accumulated depreciation of \$3,940 and \$2,511	166,786	59,277
Investment in unconsolidated ventures	3,914	4,247
Cash and cash equivalents	42,969	44,025
Restricted cash – construction holdbacks	30,276	—
Available-for-sale securities at fair value	1,849	2,766
Deferred costs	9,055	1,692
Other assets	10,051	3,869
Total Assets	<u>\$ 329,753</u>	<u>\$ 191,012</u>
LIABILITIES AND EQUITY		
Liabilities:		
Mortgages payable	\$ 125,702	\$ 14,417
Junior subordinated notes	37,400	37,400
Accounts payable and accrued liabilities	2,868	948
Deposits payable	2,724	2,518
Deferred income	16,080	—
Total Liabilities	<u>184,774</u>	<u>55,283</u>
Commitments and contingencies	—	—
Equity:		
BRT Realty Trust shareholders' equity:		
Preferred shares, \$1 par value:		
Authorized 10,000 shares, none issued	—	—
Shares of beneficial interest, \$3 par value:		
Authorized number of shares, unlimited, 13,924 and 14,994 issued	41,772	44,981
Additional paid-in capital	167,227	171,889
Accumulated other comprehensive income	436	278
Accumulated deficit	(74,311)	(77,015)
Cost of 451 and 1,422 treasury shares of beneficial interest	(3,505)	(11,070)
Total BRT Realty Trust shareholders' equity	<u>131,619</u>	<u>129,063</u>
Non-controlling interests	<u>13,360</u>	<u>6,666</u>
Total Equity	<u>144,979</u>	<u>135,729</u>
Total Liabilities and Equity	<u>\$ 329,753</u>	<u>\$ 191,012</u>

See accompanying notes to consolidated financial statements.

BRT REALTY TRUST AND SUBSIDIARIES
CONSOLIDATED STATEMENTS OF OPERATIONS
(Unaudited)
(Dollars in thousands, except share data)

	Three Months Ended June 30,		Nine Months Ended June 30,	
	2012	2011	2012	2011
Revenues:				
Interest on real estate loans	\$ 2,014	\$ 2,828	\$ 5,628	\$ 5,730
Loan fee income	548	690	1,388	1,208
Rental revenue from real estate properties	2,668	763	4,455	2,576
Recovery of previously provided allowances	9	1,002	19	3,568
Other income	316	61	906	411
Total revenues	5,555	5,344	12,396	13,493
Expenses:				
Interest on borrowed funds	1,416	452	2,758	1,651
Advisor's fees, related party	333	237	777	699
Foreclosure related professional fees	—	162	—	519
Property acquisition costs	471	—	2,264	—
General and administrative—including \$181 and \$231 to related party for the three months ended and \$662 and \$682 for the nine months ended, respectively	1,734	1,585	5,414	4,645
Operating expenses relating to real estate properties	1,733	889	3,478	2,655
Amortization and depreciation	1,077	183	1,441	555
Total expenses	6,764	3,508	16,132	10,724
Total revenues less total expenses	(1,209)	1,836	(3,736)	2,769
Equity in earnings (loss) of unconsolidated ventures	20	60	(95)	195
Gain on sale of available-for-sale securities	96	176	420	1,190
Gain on sale of loan	—	—	3,192	—
Loss on extinguishment of debt	—	—	—	(2,138)
(Loss) income from continuing operations	(1,093)	2,072	(219)	2,016
Discontinued operations:				
Gain on sale of real estate assets	302	645	792	1,342
Net (loss) income	(791)	2,717	573	3,358
Plus: net loss attributable to non controlling interests	649	455	2,131	1,153
Net (loss) income attributable to common shareholders	\$ (142)	\$ 3,172	\$ 2,704	\$ 4,511
Basic and diluted per share amounts attributable to common shareholders:				
(Loss) income from continuing operations	\$ (.03)	\$.18	\$.13	\$.22
Discontinued operations	.02	.05	.06	.10
Basic and diluted (loss) income per share	\$ (.01)	\$.23	\$.19	\$.32
Amounts attributable to BRT Realty Trust:				
(Loss) income from continuing operations	\$ (444)	\$ 2,527	\$ 1,912	\$ 3,169
Discontinued operations	302	645	792	1,342
Net (loss) income	\$ (142)	\$ 3,172	\$ 2,704	\$ 4,511
Weighted average number of common shares outstanding:				
Basic and diluted	14,056,357	14,070,774	14,029,364	14,031,861

See accompanying notes to consolidated financial statements.

BRT REALTY TRUST AND SUBSIDIARIES
CONSOLIDATED STATEMENTS OF COMPREHENSIVE (LOSS) INCOME
(Unaudited)
(Dollars in thousands)

	Three Months Ended June 30,		Nine Months Ended June 30,	
	2012	2011	2012	2011
Net (loss) income	\$ (791)	\$ 2,717	\$ 573	\$ 3,358
Other comprehensive income:				
Net unrealized (loss) gain on available-for-sale securities	(46)	(272)	251	(677)
Unrealized loss on derivative instruments	(66)	—	(93)	—
Other comprehensive (loss) income	(112)	(272)	158	(677)
Comprehensive (loss) income	(903)	2,445	731	2,681
Comprehensive loss attributable to non-controlling interests	649	455	2,131	1,153
Comprehensive (loss) income attributable to common shareholders	<u>\$ (254)</u>	<u>\$ 2,900</u>	<u>\$ 2,862</u>	<u>\$ 3,834</u>

See accompanying notes to consolidated financial statements.

BRT REALTY TRUST AND SUBSIDIARIES
CONSOLIDATED STATEMENT OF EQUITY
(Unaudited)
(Dollars in thousands, except share data)

<u>For the nine months ended</u> <u>June 30, 2012</u>	<u>Shares of</u> <u>Beneficial</u> <u>Interest</u>	<u>Additional</u> <u>Paid-In</u> <u>Capital</u>	<u>Accumulated</u> <u>Other</u> <u>Comprehensive</u> <u>Income</u>	<u>Accumulated</u> <u>Deficit</u>	<u>Treasury</u> <u>Shares</u>	<u>Non-</u> <u>Controlling</u> <u>Interest</u>	<u>Total</u>
Balances, September 30, 2011	\$ 44,981	\$ 171,889	\$ 278	\$ (77,015)	\$ (11,070)	\$ 6,666	\$ 135,729
Restricted stock vesting		(319)			319		
Compensation expense — restricted stock	—	574	—	—	—	—	574
Contributions from non- controlling interests						8,930	8,930
Distributions to non-controlling interests						(105)	(105)
Retirement of treasury shares (930,198 shares)	(2,790)	(4,456)	—	—	7,246	—	—
Shares repurchased 139,507 shares	(419)	(461)	—	—	—	—	(880)
Net income				2,704		(2,131)	573
Other comprehensive income	—	—	158	—	—	—	158
Comprehensive income	—	—	—	—	—	—	731
Balances, June 30, 2012	<u>\$ 41,772</u>	<u>\$ 167,227</u>	<u>\$ 436</u>	<u>\$ (74,311)</u>	<u>\$ (3,505)</u>	<u>\$ 13,360</u>	<u>\$ 144,979</u>

See accompanying notes to consolidated financial statements.

BRT REALTY TRUST AND SUBSIDIARIES
CONSOLIDATED STATEMENTS OF CASH FLOWS
(Unaudited)
(Dollars in Thousands)

	Nine Months Ended June 30,	
	2012	2011
Cash flows from operating activities:		
Net income	\$ 573	\$ 3,358
Adjustments to reconcile net income to net cash used in operating activities:		
Recovery of previously provided allowances	(19)	(3,568)
Amortization and depreciation	1,912	697
Amortization of deferred fee income	(1,364)	(1,185)
Accretion of junior subordinated notes principal	—	277
Amortization of securities discount	—	(28)
Amortization of restricted stock	574	636
Gain on sale of real estate assets from discontinued operations	(792)	(1,342)
Gain on sale of available-for-sale securities	(420)	(1,190)
Loss on extinguishment of debt	—	2,138
Gain on sale of loan	(3,192)	—
Equity in earnings (loss) of unconsolidated joint ventures	95	(195)
Distribution of earnings of unconsolidated joint ventures	525	150
Change in straight line rent	20	(56)
Increases and decreases from changes in other assets and liabilities:		
Increase in interest and dividends receivable	(66)	(468)
(Increase) decrease in prepaid expenses	(57)	94
Increase in prepaid interest	(1,853)	—
Increase in accounts payable and accrued liabilities	2,031	438
Decrease in deferred costs	(243)	—
Increase in security deposits and other receivable	(4,234)	(77)
Other	(5)	122
Net cash used in operating activities	<u>(6,515)</u>	<u>(199)</u>
Cash flows from investing activities:		
Collections from real estate loans	83,711	47,260
Additions to real estate loans	(86,244)	(112,442)
Proceeds from the sale of loans and loan participations	15,657	26,500
Loan loss recoveries	19	1,012
Additions to real estate properties	(101,512)	—
Net costs capitalized to real estate owned	(7,271)	(2,654)
Net change in restricted cash — construction holdbacks	(30,276)	—
Collection of loan fees	1,717	2,079
Proceeds from sale of real estate owned	852	4,021
Proceeds from sale of available-for-sale securities	3,222	7,266
Purchase of available for sale securities	(1,634)	(55)
Distributions of capital from unconsolidated joint ventures	4,474	—
Contributions to unconsolidated joint ventures	(4,760)	(10)
Purchase of interest from minority partner	—	(713)
Net cash used in investing activities	<u>(122,045)</u>	<u>(27,736)</u>
Cash flows from financing activities:		
Repayment of junior subordinated notes	—	(5,000)
Proceeds from borrowed funds	3,500	—
Repayment of borrowed funds	(3,500)	—
Increase in mortgages payable	114,695	1,261
Mortgage principal payments	(3,410)	(202)
Increase in deferred borrowing costs	(7,805)	(910)
Capital contributions from non-controlling interests	8,929	2,256
Capital distribution to non-controlling interests	(105)	(66)
Proceeds from sale of New Market Tax Credits	16,080	—
Repurchase of shares of beneficial interest	(880)	(1,178)
Net cash provided by (used in) financing activities	<u>127,504</u>	<u>(3,839)</u>
Net decrease in cash and cash equivalents	(1,056)	(31,774)
Cash and cash equivalents at beginning of period	44,025	58,497
Cash and cash equivalents at end of period	<u>\$ 42,969</u>	<u>\$ 26,723</u>
Supplemental disclosure of cash flow information:		
Cash paid during the period for interest	<u>\$ 2,380</u>	<u>\$ 1,625</u>
Taxes paid	<u>\$ 169</u>	<u>—</u>
Reclassification of deferred costs to real estate properties	<u>—</u>	<u>\$ 396</u>

See accompanying notes to consolidated financial statements.

BRT REALTY TRUST AND SUBSIDIARIES
Notes to Consolidated Financial Statements
June 30, 2012

Note 1 — Organization and Background

BRT Realty Trust (“BRT” or the “Trust”) is a business trust organized in Massachusetts. BRT originates and holds for investment senior mortgage loans secured by commercial and multi-family real estate property in the United States. The loans BRT originates generally have relatively high yields and are short-term or bridge loans with a duration ranging from six months to one year. BRT’s policy is to lend at a floating rate of interest based on a spread over the prime rate, with a stated minimum rate, though BRT originates fixed rate loans as circumstances dictate. BRT receives an origination fee for the loans it originates.

Beginning in the quarter ended March 31, 2012, BRT expanded its business activities by acquiring for investment, with venture partners, multi-family residential properties. The Trust generally contributes 80% of the required equity in such transactions.

BRT conducts its operations to qualify as a real estate investment trust, or REIT, for Federal income tax purposes.

Note 2 - Basis of Preparation

The accompanying interim unaudited consolidated financial statements as of June 30, 2012 and for the three and nine months ended June 30, 2012 and 2011 reflect all normal recurring adjustments which are, in the opinion of management, necessary for a fair presentation of the results for such interim periods. The results of operations for the three and nine months ended June 30, 2012 are not necessarily indicative of the results for the full year. The balance sheet as of September 30, 2011 has been derived from the audited financial statements at that date but does not include all the information and footnotes required by accounting principles generally accepted in the United States for complete financial statements.

Certain items on the consolidated financial statements for the preceding period have been reclassified to conform with the current year’s presentation.

The consolidated financial statements include the accounts and operations of BRT Realty Trust, its wholly owned subsidiaries, and its majority-owned or controlled real estate entities and its interests in variable interest entities in which it is the primary beneficiary. Material intercompany balances and transactions have been eliminated.

Restricted cash-construction holdbacks represent a portion of the net proceeds received from mortgage financing completed in February, 2012. These funds are to be used for construction of two buildings at the Teachers Village Project of our Newark Joint Venture.

RBH-TRB Newark Holdings LLC was determined to be a Variable Interest Entity (“VIE”) because the total equity investment at risk is not sufficient to permit it to finance its activities without additional subordinated financial support by its equity holders. The Trust was determined to be the primary beneficiary as it has a controlling financial interest in the VIE as it has the power to direct the activities of the VIE and has the obligation to absorb a majority of the VIE’s expected losses.

Note 2 - Basis of Preparation (Continued)

The Trust's three consolidated joint ventures that own multi — family residential properties in Florida and Tennessee were determined to be VIE's because the voting rights of some equity investors are not proportional to their obligations to absorb the expected losses of the entity and their right to receive the expected residual returns and substantially all of the entity's activities either involve or are conducted on behalf of the investor that has disproportionately few voting rights.

The Trust was determined to be the primary beneficiary of these joint ventures because it has a controlling interest in that it has the power to direct the activities of the VIE that most significantly impact the entity's economic performance and it has the obligation to absorb losses of the entity and the right to receive benefits from the entity that could potentially be significant to the VIE.

For these reasons the Trust has consolidated the operations and assets and liabilities of these VIE's in the Trust's consolidated financial statements.

With respect to its unconsolidated joint ventures, as (i) the Trust is primarily the managing member but does not exercise substantial operating control over these entities or the Trust is not the managing member and (ii) such entities are not variable interest entities, the Trust has determined that such joint ventures should be accounted for under the equity method of accounting for financial statement purposes.

These statements should be read in conjunction with the consolidated financial statements and related notes which are included in BRT's Annual Report on Form 10-K for the year ended September 30, 2011.

The preparation of the financial statements in conformity with accounting principles generally accepted in the United States requires management to make estimates and assumptions that affect the amounts reported in the consolidated financial statements. Actual results could differ from those estimates.

Note 3 - Equity

Common Share Dividend Distribution

During the quarter ended June 30, 2012, the Trust did not declare a dividend to its shareholders.

Restricted Shares

The Trust's 2012 Incentive Plan, approved by its shareholders in January 2012, permits the Trust to grant stock options, restricted stock, restricted stock units, performance shares awards and any one or more of the foregoing. A maximum of 600,000 shares may be issued pursuant to such plan. An aggregate of 583,030 shares of restricted stock have been granted pursuant to the Trust's 2003 and 2009 equity incentive plans (collectively, the "Prior Plans") and have not yet vested. No awards have been granted under the 2012 Plan and no additional awards may be granted under the Prior Plans. The restricted shares that have been granted under the Prior Plans vest five years from the date of grant and under specified circumstances, including a change in control, may vest earlier. For accounting purposes, the restricted shares are not included in the outstanding shares shown on the consolidated balance sheet until they vest, but are included in the earnings per share computation. The estimated fair value of restricted stock at the date of grant is being amortized ratably into expense over the applicable

Note 3 — Equity (Continued)

vesting period. For the three months ended June 30, 2012 and 2011 the Trust recorded \$183,000 and \$210,000 of compensation expense, respectively, and for the nine months ended June 30, 2012 and 2011, recorded \$574,000 and \$636,000 of compensation expense, respectively. At June 30, 2012, \$2,076,000 has been deferred as unearned compensation and will be charged to expense over the remaining weighted average vesting period of approximately 2.84 years.

Per Share Data

Basic earnings (loss) per share attributable to holders of shares of beneficial interest was determined by dividing net income (loss) for the period by the weighted average number of common shares outstanding during each period.

Diluted earnings (loss) per share attributable to holders of shares of beneficial interest reflects the potential dilution that could occur if securities or other contracts to issue common shares were exercised or converted into common shares or resulted in the issuance of common shares that shared in the earnings of the Trust.

Basic and diluted shares outstanding for the three months ended June 30, 2012 and 2011 were 14,056,357 and 14,070,774, respectively and for the nine months ended June 30, 2012 and 2011 were 14,029,364 and 14,031,861, respectively.

The impact of dilutive securities is not included in the computation of loss per share for the three and nine months ended June 30, 2011, as the inclusion of such common share equivalents would be anti-dilutive.

Note 4 - Real Estate Loans

Information relating to real estate loans, all of which are earning interest, is summarized as follows (dollars in thousands):

Property Type	June 30, 2012		September 30, 2011	
	Real Estate Loans, Net	Percent	Real Estate Loans, Net	Percent
Multi-family residential	\$ 52,041	79.1%	\$ 26,300	39.2%
Industrial	11,739	17.9	11,874	17.6
Office	—	—	24,975	37.1
Retail	2,000	3.0	4,117	6.1
	65,780	100%	67,266	100%
Deferred fee income	(927)		(576)	
Real estate loans, net	\$ 64,853		\$ 66,690	

The Trust recognized cash basis interest of \$149,000 and \$452,000 on non-earning loans in the three and nine months ended June 30, 2011, respectively.

Note 4 - Real Estate Loans (Continued)

At June 30, 2012, one borrower had two loans outstanding that in the aggregate were in excess of 5% of total assets. Information regarding these loans are set forth in the table below (dollars in thousands):

<u>Property Type</u>	<u>Gross Loan Balance</u>	<u># of Loans</u>	<u>% of Gross Loans</u>	<u>% of Assets</u>	<u>State</u>	<u>Status</u>
Multi-Family	\$ 16,620	1	25.3%	5.0%	NY	Performing
Multi-Family	\$ 7,303	1	11.1%	2.2%	NY	Performing

Substantially all of the Trust's loan portfolio consists of senior mortgage loans secured by real properties, 44% of which are located in New York, 19% in Florida, 18% in Maryland, and 19% in Georgia.

Note 5 - Real Estate Loan Held For Sale

At September 30, 2011, the Trust had one loan classified as held for sale. The loan, which represented a pari passu interest in a loan with a principal balance of approximately \$17 million, had a carrying value of approximately \$8.5 million. In October 2011, pursuant to a Federal Bankruptcy Court approved joint plan of reorganization, the Trust and its loan participant sold the rights to the loan for net proceeds of approximately \$23.5 million. The Trust recognized a gain of \$3.2 million on the sale representing its 50% interest in the loan. The Trust provided \$15 million of financing for the purchase which was paid off on December 5, 2011.

Note 6 - Allowance for Possible Losses

At June 30, 2012 and September 30, 2011 the Trust did not have an allowance for possible loan losses.

Note 7 - Real Estate Properties

A summary of real estate properties owned is as follows (dollars in thousands):

	<u>September 30, 2011 Balance</u>	<u>Additions</u>	<u>Costs Capitalized</u>	<u>Depreciation and Amortization</u>	<u>June 30, 2012 Balance</u>
Shopping centers/Retail	\$ 2,853	—	—	\$ (78)	\$ 2,775
Coop apartments	315	—	\$ 2	(60)	257
Commercial (a)	48,137	\$ 762	7,474	(457)	55,916
Multi Family (b)	—	100,750	10	(894)	99,866
Land	7,972	—	—	—	7,972
Total real estate properties	<u>\$ 59,277</u>	<u>\$ 101,512</u>	<u>\$ 7,486</u>	<u>\$ (1,489)</u>	<u>\$ 166,786</u>

(a) Represents the real estate assets of RBH-TRB Newark Holdings LLC, a consolidated VIE which owns operating and development properties in Newark, NJ. These properties contain a mix of office and retail space, totaling approximately 640,000 square feet. These assets are subject to blanket mortgages aggregating \$23,250,000, held by the Trust, which are eliminated in

Note 7 - Real Estate Properties (Continued)

consolidation. Several of the assets are also encumbered by other mortgages which are discussed in Note 10 Debt Obligations — Mortgages Payable.

(b) On March 22, 2012, the Trust, through a consolidated joint venture, purchased a 542 unit multi-family residential property located in Palm Beach Gardens, Florida. The purchase price was \$59,400,000 exclusive of acquisition costs of \$1,550,000 which were expensed in the three months ended March 31, 2012. The Trust has an 80% interest in this joint venture. The property is encumbered by a \$45,200,000 mortgage — see Note 10 Debt Obligations — Mortgages Payable. The Trust made a capital contribution of \$14,480,000 representing its proportionate share of capital required to purchase and improve the property.

On March 30, 2012, the Trust, through a consolidated joint venture, purchased a 208 unit multi-family residential property located in Melbourne, Florida. The purchase price was \$9,300,000 exclusive of \$238,000 of acquisition costs which were expensed in the quarter ended March 31, 2012. The Trust has an 80% interest in this joint venture. The property is encumbered by a \$7,680,000 mortgage — see Note 10 Debt Obligations — Mortgages Payable. The Trust made a capital contribution of \$3,120,000 representing its proportionate share of capital required to purchase and improve the property.

On June 20, 2012, the Trust, through a consolidated joint venture, purchased a 324 unit multi-family residential property located in Collierville, Tennessee. The purchase price was \$32,100,000 exclusive of \$476,000 of acquisition costs which were expensed in the quarter ended June 30, 2012. The Trust has an 80% interest in this joint venture. The property is encumbered by a \$25,680,000 mortgage — see Note 10 Debt Obligations — Mortgages Payable. The Trust made a capital contribution of \$6,220,000 representing its proportionate share of capital required to purchase and improve the property.

Note 8 — Investment in Unconsolidated Ventures

The Trust is a partner in unconsolidated ventures which own and operate in the aggregate four properties. The Trust's share of earnings (loss) in all of its unconsolidated joint ventures, including a joint venture engaged in purchasing loans that ceased investment activities in November 2011, was \$20,000 and \$60,000 for the three months ended June 30, 2012 and 2011, respectively, and \$(95,000) and \$195,000 for the nine months ended June 30, 2012 and 2011, respectively. The Trust's equity in these unconsolidated ventures totaled \$3,914,000 and \$4,247,000 at June 30, 2012 and September 30, 2011, respectively.

On January 12, 2012, an unconsolidated joint venture in which the Trust has an 80% interest purchased a 207 unit multi-family residential property in Marietta, Georgia. The Trust's equity investment was \$2,560,000.

On February 23, 2012, an unconsolidated joint venture in which the Trust has an 80% interest purchased a 170 unit multi-family residential property in Lawrenceville, Georgia. The Trust's equity investment was \$2,200,000.

Note 9 — Available-For-Sale Securities

Information regarding our available-for-sale securities is set forth in the table below (dollars in thousands):

	<u>June 30, 2012</u>	<u>September 30, 2011</u>
Cost basis	\$ 1,328	\$ 2,488
Unrealized gains	560	406
Unrealized losses	(39)	(128)
Market value	<u>\$ 1,849</u>	<u>\$ 2,766</u>

Unrealized gains and losses are reflected as accumulated other comprehensive income in the accompanying consolidated balance sheets.

The Trust's available-for-sale equity securities were determined to be Level 1 financial assets within the valuation hierarchy established by current accounting guidance, and the valuation is based on current market quotes received from financial sources that trade such securities. All of the available-for-sale securities in an unrealized loss position are not considered impaired on an other than temporary basis because the Company expects the value of these securities to recover and plans on holding them until at least such recovery.

Information regarding the sales of available-for-sale equity securities is presented in the table below (dollars in thousands):

	<u>Three months ended</u>		<u>Nine months ended</u>	
	<u>June 30,</u>		<u>June 30,</u>	
	<u>2012</u>	<u>2011</u>	<u>2012</u>	<u>2011</u>
Proceeds from sale	\$ 709	\$ 978	\$ 3,222	\$ 3,849
less cost basis	613	802	2,802	3,151
Gain on sale	<u>\$ 96</u>	<u>\$ 176</u>	<u>\$ 420</u>	<u>\$ 698</u>

For 2011 the calculation of gain or loss on sale was determined using an average cost. For 2012, the gain or loss on sale was determined using specific identification.

During the nine months ended June 30, 2011, the Trust sold available-for-sale debt securities for \$3,417,000 which had a basis of \$2,925,000 determined using specific cost. Accordingly, the Trust recognized a gain of \$492,000 from these sales.

Note 10 — Debt Obligations

Debt obligations consist of the following (dollars in thousands):

	<u>June 30, 2012</u>	<u>September 30, 2011</u>
Line of credit	—	—
Junior subordinated notes	\$ 37,400	\$ 37,400
Mortgages payable	125,702	14,417
Total debt obligations	<u>\$ 163,102</u>	<u>\$ 51,817</u>

Note 10 — Debt Obligations (Continued)

Line of credit

On June 22, 2011, the Trust, through a wholly owned subsidiary, entered into a senior secured revolving credit facility with Capital One, National Association. The maximum amount that may be borrowed under the facility is the lesser of \$25 million and the borrowing base. The borrowing base ranges from 40% to 65% (depending on, among other things, the type of property secured by the eligible mortgage receivables pledged to the lender and the operating income of the related property) of such receivables. Interest accrues on the outstanding balance at the greater of (i) 4% plus LIBOR and (ii) 5.50%. The facility matures June 21, 2014 and, subject to the satisfaction of specified conditions, the outstanding balance may be converted at the Trust's option into an 18-month term loan. The Trust has guaranteed the payment and performance of its subsidiary's obligations under the facility.

On April 17, 2012, the facility was amended to allow the subsidiary to borrow for up to 90 days on an unsecured basis, a maximum of \$10,000,000.

The facility, requires the Trust and the subsidiary to maintain or comply with, among other things, net worth and liquidity covenants, debt service and collateral coverage ratios and limits, with specified exceptions, and the incurrence of debt.

For the three and nine months ended June 30, 2012, interest expense, which includes fee amortization with respect to the facility, was \$70,000 and \$144,000, respectively. At June 30, 2012 and September 30, 2011, there were no outstanding balances on this facility.

Junior Subordinated Notes

At June 30, 2012 and September 30, 2011, the Trust's junior subordinated notes had an outstanding principal balance of \$37,400,000. The interest rates on the outstanding notes is set forth in the table below:

<u>Interest Period</u>	<u>Interest Rate</u>
May 2009 through March 14, 2011	3.50%
March 15, 2011 through July 31, 2012	3.00%
August 1, 2012 through April 29, 2016	4.90%
April 30, 2016 through April 30, 2036	Libor + 2.00%

Interest expense relating to the junior subordinated notes for both the three months ended June 30, 2012 and 2011 was \$280,000. For the nine months ended June 30, 2012 and 2011, interest expense was \$841,000 and \$1,284,000, respectively. Amortization of the deferred costs, which is a component of interest expense on borrowed funds, was \$5,000 and \$6,000 for the three months ended June 30, 2012 and 2011, respectively, and \$15,000 and \$21,000 for the nine months ended June 30, 2012 and 2011, respectively.

Note 10 — Debt Obligations (Continued)

Mortgages Payable

The Trust had the following obligations outstanding as of the dates indicated all of which are, except as indicated, secured by real property (dollars in thousands):

Property	June 30, 2012	September 30, 2011	Rate	Maturity
Yonkers, NY (1)	\$ 1,975	\$ 2,041	5.25%	April 2022
Palm Beach Gardens, FL (2)	45,200	—	3.78%	April 2019
Melbourne, FL (2)	7,680	—	3.97%	April 2019
Collierville, TN (3)	25,680	—	3.91%	July 2022
65 Market St — Newark, NJ	900	900	7.00%	January 2015
69 Market St — Newark, NJ	—	1,200	7.00%	N/A
909 Broad St — Newark, NJ	5,702	5,828	6.00%	August 2030
909 Broad St — Newark, NJ	475	486	6.00%	August 2030
Teachers Village — Newark, NJ (4) (5)	22,748	—	5.50%	December 2030
Teachers Village — Newark, NJ (4)	4,250	—	3.46%	February 2032
Teachers Village — Newark, NJ (4)	993	—	2.00%	February 2022
Teachers Village — Newark, NJ (4)	1,667	—	2.50%	February 2014
Teachers Village — Newark, NJ (4) (6)	1,832	—	(5)	February 2034
Teachers Village — Newark, NJ (7)	6,600	3,962	17%	September 2012
	<u>\$ 125,702</u>	<u>\$ 14,417</u>		

- (1) On March 29, 2012, a consolidated joint venture which owns a property in Yonkers, NY, refinanced an existing mortgage in the amount of \$ 1,990,000 with the current lender. The new mortgage bears interest at one-month LIBOR plus 3.15%. In connection with the transaction, the venture entered into an interest rate swap agreement which effectively fixes the interest rate at 5.25%.
- (2) Reflects the mortgage debt obtained with respect to the acquisition of such property in March 2012.
- (3) Reflects the mortgage debt obtained with respect to the acquisition of such property in June 2012.
- (4) From December 29, 2011 through February 2, 2012, subsidiaries of our consolidated Newark Joint Venture entered into a series of agreements and transactions pursuant to which such entities obtained \$31.8 million of mortgage financing and \$13.7 million in Federal New Markets Tax Credit (the “NMTC”) proceeds. The NMTC proceeds are recorded as a deferred income on the consolidated balance sheet at June 30, 2012. The net proceeds of the foregoing, together with \$2.5 million in NMTC proceeds received in May 2012, are to be used to construct two buildings at the Teachers Village site. The remaining proceeds from the transaction which totaled \$30.3 million at June 30, 2012 are to be used for construction and are reflected on the consolidated balance sheet as restricted cash-construction holdbacks. See Note 11 to the Trust’s consolidated financial statements.

Note 10 — Debt Obligations (Continued)

- (5) TD Bank has the right, in 2018, to require subsidiaries of the Newark Joint Venture to repurchase such debt. If such right is exercised, such subsidiaries will be required to refinance such debt. The stated rate of interest thereon is 5.5% per year; however, the United States Treasury Department is covering the interest at the rate of 4.99% per year and accordingly, the effective rate of interest thereon until 2018 is 0.51% per year.
- (6) The debt is to be serviced in full by annual payment-in-lieu of taxes (“PILOT”) of \$256,000 in 2013 increasing to approximately \$281,000 at maturity. This obligation is not secured by real property.
- (7) As of June 30, 2012, The Trust had guaranteed \$1,653,000 of this mortgage obligation.

Note 11 — Deferred Income (New Markets Tax Credit Transaction)

On February 3, 2012, subsidiaries of the Newark Joint Venture entered into a transaction with an affiliate of Goldman Sachs (“Goldman”) related to the Teacher’s Village project and received proceeds from NMTC credits. The NMTC program was enacted by Congress to serve low-income and distressed communities by providing investors with tax credit incentives to make capital investments in those communities. The program permits taxpayers to claim credits against their Federal income tax for up to 39% of qualified investments.

Goldman contributed a net amount of \$16,400,000 to the project through a special-purpose entity created to effect the financing transaction and is entitled to receive tax credits against the \$60 million qualified investment in the project over the next seven years. At the end of the seven years, the Newark Joint Venture subsidiaries have the option to acquire the special purpose entity for a nominal fee and it is anticipated that it will exercise this option.

Included in deferred income on the Trust’s consolidated balance sheet at June 30, 2012 is \$16,080,000 of the Goldman contribution. This amount will be recognized into income when the obligation to comply with the requirements of the New Markets Tax Credit program as set forth in the applicable provisions of the Internal Revenue Code of 1986, as amended (the “Code”), is eliminated. Risks of non-compliance include recapture (*i.e.* reversal of the benefit the tax credit and the related indemnity obligation of the Newark Joint Venture). The tax credits are subject to recapture for a seven year period as provided in the Code.

Costs incurred in structuring this transaction are deferred and will be recognized as an expense based on the maturities of the various mortgage financings related to the NMTC transaction. At June 30, 2012, these costs totaled \$7,000,000 and are included in deferred costs on the consolidated balance sheet.

The Trust determined that the special purpose entity is a VIE. The VIE’s ongoing activities, which include collecting and remitting interest and fees and NMTC compliance, were all considered in the design and are not anticipated to affect the economic performance during the life of the VIE. Management considered the obligation to deliver tax benefits and provide guarantees to Goldman and the Trust’s obligations to absorb the losses of the VIE. Management also considered Goldman’s lack of a material interest in the underlying economics of the project. Management concluded that the Trust is the primary beneficiary and has therefore consolidated the VIE.

Note 12 - Segment Reporting

Management has determined that it operates in two reportable segments: (i) a loan and investment segment which includes the origination and servicing of our loan portfolio and investments; and (ii) a real estate segment which includes the operation and disposition of our real estate assets.

The following table summarizes our segment reporting for the periods indicated (dollars in thousands):

	Three Months Ended June 30, 2012			Nine Months Ended June 30, 2012		
	Loan and Investment	Real Estate	Total	Loan and Investment	Real Estate	Total
Interest and loan fee income	\$ 2,562	—	\$ 2,562	\$ 7,016	—	\$ 7,016
Rental revenues	—	\$ 2,668	2,668	—	\$ 4,455	4,455
Other income	33	292	325	340	585	925
Total Revenues	2,595	2,960	5,555	7,356	5,040	12,396
Interest on borrowed funds	161	1,255	1,416	490	2,268	2,758
Operating expenses relating to real estate properties	—	1,733	1,733	—	3,478	3,478
Other expenses	771	1,296	2,067	2,907	3,284	6,191
Property acquisition costs	—	471	471	—	2,264	2,264
Amortization and depreciation	—	1,077	1,077	—	1,441	1,441
Total expenses	932	5,832	6,764	3,397	12,735	16,132
Total revenues less total expenses	1,663	(2,872)	(1,209)	3,959	(7,695)	(3,736)
Equity in (loss) earnings of unconsolidated ventures	—	20	20	(136)	41	(95)
Gain on sale of available- for-sale securities	96	—	96	420	—	420
Gain on sale of loan	—	—	—	3,192	—	3,192
Income (loss) from continuing operations	1,759	(2,852)	(1,093)	7,435	(7,654)	(219)
Discontinued operations:						
Gain on sale of real estate Assets	—	302	302	—	792	792
Net income (loss)	1,759	(2,550)	(791)	7,435	(6,862)	573
Plus: net loss attributable to non-controlling interests	—	649	649	—	2,131	2,131
Net income (loss) attributable to common shareholders	\$ 1,759	\$ (1,901)	\$ (142)	\$ 7,435	\$ (4,731)	\$ 2,704
Segment assets at June 30, 2012	\$ 106,765	\$ 222,988	\$ 329,753	\$ 106,765	\$ 222,988	\$ 329,753

Note 12 -Segment Reporting (Continued)

The following table summarizes our segment reporting for the periods indicated (dollars in thousands):

	Three Months Ended June 30, 2011			Nine Months Ended June 30, 2011		
	Loan and Investment	Real Estate	Total	Loan and Investment	Real Estate	Total
Interest and loan fee income	\$ 3,518	—	\$ 3,518	\$ 6,938	—	\$ 6,938
Rental revenues	—	\$ 763	763	—	\$ 2,576	2,576
Other income	1,063	—	1,063	3,979	—	3,979
Total Revenues	\$ 4,581	\$ 763	\$ 5,344	\$ 10,917	\$ 2,576	\$ 13,493
Interest on borrowed funds	195	257	452	885	766	1,651
Other expenses	1,393	1,480	2,873	4,116	4,402	8,518
Amortization and depreciation	—	183	183	—	555	555
Total expenses	1,588	1,920	3,508	5,001	5,723	10,724
Total revenues less total expenses	2,993	(1,157)	1,836	5,916	(3,147)	2,769
Equity in earnings of unconsolidated ventures	—	60	60	—	195	195
Gain on sale of available- for-sale securities	176	—	176	1,190	—	1,190
Loss on extinguishment of Debt	—	—	—	(1,441)	(697)	(2,138)
Income (loss) from continuing operations	3,169	(1,097)	2,072	5,665	(3,649)	2,016
Discontinued operations:						
Gain on sale of real estate Assets	—	645	645	—	1,342	1,342
Net income (loss)	3,169	(452)	2,717	5,665	(2,307)	3,358
Less net loss attributable to non-controlling interests	—	455	455	—	1,153	1,153
Net income (loss) attributable to common shareholders	\$ 3,169	\$ 3	\$ 3,172	\$ 5,665	\$ (1,154)	\$ 4,511
Segment assets	\$ 127,457	\$ 60,803	\$ 188,260	\$ 127,457	\$ 60,803	\$ 188,260

Note 13 — Fair Value of Financial Instruments

Financial Instruments Not Measured at Fair Value

The following methods and assumptions were used to estimate the fair value of each class of financial instruments that are not recorded at fair value on the consolidated balance sheets:

Cash and cash equivalents, restricted cash, accounts receivable (included in other assets), accounts payable and accrued liabilities: The carrying amounts reported in the consolidated balance sheets for these instruments approximate their fair value due to the short term nature of these accounts.

Real estate loans: The earning mortgage loans of the Trust which have variable rate provisions, based upon a margin over prime rate, have an estimated fair value which is equal to their carrying value assuming market interest rates between 10% and 12.5%. The earning mortgage loans of the Trust which have fixed rate provisions have an estimated fair value of \$28,000 greater than their carrying value assuming a market rate of interest of 11% which we believe reflect institutional lender yield requirements.

Junior Subordinated Notes: At June 30, 2012, the estimated fair value of the Trust’s junior subordinated notes is lower than their carrying value by approximately \$724,000 based on a market interest rate of 2.97%.

Mortgages Payable: At June 30, 2012, the estimated fair value of the Trust’s mortgages payable is greater than their carrying value by approximately \$3,865,000 assuming market interest rates between 2.9% and 17%. Market interest rates were determined using current financing transactions provided by third party institutions.

Considerable judgment is necessary to interpret market data and develop estimated fair value. The use of different market assumptions and/or estimation methodologies may have a material effect on the estimated fair value assumptions.

Financial Instruments Measured at Fair Value

The Trust’s fair value measurements are based on the assumptions that market participants would use in pricing the asset or liability. As a basis for considering market participant assumptions in fair value measurements, there is a fair value hierarchy that distinguishes between market participant assumptions based on market data obtained from sources independent of the reporting entity and the reporting entity’s own assumptions about market participant assumptions. Level 1 assets/liabilities are valued based on quoted prices for identical instruments in active markets, Level 2 assets/liabilities are valued based on quoted prices in active markets for similar instruments, on quoted prices in less active or inactive markets, or on other “observable” market inputs and Level 3 assets/liabilities are valued based significantly on “unobservable” market inputs. The Trust does not currently own any financial instruments that are classified as Level 3.

Set forth below is information regarding the Trust’s financial assets measured at fair value as of June 30, 2012 (dollars in thousands):

	Carrying and Fair Value	Maturity Date	Fair Value Measurements Using Fair Value Hierarchy	
			Level 1	Level 2
Available-for-sale securities:				
Corporate equity securities	\$ 1,849	—	\$ 1,849	—

Note 14 — Derivative Financial Instruments

Financial Liabilities

Available-for-sale securities: Fair values are approximated based on current market quotes from financial sources that track such securities. All of the available-for-sale securities in an unrealized loss position are equity securities and amounts are not considered to be impairment on an other than temporary basis because the Trust expects the value of these securities to recover and plans on holding them until at least such recovery occurs.

