

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

FEDERAL NATIONAL  
MORTGAGE ASSOCIATION,

Appellant,

vs.

WESTLAND LIBERTY VILLAGE,  
LLC, a Nevada limited liability  
company; and WESTLAND  
VILLAGE SQUARE, LLC, a Nevada  
limited liability company,

Respondents.

Electronically Filed  
Jun 22 2021 02:55 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

Supreme Court Case No. 82174

District Court Case No. A-20-819412-B

**APPEAL**

**From the Eighth Judicial District Court**

**The Honorable Kerry Earley/ The Honorable Mark Denton<sup>1</sup>**

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**APPELLANT'S APPENDIX**

**VOLUME II**

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Kelly H. Dove (Nevada Bar No. 10569)  
Nathan G. Kanute, Esq. (Nevada Bar No. 12413)  
Bob L. Olson, Esq. (Nevada Bar No. 3783)  
SNELL & WILMER L.L.P.  
3883 Howard Hughes Parkway, Suite 1100  
Las Vegas, NV 89169  
Telephone: (702) 784-5200  
Facsimile: (702) 784-5252

*Attorneys for Appellant Federal National Mortgage Association*

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<sup>1</sup> This challenged order in this matter was issued by Judge Kerry Earley after the case had been transferred to Judge Mark Denton.

<b><u>Document Name</u></b>	<b><u>Date Filed</u></b>	<b><u>Vol.</u></b>	<b><u>Page</u></b>
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Defendants'/Counterclaimants'/Third Party Plaintiffs' Exhibits A through T filed in Support of Answer to Plaintiff's Complaint, Counterclaim and Third Party Complaint; and in Support of Opposition to Plaintiff's Application for Appointment of Receiver on Order Shortening Time; and in Support of Countermotion for Temporary Restraining Order and/or Preliminary Injunction	09/01/2020	9	APP1404-APP1418
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DATED: June 22, 2021.

SNELL & WILMER L.L.P.

/s/ Kelly H. Dove

Kelly H. Dove (Nevada Bar No. 10569)

Nathan G. Kanute, Esq. (Nevada Bar No. 12413)

Bob L. Olson, Esq. (Nevada Bar No. 3783)

*Attorneys for Appellant Federal National  
Mortgage Association*



## **CERTIFICATE OF SERVICE**

I, the undersigned, declare under penalty of perjury, that I am over the age of eighteen (18) years, and I am not a party to, nor interested in, this action. On June 22, 2021, I caused to be served a true and correct copy of the foregoing **APPELLANT'S APPENDIX VOLUME II** upon the following by the method indicated:

- ☐ **BY E-MAIL:** by transmitting via e-mail the document(s) listed above to the e-mail addresses set forth below and/or included on the Court's Service List for the above-referenced case.
- ☒ **BY ELECTRONIC SUBMISSION:** submitted to the above-entitled Court for electronic filing and service upon the Court's Service List for the above-referenced case.
- ☐ **BY U.S. MAIL:** by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Las Vegas, Nevada addressed as set forth below:

/s/ Maricris Williams

An Employee of SNELL & WILMER L.L.P.

(5) On the Conversion Closing Date, Lender shall have received all of the following, each of which, where applicable, shall be executed by individuals authorized to do so, shall be dated as of the Closing Date, and shall be in form and substance acceptable to Lender:

(A) the Conversion Amendment;

(B) an endorsement to the Title Policy or a new Title Policy as of the Conversion Closing Date showing that the Security Instrument constitutes a valid mortgage lien on the Mortgaged Property, with the same lien priority insured by the Title Policy, subject only to the Permitted Encumbrances;

(C) either (i) the Survey, redated to a date within fifteen (15) days prior to the Conversion Closing Date showing that there are no Liens or other matters that have arisen since the date of the Survey other than matters approved in writing by Lender, or (ii) affirmative coverage in the title insurance endorsement referred to in Section 6(d)(4)(B) of this Schedule that there are no exceptions based upon the results of a visual inspection of the Mortgaged Property, or the absence of any exception based upon any facts or conditions which have arisen since the date of the Survey and which would be disclosed by a current survey of the Mortgaged Property;

(D) if necessary, as determined by Lender, an amendment to the Security Instrument to be recorded in the land records and insured as a supplement to the Security Instrument to reflect the New Maturity Date;

(E) an opinion of counsel satisfactory to Lender as to such matters as Lender may reasonably request; and

(F) such other documents as Lender may reasonably request related to the Loan Agreement, the Conversion Amendment or the transactions contemplated hereby or thereby.

(6) The Mortgaged Property shall not have been damaged, destroyed or subject to any condemnation or other taking, in whole or any material part, and Lender shall have received a certificate of Borrower, dated as of the Conversion Closing Date, to such effect.

**7. Property Condition Assessment.**

Notwithstanding the provisions of Section 13.02(a)(3)(A), if the Conversion Option is exercised for any Mortgaged Property other than an "affordable housing property" (as indicated on the Summary of Loan Terms), and extends the Loan Term, then a new property condition assessment shall be required in the earlier of (a) the Loan Year that would have been the final Loan Year of the Mortgage Loan had the Conversion Option not been exercised, or (b) the tenth (10th) Loan Year.

**[INITIALS FOLLOW ON NEXT PAGE]**

{01307761;1}

**Schedule 3 to Multifamily Loan and Security  
Agreement - Interest Rate and Conversion  
Provisions (ARM)  
Fannie Mae**

**Form 6103.ARM  
01-16**

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BORROWER'S INITIALS:

AW

Schedule 3 to Multifamily Loan and Security  
Agreement - Interest Rate and Conversion  
Provisions (ARM)  
Fannie Mae

Form 6103.ARM  
01-16

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**SCHEDULE 4**  
**TO MULTIFAMILY LOAN AND SECURITY AGREEMENT**

**Prepayment Premium Schedule**  
**(1% Prepayment Premium – ARM, SARM)**

**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.**

(a) Any Prepayment Premium payable under Section 2.03 (Lockout/Prepayment) of the Loan Agreement shall be equal to the following percentage of the amount of principal being prepaid at the time of such prepayment, acceleration or application:

Prepayment Lockout Period	5.00%
Second Loan Year, and each	1.00%
Loan Year thereafter	

(b) Notwithstanding the provisions of Section 2.03 (Lockout/Prepayment) of the Loan Agreement or anything to the contrary in this Prepayment Premium Schedule, 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.

**[INITIALS FOLLOW ON NEXT PAGE]**

BORROWER'S INITIALS:

*CH*

Schedule 4 to Multifamily Loan and  
Security Agreement (Prepayment Premium  
Schedule - 1% Prepayment Premium -  
ARM, SARM)  
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01-11

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**SCHEDULE 5 TO  
MULTIFAMILY LOAN AND SECURITY AGREEMENT**

**Required Replacement Schedule**

**[INSERT PROPERTY CONDITION ASSESSMENT REPLACEMENT SCHEDULE]**

**[INITIALS FOLLOW ON NEXT PAGE]**

# REPLACEMENT RESERVE SCHEDULE

Replacement Asset	Units	Unit Cost	Life Span	Total Cost	Y1	Y2	Y3	Y4	Y5	Y6	Y7	Y8	Y9	Y10
<b>Site:</b>														
Asphalt Pavedment Base/Drive	1	\$38,272	100%	8%	-	-	-	-	-	-	-	-	-	-
Pool, General Site, Concrete, Inflation	2	\$7,000	100%	1%	-	-	-	-	14,000	-	-	-	-	-
Pool, General Site, Concrete, Inflation	3	\$2,000	100%	0%	-	-	-	-	8,000	-	-	-	-	-
Pool, General Site, Concrete, Inflation	1	\$6,500	100%	1%	-	-	-	-	8,500	-	-	-	-	-
<b>Equipment:</b>														
Water/Cooling/Chilling	400	\$325	100%	11%	-	-	-	-	-	66,400	66,400	-	-	-
Marshallment														
Condenser Runoff-Right	245	\$100	83%	10%	10,208	10,208	10,208	10,208	10,208	10,208	10,208	10,208	10,208	10,208
Pen Out/Pared Air Unit	140	\$850	83%	10%	8,917	8,917	8,917	8,917	8,917	8,917	8,917	8,917	8,917	8,917
Boiler, Control Vent Water	2	\$12,000	100%	2%	-	-	-	-	-	-	-	-	-	24,000
Water Heater Tank Type	0	\$2,000	100%	1%	-	-	-	-	-	-	7,000	7,000	-	-
<b>Boiler:</b>														
Carpet (Working on rubber)	540	\$650	83%	22%	20,521	20,521	20,521	20,521	20,521	20,521	20,521	20,521	20,521	20,521
Vinyl	327	\$200	83%	8%	5,450	5,450	5,450	5,450	5,450	5,450	5,450	5,450	5,450	5,450
Dishwasher (Working on rubber)	409	\$230	83%	8%	7,839	7,839	7,839	7,839	7,839	7,839	7,839	7,839	7,839	7,839
Range/Oven	198	\$350	83%	0%	5,717	5,717	5,717	5,717	5,717	5,717	5,717	5,717	5,717	5,717
Refrigerator	327	\$400	83%	11%	10,600	10,600	10,600	10,600	10,600	10,600	10,600	10,600	10,600	10,600
<b>Total Un-Inflated Cost</b>					79,582	79,582	88,092	98,982	117,825	150,819	152,819	152,819	152,819	79,582
<b>Total Inflated Cost (2.0%)</b>					79,582	81,552	91,252	102,782	122,612	158,216	162,882	162,882	162,882	120,776
<b>RVB (Inflated)</b>														
<b>Annual Replacement Reserve</b>														
Beginning Balance	\$5				0	43,587	84,727	116,544	150,819	182,368	182,368	182,368	182,368	182,368
Projected Expenses (Inflated)					120,582	120,582	120,582	120,582	120,582	120,582	120,582	120,582	120,582	120,582
Annual Contributions					120,582	120,582	120,582	120,582	120,582	120,582	120,582	120,582	120,582	120,582
Interest Earned	6.0%													
Ending Balance					43,587	84,727	116,544	150,819	182,368	182,368	182,368	182,368	182,368	182,368



BORROWER'S INITIALS: CAW

**SCHEDULE 6 TO  
MULTIFAMILY LOAN AND SECURITY AGREEMENT**

**Required Repair Schedule**

<b>Repair Description</b>	<b>Estimated Cost</b>	<b>Maximum Repair Cost x 125%</b>	<b>Completion Date</b>
Façade	\$3,200.00	\$4,000.00	May 2, 2018
Repair Cracked Concrete Decks	\$5,600.00	\$7,000.00	May 2, 2018
Roof Repair	\$3,750.00	\$4,688.00	May 2, 2018
Unit 101 Car Damage	\$10,000.00	\$12,500.00	May 2, 2018
Asphalt Pavement Remediation	\$38,273.00	\$47,841.00	November 2, 2018
Repair/Replace Condensing Units	\$4,250.00	\$5,313.00	November 2, 2018
Damaged Concrete Wheel Stops	\$3,000.00	\$3,750.00	November 2, 2018
Subtotal:	\$68,073.00	\$85,091.00	
<b>Total Amount of Repair Escrow Due at Closing:</b>		<b>\$85,091.00</b>	

[INITIALS FOLLOW ON NEXT PAGE]

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PAW

Multifamily Loan and Security Agreement  
(Non-Recourse)  
Schedule 6

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**SCHEDULE 7 TO  
MULTIFAMILY LOAN AND SECURITY AGREEMENT**

**Exceptions to Representations and Warranties Schedule**

**NONE.**

**[INITIALS FOLLOW ON NEXT PAGE]**

BORROWER'S INITIALS:

AW

## EXHIBIT A

### MODIFICATIONS TO MULTIFAMILY LOAN AND SECURITY AGREEMENT (Cross-Default and Cross-Collateralization: Multi-Note)

The foregoing Loan Agreement is hereby modified as follows:

1. Capitalized terms used and not specifically defined herein have the meanings given to such terms in the Loan Agreement.

2. The Definitions Schedule is hereby amended by deleting the definition of "Loan Documents" and adding the following in lieu thereof:

**"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 Plans, the Other Loan Documents, each Other Security Instrument, and any other documents now or in the future executed by Borrower, Borrower Affiliate, Guarantor, Key Principal, any guarantor, or any other person in connection with the Mortgage Loan or any Other Loan, as such documents may be amended, restated, replaced, supplemented, or otherwise modified from time to time.

3. The Definitions Schedule is hereby amended by adding the following new definitions in the appropriate alphabetical order:

**"Borrower Projects"** has the meaning set forth in the Security Instrument.

**"Net Operating Income"** for purposes of subsections (a) and (b) of Section 16.01 (Cross Provisions – Release of Borrower Projects), means, for any Borrower Project:

(a) the lesser of the actual rents collected for the twelve (12) month period (net of any concession) or ninety-five percent (95%) of the gross potential rental income for the twelve (12) month period; plus

(b) the actual laundry income (coin operated machines), cable and alarm fees, application fees, late fees and forfeited deposits for the twelve (12) month period; less

(c) the greater of the actual operating expenses for the twelve (12) month period (including the required Replacement Reserve Deposits funding for the period) or the operating expenses used by Lender in its final underwriting (including Replacement Reserve Deposits), increased at the rate of three percent (3%) per annum.

{01329704;2}

Modifications to Multifamily Loan and  
Security Agreement (Cross-Default and  
Cross-Collateralization: Multi Note)  
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**"Other Loan Documents"** has the meaning set forth in the Security Instrument.

**"Other Loans"** has the meaning set forth in the Security Instrument.

**"Other Security Instrument"** has the meaning set forth in the Security Instrument.

4. The following section is hereby added to the Loan Agreement as Section 2.01(d) (Cross with Other Loans):

**(d) Cross with Other Loans.**

Contemporaneously with the making of the Mortgage Loan, Lender is making the Other Loans to Borrower or Borrower Affiliate secured by a lien on the Borrower Projects. Each Other Loan is cross-defaulted and cross-collateralized with the Mortgage Loan as set forth in the Security Instrument and each other Security Instrument.

5. Section 4.01(h) (Borrower Status – Representations and Warranties – Borrower Single Asset Status) of the Loan Agreement is hereby deleted and restated in its entirety to read as follows:

**(h) Borrower Single Asset Status.**

Borrower:

(1) does not own or lease any real property, personal property, or assets other than the Borrower Projects and assets (such as accounts) related to the operation and maintenance of the Borrower Projects;

(2) does not own, operate or participate in any business other than the leasing, ownership, management, operation, and maintenance of the Borrower Projects;

(3) has no material financial obligation under or secured by 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 Borrower Projects are otherwise bound, or to which the Borrower Projects are subject or by which the Borrower Projects are otherwise encumbered, other than:

(A) unsecured trade payables incurred in the ordinary course of the operation of the Borrower Projects (exclusive of amounts for rehabilitation, restoration, repairs, or replacements of the Borrower Projects) that (i) are not evidenced by a promissory note, (ii) are payable within sixty (60) days of the date incurred, and (iii) as of the Effective Date, do not exceed, in the aggregate, four percent (4%) of the original principal balance of the Mortgage Loan;

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(B) if the Security Instrument grants a lien on a leasehold estate, Borrower's obligations as lessee under such ground lease creating such leasehold estate; and

(C) obligations under the Loan Documents and obligations secured by the Borrower Projects to the extent permitted under the Loan Documents.

(4) has 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 (unless Borrower's assets have been included in a consolidated financial statement prepared in accordance with generally accepted accounting principles);

(5) has not commingled its assets or funds with those of any other Person unless such assets or funds can easily be segregated and identified in the ordinary course of business from those of any other Person;

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

(7) has not assumed, guaranteed, or pledged its assets to secure the liabilities or obligations of any other Person (except in connection with the Mortgage Loan, the Other Loans, or other mortgage loans that have been paid in full or collaterally assigned to Lender, including in connection with any Consolidation, Extension and Modification Agreement or similar instrument) or held out its credit as being available to satisfy the obligations of any other Person;

(8) not made loans or advances to any other Person; and

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

6. Section 4.02(d) (Borrower Status – Covenants – Borrower Single Asset Status) of the Loan Agreement is hereby deleted and restated in its entirety to read as follows:

**(d) Borrower Single Asset Status.**

Until the Indebtedness is fully paid, Borrower:

(1) shall not acquire or lease any real property, personal property, or assets other than the Borrower Projects and assets (such as accounts) related to the operation and maintenance of the Borrower Projects;

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Modifications to Multifamily Loan and  
Security Agreement (Cross-Default and  
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(2) shall not acquire, own, operate or participate in any business other than the leasing, ownership, management, operation, and maintenance of the Borrower Projects;

(3) shall not commingle its assets or funds with those of any other Person, unless such assets or funds easily can be segregated and identified in the ordinary course of business from those of any other Person;

(4) shall 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 (unless Borrower's assets are included in a consolidated financial statement prepared in accordance with generally accepted accounting principles);

(5) shall have 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 Borrower Projects are otherwise bound, or to which the Borrower Projects are subject or by which the Borrower Projects are otherwise encumbered, other than:

(A) unsecured trade payables incurred in the ordinary course of the operation of the Borrower Projects (exclusive of amounts (i) to be paid out of the Replacement Reserve Account or Repairs Escrow Account, or (ii) for rehabilitation, restoration, repairs, or replacements of the Borrower Projects or otherwise approved by Lender) so long as such trade payables (1) are not evidenced by a promissory note, (2) are payable within sixty (60) days of the date incurred, and (3) as of any date, do not exceed, in the aggregate, two percent (2%) of the original principal balance of the Mortgage Loan; provided, however, that otherwise compliant outstanding trade payables may exceed two percent (2%) up to an aggregate amount of four percent (4%) of the original principal balance of the Mortgage Loan for a period (beginning on or after the Effective Date) not to exceed ninety (90) consecutive days;

(B) if the Security Instrument grants a lien on a leasehold estate, Borrower's obligations as lessee under the ground lease creating such leasehold estate; and

(C) obligations under the Loan Documents and obligations secured by the Borrower Projects to the extent permitted by the Loan Documents;

(6) shall not assume, guaranty, or pledge its assets to secure the liabilities or obligations of any other Person (except in connection with the Mortgage Loan, the Other Loans, or other mortgage loans that have been paid in

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Modifications to Multifamily Loan and  
Security Agreement (Cross-Default and  
Cross-Collateralization: Multi Note)  
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full or collaterally assigned to Lender, including in connection with any Consolidation, Extension and Modification Agreement or similar instrument) or hold out its credit as being available to satisfy the obligations of any other Person;

(7) shall not make loans or advances to any other Person; or

(8) shall not enter into, or become a party to, any transaction with any Borrower Affiliate, except in the ordinary course of business and on terms which are no more favorable to any such Borrower Affiliate than would be obtained in a comparable arm's length transaction with an unrelated third party.

7. Section 14.01(a) (Automatic Events of Default) is hereby amended to add the following new section to the end thereof:

(12) any "Event of Default" (as defined in the Other Loan Documents) under any Other Loan Document.