Derivative financial instrument: Fair values are approximated using widely accepted valuation techniques including discounted cash flow analysis on the expected cash flows of the derivatives. This analysis reflects the contractual terms of the derivatives, including the period to maturity, and uses observable market-based inputs, including interest rate curves, foreign exchange rates, and implied volatilities. At June 30, 2012, this derivative is included in accounts payable and accrued liabilities on the consolidated balance sheet.

Although the Trust has determined that the majority of the inputs used to value its derivatives fall within Level 2 of the fair value hierarchy, the credit valuation adjustments associated with it utilize Level 3 inputs, such as estimates of current credit spreads to evaluate the likelihood of default by itself and its counterparty. As of June 30, 2012, the Trust assessed the significance of the impact of the credit valuation adjustments on the overall valuation of its derivative positions and determined that the credit valuation adjustments are not significant to the overall valuation of its derivatives. As a result, the Trust determined that its derivative valuation is classified in Level 2 of the fair value hierarchy.

Cash Flow Hedges of Interest Rate Risk

The Trust's objectives in using interest rate derivatives are to add stability to interest expense and to manage its exposure to interest rate movements. To accomplish this objective, the Trust primarily uses interest rate swaps as part of its interest rate risk management strategy. Interest rate swaps designated as cash flow hedges involve the receipt of variable amounts from a counterparty in exchange for the Trust making fixed-rate payments over the life of the agreements without exchange of the underlying notional amount.

The effective portion of changes in the fair value of derivatives designated and that qualify as cash flow hedges is recorded in accumulated other comprehensive income on our consolidated balance sheet and is subsequently reclassified into earnings in the period that the hedged forecasted transaction affects earnings. In March 2012, the Trust entered into an interest rate swap agreement used to hedge the variable cash flows associated with existing variable-rate debt. The ineffective portion of the change in fair value of the derivatives is recognized directly in earnings.

Amounts reported in accumulated other comprehensive income related to derivatives will be reclassified to interest expense as interest payments are made on the Trust's variable-rate debt.

As of June 30, 2012, the Trust had the following outstanding interest rate derivative that was designated as a cash flow hedge of interest rate risk (dollars in thousands):

<u>Interest Rate Derivative</u>	<u>Notional</u>	<u>Rate</u>	<u>Maturity</u>
Interest Rate Swap	\$ 1,976	5.25%	April 1, 2022

Note 14 — Derivative Financial Instruments

The table below presents the fair value of the Trust’s derivative financial instrument as well as its classification on the consolidated balance sheets as of the dates indicated (amounts in thousands):

Liability Derivatives as of:			
June 30, 2012		September 30, 2011	
Balance Sheet Location	Fair Value	Balance Sheet Location	Fair Value
Accounts payable and accrued liabilities	\$ 90	Accounts payable and accrued liabilities	\$ —

The following table presents the effect of the Trust’s derivative financial instrument on the consolidated statements of comprehensive (loss) income for the three and nine months ended June 30, 2012 (dollars in thousands):

	Three Months Ended	Nine Months Ended
	June 30, 2012	
Amount of loss recognized on derivative in Other Comprehensive Income	\$ 72	\$ 100
Amount of loss reclassified from Accumulated Other Comprehensive Income into Interest Expense	\$ 9	\$ 9

No gain or loss was recognized related to hedge ineffectiveness or to amounts excluded from effectiveness testing on the Trust’s cash flow hedges during the three and nine months ended June 30, 2012 or June 30, 2011. During the twelve months ending June 30, 2013, the Trust estimates an additional \$35,000 will be reclassified from other comprehensive income as an increase to interest expense.

Credit-risk-related Contingent Features

The agreement between the Trust and its derivatives counterparty provides that if the Trust defaults on any of its indebtedness, including default where repayment of the indebtedness has not been accelerated by the lender, the Trust could be declared in default on its derivative obligation.

As of June 30, 2012, the fair value of the derivative in a net liability position, which includes accrued interest, but excludes any adjustment for nonperformance risk related to this agreement, was \$96,000. As of June 30, 2012, the Trust has not posted any collateral related to this agreement. If the Trust had been in breach of this agreement at June 30, 2012, it could have been required to settle its obligations thereunder at its termination value of \$96,000.

Note 15 — New Accounting Pronouncements

In May 2011, the FASB issued ASU No. 2011-04, which is included in ASC 820, Fair Value Measurement: Amendments to Achieve Common Fair Value Measurement and Disclosure Requirements in U.S GAAP and IFRS. This update defines fair value, clarifies a framework to measure fair value, and requires specific disclosures of fair value measurements. The guidance is effective for the Trust's interim and annual reporting periods beginning October 1, 2011, and applied prospectively. The adoption of the guidance did not have a material impact on its financial condition, results of operations, or disclosures of the Trust.

In June 2011, the FASB issued ASU No. 2011-05, which is included in ASC 220, Presentation of Comprehensive Income. This update improves the comparability, consistency, and transparency of financial reporting and increases the prominence of items reported in other comprehensive income. The guidance requires all non-owner changes in shareholders' equity be presented either in a single continuous statement of comprehensive income or in two separate but consecutive statements. The guidance will be effective for the Trust's interim and annual reporting periods beginning January 1, 2012, and applied retrospectively. The Trust does not expect adoption of this guidance to have a material impact on its financial condition, results of operations, or disclosures.

Note 16 — Subsequent Events

Subsequent events have been evaluated and any significant events, relative to our consolidated financial statements as of June 30, 2012 that warrant additional disclosure, have been included in the notes to the consolidated financial statements

Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations

Forward-Looking Statements

With the exception of historical information, this report on Form 10-Q contains certain forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended. We intend such forward-looking statements to be covered by the safe harbor provision for forward-looking statements contained in the Private Securities Litigation Reform Act of 1995 and include this statement for purposes of complying with these safe harbor provisions. Forward-looking statements, which are based on certain assumptions and describe our future plans, strategies and expectations, are generally identifiable by use of the words "may", "will", "believe", "expect", "intend", "anticipate", "estimate", "project", or similar expressions or variations thereof. Forward-looking statements involve known and unknown risks, uncertainties and other factors which are, in some cases, beyond our control and which could materially affect actual results, performance or achievements. Investors are cautioned not to place undue reliance on any forward-looking statements and are urged to read "item 1A Risk Factors" in our annual report on Form 10-K for the year ended September 30, 2011.

Overview

We are a real estate investment trust, also known as a REIT. We originate and hold for investment senior mortgage loans secured by commercial and multi-family properties in the United States. Historically, our primary source of revenue has been interest income, and to a lesser extent, loan fee income generated on the origination and extension of loans, rental revenue from real properties and investment income. We believe that during the nine months ended June 30, 2012, loan origination activities decreased from the corresponding prior year period due to competitive pricing pressure. Beginning in the quarter ended March 31, 2012, we expanded our activities by acquiring for investment, with venture partners, multi-family residential properties. As a result of the expansion of our activities and the acquisition in the most recent two quarters of multi-family residential properties, we expect that rental revenues, real estate operating expenses, interest expense, depreciation and cash flow from operations will increase in the future.

The following highlights our activities during the nine months ended June 30, 2012:

- the Newark Joint Venture closed on approximately \$47.9 million of financing, comprised of \$31.8 million of mortgage debt and \$16.1 million of New Markets Tax Credits proceeds, for the Teachers Village project enabling it to begin construction on two buildings of the project;
- our consolidated joint ventures purchased three multi-family residential properties with an aggregate of 1,074 units for an aggregate purchase price of \$100.8 million (excluding acquisition costs of \$2.3 million and including an aggregate of \$78.5 million of mortgage debt);
- we invested an aggregate of \$4.8 million, representing an 80% interest, in two unconsolidated joint ventures that purchased two multi-family residential properties with an aggregate of 377 units for an aggregate purchase price of \$14.4 million (excluding \$193,000 of acquisition costs and including an aggregate of \$11.2 million of mortgage debt);
- we originated \$86.2 million of mortgage loans in the first nine months of fiscal 2012 compared to \$112.4 million in the first nine months of fiscal 2011;
- at June 30, 2012, our net loan portfolio totaled \$64.9 million - all of the loans in the portfolio are performing; and

[Table of Contents](#)

- at June 30, 2012 we had cash and cash equivalents and available-for-sale securities of \$44.8 million.

Results of Operations — Three months ended June 30, 2012 compared to the three months ended June 30, 2011

Revenues

The following table sets forth a comparison of our revenues for the periods indicated:

(Dollars in thousands):	Three Months Ended June 30,		Increase (Decrease)	%Change
	2012	2011		
Interest on real estate loans	\$ 2,014	\$ 2,828	\$ (814)	(28.8)%
Loan fee income	548	690	(142)	(20.6)
Rental revenue from real estate properties	2,668	763	1,905	249.7
Recovery of previously provided allowances	9	1,002	(993)	(99.1)
Other income	316	61	255	418.0
Total revenues	<u>\$ 5,555</u>	<u>\$ 5,344</u>	<u>\$ 211</u>	4.0

Interest on real estate loans. The decrease is attributable to the following factors: (i) \$518,000 is due to a \$17.5 million decrease in the average balance of earning loans outstanding; (ii) \$213,000 is due to the inclusion in the three months ended June 30, 2011 of cash basis income received primarily from non-performing loans and interest income from purchase money mortgages that were subsequently paid off; and (iii) \$83,000 is due to the decline, as a result of competitive pricing pressure, in the weighted average interest rate from 12.05% to 11.65%.

Loan fee income. The decrease is due to amortization of loan and extension fees resulting from a smaller loan portfolio.

Rental revenue from real estate properties. The increase is primarily due to \$1,872,000 of rental revenue received from two multi-family residential properties we acquired in late March 2012.

Recovery of previously provided allowances. The decline is due to the inclusion of \$1,002,000 of recoveries in the 2011 period. There were only limited recoveries in the current period.

Other income. The increase is the result of a U.S. Treasury subsidy which is covering approximately 90% of the interest payments with respect to Qualified School Construction Bonds ("QSCB's") with a principal amount of approximately \$22.7 million issued by the Newark Joint Venture. We anticipate this subsidy, in the annual amount of approximately \$1.2 million, will continue until at least 2018.

Expenses

The following table sets forth a comparison of our expenses for the periods indicated:

(Dollars in thousands)	Three Months Ended June 30,		Increase (Decrease)	% Change
	2012	2011		
Interest — borrowed funds	\$ 1,416	\$ 452	\$ 964	213.2%
Advisor's fees — related party	333	237	96	40.5
Foreclosure related professional fees	—	162	(162)	(100.0)
Property acquisition costs	471	—	471	N/A
General and administrative	1,734	1,585	149	9.4
Operating expenses relating to real estate properties	1,733	889	844	99.4
Amortization and depreciation	1,077	183	894	488.5
Total expenses	<u>\$ 6,764</u>	<u>\$ 3,508</u>	<u>\$ 3,256</u>	92.8

Interest - borrowed funds. The increase is attributable to the following factors: (i) \$518,000 is due to mortgages on the multi-family residential properties acquired in March 2012; (ii) \$376,000 is due to the Newark Joint Venture's financing transactions; and (iii) \$70,000 is related to interest and fee amortization associated with our credit line. We anticipate that interest expense will increase in the near term because: (i) the current period does not include interest expense for the full quarter with respect to the mortgage debt of \$25.7 million incurred in connection with the acquisition on June 20, 2012 of a multi-family residential property in Tennessee; and (ii) the interest rate on the junior subordinated notes will increase from 3% to 4.9% in August 2012.

Advisor's fees — related party. The fee is calculated based on invested assets and increased primarily because of the increase in the assets of the Trust. This was due to the purchase of several multi-family properties in the current fiscal year.

Foreclosure related professional fees. There were no such fees in the current quarter as we resolved all of the bankruptcy, foreclosure and related proceedings in which we had been involved.

Property acquisition costs. Our consolidated joint venture purchased a multi-family residential property in Tennessee and incurred property acquisition costs of \$471,000. Such costs included acquisition fees to our joint venture partners, brokerage fees, and legal, due diligence and other transactional costs and expenses.

General and administrative. The increase is due to increased professional fees associated with recent joint venture activities, the fee payable to the chairman of our board of trustees and to increases in various expenses, none of which was individually material.

Operating expenses relating to real estate properties. The increase is due primarily to the acquisition, in March 2012, of two multi-family residential properties.

Amortization and depreciation. The increase is the result of the addition of two multi-family residential properties acquired in March 2012.

[Table of Contents](#)

Other revenue and expense items

(Loss) gain on sale of available-for-sale securities - In the three months ended June 30, 2012, we sold available-for-sale securities with a cost basis of \$613,000 and recognized a gain of \$96,000. In the three months ended June 30, 2011, we sold available-for-sale securities with a cost basis of \$800,000 and recognized a gain of approximately \$176,000.

Discontinued operations

In the three months ended June 30, 2012 and 2011, discontinued operations consisted of gains on the sale of one vacant cooperative apartment in New York City in each period.

Results of Operations — Nine months ended June 30, 2012 compared to the nine months ended June 30, 2011**Revenues**

The following table sets forth a comparison of our revenues for the periods indicated:

(Dollars in thousands):	Nine Months Ended March 31,		Increase (Decrease)	%Change
	2012	2011		
Interest on real estate loans	\$ 5,628	\$ 5,730	\$ (102)	(1.8)%
Loan fee income	1,388	1,208	180	14.9
Rental revenue from real estate properties	4,455	2,576	1,879	73.0
Recovery of previously provided allowances	19	3,568	(3,549)	99.5
Other income	906	411	495	120.4
Total revenues	<u>\$ 12,396</u>	<u>\$ 13,493</u>	<u>\$ (1,097)</u>	(8.1)

Interest on real estate loans. The decrease is attributable to the following factors: (i) \$878,000 is due to the inclusion, during the nine months ended June 30, 2011, of cash basis income received primarily on non-performing loans and purchase money mortgages that were subsequently paid off; and (ii) \$183,000 is due to the decline, as a result of competitive pricing pressure, in the weighted average interest rate from 12.18% to 11.75%. Partially offsetting the decrease by approximately \$959,000 was the increase of \$11.3 million in the average balance of earning loans outstanding. While originations were lower in the current nine months than in the corresponding period in the prior fiscal year, the timing of the payoffs of loans caused the average balance to increase.

Loan fee income. The increase is primarily due to amortization of loan fees resulting from a larger loan portfolio.

Rental revenue from real estate properties. The increase is due to the inclusion of \$2,051,000 of rental income from two multi-family properties acquired in March 2012. Partially offsetting the increase was (i) the inclusion in the corresponding period of the prior year of \$106,000 of rebill income at a Newark Joint Venture property and (ii) a \$108,000 decrease due to the loss of several commercial tenants at the Newark Joint Venture's Market Street property. This is a future development site and accordingly, only short term leases are offered at this property.

Recovery of previously provided allowances. The decline is due to the inclusion of \$3,568,000 in recoveries in the 2011 period. There were only limited recoveries in the current period.

Other income. The increase is the result of a U.S. Treasury subsidy which will cover approximately 90% of the interest payments with respect to QSCB's with a principal amount of \$22.7 million issued by the Newark Joint Venture. We anticipate this subsidy in the annual amount of approximately \$1.2 million will continue until at least 2018.

Expenses

The following table sets forth a comparison of our expenses for the periods indicated:

(Dollars in thousands)	Nine Months Ended June 30,		Increase (Decrease)	% Change
	2012	2011		
Interest on borrowed funds	\$ 2,758	\$ 1,651	\$ 1,107	67.1%
Advisor's fees — related party	777	699	78	11.2
Foreclosure related professional fees	—	519	(519)	100
Property acquisition costs	2,264	—	2,264	N/A
General and administrative	5,414	4,645	769	16.6
Operating expenses relating to real estate properties	3,478	2,655	823	31.0
Amortization and depreciation	1,441	555	886	159.6
Total expenses	<u>\$ 16,132</u>	<u>\$ 10,724</u>	<u>\$ 5,408</u>	50.4

Interest on borrowed funds. The increase is attributable to the following factors: (i) \$843,000 is due to interest expense related to the Newark Joint Venture's financing transactions; (ii) \$568,000 is due to mortgages on the multi-family residential properties acquired in March 2012; and (iii) \$144,000 is related to interest expense and amortization of fees associated with our credit line. The increase was partially offset by a \$448,000 interest expense decrease resulting from the March 2011 restructuring of our junior subordinated notes.

Advisor's fee — related party. The fee is calculated based on invested assets and increased because of an increase in the assets of the Trust. This was primarily due to the purchase of several multi-family assets in the current fiscal year.

Property acquisition costs. Beginning March 2012, our consolidated joint ventures purchased three separate multi-family residential properties and incurred property acquisition costs of \$2,264,000. Such costs included acquisition fees to our joint venture partners, brokerage fees, and legal, due diligence and other transactional costs and expenses.

General and administrative. The increase is attributable to the following factors: (i) \$270,000 is due to higher rates of employee compensation and the payment of a fee to the chairman of our board of trustees; (ii) \$208,000 is due to the inclusion in the prior year of reversals of over-accruals relating to professional and stock exchange fees and expenses and compensation expense; (iii) \$165,000 is due to the payment of Federal alternative minimum tax resulting from our use of net operating loss carryforwards to reduce 2011 taxable income; and (iv) \$140,000 is due to increased professional fees relating to, among other things, our joint ventures engaged in acquiring multi-family residential properties. The balance of the increase is due to increases in various expenses, none of which was individually material.

Operating expenses relating to real estate properties. The increase is due to the addition of two multi-family residential properties acquired in March 2012.

Amortization and depreciation. The increase is due to the addition of two multi-family residential properties acquired in March 2012.

Other revenue and expense items

Equity in (loss) earnings of unconsolidated joint ventures. The decrease of \$290,000 is related to a loss of: (i) \$138,000 from a joint venture entered into in the March 2012 quarter which loss is primarily the result of \$193,000 of acquisition costs; and (ii) \$136,000 (which reflects the write-off of \$297,000 of capitalized costs) related to a joint venture that ceased loan purchasing activities in November 2011.

Gain on sale of available-for-sale securities. In the nine months ended June 30, 2012, we sold available-for-sale securities with a cost basis of \$3,222,000 and recognized a gain of \$420,000. In the first nine months of fiscal 2011, we sold available-for-sale debt and equity securities with a cost basis of \$7,266,000 and recognized a gain of approximately \$1,190,000.

Gain on sale of loan. In October 2011, pursuant to a Federal Bankruptcy Court approved joint plan of reorganization, we and our loan participant sold the rights to a loan, for net proceeds of approximately \$23.5 million. We recognized a \$3.2 million gain on the sale, representing our 50% interest in this loan.

Loss on extinguishment of debt. In the nine months ended June 30, 2011, we restructured our outstanding junior subordinated notes. Pursuant to the restructuring, we repaid \$5.0 million of the notes at par and reduced the interest rate on the remaining outstanding notes through the April 2036 maturity date. For accounting purposes this restructuring was treated as an extinguishment of debt, and accordingly, we recognized a loss of \$2,138,000 which represented the unaccreted principal balance of the notes and the related unamortized costs.

Discontinued operations

In the first nine months of fiscal 2012, discontinued operations consisted of the gain on the sale of two vacant cooperative apartments. In the first nine months of fiscal 2011, discontinued operations consisted of the sale of two vacant cooperative apartments and a residential building all located in Manhattan, New York.

Liquidity and Capital Resources

Liquidity is a measurement of our ability to meet cash requirements, including to fund loan originations, pay operating expenses, repay borrowings, and other general business needs. We require capital to fund loan originations, acquire properties, invest in joint ventures and pay operating expenses. Our current sources of capital and liquidity primarily consist of our cash and credit facility. At June 30, 2012, our total available liquidity (excluding \$30.3 million in restricted cash-construction holdback which is to be used by the Newark Joint Venture) was \$45.1 million, including approximately \$43.0 million of cash and cash equivalents and up to \$10 million that we may borrow on an unsecured basis for up to 90 days pursuant to our credit facility to fund any capital contributions required by the general operations of the Newark Joint Venture and to engage in our lending business. The acquisition of additional real properties may be constrained by our liquidity and capital resource position.

Credit Facility

A senior secured revolving credit facility with Capital One, N.A. permits our subsidiary to borrow the lesser of \$25 million and the borrowing base (as determined pursuant to the facility) and provides for an interest rate equal to the greater of (i) 4% plus LIBOR and (ii) 5.5%. The facility, among

[Table of Contents](#)

other things, requires the Trust and the subsidiary to maintain or comply with, net worth and liquidity covenants, debt service and collateral coverage ratios and limits, with specified exceptions, the incurrence of debt. On April 17, 2012, the facility was amended to allow the subsidiary to borrow for up to 90 days on an unsecured basis, a maximum of \$10 million. There was no balance outstanding on the facility as of June 30, 2012.

Multi-Family Residential Properties

We anticipate that we will be able to fund the debt service (principal and interest) and the operating expenses with respect to the multi-family residential properties acquired in the March and June 2012 quarters, from the cash flow generated by such properties. The mortgage debt with respect to these properties is non-recourse to us, subject to customary carve-outs.

Newark Joint Venture

The current principal focus of the Newark Joint Venture is the redevelopment of its Teacher's Village site. The venture contemplates three financing phases, the first phase of which was completed between February and May 2012. Set forth below is information pertaining to funding of the development of this site.

Phase 1. The Newark Joint Venture obtained \$31.8 million of construction and permanent financing which, together with \$16.1 million of New Markets Tax Credits proceeds, was used to (i) pay transaction expenses of approximately \$7.2 million (which is reflected on our consolidated balance sheet as deferred costs) and \$6.3 million of debt (including \$4.3 million of debt which had been owed to us and (ii) will be used to construct two buildings at the Teacher's Village site in Newark, New Jersey. Approximately \$30.3 million of the proceeds of this financing are reflected on our consolidated balance sheet as of June 30, 2012 as "restricted cash-construction holdbacks" and will be released to the venture from time to time primarily upon satisfaction of specified construction and permitting related conditions. An interest reserve of \$2.6 million, which is included in "other assets" on our consolidated balance sheet, is expected to cover, until December 2013, the interest expense on the mortgage debt incurred in this financing. Thereafter, the Newark Joint Venture's ability to pay debt service (*i.e.* principal and interest) on such debt and the estimated operating expenses of these buildings will depend on generating rental revenue and cash flow from tenants. After giving effect to the approximately \$1.23 million to be generated from the in-place lease agreement with charter schools and a daycare center (and without giving effect to contractual rent increases), the Newark Joint Venture estimates that it will require at least an additional \$420,000 in rental payments from prospective retail tenants at these buildings to cover debt service and operating expenses. While the Newark Joint Venture has commenced marketing the retail space at these buildings, there is no assurance that the venture will be able to lease such space and that if leased, the rental payments therefrom will be sufficient to cover debt service and operating expenses. If such payments are insufficient, we may, but are not obligated to, cover a shortfall.

Phases 2 and 3. The Newark Joint Venture contemplates that an additional \$85 million will be raised in 2012 from public and private sources to complete the construction of an additional six residential/retail buildings at the Teachers Village site. No assurance can be given such financing will be obtained or that if is obtained, that the project will be profitable. The failure to complete these phases (including completing the contemplated construction), may adversely impact the venture's ability to obtain and retain tenants at the buildings to be constructed as contemplated by Phase 1.

[Table of Contents](#)

Cash Distribution Policy

At December 31, 2011, we had approximately \$62 million of net operating loss carry forwards available to offset future income. It therefore is highly unlikely that we will pay or, to maintain our REIT status, be required to pay any dividend in 2012 and for several years thereafter.

Off Balance Sheet Arrangements

At June 30, 2012, the Trust had guaranteed \$1.65 million of a \$6.6 million mortgage obligation of its Newark Joint Venture.

Item 3. Quantitative and Qualitative Disclosures About Market Risks

Our primary component of market risk is interest rate sensitivity. Our interest income is subject to changes in interest rates. We seek to minimize these risks by originating loans that are indexed to the prime rate, with a stated minimum interest rate. At June 30, 2012, approximately 97% the principal amount of our outstanding mortgage loans were comprised of variable rate based loans tied to the prime rate and with a stated minimum interest rate. When determining interest rate sensitivity, we assume that any change in interest rates is immediate and that the interest rate sensitive assets and liabilities existing at the beginning of the period remain constant over the period being measured. We assessed the market risk for our variable rate mortgage receivables as of June 30, 2012 and believe that a one percent increase in interest rates would have a positive annual effect of approximately \$614,000 on income before taxes and a one percent decline in interest rates would have no annual effect on income before taxes because all of our variable rate loans have a stated minimum rate.

Our mortgage debt (excluding a mortgage subject to an interest rate swap agreement), bears interest at fixed rates and accordingly, the effect of changes in interest rates would not impact the amount of interest expense that we incur under these mortgages.

As of June 30, 2012, 44% of our loan portfolio was secured by properties located in the New York metropolitan area, 19% in Florida, 19% in Georgia and 18% in Maryland and we are therefore subject to risks associated with those markets.

Item 4. Controls and Procedures

As required under Rules 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934, as amended, we carried out an evaluation under the supervision and with the participation of our management, including our Chief Executive Officer, Senior Vice President-Finance and Chief Financial Officer, of the effectiveness of the design and operation of our disclosure controls and procedures as of June 30, 2012. Based upon that evaluation, the Chief Executive Officer, Senior Vice President-Finance and Chief Financial Officer concluded that our disclosure controls and procedures as of June 30, 2012 are effective.

There have been no changes in our internal control over financial reporting during the quarter ended June 30, 2012 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting or in other factors that could significantly affect these controls subsequent to the date of their evaluation, including any corrective actions with regard to significant deficiencies and material weaknesses.

Part II

Item 2. Unregistered Sales of Equity Securities and Use of Proceeds.

In September 2011, we announced that our Board of Trustees had authorized a share buyback plan pursuant to which we may, through September 2013, expend up to \$2,000,000 to acquire our common shares. There were no share purchases effected in the quarter ended June 30, 2012.

[Table of Contents](#)

Item 6. Exhibits

In reviewing the agreements included as exhibits to this Quarterly Report on Form 10-Q, please remember they are included to provide you with information regarding their terms and are not intended to provide any other factual or disclosure information about us or the other parties to the agreements. The agreements contain representations and warranties by each of the parties to the applicable agreement. These representations and warranties have been made solely for the benefit of the other parties to the applicable agreement and:

- should not in all instances be treated as categorical statements of fact, but rather as a way of allocating the risk to one of the parties if those statements prove to be inaccurate;
- have been qualified by disclosures that were made to the other party in connection with the negotiation of the applicable agreement, which disclosures are not necessarily reflected in the agreement;
- may apply standards of materiality in a way that is different from what may be viewed as material to you or other investors; and

Exhibit No.	Title of Exhibits
10.1	Multi-Family Loan and Security Agreement dated as of the June 20, 2012 by and between Madison 324, LLC and CWCapital LLC
10.2	Multi-Family Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing dated as of the 20th day of June, 2012, executed by Madison 324, LLC to Joseph B. Pitt, JR, as trustee for the benefit of CWCapital LLC
10.3	Multi-Family Note dated as of June 20, 2012 in face amount of \$25,680,000 issued by Madison 324, LLC in favor of CWCapital LLC
10.4	Amendment No. 1 dated April 17, 2012 to Loan and Security Agreement by and among BRT RLOC LLC, BRT Realty Trust and Capital One, National Association
31.1	Certification of President and Chief Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002
31.2	Certification of Senior Vice President—Finance pursuant to Section 302 of the Sarbanes-Oxley Act of 2002
31.3	Certification of Vice President and Chief Financial Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002
32.1	Certification of President and Chief Executive Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002
32.2	Certification of Senior Vice President—Finance pursuant to Section 906 of the Sarbanes-Oxley Act of 2002
32.3	Certification of Vice President and Chief Financial Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002
101.INS	XBRL Instance Document
101.SCH	XBRL Taxonomy Extension Schema Document
101.CAL	XBRL Taxonomy Extension Calculation Linkbase Document
101.DEF	XBRL Taxonomy Extension Definition Linkbase Document
101.LAB	XBRL Taxonomy Extension Definition Label Linkbase Document
101.PRE	XBRL Taxonomy Extension Presentation Linkbase Document

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, as amended, the Registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

BRT REALTY TRUST
(Registrant)

August 9, 2012

/s/ Jeffrey A. Gould
Jeffrey A. Gould, President and
Chief Executive Officer

August 9, 2012

/s/ George Zweier
George Zweier, Vice President
and Chief Financial Officer
(principal financial officer)

**MULTIFAMILY LOAN AND SECURITY AGREEMENT
(NON-RECOURSE)**

BY AND BETWEEN

MADISON 324, LLC, a Delaware limited liability company

AND

CWCAPITAL LLC, a Massachusetts limited liability company

DATED AS OF

June 20, 2012



TABLE OF CONTENTS

ARTICLE 1 - DEFINITIONS; SUMMARY OF MORTGAGE LOAN TERMS	1
SECTION 1.01 DEFINED TERMS	1
SECTION 1.02 SCHEDULES, EXHIBITS AND ATTACHMENTS INCORPORATED	1
ARTICLE 2 - GENERAL MORTGAGE LOAN TERMS	1
SECTION 2.01 MORTGAGE LOAN ORIGINATION AND SECURITY	1
(a) Making of Mortgage Loan	1
(b) Security for Mortgage Loan	2
(c) Protective Advances	2
SECTION 2.02 PAYMENTS ON MORTGAGE LOAN	2
(a) Debt Service Payments	2
(b) Capitalization of Accrued But Unpaid Interest	3
(c) Late Charges	3
(d) Default Rate	4
(e) Address for Payments	5
(f) Application of Payments	5
SECTION 2.03 LOCKOUT/PREPAYMENT	5
(a) Prepayment; Prepayment Lockout; Prepayment Premium	5
(b) Voluntary Prepayment in Full	5
(c) Acceleration of Mortgage Loan	6
(d) Application of Collateral	6
(e) Casualty and Condemnation	6
(f) No Effect on Payment Obligations	7
(g) Loss Resulting from Prepayment	7
ARTICLE 3 - PERSONAL LIABILITY	7
SECTION 3.01 NON-RECOURSE MORTGAGE LOAN; EXCEPTIONS	7
SECTION 3.02 PERSONAL LIABILITY OF BORROWER (EXCEPTIONS TO NON-RECOURSE PROVISION)	7
(a) Personal Liability Based on Lender's Loss	7
(b) Full Personal Liability for Mortgage Loan	8
SECTION 3.03 PERSONAL LIABILITY FOR INDEMNITY OBLIGATIONS	9
SECTION 3.04 LENDER'S RIGHT TO FOREGO RIGHTS AGAINST MORTGAGED PROPERTY	9
ARTICLE 4 - BORROWER STATUS	9
SECTION 4.01 REPRESENTATIONS AND WARRANTIES	9
(a) Due Organization and Qualification	9
(b) Location	9
(c) Power and Authority	9
(d) Due Authorization	10
(e) Valid and Binding Obligations	10
(f) Effect of Mortgage Loan on Borrower's Financial Condition	10
(g) Economic Sanctions, Anti-Money Laundering and Anti-Corruption	10
(h) Borrower Single Asset Status	11
(i) No Bankruptcies or Judgments	12
(j) No Litigation	12

**Multifamily Loan and Security Agreement
(Non-Recourse)
Fannie Mae**

**Form 6001.NR
04-11**

© 2011 Fannie Mae

(k)	Payment of Taxes, Assessments and Other Charges	12
(l)	Not a Foreign Person	13
(m)	ERISA	13
(n)	Default Under Other Obligations	13
(o)	Prohibited Person	14
SECTION 4.02	COVENANTS	14
(a)	Maintenance of Existence; Organizational Documents	14
(b)	Economic Sanctions and Anti-Money Laundering	14
(c)	Payment of Taxes, Assessments and Other Charges	15
(d)	Borrower Single Asset Status	15
(e)	ERISA	16
(f)	Notice of Litigation or Insolvency	16
(g)	Payment of Costs, Fees, and Expenses	16
ARTICLE 5 - THE MORTGAGE LOAN		17
SECTION 5.01	REPRESENTATIONS AND WARRANTIES	17
(a)	Receipt and Review of Loan Documents	17
(b)	No Default	17
SECTION 5.02	COVENANTS	17
(a)	Ratification of Covenants; Estoppels; Certifications	17
(b)	Further Assurances	18
(c)	Sale of Mortgage Loan	18
(d)	Limitations on Further Acts of Borrower	19
(e)	Financing Statements; Record Searches	19
ARTICLE 6 - PROPERTY USE, PRESERVATION AND MAINTENANCE		20
SECTION 6.01	REPRESENTATIONS AND WARRANTIES	20
(a)	Compliance with Law; Permits and Licenses	20
(b)	Property Characteristics	20
(c)	Property Ownership	21
SECTION 6.02	COVENANTS	21
(a)	Use of Property	21
(b)	Property Maintenance	21
(c)	Property Preservation	22
(d)	Property Inspections	23
(e)	Compliance with Laws	23
SECTION 6.03	MORTGAGE LOAN ADMINISTRATION MATTERS REGARDING THE PROPERTY	24
(a)	Property Management	24
(b)	Subordination of Fees to Affiliated Property Managers	24
(c)	Physical Needs Assessment	24
ARTICLE 7 - LEASES AND RENTS		24
SECTION 7.01	REPRESENTATIONS AND WARRANTIES	24
(a)	Prior Assignment of Rents	25
(b)	Prepaid Rents	25
SECTION 7.02	COVENANTS	25
(a)	Leases	25
(b)	Commercial Leases	25
(c)	Payment of Rents	26

(d)	Assignment of Rents	27
(e)	Further Assignments of Leases and Rents	27
(f)	Options to Purchase by Tenants	27
SECTION 7.03	MORTGAGE LOAN ADMINISTRATION REGARDING LEASES AND RENTS	27
(a)	Material Commercial Lease Requirements	27
(b)	Residential Lease Requirements	27
ARTICLE 8 - BOOKS AND RECORDS; FINANCIAL REPORTING		28
SECTION 8.01	REPRESENTATIONS AND WARRANTIES	28
(a)	Financial Information	28
(b)	No Change in Facts or Circumstances	28
SECTION 8.02	COVENANTS	28
(a)	Obligation to Maintain Accurate Books and Records	28
(b)	Items to Furnish to Lender	28
(c)	Delivery of Books and Records	30
SECTION 8.03	MORTGAGE LOAN ADMINISTRATION MATTERS REGARDING BOOKS AND RECORDS AND FINANCIAL REPORTING	30
(a)	Right to Audit Books and Records	30
(b)	Credit Reports; Credit Score	30
ARTICLE 9 - INSURANCE		31
SECTION 9.01	REPRESENTATIONS AND WARRANTIES	31
(a)	Compliance with Insurance Requirements	31
(b)	Property Condition	31
SECTION 9.02	COVENANTS	31
(a)	Insurance Requirements	31
(b)	Delivery of Policies, Renewals, Notices and Proceeds	32
SECTION 9.03	MORTGAGE LOAN ADMINISTRATION MATTERS REGARDING INSURANCE	32
(a)	Lender's Ongoing Insurance Requirements	32
(b)	Application of Proceeds on Event of Loss	33
(c)	Payment Obligations Unaffected	35
(d)	Foreclosure Sale	35
(e)	Appointment of Lender as Attorney-In-Fact	35
ARTICLE 10 - CONDEMNATION		35
SECTION 10.01	REPRESENTATIONS AND WARRANTIES	35
(a)	Prior Condemnation Action	35
(b)	Pending Condemnation Actions	35
SECTION 10.02	COVENANTS	36
(a)	Notice of Condemnation	36
(b)	Condemnation Proceeds	36
SECTION 10.03	MORTGAGE LOAN ADMINISTRATION MATTERS REGARDING CONDEMNATION	36
(a)	Application of Condemnation Awards	36
(b)	Payment Obligations Unaffected	36
(c)	Appointment of Lender as Attorney-In-Fact	36
(d)	Application of Proceeds	36

ARTICLE 11 - LIENS, TRANSFERS AND ASSUMPTIONS	37
SECTION 11.01 REPRESENTATIONS AND WARRANTIES	37
(a) No Labor or Materialmen’s Claims	37
(b) No Other Interests	37
SECTION 11.02 COVENANTS	37
(a) Liens; Encumbrances	37
(b) Transfers	37
SECTION 11.03 MORTGAGE LOAN ADMINISTRATION MATTERS REGARDING LIENS, TRANSFERS AND ASSUMPTIONS	39
(a) Assumption of Mortgage Loan	39
(b) Transfers to Key Principal-Owned Affiliates or Guarantor-Owned Affiliates	40
(c) Estate Planning	41
(d) Termination or Revocation of Trust	41
(e) Death of Key Principal or Guarantor	42
(f) Bankruptcy of Guarantor	43
(g) Further Conditions to Transfers and Assumption	44
ARTICLE 12 - IMPOSITIONS	45
SECTION 12.01 REPRESENTATIONS AND WARRANTIES	45
(a) Payment of Taxes, Assessments and Other Charges	45
SECTION 12.02 COVENANTS	45
(a) Imposition Deposits, Taxes, and Other Charges	45
SECTION 12.03 MORTGAGE LOAN ADMINISTRATION MATTERS REGARDING IMPOSITIONS	46
(a) Maintenance of Records by Lender	46
(b) Imposition Accounts	46
(c) Payment of Impositions; Sufficiency of Imposition Deposits	46
(d) Imposition Deposits Upon Event of Default	47
(e) Contesting Impositions	47
(f) Release to Borrower	47
ARTICLE 13 - REPLACEMENT RESERVE AND REPAIRS	47
SECTION 13.01 COVENANTS	47
(a) Initial Deposits to Replacement Reserve Account and Repairs Escrow Account	47
(b) Monthly Replacement Reserve Deposits	48
(c) Payment for Replacements and Repairs	48
(d) Assignment of Contracts for Replacements and Repairs	48
(e) Indemnification	48
(f) Amendments to Loan Documents	48
(g) Administrative Fees and Expenses	48
SECTION 13.02 MORTGAGE LOAN ADMINISTRATION MATTERS REGARDING RESERVES	49
(a) Accounts, Deposits, and Disbursements	49
(b) Approvals of Contracts; Assignment of Claims	55
(c) Delays and Workmanship	55
(d) Appointment of Lender as Attorney-In-Fact	55
(e) No Lender Obligation	56
(f) No Lender Warranty	56

ARTICLE 14 - DEFAULTS/REMEDIES	56
SECTION 14.01 EVENTS OF DEFAULT	56
(a) Automatic Events of Default	56
(b) Events of Default Subject to a Specified Cure Period	57
(c) Events of Default Subject to Extended Cure Period	58
SECTION 14.02 REMEDIES	58
(a) Acceleration; Foreclosure	58
(b) Loss of Right to Receive Replacement Reserve Disbursements and Repairs Disbursements	58
(c) Remedies Cumulative	59
SECTION 14.03 ADDITIONAL LENDER RIGHTS; FORBEARANCE	59
(a) No Effect Upon Obligations	59
(b) No Waiver of Rights or Remedies	60
(c) Appointment of Lender as Attorney-in-Fact	60
SECTION 14.04 WAIVER OF MARSHALING	61
ARTICLE 15 - MISCELLANEOUS	62
SECTION 15.01 GOVERNING LAW; CONSENT TO JURISDICTION AND VENUE	62
(a) Governing Law	62
(b) Venue	62
SECTION 15.02 NOTICE	62
(a) Process of Serving Notice	62
(b) Change of Address	63
(c) Default Method of Notice	63
(d) Receipt of Notices	63
SECTION 15.03 SUCCESSORS AND ASSIGNS BOUND; SALE OF MORTGAGE LOAN	63
(a) Binding Agreement	63
(b) Sale of Mortgage Loan; Change of Servicer	63
SECTION 15.04 COUNTERPARTS	63
SECTION 15.05 JOINT AND SEVERAL (OR SOLIDARY) LIABILITY	64
SECTION 15.06 RELATIONSHIP OF PARTIES; NO THIRD PARTY BENEFICIARY	64
(a) Solely Creditor and Debtor	64
(b) No Third Party Beneficiaries	64
SECTION 15.07 SEVERABILITY; ENTIRE AGREEMENT; AMENDMENTS	64
SECTION 15.08 CONSTRUCTION	64
SECTION 15.09 MORTGAGE LOAN SERVICING	65
SECTION 15.10 DISCLOSURE OF INFORMATION	65
SECTION 15.11 WAIVER; CONFLICT	66
SECTION 15.12 DETERMINATIONS BY LENDER	66
SECTION 15.13 SUBROGATION	66
SECTION 15.14 COUNTING OF DAYS	66
SECTION 15.15 REVIVAL AND REINSTATEMENT OF INDEBTEDNESS	66
SECTION 15.16 TIME IS OF THE ESSENCE	66
SECTION 15.17 FINAL AGREEMENT	67
SECTION 15.18 WAIVER OF TRIAL BY JURY	67

SCHEDULES & EXHIBITS

Schedules

Schedule 1	Definitions Schedule (required)	Form 6101.FR
Schedule 2	Summary of Loan Terms (required)	Form 6102.FR
Schedule 3	Interest Rate Type Provisions (required)	Form 6103.FR
Schedule 4	Prepayment Premium Schedule (required)	Form 6104.01
Schedule 5	Required Replacement Schedule (required)	Form 6001.NR
Schedule 6	Required Repair Schedule (required)	Form 6001.NR
Schedule 7	Exceptions to Representations and Warranties Schedule (required)	Form 6001.NR

**MULTIFAMILY LOAN AND SECURITY AGREEMENT
(Non-Recourse)**

This MULTIFAMILY LOAN AND SECURITY AGREEMENT (as amended, restated, replaced, supplemented or otherwise modified from time to time, the “**Loan Agreement**”) is made as of the Effective Date (as hereinafter defined) by and between **MADISON 324, LLC**, a Delaware limited liability company (“**Borrower**”), and **CWCAPITAL LLC**, a Massachusetts limited liability company (“**Lender**”).