8. The following article is hereby added to the Loan Agreement as Article 16 (Cross Provisions):

## **ARTICLE 16 – CROSS PROVISIONS**

### **Section 16.01 Release of Borrower Projects.**

Lender hereby agrees that Borrower may request that any of the Borrower Projects be released from the cross-default and cross-collateral provisions of this Loan Agreement and the Security Instrument if (a) Borrower proposes to pay off an individual loan secured by one of the Borrower Projects, or (b) Borrower proposes to sell one of the Borrower Projects and have the loan secured by such Borrower Project assumed in accordance with Section 11.03(a) of this Loan Agreement. Upon such request from Borrower, Lender shall consent to release the Borrower Projects from the cross-default and cross-collateral provisions of this Loan Agreement and the Security Instrument, provided the following conditions are satisfied:

(a) the loans secured by the remaining Borrower Projects that are not requested to be released have, in the aggregate, a minimum overall 1.45 debt service coverage, based on the aggregate Net Operating Income for the Borrower Projects not requested to be released for the twelve (12) months of operation immediately prior to Borrower's request; and

(b) a loan requested to be released and assumed must also have a minimum 1.45 debt service coverage, based on that Borrower Project's Net Operating Income for the twelve (12) months of operation immediately prior to Borrower's request;

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Modifications to Multifamily Loan and  
Security Agreement (Cross-Default and  
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(c) in the event Borrower proposes to pay off one of the loans secured by one of the Borrower Projects by refinancing such loan with a new lender, Borrower must convey the Borrower Project being refinanced to a different ownership entity (with neither the specific Borrower Projects nor the proposed new ownership entity being owned by Borrower) prior to such refinancing, so that none of the Borrower Projects will be security for financing held by any lender other than Lender that is the owner and holder of the Notes;

(d) no Event of Default has occurred and is continuing under the Loan Documents or Other Loans at the time of such request; and

(e) Borrower has paid all costs and expenses of Lender incurred in connection with its processing of the requested release, including all title endorsement premiums, recording fees, inspection fees, and attorney fees.

**[INITIALS FOLLOW ON NEXT PAGE]**

{01329704;2}

**Modifications to Multifamily Loan and  
Security Agreement (Cross-Default and  
Cross-Collateralization: Multi Note)  
Fannie Mae**

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BORROWER'S INITIALS:

BAW

Modifications to Multifamily Loan and  
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APP158

## EXHIBIT 2 - Village Square Multifamily Note

EXHIBIT 2 - Village Square Multifamily Note

## MULTIFAMILY NOTE

US \$9,366,000.00

As of November 2, 2017

**FOR VALUE RECEIVED**, the undersigned ("**Borrower**") promises to pay to the order of **SUNTRUST BANK**, a Georgia banking corporation ("**Lender**"), the principal amount of **NINE MILLION THREE HUNDRED SIXTY-SIX THOUSAND AND 00/100 DOLLARS (\$9,366,000.00)** (the "**Mortgage Loan**"), together with interest thereon accruing at the Interest Rate on the unpaid principal balance from the date the Mortgage Loan proceeds are disbursed 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, if an Event of Default has occurred and is continuing, 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, and 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.**

**TO THE MAXIMUM EXTENT PERMITTED BY LAW, 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


**[Remainder of Page Intentionally Blank]**

**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.

**BORROWER:**

**SHAMROCK PROPERTIES VII LLC**, a  
Delaware limited liability company

By: **ND MANAGER LLC**, a  
Delaware limited liability company, its  
Manager

By:  (SEAL)  
Name: Ellen Weinstein  
Title: Manager

PAY TO THE ORDER OF FANNIE MAE

WITHOUT RECOURSE.

**SUNTRUST BANK**, a  
Georgia banking corporation

By: Paul A. Sherrington (SEAL)  
Name: Paul A. Sherrington  
Title: Senior Vice President

**EXHIBIT 3 - Village Square Multifamily  
Deed of Trust, Assignment of Leases and  
Rents, Security Agreement and Fixture  
Filing**

**EXHIBIT 3 - Village Square Multifamily  
Deed of Trust, Assignment of Leases and  
Rents, Security Agreement and Fixture Filing**

FIRST AMERICAN TITLE INSURANCE COMPANY

Inst #: 20171103-0001292  
Fees: \$40.00  
11/03/2017 11:14:24 AM  
Receipt #: 3239929  
Requestor:  
FIRST AMERICAN TITLE NCS LA  
Recorded By: SOV Pgs: 27  
DEBBIE CONWAY  
CLARK COUNTY RECORDER  
Src: ERECORD  
Ofc: ERECORD

APNs: 140-08-702-002 and 140-08-702-003

After recording return to:

Cassin & Cassin LLP  
711 Third Avenue, 20<sup>th</sup> Floor  
New York, New York 10017  
Attn: Recording Department

**MULTIFAMILY DEED OF TRUST,  
ASSIGNMENT OF LEASES AND RENTS,  
SECURITY AGREEMENT  
AND FIXTURE FILING**

**(NEVADA)**

**Village Square Apartments  
5025 Nellis Oasis Lane  
Las Vegas, Nevada**

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Nevada**

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**MULTIFAMILY DEED OF TRUST,  
ASSIGNMENT OF LEASES AND RENTS,  
SECURITY AGREEMENT  
AND FIXTURE FILING**

**THIS DOCUMENT DOES NOT CONTAIN ANY PERSONAL INFORMATION (AS DEFINED IN NEVADA REVISED STATUTES (as amended, "NRS") SECTION 603A.040) IN VIOLATION OF NRS SECTION 239B.030.**

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 November 2, 2017, is executed by **SHAMROCK PROPERTIES VII LLC**, a limited liability company organized and existing under the laws of Delaware, as grantor ("**Borrower**"), to **FIRST AMERICAN TITLE INSURANCE COMPANY**, a Nebraska corporation, as trustee ("**Trustee**"), for the benefit of **SUNTRUST BANK**, a banking corporation organized and existing under the laws of Georgia, as beneficiary ("**Lender**").

Borrower, in consideration of (i) the loan in the original principal amount of **\$9,366,000.00** (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 **Clark** County, State of Nevada, 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

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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.

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 of Borrower’s present and hereafter acquired right, title and interest in 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

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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 assessed against the Mortgaged Property 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, interest charged at the Default Rate, 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

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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, if any, 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,

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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, restrictions and other matters 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 of Borrower's present and hereafter acquired right, title and interest in all Goods, accounts, choses of action, chattel paper, documents, general intangibles (including

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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 in which a security interest may be granted under the UCC and in which Borrower has any present or hereafter acquired right, title or interest.

## **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. If an Event of Default has occurred and is continuing, Lender shall have the remedies of a secured party under the UCC or otherwise provided at law or in equity, in addition to all remedies provided by this Security Instrument and in any Loan Document. 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) except as expressly provided in the Loan Agreement, 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

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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 an Event of Default has occurred and is continuing, 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, extend or terminate any Lease, or enter into new Leases, 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 and is continuing (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), the Rents remaining after application pursuant to the preceding sentence may be retained and distributed by Borrower free and clear of, and released from, Lender's rights with respect to Rents under this Security Instrument.

(c) If an Event of Default has occurred and is continuing, 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

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become due and payable, including Rents then due and unpaid. During the continuance 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 during the continuance 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) If an Event of Default has occurred and is continuing, Lender may, regardless of the adequacy of Lender's security or the solvency of Borrower, and even in the absence of waste, enter upon, 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 is continuing, 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 and is continuing, Borrower, by its execution of this Security Instrument, expressly consents to the appointment of such receiver, including the appointment of a receiver *ex parte*, if permitted by applicable law. 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.

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If Lender or receiver takes possession and control of the Mortgaged Property, Lender or receiver 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, provided that Lender shall not be released from liability that occurs as a result of Lender's gross negligence or willful misconduct as determined by a court of competent jurisdiction pursuant to a final, non-appealable court order. 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.

(h) The assignment of Rents by Borrower pursuant to this Section 3 is subject to the Uniform Assignment of Rents Act (the "Act") codified as NRS Chapter 107A, as amended or

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recodified from time to time, and in the event of any conflict or inconsistency between the provisions of this Section 3 and the provisions of the Act, the provisions of the Act shall control.

#### **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 deemed to be obligatory advances and 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. Default; Acceleration; Remedies.**

(a) If an Event of Default has occurred and is continuing, 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 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

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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 execute or cause Trustee to execute a written notice of the occurrence of an Event of Default and of Lender's election to cause the Mortgaged Property to be sold and shall cause such notice to be recorded in each county in which the Mortgaged Property is located. 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, timing, and location requirements for such sale (which location shall be in the county in which the Mortgaged Property is located);

(2) Trustee shall have the authority to determine the terms of the sale, subject to applicable law. 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; and

(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.

(c) Borrower acknowledges and agrees that the proceeds of any sale shall be applied as determined by Lender unless otherwise required by applicable law.

(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

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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 5, 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 5 shall comply with the laws of the Property Jurisdiction. Such applicable laws shall take precedence over the provisions of this Section 5, 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, during the continuance of or following 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.

#### **6. 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

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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.

**7. 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 appraisement, 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 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;

(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 7 (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.

**8. 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 8.

(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 8.

**9. 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.

**10. 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.

**11. Substitute Trustee.**

Lender, at Lender's option, may from time to time remove Trustee and appoint a successor trustee in accordance with the laws of the Property Jurisdiction. 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.

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## **12. Nevada State Specific Provisions.**

(a) Lender shall have the right to recommend to the court the person to be appointed as receiver pursuant to Section 3(e).

(b) In the event that Lender consents to a Transfer (as defined in the Loan Agreement) of the Mortgaged Property to and an assumption of the Mortgage Loan by a new borrower, Lender shall be entitled to charge and be paid the Transfer Fee (as defined in the Loan Agreement), in addition to requiring satisfaction of all other conditions to such Transfer and assumption as set forth in the Loan Agreement.

(c) The covenants set forth as Nos. 6, 7 (a reasonable amount), 8, and 9 of NRS Section 107.030, are hereby adopted and made a part of this Security Instrument.

## **13. 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.

## **14. 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

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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, designation, determination, selection, estimate, action or decision is required, permitted or contemplated hereunder, such approval, designation, determination, selection, estimate, action or decision shall be made in Lender's sole and absolute discretion.

(8) 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.

(9) "Lender may" shall mean at Lender's discretion, but shall not be an obligation.

**15. 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.

**16. 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:

<input checked="" type="checkbox"/>	Exhibit A	Description of the Land (required)
<input checked="" type="checkbox"/>	Exhibit B	Modifications to Security Instrument (Cross-Default and Cross-Collateralization: Multi-Note)

**[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:**

**SHAMROCK PROPERTIES VII LLC**, a  
Delaware limited liability company

By: **ND MANAGER LLC**, a  
Delaware limited liability company, its  
Manager

By: \_\_\_\_\_ (SEAL)  
Name: Ellen Weinstein  
Title: Manager

STATE OF UTAH )  
 ) ss.:  
COUNTY OF Salt Lake )

This Assignment was acknowledged before me on Oct 23, 2017, by **ELLEN WEINSTEIN**, the **MANAGER** of **ND MANAGER LLC**, a Delaware limited liability company, the **MANAGER** of **SHAMROCK PROPERTIES VII LLC**, a Delaware limited liability company.

Notary Public

Printed Name: Joy Pratt

(Seal)

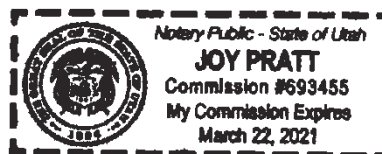
My Commission Expires:

March 22, 2021

Joy Pratt

NO 693455

Exp 3-22-2021  
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The name, chief executive office and organizational identification number of Borrower (as Debtor under any applicable Uniform Commercial Code) are:

Debtor Name/Record Owner: **SHAMROCK**  
**PROPERTIES VII LLC, a Delaware limited liability**  
**company**

Debtor Chief Executive Office Address:

Two Greenwich Office Park, Suite 300  
Greenwich, Connecticut 06831  
Attention: Ellen Weinstein

Debtor Organizational ID Number: 5543863

The name and chief executive office of Lender (as Secured Party) are:

Secured Party Name: **SUNTRUST BANK, a Georgia**  
**banking corporation**

Secured Party Chief Executive Office Address:

8245 Boone Boulevard, Suite 710  
Vienna, Virginia 22182

**TRUSTEE NOTICE ADDRESS:**

1 First American Way  
Santa Ana, California 92707

**EXHIBIT A**  
**[DESCRIPTION OF THE LAND]**

PARCEL 1:  
INTENTIONALLY DELETED.

PARCEL 2:  
INTENTIONALLY DELETED.

PARCEL 3:  
INTENTIONALLY DELETED.

PARCEL 4:  
THAT PORTION OF THE NORTHEAST QUARTER (NE ¼) OF THE SOUTHEAST QUARTER (SE ¼) OF SECTION 8, TOWNSHIP 20 SOUTH, RANGE 62 EAST, M.D.M., MORE PARTICULARLY DESCRIBED AS FOLLOWS:  
LOTS TWO (2) AND THREE (3) AS SHOWN BY MAP THEREOF IN FILE 54 OF PARCEL MAPS, PAGE 81, RECORDED NOVEMBER 13, 1987 AS DOCUMENT NO. 00558, IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA.

PARCEL 4A:  
A NON-EXCLUSIVE PERPETUAL EASEMENT FOR INGRESS AND EGRESS FOR THE BENEFIT OF THE HEREIN DESCRIBED PARCEL AS CREATED IN DOCUMENT RECORDED OCTOBER 26, 1987 IN BOOK 871026 AS DOCUMENT NO. 00517, OF OFFICIAL RECORDS, CLARK COUNTY, NEVADA, AND AS AMENDED BY THAT CERTAIN AGREEMENT REGARDING EASEMENT AS EVIDENCED BY A MEMORANDUM OF EASEMENT DATED AUGUST 18, 2005 AND RECORDED AUGUST 31, 2005 AS DOCUMENT NO. 03969 IN BOOK 20050831 OF OFFICIAL RECORDS, CLARK COUNTY, NEVADA.

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## EXHIBIT B

### MODIFICATIONS TO SECURITY INSTRUMENT (Cross-Default and Cross-Collateralization: Multi-Note)

The foregoing Security Instrument is hereby modified as follows:

1. Capitalized terms used and not specifically defined herein have the meanings given to such terms in the Security Instrument.

2. Section 1 of the Security Instrument (Defined Terms) is hereby amended by amending and restating the following definitions:

**"Indebtedness"** means the principal of, interest on, and all other amounts due at any time under the Note, the Loan Agreement, this Security Instrument and any other Loan Document (other than the Environmental Indemnity Agreement and Guaranty), the Other Security Instrument, and any Other Loan Document (other than the Environmental Indemnity Agreement for the Other Loan and the Guaranty for the Other Loan), including Prepayment Premiums, late charges, interest charged at the Default Rate, 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) and the Other Security Instrument, any and any Other Loan Document (other than the Environmental Indemnity Agreement for the Other Loan) including amounts due as a result of any indemnification obligations, and any Enforcement Costs.

3. Section 1 of the Security Instrument (Defined Terms) is hereby amended by adding the following new definitions in the appropriate alphabetical order:

**"Borrower Projects"** means all of the properties owned by Borrower or Borrower Affiliate as described on Exhibit C, attached hereto, together with the Mortgaged Property, that secure the Indebtedness and each Other Loan.

**"Other Loan"** means, individually and collectively, each additional loan extended from Lender to Borrower or Borrower Affiliate, as described on Exhibit C, attached hereto.

**"Other Loan Documents"** means each Other Security Instrument and any other loan documents, including any loan agreement or note evidencing any Other Loan.

**"Other Security Instrument"** means, individually and collectively, each multifamily mortgage, deed of trust or deed to secure debt encumbering each of

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Modifications to Security Instrument  
(Cross-Default and Cross-  
Collateralization: Multi-Note)  
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the Borrower Projects (other than the Mortgaged Property) securing each Other Loan.

4. The first full paragraph of the Security Instrument is revised to delete clause (i) and restate it as follows:

(i) the loan in the original principal amount of **\$9,366,000.00** (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**”) and the Other Loan in the aggregate principal amount of **\$38,366,000.00** as evidenced by the Other Loan Documents;

5. The following section is hereby added to the Security Instrument as Section 17 (Cross-Default and Cross-Collateralization):

**17. Cross-Default and Cross-Collateralization.**

**(a) Cross-Default.**

Borrower hereby agrees and consents that the occurrence of an “Event of Default” (as defined in each Other Security Instrument) shall be an Event of Default under the Loan Agreement.

**(b) Cross-Collateralization; Remedies Against Other Collateral.**

Borrower hereby agrees and consents that the Indebtedness and each of the Other Loans are and shall be collateralized and secured by the lien of this Security Instrument on the Mortgaged Property and by the liens of each Other Security Instrument on each of the Borrower Projects. Borrower further agrees that the Mortgaged Property shall secure both the Indebtedness of the Borrower and the obligations of Borrower or any Borrower Affiliate pursuant to each Other Loan and the Other Loan Documents.

Borrower hereby acknowledges that the Indebtedness is also secured by liens on collateral which may be located in jurisdictions other than the Property Jurisdiction. Borrower further agrees and consents that upon the occurrence and during the continuance of an Event of Default, Lender shall have the right, in its sole and absolute discretion, to exercise any and all rights and remedies in and under any of the Loan Documents, including the right to proceed, at the same or at different times, to foreclose any or all liens against such collateral (or sell such collateral under power of sale) in accordance with the terms of this Security Instrument or any other Security Instrument, by any proceedings appropriate in the jurisdictions where such collateral is located, and that no enforcement action

{01329705;2}

**Modifications to Security Instrument  
(Cross-Default and Cross-  
Collateralization: Multi-Note)  
Fannie Mae**

**Form 6305  
12-12**

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taking place in any jurisdiction shall preclude or bar enforcement in any other jurisdiction. Any Foreclosure Event brought in any jurisdiction in which collateral is located may be brought and prosecuted as to any part of such collateral without regard to the fact that a Foreclosure Event has not been instituted elsewhere on any other part of the collateral for the Indebtedness. No notice, except as may be expressly required by the Loan Documents or by applicable law, shall be required to be given to Borrower in connection with (a) the occurrence of such Event of Default, or (b) Lender's exercise of any and all of its rights or remedies after the occurrence of such Event of Default.