RECITALS:

WHEREAS, Borrower desires to obtain the Mortgage Loan (as hereinafter defined) from Lender to be secured by the Mortgaged Property (as hereinafter defined); and

WHEREAS, Lender is willing to make the Mortgage Loan on the terms and conditions contained in this Loan Agreement and in the other Loan Documents (as hereinafter defined);

NOW, THEREFORE, in consideration of the making of the Mortgage Loan by Lender and other good and valuable consideration, the receipt and adequacy of which are hereby conclusively acknowledged, the parties hereby covenant, agree, represent and warrant as follows:

AGREEMENTS:

**ARTICLE 1- DEFINITIONS; SUMMARY OF MORTGAGE
LOAN TERMS**

Section 1.01 **Defined Terms.**

Capitalized terms not otherwise defined in the body of this Loan Agreement shall have the meanings set forth in the Definitions Schedule attached as Schedule 1 to this Loan Agreement.

Section 1.02 **Schedules, Exhibits and Attachments Incorporated.**

The schedules, exhibits and any other addenda or attachments are incorporated fully into this Loan Agreement by this reference and each constitutes a substantive part of this Loan Agreement.

ARTICLE 2 - GENERAL MORTGAGE LOAN TERMS

Section 2.01 **Mortgage Loan Origination and Security.**

(a) Making of Mortgage Loan.

On the Effective Date and subject to the terms and conditions of this Loan Agreement and the other Loan Documents, Lender hereby makes the Mortgage Loan to Borrower and

Borrower hereby accepts the Mortgage Loan from Lender. Borrower covenants and agrees that it shall:

(1) pay the Indebtedness, including the Prepayment Premium, if any (whether in connection with any voluntary prepayment or in connection with an acceleration by Lender of the Indebtedness), in accordance with the terms of this Loan Agreement and the other Loan Documents; and

(2) perform, observe and comply with this Loan Agreement and all other provisions of the other Loan Documents.

(b) Security for Mortgage Loan.

The Mortgage Loan is made pursuant to this Loan Agreement, is evidenced by the Note and is secured by the Security Instrument, this Loan Agreement and the other Loan Documents that are expressly stated to be security for the Mortgage Loan.

(c) Protective Advances.

As provided in the Security Instrument, Lender may take such actions or disburse such funds as Lender reasonably deems necessary to perform the obligations of Borrower under this Loan Agreement and the other Loan Documents and to protect Lender's interest in the Mortgaged Property.

Section 2.02 **Payments on Mortgage Loan.**

(a) Debt Service Payments.

(1) Short Month Interest.

If the Effective Date is any day other than the first day of the month, interest for the period beginning on the Effective Date and ending on and including the last day of the month in which the Effective Date occurs shall be payable by Borrower on the Effective Date.

(2) Interest Accrual and Computation.

Except as provided in Section 2.02(a)(1), interest shall be paid in arrears. Interest shall accrue as provided in the Schedule of Interest Rate Type Provisions and shall be computed in accordance with the Interest Accrual Method. If the Interest Accrual Method is "Actual/360", Borrower acknowledges and agrees that the amount allocated to interest for each month will vary depending on the actual number of calendar days during such month.

(3) Monthly Debt Service Payments.

Consecutive monthly debt service installments (comprised of either interest only or principal and interest, depending on the Amortization Type), each in the amount of the applicable Monthly Debt Service Payment, shall be due and payable on the First Payment Date, and on each Payment Date thereafter until the Maturity Date at which time all Indebtedness shall be due. Any regularly scheduled Monthly Debt Service Payment that

is received by Lender before the applicable Payment Date shall be deemed to have been received on such Payment Date solely for the purpose of calculating interest due.

(4) Payment at Maturity.

The unpaid principal balance of the Mortgage Loan, any Accrued Interest thereon and all other Indebtedness shall be due and payable on the Maturity Date.

(5) Interest Rate Type.

See the Schedule of Interest Rate Type Provisions for additional provisions, if any, specific to the Interest Rate Type.

(b) Capitalization of Accrued But Unpaid Interest.

Any accrued and unpaid interest on the Mortgage Loan remaining past due for thirty (30) days or more may, at Lender's election, be added to and become part of the unpaid principal balance of the Mortgage Loan.

(c) Late Charges.

(1) If any Monthly Debt Service Payment (other than the payment due on the Maturity Date for repayment of the Mortgage Loan in full) due hereunder is not received by Lender within ten (10) days (or fifteen (15) days for any Mortgaged Property located in Mississippi or North Carolina to comply with applicable law) after the applicable Payment Date, or if any other amount payable under this Loan Agreement or any other Loan Document is not received by Lender within ten (10) days (or fifteen (15) days for any Mortgaged Property located in Mississippi or North Carolina to comply with applicable law) after the date such amount is due, inclusive of the date on which such amount is due, Borrower shall pay to Lender, immediately and without demand by Lender, the Late Charge.

The Late Charge is payable in addition to, and not in lieu of, any interest payable at the Default Rate pursuant to Section 2.02 (d).

(2) Borrower acknowledges and agrees that:

(A) its failure to make timely payments will cause Lender to incur additional expenses in servicing and processing the Mortgage Loan;

(B) it is extremely difficult and impractical to determine those additional expenses;

(C) Lender is entitled to be compensated for such additional expenses; and

(D) the Late Charge represents a fair and reasonable estimate, taking into account all circumstances existing on the date hereof, of the additional expenses Lender will incur by reason of any such late payment.

(d) Default Rate.

(1) Default interest shall be paid as follows:

(A) If any amount due on the Mortgage Loan (other than amounts due on the Maturity Date) remains past due for thirty (30) days or more, interest on such unpaid amount(s) shall accrue from the date payment is due at the Default Rate and shall be payable upon demand by Lender.

(B) If any principal, Accrued Interest or other Indebtedness due on the Mortgage Loan is not paid in full on the Maturity Date, then interest shall accrue at the Default Rate on all such unpaid amounts from the Maturity Date until fully paid and shall be payable upon demand by Lender.

Absent a demand by Lender, any such amounts shall be payable by Borrower in the same manner as provided for the payment of Monthly Debt Service Payments. To the extent permitted by applicable law, interest shall also accrue at the Default Rate on any judgment obtained by Lender against Borrower in connection with the Mortgage Loan.

(2) Borrower acknowledges and agrees that:

(A) its failure to make timely payments will cause Lender to incur additional expenses in servicing and processing the Mortgage Loan; and

(B) in connection with any failure to timely pay all amounts due in respect of the Mortgage Loan on the Maturity Date, or during the time that any Monthly Debt Service Payment or other payment due on the Mortgage Loan is delinquent for more than thirty (30) days:

(i) Lender's risk of nonpayment of the Mortgage Loan will be materially increased;

(ii) Lender's ability to meet its other obligations and to take advantage of other investment opportunities will be adversely impacted;

(iii) Lender will incur additional costs and expenses arising from its loss of the use of the amounts due;

(iv) it is extremely difficult and impractical to determine such additional costs and expenses;

(v) Lender is entitled to be compensated for such additional risks, costs and expenses; and

(vi) the increase from the Interest Rate to the Default Rate represents a fair and reasonable estimate of the additional risks, costs and expenses Lender will incur by reason of Borrower's delinquent payment and the additional compensation Lender is entitled to receive for the increased risks of nonpayment associated with a delinquency on the Mortgage Loan (taking into account all circumstances existing on the Effective Date).

(e) Address for Payments.

All payments due pursuant to the Loan Documents shall be payable at Lender's Payment Address, or such other place and in such manner as may be designated from time to time by written notice to Borrower by Lender.

(f) Application of Payments.

If at any time Lender receives, from Borrower or otherwise, any amount in respect of the Indebtedness that is less than all amounts due and payable at such time, then Lender may apply such payment to amounts then due and payable in any manner and in any order determined by Lender or hold in suspense and not apply such amount at Lender's election. Neither Lender's acceptance of an amount that is less than all amounts then due and payable, nor Lender's application of, or suspension of the application of, such payment, 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 Loan Agreement and the other Loan Documents shall remain unchanged.

Section 2.03 **Lockout/Prepayment.**

(a) Prepayment; Prepayment Lockout; Prepayment Premium.

(1) Borrower shall not make a voluntary full or partial prepayment on the Mortgage Loan during any Prepayment Lockout Period nor shall Borrower make a voluntary partial prepayment at any time. Except as expressly provided in this Loan Agreement (including as provided in the Prepayment Premium Schedule), a Prepayment Premium calculated in accordance with the Prepayment Premium Schedule shall be payable in connection with any prepayment of the Mortgage Loan.

(2) If a Prepayment Lockout Period applies to the Mortgage Loan, and during such Prepayment Lockout Period Lender accelerates the unpaid principal balance of the Mortgage Loan or otherwise applies collateral held by Lender to the repayment of any portion of the unpaid principal balance of the Mortgage Loan, the Prepayment Premium shall be due and payable and equal to the amount obtained by multiplying the percentage indicated (if at all) in the Prepayment Premium Schedule by the amount of principal being prepaid at the time of such acceleration or application.

(b) Voluntary Prepayment in Full.

At any time after the expiration of any Prepayment Lockout Period, Borrower may voluntarily prepay the Mortgage Loan in full on a Permitted Prepayment Date so long as:

(1) Borrower delivers to Lender a Prepayment Notice specifying the Intended Prepayment Date not more than sixty (60) days, but not less than thirty (30) days (if given via U.S. Postal Service) or twenty (20) days (if given via facsimile, e-mail or overnight courier) prior to such Intended Prepayment Date; and

(2) Borrower pays to Lender an amount equal to the sum of:

(A) the entire unpaid principal balance of the Mortgage Loan; plus

- (B) all Accrued Interest (calculated through the last day of the month in which the prepayment occurs); plus
- (C) the Prepayment Premium; plus
- (D) all other Indebtedness.

In connection with any such voluntary prepayment, Borrower acknowledges and agrees that interest shall always be calculated and paid through the last day of the month in which the prepayment occurs (even if the Permitted Prepayment Date for such month is not the last day of such month, or if Lender approves prepayment on an Intended Prepayment Date that is not a Permitted Prepayment Date). Borrower further acknowledges that Lender is not required to accept a voluntary prepayment of the Mortgage Loan on any day other than a Permitted Prepayment Date. However, if Lender does approve an Intended Prepayment Date that is not a Permitted Prepayment Date and accepts a prepayment on such Intended Prepayment Date, such prepayment shall be deemed to be received on the immediately following Permitted Prepayment Date. If Borrower fails to prepay the Mortgage Loan on the Intended Prepayment Date for any reason (including on any Intended Prepayment Date that is not a Permitted Prepayment Date but is approved by Lender) and such failure continues for five (5) Business Days or longer, or into the following month (if sooner), Lender may recalculate the payoff amount. Borrower shall immediately pay to Lender any additional amounts required by any such recalculation.

(c) Acceleration of Mortgage Loan.

Upon acceleration of the Mortgage Loan, Borrower shall pay to Lender:

- (1) the entire unpaid principal balance of the Mortgage Loan;
- (2) all Accrued Interest (calculated through the last day of the month in which the acceleration occurs);
- (3) the Prepayment Premium; and
- (4) all other Indebtedness.

(d) Application of Collateral.

Any application by Lender of any collateral or other security to the repayment of all or any portion of the unpaid principal balance of the Mortgage Loan prior to the Maturity Date in accordance with the Loan Documents shall be deemed to be a prepayment by Borrower. Any such prepayment shall require the payment to Lender by Borrower of the Prepayment Premium calculated on the amount being prepaid in accordance with this Loan Agreement.

(e) Casualty and Condemnation.

Notwithstanding any provision of this Loan Agreement to the contrary, no Prepayment Premium shall be payable with respect to any prepayment occurring as a result of the application of any insurance proceeds or condemnation award in accordance with this Loan Agreement.

(f) No Effect on Payment Obligations.

Unless otherwise expressly provided in this Loan Agreement, any prepayment required by any Loan Document of less than the entire unpaid principal balance of the Mortgage Loan shall not extend or postpone the due date of any subsequent Monthly Debt Service Payments, Monthly Replacement Reserve Deposit, or other payment, or change the amount of any such payments or deposits.

(g) Loss Resulting from Prepayment.

Borrower acknowledges and agrees that:

- (1) any prepayment of the unpaid principal balance of the Mortgage Loan, whether voluntary or involuntary, or resulting from a default by Borrower, will result in Lender's incurring loss, including reinvestment loss, additional risk, expense and frustration or impairment of Lender's ability to meet its commitments to third parties;
- (2) it is extremely difficult and impractical to ascertain the extent of such losses, risks and damages;
- (3) the formula for calculating the Prepayment Premium represents a reasonable estimate of the losses, risks and damages Lender will incur as a result of a prepayment; and
- (4) the provisions regarding the Prepayment Premium contained in this Loan Agreement are a material part of the consideration for the Mortgage Loan, and that the terms of the Mortgage Loan are in other respects more favorable to Borrower as a result of Borrower's voluntary agreement to such prepayment provisions.

ARTICLE 3 - PERSONAL LIABILITY

Section 3.01 Non-Recourse Mortgage Loan; Exceptions.

Except as otherwise provided in this Article 3 or in any other Loan Document, none of Borrower, or any director, officer or employee of Borrower, shall have personal liability under this Loan Agreement or any other Loan Document for the repayment of the Indebtedness or for the performance of any other obligations of Borrower under the Loan Documents, and Lender's only recourse for the satisfaction of such Indebtedness and the performance of such obligations shall be Lender's exercise of its rights and remedies with respect to the Mortgaged Property and any other collateral held by Lender as security for the Indebtedness. This limitation on Borrower's liability shall not limit or impair Lender's enforcement of its rights against any Guarantor under any Loan Document.

Section 3.02 Personal Liability of Borrower (Exceptions to Non-Recourse Provision).

(a) Personal Liability Based on Lender's Loss.

Borrower shall be personally liable to Lender for the repayment of the portion of the Indebtedness equal to any loss or damage suffered by Lender as a result of:

- (1) failure to pay to Lender upon demand after an Event of Default, all Rents to which Lender is entitled under the Loan Documents and the amount of all security deposits collected by Borrower from tenants;
- (2) failure to maintain all insurance policies required by the Loan Documents;
- (3) failure to apply all insurance proceeds and any condemnation award as required by the Loan Documents;
- (4) failure to comply with any provision of this Loan Agreement or any other Loan Document relating to the delivery of books and records, statements, schedules and reports;
- (5) failure to apply Rents to the ordinary and necessary expenses of owning and operating the Mortgaged Property (other than property management fees that are not currently payable pursuant to the terms of any collateral assignment of property management agreement required by Lender), and to Debt Service Amounts, except that Borrower will not be personally liable with respect to Rents that are distributed in any calendar year if Borrower has paid all ordinary and necessary expenses of owning and operating the Mortgaged Property and Debt Service for the calendar year that such Rents are attributable; or
- (6) waste or abandonment of the Mortgaged Property;

provided, however, Borrower shall not have personal liability under clauses (1), (3), or (5) above to the extent that Borrower lacks the legal right to direct the disbursement of the applicable funds due to an involuntary Bankruptcy Event that occurs without the consent, encouragement or active participation of Guarantor, Key Principal or Borrower Affiliate.

(b) Full Personal Liability for Mortgage Loan.

Borrower shall be personally liable to Lender for the repayment of all of the Indebtedness, and the Mortgage Loan shall be fully recourse to Borrower, upon the occurrence of any of the following:

- (1) failure by Borrower to comply with the single-asset entity requirements of this Loan Agreement or any other Loan Document;
- (2) a Transfer (other than a conveyance of the Mortgaged Property at a Foreclosure Event pursuant to the Security Instrument and this Loan Agreement) that is not permitted under this Loan Agreement or any other Loan Document;
- (3) the occurrence of any Bankruptcy Event (other than an acknowledgement in writing as described in (b) of the definition of "Bankruptcy Event"); provided, however, in the event of an involuntary Bankruptcy Event, Borrower shall only be personally liable if such involuntary Bankruptcy Event occurs with the consent, encouragement or active participation of Borrower, Guarantor, Key Principal or any Borrower Affiliate; or
- (4) fraud or written material misrepresentation by Borrower, Guarantor, Key Principal, or any officer, director, partner, member, or shareholder of Borrower, Guarantor, or Key Principal or material omission in connection with: any application for

or creation of the Indebtedness, on-going financial or other reporting, or any request for action or consent by Lender.

Section 3.03 Personal Liability for Indemnity Obligations.

Borrower shall be personally and fully liable to Lender for Borrower's indemnity obligations under Section 13.01(e), the Environmental Indemnity Agreement and any other indemnity provided by Borrower under any other Loan Document. Borrower's liability for such indemnity obligations shall not be limited by the amount of the Indebtedness, the repayment of the Indebtedness, or otherwise.

Section 3.04 Lender's Right to Forego Rights Against Mortgaged Property.

To the extent that Borrower has personal liability under this Loan Agreement or any other Loan Document, Lender may exercise its rights against Borrower personally to the fullest extent permitted by applicable law without regard to whether Lender has exercised any rights against the Mortgaged Property, the UCC Collateral or any other security, or pursued any rights against any Guarantor or Key Principal, or pursued any other rights available to Lender under this Loan Agreement, any other Loan Document or applicable law. For purposes of this Section 3.04 only, the term "Mortgaged Property" shall not include any funds that have been applied by Borrower as required or permitted by this Loan Agreement prior to the occurrence of an Event of Default, or that Borrower was unable to apply as required or permitted by this Loan Agreement because of a Bankruptcy Event. To the fullest extent permitted by applicable law, in any action to enforce Borrower's personal liability under this Article 3, Borrower waives any right to set off the value of the Mortgaged Property against such personal liability.

ARTICLE 4 - BORROWER STATUS

Section 4.01 Representations and Warranties.

The representations and warranties made by Borrower to Lender in this Section 4.01 are made as of the Effective Date, and are true and correct except as disclosed on the Exceptions to Representations and Warranties Schedule.

(a) Due Organization and Qualification.

Borrower is validly existing and qualified to transact business and is in good standing in the state in which it is formed or organized, the Property Jurisdiction and in each other jurisdiction that qualification or good standing is required according to applicable law to conduct its business with respect to the Mortgaged Property and where the failure to be so qualified or in good standing would adversely affect Borrower's operation of the Mortgaged Property or the validity, enforceability or the ability of Borrower to perform its obligations under this Loan Agreement or any other Loan Document.

(b) Location.

Borrower's General Business Address is Borrower's principal place of business and principal office.

(c) Power and Authority.

Borrower has the requisite power and authority:

(1) to own the Mortgaged Property and to carry on its business as now conducted and as contemplated to be conducted in connection with the performance of its obligations under this Loan Agreement and under the other Loan Documents to which it is a party; and

(2) to execute and deliver this Loan Agreement and the other Loan Documents to which it is a party, and to carry out the transactions contemplated by this Loan Agreement and the other Loan Documents to which it is a party.

(d) Due Authorization.

The execution, delivery and performance of this Loan Agreement and the other Loan Documents to which it is a party have been duly authorized by all necessary action and proceedings by or on behalf of Borrower, and no further approvals or filings of any kind, including any approval of or filing with any Governmental Authority, are required by or on behalf of Borrower as a condition to the valid execution, delivery and performance by Borrower of this Loan Agreement or any of the other Loan Documents to which it is a party, except filings required to perfect and maintain the liens to be granted under the Loan Documents and routine filings to maintain good standing and its existence.

(e) Valid and Binding Obligations.

This Loan Agreement and the other Loan Documents to which it is a party have been duly executed and delivered by Borrower and constitute the legal, valid and binding obligations of Borrower, enforceable against Borrower in accordance with their respective terms, except as such enforceability may be limited by applicable Insolvency Laws or by the exercise of discretion by any court.

(f) Effect of Mortgage Loan on Borrower's Financial Condition.

Borrower is not presently Insolvent and the Mortgage Loan will not render Borrower Insolvent. Borrower has sufficient working capital, including proceeds from the Mortgage Loan, cash flow from the Mortgaged Property, or other sources, not only to adequately maintain the Mortgaged Property, but also to pay all of Borrower's outstanding debts as they come due, including all Debt Service Amounts.

(g) Economic Sanctions, Anti-Money Laundering and Anti-Corruption.

None of Borrower, any Guarantor, any Key Principal, or any Principal, nor to Borrower's knowledge, its general partners, managing members, managers (if non-member managed), or any Person owning or controlling any of them:

(1) is in violation of:

(A) any applicable anti-money laundering laws, including those contained in the Bank Secrecy Act;

(B) any applicable economic sanction laws administered by OFAC or by the United States Department of State; or

(C) any applicable anti-drug trafficking, anti-terrorism, or anti-corruption laws, civil or criminal; or

(2) is a Person:

(A) that is charged with, or has reason to believe that he, she or it is under investigation for, any violation of any such laws;

(B) that has been convicted of any violation of, has been subject to civil penalties pursuant to, or had any of its property seized or forfeited under any such laws;

(C) named on the list of “Specially Designated Nationals or Blocked Persons” maintained by OFAC (or any successor United States government office or list), or any similar list maintained by the United States Department of State (or any successor United States government office or list);

(D) with whom any United States Person, any entity organized under the laws of the United States or its constituent states or territories, or any entity, regardless of where organized, having its principal place of business within the United States or any of its territories, is prohibited from transacting business of the type contemplated by this Loan Agreement and the other Loan Documents under any other applicable law; or

(E) that is owned, controlled by, or affiliated with any Person identified in clause (A), (B), (C), and/or (D) of this Section 4.01(g)(2); or

(3) is in violation of any obligation to maintain appropriate internal controls as required by the governing laws of the jurisdiction of such Person as are necessary to ensure compliance with the economic sanctions, anti-money laundering and anti-corruption laws of the United States and the jurisdiction where the Person resides, is domiciled or has its principal place of business.

(h) Borrower Single Asset Status.

Borrower:

(1) does not own any real property, personal property or assets other than the Mortgaged Property;

(2) does not own, operate or participate in any business other than the management and operation of the Mortgaged Property;

(3) has no material financial obligation under any indenture, mortgage, deed of trust, deed to secure debt, loan agreement or other agreement or instrument to which Borrower is a party or by which Borrower or the Mortgaged Property is otherwise bound, other than unsecured obligations incurred in the ordinary course of the operation of the Mortgaged Property and obligations under the Loan Documents and obligations secured by the Mortgaged Property to the extent permitted by the Loan Documents;

(4) has accurately maintained its financial statements, accounting records and other partnership, real estate investment trust, limited liability company or corporate documents, as the case may be, separate from those of any other Person;

(5) has not commingled its assets or funds with those of any other Person;

(6) has been adequately capitalized in light of its contemplated business operations;

(7) has not assumed, guaranteed or become obligated for the liabilities of any other Person (except in connection with the Mortgage Loan or the endorsement of negotiable instruments in the ordinary course of business) or held out its credit as being available to satisfy the obligations of any other Person; and

(8) has not entered into, and was not a party to, any transaction with any affiliate of any Person, except in the ordinary course of business and on terms which are no less favorable to any such Person than would be obtained in a comparable arm's length transaction with an unrelated third party.

(i) No Bankruptcies or Judgments.

None of Borrower, any Guarantor, any Key Principal, or any Principal, nor to Borrower's knowledge, its general partners, managing members, managers (if non-member managed), or any Person owning a Controlling Interest in any of them is currently:

(1) the subject of or a party to any completed or pending bankruptcy, reorganization, including any receivership or other insolvency proceeding;

(2) preparing or intending to be the subject of a Bankruptcy Event; or

(3) the subject of any judgment unsatisfied of record or docketed in any court; or

(4) Insolvent.

(j) No Litigation.

There are no actions, suits or proceedings at law or in equity by or before any Governmental Authority now pending or, to Borrower's knowledge, threatened against or affecting Borrower, any Guarantor, any Key Principal, any Principal or the Mortgaged Property.

(k) Payment of Taxes, Assessments and Other Charges.

Borrower confirms that:

(1) it has filed all federal, state, county and municipal tax returns and reports required to have been filed by Borrower;

(2) it has paid all taxes, governmental charges and assessments due and payable with respect to such returns and reports;

(3) there is no controversy or objection pending, or to the knowledge of Borrower, threatened in respect of any tax returns of Borrower; and

(4) it has made adequate reserves on its books and records for all taxes that have accrued but which are not yet due and payable.

(l) Not a Foreign Person.

Borrower is not a “foreign person” within the meaning of Section 1445(f)(3) of the Internal Revenue Code.

(m) ERISA.

Borrower acknowledges that:

- (1) it has no Employee Benefit Plan and does not maintain or sponsor an Employee Benefit Plan intended to meet the requirements of a “qualified plan” under Section 401(a) of the Internal Revenue Code;
- (2) it does not maintain, sponsor or contribute to any Employee Benefit Plan that is subject to Title IV of ERISA or Section 412 of the Internal Revenue Code;
- (3) it has not engaged in a non-exempt “prohibited transaction” described in Section 406 of ERISA or Section 4975 of the Internal Revenue Code that could result in an assessment of a civil penalty under Section 502(i) of ERISA or excise tax under Section 4975 of the Internal Revenue Code and none of the assets of Borrower constitute “plan assets” (within the meaning of Department of Labor Regulation Section 2510.3-101) of any Employee Benefit Plan subject to Title I of ERISA;
- (4) it has not incurred any “withdrawal liability” and no “reportable event” has occurred (as such terms are described in Title IV of ERISA) with respect to any such Employee Benefit Plan, unless approved by the appropriate Governmental Authority;
- (5) none of Borrower, any general partner, manager (if non-member managed), or managing member of Borrower, or any Guarantor, Principal, or Key Principal, or any person under common control with Borrower, is or ever has been obligated to contribute to any “multiemployer plan” (as defined in Section 3(37) of ERISA); and
- (6) it has no unpaid obligations or liabilities that have not been discharged arising under ERISA of a character which if unpaid or unperformed might result in the imposition of a Lien against any of its properties or assets, including satisfaction of any plan funding requirements.

(n) Default Under Other Obligations.

- (1) The execution, delivery and performance of the obligations imposed on Borrower under this Loan Agreement and the Loan Documents to which it is a party will not cause Borrower to be in default under the provisions of any agreement, judgment or order to which Borrower is a party or by which such Borrower is bound.
- (2) None of Borrower, any general partner, manager (if non-member managed) or managing member of Borrower, or any Guarantor, Principal or Key Principal is in default under any obligation to Lender.

(o) Prohibited Person.

None of Borrower, any Guarantor, any Key Principal or any Principal, nor to Borrower's knowledge, its general partners, managing members, managers (if non-member managed) or any Person owning a Controlling Interest in any of them is a Prohibited Person.

Section 4.02 **Covenants.**

(a) Maintenance of Existence; Organizational Documents.

Borrower shall maintain its existence, its entity status, franchises, rights and privileges under the laws of the state of its formation or organization (as applicable). Borrower shall continue to be duly qualified and in good standing to transact business in each jurisdiction that qualification or standing is required according to applicable law to conduct its business with respect to the Mortgaged Property and where the failure to do so would adversely affect Borrower's operation of the Mortgaged Property or the validity, enforceability or the ability of Borrower to perform its obligations under this Loan Agreement or any other Loan Document. Borrower shall not make any material change to its organizational documents, including changes relating to control of, or the ability to oversee management and day-to-day operations of, Borrower, without Lender's prior written consent.

(b) Economic Sanctions and Anti-Money Laundering.

(1) Borrower shall at all times remain, and shall cause its general partners, managing members and managers (if non-member managed), and any Guarantor, Key Principal, Principal and any Person owning or controlling any of them to remain, in compliance with:

- (A) any applicable anti-money laundering laws, including those contained in the Bank Secrecy Act;
- (B) any applicable economic sanction laws administered by OFAC or by the United States Department of State; and
- (C) any applicable anti-drug trafficking, anti-terrorism, or anti-corruption laws, civil or criminal.

(2) At no time shall Borrower, or its general partners, managing members, managers (if non-member managed), any Guarantor, Key Principal, Principal, or any Person owning or controlling any of them, be a Person:

- (A) that is charged with, or has reason to believe that he, she or it is under investigation for, any violation of any such laws;
- (B) that has been convicted of any violation of, has been subject to civil penalties pursuant to, or had any of its property seized or forfeited under, any such laws;
- (C) named on the list of "Specially Designated Nationals or Blocked Persons" maintained by OFAC (or any successor United States government office or list), or any similar list maintained by the United States Department of State (or any successor United States government office or list);

(D) with whom any United States Person, any entity organized under the laws of the United States or its constituent states or territories, or any entity, regardless of where organized, having its principal place of business within the United States or any of its territories, is prohibited from transacting business of the type contemplated by this Loan Agreement and the other Loan Documents under any other applicable law; or

(E) that is owned, controlled by or affiliated with any Person identified in clause (A), (B), (C), and/or (D) of this Section 4.02(b)(2).

(3) At no time shall Borrower, its general partners, managing members, managers, non-member managers, any Guarantor, Key Principal, Principal and any Person owning or controlling any of them, be a Person in violation of any obligation to maintain appropriate internal controls as required by the governing laws of the jurisdiction of such Person as are necessary to ensure compliance with the economic sanctions, anti-money laundering, and anti-corruption laws of the United States and the jurisdiction where the Person resides, is domiciled or has its principal place of business.

(c) Payment of Taxes, Assessments and Other Charges.

Borrower shall file all federal, state, county and municipal tax returns and reports required to be filed by Borrower and shall pay, before any fine, penalty, interest or cost may be added thereto, all taxes payable with respect to such returns and reports.

(d) Borrower Single Asset Status.

Until the Indebtedness is fully paid, Borrower:

- (1) shall not acquire any real property, personal property or assets other than the Mortgaged Property;
- (2) shall not own, operate or participate in any business other than the management and operation of the Mortgaged Property;
- (3) shall not commingle its assets or funds with those of any other Person unless such assets or funds can be segregated and identified;
- (4) shall accurately maintain its financial statements, accounting records and other partnership, real estate investment trust, limited liability company or corporate documents, as the case may be, separate from those of any other Person;
- (5) shall not assume, guaranty or become obligated for, the liabilities of any other Person (except in connection with the Mortgage Loan or the endorsement of negotiable instruments in the ordinary course of business) or hold out its credit as being available to satisfy the obligations of any other Person; or
- (6) shall not enter into, or become a party to, any transaction with any affiliate of any Person, except in the ordinary course of business and on terms which are no less favorable to any such Person than would be obtained in a comparable arm's length transaction with an unrelated third party.

(e) ERISA.

Borrower acknowledges that:

- (1) it shall not maintain or sponsor an Employee Benefit Plan or fail to comply with the requirements of a “qualified plan” under Section 401(a) of the Internal Revenue Code;
- (2) it shall not maintain, sponsor or contribute to any Employee Benefit Plan that is subject to Title IV of ERISA or Section 412 of the Internal Revenue Code;
- (3) it shall not engage in a non-exempt “prohibited transaction” described in Section 406 of ERISA or Section 4975 of the Internal Revenue Code that could result in an assessment of a civil penalty under Section 502(i) of ERISA or excise tax under Section 4975 of the Internal Revenue Code, and none of the assets of Borrower shall constitute “plan assets” (within the meaning of Department of Labor Regulation Section 2510.3-101) of any Employee Benefit Plan subject to Title I of ERISA;
- (4) it shall not incur any “withdrawal liability” or trigger a “reportable event” (as such terms are described in Title IV of ERISA) with respect to any such Employee Benefit Plan, unless approved by the appropriate Governmental Authority;
- (5) none of Borrower, any general partner, manager, managing member or Principal of Borrower, or any Guarantor or Key Principal, or any person under common control with Borrower, shall withdraw from any Employee Benefit Plan that is a “multiemployer plan” (as defined in Section 3(37) of ERISA); and
- (6) it shall not incur any liabilities under ERISA that if unpaid or unperformed might result in the imposition of a Lien against any of its properties or assets, including satisfaction of any plan funding requirements.

(f) Notice of Litigation or Insolvency.

Borrower shall give immediate written notice to Lender of any claims, actions, suits or proceedings at law or in equity (including any insolvency, bankruptcy or receivership proceeding) by or before any Governmental Authority pending or, to Borrower’s knowledge, threatened against or affecting Borrower, any Guarantor, any Key Principal, any Principal or the Mortgaged Property, which claims, actions, suits or proceedings, if adversely determined would reasonably be expected to materially adversely affect the financial condition or business of Borrower, any Guarantor, any Key Principal or any Principal or the condition or ownership of the Mortgaged Property (including any claims, actions, suits or proceedings regarding fair housing, anti-discrimination, or equal opportunity, which shall always be deemed material).

(g) Payment of Costs, Fees, and Expenses.

In addition to the payments specified in this Loan Agreement, Borrower shall pay, on demand, all of Lender’s out-of-pocket fees, costs, charges or expenses (including the reasonable fees and expenses of attorneys, accountants, and other experts) incurred by Lender in connection with:

- (1) any amendment to, or consent, or waiver required under this Loan Agreement or any of the Loan Documents (whether or not any such amendments, consents, or waivers are entered into);
- (2) defending or participating in any litigation arising from actions by third parties and brought against or involving Lender with respect to:
 - (A) the Mortgaged Property;
 - (B) any event, act, condition, or circumstance in connection with the Mortgaged Property; or
 - (C) the relationship between Lender, Borrower, Key Principal and Guarantor in connection with this Loan Agreement or any of the transactions contemplated by this Loan Agreement;
- (3) the administration or enforcement of, or preservation of rights or remedies under, this Loan Agreement or any other Loan Documents including or in connection with any litigation or appeals, any Foreclosure Event or other disposition of any collateral granted pursuant to the Loan Documents;
- (4) any Bankruptcy Event or Guarantor Bankruptcy Event;
- (5) any disclosure documents, including fees payable to any rating agencies, including the reasonable fees and expenses of Lender's attorneys and accountants.

ARTICLE 5 - THE MORTGAGE LOAN

Section 5.01 Representations and Warranties.

The representations and warranties made by Borrower to Lender in this Section 5.01 are made as of the Effective Date, and are true and correct except as disclosed on the Exceptions to Representations and Warranties Schedule.

(a) Receipt and Review of Loan Documents.

Borrower has received and reviewed this Loan Agreement and all of the other Loan Documents.

(b) No Default.

No Event of Default exists under any of the Loan Documents and the execution, delivery and performance of the obligations imposed on Borrower under the Loan Documents will not cause Borrower to be in default under the provisions of any agreement, judgment or order to which Borrower is a party or by which Borrower is bound.

Section 5.02 Covenants.

(a) Ratification of Covenants; Estoppels; Certifications.

Borrower shall:

(1) promptly notify Lender in writing upon any violation of any covenant set forth in any Loan Document; provided, however, any such notice by Borrower shall not relieve Borrower of, or result in a waiver of, any obligation under this Loan Agreement or any other Loan Document; and

(2) within ten (10) days after a request from Lender, provide 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 Loan Documents are unmodified and in full force and effect (or, if there have been modifications, that the Loan Documents are in full force and effect as modified and setting forth such modifications);

(B) the unpaid principal balance of the Mortgage Loan;

(C) the date to which interest on the Mortgage Loan 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 this Loan Agreement or any of the other Loan Documents (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 Loan Documents; and

(F) any additional facts requested by Lender.

(b) Further Assurances.

(1) Other Documents As Lender May Require.

Borrower shall execute, acknowledge and deliver, at its 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 Loan Agreement and the other Loan Documents.

(2) Corrective Actions.

Borrower shall provide, or cause to be provided, to Lender, at Borrower's cost and expense, such further documentation or information deemed necessary or appropriate by Lender in the exercise of its rights under the related commitment letter between Borrower and Lender or to correct patent mistakes in the Loan Documents, the Title Policy or the funding of the Mortgage Loan.

(c) Sale of Mortgage Loan.

Borrower shall:

(1) do anything necessary to comply with the requirements of Lender or any Investor of the Mortgage Loan or provide, or cause to be provided, to Lender or any

Investor of the Mortgage Loan, at Borrower's cost and expense, such further documentation or information required by Lender or Investor, in order to enable:

- (A) Lender to sell the Mortgage Loan to such Investor;
- (B) Lender to obtain a refund of any commitment fee from any such Investor; or
- (C) any such Investor to further sell or securitize the Mortgage Loan;

(2) ratify and affirm in writing the representations and warranties set forth in any Loan Document as of such date specified by Lender modified as necessary to reflect changes that have occurred subsequent to the Effective Date;

(3) confirm that Borrower is not in default in paying the Indebtedness or in performing or observing any of the covenants or agreements contained in this Loan Agreement or any of the other Loan Documents (or, if Borrower is in default, describing such default in reasonable detail); and

(4) execute and deliver to Lender and/or any Investor such other documentation, including any amendments, corrections, deletions or additions to this Loan Agreement or other Loan Document(s) as is required by Lender or such Investor.

(d) Limitations on Further Acts of Borrower.

Nothing in Section 5.02(c) shall require Borrower to do any further act that has the effect of:

(1) changing the economic terms of the Mortgage Loan set forth in the related commitment letter between Borrower and Lender; or

(2) imposing on Borrower greater personal liability under the Loan Documents than that set forth in the related commitment letter between Borrower and Lender.

(e) Financing Statements; Record Searches.

(1) Borrower shall pay all filing costs and all costs and expenses associated with any filing or recording of:

(A) any financing statements, including all continuation statements, termination statements and amendments or any other filings related to security interests in or liens on collateral; and

(B) any record searches for financing statements that Lender may require.

(2) Borrower hereby authorizes Lender to file any financing statements, continuation statements, termination statements and amendments as Lender may require in order to protect and preserve Lender's lien priority and security interest in the Mortgaged Property (and to the extent Lender has filed any such financing statements,

continuation statements or amendments prior to the Effective Date, such filings by Lender are hereby authorized and ratified by Borrower).

ARTICLE 6 - PROPERTY USE, PRESERVATION AND MAINTENANCE

Section 6.01 **Representations and Warranties.**

The representations and warranties made by Borrower to Lender in this Section 6.01 are made as of the Effective Date, and are true and correct except as disclosed on the Exceptions to Representations and Warranties Schedule.

(a) Compliance with Law; Permits and Licenses.

(1) To Borrower's knowledge, all improvements to the Land and the use of the Mortgaged Property comply with all applicable laws, ordinances, statutes, rules and regulations, including all applicable statutes, rules and regulations pertaining to requirements for equal opportunity, anti-discrimination, fair housing and environmental protection.

(2) To Borrower's knowledge, there is no evidence of any illegal activities on the Mortgaged Property.

(3) To Borrower's knowledge, no permits or approvals from any Governmental Authority, other than those previously obtained and furnished to Lender, are necessary for the commencement and completion of the Repairs or Replacements, as applicable.

(4) All required permits, licenses and certificates to comply with all zoning and land use statutes, laws, ordinances, rules and regulations, and all applicable health, fire, safety and building codes, and for the lawful use and operation of the Mortgaged Property, including certificates of occupancy, apartment licenses or the equivalent, have been obtained and are in full force and effect.

(5) No portion of the Mortgaged Property has been purchased with the proceeds of any illegal activity.

(b) Property Characteristics.

(1) The Mortgaged Property contains not less than:

- (A) the Property Square Footage;
- (B) the Total Parking Spaces; and
- (C) the Total Residential Units.

(2) No part of the Land is included or assessed under or as part of another tax lot or parcel, and no part of any other property is included or assessed under or as part of the tax lot or parcels for the Land.

(c) Property Ownership.

Borrower is sole owner of the Mortgaged Property.

Section 6.02 **Covenants**

(a) Use of Property.

From and after the Effective Date, Borrower shall not, unless required by applicable law or Governmental Authority:

- (1) allow changes in the use of all or any part of the Mortgaged Property;
- (2) convert any individual dwelling units or common areas to commercial use;
- (3) initiate or acquiesce in a change in the zoning classification of the Land;
- (4) establish any condominium or cooperative regime with respect to the Mortgaged Property; or
- (5) subdivide the Land.

(b) Property Maintenance.

Borrower shall:

(1) 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;

(2) keep the Mortgaged Property in good repair and marketable condition (including the replacement of Personalty and Fixtures with items of equal or better function and quality) and subject to Section 9.03(b) 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 condition immediately prior to the damage (if improved after the Effective Date), whether or not insurance proceeds are or any condemnation award is available to cover any costs of such restoration or repair;

(3) commence all Required Repairs, Additional Lender Repairs and Additional Lender Replacements as follows:

(A) with respect to any Required Repairs, promptly following the Effective Date (subject to weather conditions, if applicable), in accordance with the timelines set forth on the Required Repair Schedule, or if no timelines are provided, as soon as practical following the Effective Date;

(B) with respect to Additional Lender Repairs, in the event that Lender determines that Additional Lender Repairs are necessary from time to time or pursuant to Section 6.03(c), promptly following Lender's notice of such Additional Lender Repairs (subject to weather conditions, if applicable),

commence any such Additional Lender Repairs in accordance with Lender's timelines, or if no timelines are provided, as soon as practical;

(C) with respect to Additional Lender Replacements, in the event that Lender determines that Additional Lender Replacements are necessary from time to time or pursuant to Section 6.03(c), promptly following Lender's notice of such Additional Lender Replacements (subject to weather conditions, if applicable), commence any such Additional Lender Replacements in accordance with Lender's timelines, or if no timelines are provided, as soon as practical;

(4) make, construct, install, diligently perform and complete all Replacements and Repairs:

(A) in a good and workmanlike manner as soon as practicable following the commencement thereof, free and clear of any Liens, including mechanics' or materialmen's liens and encumbrances (except for Permitted Encumbrances);

(B) in accordance with all applicable laws, ordinances, rules and regulations of any Governmental Authority including applicable building codes, special use permits and environmental regulations;

(C) in accordance with all applicable insurance requirements; and

(D) within all timeframes required by Lender, and Borrower acknowledges that it shall be an Event of Default if Borrower abandons or ceases work on any Repair at any time prior to the completion of the Repairs for a period of longer than twenty (20) days (except when such cessation results from causes beyond the control of Borrower and Borrower is diligently pursuing the reinstatement of such work, provided however any such abandonment or cessation shall not in any event allow the Repair to be completed after the Completion Period); and

(5) subject to the terms of Section 6.03(a) provide for professional management of the Mortgaged Property by a residential rental property manager satisfactory to Lender under a contract approved by Lender in writing;

(6) give notice to Lender of, and, unless otherwise directed in writing by Lender, appear in and defend any action or proceeding purporting to affect the Mortgaged Property, Lender's security for the Mortgage Loan or Lender's rights under this Loan Agreement; and

(7) upon Lender's request, submit to Lender any contracts or work orders described in Section 13.02(b).

(c) Property Preservation.

Borrower shall:

(1) not commit waste, or abandon or permit impairment or deterioration of the Mortgaged Property;

(2) except as otherwise permitted herein in connection with Repairs and Replacements, not remove, demolish or alter the Mortgaged Property or any part of the Mortgaged Property (or permit any tenant or any other person to do the same) except in connection with the replacement of tangible Personalty or Fixtures (provided such Personalty and Fixtures are replaced with items of equal or better function and quality);

(3) not engage in or knowingly permit, and shall take appropriate measures to prevent and abate or cease and desist, any illegal activities at the Mortgaged Property that could endanger tenants or visitors, result in damage to the Mortgaged Property, result in forfeiture of the Land or otherwise materially impair the lien created by the Security Instrument or Lender's interest in the Mortgaged Property;

(4) not permit any condition to exist on the Mortgaged Property that would invalidate any part of any insurance coverage required by this Loan Agreement; or

(5) not subject the Mortgaged Property to any voluntary, elective or non-compulsory tax lien or assessment (or opt in to any voluntary, elective or non-compulsory special tax district or similar regime).

(d) Property Inspections.

Borrower shall:

(1) permit Lender, its agents, representatives and designees to enter upon and inspect the Mortgaged Property (including in connection with any replacement, repair or environmental inspections), and shall cooperate and provide access to all areas of the Mortgaged Property (subject to the rights of tenants under the Leases) during normal business hours or at such other reasonable time upon reasonable notice, and at any time after an Event of Default or when exigent circumstances exist; and

(2) pay for reasonable costs or expenses incurred by Lender or its agents in connection with any such inspections.

(e) Compliance with Laws.

Borrower shall:

(1) comply with all laws, ordinances, statutes, rules and regulations of any Governmental Authority and all recorded lawful covenants and agreements relating to or affecting the Mortgaged Property, including all laws, ordinances, statutes, rules and regulations and covenants pertaining to construction of improvements on the Land, fair housing and requirements for equal opportunity, anti-discrimination, environmental protection and Leases;

(2) maintain all required permits, licenses and certificates necessary to comply with all zoning and land use statutes, laws, ordinances, rules and regulations, and all applicable health, fire, safety and building codes and for the lawful use and operation of the Mortgaged Property, including certificates of occupancy, apartment licenses or the equivalent;

(3) comply with all applicable laws that pertain to the maintenance and disposition of tenant security deposits;

(4) at all times maintain records sufficient to demonstrate compliance with the provisions of this Section 6.02 (e); and

(5) promptly after receipt or notification thereof, provide Lender copies of any building code or zoning violation from any Governmental Authority with respect to the Mortgaged Property.

Section 6.03 **Mortgage Loan Administration Matters Regarding the Property.**

(a) Property Management.

From and after the Effective Date, each property manager and each property management agreement must be approved by Lender. If, in connection with the making of the Mortgage Loan, or at any later date, Lender waives in writing the requirement that Borrower enter into a written contract for management of the Mortgaged Property, and Borrower later elects to enter into a written contract or change the management of the Mortgaged Property, such new property manager or the property management agreement must be approved by Lender. As a condition to any approval by Lender, Lender may require that Borrower and such new property manager enter into a collateral assignment of the property management agreement on a form approved by Lender.

(b) Subordination of Fees to Affiliated Property Managers.

Any Property Manager that is a Borrower Affiliate to whom fees are payable for the management of the Mortgaged Property must enter into a collateral agreement with Lender, in a form approved by Lender, providing for subordination of those fees and such other provisions as Lender may require.

(c) Physical Needs Assessment.

If, in connection with any inspection of the Mortgaged Property, Lender determines that the condition of the Mortgaged Property has deteriorated since the Effective Date, Lender may obtain, at Borrower's expense, a physical needs assessment of the Mortgaged Property. Lender's right to obtain a physical needs assessment pursuant to this Section 6.03(c) shall be in addition to any other rights available to Lender under this Loan Agreement in connection with any such deterioration. Any such inspection or physical needs assessment may result in Lender requiring Additional Lender Repairs or Additional Lender Replacements as further described in Section 13.02(a)(9)(B).

ARTICLE 7 - LEASES AND RENTS

Section 7.01 **Representations and Warranties.**

The representations and warranties made by Borrower to Lender in this Section 7.01 are made as of the Effective Date, and are true and correct except as disclosed on the Exceptions to Representations and Warranties Schedule.

(a) Prior Assignment of Rents.

Borrower has not executed any:

- (1) prior assignment of Rents (other than an assignment of Rents securing prior indebtedness that has been paid off and discharged or will be paid off and discharged with the proceeds of the Mortgage Loan); or
- (2) instrument which would prevent Lender from exercising its rights under this Loan Agreement or the Security Instrument.

(b) Prepaid Rents.

Borrower has not accepted, and does not expect to receive prepayment of, any Rents for more than two (2) months prior to the due dates of such Rents.

Section 7.02 **Covenants.**

(a) Leases.

Borrower shall:

- (1) comply with and observe Borrower's obligations under all Leases, including Borrower's obligations pertaining to the maintenance and disposition of tenant security deposits;
- (2) surrender possession of the Mortgaged Property, including all Leases and all security deposits and prepaid Rents, immediately upon appointment of a receiver or Lender's entry upon and taking of possession and control of the Mortgaged Property, as applicable; and
- (3) promptly provide Lender a copy of any non-Residential Lease at the time such Lease is executed (subject to Lender's consent rights for Material Commercial Leases in Section 7.02(b)), and, upon Lender's request, promptly provide Lender a copy of any Residential Lease then in effect as requested by Lender.

(b) Commercial Leases.

- (1) With respect to Material Commercial Leases, Borrower shall not:
 - (A) enter into any Material Commercial Lease except with the prior written consent of Lender and Lender's written approval of such Material Commercial Lease; or
 - (B) modify the terms of, extend or terminate any Material Commercial Lease (including any Material Commercial Lease in existence on the Effective Date) without the prior written consent of Lender.
- (2) With respect to any non-Material Commercial Lease, Borrower shall not:
 - (A) enter into any non-Material Commercial Lease that materially alters the use and type of operation of the premises subject to the Lease in effect as of the Effective Date, reduces the number or size of residential units at the Mortgaged Property or causes such non-Material Commercial Lease to be deemed a Material Commercial Lease; or

(B) modify the terms of any non-Material Commercial Lease (including any non-Material Commercial Lease in existence on the Effective Date) in any way that materially alters the use and type of operation of the premises subject to such non-Material Commercial Lease in effect as of the Effective Date, reduces the number or size of residential units at the Mortgaged Property or causes such non-Material Commercial Lease to be deemed a Material Commercial Lease.

(3) With respect to any Material Commercial Lease or non-Material Commercial Lease, Borrower shall cause the applicable tenant to provide within ten (10) days of the request, a certificate of estoppel, or if not provided by tenant within such ten (10) day period, Borrower shall provide such certificate of estoppel, certifying:

(A) that such Material Commercial Lease or non-Material Commercial Lease is unmodified and in full force and effect (or if there have been modifications, that such Material Commercial Lease or non-Material Commercial Lease is in full force and effect as modified and stating the modifications);

(B) the term of the Lease including any extensions thereto;

(C) the dates to which the Rent and any other charges hereunder have been paid by tenant;

(D) the amount of any security deposit delivered to Borrower as landlord;

(E) whether or not Borrower is in default (or whether any event or condition exists which, with the passage of time, would constitute an event of default) under such Lease;

(F) the address to which notices to tenant should be sent; and

(G) any other information as may be reasonably required by Lender.

(c) Payment of Rents.

Borrower shall:

(1) pay to Lender upon demand all Rents after the occurrence of an Event of Default;

(2) shall cooperate with Lender's efforts in connection with the assignment of Rents set forth in the Security Instrument; and

(3) not accept Rent under any Lease (whether residential or non-residential) for more than two (2) months in advance.

(d) Assignment of Rents.

Borrower shall not:

- (1) perform any acts and shall not execute any instrument that would prevent Lender from exercising its rights under the assignment of Rents granted in the Security Instrument or in any other Loan Document; or
- (2) interfere with Lender's collection of such Rents.

(e) Further Assignments of Leases and Rents.

Borrower shall execute and deliver any further assignments of Leases and Rents as Lender may require.

(f) Options to Purchase by Tenants.

No Lease (whether a Residential Lease or a non-Residential Lease) shall contain an option to purchase, right of first refusal or right of first offer, except as required by applicable law.

Section 7.03 **Mortgage Loan Administration Regarding Leases and Rents.**

(a) Material Commercial Lease Requirements.

Each Material Commercial Lease, including any renewal or extension of any Material Commercial Lease in existence as of the Effective Date, shall provide, directly or pursuant to a subordination, non-disturbance and attornment agreement approved by Lender, that:

- (1) the tenant shall, upon written notice from Lender after the occurrence of an Event of Default, pay all Rents payable under such Lease to Lender;
- (2) such Lease is subordinate to the lien of the Security Instrument;
- (3) the tenant shall attorn to Lender and any purchaser at a Foreclosure Event (such attornment to be self-executing and effective upon acquisition of title to the Mortgaged Property by any purchaser at a Foreclosure Event or by Lender in any manner);
- (4) the tenant agrees to execute such further evidences of attornment as Lender or any purchaser at a Foreclosure Event may from time to time request; and
- (5) such Lease shall not terminate as a result of a Foreclosure Event unless Lender or any other purchaser at such Foreclosure Event, but subject to the terms of the subordination, non-disturbance and attornment agreement, affirmatively elects to terminate such Lease.

(b) Residential Lease Requirements.

All Residential Leases shall be:

- (1) on forms approved by Lender; and
- (2) for initial lease terms of not less than six (6) months and not more than twenty-four (24) months (however, if customary in the applicable market, Residential

Leases with terms of less than six (6) months may be permitted with Lender's prior written consent).

ARTICLE 8 - BOOKS AND RECORDS; FINANCIAL REPORTING

Section 8.01 **Representations and Warranties.**

The representations and warranties made by Borrower to Lender in this Section 8.01 are made as of the Effective Date, and are true and correct except as disclosed on the Exceptions to Representations and Warranties Schedule.

(a) Financial Information.

All financial statements and data, including statements of cash flow and income and operating expenses, that have been delivered to Lender in respect of the Mortgaged Property:

- (1) are true, complete and correct in all material respects; and
- (2) accurately represent the financial condition of the Mortgaged Property as of such date.

(b) No Change in Facts or Circumstances.

All information in the Loan Application and in all financial statements, rent rolls, reports, certificates and other documents submitted in connection with the Loan Application are complete and accurate in all material respects. There has been no material adverse change in any fact or circumstance that would make any such information incomplete or inaccurate.

Section 8.02 **Covenants.**

(a) Obligation to Maintain Accurate Books and Records.

Borrower shall keep and maintain at all times at the Mortgaged Property or the property management agent's offices or Borrower's General Business Address and, upon Lender's request, shall make available at the Land:

- (1) 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
- (2) copies of all written contracts, Leases and other instruments that affect Borrower or the Mortgaged Property.

(b) Items to Furnish to Lender.

Borrower shall furnish to Lender the following, certified as true, complete and accurate by an individual having authority to bind Borrower (or Guarantor, as applicable), in such form and with such detail as Lender reasonably requires:

- (1) within forty-five (45) days after the end of each first, second and third calendar quarter, a statement of income and expenses for Borrower on a year-to-date basis as of the end of each calendar quarter, and
- (2) within one hundred twenty (120) days after the end of each calendar year:
 - (A) a statement of income and expenses for Borrower and Guarantor for such calendar year;
 - (B) a statement of cash flows of Borrower and Guarantor for such calendar year;
 - (C) when requested by Lender, balance sheet(s) showing all assets and liabilities of Borrower and Guarantor as of the end of such calendar year; and
 - (D) a written certification ratifying and affirming that:
 - (i) Borrower has taken no action in violation of Section 4.02(d) regarding its single asset status;
 - (ii) Borrower has received no notice of any building code violation, or if Borrower has received such notice, evidence of remediation;
 - (iii) Borrower has made no application for rezoning nor received any notice that the Mortgaged Property has been or is being rezoned; and
 - (iv) Borrower has taken no action and has no knowledge of any action that would violate the provisions of Section 11.02(b)(1)(F) regarding liens encumbering the Mortgaged Property;
 - (E) an accounting of all security deposits held pursuant to all Leases, including the name of the institution (if any) and the names and identification numbers of the accounts (if any) in which such security deposits are held and the name of the person to contact at such financial institution, along with any authority or release necessary for Lender to access information regarding such accounts; and
 - (F) a statement that identifies all owners of any interest in Borrower and the interest held by each, and if Borrower is a corporation, the names of all officers and directors of Borrower, and if Borrower is a limited liability company, the names of all managers who are not members;
- (3) within forty-five (45) days after the end of each first, second and third calendar quarter and within one hundred twenty (120) days after the end of each calendar year, and at any other time upon Lender's request, a rent schedule for the Mortgaged Property showing the name of each tenant and for each tenant, the space occupied, the lease expiration date, the rent payable for the current month, the date through which rent has been paid and any related information requested by Lender;

(4) upon Lender's request (but, absent an Event of Default, no more frequently than once in any six (6) month period):

(A) any item described in Section 8.02(b)(1) or Section 8.02(b)(2) for Borrower, certified as true, complete and accurate by an individual having authority to bind Borrower;

(B) a property management or leasing report for the Mortgaged Property, showing the number of rental applications received from tenants or prospective tenants and deposits received from tenants or prospective tenants, and any other information requested by Lender; and

(C) a statement of income and expenses for Borrower's operation of the Mortgaged Property on a year-to-date basis as of the end of each month for such period as requested by Lender, which statement shall be delivered within thirty (30) days after the end of such month requested by Lender.

(c) Delivery of Books and Records.

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

Section 8.03 **Mortgage Loan Administration Matters Regarding Books and Records and Financial Reporting.**

(a) Right to Audit Books and Records.

Lender may require that any or all of the statements, schedules and reports of Borrower or the Mortgaged Property be audited, at Borrower's expense, by independent certified public accountants acceptable to Lender; provided that such requirement shall be limited to not more than once per Borrower's fiscal year so long as no Event of Default has occurred (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). If Borrower fails, in a timely manner, to provide any such required audited materials, Lender shall have the right, at Borrower's expense, to have such materials audited by independent certified public accountants selected by Lender. All related costs and expenses of Lender shall become immediately due and payable within ten (10) Business Days after demand therefor.

(b) Credit Reports; Credit Score.

No more often than once in any twelve (12) month period, Lender is authorized to obtain a credit report (if applicable) on Borrower or any Guarantor or any Key Principal, the cost of which report shall be paid by Borrower, Guarantor, and Key Principal. Lender is authorized to obtain a Credit Score (if applicable) for Borrower, any Guarantor or any Key Principal at any time at Lender's expense.

ARTICLE 9 - INSURANCE

Section 9.01 Representations and Warranties.

The representations and warranties made by Borrower to Lender in this Section 9.01 are made as of the Effective Date, and are true and correct except as disclosed on the Exceptions to Representations and Warranties Schedule.

(a) Compliance with Insurance Requirements.

Borrower is in compliance with Lender's insurance requirements (or has obtained a written waiver from Lender for any non-compliant coverage) and has timely paid all premiums on all required insurance policies.

(b) Property Condition.

- (1) The Mortgaged Property has not been damaged by fire, water, wind or other cause of loss; or
- (2) if previously damaged, any previous damage to the Mortgaged Property has been repaired and the Mortgaged Property has been fully restored.

Section 9.02 Covenants.

(a) Insurance Requirements.

- (1) As required by Lender and applicable law, and as may be modified from time to time, Borrower shall:
 - (A) keep the Improvements insured at all times against any hazards, which insurance shall include coverage against loss by fire and allied perils, general boiler and machinery coverage, business income coverage and flood (if any of the Improvements are located in an area identified by the Federal Emergency Management Agency (or any successor) as an area having special flood hazards and to the extent flood insurance is available in that area), and may include sinkhole insurance, mine subsidence insurance, earthquake insurance, terrorism insurance and, if the Mortgaged Property does not conform to applicable building, zoning or land use laws, ordinance and law coverage;
 - (B) maintain at all times commercial general liability insurance, workmen's compensation insurance and such other liability, errors and omissions and fidelity insurance coverage; and
 - (C) maintain workmen's compensation insurance, builder's risk and public liability insurance, and other insurance in connection with completing the Repairs or Replacements, as applicable.

(b) Delivery of Policies, Renewals, Notices and Proceeds.

Borrower shall:

- (1) cause all insurance policies (including any policies not otherwise required by Lender) which can be endorsed with standard non-contributing, non-reporting mortgagee clauses making loss payable to Lender (or Lender's assigns) to be so endorsed;
- (2) 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;
- (3) deliver evidence, in form and content acceptable to Lender, that each existing insurance policy has been renewed not less than thirty (30) days prior to the applicable expiration date and (if such evidence is other than an original or duplicate original of a renewal policy) deliver the original or duplicate original of each renewal policy in form and content acceptable to Lender within ninety (90) days after the applicable expiration date of the original insurance policy);
- (4) provide immediate written notice to the insurance company and to Lender of any event of loss;
- (5) execute such further evidence of assignment of any insurance proceeds as Lender may require; and
- (6) provide immediate written notice to Lender of Borrower's receipt of any insurance proceeds under any insurance policy required by Section 9.02(a)(1)(A) above and, if requested by Lender, deliver to Lender all of such proceeds received by Borrower to be applied by Lender in accordance with this Article 9.

Section 9.03 **Mortgage Loan Administration Matters Regarding Insurance**

(a) Lender's Ongoing Insurance Requirements.

Borrower acknowledges that Lender's insurance requirements may change from time to time. All insurance policies and renewals of insurance policies required by this Loan Agreement shall be:

- (1) in the form and with the terms required by Lender;
- (2) in such amounts, with such maximum deductibles and for such periods required by Lender; and
- (3) issued by insurance companies satisfactory to Lender.

BORROWER ACKNOWLEDGES THAT ANY FAILURE TO COMPLY WITH INSURANCE PROVISIONS SHALL PERMIT LENDER TO PURCHASE SUCH INSURANCE AT BORROWER'S COST. SUCH INSURANCE MAY, BUT NEED NOT, PROTECT BORROWER'S INTERESTS. THE COVERAGE THAT LENDER PURCHASES MAY NOT PAY ANY CLAIM THAT BORROWER MAKES OR ANY CLAIM THAT IS MADE AGAINST BORROWER IN CONNECTION WITH THE MORTGAGED PROPERTY. IF LENDER PURCHASES INSURANCE FOR THE MORTGAGED PROPERTY, BORROWER WILL BE RESPONSIBLE FOR THE COSTS OF THAT INSURANCE, INCLUDING INTEREST AT THE DEFAULT RATE AND ANY OTHER CHARGES LENDER MAY IMPOSE IN CONNECTION WITH THE PLACEMENT OF THE INSURANCE UNTIL THE EFFECTIVE DATE OF THE CANCELLATION OR THE

EXPIRATION OF THE INSURANCE. THE COSTS OF THE INSURANCE SHALL BE ADDED TO BORROWER'S TOTAL OUTSTANDING BALANCE OR OBLIGATION AND SHALL CONSTITUTE ADDITIONAL INDEBTEDNESS. THE COSTS OF THE INSURANCE MAY BE MORE THAN THE COST OF INSURANCE BORROWER MAY BE ABLE TO OBTAIN ON ITS OWN. BORROWER MAY LATER CANCEL ANY INSURANCE PURCHASED BY LENDER, BUT ONLY AFTER PROVIDING EVIDENCE THAT BORROWER HAS OBTAINED INSURANCE AS REQUIRED BY THIS LOAN AGREEMENT AND THE OTHER LOAN DOCUMENTS.

(b) Application of Proceeds on Event of Loss.

(1) Upon an event of loss, Lender may, at Lender's option:

(A) hold such proceeds to be applied to reimburse Borrower for the cost of Restoration (in accordance with Lender's then-current policies relating to the restoration of casualty damage on similar multifamily residential properties); or

(B) apply such proceeds to the payment of the Indebtedness, whether or not then due; provided, however, Lender shall not apply insurance proceeds to the payment of the Indebtedness and shall permit Restoration pursuant to Section 9.03(b)(1) if all of the following conditions are met:

(i) no Event of Default has occurred (or any event which, with the giving of notice or the passage of time, or both, would constitute an Event of Default has occurred and is continuing);

(ii) Lender determines that there will be sufficient funds to complete the Restoration;

(iii) Lender determines that the net operating income generated by the Mortgaged Property after completion of the Restoration will be sufficient to support a debt service coverage ratio not less than the debt service coverage ratio immediately prior to the event of loss, but in no event less than 1.0x (the debt service coverage ratio shall be calculated on a thirty (30) year amortizing basis in all events) and shall include all operating costs and other expenses, Imposition Deposits, deposits to Collateral Accounts and Mortgage Loan repayment obligations);

(iv) Lender determines that the Restoration will be completed before the earlier of (x) one (1) year before the stated Maturity Date or (y) one (1) year after the date of the loss or casualty; and

(v) Borrower provides Lender, upon request, evidence of the availability during and after the Restoration of the insurance required to be maintained by Borrower pursuant to this Loan Agreement.

After the completion of Restoration in accordance with the above requirements, as determined by Lender, the balance, if any, of such proceeds shall be returned to Borrower.

(2) Notwithstanding the foregoing, if any loss is estimated to be in an amount equal to or less than \$50,000, Lender shall not exercise its rights and remedies as power-of-attorney herein and shall allow 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 policies of property damage insurance, and to collect and receive the proceeds of property damage insurance; provided that each of the following conditions shall be satisfied:

- (A) Borrower shall immediately notify Lender of the casualty giving rise to the claim;
- (B) no Event of Default has occurred (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);
- (C) the Restoration will be completed before the earlier of (i) one (1) year before the stated Maturity Date or (ii) one (1) year after the date of the loss or casualty;
- (D) there will be sufficient funds to complete the Restoration;
- (E) all proceeds of property damage insurance shall be issued in the form of joint checks to Borrower and Lender;
- (F) all proceeds of property damage insurance shall be applied to the Restoration;
- (G) Borrower shall deliver to Lender evidence satisfactory to Lender of completion of the Restoration and obtainment of all lien releases;
- (H) Borrower shall have complied to Lender's satisfaction with the foregoing requirements on any prior claims subject to this provision, if any; and
- (I) Lender shall have the right to inspect the Mortgaged Property.

(3) If Lender elects to apply insurance proceeds to the Indebtedness in accordance with the terms of this Loan Agreement, Borrower shall not be obligated to restore or repair the Mortgaged Property. Rather, Borrower shall restrict access to the damaged portion of the Mortgaged Property and, at its expense and regardless of whether such costs are covered by insurance, clean up any debris resulting from the casualty event, and, if required or otherwise permitted by Lender, demolish or raze any remaining part of the damaged Mortgaged Property to the extent necessary to keep and maintain the Mortgaged Property in a safe, habitable and marketable condition. Nothing in this Section 9.03(b) shall affect any of Lender's remedial rights against Borrower in connection with a breach by Borrower of any of its obligations under this Loan Agreement or under any Loan Document, including any failure to timely pay Monthly Debt Service Payments or maintain the insurance coverage(s) required by this Loan Agreement.

(c) Payment Obligations Unaffected.

The application of any insurance proceeds to the Indebtedness shall not extend or postpone the Maturity Date or the due date or the full payment of any Monthly Debt Service Payment, Monthly Replacement Reserve Deposit, any other installments referred to in this Loan Agreement or in any other Loan Document. Notwithstanding the foregoing, if Lender applies insurance proceeds to the Indebtedness in connection with a casualty of less than the entire Mortgaged Property, and after such application of proceeds the debt service coverage ratio (as determined by Lender) is less than 1.25x based on the then-applicable Monthly Debt Service Payment and the anticipated on-going net operating income of the Mortgaged Property after such casualty event, then Lender may, at its discretion, permit an adjustment to the Monthly Debt Service Payments that become due and owing thereafter, based on Lender's then-current underwriting requirements. In no event shall the preceding sentence obligate Lender to make any adjustment to the Monthly Debt Service Payments.

(d) Foreclosure Sale.

If the Mortgaged Property is transferred pursuant to a Foreclosure Event or Lender otherwise acquires title to the Mortgaged Property, Borrower acknowledges that Lender shall automatically succeed to all rights of Borrower in and to any insurance policies and unearned insurance premiums applicable to the Mortgaged Property and in and to the proceeds resulting from any damage to the Mortgaged Property prior to such Foreclosure Event or such acquisition.

(e) Appointment of Lender as Attorney-In-Fact.

Borrower hereby authorizes and appoints Lender as attorney-in-fact pursuant to Section 14.03(c).

ARTICLE 10 - CONDEMNATION

Section 10.01 **Representations and Warranties.**

The representations and warranties made by Borrower to Lender in this Section 10.01 are made as of the Effective Date, and are true and correct except as disclosed on the Exceptions to Representations and Warranties Schedule.

(a) Prior Condemnation Action.

No part of the Mortgaged Property has been taken in connection with a Condemnation Action.

(b) Pending Condemnation Actions.

No Condemnation Action is pending nor, to Borrower's knowledge, is threatened for the partial or total condemnation or taking of the Mortgaged Property.

Section 10.02 **Covenants.**

(a) Notice of Condemnation.

Borrower shall:

- (1) promptly notify Lender of any Condemnation Action;
- (2) appear in and prosecute or defend, at its own cost and expense, any action or proceeding relating to any Condemnation Action, including any defense of Lender's interest in the Mortgaged Property tendered to Borrower by Lender, unless otherwise directed by Lender in writing; and
- (3) execute such further evidence of assignment of any condemnation award in connection with a Condemnation Action as Lender may require.

(b) Condemnation Proceeds.

Borrower shall pay to Lender all awards or proceeds of a Condemnation Action promptly upon receipt.

Section 10.03 **Mortgage Loan Administration Matters Regarding Condemnation.**

(a) Application of Condemnation Awards.

Lender may apply any awards or proceeds of a Condemnation Action, after the deduction of Lender's expenses incurred in the collection of such amounts, to:

- (1) the restoration or repair of the Mortgaged Property; or
- (2) the payment of the Indebtedness, with the balance, if any, paid to Borrower.

(b) Payment Obligations Unaffected.

The application of any awards or proceeds of a Condemnation Action to the Indebtedness shall not extend or postpone the due date or the full payment of any Monthly Debt Service Payment, Monthly Replacement Reserve Deposit, any other installments referred to in this Loan Agreement or in any other Loan Document, or the Maturity Date.

(c) Appointment of Lender as Attorney-In-Fact.

Borrower authorizes and appoints Lender as attorney-in-fact pursuant to Section 14.03(c).

(d) Application of Proceeds.

If Lender elects to apply condemnation proceeds or awards to the Indebtedness in accordance with the terms of this Loan Agreement, Borrower shall not be obligated to restore or repair the Mortgaged Property. Rather, Borrower shall restrict access to the damaged portion of the Mortgaged Property and, at its expense and regardless of whether such costs are covered by insurance, clean up any debris resulting from the casualty event, and, if required or otherwise permitted by Lender, demolish or raze any remaining part of the damaged Mortgaged Property to the extent necessary to keep and maintain the Mortgaged Property in a safe, habitable and marketable condition. Nothing in this Section 10.03(d) shall affect any of Lender's remedial rights against Borrower in connection with a breach by Borrower of any of its obligations under this Loan Agreement or under any Loan Document, including any failure to timely pay Monthly Debt Service Payments or maintain the insurance coverage(s) required by this Loan Agreement.

ARTICLE 11 - LIENS, TRANSFERS AND ASSUMPTIONS

Section 11.01 Representations and Warranties.

The representations and warranties made by Borrower to Lender in this Section 11.01 are made as of the Effective Date, and are true and correct except as disclosed on the Exceptions to Representations and Warranties Schedule.

(a) No Labor or Materialmen's Claims.

All parties furnishing labor and materials have been paid in full and there are no mechanics' or materialmen's liens or claims outstanding for work, labor or materials affecting the Mortgaged Property, whether prior to, equal with or subordinate to the lien of the Security Instrument.

(b) No Other Interests.

No Person:

(1) other than Borrower has any possessory ownership or interest in the Mortgaged Property or right to occupy the same except under and pursuant to the provisions of existing Leases, the material terms of all such Leases having been previously disclosed to Lender;

(2) has an option, right of first refusal, or right of first offer (except as required by applicable law) to purchase the Mortgaged Property, or any interest in the Mortgaged Property, except as may be disclosed to and approved in writing by Lender.

Section 11.02 Covenants.

(a) Liens; Encumbrances.

Other than Permitted Encumbrances and the lien of the Security Instrument and this Loan Agreement, Borrower shall not permit the grant, creation or existence of any Lien, whether voluntary, involuntary or by operation of law, on all or any portion of the Mortgaged Property (including any voluntary, elective or non-compulsory tax lien or assessment pursuant to a voluntary, elective or non-compulsory special tax district or similar regime).

(b) Transfers.

(1) Mortgaged Property.

Borrower shall not Transfer, or cause or permit a Transfer of, all or any part of the Mortgaged Property (including any interest in the Mortgaged Property) other than:

(A) a Transfer to which Lender has consented in writing;

(B) the grant of a Residential Lease for a term of two (2) years or less and not containing an option to purchase or right of first refusal (except as required by applicable law);

(C) the grant of a non-Material Commercial Lease provided the use and type of operation of such space is unchanged from the use and type of operation in effect as of the Effective Date and the number and size of residential units at the Mortgaged Property are not reduced;

(D) a Transfer of obsolete or worn out Personalty or Fixtures that are contemporaneously replaced by items of equal or better function and quality which are free of Liens (other than those created by the Loan Documents);

(E) the grant of an easement, servitude or restrictive covenant to which Lender has consented, and Borrower has paid to Lender, upon demand, all costs and expenses incurred by Lender in connection with reviewing Borrower's request; or

(F) the creation of any tax lien, municipal lien, utility lien, mechanics' lien, materialmen's lien, or judgment lien against the Mortgaged Property if bonded off, released of record or otherwise remedied to Lender's satisfaction within sixty (60) days after the earlier of the date Borrower has actual notice or constructive notice of the existence of such lien.

(2) Interests in Borrower and/or Key Principal and/or Guarantor.

Other than a Transfer to which Lender has consented in writing, Borrower shall not Transfer, or cause or permit to be Transferred:

(A) a direct or indirect Controlling Interest in Borrower, Key Principal or Guarantor (if applicable);

(B) more than forty-nine percent (49%) of any Key Principal's or Guarantor's direct or indirect ownership interests in Borrower that existed on the Effective Date (individually or on an aggregate basis);

(C) the economic benefits or rights to cash flows attributable to any ownership interests in Borrower, Key Principal or Guarantor (if applicable) separate from the Transfer of the underlying ownership interests if the Transfer of the underlying ownership interest is prohibited by this Loan Agreement; or

(D) a Transfer to a new key principal or new guarantor (if such new key principal or guarantor is an entity) which entity has an organizational existence termination date that ends before the Maturity Date.

(3) Entity Conversion.

(A) Borrower shall not change its name, change its jurisdiction or organization, or cause or permit a conversion of Borrower from one type of entity into another type of entity if such conversion results in either:

(i) a Transfer of a Controlling Interest; or

(ii) a change in any assets, liabilities, legal rights or obligations of Borrower (or of Key Principal, Guarantor or any general partner,

manager (if non-member managed) or managing member of Borrower, as applicable), by operation of law or otherwise.

(B) Notwithstanding the foregoing, Borrower may convert from one type of legal entity into another type of legal entity for tax or other structuring purposes, provided:

- (i) the provisions of Section 11.02(b)(2) are satisfied;
- (ii) Borrower provides Lender with at least ten (10) days prior written notice of such conversion;
- (iii) Borrower provides Lender any certificates evidencing such conversion filed with the appropriate Secretary of State within ten (10) days after filing such certificates;
- (iv) Borrower provides Lender new certificates of good standing for such entity at least five (5) days prior to such conversion;
- (v) Lender reserves the right to file UCC-3 amendments where necessary reflecting the conversion;
- (vi) if required by Lender, Borrower executes an amendment to this Loan Agreement documenting the conversion; and
- (vii) Borrower shall provide Lender with confirmation from the title company (via electronic mail or letter) that nothing is needed in the land records (of the appropriate Property Jurisdiction) at such time to evidence such conversion, and no endorsements to the Title Policy are necessary to maintain Lender's coverage; or if any endorsements are necessary, Borrower shall provide such endorsements at Borrower's cost.

Section 11.03 **Mortgage Loan Administration Matters Regarding Liens, Transfers and Assumptions**

(a) Assumption of Mortgage Loan.

Lender shall consent to a Transfer of the Mortgaged Property to and an assumption of the Mortgage Loan by a new borrower if each of the following conditions is satisfied prior to the Transfer:

- (1) Borrower has submitted to Lender all information required by Lender to make the determination required by this Section 11.03(a);
- (2) no Event of Default has occurred, and no 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;
- (3) Lender determines that:
 - (A) the proposed new borrower, new key principal and any other new guarantor fully satisfy all of Lender's then-applicable borrower, key principal or

guarantor eligibility, credit, management and other loan underwriting standards (including any standards with respect to previous relationships between Lender and the proposed new borrower, new key principal and new guarantor and the organization of the new borrower, new key principal and new guarantor (if applicable));

(B) none of the proposed new borrower, new key principal and any new guarantor, or any owners of the proposed new borrower, new key principal and any new guarantor, are a Prohibited Person; and

(C) none of the proposed new borrower, new key principal and any new guarantor (if any of such are entities) shall have an organizational existence termination date that ends before the Maturity Date;

(4) Lender determines that the Mortgaged Property satisfies all of Lender's then-applicable loan underwriting standards, including physical condition, occupancy and net operating income;

(5) the proposed new borrower has executed an assumption agreement acceptable to Lender that, among other things, requires the proposed new borrower to assume and perform all obligations of Borrower (or any other transferor), and that may require that the new borrower comply with any provisions of any Loan Document which previously may have been waived by Lender for Borrower, subject to the terms of Section 11.03(g);

(6) one or more individuals or entities acceptable to Lender as new guarantors have executed and delivered to Lender:

(A) an assumption agreement acceptable to Lender that requires the new guarantor to assume and perform all obligations of Guarantor under any Guaranty given in connection with the Mortgage Loan; or

(B) a substitute Non-Recourse Guaranty and other substitute guaranty in a form acceptable to Lender;

(7) Lender has reviewed and approved the Transfer documents; and

(8) Lender has received the fees described in Section 11.03(g).