**[INITIALS FOLLOW ON NEXT PAGE]**

{01329705;2}

**Modifications to Security Instrument  
(Cross-Default and Cross-  
Collateralization: Multi-Note)  
Fannie Mae**

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12-12**

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BORROWER'S INITIALS: etw

Modifications to Security Instrument  
(Cross-Default and Cross-  
Collateralization: Multi-Note)  
Fannie Mae

Form 6305  
12-12

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**EXHIBIT C  
TO  
MODIFICATIONS TO MULTIFAMILY SECURITY INSTRUMENT  
(Cross-Default and Cross-Collateralization: Multi-Note)**

**[Borrower Projects]**

**Liberty Village Apartments  
4870 Nellis Oasis Lane  
Las Vegas, Nevada**

**Village Square Apartments  
5025 Nellis Oasis Lane  
Las Vegas, Nevada**

# EXHIBIT 4 - Village Square Assignment of Security Instruments

# EXHIBIT 4 - Village Square Assignment of Security Instruments

FIRST AMERICAN TITLE INSURANCE COMPANY

Inst #: 20171103-0001293  
Fees: \$40.00  
11/03/2017 11:14:24 AM  
Receipt #: 3239929  
Requestor:  
FIRST AMERICAN TITLE NCS LA  
Recorded By: SOV Pgs: 3  
DEBBIE CONWAY  
CLARK COUNTY RECORDER  
Src: ERECORD  
Ofc: ERECORD

**RECORD AND RETURN TO:**

Cassin & Cassin LLP  
711 Third Avenue, 20th Floor  
New York, New York 10017

Attention: Recording Department

County: Clark

APNs: 140-08-702-002 and  
140-08-702-003

**ASSIGNMENT OF SECURITY INSTRUMENT**

*This Assignment of Security Instrument* is made and entered into as of the 2<sup>nd</sup> day of November, 2017, by and between **SUNTRUST BANK**, a Georgia banking corporation, with its place of business at 8245 Boone Boulevard, Suite 710, Vienna, Virginia 22182 ("Assignor") and **FANNIE MAE, c/o SUNTRUST BANK**, a Georgia banking corporation, 8245 Boone Boulevard, Suite 710, Vienna, Virginia 22182 ("Assignee").

**WITNESSETH:**

That for good and valuable consideration, Assignor does hereby assign, sell, convey, set over and deliver to Assignee all of Assignor's right, title, and interest in and to a certain Multifamily Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing in the original principal amount of \$9,366,000.00 made by **SHAMROCK PROPERTIES VII LLC**, a Delaware limited liability company to **FIRST AMERICAN TITLE INSURANCE COMPANY**, a Nebraska corporation, as trustee for the benefit of Assignor (as the "Lender" therein) dated as of November 2, 2017, and recorded immediately prior hereto in the office of the County Clerk, County of Clark, State of Nevada and together with all of Assignor's right, title, and interest in and to the real property known as Village Square Apartments located at 5025 Nellis Oasis Lane, Las Vegas, Nevada, as more particularly described in EXHIBIT "A" hereto.

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{01307743;1}

826873-A



FIRST AMERICAN TITLE INSURANCE COMPANY

**E-RECORDED** simplify<sup>®</sup>

ID: \_\_\_\_\_  
County: \_\_\_\_\_  
Date: \_\_\_\_\_ Time: \_\_\_\_\_

**RECORD AND RETURN TO:**

Cassin & Cassin LLP  
711 Third Avenue, 20th Floor  
New York, New York 10017

Attention: Recording Department

County: Clark

APNs: 140-08-702-002 and  
140-08-702-003

**ASSIGNMENT OF SECURITY INSTRUMENT**

*This Assignment of Security Instrument is made and entered into as of the 2<sup>nd</sup> day of November, 2017, by and between SUNTRUST BANK, a Georgia banking corporation, with its place of business at 8245 Boone Boulevard, Suite 710, Vienna, Virginia 22182 ("Assignor") and FANNIE MAE, c/o SUNTRUST BANK, a Georgia banking corporation, 8245 Boone Boulevard, Suite 710, Vienna, Virginia 22182 ("Assignee").*

**WITNESSETH:**

That for good and valuable consideration, Assignor does hereby assign, sell, convey, set over and deliver to Assignee all of Assignor's right, title, and interest in and to a certain Multifamily Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing in the original principal amount of \$9,366,000.00 made by SHAMROCK PROPERTIES VII LLC, a Delaware limited liability company to FIRST AMERICAN TITLE INSURANCE COMPANY, a Nebraska corporation, as trustee for the benefit of Assignor (as the "Lender" therein) dated as of November 2, 2017, and recorded immediately prior hereto in the office of the County Clerk, County of Clark, State of Nevada and together with all of Assignor's right, title, and interest in and to the real property known as Village Square Apartments located at 5025 Nellis Oasis Lane, Las Vegas, Nevada, as more particularly described in EXHIBIT "A" hereto.

**[THE REMAINDER OF THIS PAGE HAS BEEN LEFT BLANK INTENTIONALLY]**

{01307743;1}

826873-A

WITNESS, this Assignment has been duly executed as of the day and year first above written.

**ASSIGNOR:**

**SUNTRUST BANK**, a  
Georgia banking corporation

By: Paul A. Sherrington (SEAL)  
Name: Paul A. Sherrington  
Title: Senior Vice President

STATE OF New York )  
 ) ss.:  
COUNTY OF New York )

This Assignment was acknowledged before me on October 5, 2017, by **PAUL A. SHERRINGTON**, the **SENIOR VICE PRESIDENT** of **SUNTRUST BANK**, a Georgia banking corporation.

Katelyn Cappello  
Notary Public  
Printed Name: Katelyn Cappello  
(Seal)  
My Commission Expires:  
4-18-2020

**KATELYN CAPPELLO**  
Notary Public, State of New York  
No. 01CA6340515  
Qualified in Nassau County  
Commission Expires April 18, 2020

**EXHIBIT "A"**

**LEGAL DESCRIPTION**

PARCEL 1:  
INTENTIONALLY DELETED.

PARCEL 2:  
INTENTIONALLY DELETED.

PARCEL 3:  
INTENTIONALLY DELETED.

PARCEL 4:  
THAT PORTION OF THE NORTHEAST QUARTER (NE ¼) OF THE SOUTHEAST QUARTER  
(SE ¼) OF SECTION 8, TOWNSHIP 20 SOUTH, RANGE 62 EAST, M.D.M., MORE  
PARTICULARLY DESCRIBED AS FOLLOWS:  
LOTS TWO (2) AND THREE (3) AS SHOWN BY MAP THEREOF IN FILE 54 OF PARCEL  
MAPS, PAGE 81, RECORDED NOVEMBER 13, 1987 AS DOCUMENT NO. 00558, IN THE  
OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA.

PARCEL 4A:  
A NON-EXCLUSIVE PERPETUAL EASEMENT FOR INGRESS AND EGRESS FOR THE  
BENEFIT OF THE HEREIN DESCRIBED PARCEL AS CREATED IN DOCUMENT  
RECORDED OCTOBER 26, 1987 IN BOOK 871026 AS DOCUMENT NO. 00517, OF OFFICIAL  
RECORDS, CLARK COUNTY, NEVADA, AND AS AMENDED BY THAT CERTAIN  
AGREEMENT REGARDING EASEMENT AS EVIDENCED BY A MEMORANDUM OF  
EASEMENT DATED AUGUST 18, 2005 AND RECORDED AUGUST 31, 2005 AS  
DOCUMENT NO. 03969 IN BOOK 20050831 OF OFFICIAL RECORDS, CLARK COUNTY,  
NEVADA.

{01307743;1}

# EXHIBIT 5 - Village Square Assumption and Release Agreement

EXHIBIT 5 - Village Square Assumption and Release Agreement

Inst #: 20180830-0002653  
Fee: \$40.00  
08/30/2018 10:41:19 AM  
Receipt #: 3498598  
Requestor:  
FIRST AMERICAN TITLE NCS LA  
Recorded By: KVHO Pgs: 20  
DEBBIE CONWAY  
CLARK COUNTY RECORDER  
Src: ERECORD  
Ofc: ERECORD

FIRST AMERICAN TITLE INSURANCE COMPANY

RECORDING REQUESTED BY:  
First American Title Insurance Company  
National Commercial Services

AND WHEN RECORDED MAIL TO:  
Cassin & Cassin LLP  
711 Third Avenue, 20<sup>th</sup> Floor  
New York, New York 10017  
Attn: Recording Department

APNs: 140-08-702-002 and 140-08-702-003

NCS- 899513

For Recorder's Use Only

ASSUMPTION AND RELEASE AGREEMENT



## ASSUMPTION AND RELEASE AGREEMENT

This ASSUMPTION AND RELEASE AGREEMENT ("Agreement") is dated as of August 29, 2018 by and among **SHAMROCK PROPERTIES VII LLC**, a Delaware limited liability company ("Transferor"), **WESTLAND VILLAGE SQUARE LLC**, a Nevada limited liability company ("Transferee"), **ELLEN WEINSTEIN**, ("Original Guarantor"), **ALEVY DESCENDANTS TRUST NUMBER 1** ("New Guarantor") and **FANNIE MAE**, the corporation duly organized under the Federal National Mortgage Association Charter Act, as amended, 12 U.S.C. §1716 et seq. and duly organized and existing under the laws of the United States ("Fannie Mae").

### RECITALS:

A. Pursuant to that certain Multifamily Loan and Security Agreement dated as of November 2, 2017, executed by and between Transferor and **SUNTRUST BANK**, a Georgia banking corporation ("Original Lender") (as amended, restated, replaced, supplemented or otherwise modified from time to time, the "Loan Agreement"), Original Lender made a loan to Transferor in the original principal amount of **NINE MILLION THREE HUNDRED SIXTY-SIX THOUSAND AND 00/100 DOLLARS (\$9,366,000.00)** (the "Mortgage Loan"), as evidenced by, among other things, that certain Multifamily Note dated as of November 2, 2017, executed by Transferor and made payable to Original Lender in the amount of the Mortgage Loan (as amended, restated, replaced, supplemented or otherwise modified from time to time, the "Note"), which Note has been assigned to Fannie Mae. The current servicer of the Mortgage Loan is **SUNTRUST BANK**, a Georgia banking corporation ("Loan Servicer").