(b) Transfers to Key Principal-Owned Affiliates or Guarantor-Owned Affiliates.

(1) Transfers of direct or indirect ownership interests in Borrower that are not otherwise permitted by this Loan Agreement but in which Key Principal or Guarantor, or an entity in which Key Principal or Guarantor, as applicable, owns a Controlling Interest, is the transferee shall be consented to by Lender if such Transfer satisfies the applicable requirements of Section 11.03(a), other than Section 11.03(a)(5).

(2) Transfers of direct or indirect interests in Borrower held by a Key Principal or Guarantor to other Key Principals or Guarantors, as applicable, shall be consented to by Lender if such Transfer satisfies the following conditions:

(A) the Transfer does not cause a change in the management and control of Borrower; and

(B) the transferor Key Principal or Guarantor maintains the same right and ability to manage and control Borrower as existed prior to the Transfer.

If the conditions set forth in this Section 11.03(b) are satisfied, the Transfer Fee shall be waived provided Borrower shall pay the Review Fee and out-of-pocket costs set forth in Section 11.03(g).

(c) Estate Planning.

Notwithstanding the provisions of Section 11.02(b)(2), so long as (1) the Transfer does not cause a change in the management and control of Borrower and (2) the transferor Key Principal or Guarantor, as applicable, maintains the same right and ability to manage and control Borrower as existed prior to the Transfer, Lender shall consent to Transfers of direct or indirect ownership interests in Borrower held by a Key Principal or Guarantor to, and Transfers of direct or indirect ownership interests, in an entity Key Principal or entity Guarantor to:

(A) Immediate Family Members of such Key Principal or Guarantor;

(B) United States domiciled trusts established for the benefit of the transferor Key Principal or transferor Guarantor, or Immediate Family Members of the transferor Key Principal or the transferor Guarantor; or

(C) partnerships or limited liability companies of which the partners or members, respectively, are all Immediate Family Members of such Key Principal or Guarantor.

If the conditions set forth in this Section 11.03(c) are satisfied, the Transfer Fee shall be waived provided Borrower shall pay the Review Fee and out-of-pocket costs set forth in Section 11.03(g).

(d) Termination or Revocation of Trust.

If any of Borrower, Guarantor or Key Principal is a trust, the termination or revocation of such trust is an unpermitted Transfer; provided that the termination or revocation of the trust due to the death of an individual trustor shall not be considered an unpermitted Transfer so long as:

(1) Lender is notified within thirty (30) days of the death; and

(2) such Borrower, Guarantor or Key Principal, as applicable, is replaced with an individual or entity acceptable to Lender, in accordance with the provisions of Section 11.03(a) within ninety (90) days of the date of death.

If the conditions set forth in this Section 11.03(d) are satisfied, the Transfer Fee shall be waived; provided Borrower shall pay the Review Fee and out-of-pocket costs set forth in Section 11.03(g).

(e) Death of Key Principal or Guarantor.

(1) If Key Principal or Guarantor is a natural person, Borrower must notify Lender in writing within ninety (90) days in the event Key Principal or Guarantor dies. Unless waived in writing by Lender, the deceased Key Principal or Guarantor shall be replaced by an individual or entity within one hundred eighty (180) days, subject to Borrower's satisfaction of the following conditions:

(A) Borrower has submitted to Lender all information required by Lender to make the determination required by this Section 11.03(e);

(B) Lender determines that:

(i) the proposed new key principal and any other new guarantor fully satisfies all of Lender's then-applicable key principal or guarantor eligibility, credit, management and other loan underwriting standards (including any standards with respect to previous relationships between Lender and the proposed new key principal and new guarantor and the organization of the new key principal and new guarantor (if applicable));

(ii) none of the proposed new key principal or any new guarantor, or any owners of the proposed new key principal or any new guarantor, is a Prohibited Person; and

(iii) none of the proposed new key principal or any new guarantor (if any of such are entities) shall have an organizational existence termination date that ends before the Maturity Date;

(C) if applicable, one or more individuals or entities acceptable to Lender as new guarantors have executed and delivered to Lender:

(i) an assumption agreement acceptable to Lender that requires the new guarantor to assume and perform all obligations of Guarantor under any Guaranty given in connection with the Mortgage Loan; or

(ii) a substitute Non-Recourse Guaranty and other substitute guaranty in a form acceptable to Lender.

(2) In the event a replacement Key Principal or Guarantor is required by Lender due to the death described in this Section 11.03(e), and such replacement has not occurred within such period, the period for replacement may be extended by Lender to a date not more than one (1) year from the date of Key Principal's or Guarantor's death; however, Lender may require as a condition to any such extension that:

(A) the then-current property manager be replaced with a property manager reasonably acceptable to Lender (or if a property manager has not been previously engaged, a property manager reasonably acceptable to Lender be engaged); or

(B) a lockbox or cash management arrangement (with the property manager) reasonably acceptable to Lender during such extended replacement period be instituted.

If the conditions set forth in this Section 11.03(e) are satisfied, the Transfer Fee shall be waived, provided Borrower shall pay the Review Fee and out-of-pocket costs set forth in Section 11.03(g).

(f) Bankruptcy of Guarantor.

(1) Upon the occurrence of any Guarantor Bankruptcy Event, unless waived in writing by Lender, the applicable Guarantor shall be replaced by an individual or entity within ninety (90) days of such Guarantor Bankruptcy Event, subject to Borrower's satisfaction of the following conditions:

(A) Borrower has submitted to Lender all information required by Lender to make the determination required by this Section 11.03(f);

(B) Lender determines that

(i) the proposed new guarantor fully satisfies all of Lender's then-applicable guarantor eligibility, credit, management and other loan underwriting standards (including any standards with respect to previous relationships between Lender and the proposed new guarantor and the organization of the new guarantor (if applicable));

(ii) no new guarantor is a Prohibited Person; and

(iii) no new guarantor (if any of such are entities) shall have an organizational existence termination date that ends before the Maturity Date;

(C) one or more individuals or entities acceptable to Lender as new guarantors have executed and delivered to Lender:

(i) an assumption agreement acceptable to Lender that requires the new guarantor to assume and perform all obligations of Guarantor under any Guaranty given in connection with the Mortgage Loan; or

(ii) a substitute Non-Recourse Guaranty and other substitute guaranty in a form acceptable to Lender.

(2) In the event a replacement Guarantor is required by Lender due to the Guarantor Bankruptcy Event described in this Section 11.03(f), and such replacement has not occurred within such period, the period for replacement may be extended by Lender in its discretion; however, Lender may require as a condition to any such extension that:

(A) the then-current property manager be replaced with a property manager reasonably acceptable to Lender (or if a property manager has not been previously engaged, a property manager reasonably acceptable to Lender be engaged); or

(B) a lockbox or cash management arrangement (with the property manager) reasonably acceptable to Lender during such extended replacement period be instituted.

If the conditions set forth in this Section 11.03(f) are satisfied, the Transfer Fee shall be waived, provided Borrower shall pay the Review Fee and out-of-pocket costs set forth in Section 11.03(g).

(g) Further Conditions to Transfers and Assumption.

(1) In connection with any Transfer of the Mortgaged Property, or an ownership interest in Borrower, Key Principal or Guarantor for which Lender's approval is required under this Loan Agreement, Lender may, as a condition to any such approval, require:

(A) additional collateral, guaranties or other credit support to mitigate any risks concerning the proposed transferee or the performance or condition of the Mortgaged Property;

(B) amendment of the Loan Documents to delete or modify any specially negotiated terms or provisions previously granted for the exclusive benefit of original Borrower, Key Principal or Guarantor and to restore the original provisions of the standard Fannie Mae form multifamily loan documents, to the extent such provisions were previously modified; or

(C) a modification to the amounts required to be deposited into the Reserve/Escrow Account pursuant to the terms of Section 13.02(a)(3)(B).

(2) In connection with any request by Borrower for consent to a Transfer, Borrower shall pay to Lender upon demand:

(A) the Transfer Fee (to the extent charged by Lender);

(B) the Review Fee (regardless of whether Lender approves or denies such request);

(C) all of Lender's out-of-pocket costs (including reasonable attorneys' fees) incurred in reviewing the Transfer request, to the extent such costs exceed the Review Fee; and

(3) Borrower shall provide Lender written notice of all Transfers whether or not such Transfers are permitted under this Loan Agreement or approved by Lender no later than ten (10) days prior to the date of the Transfer, provided that Borrower shall not be required to provide notice of Transfers of Residential Leases or of the replacement of Fixtures or Personalty performed pursuant to the terms of the Loan Documents.

ARTICLE 12 - IMPOSITIONS

Section 12.01 Representations and Warranties.

The representations and warranties made by Borrower to Lender in this Section 12.01 are made as of the Effective Date, and are true and correct except as disclosed on the Exceptions to Representations and Warranties Schedule.

(a) Payment of Taxes, Assessments and Other Charges.

Borrower has:

- (1) paid (or with the approval of Lender, established an escrow fund sufficient to pay when due and payable) all amounts and charges relating to the Mortgaged Property that have become due and payable, including Impositions, leasehold payments and ground rents;
- (2) paid all Taxes for the Mortgaged Property that have become due pursuant to any notice of assessment received by Borrower and any and all taxes that have become due against Borrower;
- (3) no knowledge of any basis for any additional assessments;
- (4) no knowledge of any presently pending special assessments against all or any part of the Mortgaged Property, or any presently pending special assessments against Borrower; and
- (5) not received any written notice of any contemplated special assessment against the Mortgaged Property, or any contemplated special assessment against Borrower.

Section 12.02 Covenants.

(a) Imposition Deposits, Taxes, and Other Charges.

Borrower shall:

- (1) deposit the Imposition Deposits with Lender on each Payment Date (or on another day designated in writing by Lender) in amount sufficient, in Lender's discretion, to enable Lender to pay each Imposition before the last date upon which such payment may be made without any penalty or interest charge being added, plus an amount equal to no more than one-sixth (1/6) (or the amount permitted by applicable law) of the Impositions for the trailing twelve (12) months (calculated based on the aggregate annual Imposition costs divided by twelve (12) and multiplied by two (2));
- (2) deposit with Lender, within ten (10) days after notice from Lender (subject to applicable law), such additional amounts estimated by Lender to be reasonably necessary to cure any deficiency in the amount of the Imposition Deposits held for payment of a specific Imposition;

(3) pay, or cause to be paid, all Impositions, leasehold payments, ground rents and Borrower taxes when due and before the addition of any interest, fine, penalty or cost for nonpayment;

(4) 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; and

(5) promptly deliver to Lender a copy of all notices of any special assessments and contemplated special assessments against the Mortgaged Property or Borrower.

Section 12.03 **Mortgage Loan Administration Matters Regarding Impositions.**

(a) Maintenance of Records by Lender.

Lender shall maintain records of the monthly and aggregate Imposition Deposits held by Lender for the purpose of paying Taxes, insurance premiums and each other obligation of Borrower for which Imposition Deposits are required.

(b) Imposition Accounts.

All Imposition Deposits shall be held in an institution (which may be Lender, if Lender is such an institution) whose deposits or accounts are insured or guaranteed by a federal agency and which accounts meet the standards for custodial accounts as required by Lender from time to time. Lender shall not be obligated to open additional accounts, or deposit Imposition Deposits in additional institutions, when the amount of the Imposition Deposits exceeds the maximum amount of the federal deposit insurance or guaranty. No interest, earnings or profits on the Imposition Deposits shall be paid to Borrower unless applicable law so requires. Imposition Deposits shall not be trust funds, nor shall they operate to reduce the Indebtedness, unless applied by Lender for that purpose in accordance with this Loan Agreement. For the purposes of 9-104(a)(3) of the UCC, Lender is the owner of the Imposition Deposits and shall be deemed a "customer" with sole control of the account holding the Imposition Deposits.

(c) Payment of Impositions; Sufficiency of Imposition Deposits.

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. Imposition Deposits shall be required to be used by Lender to pay Taxes, insurance premiums and any other individual Imposition only if:

- (1) no Event of Default exists;
- (2) Borrower has timely delivered to Lender all applicable bills or premium notices that it has received; and
- (3) sufficient Imposition Deposits are held by Lender for each Imposition at the time such Imposition becomes due and payable.

Lender shall have no liability to Borrower for failing to pay any Imposition if any of the conditions are not satisfied. If at any time the amount of the Imposition Deposits held for payment of a specific Imposition exceeds the amount reasonably deemed necessary by Lender to

be held in connection with such Imposition, the excess may be credited against future installments of Imposition Deposits for such Imposition.

(d) Imposition Deposits Upon Event of Default.

If an Event of Default has occurred and is continuing, Lender may apply any Imposition Deposits, in such amount and in such order as Lender determines, to pay any Impositions or as a credit against the Indebtedness.

(e) Contesting Impositions.

Other than insurance premiums, Borrower may contest, at its expense, by appropriate legal proceedings, the amount or validity of any Imposition if:

- (1) Borrower notifies Lender of the commencement or expected commencement of such proceedings;
- (2) Lender determines that the Mortgaged Property is not in danger of being sold or forfeited;
- (3) Borrower deposits with Lender (or the applicable Governmental Authority if required by applicable law) reserves sufficient to pay the contested Imposition, if required by Lender (or the applicable Governmental Authority);
- (4) Borrower furnishes whatever additional security is required in the proceedings or is reasonably requested by Lender; and
- (5) Borrower commences, and at all times thereafter diligently prosecutes, such contest in good faith until a final determination is made by the applicable Governmental Authority.

(f) Release to Borrower.

Upon payment in full of all sums secured by the Security Instrument and this Loan Agreement and release by Lender of the lien of the Security Instrument, Lender shall disburse to Borrower the balance of any Imposition Deposits then on deposit with Lender.

ARTICLE 13 - REPLACEMENT RESERVE AND REPAIRS

Section 13.01 **Covenants.**

(a) Initial Deposits to Replacement Reserve Account and Repairs Escrow Account.

On the Effective Date, Borrower shall pay to Lender:

- (1) the Initial Replacement Reserve Deposit for deposit into the Replacement Reserve Account; and
- (2) the Repairs Escrow Deposit for deposit into the Repairs Escrow Account.

(b) Monthly Replacement Reserve Deposits.

Borrower shall deposit the applicable Monthly Replacement Reserve Deposit into the Replacement Reserve Account on each Payment Date.

(c) Payment for Replacements and Repairs.

Borrower shall:

(1) pay all invoices for the Replacements and Repairs, regardless of whether funds on deposit in the Replacement Reserve Account or the Repairs Escrow Account, as applicable, are sufficient, prior to any request for disbursement from the Replacement Reserve Account or the Repairs Escrow Account, as applicable (unless Lender has agreed to issue joint checks in connection with a particular Replacement or Repair);

(2) pay all applicable fees and charges of any Governmental Authority on account of the Replacements and Repairs, as applicable; and

(3) provide evidence satisfactory to Lender of completion of the Replacements and any Required Repairs (within the Completion Period or within such other period or by such other date set forth in the Required Repair Schedule and any Borrower Requested Repairs and Additional Lender Repairs (by the date specified by Lender for any such Borrower Requested Repairs or Additional Lender Repairs)).

(d) Assignment of Contracts for Replacements and Repairs.

Borrower shall assign to Lender any contract or subcontract for Replacements or Repairs, upon Lender's request, on a form of assignment approved by Lender.

(e) Indemnification.

Borrower shall indemnify and hold Lender harmless from and against any and all actions, suits, claims, demands, liabilities, losses, damages, obligations and costs or expenses, including litigation costs and reasonable attorneys' fees, arising from or in any way connected with the performance of the Replacements or Repairs or investment of the Reserve/Escrow Account Funds.

(f) Amendments to Loan Documents.

Borrower shall execute and/or deliver to Lender, upon request, an amendment to this Loan Agreement, the Security Instrument, any other Loan Document and/or the original financing statement necessary or desirable to perfect Lender's lien upon any portion of the Mortgaged Property for which Reserve/Escrow Account Funds were expended.

(g) Administrative Fees and Expenses.

Borrower shall pay to Lender:

(1) by the date specified in the applicable invoice, the Repairs Escrow Account Administrative Fee and the Replacement Reserve Account Administration Fee for Lender's services in administering the Repairs Escrow Account and Replacement

Reserve Account and investing the funds on deposit in the Repairs Escrow Account and the Replacement Reserve Account, respectively;

(2) upon demand, a reasonable inspection fee, not exceeding the Maximum Inspection Fee, for each inspection of the Mortgaged Property by Lender in connection with a Repair or Replacement, plus all other reasonable costs and out-of-pocket expenses relating to such inspections; and

(3) upon demand, all reasonable fees charged by any engineer, architect, inspector or other person inspecting the Mortgaged Property on behalf of Lender for each inspection of the Mortgaged Property in connection with a Repair or Replacement, plus all other reasonable costs and out-of-pocket expenses relating to such inspections.

Section 13.02 **Mortgage Loan Administration Matters Regarding Reserves.**

(a) Accounts, Deposits, and Disbursements.

(1) Custodial Accounts.

(A) The Replacement Reserve Account shall be an interest-bearing account that meets the standards for custodial accounts as required by Lender from time to time. Lender shall not be responsible for any losses resulting from the investment of the Replacement Reserve Deposits or for obtaining any specific level or percentage of earnings on such investment. All interest earned on the Replacement Reserve Deposits shall be added to and become part of the Replacement Reserve Account; provided, however, if applicable law requires, and so long as no Event of Default exists under any of the Loan Documents, Lender shall pay to Borrower the interest earned on the Replacement Reserve Account not less frequently than the Replacement Reserve Account Interest Disbursement Frequency. In no event shall Lender be obligated to disburse funds from the Reserve/Escrow Account if an Event of Default exists.

(B) Lender shall not be obligated to deposit the Repairs Escrow Deposits into an interest-bearing account.

(2) Disbursements by Lender Only.

Only Lender or a designated representative of Lender may make disbursements from the Replacement Reserve Account and the Repairs Escrow Account. Except as provided in Section 13.02(a)(8), disbursements shall only be made upon Borrower request and after satisfaction of all conditions for disbursement.

(3) Adjustment of Deposits.

(A) Mortgage Loan Terms Exceeding Ten (10) Years.

If the Loan Term exceeds ten (10) years, a physical needs assessment shall be ordered by Lender for the Mortgaged Property at the expense of Borrower (which expense may be paid of out of the Replacement Reserve Account if excess funds are available). The physical needs assessment shall be performed no earlier than the sixth (6th) month and no later than the ninth (9th) month of the tenth (10th) Loan Year (and of the twentieth (20th) Loan Year if the Loan Term exceeds

twenty (20) years). After review of the physical needs assessment, the amount of the Monthly Replacement Reserve Deposit may be adjusted by Lender for the remaining Loan Term by written notice to Borrower so that the Monthly Replacement Reserve Deposits are sufficient to fund the Replacements as and when required and/or the amount to be held in the Repairs Escrow Account may be adjusted by Lender so that the Repairs Escrow Deposit is sufficient to fund the Repairs as and when required.

(B) Transfers.

In connection with any Transfer of the Mortgaged Property, or any Transfer of an ownership interest in Borrower, Guarantor or Key Principal which requires Lender's consent, Lender may review the amounts on deposit, if any, in the Replacement Reserve Account or the Repairs Escrow Account, the amount of the Monthly Replacement Reserve Deposit and the likely repairs and replacements required by the Mortgaged Property, and the related contingencies which may arise during the remaining Loan Term. Based upon that review, Lender may require an additional deposit to the Replacement Reserve Account or the Repairs Escrow Account, or an increase in the amount of the Monthly Replacement Reserve Deposit as a condition to Lender's consent to such Transfer. In all events, the transferee shall be required to assume Borrower's duties and obligations under this Loan Agreement.

(4) Insufficient Funds.

Lender may, upon thirty (30) days prior written notice to Borrower, require an additional deposit(s) to the Replacement Reserve Account or Repairs Escrow Account, or an increase in the amount of the Monthly Replacement Reserve Deposit, if Lender determines that the amounts on deposit in either the Replacement Reserve Account or the Repairs Escrow Account are not sufficient to cover the costs for Required Repairs or Required Replacements or, pursuant to the terms of Section 13.02(a)(9), not sufficient to cover the costs for Borrower Requested Repairs, Additional Lender Repairs, Borrower Requested Replacements or Additional Lender Replacements. Borrower's agreement to complete the Replacements or Repairs as required by this Loan Agreement shall not be affected by the insufficiency of any balance in the Replacement Reserve Account or the Repairs Escrow Account, as applicable.

(5) Disbursements for Replacements and Repairs.

(A) Disbursement requests may only be made after completion of the applicable Replacements and only to reimburse Borrower for the actual approved costs of the Replacements. Lender shall not disburse from the Replacement Reserve Account the costs of routine maintenance to the Mortgaged Property or for costs which are to be reimbursed from the Repairs Escrow Account or any similar account. Disbursement from the Replacement Reserve Account and the Repairs Escrow Account shall not be made more frequently than the Maximum Replacement Reserve Disbursement Interval. Other than in connection with a final request for disbursement, disbursements from the Replacement Reserve Account shall not be less than the Minimum Replacement Reserve Disbursement Amount.

(B) Disbursement requests may only be made after completion of the applicable Repairs and only to reimburse Borrower for the actual cost of the Repairs, up to the Maximum Repair Cost. Lender shall not disburse any amounts which would cause the funds remaining in the Repairs Escrow Account after any disbursement (other than with respect to the final disbursement) to be less than the Maximum Repair Cost of the then-current estimated cost of completing all remaining Repairs. Lender shall not disburse from the Repairs Escrow Account the costs of routine maintenance to the Mortgaged Property or for costs which are to be reimbursed from the Replacement Reserve Account or any similar account. Disbursement from the Repairs Escrow Account shall not be made more frequently than the Maximum Repair Disbursement Interval. Other than in connection with a final request for disbursement, disbursements from the Repairs Escrow Account shall not be less than the Minimum Repairs Disbursement Amount.

(6) Disbursement Requests.

Each request by Borrower for disbursement from the Replacement Reserve Account or the Repairs Escrow Account must be in writing, must specify the Replacement or Repair for which reimbursement is requested (provided that for any Borrower Requested Replacements, Borrower Requested Repairs, Additional Lender Replacements and Additional Lender Repairs, Lender shall have approved the use of the Reserve/Escrow Account Funds for such replacements or repairs pursuant to the terms of Section 13.02(a)(9)), and must:

(A) if applicable, specify the quantity and price of the items or materials purchased, grouped by type or category;

(B) if applicable, specify the cost of all contracted labor or other services involved in the Replacement or Repair for which such request for disbursement is made;

(C) if applicable, include copies of invoices for all items or materials purchased and all contracted labor or services provided;

(D) include evidence of payment of such Replacement or Repair satisfactory to Lender (unless Lender has agreed to issue joint checks in connection with a particular Repair or Replacement as provided in this Loan Agreement); and

(E) contain a certification by Borrower that the Repair or Replacement has been completed lien free and in a good and workmanlike manner, in accordance with any plans and specifications previously approved by Lender (if applicable) and in compliance with all applicable laws, ordinances, rules and regulations of any Governmental Authority having jurisdiction over the Mortgaged Property, and otherwise in accordance with the provisions of this Loan Agreement.

(7) Conditions to Disbursement.

Lender may require any or all of the following at the expense of Borrower as a condition to disbursement of funds from the Replacement Reserve Account or the

Repairs Escrow Account (provided that for any Borrower Requested Replacements, Borrower Requested Repairs, Additional Lender Replacements and Additional Lender Repairs, Lender shall have approved the use of the Reserve/Escrow Account Funds for such replacements or repairs pursuant to the terms of Section 13.02(a)(9)):

- (A) an inspection by Lender of the Mortgaged Property and the applicable Replacement or Repair;
- (B) an inspection or certificate of completion by an appropriate independent qualified professional (such as an architect, engineer or property inspector, depending on the nature of the Repair or Replacement) selected by Lender;
- (C) either:
 - (i) a search of title to the Mortgaged Property effective to the date of disbursement; or
 - (ii) a “date-down” endorsement to Lender’s Title Policy extending the effective date of such policy to the date of disbursement, and showing no Liens other than Permitted Encumbrances (or liens which Borrower is diligently contesting in good faith that have been bonded off to the satisfaction of Lender); and
- (D) an acknowledgement of payment, waiver of claims and release of lien for work performed and materials supplied from each contractor, subcontractor or materialman in accordance with the requirements of applicable law and covering all work performed and materials supplied (including equipment and fixtures) for the Mortgaged Property by that contractor, subcontractor or materialman through the date covered by the disbursement request (or, in the event that payment to such contractor, subcontractor or materialman is to be made by a joint check, the release of lien shall be effective through the date covered by the previous disbursement).

(8) Joint Checks for Periodic Disbursements.

Lender may issue joint checks, payable to Borrower and the applicable supplier, materialman, mechanic, contractor, subcontractor or other similar party, if:

- (A) the cost of the Replacement or Repair exceeds the Replacement Threshold or the Repair Threshold, as applicable, and the contractor performing such Replacement or Repair requires periodic payments pursuant to the terms of the applicable written contract;
- (B) the contract for such Repair or Replacement requires payment upon completion of the applicable portion of the work;
- (C) Borrower makes the disbursement request after completion of the applicable portion of the work required to be completed under such contract;
- (D) the materials for which the request for disbursement has been made are on site at the Mortgaged Property and are properly secured or installed;

(E) Lender determines that the remaining funds in the Replacement Reserve Account designated for such Replacement, or in the Repairs Escrow Account designated for such Repair, as applicable, are sufficient to complete the Replacement or Repair;

(F) each supplier, materialman, mechanic, contractor, subcontractor or other similar party receiving payments shall have provided, if requested by Lender, a waiver of liens with respect to amounts which have been previously paid to them; and

(G) all other conditions for disbursement have been satisfied.

(9) Replacements and Repairs Other than Required Replacements and/or Required Repairs.

(A) Borrower Requested Replacements and Borrower Requested Repairs.

In the event Borrower requests a disbursement from the Replacement Reserve Account or the Repairs Escrow Account to reimburse Borrower for any Borrower Requested Replacement or Borrower Requested Repair, any related disbursement request must also contain support for why Lender should allow such disbursement. Lender may make disbursements for Borrower Requested Replacements or Borrower Requested Repairs if Lender determines that:

(i) they are of the type intended to be covered by the Replacement Reserve Account or the Repairs Escrow Account, as applicable;

(ii) the costs are reasonable;

(iii) the amount of funds in the Replacement Reserve Account or Repairs Escrow Account, as applicable, is sufficient to pay such costs and the then-current estimated cost of completing all remaining Required Replacements or Required Repairs (at the Maximum Repair Cost), as applicable, and any other Borrower Requested Replacements, Borrower Requested Repairs, Additional Lender Replacements or Additional Lender Repairs that have been previously approved by Lender; and

(iv) all conditions for disbursement from the Replacement Reserve Account or Repairs Escrow Account, as applicable, have been satisfied.

Nothing in this Loan Agreement shall limit Lender's right to require an additional deposit to the Replacement Reserve Account or an increase to the Monthly Replacement Reserve Deposit in connection with any such Borrower Requested Replacements, or an additional deposit to the Repairs Escrow Account for any such Borrower Requested Repairs.

(B) Additional Lender Replacements and Additional Lender Repairs.

Lender may require, as set forth in Section 6.02(b)(3), Section 6.03(c), or otherwise from time to time, upon written notice to Borrower, that Borrower make Additional Lender Replacements or Additional Lender Repairs. Lender may make disbursements from the Replacement Reserve Account for Additional Lender Replacements or from the Repairs Escrow Account for Additional Lender Repairs, as applicable, if Lender determines that:

- (i) the costs are reasonable;
- (ii) the amount of funds in the Replacement Reserve Account or the Repairs Escrow Account, as applicable, is sufficient to pay such costs and the then-current estimated cost of completing all remaining Required Replacements or Required Repairs (at the Maximum Repair Cost), as applicable, and any other Borrower Requested Replacements, Borrower Requested Repairs, Additional Lender Replacements or Additional Lender Repairs that have been previously approved by Lender; and
- (iii) all conditions for disbursement from the Replacement Reserve Account or Repairs Escrow Account, as applicable, have been satisfied.

Nothing in this Loan Agreement shall limit Lender's right to require an additional deposit to the Replacement Reserve Account or an increase to the Monthly Replacement Reserve Deposit for any such Additional Lender Replacements or an additional deposit to the Repairs Escrow Account for any such Additional Lender Repair.

(10) Excess Costs.

In the event any Replacement or Repair exceeds the approved cost set forth on the Required Replacement Schedule for Replacements, or the Maximum Repair Cost for Repairs, Borrower may submit a disbursement request to reimburse Borrower for such excess cost. The disbursement request must contain support for why Lender should allow such disbursement. Lender may make disbursements from the Replacement Reserve Account or the Repairs Escrow Account, as applicable, if:

- (A) the excess cost is reasonable;
- (B) the amount of funds in the Replacement Reserve Account or the Repairs Escrow Account, as applicable, is sufficient to pay such excess cost and the then-current estimated cost of completing all remaining Replacements and Repairs at the Maximum Repair Cost; and
- (C) all conditions for disbursement from the Replacement Reserve Account or the Repairs Escrow Account have been satisfied.

(11) Final Disbursements.

Upon completion of all Repairs in accordance with this Loan Agreement and so long as no Event of Default has occurred, Lender shall disburse to Borrower any amounts then remaining in the Repairs Escrow Account. Upon payment in full of the Indebtedness and release by Lender of the lien of the Security Instrument, Lender shall disburse to Borrower any and all amounts then remaining in the Replacement Reserve Account and the Repairs Escrow Account (if not previously released).

(b) Approvals of Contracts; Assignment of Claims.

Lender retains the right to approve all contracts or work orders with materialmen, mechanics, suppliers, subcontractors, contractors or other parties providing labor or materials in connection with the Replacements or Repairs. Notwithstanding Borrower's assignment (in the Security Instrument) of its rights and claims against all persons or entities supplying labor or materials in connection with the Replacement or Repairs, Lender will not pursue any such right or claim unless an Event of Default has occurred or as otherwise provided in Section 14.03(c).

(c) Delays and Workmanship.

If Lender determines that any work for any Replacement or Repair has not timely commenced, has not been timely performed in a workmanlike manner, or has not been timely completed in a workmanlike manner, Lender may, without notice to Borrower:

- (1) withhold disbursements from the Replacement Reserve Account or Repairs Escrow Account for such unsatisfactory Replacement or Repair, as applicable;
- (2) proceed under existing contracts or contract with third parties to make or complete such Replacement or Repair;
- (3) apply the funds in the Replacement Reserve Account or Repairs Escrow Account toward the labor and materials necessary to make or complete such Replacement or Repair, as applicable; or
- (4) exercise any and all other remedies available to Lender under this Loan Agreement or any other Loan Document, including any remedies otherwise available upon an Event of Default pursuant to the terms of Section 14.02.

To facilitate Lender's completion or making of such Replacements or Repairs, Lender shall have the right to enter onto the Mortgaged Property and perform any and all work and labor necessary to make or complete the Replacements or Repairs and employ watchmen to protect the Mortgaged Property from damage. All funds so expended by Lender shall be deemed to have been advanced to Borrower, shall be part of the Indebtedness and shall be secured by the Security Instrument and this Loan Agreement.

(d) Appointment of Lender as Attorney-In-Fact.

Borrower hereby authorizes and appoints Lender as attorney-in-fact pursuant to Section 14.03(c).

(e) No Lender Obligation.

Nothing in this Loan Agreement shall:

- (1) make Lender responsible for making or completing the Replacements or Repairs;
- (2) require Lender to expend funds, whether from the Replacement Reserve Account, the Repairs Escrow Account or otherwise, to make or complete any Replacement or Repair;
- (3) obligate Lender to proceed with the Replacements or Repairs; or
- (4) obligate Lender to demand from Borrower additional sums to make or complete any Replacement or Repair.

(f) No Lender Warranty.

Lender's approval of any plans for any Replacement or Repair, release of funds from the Replacement Reserve Account or Repairs Escrow Account, inspection of the Mortgaged Property by Lender or its agents, representatives or designees, or other acknowledgment of completion of any Replacement or Repair in a manner satisfactory to Lender shall not be deemed an acknowledgment or warranty to any person that the Replacement or Repair has been completed in accordance with applicable building, zoning or other codes, ordinances, statutes, laws, regulations or requirements of any governmental agency, such responsibility being at all times exclusively that of Borrower.

ARTICLE 14 - DEFAULTS/REMEDIES

Section 14.01 Events of Default.

The occurrence of any one or more of the following in this Section 14.01 shall constitute an Event of Default under this Loan Agreement.

(a) Automatic Events of Default.

The following shall constitute automatic Events of Default:

- (1) any failure by Borrower to pay or deposit when due any amount required by the Note, this Loan Agreement or any other Loan Document;
- (2) any failure by Borrower to maintain the insurance coverage required by any Loan Document;
- (3) any failure by Borrower to comply with the provisions of Section 4.02(d) relating to its single asset status;
- (4) any warranty, representation, certificate or statement of Borrower, Guarantor or Key Principal in this Loan Agreement or any of the other Loan Documents shall be false, inaccurate or misleading in any material respect when made;

(5) fraud, gross negligence, willful misconduct or material misrepresentation or material omission by Borrower, or any of its officers, directors, trustees, partners, members or managers, or any Guarantor, Key Principal or Principal or any of their employees, officers, directors, trustees, partners, members or managers in connection with:

(A) the application for, or creation of, the Indebtedness;

(B) any financial statement, rent roll or other report or information provided to Lender during the term of the Mortgage Loan;

(C) any request for Lender's consent to any proposed action, including a request for disbursement of Reserve/Escrow Account Funds or Collateral Account Funds;

(6) the occurrence of any Transfer not permitted by the Loan Documents;

(7) the occurrence of a Bankruptcy Event;

(8) 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 Loan Agreement or the Security Instrument or Lender's interest in the Mortgaged Property;

(9) any failure by Borrower, Key Principal or Guarantor to comply with the provisions of Section 5.02(b) and Section 5.02(c);

(10) if Borrower, Guarantor or Key Principal is a trust, the termination or revocation of such trust, except as set forth in Section 11.03(d);

(11) any failure by Borrower to complete any Repair related to fire, life or safety issues in accordance with the terms of this Loan Agreement within the Completion Period (or such other date set forth on the Required Repair Schedule or otherwise required by Lender in writing for such Repair); and

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

(b) Events of Default Subject to a Specified Cure Period.

The following shall constitute an Event of Default subject to the cure period set forth in the Loan Documents:

(1) if Key Principal or Guarantor is a natural person, the death of such individual, unless requirements of Section 11.03(e) are met;

(2) the occurrence of a Guarantor Bankruptcy Event, unless requirements of Section 11.03(f) are met; and

(3) any failure by Borrower to perform any obligation under this Loan Agreement or any Loan Document that is subject to a specified notice and cure period,

which failure continues beyond such specified notice and cure period as set forth herein or in the applicable Loan Document.

(c) Events of Default Subject to Extended Cure Period.

The following shall constitute an Event of Default subject to the cure period set forth below:

(1) Any failure by Borrower to perform any of its obligations under this Loan Agreement or any Loan Document (other than those specified in Section 14.01(a) or Section 14.01(b) above) as and when required, which failure continues for a period of thirty (30) days after notice of such failure by Lender to Borrower, provided, however, such period may be extended for up to an additional thirty (30) days if Borrower, in the discretion of Lender, is diligently pursuing a cure of such; provided, further, however, no such notice, grace period or extension shall apply if, in Lender's discretion, immediate exercise by Lender of a right or remedy under this Loan Agreement or any Loan Document is required to avoid harm to Lender or impairment of the Mortgage Loan (including the Loan Documents), the Mortgaged Property or any other security given for the Mortgage Loan.

Section 14.02 **Remedies.**

(a) Acceleration; Foreclosure.

Upon the occurrence of an Event of Default, the entire unpaid principal balance of the Mortgage Loan, any Accrued Interest, interest accruing at the Default Rate, the Prepayment Premium (if applicable), and all other Indebtedness shall at once become due and payable, at the option of Lender, without any prior notice to Borrower, unless applicable law requires otherwise (and in such case, after any required notice has been given). Lender may exercise this option to accelerate regardless of any prior forbearance. In addition, Lender shall have all rights and remedies afforded to it hereunder and under the other Loan Documents, including, foreclosure on and/or the power of sale of the Mortgaged Property, as provided in the Security Instrument, and any rights and remedies available to it at law or in equity (subject to Borrower's statutory rights of reinstatement, if any, prior to a Foreclosure Event). Any proceeds of a foreclosure or other sale under this Loan Agreement or any other Loan Document may be held and applied by Lender as additional collateral for the Indebtedness pursuant to this Loan Agreement. Notwithstanding the foregoing, the occurrence of any Bankruptcy Event shall automatically accelerate the Mortgage Loan and all obligations and Indebtedness shall be immediately due and payable without notice or further action by Lender.

(b) Loss of Right to Receive Replacement Reserve Disbursements and Repairs Disbursements.

Upon the occurrence of an Event of Default under this Loan Agreement, Borrower shall immediately lose all of its rights to receive disbursements from the Reserve/Escrow Accounts and any Collateral Accounts. Upon any such Event of Default, Lender may use the Reserve/Escrow Account Funds and any Collateral Account Funds (or any portion thereof) for any purpose, including:

(1) repayment of the Indebtedness, including principal prepayments and the Prepayment Premium applicable to such full or partial prepayment, as applicable

(however, such application of funds shall not cure or be deemed to cure any Event of Default);

- (2) reimbursement of Lender for all losses and expenses (including reasonable legal fees) suffered or incurred by Lender as a result of such Event of Default;
- (3) completion of the Replacement or Repair or for any other replacement or repair to the Mortgaged Property; and
- (4) payment of any amount expended in exercising (and the exercise of) all rights and remedies available to Lender at law or in equity or under this Loan Agreement or under any of the other Loan Documents.

Nothing in this Loan Agreement shall obligate Lender to apply all or any portion of the Reserve/Escrow Account Funds or Collateral Account Funds on account of any Event of Default by Borrower or to repayment of the Indebtedness or in any specific order of priority.

(c) Remedies Cumulative.

Each right and remedy provided in this Loan Agreement is distinct from all other rights or remedies under this Loan Agreement or any other Loan Document or afforded by applicable law, and each shall be cumulative and may be exercised concurrently, independently or successively, in any order. Lender shall not be required to demonstrate any actual impairment of its security or any increased risk of default in order to exercise any of its remedies with respect to an Event of Default.

Section 14.03 **Additional Lender Rights; Forbearance.**

(a) No Effect Upon Obligations.