B. In addition to the Loan Agreement, the Mortgage Loan and the Note are secured by, among other things, (i) a Multifamily Mortgage, Deed of Trust or Deed to Secure Debt dated as of November 2, 2017 and recorded November 3, 2017 as Instr # 20171103-0001292 in the Office of the County Clerk, Clark County, Nevada (as amended, restated, replaced, supplemented or otherwise modified from time to time, the "Security Instrument") encumbering the land as more particularly described in Exhibit A attached hereto (the "Mortgaged Property"); and (ii) an Environmental Indemnity Agreement by Transferor for the benefit of Original Lender dated as of the date of the Loan Agreement (the "Environmental Indemnity").

C. The Security Instrument has been assigned to Fannie Mae pursuant to that certain Assignment of Multifamily Mortgage, Deed of Trust or Deed to Secure Debt dated as of November 2, 2017 and recorded November 3, 2017 as Instr # 20171103-0001293 in the Office of the County Clerk, Clark County, Nevada.

D. The Loan Agreement, the Note, the Security Instrument, the Environmental Indemnity and any other documents executed in connection with the Mortgage Loan, including but not limited to those listed on Exhibit B to this Agreement, are referred to collectively as the "Loan Documents." Transferor is liable for the payment and performance of all of Transferor's obligations under the Loan Documents.

{01430134;1}

Assumption and Release Agreement  
Fannie Mae

Form 6625  
08-13

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E. Original Guarantor is liable under the Guaranty of Non-Recourse Obligations dated as of November 2, 2018 (the “**Guaranty**”).

F. Each of the Loan Documents has been duly assigned or endorsed to Fannie Mae.

G. Fannie Mae has been asked to consent to (i) the transfer of the Mortgaged Property to Transferee and the assumption by Transferee of the obligations of Transferor under the Loan Documents (the “**Transfer**”) and (ii) the release of Original Guarantor from its obligations under the Guaranty and accept the assumption by New Guarantor of Original Guarantor’s obligations under the Guaranty (the “**Guarantor Assumption**”).

H. Fannie Mae has agreed to consent to the Transfer and Guarantor Assumption subject to the terms and conditions stated below.

### **AGREEMENTS:**

NOW, THEREFORE, in consideration of the mutual covenants in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

#### **1. Recitals.**

The recitals set forth above are incorporated herein by reference.

#### **2. Defined Terms.**

Capitalized terms used and not specifically defined herein have the meanings given to such terms in the Loan Agreement. The following terms, when used in this Agreement, shall have the following meanings:

“**Amended Loan Agreement**” means either (a) the Amendment to Multifamily Loan and Security Agreement executed by Transferee and Fannie Mae dated as of even date herewith, together with the Loan Agreement, or (b) the Amended and Restated Multifamily Loan and Security Agreement executed by Transferee and Fannie Mae dated as of even date herewith.

“**Claims**” means any and all possible claims, demands, actions, costs, expenses and liabilities whatsoever, known or unknown, at law or in equity, originating in whole or in part, on or before the date of this Agreement, which Transferor, Original Guarantor, or any of their respective partners, members, officers, agents or employees, may now or hereafter have against the Indemnitees, if any and irrespective of whether any such claims arise out of contract, tort, violation of laws, or regulations, or otherwise in connection with any of the Loan Documents, including, without limitation, any contracting for, charging, taking, reserving, collecting or receiving interest in excess of the highest lawful rate applicable thereto and any loss, cost or damage, of any kind or character, arising out of or in any way connected with or in any way resulting from the acts, actions or omissions of the Indemnitees, including any requirement that the Loan Documents be modified as a condition to the transactions contemplated by this

{01430134;1}

Assumption and Release Agreement  
Fannie Mae

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Page 2  
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Agreement, any charging, collecting or contracting for prepayment premiums, transfer fees, or assumption fees, any breach of fiduciary duty, breach of any duty of fair dealing, breach of confidence, breach of funding commitment, undue influence, duress, economic coercion, violation of any federal or state securities or Blue Sky laws or regulations, conflict of interest, negligence, bad faith, malpractice, violations of the Racketeer Influenced and Corrupt Organizations Act, intentional or negligent infliction of mental distress, tortious interference with contractual relations, tortious interference with corporate governance or prospective business advantage, breach of contract, deceptive trade practices, libel, slander, conspiracy or any claim for wrongfully accelerating the Note or wrongfully attempting to foreclose on any collateral relating to the Mortgage Loan, but in each case only to the extent permitted by applicable law.

**"Indemnitees"** means, collectively, Original Lender, Fannie Mae, Loan Servicer and their respective successors, assigns, agents, directors, officers, employees and attorneys, and each current or substitute trustee under the Security Instrument.

**"Transfer Fee"** means \$93,660.00.

### **3. Assumption of Transferor's Obligations.**

Transferor hereby assigns and Transferee hereby assumes all of the payment and performance obligations of Transferor set forth in the Note, the Security Instrument, the Loan Agreement, and the other Loan Documents in accordance with their respective terms and conditions, as the same may be modified from time to time, including payment of all sums due under the Loan Documents. Transferee further agrees to abide by and be bound by all of the terms of the Loan Documents, all as though each of the Loan Documents had been made, executed and delivered by Transferee.

### **4. Assumption by New Guarantor; Release of Transferor and Original Guarantor.**

New Guarantor hereby assumes all liability of Original Guarantor under the provisions of the Guaranty.

In reliance on Transferor's Original Guarantor's and Transferee's and New Guarantor's representations and warranties in this Agreement, Fannie Mae releases Transferor and Original Guarantor from all of their respective obligations under the Loan Documents other than for any liability pursuant to this Agreement, the Guaranty and the Environmental Indemnity for any liability that relates to the period prior to the date hereof, regardless of when such environmental liability is discovered. If any material element of the representations and warranties made by Transferor and Original Guarantor contained herein is false as of the date of this Agreement, then the release set forth in this Section 4 will be deemed cancelled as of the date of this Agreement and Transferor and Original Guarantor will remain obligated under the Loan Documents as though there had been no such release.

**5. Transferor's and Original Guarantor's Representations and Warranties.**

Transferor and Original Guarantor represent and warrant to Fannie Mae as of the date of this Agreement that:

(a) the Note has an unpaid principal balance of **\$9,366,000.00** and prior to default currently bears interest at the rate of three and 60/100percent (3.60%) per annum;

(b) the Loan Documents require that monthly payments of interest only be made for the first thirty six (36) months of the Mortgage Loan term, and further require that monthly payments of principal and interest be made thereafter at an adjustable interest rate on or before the first (1st) day of each month, continuing to and including December 1, 2024, when all sums due under the Loan Documents will be immediately due and payable in full;

(c) there are no defenses, offsets or counterclaims to the Note, the Security Instrument, the Loan Agreement, the Guaranty or the other Loan Documents;

(d) there are no defaults by Transferor under the provisions of the Note, the Security Instrument, the Loan Agreement, the Guaranty or the other Loan Documents;

(e) all provisions of the Note, the Security Instrument, the Loan Agreement, the Guaranty and other Loan Documents are in full force and effect; and

(f) there are no subordinate liens covering or relating to the Mortgaged Property, nor are there any mechanics' liens or liens for unpaid taxes or assessments encumbering the Mortgaged Property, nor has notice of a lien or notice of intent to file a lien been received except for mechanics' or materialmen's liens which attach automatically under the laws of the Governmental Authority upon the commencement of any work upon, or delivery of any materials to, the Mortgaged Property and for which Transferor is not delinquent in the payment for any such services or materials.

**6. Transferee's and New Guarantor's Representations and Warranties.**

Transferee and New Guarantor represent and warrant to Fannie Mae as of the date of this Agreement that neither Transferee nor any New Guarantor has any knowledge that any of the representations made by Transferor and Original Guarantor in Section 5 above are not true and correct.

**7. Consent to Transfer.**

(a) Fannie Mae hereby consents to the Transfer and to the assumption by Transferee of all of the obligations of Transferor under the Loan Documents, subject to the terms and conditions set forth in this Agreement. Fannie Mae's consent to the transfer of the Mortgaged Property to Transferee is not intended to be and shall not be construed as a consent to any subsequent transfer which requires Lender's consent pursuant to the terms of the Loan Agreement.

(b) Transferor, Transferee, New Guarantor and Original Guarantor understand and intend that Fannie Mae will rely on the representations and warranties contained herein.

**8. Consent to Guarantor Assumption.**

Fannie Mae hereby consents to the Guarantor Assumption, subject to the terms and conditions set forth in this Agreement. Fannie Mae's consent to the Guarantor Assumption is not intended to be and shall not be construed as a consent to any subsequent transfer which requires Lender's consent pursuant to the terms of the Loan Agreement.

**9. Amendment and Modification of Loan Documents.**

As additional consideration for Fannie Mae's consent to the Transfer [and Guarantor Assumption] as provided herein, Transferee, [New Guarantor] and Fannie Mae hereby agree to a modification and amendment of the Loan Documents as set forth in the Amended Loan Agreement.

**10. Consent to Key Principal Change.**

The parties hereby agree that the party identified as the Key Principal in the Loan Agreement is hereby changed to **Yaakov Greenspan and ALEVY DESCENDANTS TRUST NUMBER 1**.

**11. Limitation of Amendment.**

Except as expressly stated herein, all terms and conditions of the Loan Documents, including the Loan Agreement, Note, Security Instrument and Guaranty, shall remain unchanged and in full force and effect.