Lender may, but shall not be obligated to, agree with Borrower, from time to time, and without giving notice to, or obtaining the consent of, or having any effect upon the obligations of, any Guarantor, Key Principal or other third party obligor, to take any of the following actions:

- (1) the time for payment of the principal of or interest on the Indebtedness may be extended or the Indebtedness may be renewed in whole or in part;
- (2) the rate of interest on or period of amortization of the Mortgage Loan or the amount of the Monthly Debt Service Payments payable under the Loan Documents may be modified;
- (3) the time for Borrower's performance of or compliance with any covenant or agreement contained in any Loan Document, whether presently existing or hereinafter entered into, may be extended or such performance or compliance may be waived;
- (4) the maturity of the Indebtedness may be accelerated as provided in the Loan Documents;
- (5) any or all payments due under the Loan Agreement or any other Loan Document may be reduced;

(6) any Loan Document may be modified or amended by Lender and Borrower in any respect, including an increase in the principal amount of the Mortgage Loan;

(7) any amounts under this Loan Agreement or any other Loan Document may be released;

(8) any security for the Indebtedness may be modified, exchanged, released, surrendered or otherwise dealt with or additional security may be pledged or mortgaged for the Indebtedness;

(9) the payment of the Indebtedness or any security for the Indebtedness, or both, may be subordinated to the right to payment or the security, or both, of any other present or future creditor of Borrower;

(10) any payments made by Borrower to Lender may be applied to the Indebtedness in such priority as Lender may determine in its discretion; or

(11) any other terms of the Loan Documents may be modified.

(b) No Waiver of Rights or Remedies.

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

(c) Appointment of Lender as Attorney-in-Fact.

Borrower hereby irrevocably makes, constitutes and appoints Lender (and any officer of Lender or any Person designated by Lender for that purpose) as Borrower's true and lawful proxy and attorney-in-fact (and agent-in-fact) in Borrower's name, place and stead, with full power of substitution, to:

(1) use any of the funds in the Replacement Reserve Account or Repairs Escrow Account for the purpose of making or completing the Replacements or Repairs;

(2) make such additions, changes and corrections to the Replacements or Repairs as shall be necessary or desirable to complete the Replacements or Repairs;

(3) employ such contractors, subcontractors, agents, architects and inspectors as shall be required for such purposes;

- (4) pay, settle or compromise all bills and claims for materials and work performed in connection with the Replacements or Repairs, or as may be necessary or desirable for the completion of the Replacements or Repairs, or for clearance of title;
- (5) adjust and compromise any claims under any and all policies of insurance required pursuant to this Loan Agreement and any other Loan Document;
- (6) appear in and prosecute any action arising from any insurance policies;
- (7) collect and receive the proceeds of insurance, and to deduct from such proceeds Lender's expenses incurred in the collection of such proceeds;
- (8) commence, appear in and prosecute, in Lender's or Borrower's name, any action or proceeding relating to any condemnation;
- (9) settle or compromise any claim in connection with any condemnation;
- (10) execute all applications and certificates in the name of Borrower which may be required by any of the contract documents;
- (11) prosecute and defend all actions or proceedings in connection with the Mortgaged Property or the rehabilitation and repair of the Mortgaged Property;
- (12) take such actions as are permitted in this Loan Agreement and any other Loan Documents;
- (13) execute such financing statements and other documents and to do such other acts as Lender may require to perfect and preserve Lender's security interest in, and to enforce such interests in, the collateral; and
- (14) carry out any remedy provided for in this Loan Agreement and any other Loan Documents, including endorsing Borrower's name to checks, drafts, instruments and other items of payment and proceeds of the collateral, executing change of address forms with the postmaster of the United States Post Office serving the address of Borrower, changing the address of Borrower to that of Lender, opening all envelopes addressed to Borrower and applying any payments contained therein to the Indebtedness.

Borrower hereby acknowledges that the constitution and appointment of such proxy and attorney-in-fact are coupled with an interest and are irrevocable and shall not be affected by the disability or incompetence of Borrower. Borrower specifically acknowledges and agrees that this power of attorney granted to Lender may be assigned by Lender to Lender's successors or assigns as holder of the Note (and the Mortgage Loan). However, the foregoing shall not require Lender to incur any expense or take any action. Borrower hereby ratifies and confirms all that such attorney-in-fact may do or cause to be done by virtue of any provision of this Loan Agreement and any other Loan Documents.

Section 14.04 Waiver of Marshaling.

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 Loan Agreement, any other Loan Document or applicable law. Lender shall have the right to

determine the order in which all or any part of the Indebtedness is 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 Loan Agreement waives any and all right to require the marshaling 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 Loan Agreement or any other Loan Documents.

ARTICLE 15 - MISCELLANEOUS

Section 15.01 Governing Law; Consent to Jurisdiction and Venue.

(a) Governing Law.

This Loan Agreement and any other Loan Document which does not itself expressly identify the law that is to apply to it, shall be governed by the laws of the Property Jurisdiction without regard to the application of choice of law principles.

(b) Venue.

Any controversy arising under or in relation to this Loan Agreement or any other Loan Document shall be litigated exclusively in the Property Jurisdiction without regard to conflicts of laws principles. The state and federal courts and authorities with jurisdiction in the Property Jurisdiction shall have exclusive jurisdiction over all controversies which shall arise under or in relation to this Loan Agreement or any other Loan Document. Borrower irrevocably consents to service, jurisdiction, and venue of such courts for any such litigation and waives any other venue to which it might be entitled by virtue of domicile, habitual residence or otherwise.

Section 15.02 Notice.

(a) Process of Serving Notice.

Except as otherwise set forth herein or in any other Loan Document, all Notices under this Loan Agreement and any other Loan Document shall be:

- (1) in writing and shall be:
 - (A) delivered, in person;
 - (B) mailed, postage prepaid, either by registered or certified delivery, return receipt requested;
 - (C) sent by overnight courier; or
 - (D) sent by electronic mail with originals to follow by overnight courier;
- (2) addressed to the intended recipient at Borrower's Notice Address and Lender's Notice Address, as applicable; and

(3) deemed given on the earlier to occur of:

(A) the date when the Notice is received by the addressee; or

(B) if the recipient refuses or rejects delivery, the date on which the Notice is so refused or rejected, as conclusively established by the records of the United States Postal Service or such express courier service.

(b) Change of Address.

Any party to this Loan Agreement may change the address to which Notices intended for it are to be directed by means of Notice given to the other parties identified on the Summary of Loan Terms in accordance with this Section 15.02.

(c) Default Method of Notice.

Any required Notice under this Loan Agreement or any other Loan Document which does not specify how Notices are to be given shall be given in accordance with this Section 15.02.

(d) Receipt of Notices.

Neither Borrower nor Lender shall refuse or reject delivery of any Notice given in accordance with this Loan Agreement. Each party is required to acknowledge, in writing, the receipt of any Notice upon request by the other party.

Section 15.03 Successors and Assigns Bound; Sale of Mortgage Loan.

(a) Binding Agreement.

This Loan Agreement shall bind, and the rights granted by this Loan Agreement shall inure to, the successors and assigns of Lender and the permitted successors and assigns of Borrower. However, a Transfer not permitted by this Loan Agreement shall be an Event of Default and shall be void ab initio.

(b) Sale of Mortgage Loan; Change of Servicer.

Nothing in this Loan Agreement shall limit Lender's (including its successors and assigns) right to sell or transfer the Mortgage Loan or any interest in the Mortgage Loan. The Mortgage Loan or a partial interest in the Mortgage Loan (together with this Loan Agreement and the other Loan Documents) may be sold one (1) or more times without prior notice to Borrower. A sale may result in a change of the Loan Servicer.

Section 15.04 Counterparts.

This Loan Agreement may be executed in any number of counterparts with the same effect as if the parties hereto had signed the same document and all such counterparts shall be construed together and shall constitute one (1) instrument.

Section 15.05 **Joint and Several (or Solidary) Liability.**

If more than one Person signs this Loan Agreement as Borrower, the obligations of such Persons shall be joint and several (solidary instead for purposes of Louisiana law).

Section 15.06 **Relationship of Parties; No Third Party Beneficiary.**

(a) **Solely Creditor and Debtor.**

The relationship between Lender and Borrower shall be solely that of creditor and debtor, respectively, and nothing contained in this Loan Agreement shall create any other relationship between Lender and Borrower. Nothing contained in this Loan Agreement shall constitute Lender as a joint venturer, partner or agent of Borrower, or render Lender liable for any debts, obligations, acts, omissions, representations or contracts of Borrower.

(b) **No Third Party Beneficiaries.**

No creditor of any party to this Loan Agreement and no other person shall be a third party beneficiary of this Loan Agreement or any other Loan Document or any account created or contemplated under this Loan Agreement or any other Loan Document. Nothing contained in this Loan Agreement shall be deemed or construed to create an obligation on the part of Lender to any third party nor shall any third party have a right to enforce against Lender any right that Borrower may have under this Loan Agreement. Without limiting the foregoing:

- (1) any Servicing Arrangement between Lender and any Loan Servicer shall constitute a contractual obligation of such Loan Servicer that is independent of the obligation of Borrower for the payment of the Indebtedness;
- (2) Borrower shall not be a third party beneficiary of any Servicing Arrangement; and
- (3) no payment by the Loan Servicer under any Servicing Arrangement will reduce the amount of the Indebtedness.

Section 15.07 **Severability; Entire Agreement; Amendments.**

The invalidity or unenforceability of any provision of this Loan Agreement or any other Loan Document shall not affect the validity or enforceability of any other provision of this Loan Agreement or of any other Loan Document, all of which shall remain in full force and effect, including the Guaranty. This Loan Agreement contains the complete and entire agreement among the parties as to the matters covered, rights granted and the obligations assumed in this Loan Agreement. This Loan Agreement may not be amended or modified except by written agreement signed by the parties hereto.

Section 15.08 **Construction.**

(a) The captions and headings of the sections of this Loan Agreement and the Loan Documents are for convenience only and shall be disregarded in construing this Loan Agreement and the Loan Documents.

(b) Any reference in this Loan Agreement to an "Exhibit" or "Schedule" or a "Section" or an "Article" shall, unless otherwise explicitly provided, be construed as referring,

respectively, to an exhibit or schedule attached to this Loan Agreement or to a Section or Article of this Loan Agreement.

(c) Any reference in this Loan Agreement to a statute or regulation shall be construed as referring to that statute or regulation as amended from time to time.

(d) Use of the singular in this Loan Agreement includes the plural and use of the plural includes the singular.

(e) As used in this Loan Agreement, the term “including” means “including, but not limited to” or “including, without limitation,” and is for example only and not a limitation.

(f) Whenever Borrower’s knowledge is implicated in this Loan Agreement or the phrase “to Borrower’s knowledge” or a similar phrase is used in this Loan Agreement, Borrower’s knowledge or such phrase(s) shall be interpreted to mean to the best of Borrower’s knowledge after reasonable and diligent inquiry and investigation.

(g) Unless otherwise provided in this Loan Agreement, if Lender’s approval is required for any matter hereunder, such approval may be granted or withheld in Lender’s sole and absolute discretion.

(h) Unless otherwise provided in this Loan Agreement, if Lender’s designation, determination, selection, estimate, action or decision is required, permitted or contemplated hereunder, such designation, determination, selection, estimate, action or decision shall be made in Lender’s sole and absolute discretion.

(i) All references in this Loan Agreement to a separate instrument or agreement shall include such instrument or agreement as the same may be amended or supplemented from time to time pursuant to the applicable provisions thereof.

(j) “Lender may” shall mean at Lender’s discretion, but shall not be an obligation.

Section 15.09 Mortgage Loan Servicing.

All actions regarding the servicing of the Mortgage Loan, including the collection of payments, the giving and receipt of notice, inspections of the Mortgaged Property, inspections of books and records, and the granting of consents and approvals, may be taken by the Loan Servicer unless Borrower receives notice to the contrary. If Borrower receives conflicting notices regarding the identity of the Loan Servicer or any other subject, any such notice from Lender shall govern. The Loan Servicer may change from time to time (whether related or unrelated to a sale of the Mortgage Loan). If there is a change of the Loan Servicer, Borrower will be given notice of the change.

Section 15.10 Disclosure of Information.

Lender may furnish information regarding Borrower, Key Principal or Guarantor or the Mortgaged Property to third parties with an existing or prospective interest in the servicing, enforcement, evaluation, performance, purchase or securitization of the Mortgage Loan, including trustees, master servicers, special servicers, rating agencies and organizations maintaining databases on the underwriting and performance of multifamily mortgage loans. Borrower irrevocably waives any and all rights it may have under applicable law to prohibit such disclosure, including any right of privacy.

Section 15.11 **Waiver; Conflict.**

No specific waiver of any of the terms of this Loan Agreement shall be considered as a general waiver. If any provision of this Loan Agreement is in conflict with any provision of any other Loan Document, the provision contained in this Loan Agreement shall control.

Section 15.12 **Determinations by Lender.**

In any instance in this Loan Agreement where the consent or approval of Lender may be given or is required, or where any determination, judgment or decision is to be rendered by Lender under this Loan Agreement, except as otherwise provided herein, the granting, withholding or denial of such consent or approval and the rendering of such determination, judgment or decision shall be made or exercised by Lender (or its designated representative) at its discretion.

Section 15.13 **Subrogation.**

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

Section 15.14 **Counting of Days.**

Except where otherwise specifically provided, any reference in this Loan Agreement to a period of "days" means calendar days, not Business Days. If the date on which Borrower is required to perform an obligation under this Loan Agreement is not a Business Day, Borrower shall be required to perform such obligation by the Business Day immediately preceding such date; provided, however, in respect of any Payment Date, or if the Maturity Date is other than a Business Day, Borrower shall be obligated to make such payment by the Business Day immediately following such date.

Section 15.15 **Revival and Reinstatement of Indebtedness.**

If the payment of all or any part of the Indebtedness by Borrower, Key Principal or any Guarantor or the transfer to Lender of any collateral or other property should for any reason subsequently be declared to be void or voidable under any state or federal law relating to creditors' rights, including provisions of the Insolvency Laws relating to a Voidable Transfer, and if Lender is required to repay or restore, in whole or in part, any such Voidable Transfer, or elects to do so upon the advice of its counsel, then the amount of such Voidable Transfer or the amount of such Voidable Transfer that Lender is required or elects to repay or restore, including all reasonable costs, expenses and attorneys' fees incurred by Lender in connection therewith, and the Indebtedness shall automatically shall be revived, reinstated and restored by such amount and shall exist as though such Voidable Transfer had never been made.

Section 15.16 **Time is of the Essence.**

Borrower agrees that, with respect to each and every obligation and covenant contained in this Loan Agreement and the other Loan Documents, time is of the essence.

Section 15.17 **Final Agreement.**

THIS LOAN AGREEMENT ALONG WITH ALL OF THE OTHER LOAN DOCUMENTS REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES WITH RESPECT TO THE SUBJECT MATTER HEREOF AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES. All prior or contemporaneous agreements, understandings, representations and statements, oral or written, are merged into this Loan Agreement and the other Loan Documents. This Loan Agreement, the other Loan Documents and any of their provisions may not be waived, modified, amended, discharged or terminated except by an agreement in writing signed by the party against which the enforcement of the waiver, modification, amendment, discharge or termination is sought, and then only to the extent set forth in that agreement.

Section 15.18 **WAIVER OF TRIAL BY JURY.**

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

IN WITNESS WHEREOF, Borrower and Lender have signed and delivered this Loan Agreement under seal (where applicable) or have caused this Loan Agreement to be signed and delivered under seal (where applicable) by their duly authorized representatives. Where applicable law so provides, Borrower and Lender intend that this Loan Agreement shall be deemed to be signed and delivered as a sealed instrument.

[Remainder of Page Intentionally Blank]

BORROWER:

MADISON 324, LLC, a Delaware limited liability company

By: Arenda Capital Management, LLC, a Delaware limited liability company, its manager

By: _____
Name:
Title:

LENDER:

CWCAPITAL LLC, a Massachusetts limited liability company

By: _____
Paul A. Sherrington
Managing Director

SCHEDULE 1
TO MULTIFAMILY LOAN AND SECURITY AGREEMENT

Definitions Schedule
(Interest Rate Type — Fixed Rate)

Capitalized terms used in the Loan Agreement have the meanings given to such terms in this Definitions Schedule.

“**Accrued Interest**” means unpaid interest, if any, on the Mortgage Loan that has not been added to the unpaid principal balance of the Mortgage Loan pursuant to Section 2.02(b) (Capitalization of Accrued But Unpaid Interest) of the Loan Agreement.

“**Additional Lender Repairs**” means repairs of the type listed on the Required Repair Schedule but not otherwise identified thereon that are determined advisable by Lender to keep the Mortgaged Property in good order and repair and in good marketable condition or to prevent deterioration of the Mortgaged Property.

“**Additional Lender Replacements**” means replacements of the type listed on the Required Replacement Schedule but not otherwise identified thereon that are determined advisable by Lender to keep the Mortgaged Property in good order and repair and in good marketable condition or to prevent deterioration of the Mortgaged Property.

“**Amortization Period**” has the meaning set forth in the Summary of Loan Terms.

“**Amortization Type**” has the meaning set forth in the Summary of Loan Terms.

“**Bank Secrecy Act**” means the Bank Secrecy Act of 1970, as amended (e.g., 31 U.S.C. Sections 5311-5330).

“**Bankruptcy Event**” means any one or more of the following:

- (a) the commencement, filing or continuation of a voluntary case or proceeding under one or more of the Insolvency Laws by Borrower;
- (b) the acknowledgment in writing by Borrower (other than to Lender in connection with a workout) that it is unable to pay its debts generally as they mature;
- (c) the making of a general assignment for the benefit of creditors by Borrower;
- (d) the commencement, filing or continuation of an involuntary case or proceeding under one or more Insolvency Laws against Borrower; or
- (e) the appointment of a receiver, liquidator, custodian, sequestrator, trustee or other similar officer who exercises control over Borrower or any substantial part of the assets of Borrower;

provided, however, that any proceeding or case under (d) or (e) above shall not be a Bankruptcy Event until the ninetieth (90th) day after filing (if not earlier dismissed) so long as such proceeding or case occurred without the consent, encouragement or active participation of

Borrower, Guarantor, Key Principal, Principal or any Borrower Affiliate (in which event such case or proceeding shall be a Bankruptcy Event immediately).

“**Borrower**” means, individually (and jointly and severally (solidarily instead for purposes of Louisiana law) if more than one), the entity (or entities) identified as “Borrower” in the first paragraph of the Loan Agreement.

“**Borrower Affiliate**” means, as to Borrower, Guarantor or Key Principal:

(a) any entity that directly or indirectly owns, controls or holds with power to vote, twenty percent (20%) or more of the outstanding voting securities of Borrower, Guarantor or Key Principal;

(b) any entity in which Borrower, Guarantor or Key Principal directly or indirectly owns, controls or holds with the power to vote, twenty percent (20%) or more of the outstanding voting securities of such entity;

(c) any entity controlled by or under common control with, or which controls Borrower, Guarantor or Key Principal (the term “control” for these purposes means the ability, whether by the ownership of shares or other equity interests, by contract or otherwise, to elect a majority of the directors of a corporation, to make management decisions on behalf of, or independently to select the managing partner of, a partnership, or otherwise to have the power independently to remove and then select a majority of those individuals exercising managerial authority over an entity, and control shall be conclusively presumed in the case of the ownership of fifty percent (50%) or more of the equity interests);

(d) any partner, manager, member or shareholder of Borrower, Guarantor or Key Principal; or

(e) any other individual that is related (to the third degree of consanguinity) by blood or marriage to Borrower, Guarantor or Key Principal.

“**Borrower Requested Repairs**” means repairs not listed on the Required Repair Schedule requested by Borrower to be reimbursed from the Repairs Escrow Account.

“**Borrower Requested Replacements**” means replacements not listed on the Required Replacement Schedule requested by Borrower to be reimbursed from the Replacement Reserve Account.

“**Borrower’s General Business Address**” has the meaning set forth in the Summary of Loan Terms.

“**Borrower’s Notice Address**” has the meaning set forth in the Summary of Loan Terms.

“**Business Day**” means any day other than Saturday, Sunday or any other day on which Lender is not open for business.

“**Collateral Account Funds**” means, collectively, the funds on deposit in any or all of the Collateral Accounts, including the Reserve/Escrow Account Funds.

“**Collateral Accounts**” means any account designated as such by Lender pursuant to a Collateral Agreement or as established pursuant to this Loan Agreement, including the Reserve/Escrow Account.

“**Collateral Agreement**” means any separate agreement between Borrower and Lender for the establishment of any other fund, reserve or account.

“**Completion Period**” has the meaning set forth in the Summary of Loan Terms.

“**Condemnation Action**” has the meaning set forth in the Security Instrument.

“**Controlling Interest**” means:

- (a) with respect to any entity, the following:
 - (1) if such entity is a general partnership or a joint venture, fifty-one percent (51%) of all general partnership or joint venture interests in such entity;
 - (2) if such entity is a limited partnership:
 - (A) any general partnership interest; or
 - (B) fifty-one percent (51%) of all limited partnership interests in such entity;
 - (3) if such entity is a limited liability company or a limited liability partnership:
 - (A) fifty-one percent (51%) of all membership or other ownership interests in such entity;
 - (B) the amount of membership or ownership interests sufficient to have the power to appoint or change any manager; or
 - (C) the interest of any manager;
 - (4) if such entity is a corporation (other than a Publicly-Held Corporation) with only one class of voting stock, fifty-one percent (51%) of voting stock in such corporation;
 - (5) if such entity is a corporation (other than a Publicly-Held Corporation) with more than one class of voting stock, the amount of shares of voting stock sufficient to have the power to elect the majority of directors of such corporation;
 - (6) if such entity is a trust (other than a land trust or a Publicly-Held Trust), the trustee of such trust or the ability to remove, appoint or substitute the trustee of such trust (unless the trustee of such trust after such removal, appointment or substitution is a trustee identified in the trust agreement approved by Lender); or

(b) the power or right in any agreement (including provisions contained in the organizational and/or governing documents of Borrower, Guarantor or Key Principal) to control or otherwise limit or modify, directly or indirectly, the management and operations of Borrower, Guarantor or Key Principal, including the power to:

- (1) cause a change in or replacement of the Person that controls the management and operations of Borrower, Guarantor or Key Principal; or
- (2) limit or otherwise modify the extent of such Person's control over the management and operations of Borrower, Guarantor or Key Principal.

“Credit Score” means a numerical value or a categorization derived from a statistical tool or modeling system used to measure credit risk and predict the likelihood of certain credit behaviors, including default.

“Debt Service Amounts” means the Monthly Debt Service Payments and all other amounts payable under the Loan Agreement, the Note, the Security Instrument or any other Loan Document.

“Default Rate” means an interest rate equal to the lesser of:

- (a) the sum of the Interest Rate plus four (4) percentage points; or
- (b) the maximum interest rate which may be collected from Borrower under applicable law.

“Definitions Schedule” means this Schedule 1 (Definitions Schedule) to the Loan Agreement.

“Effective Date” has the meaning set forth in the Summary of Loan Terms.

“Employee Benefit Plan” has the meaning as defined in Section 3(3) of ERISA.

“Enforcement Costs” has the meaning set forth in the Security Instrument.

“Environmental Indemnity Agreement” means that certain Environmental Indemnity Agreement dated as of the Effective Date made by Borrower to and for the benefit of Lender, as the same may be amended, restated, replaced, supplemented, or otherwise modified from time to time.

“Environmental Laws” has the meaning set forth in the Environmental Indemnity Agreement.

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended.

“Event of Default” means the occurrence of any event listed in Section 14.01 (Events of Default) of the Loan Agreement.

“Exceptions to Representations and Warranties” means the exceptions to Borrower's representations and warranties set forth on Schedule 7 (Exceptions to Representations and Warranties Schedule) to the Loan Agreement.

“First Payment Date” has the meaning set forth in the Summary of Loan Terms.

“**First Principal and Interest Payment Date**” has the meaning set forth in the Summary of Loan Terms, if applicable.

“**Fixed Rate**” has the meaning set forth in the Summary of Loan Terms.

“**Fixtures**” has the meaning set forth in the Security Instrument.

“**Foreclosure Event**” means:

- (a) foreclosure under the Security Instrument;
- (b) any other exercise by Lender of rights and remedies (whether under the Security Instrument or under applicable law, including Insolvency Laws) as holder of the Mortgage Loan and/or the Security Instrument, as a result of which Lender (or its designee or nominee) or a third party purchaser becomes owner of the Mortgaged Property;
- (c) delivery by Borrower to Lender (or its designee or nominee) of a deed or other conveyance of Borrower’s interest in the Mortgaged Property in lieu of any of the foregoing; or
- (d) in Louisiana, any dation en paiement.

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

“**Guarantor**” means any guarantor of the Indebtedness or any other obligation of Borrower under any Loan Document.

“**Guarantor Bankruptcy Event**” means any one or more of the following:

- (a) the commencement, filing or continuation of a voluntary case or proceeding under one or more of the Insolvency Laws by Guarantor;
- (b) the acknowledgment in writing by Guarantor (other than to Lender in connection with a workout) that it is unable to pay its debts generally as they mature;
- (c) the making of a general assignment for the benefit of creditors by Guarantor;
- (d) the commencement, filing or continuation of an involuntary case or proceeding under one or more Insolvency Laws against Guarantor; or
- (e) the appointment of a receiver, liquidator, custodian, sequestrator, trustee or other similar officer who exercises control over Guarantor or any substantial part of the assets of Guarantor, as applicable;

provided, however, that any proceeding or case under (d) or (e) above shall not be a Guarantor Bankruptcy Event until the ninetieth (90th) day after filing (if not earlier dismissed) so long as such proceeding or case occurred without the consent, encouragement or active participation of Borrower, Guarantor, Key Principal, Principal, or any Borrower Affiliate (in which event such case or proceeding shall be a Guarantor Bankruptcy Event immediately).

“**Guarantor’s General Business Address**” has the meaning set forth in the Summary of Loan Terms.

“**Guarantor’s Notice Address**” has the meaning set forth in the Summary of Loan Terms.

“**Guaranty**” means, individually and collectively, any Payment Guaranty, Non-Recourse Guaranty or other guaranty executed by Guarantor in connection with the Mortgage Loan.

“**Immediate Family Members**” means a child, grandchild, spouse, sibling, or parent, each of whom must have obtained a legal age of majority.

“**Imposition Deposits**” has the meaning set forth in the Security Instrument.

“**Impositions**” has the meaning set forth in the Security Instrument.

“**Improvements**” has the meaning set forth in the Security Instrument.

“**Indebtedness**” has the meaning set forth in the Security Instrument.

“**Initial Replacement Reserve Deposit**” has the meaning set forth in the Summary of Loan Terms.

“**Insolvency Laws**” means the United States Bankruptcy Code, 11 U.S.C. Section 101, et seq., together with any other federal or state law affecting debtor and creditor rights or relating to the bankruptcy, insolvency, reorganization, arrangement, moratorium, readjustment of debt, dissolution, liquidation or similar laws, proceedings, or equitable principles affecting the enforcement of creditors’ rights, as amended from time to time.

“**Insolvent**” means:

(a) that the sum total of all of a specified Person’s liabilities (whether secured or unsecured, contingent or fixed, or liquidated or unliquidated) is in excess of the value of such Person’s non-exempt assets, i.e., all of the assets of such Person that are available to satisfy claims of creditors; or

(b) such Person’s inability to pay its debts as they become due.

“**Intended Prepayment Date**” means the date upon which Borrower intends to make a prepayment on the Mortgage Loan, as set forth in the Prepayment Notice.

“**Interest Accrual Method**” has the meaning set forth in the Summary of Loan Terms.

“**Interest Only Term**” has the meaning set forth in the Summary of Loan Terms.

“**Interest Rate**” means the Fixed Rate.

“**Interest Rate Type**” has the meaning set forth in the Summary of Loan Terms.

“**Internal Revenue Code**” means the Internal Revenue Code of 1986, as amended.

“**Investor**” means any Person to whom Lender intends to sell, transfer, deliver or assign the Mortgage Loan in the secondary mortgage market.

“**Key Principal**” means, collectively:

(a) the natural person(s) or entity that controls and manages Borrower that Lender determines is critical to the successful operation and management of Borrower and the Mortgaged Property, as identified as such in the Summary of Loan Terms; or

(b) any natural person or entity who becomes a Key Principal after the date of the Loan Agreement and is identified as such in an assumption agreement, or another amendment or supplement to the Loan Agreement.

“**Key Principal’s General Business Address**” has the meaning set forth in the Summary of Loan Terms.

“**Key Principal’s Notice Address**” has the meaning set forth in the Summary of Loan Terms.

“**Land**” means the land described in Exhibit A to the Security Instrument.

“**Last Interest Only Payment Date**” has the meaning set forth in the Summary of Loan Terms, if applicable.

“**Late Charge**” means an amount equal to the delinquent amount then due under the Loan Documents multiplied by five percent (5%).

“**Leases**” has the meaning set forth in the Security Instrument.

“**Lender**” means the entity identified as “Lender” in the first paragraph of the Loan Agreement and its transferees, successors and assigns, or any subsequent holder of the Note.

“**Lender’s General Business Address**” has the meaning set forth in the Summary of Loan Terms.

“**Lender’s Notice Address**” has the meaning set forth in the Summary of Loan Terms.

“**Lender’s Payment Address**” has the meaning set forth in the Summary of Loan Terms.

“**Lien**” has the meaning set forth in the Security Instrument.

“**Loan Agreement**” means the Multifamily Loan and Security Agreement dated as of the Effective Date executed by and between Borrower and Lender to which this Definitions Schedule is attached, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

“**Loan Amount**” has the meaning set forth in the Summary of Loan Terms.

“**Loan Application**” means the application for the Mortgage Loan submitted by Borrower to Lender.

“**Loan Documents**” means the Note, the Loan Agreement, the Security Instrument, the Environmental Indemnity Agreement, the Guaranty, all guaranties, all indemnity agreements, all

Collateral Agreements, all O&M Programs, and any other documents now or in the future executed by Borrower, Guarantor, Key Principal, any guarantor or any other person in connection with the Mortgage Loan, as such documents may be amended, restated, replaced, supplemented or otherwise modified from time to time.

“**Loan Servicer**” means the entity that from time to time is designated by Lender to collect payments and deposits and receive notices under the Note, the Loan Agreement, the Security Instrument and any other Loan Document, and otherwise to service the Mortgage Loan for the benefit of Lender. Unless Borrower receives notice to the contrary, the Loan Servicer shall be the Lender originally named on the Summary of Loan Terms.

“**Loan Term**” has the meaning set forth in the Summary of Loan Terms.

“**Loan Year**” has the meaning set forth in the Summary of Loan Terms.

“**Material Commercial Lease**” means any non-Residential Lease, including any master lease (which term “master lease” shall include any master lease to a single corporate tenant), other than:

- (a) a non-Residential Lease that comprises less than five percent (5%) of total gross income of the Mortgaged Property on an annualized basis, so long as the lease is not a cell tower lease or a solar (power) lease;
- (b) a cable television lease, so long as the lessee is not a Borrower Affiliate, Key Principal or Guarantor;
- (c) storage units leased pursuant to any Residential Lease; or
- (d) a laundry lease, so long as:
 - (1) the lessee is not a Borrower Affiliate, Key Principal or Guarantor;
 - (2) the rent payable is not below-market (as determined by Lender); and
 - (3) such laundry lease is terminable for cause by lessor.

“**Maturity Date**” has the meaning set forth in the Summary of Loan Terms.

“**Maximum Inspection Fee**” has the meaning set forth in the Summary of Loan Terms.

“**Maximum Repair Cost**” shall be the amount(s) set forth in the Required Repair Schedule, if any.

“**Maximum Repair Disbursement Interval**” has the meaning set forth in the Summary of Loan Terms.

“**Maximum Replacement Reserve Disbursement Interval**” has the meaning set forth in the Summary of Loan Terms.

“**Minimum Repairs Disbursement Amount**” has the meaning set forth in the Summary of Loan Terms.

“**Minimum Replacement Reserve Disbursement Amount**” has the meaning set forth in the Summary of Loan Terms.

“**Monthly Debt Service Payment**” has the meaning set forth in the Summary of Loan Terms.

“**Monthly Replacement Reserve Deposit**” has the meaning set forth in the Summary of Loan Terms.

“**Mortgage Loan**” means the mortgage loan made by Lender to Borrower in the principal amount of the Note made pursuant to the Loan Agreement, evidenced by the Note and secured by the Loan Documents that are expressly stated to be security for the Mortgage Loan.

“**Mortgaged Property**” has the meaning set forth in the Security Instrument.

“**Multifamily Project**” has the meaning set forth in the Summary of Loan Terms.

“**Multifamily Project Address**” has the meaning set forth in the Summary of Loan Terms.

“**Non-Recourse Guaranty**” means, if applicable, that certain Guaranty of Non-Recourse Obligations of even date herewith executed by Guarantor to and for the benefit of Lender, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

“**Note**” means that certain Multifamily Note of even date herewith in the original principal amount of the stated Loan Amount made by Borrower in favor of Lender, and all schedules, riders, allonges and addenda attached thereto, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

“**Notice**” means any notices, requests, demands or other communications.

“**O&M Program**” has the meaning set forth in the Environmental Indemnity Agreement.

“**OFAC**” means the United States Treasury Department, Office of Foreign Assets Control, and any successor thereto.

“**Payment Date**” means the First Payment Date and the first day of each month thereafter until the Mortgage Loan is fully paid.

“**Payment Guaranty**” means, if applicable, that certain Guaranty (Payment) of even date herewith executed by Guarantor to and for the benefit of Lender, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

“**Permitted Encumbrance**” has the meaning set forth in the Security Instrument.

“**Permitted Prepayment Date**” means the last Business Day of a calendar month.

“**Person**” means an individual, an estate, a trust, a corporation, a partnership, a limited liability company or any other organization or entity (whether governmental or private).

“**Personalty**” has the meaning set forth in the Security Instrument.

“**Prepayment Lockout Period**” has the meaning set forth in the Summary of Loan Terms.

“Prepayment Notice” means the written notice that Borrower is required to provide to Lender in accordance with Section 2.03 (Lockout/Prepayment) of the Loan Agreement in order to make a prepayment on the Mortgage Loan, which shall include, at a minimum, the Intended Prepayment Date.

“Prepayment Premium” means the amount payable by Borrower in connection with a prepayment of the Mortgage Loan, as provided in Section 2.03 (Lockout/Prepayment) of the Loan Agreement and calculated in accordance with the Prepayment Premium Schedule.

“Prepayment Premium Period End Date” or **“Yield Maintenance Period End Date”** has the meaning set forth in the Summary of Loan Terms.

“Prepayment Premium Period Term” or **“Yield Maintenance Period Term”** has the meaning set forth in the Summary of Loan Terms.

“Prepayment Premium Schedule” means that certain Schedule 4 (Prepayment Premium) to the Loan Agreement.

“Principal” means any Person owning at least a twenty-five percent (25%) interest (direct or indirect) in Borrower, Guarantor or Key Principal.

“Prohibited Person” means:

(a) any Person with whom Lender or Fannie Mae is prohibited from doing business pursuant to any law, rule, regulation, judicial proceeding or administrative directive; or

(b) any Person identified on the United States Department of Housing and Urban Development’s “Limited Denial of Participation, HUD Funding Disqualifications and Voluntary Abstentions List,” or on the General Services Administration’s “Excluded Parties List System,” each of which may be amended from time to time, and any successor or replacement thereof; or

(c) any Person that is determined by Fannie Mae to pose an unacceptable credit risk due to the aggregate amount of debt of such Person owned or held by Fannie Mae; or

(d) any Person that has caused any unsatisfactory experience of a material nature with Fannie Mae or Lender, such as a default, fraud, intentional misrepresentation, litigation, arbitration or other similar act.

“Property Jurisdiction” has the meaning set forth in the Security Instrument.

“Property Square Footage” has the meaning set forth in the Summary of Loan Terms.

“Publicly-Held Corporation” means a corporation, the outstanding voting stock of which is registered under Sections 12(b) or 12(g) of the Securities Exchange Act of 1934, as amended.

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

“Remedial Work” means, in connection with the Mortgaged Property, any investigation, site monitoring, containment, clean-up, restoration or other remedial work necessary to comply with any Environmental Law or order of any Governmental Authority.

“**Rents**” has the meaning set forth in the Security Instrument.

“**Repair Threshold**” has the meaning set forth in the Summary of Loan Terms.

“**Repairs**” means, individually and collectively, the Required Repairs, Borrower Requested Repairs, and Additional Lender Repairs.

“**Repairs Escrow Account**” means the account established by Lender into which the Repairs Escrow Deposit is deposited to fund the Repairs.

“**Repairs Escrow Account Administrative Fee**” has the meaning set forth in the Summary of Loan Terms.

“**Repairs Escrow Deposit**” has the meaning set forth in the Summary of Loan Terms.

“**Replacement Reserve Account**” means the account established by Lender into which the Replacement Reserve Deposits are deposited to fund the Replacements.

“**Replacement Reserve Account Administration Fee**” has the meaning set forth in the Summary of Loan Terms.

“**Replacement Reserve Account Interest Disbursement Frequency**” has the meaning set forth in the Summary of Loan Terms.

“**Replacement Reserve Deposits**” means the Initial Replacement Reserve Deposit, Monthly Replacement Reserve Deposits and any other deposits to the Replacement Reserve Account required by the Loan Agreement.

“**Replacement Threshold**” has the meaning set forth in the Summary of Loan Terms.

“**Replacements**” means, individually and collectively, the Required Replacements, Borrower Requested Replacements and Additional Lender Replacements.

“**Required Repair Schedule**” means that certain Schedule 6 (Required Repairs) to the Loan Agreement.

“**Required Repairs**” means those items listed on the Required Repair Schedule.

“**Required Replacement Schedule**” means that certain Schedule 5 (Required Replacements) to the Loan Agreement.

“**Required Replacements**” means those items listed on the Required Replacement Schedule.

“**Reserve/Escrow Account Funds**” means, collectively, the funds on deposit in the Reserve/Escrow Accounts.

“**Reserve/Escrow Accounts**” means, together, the Replacement Reserve Account and the Repairs Escrow Account.

“**Residential Lease**” means a leasehold interest in an individual dwelling unit and shall not include any master lease.

“**Restoration**” means restoring and repairing the Mortgaged Property to the equivalent of its original economic and physical condition or to a condition approved by Lender following a casualty.

“**Review Fee**” means the non-refundable fee of Three Thousand Dollars (\$3,000) payable to Lender in connection with a Transfer for which Lender’s consent is required (including any assumption of the Mortgage Loan).

“**Schedule of Interest Rate Type Provisions**” means that certain Schedule 3 (Schedule of Interest Rate Type Provisions) to the Loan Agreement.

“**Security Instrument**” means that certain multifamily mortgage, deed to secure debt or deed of trust executed and delivered by Borrower as security for the Mortgage Loan and encumbering the Mortgaged Property, including all riders or schedules attached thereto, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

“**Servicing Arrangement**” means any arrangement between Lender and the Loan Servicer for loss sharing or interim advancement of funds.

“**Summary of Loan Terms**” means that certain Schedule 2 (Summary of Loan Terms) to the Loan Agreement.

“**Taxes**” has the meaning set forth in the Security Instrument.

“**Title Policy**” means the mortgagee’s loan policy of title insurance issued in connection with the Mortgage Loan and insuring the lien of the Security Instrument as set forth therein, as approved by Lender.

“**Total Parking Spaces**” has the meaning set forth in the Summary of Loan Terms.

“**Total Residential Units**” has the meaning set forth in the Summary of Loan Terms.