**12. Further Assurances.**

Transferee and New Guarantor agree at any time and from time to time upon request by Fannie Mae to take, or cause to be taken, any action and to execute and deliver any additional documents which, in the opinion of Fannie Mae, may be necessary in order to assure to Fannie Mae the full benefits of the amendments contained in this Agreement.

**13. Modification.**

This Agreement embodies and constitutes the entire understanding among the parties with respect to the transactions contemplated herein, and all prior or contemporaneous agreements, understandings, representations, and statements, oral or written, are merged into this Agreement. Neither this Agreement nor any provision hereof may be waived, modified, amended, discharged, or terminated except by an instrument in writing signed by the party against which the enforcement of such waiver, modification, amendment, discharge, or termination is sought, and then only to the extent set forth in such instrument. Except as expressly modified by this Agreement, the Loan Documents shall remain in full force and effect



and this Agreement shall have no effect on the priority or validity of the liens set forth in the Security Instrument or the other Loan Documents, which are incorporated herein by reference. Transferee and New Guarantor hereby ratify the agreements made by Transferor and Original Guarantor to Fannie Mae in connection with the Mortgage Loan and agree(s) that, except to the extent modified hereby, all of such agreements remain in full force and effect.

**14. Priority; No Impairment of Lien.**

Nothing set forth herein shall affect the priority, validity or extent of the lien of any of the Loan Documents, nor, except as expressly set forth herein, release or change the liability of any party who may now be or after the date of this Agreement, become liable, primarily or secondarily, under the Loan Documents.

**15. Costs.**

Transferee and Transferor agree to pay all fees and costs (including attorneys' fees) incurred by Fannie Mae and the Loan Servicer in connection with Fannie Mae's consent to and approval of the Transfer, Guarantor Assumption, and the Transfer Fee in consideration of the consent to that transfer.

**16. Financial Information.**

Transferee and New Guarantor represent and warrant to Fannie Mae that all financial information and information regarding the management capability of Transferee and New Guarantor provided to the Loan Servicer or Fannie Mae was true and correct as of the date provided to the Loan Servicer or Fannie Mae and remains materially true and correct as of the date of this Agreement.

**17. Indemnification.**

(a) Transferee and Transferor and Original Guarantor and New Guarantor each unconditionally and irrevocably releases and forever discharges the Indemnitees from all Claims, agrees to indemnify the Indemnitees, and hold them harmless from any and all claims, losses, causes of action, costs and expenses of every kind or character in connection with the Claims or the transfer of the Mortgaged Property. Notwithstanding the foregoing, Transferor and Original Guarantor shall not be responsible for any Claims arising from the action or inaction of Transferee and New Guarantor, and Transferee and New Guarantor shall not be responsible for any Claims arising from the action or inaction of Transferor or Original Guarantor.

(b) This release is accepted by Fannie Mae and Loan Servicer pursuant to this Agreement and shall not be construed as an admission of liability on the part of any party.

(c) Each of Transferor and Transferee and Original Guarantor and New Guarantor hereby represents and warrants that it has not assigned, pledged or contracted to assign or pledge any Claim to any other person.

**18. Non-Recourse.**

Article 3 (Personal Liability) of the Loan Agreement is hereby incorporated herein as if fully set forth in the body of this Agreement.

**19. Governing Law; Consent to Jurisdiction and Venue.**

Section 15.01 (Governing Law; Consent to Jurisdiction and Venue) of the Loan Agreement is hereby incorporated herein as if fully set forth in the body of this Agreement.

**20. Notice.**

**(a) Process of Serving Notice.**

All notices under this Agreement 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 its respective address set forth at the end of this Agreement; 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 any express courier service.

**(b) Change of Address.**

Any party to this Agreement may change the address to which notices intended for it are to be directed by means of notice given to the other parties to this Agreement in accordance with this Section 20.

**(c) Default Method of Notice.**

Any required notice under this Agreement which does not specify how notices are to be given shall be given in accordance with this Section 20.

**(d) Receipt of Notices.**

No party to this Agreement shall refuse or reject delivery of any notice given in accordance with this Agreement. Each party is required to acknowledge, in writing, the receipt of any notice upon request by the other party.

**21. Counterparts.**

This Agreement may be executed in any number of counterparts, each of which shall be considered an original for all purposes; provided, however, that all such counterparts shall constitute one and the same instrument.

**22. Severability; Entire Agreement; Amendments.**

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

**23. Construction.**

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

(b) Any reference in this 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 Agreement or to a Section or Article of this Agreement. All exhibits and schedules attached to or referred to in this Agreement, if any, are incorporated by reference into this Agreement.

(c) Any reference in this 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 Agreement includes the plural and use of the plural includes the singular.

(e) As used in this 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 a party's knowledge is implicated in this Agreement or the phrase "to the knowledge" of a party or a similar phrase is used in this Agreement, such party's knowledge or such phrase(s) shall be interpreted to mean to the best of such party's knowledge after reasonable and diligent inquiry and investigation.

(g) Unless otherwise provided in this 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 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 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.

"Lender may" shall mean at Lender's discretion, but shall not be an obligation.

#### **24. WAIVER OF TRIAL BY JURY.**

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EACH OF THE PARTIES HERETO (A) COVENANTS AND AGREES NOT TO ELECT A TRIAL BY JURY WITH RESPECT TO ANY ISSUE ARISING OUT OF THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT, OR THE RELATIONSHIP BETWEEN THE PARTIES, 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.

**[Remainder of Page Intentionally Blank]**

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

**TRANSFEROR:**

**SHAMROCK PROPERTIES VII LLC**, a  
Delaware limited liability company

By: **ND MANAGER LLC**, a  
Delaware limited liability company, its  
Manager



By: \_\_\_\_\_ (SEAL)

Name: Ellen Weinstein

Title: Manager

Notice Address:

Two Greenwich Office Park, Suite 300

Greenwich, Connecticut 06831

Attention: Ellen Weinstein

STATE OF \_\_\_\_\_ )  
 ) ss.:  
COUNTY OF \_\_\_\_\_ )

This Agreement was acknowledged before me on \_\_\_\_\_, 2018, by **ELLEN WEINSTEIN**, the **MANAGER** of **ND MANAGER LLC**, a Delaware limited liability company, the **MANAGER** of **SHAMROCK PROPERTIES VII LLC**, a Delaware limited liability company.

\_\_\_\_\_  
Notary Public

Printed Name: \_\_\_\_\_

(Seal)

My Commission Expires: \_\_\_\_\_



A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California                    )  
  ) ss.  
County of Los Angeles                )

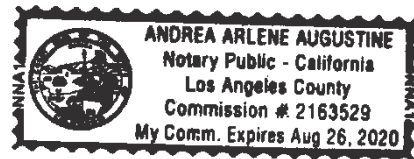
On August 20, 2018, before me, Andrea Arlene Augustine, Notary Public, personally appeared ELLEN WEINSTEIN, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her authorized capacity, and that by her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_  


(seal)



Andrea Arlene Augustine  
No. 2163529  
Exp 8-26-20

ORIGINAL GUARANTOR:



ELLEN WEINSTEIN

Notice Address:

6482 South Canyon Crest Drive

Holladay, Utah 84121

STATE OF

)

) ss.:

COUNTY OF

)

This Agreement was acknowledged before me on \_\_\_\_\_, 2018, by ELLEN WEINSTEIN.

\_\_\_\_\_  
Notary Public

Printed Name: \_\_\_\_\_

(Seal)

My Commission Expires: \_\_\_\_\_

[SIGNATURES CONTINUE ON NEXT PAGE]

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California            )  
  ) ss.  
County of Los Angeles        )

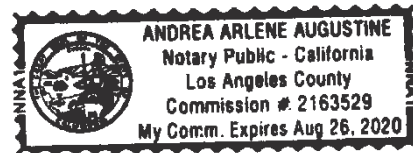
On August 20, 2018, before me, Andrea Arlene Augustine, Notary Public, personally appeared ELLEN WEINSTEIN, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her authorized capacity, and that by her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

**I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.**

WITNESS my hand and official seal.

Signature 

(seal)



Andrea Arlene Augustine

NO. 2163529

Exp 8-26-20

**TRANSFeree:**

**WESTLAND VILLAGE SQUARE LLC**, a  
Nevada limited liability company

By: **ALEVY DESCENDANTS TRUST NUMBER 1**, its  
Manager

By: \_\_\_\_\_ (SEAL)

Name: Yaakov Greenspan

Title: Co-Trustee

*Yaakov Greenspan  
Co-Trustee*

The name, chief executive office and organizational identification number of  
Borrower (as Debtor under any applicable Uniform Commercial Code) are:

Debtor Name/Record Owner: **WESTLAND VILLAGE SQUARE LLC**, a  
Nevada limited liability company

Debtor Chief Executive Office Address:

520 West Willow Street  
Long Beach, California 90806

Debtor Organizational ID Number: E0325502018-6

Notice Address:

520 West Willow Street  
Long Beach, California 90806

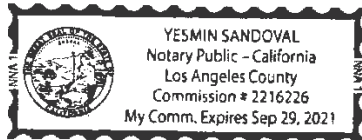
CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California )  
County of Los Angeles )

On August 27, 2018 before me, Yesmin Sandoval, Notary Public, personally appeared **YAAKOV GREENSPAN**, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.