“**Transfer**” means:

- (a) a sale, assignment, transfer or other disposition (whether voluntary, involuntary, or by operation of law);
- (b) a granting, pledging, creating or attachment of a lien, encumbrance or security interest (whether voluntary, involuntary, or by operation of law);
- (c) an issuance or other creation of a direct or indirect ownership interest;
- (d) a withdrawal, retirement, removal or involuntary resignation of any owner or manager of a legal entity; or
- (e) a merger, consolidation, dissolution or liquidation of a legal entity.

“**Transfer Fee**” means a fee equal to one percent (1%) of the unpaid principal balance of the Mortgage Loan payable to Lender in connection with a Transfer of the Mortgaged Property or of an ownership interest in Borrower, Guarantor or Key Principal for which Lender’s consent is required (including in connection with an assumption of the Mortgage Loan).

“UCC” has the meaning set forth in the Security Instrument.

“UCC Collateral” has the meaning set forth in the Security Instrument.

“Voidable Transfer” means any fraudulent conveyance, preference or other voidable or recoverable payment of money or transfer of property.

“Yield Maintenance Period End Date” or “Prepayment Premium Period End Date” has the meaning set forth in the Summary of Loan Terms.

“Yield Maintenance Period Term” or “Prepayment Premium Period Term” has the meaning set forth in the Summary of Loan Terms.

SCHEDULE 2
TO MULTIFAMILY LOAN AND SECURITY AGREEMENT

Summary of Loan Terms
(Interest Rate Type - Fixed Rate)

I. GENERAL PARTY AND MULTIFAMILY PROJECT INFORMATION

Borrower	MADISON 324, LLC, a Delaware limited liability company
Lender	CWCAPITAL LLC, a Massachusetts limited liability company
Key Principal	Ryan Millsap Dusan Miletich Evan Meyer Arenda Capital Partners II, LLC, a Delaware limited liability company
Guarantor	Ryan Millsap Dusan Miletich Evan Meyer Arenda Capital Partners II, LLC, a Delaware limited liability company
Multifamily Project	Madison at Schilling Farms

ADDRESSES

Borrower's General Business Address	c/o Arenda Capital Management, LLC 20501 Earl Street, Suite Two Torrance, California 90503
Borrower's Notice Address	c/o Arenda Capital Management, LLC 20501 Earl Street, Suite Two Torrance, California 90503 Email: ryan@arendacapital.com
Multifamily Project Address	160 Madison Farms Lane Collierville, Tennessee 38017
Multifamily Project County	Shelby County
Key Principal's General Business Address	c/o Arenda Capital Management, LLC 20501 Earl Street, Suite Two Torrance, California 90503

Schedule 2 to Multifamily Loan and Security Agreement - Summary of Loan Terms (Interest Rate Type - Fixed Rate)
Fannie Mae

Form 6102.FR

07-11

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Key Principal's Notice Address c/o Arenda Capital Management, LLC
20501 Earl Street, Suite Two
Torrance, California 90503
Email: ryan@arendacapital.com
dusan@arendacapital.com
evan@arendacapital.com

Guarantor's General Business Address c/o Arenda Capital Management, LLC
20501 Earl Street, Suite Two
Torrance, California 90503

Guarantor's Notice Address c/o Arenda Capital Management, LLC
20501 Earl Street, Suite Two
Torrance, California 90503
Email: ryan@arendacapital.com
dusan@arendacapital.com
evan@arendacapital.com

Lender's General Business Address One Charles River Place
63 Kendrick Street
Needham, Massachusetts 02494

Lender's Notice Address One Charles River Place
63 Kendrick Street
Needham, Massachusetts 02494

Lender's Payment Address One Charles River Place
63 Kendrick Street
Needham, Massachusetts 02494

II. MULTIFAMILY PROJECT INFORMATION

Property Square Footage 21.529 acres

Total Parking Spaces 672

Total Residential Units 325

III. MORTGAGE LOAN INFORMATION

Amortization Period 360 months

Amortization Type	<input type="checkbox"/> Amortizing <input type="checkbox"/> Full Term Interest Only <input checked="" type="checkbox"/> Partial Interest Only
Effective Date	As of June 20, 2012
First Payment Date	August 1, 2012
First Principal and Interest Payment Date	August 1, 2015
Fixed Rate	3.91%
	<input type="checkbox"/> 30/360 (computed on the basis of a three hundred sixty (360) day year consisting of twelve (12) thirty (30) day months).
	or
Interest Accrual Method	<input checked="" type="checkbox"/> Actual/360 (computed on the basis of a three hundred sixty (360) day year and the actual number of calendar days during the applicable month, calculated by multiplying the unpaid principal balance of the Mortgage Loan by the Interest Rate, dividing the product by three hundred sixty (360), and multiplying the quotient obtained by the actual number of days elapsed in the applicable month).
Interest Only Term	36 months
Interest Rate	The Fixed Rate
Interest Rate Type	Fixed Rate
Last Interest Only Payment Date	July 1, 2015
Loan Amount	\$25,680,000.00
Loan Term	120 months

Loan Year	The period beginning on the Effective Date and ending on the last day of June, 2013, and each successive twelve (12) month period thereafter.
Maturity Date	July 1, 2022, or any earlier date on which the unpaid principal balance of the Mortgage Loan becomes due and payable by acceleration or otherwise.
Monthly Debt Service Payment	<ul style="list-style-type: none"> (i) \$86,463.13 for the First Payment Date; (ii) for each Payment Date thereafter through and including the Last Interest Only Payment Date: <ul style="list-style-type: none"> (a) \$78,095.73 if the prior month was a 28-day month; (b) \$80,884.87 if the prior month was a 29-day month; (c) \$83,674.00 if the prior month was a 30-day month; and (d) \$86,463.13 if the prior month was a 31-day month; and (iii) \$121,271.56 for the First Principal and Interest Payment Date and each Payment Date thereafter until the Mortgage Loan is fully paid.
Prepayment Lockout Period	0 years from the Effective Date

IV. YIELD MAINTENANCE/PREPAYMENT PREMIUM INFORMATION

Yield Maintenance Period End Date

or The last day of December, 2021.

Prepayment Premium Period End Date

Yield Maintenance Period Term

or 114 months

Prepayment Premium Period Term

V. RESERVE INFORMATION

Completion Period	Within [See Schedule 6] after the Effective Date or as otherwise shown on the Required Repair Schedule.
Initial Replacement Reserve Deposit	\$-0-
Maximum Inspection Fee	\$1,500.00
Maximum Repair Disbursement Interval	One time per calendar month
Maximum Replacement Reserve Disbursement Interval	One time per calendar quarter
Minimum Repairs Disbursement Amount	\$1,500.00
Minimum Replacement Reserve Disbursement Amount	\$1,500.00
Monthly Replacement Reserve Deposit	\$7,803.00
Repair Threshold	\$25,000.00

Repairs Escrow Account Administrative Fee	\$250.00, payable one time
Repairs Escrow Deposit	\$31,500.00
Replacement Reserve Account Administration Fee	\$250.00, payable annually
Replacement Reserve Account Interest Disbursement Frequency	Quarterly
Replacement Threshold	\$25,000.00

Borrower's Initials

7

SCHEDULE 3
TO MULTIFAMILY LOAN AND SECURITY AGREEMENT

Schedule of Interest Rate Type Provisions
(Fixed Rate)

1. Defined Terms.

Capitalized terms not otherwise defined in this Schedule have the meanings given to such terms in the Definitions Schedule to the Loan Agreement.

2. Interest Accrual.

Except as otherwise provided in the Loan Agreement, interest shall accrue at the Interest Rate until fully paid.

**Schedule 3 to Multifamily Loan and Security
Agreement - Interest Rate Type Provisions
(Fixed Rate)**
Fannie Mae

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2

SCHEDULE 4
TO MULTIFAMILY LOAN AND SECURITY AGREEMENT

Prepayment Premium Schedule
(Standard Yield Maintenance — Fixed Rate)

1. Defined Terms.

All capitalized terms used but not defined in this Prepayment Premium Schedule shall have the meanings assigned to them in the Loan Agreement.

2. Prepayment Premium.

Any Prepayment Premium payable under Section 2.03 (Lockout/Prepayment) of the Loan Agreement shall be computed as follows:

(a) If the prepayment is made at any time after the Effective Date and before the Yield Maintenance Period End Date, the Prepayment Premium shall be the greater of:

(1) one percent (1%) of the amount of principal being prepaid; or

(2) the product obtained by multiplying:

(A) the amount of principal being prepaid,

by

(B) the difference obtained by subtracting from the Fixed Rate on the Mortgage Loan, the Yield Rate (as defined below) on the twenty-fifth (25th) Business Day preceding (i) the Intended Prepayment Date, or (ii) the date Lender accelerates the Mortgage Loan or otherwise accepts a prepayment pursuant to Section 2.03(d) (Application of Collateral) of the Loan Agreement,

by

(C) the present value factor calculated using the following formula:

$$\frac{1 - (1 + r)^{-n/12}}{r}$$

[r = Yield Rate

n = the number of months remaining between (i) either of the following: (x) in the case of a voluntary prepayment, the last day of the month in which the prepayment is made, or (y) in any other case, the date on which Lender accelerates the unpaid principal balance of the Mortgage Loan and (ii) the Yield Maintenance Period End Date.

For purposes of this clause (ii), the “**Yield Rate**” means the yield calculated by interpolating the yields for the immediately shorter and longer term U.S. “Treasury constant maturities” (as reported in the Federal Reserve Statistical Release H.15 Selected Interest Rates (the “**Fed Release**”) under the heading “U.S. government securities”) closest to the remaining term of the Yield Maintenance Period Term, as follows (rounded to three (3) decimal places):

$$\left(\frac{(a - b)}{(x - y)} \times (z - y) \right) + b$$

a = the yield for the longer U.S. Treasury constant maturity
 b = the yield for the shorter U.S. Treasury constant maturity
 x = the term of the longer U.S. Treasury constant maturity
 y = the term of the shorter U.S. Treasury constant maturity
 z = “ n ” (as defined in the present value factor calculation above) divided by twelve (12).

Notwithstanding any provision to the contrary, if “ z ” equals a term reported under the U.S. “Treasury constant maturities” subheading in the Fed Release, the yield for such term shall be used, and interpolation shall not be necessary. If publication of the Fed Release is discontinued by the Federal Reserve Board, Lender shall determine the Yield Rate from another source selected by Lender. Any determination of the Yield Rate by Lender will be binding absent manifest error.]

(b) If the prepayment is made on or after the Yield Maintenance Period End Date but before the last calendar day of the fourth (4th) month prior to the month in which the Maturity Date occurs, the Prepayment Premium shall be one percent (1%) of the amount of principal being prepaid.

(c) Notwithstanding the provisions of Section 2.03 (Lockout/Prepayment) of the Loan Agreement, no Prepayment Premium shall be payable with respect to any prepayment made on or after the last calendar day of the fourth (4th) month prior to the month in which the Maturity Date occurs.

Borrower's Initials

3

**SCHEDULE 5 TO
MULTIFAMILY LOAN AND SECURITY AGREEMENT**

Required Replacement Schedule

(Madison at Schilling Farms)

- Structural Repairs
- Siding Repairs
- Roofing
- HVAC Systems
- Parking Lot Resurfacing/Sealing
- Exterior Painting
- All other repair/replacement items (other than normal maintenance items) approved in writing by Lender (in accordance with Section 13.02(a)(9)(A) of this Agreement) which are capital in nature and similar to those items specified above (including items necessary in order to keep the Property in good order and repair and in a good marketable condition or to prevent deterioration).

**Multifamily Loan and Security Agreement
(Non-Recourse)
Schedule 5**

Form 6001.NR

04-11

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Borrower's Initials

2

**SCHEDULE 6 TO
MULTIFAMILY LOAN AND SECURITY AGREEMENT**

Required Repair Schedule

Immediate Repairs

Description	Completion Time (months)	Estimated Cost	Escrowed At	Total Escrow
Attic Repairs	2	\$ 9,600	125 % \$	12,000
Exterior Posts	3	\$ 7,700	125 % \$	9,625
Exterior Veneer	3	\$ 6,500	125 % \$	8,125
Trip Hazards	2	\$ 1,400	125 % \$	1,750
Total Escrow		\$ 25,200		\$ 31,500

** Items marked with 0% are waived. Items escrowed at 125% have bids or contracts.*

**Multifamily Loan and Security Agreement
(Non-Recourse)
Schedule 6**

Form 6001.NR

04-11

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2

**SCHEDULE 7 TO
MULTIFAMILY LOAN AND SECURITY AGREEMENT**

Exceptions to Representations and Warranties Schedule

NONE

**Multifamily Loan and Security Agreement
(Non-Recourse)
Schedule 7**

Form 6001.NR

04-11

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2

Prepared by, and after recording
return to:

Nora G. Nickel, Esquire
Troutman Sanders LLP
P.O. Box 1122
Richmond, Virginia 23218-1122

**MULTIFAMILY DEED OF TRUST,
ASSIGNMENT OF LEASES AND RENTS,
SECURITY AGREEMENT
AND FIXTURE FILING**

(TENNESSEE)

**Maximum Principal Indebtedness for Tennessee
Recording Tax Purposes is \$25,680,000.00**

NOTICE PURSUANT TO SECTIONS 47-9-323 AND 47-28-104 OF TENNESSEE CODE ANNOTATED. THIS SECURITY INSTRUMENT SECURES OBLIGATORY ADVANCES AND IS FOR COMMERCIAL PURPOSES PURSUANT TO SECTION 47-28-101, ET SEQ, OF THE TENNESSEE CODE ANNOTATED.

**Fannie Mae Multifamily Security Instrument
Tennessee**

**Form 6025.TN
01-11**

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TABLE OF CONTENTS

	<u>PAGE</u>
1. DEFINED TERMS	2
2. SECURITY AGREEMENT; FIXTURE FILING	6
3. ASSIGNMENT OF LEASES AND RENTS; APPOINTMENT OF RECEIVER; LENDER IN POSSESSION	7
4. PROTECTION OF LENDER'S SECURITY	10
5. NO OTHER INDEBTEDNESS AND MEZZANINE FINANCING	10
6. DEFAULT; ACCELERATION; REMEDIES	10
7. WAIVER OF STATUTE OF LIMITATIONS AND MARSHALING	12
8. WAIVER OF REDEMPTION; RIGHTS OF TENANTS	13
9. NOTICE	13
10. MORTGAGEE-IN-POSSESSION	14
11. RELEASE	14
12. SUBSTITUTE TRUSTEE	14
13. TENNESSEE STATE SPECIFIC PROVISIONS	14
14. GOVERNING LAW; CONSENT TO JURISDICTION AND VENUE	15
15. MISCELLANEOUS PROVISIONS	15
16. TIME IS OF THE ESSENCE	16
17. WAIVER OF TRIAL BY JURY	16

**MULTIFAMILY DEED OF TRUST,
ASSIGNMENT OF LEASES AND RENTS,
SECURITY AGREEMENT
AND FIXTURE FILING**

This MULTIFAMILY DEED OF TRUST, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING (as amended, restated, replaced, supplemented, or otherwise modified from time to time, the “**Security Instrument**”) dated as of the 20th day of June, 2012, is executed by **MADISON 324, LLC**, a limited liability company organized and existing under the laws of Delaware, whose address is c/o Arenda Capital Management, LLC, 20501 Earl Street, Suite Two, Torrance, California 90503, as grantor (“**Borrower**”), to **JOSEPH B. PITT, JR.**, a resident of Davidson County, Tennessee, whose address is 6840 Carothers Parkway, Suite 200, Franklin, Tennessee 37067, as trustee (“**Trustee**”), for the benefit of **CWCAPITAL LLC**, a limited liability company organized and existing under the laws of Massachusetts, whose address is One Charles River Place, 63 Kendrick Street, Needham, Massachusetts 02494, as beneficiary (“**Lender**”).

This Security Instrument covers property or goods herein described that are, or are to become so affixed to real property described in Exhibit A hereto so as to become fixtures and also constitutes a fixture filing under Sections 47-9-334 and 47-9-502 of Tennessee Code Annotated, and is to be filed in the real estate records. The names of the debtor (the “**Borrower**” herein) and the secured party (the “**Lender**” herein), the mailing address of the secured party from which information concerning the security interest may be obtained, the mailing address of the debtor, and a statement indicating the types, or describing the items, of collateral are stated herein in compliance with Section 47-9-502 of the Tennessee Code Annotated, as amended.

Borrower, in consideration of (i) the loan in the original principal amount of \$25,680,000.00 (the “**Mortgage Loan**”) evidenced by that certain Multifamily Note dated as of the date of this Security Instrument, executed by Borrower and made payable to the order of Lender (as amended, restated, replaced, supplemented, or otherwise modified from time to time, the “**Note**”), (ii) that certain Multifamily Loan and Security Agreement dated as of the date of this Security Instrument, executed by and between Borrower and Lender (as amended, restated, replaced, supplemented or otherwise modified from time to time, the “**Loan Agreement**”), and (iii) the trust created by this Security Instrument, and to secure to Lender the repayment of the Indebtedness (as defined in this Security Instrument), and all renewals, extensions and modifications thereof, and the performance of the covenants and agreements of Borrower contained in the Loan Documents (as defined in the Loan Agreement), excluding the Environmental Indemnity Agreement (as defined in this Security Instrument), irrevocably and unconditionally mortgages, grants, warrants, conveys, bargains, sells, and assigns to Trustee, in trust, for benefit of Lender, with power of sale and right of entry and possession, the Mortgaged Property (as defined in this Security Instrument), including the real property located in Shelby County, State of Tennessee, and described in Exhibit A attached to this Security Instrument and incorporated by reference (the “**Land**”), to have and to hold such Mortgaged Property unto Trustee and Trustee’s successors and assigns, forever; Borrower hereby releasing, relinquishing and waiving, to the fullest extent allowed by law, all rights and benefits, if any, under and by

virtue of the homestead exemption laws of the Property Jurisdiction (as defined in this Security Instrument), if applicable.

Borrower represents and warrants that Borrower is lawfully seized of the Mortgaged Property and has the right, power and authority to mortgage, grant, warrant, convey, bargain, sell, and assign the Mortgaged Property, and that the Mortgaged Property is not encumbered by any Lien (as defined in this Security Instrument) other than Permitted Encumbrances (as defined in this Security Instrument). Borrower covenants that Borrower will warrant and defend the title to the Mortgaged Property against all claims and demands other than Permitted Encumbrances.

THIS SECURITY INSTRUMENT IS GIVEN FOR COMMERCIAL PURPOSES AND FOR THE PURPOSE OF CREATING A LIEN ON THE MORTGAGED PROPERTY IN ORDER TO SECURE NOT ONLY ANY EXISTING INDEBTEDNESS OR ADVANCES MADE CONTEMPORANEOUSLY WITH THE EXECUTION HEREOF, BUT ALSO FUTURE ADVANCES, WHETHER SUCH ADVANCES ARE OBLIGATORY, OR TO BE MADE AT THE OPTION OF LENDER, OR BOTH, AND WHETHER MADE BEFORE OR AFTER DEFAULT OR MATURITY OR OTHER SIMILAR EVENTS, TO THE SAME EXTENT AS IF SUCH FUTURE ADVANCES WERE MADE ON THE DATE OF THE EXECUTION OF THIS SECURITY INSTRUMENT, ALTHOUGH THERE MAY BE NO ADVANCE MADE AT THE TIME OF THE EXECUTION HEREOF AND ALTHOUGH THERE MAY BE NO INDEBTEDNESS OUTSTANDING AT THE TIME ANY ADVANCE IS MADE AS PROVIDED BY T.C.A. SECTION 47-28-102. THIS NOTICE REFERENCING OBLIGATORY FUTURE ADVANCES IS FOR PURPOSES OF COMPLYING WITH T.C.A. SECTION 47-28-104 AND NO OTHER INFERENCE IS TO BE PRESUMED HEREUNDER. NOTWITHSTANDING THE REDUCTION OF THE AMOUNT (S) SECURED HEREBY AT ANY TIME TO ZERO, THIS SECURITY INSTRUMENT SHALL REMAIN IN FULL FORCE AND EFFECT UNTIL SUCH TIME AS RELEASE OR SATISFACTION THEREOF IS FILED OR RECORDED BY LENDER.

Borrower, and by their acceptance hereof, each of Trustee and Lender covenants and agrees as follows:

1. Defined Terms.

Capitalized terms used and not specifically defined herein have the meanings given to such terms in the Loan Agreement. All terms used and not specifically defined herein, but which are otherwise defined by the UCC, shall have the meanings assigned to them by the UCC. The following terms, when used in this Security Instrument, shall have the following meanings:

“**Condemnation Action**” means any action or proceeding, however characterized or named, 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.

“**Enforcement Costs**” means all expenses and costs, including reasonable attorneys’ fees and expenses, fees and out-of-pocket expenses of expert witnesses and costs of investigation, incurred by Lender as a result of any Event of Default under the Loan Agreement or in connection with efforts to collect any amount due under the Loan Documents, or to enforce the provisions of the Loan Agreement or any of the other Loan Documents, including those incurred in post-judgment collection efforts and in any bankruptcy or insolvency proceeding (including

any action for relief from the automatic stay of any bankruptcy proceeding or Foreclosure Event) or judicial or non-judicial foreclosure proceeding, to the extent permitted by law.

“**Environmental Indemnity Agreement**” means that certain Environmental Indemnity Agreement dated as of the date of this Security Instrument, executed by Borrower to and for the benefit of Lender, as the same may be amended, restated, replaced, supplemented, or otherwise modified from time to time.

“**Environmental Laws**” has the meaning set forth in the Environmental Indemnity Agreement.

“**Event of Default**” has the meaning set forth in the Loan Agreement.

“**Fixtures**” means all Goods that are so attached or affixed to the Land or the Improvements as to constitute a fixture under the laws of the Property Jurisdiction.

“**Goods**” means all goods which are used now or in the future in connection with the ownership, management, or operation of the Land or the Improvements or are located on the Land or in the Improvements, including inventory; furniture; furnishings; machinery, equipment, engines, boilers, incinerators, and installed building materials; systems and equipment for the purpose of supplying or distributing heating, cooling, electricity, gas, water, air, or light; antennas, cable, wiring, and conduits used in connection with radio, television, security, fire prevention, or fire detection, or otherwise used to carry electronic signals; telephone systems and equipment; elevators and related machinery and equipment; fire detection, prevention and extinguishing systems and apparatus; security and access control systems and apparatus; plumbing systems; water heaters, ranges, stoves, microwave ovens, refrigerators, dishwashers, garbage disposers, washers, dryers, and other appliances; light fixtures, awnings, storm windows, and storm doors; pictures, screens, blinds, shades, curtains, and curtain rods; mirrors, cabinets, paneling, rugs, and floor and wall coverings; fences, trees, and plants; swimming pools; exercise equipment; supplies; tools; books and records (whether in written or electronic form); websites, URLs, blogs, and social network pages; computer equipment (hardware and software); and other tangible personal property which is used now or in the future in connection with the ownership, management, or operation of the Land or the Improvements or are located on the Land or in the Improvements.

“**Imposition Deposits**” means deposits in an amount sufficient to accumulate with Lender the entire sum required to pay the Impositions when due.

“**Impositions**” means

- (a) any water and sewer charges which, if not paid, may result in a lien on all or any part of the Mortgaged Property;
- (b) the premiums for fire and other casualty insurance, liability insurance, rent loss insurance and such other insurance as Lender may require under the Loan Agreement;
- (c) Taxes; and
- (d) amounts for other charges and expenses which Lender at any time reasonably deems necessary to protect the Mortgaged Property, to prevent the imposition of liens on the

Mortgaged Property, or otherwise to protect Lender's interests, all as reasonably determined from time to time by Lender.

"Improvements" means the buildings, structures, improvements, and alterations now constructed or at any time in the future constructed or placed upon the Land, including any future replacements, facilities, and additions and other construction on the Land.

"Indebtedness" means the principal of, interest on, and all other amounts due at any time under the Note, the Loan Agreement, this Security Instrument or any other Loan Document (other than the Environmental Indemnity Agreement and Guaranty), including Prepayment Premiums, late charges, default interest, and accrued interest as provided in the Loan Agreement and this Security Instrument, advances, costs and expenses to perform the obligations of Borrower or to protect the Mortgaged Property or the security of this Security Instrument, all other monetary obligations of Borrower under the Loan Documents (other than the Environmental Indemnity Agreement), including amounts due as a result of any indemnification obligations, and any Enforcement Costs.

"Land" means the real property described in Exhibit A.

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

"Lien" means any claim or charge against property for payment of a debt or an amount owed for services rendered, including any mortgage, deed of trust, deed to secure debt, security interest, tax lien, any materialman's or mechanic's lien, or any lien of a Governmental Authority, including any lien in connection with the payment of utilities, or any other encumbrance.

"Mortgaged Property" means all of Borrower's present and hereafter acquired right, title and interest in and to all of the following:

- (a) the Land;
- (b) the Improvements;
- (c) the Personalty;
- (d) current and future rights, including air rights, development rights, zoning rights and other similar rights or interests, easements, tenements, rights-of-way, strips and gores of land, streets, alleys, roads, sewer rights, waters, watercourses, and appurtenances related to or benefitting the Land or the Improvements, or both, and all rights-of-way, streets, alleys and roads which may have been or may in the future be vacated;
- (e) insurance policies relating to the Mortgaged Property (and any unearned premiums) and all proceeds paid or to be paid by any insurer of the Land, the Improvements, the Personalty, or any other part of the Mortgaged Property, whether or not Borrower obtained the insurance pursuant to Lender's requirements;

(f) awards, payments and other compensation made or to be made by any municipal, state or federal authority with respect to the Land, the Improvements, the Personalty, or any other part of the Mortgaged Property, including any awards or settlements resulting from (1) Condemnation Actions, (2) any damage to the Mortgaged Property caused by governmental action that does not result in a Condemnation Action, or (3) the total or partial taking of the Land, the Improvements, 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;

(g) contracts, options and other agreements for the sale of the Land, the Improvements, 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;

(h) Leases and Lease guaranties, letters of credit and any other supporting obligation for any of the Leases given in connection with any of the Leases, and all Rents;

(i) earnings, royalties, accounts receivable, issues and profits from the Land, the Improvements or any other part of the Mortgaged Property, and all undisbursed proceeds of the Mortgage Loan and, if Borrower is a cooperative housing corporation, maintenance charges or assessments payable by shareholders or residents;

(j) Imposition Deposits;

(k) refunds or rebates of Impositions by any municipal, state or federal authority or insurance company (other than refunds applicable to periods before the real property tax year in which this Security Instrument is dated);

(l) tenant security deposits;

(m) 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;

(n) Collateral Accounts and all Collateral Account Funds;

(o) products, and all cash and non-cash proceeds from the conversion, voluntary or involuntary, of any of the above into cash or liquidated claims, and the right to collect such proceeds; and

(p) all of Borrower's right, title and interest in the oil, gas, minerals, mineral interests, royalties, overriding royalties, production payments, net profit interests and other interests and estates in, under and on the Mortgaged Property and other oil, gas and mineral interests with which any of the foregoing interests or estates are pooled or unitized.

"Permitted Encumbrance" means only the easements or restrictions listed in a schedule of exceptions to coverage in the Title Policy and Taxes for the current tax year that are not yet due and payable.

"Personalty" means all Goods, accounts, choses of action, chattel paper, documents, general intangibles (including Software), payment intangibles, instruments, investment property, letter of

credit rights, supporting obligations, computer information, source codes, object codes, records and data, all telephone numbers or listings, claims (including claims for indemnity or breach of warranty), deposit accounts and other property or assets of any kind or nature related to the Land or the Improvements now or in the future, including operating agreements, surveys, plans and specifications and contracts for architectural, engineering and construction services relating to the Land or the Improvements, and all other intangible property and rights relating to the operation of, or used in connection with, the Land or the Improvements, including all governmental permits relating to any activities on the Land.

“**Prepayment Premium**” has the meaning set forth in the Loan Agreement.

“**Property Jurisdiction**” means the jurisdiction in which the Land is located.

“**Rents**” means all rents (whether from residential or non-residential space), revenues and other income from the Land or the Improvements, including subsidy payments received from any sources, including payments under any “Housing Assistance Payments Contract” or other rental subsidy agreement (if any), parking fees, laundry and vending machine income and fees and charges for food, health care and other services provided at the Mortgaged Property, whether now due, past due, or to become due, and tenant security deposits.

“**Software**” means a computer program and any supporting information provided in connection with a transaction relating to the program. The term does not include any computer program that is included in the definition of Goods.

“**Taxes**” means all taxes, assessments, vault rentals and other charges, if any, general, special or otherwise, including 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, may become a lien, on the Land or the Improvements or any taxes upon any Loan Document.

“**Title Policy**” has the meaning set forth in the Loan Agreement.

“**UCC**” means the Uniform Commercial Code in effect in the Property Jurisdiction, as amended from time to time.

“**UCC Collateral**” means any or all of that portion of the Mortgaged Property, whether acquired now or in the future, in which a security interest may be granted under the UCC.

2. Security Agreement; Fixture Filing.

(a) To secure to Lender, the repayment of the Indebtedness, and all renewals, extensions and modifications thereof, and the performance of the covenants and agreements of Borrower contained in the Loan Documents, Borrower hereby pledges, assigns, and grants to Lender a continuing security interest in the UCC Collateral. This Security Instrument constitutes a security agreement and a financing statement under the UCC. This Security Instrument also constitutes a financing statement pursuant to the terms of the UCC with respect to any part of the Mortgaged Property that is or may become a Fixture under applicable law, and will be recorded as a “fixture filing” in accordance with the UCC. Borrower hereby authorizes Lender to file financing statements, continuation statements and financing statement amendments in such form as Lender may require to perfect or continue the perfection of this security interest without the

signature of Borrower. From and after the occurrence of an Event of Default, Lender shall have the remedies of a secured party under the UCC, in addition to all remedies provided by this Security Instrument existing under applicable law. Lender may exercise any or all of its remedies against the UCC Collateral separately or together, and in any order, without in any way affecting the availability or validity of Lender's other remedies. For purposes of the UCC, the debtor is Borrower and the secured party is Lender. The name and address of the debtor and secured party are set forth after Borrower's signature below which are the addresses from which information on the security interest may be obtained.

(b) Borrower represents and warrants that: (1) Borrower maintains its chief executive office at the location set forth after Borrower's signature below, and Borrower will notify Lender in writing of any change in its chief executive office within five (5) days of such change; (2) Borrower is the record owner of the Mortgaged Property; (3) Borrower's state of incorporation, organization, or formation, if applicable, is as set forth on Page 1 of this Security Instrument; (4) Borrower's exact legal name is as set forth on Page 1 of this Security Instrument; (5) Borrower's organizational identification number, if applicable, is as set forth after Borrower's signature below; (6) Borrower is the owner of the UCC Collateral subject to no liens, charges or encumbrances other than the lien hereof; (7) the UCC Collateral will not be removed from the Mortgaged Property without the consent of Lender; and (8) no financing statement covering any of the UCC Collateral or any proceeds thereof is on file in any public office except pursuant hereto.

(c) All property of every kind acquired by Borrower after the date of this Security Instrument which by the terms of this Security Instrument shall be subject to the lien and the security interest created hereby, shall immediately upon the acquisition thereof by Borrower and without further conveyance or assignment become subject to the lien and security interest created by this Security Instrument. Nevertheless, Borrower shall execute, acknowledge, deliver and record or file, as appropriate, all and every such further deeds of trust, mortgages, deeds to secure debt, security agreements, financing statements, assignments and assurances as Lender shall require for accomplishing the purposes of this Security Instrument and to comply with the rerecording requirements of the UCC.

3. Assignment of Leases and 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 Leases and Rents. It is the intention of Borrower to establish present, absolute and irrevocable transfers and assignments to Lender of all Leases and Rents and to authorize and empower Lender to collect and receive all Rents without the necessity of further action on the part of Borrower. Borrower and Lender intend the assignments of Leases and Rents to be effective immediately and to constitute absolute present assignments, and not assignments for additional security only. Only for purposes of giving effect to these absolute assignments of Leases and Rents, and for no other purpose, the Leases and Rents shall not be deemed to be a part of the Mortgaged Property. However, if these present, absolute and unconditional assignments of Leases and Rents are not enforceable by their terms under the laws of the Property Jurisdiction, then each of the Leases and Rents shall be included as part of the Mortgaged Property, and it is the intention of Borrower, in such circumstance, that this Security Instrument create and perfect a lien on each of the Leases and Rents in favor of Lender, which liens shall be effective as of the date of this Security Instrument.

(b) Until the occurrence of an Event of Default, but subject to the limitations set forth in the Loan Documents, Borrower shall have a revocable license to exercise all rights, power and authority granted to Borrower under the Leases (including the right, power and authority to modify the terms of any Lease or extend or terminate any Lease subject to the limitations set forth in the Loan Documents), and to collect and receive all Rents, to hold all Rents in trust for the benefit of Lender, and to apply all Rents to pay the Monthly Debt Service Payments and the other amounts then due and payable under the other Loan Documents, including Imposition Deposits, and to pay the current costs and expenses of managing, operating and maintaining the Mortgaged Property, including utilities and Impositions (to the extent not included in Imposition Deposits), tenant improvements and other capital expenditures. So long as no Event of Default has occurred, 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.

(c) From and after the occurrence of an Event of Default, 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, the revocable license granted to Borrower pursuant to Section 3(b) shall automatically terminate, and Lender shall immediately 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) and, without notice, Lender shall be entitled to all Rents as they become due and payable, including Rents then due and unpaid. From and after the occurrence of an Event of Default, Borrower authorizes Lender to collect, sue for and compromise Rents and directs each tenant of the Mortgaged Property to pay all Rents to, or as directed by, Lender, and Borrower shall, upon Borrower's receipt of any Rents from any sources, pay the total amount of such receipts to Lender. Although the foregoing rights of Lender are self-effecting, at any time from and after the occurrence of an Event of Default, Lender may make demand for all Rents, and 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 that 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.

(d) From and after the occurrence of an Event of Default, Lender may, regardless of the adequacy of Lender's security or the solvency of Borrower, and even in the absence of waste, enter upon, take and maintain full control of the Mortgaged Property, and may exclude Borrower and its agents and employees therefrom, 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 (including through use of a lockbox, at Lender's election), 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 this assignment of Rents, protecting the Mortgaged Property or the security of this Security Instrument and the Mortgage Loan, or for such other purposes as Lender in its discretion may deem necessary or desirable.

(e) Notwithstanding any other right provided Lender under this Security Instrument or any other Loan Document, if an Event of Default has occurred, and regardless of the adequacy of Lender's security or 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 Section 3. If Lender elects to seek the appointment of a receiver for the Mortgaged Property at any time after an Event of Default has occurred, 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. Borrower consents to shortened time consideration of a motion to appoint a receiver. Lender or the receiver, as applicable, shall be entitled to receive a reasonable fee for managing the Mortgaged Property and such fee shall become an additional part of the Indebtedness. Immediately upon appointment of a receiver or Lender's entry upon and taking possession and control of the Mortgaged Property, possession of the Mortgaged Property and 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, shall be surrendered to Lender or the receiver, as applicable. If Lender takes possession and control of the Mortgaged Property, Lender may exclude Borrower and its representatives from the Mortgaged Property.

(f) The acceptance by Lender of the assignments of the Leases and Rents pursuant to this Section 3 shall not at any time or in any event obligate Lender to take any action under any Loan Document or to expend any money or to incur any expense. Lender shall not be liable in any way for any injury or damage to person or property sustained by any Person in, on or about the Mortgaged Property. Prior to Lender's actual entry upon and taking possession and control of the Land and Improvements, Lender shall not be:

- (1) 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) obligated to appear in or defend any action or proceeding relating to any Lease or the Mortgaged Property;
- or
- (3) 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 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 possession and control by Lender of the Land and Improvements.

(g) Lender shall be liable to account only to Borrower and only for Rents actually received by Lender. Lender shall not be liable to Borrower, anyone claiming under or through Borrower or anyone having an interest in the Mortgaged Property by reason of any act or omission of Lender under this Section 3, and Borrower hereby releases and discharges Lender from any such liability to the fullest extent permitted by law. 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 be added to, and become a part of, the principal balance of the Indebtedness, be immediately due and payable, and bear interest at the Default Rate from the date of disbursement until fully paid. Any entering upon and taking control of the Mortgaged Property by Lender or the receiver, 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 or any Loan Document.

4. Protection of Lender's Security.

If Borrower fails to perform any of its obligations under this Security Instrument or any other Loan Document, or any action or proceeding is commenced that purports to affect the Mortgaged Property, Lender's security, rights or interests under this Security Instrument or any Loan Document (including eminent domain, insolvency, code enforcement, civil or criminal forfeiture, enforcement of Environmental Laws, fraudulent conveyance or reorganizations or proceedings involving a debtor or decedent), Lender may, at its option, make such appearances, disburse or pay such sums and take such actions, whether before or after an Event of Default or whether directly or to any receiver for the Mortgaged Property, as Lender reasonably deems necessary to perform such obligations of Borrower and to protect the Mortgaged Property or Lender's security, rights or interests in the Mortgaged Property or the Mortgage Loan, including:

- (a) paying fees and out-of-pocket expenses of attorneys, accountants, inspectors and consultants;
- (b) entering upon the Mortgaged Property to make repairs or secure the Mortgaged Property;
- (c) obtaining (or force-placing) the insurance required by the Loan Documents; and
- (d) paying any amounts required under any of the Loan Documents that Borrower has failed to pay.

Any amounts so disbursed or paid by Lender shall be added to, and become part of, the principal balance of the Indebtedness, be immediately due and payable and bear interest at the Default Rate from the date of disbursement until fully paid. The provisions of this Section 4 shall not be deemed to obligate or require Lender to incur any expense or take any action.

5. No Other Indebtedness and Mezzanine Financing.

Other than the Mortgage Loan, Borrower shall not incur or be obligated at any time with respect to any loan or other indebtedness in connection with or secured by the Mortgaged Property. Neither Borrower nor any owner of Borrower shall (a) incur any "mezzanine debt," secured or unsecured, or issue any preferred equity that is secured by a pledge of the ownership interests in Borrower or by a pledge of the cash flows of Borrower to the extent the Transfer of the underlying ownership interests is otherwise prohibited by the Loan Agreement, or (b) incur any similar Indebtedness or equity with respect to the Mortgaged Property or ownership interest in Borrower or any owner of Key Principal or Guarantor that is secured by a pledge of the cash flows of Borrower to the extent the Transfer of the underlying ownership interests is otherwise prohibited by the Loan Agreement.

6. Default; Acceleration; Remedies.

(a) From and after the occurrence of an Event of Default, Lender, at its option, may declare the Indebtedness to be immediately due and payable without further demand, and may either with or without entry or taking possession as herein provided or otherwise, proceed by suit or suits at law or in equity or any other appropriate proceeding or remedy (1) to enforce payment of the Mortgage Loan; (2) to foreclose this Security Instrument judicially or non-judicially by the STATUTORY POWER OF SALE granted herein; (3) to enforce or exercise any right under any

Loan Document; and (4) to pursue any one (1) or more other remedies provided in this Security Instrument or in any other Loan Document or otherwise afforded by applicable law. Each right and remedy provided in this Security Instrument or any other Loan Document is distinct from all other rights or remedies under this Security Instrument or any other Loan Document or otherwise afforded by applicable law, and each shall be cumulative and may be exercised concurrently, independently, or successively, in any order. Borrower has the right to bring an action to assert the nonexistence of an Event of Default or any other defense of Borrower to acceleration and sale.

(b) Borrower acknowledges that the power of sale granted in this Security Instrument may be exercised or directed by Lender without prior judicial hearing. In the event Lender invokes the power of sale:

(1) Lender shall send to Borrower and any other Persons required to receive such notice, written notice of Lender's election to cause the Mortgaged Property to be sold. Borrower hereby authorizes and empowers Trustee to take possession of the Mortgaged Property, or any part thereof, and hereby grants to Trustee a power of sale and authorizes and empowers Trustee to sell (or, in the case of the default of any purchaser, to resell) the Mortgaged Property or any part thereof, in compliance with applicable law, including compliance with any and all notice and timing requirements for such sale;

(2) Trustee without demand on Borrower shall sell the Mortgaged Property at the time and place and under the terms designated in the notice of sale at public auction to the highest bidder. Trustee shall have the authority to determine the terms of the sale. In connection with any such sale, the whole of the Mortgaged Property may be sold in one (1) parcel as an entirety or in separate lots or parcels at the same or different times. Lender shall have the right to become the purchaser at any such sale. Trustee shall be entitled to receive fees and expenses from such sale not to exceed the amount permitted by applicable law;

(3) within a reasonable time after the sale, Trustee shall deliver to the purchaser of the Mortgaged Property a deed or such other appropriate conveyance document conveying the Mortgaged Property so sold without any express or implied covenant or warranty. The recitals in such deed or document shall be prima facie evidence of the truth of the statements made in those recitals; and

(4) the outstanding principal amount of the Mortgage Loan and the other Indebtedness, if not previously due, shall be and become immediately due and payable without demand or notice of any kind. If the Mortgaged Property is sold for an amount less than the amount outstanding under the Indebtedness, the deficiency shall be determined by the purchase price at the sale or sales. Borrower waives all rights, claims, and defenses with respect to Lender's ability to obtain a deficiency judgment.

(c) Trustee shall apply the proceeds of any sale in the following order:

(1) to all costs and expenses of the sale, including Trustee's fees not to exceed five percent (5%) of the gross sale price, attorneys' fees and costs of title evidence;

(2) to the Indebtedness in such order as Lender, in Lender's discretion, directs; and

(3) the excess, if any, to the person or persons legally entitled to the excess.

(d) In connection with the exercise of Lender's rights and remedies under this Security Instrument and any other Loan Document, there shall be allowed and included as Indebtedness: (1) all expenditures and expenses authorized by applicable law and all other expenditures and expenses which may be paid or incurred by or on behalf of Lender for reasonable legal fees, appraisal fees, outlays for documentary and expert evidence, stenographic charges and publication costs; (2) all expenses of any environmental site assessments, environmental audits, environmental remediation costs, appraisals, surveys, engineering studies, wetlands delineations, flood plain studies, and any other similar testing or investigation deemed necessary or advisable by Lender incurred in preparation for, contemplation of or in connection with the exercise of Lender's rights and remedies under the Loan Documents; and (3) costs (which may be reasonably estimated as to items to be expended in connection with the exercise of Lender's rights and remedies under the Loan Documents) of procuring all abstracts of title, title searches and examinations, title insurance policies, and similar data and assurance with respect to title as Lender may deem reasonably necessary either to prosecute any suit or to evidence the true conditions of the title to or the value of the Mortgaged Property to bidders at any sale which may be held in connection with the exercise of Lender's rights and remedies under the Loan Documents. All expenditures and expenses of the nature mentioned in this Section 6, and such other expenses and fees as may be incurred in the protection of the Mortgaged Property and rents and income therefrom and the maintenance of the lien of this Security Instrument, including the fees of any attorney employed by Lender in any litigation or proceedings affecting this Security Instrument, the Note, the other Loan Documents, or the Mortgaged Property, including bankruptcy proceedings, any Foreclosure Event, or in preparation of the commencement or defense of any proceedings or threatened suit or proceeding, or otherwise in dealing specifically therewith, shall be so much additional Indebtedness and shall be immediately due and payable by Borrower, with interest thereon at the Default Rate until paid.

(e) Any action taken by Trustee or Lender pursuant to the provisions of this Section 6 shall comply with the laws of the Property Jurisdiction. Such applicable laws shall take precedence over the provisions of this Section 6, but shall not invalidate or render unenforceable any other provision of any Loan Document that can be construed in a manner consistent with any applicable law. If any provision of this Security Instrument shall grant to Lender (including Lender acting as a mortgagee-in-possession), Trustee or a receiver appointed pursuant to the provisions of this Security Instrument any powers, rights or remedies prior to, upon or following the occurrence of an Event of Default that are more limited than the powers, rights, or remedies that would otherwise be vested in such party under any applicable law in the absence of said provision, such party shall be vested with the powers, rights, and remedies granted in such applicable law to the full extent permitted by law.

7. Waiver of Statute of Limitations and Marshaling.

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 Loan Document. 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/or any other Loan Document or by 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, for itself and all who may claim

by, through, or under it, 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 marshaling 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 (at the same time or different times) in connection with the exercise of any of the remedies provided in this Security Instrument or any other Loan Document, or afforded by applicable law.

8. Waiver of Redemption; Rights of Tenants.

(a) Borrower hereby covenants and agrees that it will not at any time apply for, insist upon, plead, avail itself, or in any manner claim or take any advantage of, any appraisal, stay, exemption or extension law or any so-called "Moratorium Law" now or at any time hereafter enacted or in force in order to prevent or hinder the enforcement or foreclosure of this Security Instrument. Without limiting the foregoing:

(1) Borrower for itself and all Persons who may claim by, through, or under Borrower, hereby expressly waives any so-called "Moratorium Law" and any and all rights of reinstatement and redemption, if any, under any order or decree of foreclosure of this Security Instrument, it being the intent hereof that any and all such "Moratorium Laws," and all rights of reinstatement and redemption, including equity of redemption, of Borrower and of all other Persons claiming by, through, or under Borrower are and shall be deemed to be hereby waived to the fullest extent permitted by applicable law, including the right of redemption granted by T.C.A. Section 66-8-101;

(2) Borrower shall not invoke or utilize any such law or laws or otherwise hinder, delay or impede the execution of any right, power remedy herein or otherwise granted or delegated to Lender but will suffer and permit the execution of every such right, power and remedy as though no such law or laws had been made or enacted; and

(3) if Borrower is a trust, Borrower represents that the provisions of this Section 8 (including the waiver of reinstatement and redemption rights) were made at the express direction of Borrower's beneficiaries and the persons having the power of direction over Borrower, and are made on behalf of the trust estate of Borrower and all beneficiaries of Borrower, as well as all other persons mentioned above.

(b) Lender shall have the right to foreclose subject to the rights of any tenant or tenants of the Mortgaged Property having an interest in the Mortgaged Property prior to that of Lender. The failure to join any such tenant or tenants of the Mortgaged Property as party defendant or defendants in any such civil action or the failure of any decree of foreclosure and sale to foreclose their rights shall not be asserted by Borrower as a defense in any civil action instituted to collect the Indebtedness, or any part thereof or any deficiency remaining unpaid after foreclosure and sale of the Mortgaged Property, any statute or rule of law at any time existing to the contrary notwithstanding.

9. Notice.

(a) All notices under this Security Instrument shall be:

- (1) in writing, and shall be (A) delivered, in person, (B) mailed, postage prepaid, either by registered or certified delivery, return receipt requested, or (C) sent by overnight express courier;
- (2) addressed to the intended recipient at its respective address set forth at the end of this Security Instrument;
and
- (3) deemed given on the earlier to occur of:
 - (A) the date when the notice is received by the addressee; or
 - (B) if the recipient refuses or rejects delivery, the date on which the notice is so refused or rejected, as conclusively established by the records of the United States Postal Service or such express courier service.

(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 9.

(c) Any required notice under this Security Instrument which does not specify how notices are to be given shall be given in accordance with this Section 9.

10. Mortgagee-in-Possession.

Borrower acknowledges and agrees that the exercise by Lender of any of the rights conferred in this Security Instrument shall not be construed to make Lender a mortgagee-in-possession of the Mortgaged Property so long as Lender has not itself entered into actual possession of the Land and Improvements.

11. Release.

Upon payment in full of the Indebtedness, Lender shall cause the release of this Security Instrument and Borrower shall pay Lender's costs incurred in connection with such release.

12. Substitute Trustee.

Lender, at Lender's option, may from time to time remove Trustee and appoint a successor trustee to any Trustee appointed hereunder by an instrument recorded in the county in which this Security Instrument is recorded. Without conveyance of the Mortgaged Property, the successor trustee shall succeed to all the title, power and duties conferred upon the Trustee in this Security Instrument and by applicable law.

13. Tennessee State Specific Provisions.

(a) Lender has not consented and will not consent to any contract or to any work or to the furnishing of any materials which might be deemed to create a lien or liens superior to the lien of this Security Instrument, either under Section 66-11-108 of Tennessee Code Annotated, or otherwise.

(b) Borrower waives the necessity of Trustee appointed hereunder, or any successor in trust, making oath or giving bond.

14. Governing Law; Consent to Jurisdiction and Venue.

This Security Instrument shall be governed by the laws of the Property Jurisdiction without giving effect to any choice of law provisions thereof that would result in the application of the laws of another jurisdiction. Borrower agrees that any controversy arising under or in relation to this Security Instrument shall be litigated exclusively in the Property Jurisdiction. The state and federal courts and authorities with jurisdiction in the Property Jurisdiction shall have exclusive jurisdiction over all controversies that arise under or in relation to any security for the Indebtedness. 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.

15. Miscellaneous Provisions.

(a) This Security Instrument shall bind, and the rights granted by this Security Instrument shall benefit, the successors and assigns of Lender. This Security Instrument shall bind, and the obligations granted by this Security Instrument shall inure to, any permitted successors and assigns of Borrower under the Loan Agreement. If more than one (1) person or entity signs this Security Instrument as Borrower, the obligations of such persons and entities shall be joint and several. 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. No creditor of any party to this Security Instrument and no other person shall be a third party beneficiary of this Security Instrument or any other Loan Document.

(b) The invalidity or unenforceability of any provision of this Security Instrument or any other Loan Document shall not affect the validity or enforceability of any other provision of this Security Instrument or of any other Loan Document, all of which shall remain in full force and effect. This Security Instrument contains the complete and entire agreement among the parties as to the matters covered, rights granted and the obligations assumed in this Security Instrument. This Security Instrument may not be amended or modified except by written agreement signed by the parties hereto.

(c) The following rules of construction shall apply to this Security Instrument:

(1) The captions and headings of the sections of this Security Instrument are for convenience only and shall be disregarded in construing this Security Instrument.

(2) Any reference in this Security Instrument to an "Exhibit" or "Schedule" or a "Section" or an "Article" shall, unless otherwise explicitly provided, be construed as referring, respectively, to an exhibit or schedule attached to this Security Instrument or to a Section or Article of this Security Instrument.

(3) Any reference in this Security Instrument to a statute or regulation shall be construed as referring to that statute or regulation as amended from time to time.

(4) Use of the singular in this Security Instrument includes the plural and use of the plural includes the singular.

(5) As used in this Security Instrument, the term “including” means “including, but not limited to” or “including, without limitation,” and is for example only, and not a limitation.

(6) Whenever Borrower’s knowledge is implicated in this Security Instrument or the phrase “to Borrower’s knowledge” or a similar phrase is used in this Security Instrument, Borrower’s knowledge or such phrase(s) shall be interpreted to mean to the best of Borrower’s knowledge after reasonable and diligent inquiry and investigation.

(7) Unless otherwise provided in this Security Instrument, if Lender’s approval is required for any matter hereunder, such approval may be granted or withheld in Lender’s sole and absolute discretion.

(8) Unless otherwise provided in this Security Instrument, if Lender’s designation, determination, selection, estimate, action or decision is required, permitted or contemplated hereunder, such designation, determination, selection, estimate, action or decision shall be made in Lender’s sole and absolute discretion.

(9) All references in this Security Instrument to a separate instrument or agreement shall include such instrument or agreement as the same may be amended or supplemented from time to time pursuant to the applicable provisions thereof.

(10) “Lender may” shall mean at Lender’s discretion, but shall not be an obligation.

16. Time is of the Essence.

Borrower agrees that, with respect to each and every obligation and covenant contained in this Security Instrument and the other Loan Documents, time is of the essence.

17. WAIVER OF TRIAL BY JURY.

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

ATTACHED EXHIBITS. The following Exhibits are attached to this Security Instrument and incorporated fully herein by reference:

- Exhibit A Description of the Land (required)
- Exhibit B Modifications to Security Instrument

[Remainder of Page Intentionally Blank]

IN WITNESS WHEREOF, Borrower has signed and delivered this Security Instrument under seal (where applicable) or has caused this Security Instrument to be signed and delivered by its duly authorized representative under seal (where applicable). Where applicable law so provides, Borrower intends that this Security Instrument shall be deemed to be signed and delivered as a sealed instrument.

BORROWER:

MADISON 324, LLC, a Delaware limited liability company

By: Arenda Capital Management, LLC, a Delaware limited liability company, its manager

By: _____
Name:
Title:

STATE OF _____, County ss:

On this _____ day of _____, 2012, before me personally appeared _____, of Arenda Capital Management, LLC, a Delaware limited liability company, manager of Madison 324, LLC, a Delaware limited liability company, to me known to be the person who executed the foregoing instrument on behalf of said limited liability company, and acknowledged the execution of the same to be the free act and deed of said limited liability company. Witness my hand and official seal.

My Commission Expires:

Notary Public

The name, chief executive office and organizational identification number of Borrower (as Debtor under any applicable Uniform Commercial Code) are:

- Debtor Name/Record Owner: Madison 324, LLC
- Debtor Chief Executive Office Address:
c/o Arenda Capital Management, LLC
20501 Earl Street, Suite Two
Torrance, California 90503
- Debtor Organizational ID Number: 5151564

The name and chief executive office of Lender (as Secured Party) are:

- Secured Party Name: CWCcapital LLC
- Secured Party Chief Executive Office Address:
One Charles River Place
63 Kendrick Street
Needham, Massachusetts 02494

The name and chief executive office of Trustee are:

- Trustee Name: Joseph B. Pitt, Jr.
- Trustee Office Address:
6840 Carothers Parkway, Suite 200
Franklin, Tennessee 37067

EXHIBIT A

The following land being situated in Shelby County, Tennessee:

Parcel I

A portion of the Schilling Farms, L.L.C. property as described in Plat Book 168, Page 16 and more particularly described by metes and bounds as follows:

Beginning at an iron rod (set) in the north line of Winchester Road (134 foot Right-of-Way), said point being 563.16 feet east of the main tangent intersection with the east line of Schilling Boulevard (80 foot Right-of-Way), as measured along said north line; thence North 00 degrees 57 minutes 39 seconds East a distance of 381.62 feet to an iron rod (set); thence North 87 degrees 07 minutes 36 seconds West a distance of 550.61 feet to a point in the east line of Schilling Boulevard; thence North 02 degrees 52 minutes 24 seconds East, and with said east line, a distance of 639.55 feet to a point; thence South 87 degrees 07 minutes 36 seconds East a distance of 797.87 feet to an iron rod (set); thence South 41 degrees 07 minutes 36 seconds East a distance of 607.78 feet to an iron rod (set); thence South 01 degree 14 minutes 07 seconds West a distance of 561.53 feet to a point in the north line of Winchester Road; thence North 89 degrees 02 minutes 21 seconds West, and with said north line, a distance of 673.15 feet to the Point of Beginning.

Said Property is also known as The Madison at Schilling Farms Apartments, being platted as The Madison at Schilling Farms, Schilling Farms P.U.D., Phase 18, Area 5, of record in Plat Book 187, Page 4, in the Register's Office of Shelby County, Tennessee, described by survey prepared by Pickering Firm, dated September 24, 2003, last revised on May 2, 2012, Project Number 19882.00, being more particularly described as follows:

Beginning at a cross cut in the north line of Winchester Boulevard East (134 Foot Right-of-Way), said point being 563.18 feet east of the main tangent intersection with the east line of the Schilling Boulevard (80 foot Right-of-Way), as measured along the said north line; thence North 00 Degrees 58 Minutes 49 Seconds East a distance of 381.62 feet to an iron rod (found); thence North 87 Degrees 06 Minutes 26 Seconds West a distance of 550.11 feet to an iron rod (found) in the east line of Schilling Boulevard; thence North 02 Degrees 53 Minutes 36 Seconds East, and with said east line; a distance of 639.50 feet to an iron rod (found); thence South 87 Degrees 06 Minutes 34 Seconds East a distance of 797.27 feet to an iron rod (found); thence South 41 Degrees 07 Minutes 03 Seconds East a distance of 607.69 feet to an iron rod (found); thence South 01 Degrees 14 Minutes 53 Seconds West a distance of 561.53 feet to a cross cut in the north line of Winchester Boulevard East; thence North 89 Degrees 01 Minutes 47 Seconds West, and with said north line, a distance of 673.15 feet to the Point of Beginning.

Parcel II

Together with ten foot water line easement as described in Easement Agreement filed of record at Instrument No. JG-6711, in the Register's Office of Shelby County, Tennessee.

MULTIFAMILY NOTE

US \$25,680,000.00

As of June 20, 2012

FOR VALUE RECEIVED, the undersigned (“**Borrower**”) promises to pay to the order of **CWCAPITAL LLC**, a Massachusetts limited liability company (“**Lender**”), the principal amount of Twenty-Five Million Six Hundred Eighty Thousand and 00/100 Dollars (US \$25,680,000.00) (the “**Mortgage Loan**”), together with interest thereon accruing at the Interest Rate on the unpaid principal balance from the Effective Date until fully paid in accordance with the terms hereof and of that certain Multifamily Loan and Security Agreement dated as of the date hereof, by and between Borrower and Lender (as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time, the “**Loan Agreement**”).

1. Defined Terms.

Capitalized terms used and not specifically defined in this Multifamily Note (this “**Note**”) have the meanings given to such terms in the Loan Agreement.

2. Repayment.

Borrower agrees to pay the principal amount of the Mortgage Loan and interest on the principal amount of the Mortgage Loan from time to time outstanding at the Interest Rate or such other rate or rates and at the times specified in the Loan Agreement, together with all other amounts due to Lender under the Loan Documents. The outstanding balance of the Mortgage Loan and all accrued and unpaid interest thereon shall be due and payable on the Maturity Date, together with all other amounts due to Lender under the Loan Documents.

3. Security.

The Mortgage Loan evidenced by this Note, together with all other Indebtedness is secured by, among other things, the Security Instrument, the Loan Agreement and the other Loan Documents. All of the terms, covenants and conditions contained in the Loan Agreement, the Security Instrument and the other Loan Documents are hereby made part of this Note to the same extent and with the same force as if they were fully set forth herein. In the event of a conflict or inconsistency between the terms of this Note and the Loan Agreement, the terms and provisions of the Loan Agreement shall govern.

4. Acceleration.

In accordance with the Loan Agreement, upon the occurrence of an Event of Default, the entire unpaid principal balance of the Mortgage Loan, any accrued and unpaid interest, including interest accruing at the Default Rate, the Prepayment Premium (if applicable), and all other amounts payable under this Note, the Loan Agreement and any other Loan Document shall at once become due and payable, at the option of Lender, without any prior notice to Borrower, unless applicable law requires otherwise (and in such case, after satisfactory notice has been given).

5. Personal Liability.

The provisions of Article 3 (Personal Liability) of the Loan Agreement are hereby incorporated by reference into this Note to the same extent and with the same force as if fully set forth herein.

6. Governing Law.

This Note shall be governed in accordance with the terms and provisions of Section 15.01 (Governing Law; Consent to Jurisdiction and Venue) of the Loan Agreement.

7. Waivers.

Presentment, demand for payment, notice of nonpayment and dishonor, protest and notice of protest, notice of acceleration, notice of intent to demand or accelerate payment or maturity, presentment for payment, notice of nonpayment, grace and diligence in collecting the Indebtedness are waived by Borrower, for and on behalf of itself, Guarantor and Key Principal, and all endorsers and guarantors of this Note and all other third party obligors or others who may become liable for the payment of all or any part of the Indebtedness.

8. Commercial Purpose.

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

9. Construction; Joint and Several (or Solidary, as applicable) Liability.

(a) Section 15.08 (Construction) of the Loan Agreement is hereby incorporated herein as if fully set forth in the body of this Note.

(b) If more than one Person executes this Note as Borrower, the obligations of such Person shall be joint and several (solidary instead for purposes of Louisiana law).

10. Notices.

All Notices required or permitted to be given by Lender to Borrower pursuant to this Note shall be given in accordance with Section 15.02 (Notice) of the Loan Agreement.

11. Time is of the Essence.

Borrower agrees that, with respect to each and every obligation and covenant contained in this Note, time is of the essence.

12. Loan Charges Savings Clause.

Borrower agrees to pay an effective rate of interest equal to the sum of the Interest Rate and any additional rate of interest resulting from any other charges of interest or in the nature of interest paid or to be paid in connection with the Mortgage Loan and any other fees or amounts to be paid by Borrower pursuant to any of the other Loan Documents. Neither this Note, the Loan Agreement nor any of the other Loan Documents shall be construed to create a contract for the use, forbearance or detention of money requiring payment of interest at a rate greater than the maximum interest rate permitted to be charged under applicable law. It is expressly stipulated

and agreed to be the intent of Borrower and Lender at all times to comply with all applicable laws governing the maximum rate or amount of interest payable on the Indebtedness evidenced by this Note and the other Loan Documents. If any applicable law limiting the amount of interest or other charges permitted to be collected from Borrower is interpreted so that any interest or other charge or amount provided for in any Loan Document, whether considered separately or together with other charges or amounts provided for in any other Loan Document, or otherwise charged, taken, reserved or received in connection with the Mortgage Loan, or on acceleration of the maturity of the Mortgage Loan or as a result of any prepayment by Borrower or otherwise, 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 any such violation. Amounts, if any, previously paid to Lender in excess of the permitted amounts shall be applied by Lender to reduce the unpaid principal balance of the Mortgage Loan without the payment of any prepayment premium (or, if the Mortgage Loan has been or would thereby be paid in full, shall be refunded to Borrower), and the provisions of the Loan Agreement and any other Loan Documents immediately shall be deemed reformed and the amounts thereafter collectible under the Loan Agreement and any other Loan Documents reduced, without the necessity of the execution of any new documents, so as to comply with any applicable law, but so as to permit the recovery of the fullest amount otherwise payable under the Loan Documents. 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, and any amount paid or agreed to be paid to Lender for the use, forbearance or detention of the Indebtedness, shall be deemed to be allocated and spread ratably over the stated term of the Mortgage Loan. 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 Mortgage Loan.

13. WAIVER OF TRIAL BY JURY.

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

14. Receipt of Loan Documents.

Borrower acknowledges receipt of a copy of each of the Loan Documents.

15. Incorporation of Schedules.

The schedules, if any, attached to this Note are incorporated fully into this Note by this reference and each constitutes a substantive part of this Note.

ATTACHED SCHEDULE. The following Schedule is attached to this Note:

Schedule 1 Modifications to Note

IN WITNESS WHEREOF, Borrower has signed and delivered this Note under seal (where applicable) or has caused this Note to be signed and delivered under seal (where

applicable) by its duly authorized representative. Where applicable law so provides, Borrower intends that this Note shall be deemed to be signed and delivered as a sealed instrument.

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BORROWER:

MADISON 324, LLC, a Delaware limited liability company

By: Arenda Capital Management, LLC, a Delaware limited liability company, its manager

By: _____
Name:
Title:

PAY TO THE ORDER OF
, WITHOUT RECOURSE.

CWCAPITAL LLC, a Massachusetts limited liability company

By: _____
Paul A. Sherrington
Managing Director

Fannie Mae Commitment Number: 868038

AMENDMENT NO. 1
TO LOAN AND SECURITY AGREEMENT

THIS AMENDMENT NO. 1 TO LOAN AND SECURITY AGREEMENT (this "Amendment") is entered into as of April 17, 2012, by and among BRT RLOC LLC, a New York limited liability company ("Borrower"), BRT Realty Trust, a Massachusetts business trust, as guarantor (in such capacity, "Guarantor") and as servicer (in such capacity, "Servicer"), the Lenders hereto, Capital One, National Association, as agent for the Lenders (in such capacity, "Agent") and as custodian (in such capacity, "Custodian").

BACKGROUND

Borrower, Guarantor and Servicer entered into that certain Loan and Security Agreement, dated as of June 22, 2011, (as amended, restated, supplemented and/or otherwise modified from time to time, the "Loan Agreement") with the Lenders, Agent and Custodian, pursuant to which, the Lenders made available to Borrower, pursuant to the terms and conditions in the Loan Agreement, a credit facility.

In connection with the Loan Agreement, Borrower, Guarantor and Servicer entered into and delivered the other Transaction Documents.

Borrower has requested that Agent and Lenders amend the Loan Agreement to incorporate a sublimit pursuant to which Borrower can request Loans up to \$10,000,000 in the aggregate without first pledging Eligible Receivables and either (a) repay such Loans no later than ninety (90) days from the date such Loan is made or (ii) pledge to Agent therefor, for the benefit of itself and Lenders, Eligible Receivables no later than ninety (90) days from the date such Loan is made so that the aggregate Facility Amount outstanding at such time (including such Loan) does not exceed the lesser of the Borrowing Limit and the Borrowing Base, and Agent and Lenders are willing to do so on the terms and conditions hereafter set forth.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. Definitions. All capitalized terms used but not otherwise defined herein shall have the meanings given to them in the Loan Agreement.

2. Amendments to the Loan Agreement. Subject to satisfaction of the conditions precedent set forth in Section 3 below, the Loan Agreement is hereby amended as follows:

(a) Section 1.01 is amended by adding the following defined terms in their appropriate alphabetical order:

“Bridge Loan” has the meaning assigned to that term in Section 2.02(b)(ii).”

“Bridge Loan Sublimit” means \$10,000,000.”

(b) Section 2.01 is amended in its entirety to provide as follows:

“SECTION 2.01 Borrowings. On the terms and conditions hereinafter set forth and set forth in the Notes, if any, each Lender shall make loans (“Loans”) to Borrower in an amount equal to such Lender’s Commitment Percentage of the Loans from time to time during the period from the date of this Agreement until the earlier of the Early Amortization Commencement Date or the Commitment End Date. The obligations of each Lender hereunder shall be several and not joint. Under no circumstances shall Lenders make any Loan if (a) the principal amount of such Loan is less than \$1,000,000 or (b) after giving effect to the Borrowing of such Loan, any of the following is true: (i) an Early Amortization Event has occurred and is continuing, (ii) the aggregate Facility Amount would exceed the Borrowing Limit, (iii) except as respects the Bridge Loans, the aggregate Facility Amount would exceed the Borrowing Base at such time; or (iv) the aggregate Facility Amount of the Bridge Loans would exceed the Bridge Loan Sublimit.”

(c) Sections 2.02(a), (b) and (c) are amended in their entirety to provide as follows:

“SECTION 2.02 The Initial Borrowing and Subsequent Borrowings.

(a) Until the occurrence of the earlier of the Early Amortization Commencement Date and the Commitment End Date, each Lender will make Loans at the request of Borrower, subject to and in accordance with the terms and conditions of Section 2.01 and this Section 2.02 and subject to the provisions of Article III hereof.

(b) (i) No later than fifteen (15) Business Days before the related Borrowing Date for a Loan other than a Bridge Loan or the date on which Borrower would like to Pledge such Receivable hereunder, Borrower shall deliver to Agent copies of the documents in the Receivables File related to a Receivable which Borrower would like to Pledge to Agent hereunder. No later than three (3) Business Days before the related Borrowing Date, Agent shall indicate whether such Receivable would constitute an Eligible Receivable as of such date; provided that Agent’s failure to deliver an indication by such date shall be deemed an indication that such Receivable is not an Eligible Receivable. It is expressly agreed and acknowledged that Agent and Lenders are providing the Loans on the basis of all representations and warranties made by Borrower and Servicer hereunder and under the other Transaction Documents and on the completeness and accuracy of the information contained in the applicable Receivables File, and any incompleteness or inaccuracies in the related Receivables File will only be acceptable to Agent and Lenders if disclosed in writing to Agent by Borrower in advance of the related date on which the Notice of Borrowing is due, and then only if Agent opts to accept such Receivable as part of the Borrowing Base notwithstanding such incompleteness and inaccuracies.

(ii) Notwithstanding the foregoing clause (i), the Borrower shall be permitted, subject to and in accordance with the terms and conditions of Section 2.01 and this Section 2.02 and subject to the provisions of Article III hereof, request a Borrowing pursuant to a Notice of Borrowing without a corresponding Pledge of Eligible Receivables (such a Loan, a “Bridge Loan”). Borrower shall not permit, at any time, the aggregate unpaid principal balance of the Bridge Loans to exceed the Bridge Loan Sublimit. Notwithstanding anything to the

contrary in this Agreement, Borrower shall, no later than ninety (90) days after a Bridge Loan is made under this Agreement, either (A) repay such Bridge Loan in full (including, without limitation, any accrued and unpaid interest attributable to such Bridge Loan) or (B) Pledge additional Eligible Receivables under this Agreement in such amount as may be necessary so that the Borrowing Base is at least equal to or greater than the Facility Amount (in which case, such Bridge Loan shall no longer be deemed a Bridge Loan hereunder).

(c) (i) Each Borrowing shall be made upon irrevocable written notice from Borrower to Agent (any such written notice, a “Notice of Borrowing”), provided that, unless otherwise agreed by Agent and Lenders, such Notice of Borrowing is received by Agent no later than 3:00 P.M. (New York City time) on the date that is two (2) Business Days prior to the related Borrowing Date and, except in the case of a Bridge Loan, Agent has previously indicated that the related Receivable, if any, would constitute an Eligible Receivable as provided in clause (b)(i) above. Each such Notice of Borrowing shall be accompanied by a Borrowing Base Certificate, other than in the case of a Bridge Loan, as of the Business Day immediately preceding the date of such Notice of Borrowing and such Notice of Borrowing shall specify in detail (A) the aggregate amount of such Borrowing and the calculations supporting such Borrowing, (B) whether such Borrowing is a Bridge Loan, (C) the date of such Borrowing and the Fixed Period requested with respect to such Borrowing and (D) other than in the case of a Bridge Loan, the Eligible Receivables to be Pledged in connection with such Borrowing, if any (and upon such Borrowing other than in the case of a Bridge Loan, such Mortgage Loan Receivables shall be Pledged Receivables hereunder). On the date of each such Borrowing, each Lender shall, upon satisfaction of the applicable conditions set forth in this Article II and Article III, make available to Borrower on the applicable Borrowing Date, no later than 3:00 P.M. (New York City time) on such Borrowing Date, in same day funds, such Lender’s Commitment Percentage of the amount of such Borrowing (net of amounts payable to or for the benefit of such Lender), by payment into the Operating Account. For the avoidance of doubt, Lenders, unless consented to in writing by Agent in its sole discretion and pursuant to terms and advance rates as agreed between Borrower and Agent, shall not make any Loans under this Agreement with respect to Pledged Receivables that are not Eligible Receivables.

(ii) Each Notice of Borrowing other than as respects a Bridge Loan delivered to Agent pursuant to this Section 2.02(c) shall be accompanied by a copy of the Notice of Pledge (and the Receivables Schedule attached thereto), if any, which was sent to Custodian pursuant to the terms of the Custodial Agreement in connection with the pledge, if any, of Eligible Receivables to be made in connection therewith.

(iii) Agent shall be entitled to rely upon, and shall be fully protected in relying upon, any Notice of Borrowing or similar notice purporting to have been sent to Agent by the proper party or parties. Agent may assume that each Person executing and delivering any notice in accordance herewith was duly authorized, unless the responsible individual acting thereon for Agent has actual knowledge to the contrary.”

(d) Section 2.05(b) is amended in its entirety to provide as follows:

“(b) Borrower Deficiency Payments. Notwithstanding anything to the contrary contained in this Section 2.05 or in any other provision in this Agreement, if, on any day prior to

the Collection Date, the Facility Amount shall exceed the Borrowing Limit, then Borrower shall either (i) remit to Agent a payment (to be applied by Agent to repay Loans selected by Agent, in its sole discretion), in such amount as may be necessary to reduce the Facility Amount to an amount less than or equal to the Borrowing Limit or (ii) pledge and grant a security interest to Agent for the benefit of Lenders in additional Pledged Receivables which would constitute Eligible Receivables sufficient to eliminate such excess, in each case, no later than two Business Days after Borrower first has Actual Knowledge of such excess or is notified by any Lender, Agent, Custodian or any other Person of such excess. Notwithstanding anything to the contrary contained in this Section 2.05 or in any other provision in this Agreement, if, on any day prior to the Collection Date, the Facility Amount (not including the aggregate unpaid principal amount of the Bridge Loans that have been outstanding under this Agreement for less than ninety (90) days) shall exceed the Borrowing Base, then Borrower shall either (i) remit to Agent a payment (to be applied by Agent to repay Loans selected by Agent, in its sole discretion), in such amount as may be necessary to reduce the Facility Amount to an amount less than or equal to the Borrowing Base or (ii) Pledge additional Eligible Receivables hereunder in such amount as may be necessary to increase the Borrowing Base to an amount equal to or greater than the Facility Amount, in each case, no later than two Business Days after Borrower first has Actual Knowledge of such excess or is notified by any Lender, Agent, Custodian or any other Person of such excess.”

3. Conditions of Effectiveness. This Amendment shall become effective upon receipt by the Agent of the following, each of which shall be in form and substance satisfactory to the Agent and its counsel:

- Custodian; and
- (a) a copy of this Amendment duly executed by Borrower, Guarantor, Servicer, Agent, Lenders and
 - (b) such other documents, instruments or agreements as Agent may reasonably require.

4. Representations and Warranties. Each of Borrower, Guarantor and Servicer hereby represents and warrants as follows:

- (a) This Amendment, the Loan Agreement and the other Transaction Documents, as amended hereby, constitute legal, valid and binding obligations of Borrower, Servicer and Guarantor and are enforceable against them in accordance with their respective terms.
- (b) No Event of Default or Early Amortization Event has occurred and is continuing or would exist after giving effect to this Amendment.
- (c) Neither Borrower, Servicer nor Guarantor has any defense, counterclaim or offset with respect to this Amendment, the Loan Agreement or any other Transaction Document.

5. Effect on the Loan Agreement and Other Transaction Documents.

(a) Upon the effectiveness of this Amendment, each reference in the Loan Agreement to “this Agreement,” “hereunder,” “hereof,” “herein” or words of like import shall mean and be a reference to the Loan Agreement as amended hereby. Upon the effectiveness of this Amendment, Borrower, Guarantor and Servicer hereby reaffirms all covenants, representations and warranties made in the Loan Agreement and the other Transaction Documents to the extent the same are not amended hereby and agree that all such covenants, representations and warranties shall be deemed to have been remade as of the effective date of this Amendment (except to the extent any such representation and warranty is expressly stated to have been made as of a specific date, in which case it shall be true and correct as of such specific date).

(b) Except as specifically amended herein, the Loan Agreement and all other Transaction Documents shall remain in full force and effect and are hereby ratified and confirmed.

(c) The execution, delivery and effectiveness of this Amendment shall not operate as a waiver of any right, power or remedy of Agent or Lenders.

6. Governing Law. This Amendment shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns and shall be governed by and construed in accordance with the laws of the State of New York.

7. Headings. Section headings in this Amendment are included herein for convenience of reference only and shall not constitute a part of this Amendment for any other purpose.

8. Counterparts; Signatures. This Amendment may be executed by the parties hereto in one or more counterparts, each of which shall be deemed an original and all of which taken together shall constitute one and the same agreement. Any signature delivered by a party by facsimile or other electronic transmission shall be deemed to be an original signature hereto.

[Signature Pages to Follow]

IN WITNESS WHEREOF, this Amendment has been duly executed as of the date first written above.

BORROWER:

BRT RLOC LLC

By: /s/ Mark H. Lundy

Name: Mark H. Lundy

Title: Senior Vice President

SERVICER:

BRT REALTY TRUST

By: /s/ Mark H. Lundy

Name: Mark H. Lundy

Title: Senior Vice President

GUARANTOR:

BRT REALTY TRUST

By: /s/ Mark H. Lundy

Name: Mark H. Lundy

Title: Senior Vice President

SIGNATURE PAGE TO
AMENDMENT NO. 1 TO
LOAN AND SECURITY AGREEMENT

AGENT:

CAPITAL ONE, NATIONAL ASSOCIATION

By: /s/ Kenneth Hund

Name: KENNETH HUND

Title: VICE PRESIDENT

LENDER:

CAPITAL ONE, NATIONAL ASSOCIATION

By: /s/ Kenneth Hund

Name: KENNETH HUND

Title: VICE PRESIDENT

CUSTODIAN

CAPITAL ONE, NATIONAL ASSOCIATION

By: /s/ Kenneth Hund

Name: KENNETH HUND

Title: VICE PRESIDENT

SIGNATURE PAGE TO
AMENDMENT NO. 1 TO
LOAN AND SECURITY AGREEMENT

CERTIFICATION

I, Jeffrey A. Gould, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q for the quarter ended June 30, 2012 of BRT Realty Trust;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officers and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent functions):
 - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: August 9, 2012

/s/ Jeffrey A. Gould

Jeffrey A. Gould
President and
Chief Executive Officer

CERTIFICATION

I, David W. Kalish, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q for the quarter ended June 30, 2012 of BRT Realty Trust;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officers and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent functions):
 - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: August 9, 2012

/s/ David W. Kalish

David W. Kalish
Senior Vice President - Finance

CERTIFICATION

I, George Zweier, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q for the quarter ended June 30, 2012 of BRT Realty Trust;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officers and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent functions):
 - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: August 9, 2012

/s/ George Zweier

George Zweier
Vice President and
Chief Financial Officer

CERTIFICATION OF PRINCIPAL EXECUTIVE OFFICER
PURSUANT TO 18 U.S.C. SECTION 1350
(SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002)

I, Jeffrey A. Gould, do hereby certify, pursuant to 18 U.S.C. Section 1350 as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that, to the best of my knowledge, based upon a review of the Quarterly Report on Form 10-Q for the quarter ended June 30, 2012 of BRT Realty Trust (“the Registrant”), as filed with the Securities and Exchange Commission on the date hereof (the “Report”):

- (1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Registrant.

Date: August 9, 2012

/s/ Jeffrey A. Gould
Jeffrey A. Gould
President and
Chief Executive Officer

CERTIFICATION OF SENIOR VICE PRESIDENT-FINANCE

PURSUANT TO 18 U.S.C. SECTION 1350
(SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002)

I, David W. Kalish, do hereby certify, pursuant to 18 U.S.C. Section 1350 as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that, to the best of my knowledge, based upon a review of the Quarterly Report on Form 10-Q for the quarter ended June 30, 2012 of BRT Realty Trust (“the Registrant”), as filed with the Securities and Exchange Commission on the date hereof (the “Report”):

- (1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Registrant.

Date: August 9, 2012

/s/ David W. Kalish
David W. Kalish
Senior Vice President - Finance

CERTIFICATION OF PRINCIPAL FINANCIAL OFFICER
PURSUANT TO 18 U.S.C. SECTION 1350
(SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002)

I, George Zweier, do hereby certify, pursuant to 18 U.S.C. Section 1350 as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that, to the best of my knowledge, based upon a review of the Quarterly Report on Form 10-Q for the quarter ended June 30, 2012 of BRT Realty Trust (“the Registrant”), as filed with the Securities and Exchange Commission on the date hereof (the “Report”):

- (1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Registrant.

Date: August 9, 2012

/s/ George Zweier
George Zweier
Vice President and
Chief Financial Officer

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