I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature

  
*Signature of Notary Public*

[SIGNATURES CONTINUE ON NEXT PAGE]

*Yesmin Sandoval*  
*No. 2216226*  
*Exp 9-29-21*

**NEW GUARANTOR:**

**ALEVY DESCENDANTS TRUST NUMBER 1**

By: \_\_\_\_\_ (SEAL)

Name: Yaakov Greenspan

Title: Co-Trustee

*Yaakov Greenspan*

Notice Address:

520 West Willow Street

Long Beach, California 90806

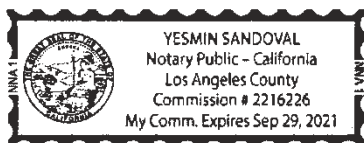
**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

**CIVIL CODE § 1189**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California )  
County of Los Angeles )

On August 27, 2018 before me, Yesmin Sandoval, Notary Public, personally appeared **YAAKOV GREENSPAN**, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.



I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_  
*Signature of Notary Public*

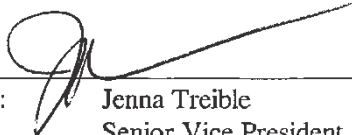
*Yesmin Sandoval*  
*No. 2216226*  
*Exp 9-29-21*

**[SIGNATURES CONTINUE ON NEXT PAGE]**



**FANNIE MAE:**

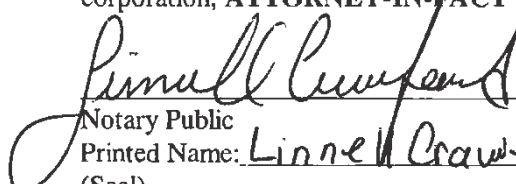
By: **SUNTRUST BANK**, a  
Georgia banking corporation, its  
Attorney-in-Fact

By:  (SEAL)  
Name: Jenna Treible  
Title: Senior Vice President

Notice Address:  
8245 Boone Boulevard, Suite 710  
Vienna, Virginia 22182

STATE OF NEW YORK )  
 ) ss.:  
COUNTY OF NEW YORK )

This Agreement was acknowledged before me on 8/14, 2018, by **JENNA TREIBLE**, the **SENIOR VICE PRESIDENT** of **SUNTRUST BANK**, a Georgia banking corporation, **ATTORNEY-IN-FACT** for **FANNIE MAE**.

  
Notary Public  
Printed Name: Linnell Crawford  
(Seal)  
My Commission Expires: 10/3/2021

LINNELL CRAWFORD  
Notary Public, State of New York  
No. 01CR5082378  
Qualified in Queens County  
My Commission Expires 10/03/20 21

**EXHIBIT A to  
ASSUMPTION AND RELEASE AGREEMENT**

**[Description of the Land]**

**PARCEL ONE (1):**

THAT PORTION OF THE NORTHEAST QUARTER (NE ¼) OF THE SOUTHEAST QUARTER (SE ¼) OF SECTION 8, TOWNSHIP 20 SOUTH, RANGE 62 EAST, M.D.M., MORE PARTICULARLY DESCRIBED AS FOLLOWS:

LOTS TWO (2) AND THREE (3) AS SHOWN BY MAP THEREOF IN FILE 54 OF PARCEL MAPS, PAGE 81, RECORDED NOVEMBER 13, 1987 AS DOCUMENT NO. 00558, IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA.

**PARCEL TWO (2):**

A NON-EXCLUSIVE PERPETUAL EASEMENT FOR INGRESS AND EGRESS FOR THE BENEFIT OF THE HEREIN DESCRIBED PARCEL AS CREATED IN DOCUMENT RECORDED OCTOBER 26, 1987 IN BOOK 871026 AS DOCUMENT NO. 00517, OF OFFICIAL RECORDS, CLARK COUNTY, NEVADA, AND AS AMENDED BY THAT CERTAIN AGREEMENT REGARDING EASEMENT AS EVIDENCED BY A MEMORANDUM OF EASEMENT DATED AUGUST 18, 2005 AND RECORDED AUGUST 31, 2005 AS DOCUMENT NO. 03969 IN BOOK 20050831 OF OFFICIAL RECORDS, CLARK COUNTY, NEVADA.

**EXHIBIT B to  
ASSUMPTION AND RELEASE AGREEMENT**

1. Multifamily Loan and Security Agreement (including any amendments, riders, exhibits, addenda or supplements, if any) dated as of November 2, 2017 by and between **SHAMROCK PROPERTIES VII LLC**, a Delaware limited liability company and **SUNTRUST BANK**, a Georgia banking corporation.
2. Multifamily Note dated as of November 2, 2017, by **SHAMROCK PROPERTIES VII LLC**, a Delaware limited liability company for the benefit of **SUNTRUST BANK**, a Georgia banking corporation, (including any amendments, riders, exhibits, addenda or supplements, if any).
3. Multifamily Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing, (including any amendments, riders, exhibits, addenda or supplements, if any) dated as of November 2, 2017, by **SHAMROCK PROPERTIES VII LLC**, a Delaware limited liability company for the benefit of **SUNTRUST BANK**, a Georgia banking corporation.
4. Environmental Indemnity Agreement dated as of November 2, 2017, from **SHAMROCK PROPERTIES VII LLC**, a Delaware limited liability company to **SUNTRUST BANK**, a Georgia banking corporation.
5. Guaranty of Non-Recourse Obligations dated as of November 2, 2017, from Ellen Weinstein to **SUNTRUST BANK**, a Georgia banking corporation.

# EXHIBIT 6 - Liberty Village Multifamily Loan and Security Agreement

EXHIBIT 6 - Liberty Village Multifamily Loan  
and Security Agreement

**MULTIFAMILY LOAN AND SECURITY AGREEMENT**

**(NON-RECOURSE)**

**BY AND BETWEEN**

**SHAMROCK PROPERTIES VI LLC, a  
Delaware limited liability company**

**AND**

**SUNTRUST BANK, a  
Georgia banking corporation**

**DATED AS OF**

**November 2, 2017**



{01307695;3}

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Multifamily Loan and Security Agreement  
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## **SCHEDULES & EXHIBITS**

### **Schedules**

<b>Schedule 1</b>	<b>Definitions Schedule (required)</b>	<b>Form 6101.ARM</b>
<b>Schedule 2</b>	<b>Summary of Loan Terms (required)</b>	<b>Form 6102.ARM</b>
<b>Schedule 3</b>	<b>Interest Rate Type Provisions (required)</b>	<b>Form 6103.ARM</b>
<b>Schedule 4</b>	<b>Prepayment Premium Schedule (required)</b>	<b>Form 6104.11</b>
<b>Schedule 5</b>	<b>Required Replacement Schedule (required)</b>	
<b>Schedule 6</b>	<b>Required Repair Schedule (required)</b>	
<b>Schedule 7</b>	<b>Exceptions to Representations and Warranties Schedule (required)</b>	

### **Exhibits**

<b>Exhibit A</b>	<b>Modifications to Multifamily Loan and Security Agreement (Cross-Default and Cross-Collateralization: Multi-Note)</b>	<b>Form 6203</b>
------------------	---	------------------



## **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 **SHAMROCK PROPERTIES VI LLC**, a Delaware limited liability company (“**Borrower**”), and **SUNTRUST BANK**, a Georgia banking corporation (“**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.**

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 date the Mortgage Loan proceeds are disbursed is any day other than the first day of the month, interest for the period beginning on the disbursement date and ending on and including the last day of the month in which the disbursement occurs shall be payable by Borrower on the date the Mortgage Loan proceeds are disbursed. In the event that the disbursement date is not the same as the Effective Date, then:

(A) the disbursement date and the Effective Date must be in the same month, and

(B) the Effective Date shall not be the first day of the month.

**(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. All payments made by Borrower under this Loan Agreement shall be made without set-off, counterclaim, or other defense.

**(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 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 any amount payable under this Loan Agreement (other than the payment due on the Maturity Date for repayment of the Mortgage Loan in full) 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 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 in respect of 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 Indebtedness due 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. To the extent Borrower or any other Person is vested with a right of redemption, interest shall continue to accrue at the Default Rate during any redemption period until such time as the Mortgaged Property has been redeemed.

(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 amount due in respect of 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 payment 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 payment at Lender's election. Neither Lender's acceptance of a payment 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 payment 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 approved by Lender) and such failure either continues for five (5) Business Days, or into the following month, Lender shall have the right to recalculate the payoff amount. If Borrower prepays the Mortgage Loan either in the following month or more than five (5) Business Days after the Intended Prepayment Date that was approved by Lender, Lender shall also have the right to recalculate the payoff amount based upon the amount of such payment and the date such payment was received by Lender. Borrower shall immediately pay to Lender any additional amounts required by any such recalculation.

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**(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 amounts received in connection with a Condemnation Action 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.**

In any circumstance in which a Prepayment Premium is due under this Loan Agreement, Borrower acknowledges that:

- (1) any prepayment of the unpaid principal balance of the Mortgage Loan, whether voluntary or involuntary, or following the occurrence of an Event of 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, manager, member, partner, shareholder, trustee, trust beneficiary, 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 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, subject to any notice and cure period, if any:

(1) failure to pay as directed by Lender upon demand after an Event of Default (to the extent actually received by Borrower):

(A) all Rents to which Lender is entitled under the Loan Documents; and

(B) the amount of all security deposits then held or thereafter collected by Borrower from tenants and not properly applied pursuant to the applicable Leases;

(2) failure to maintain all insurance policies required by the Loan Documents, except to the extent Lender has the obligation to pay the premiums pursuant to Section 12.03(c);



(3) failure to apply all insurance proceeds received by Borrower or any amounts received by Borrower in connection with a Condemnation Action, 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) except to the extent directed otherwise by Lender pursuant to Section 3.02(a)(1), failure to apply Rents to the ordinary and necessary expenses of owning and operating the Mortgaged Property and Debt Service Amounts, as and when each is due and payable, except that Borrower will not be personally liable with respect to Rents that are distributed by Borrower in any calendar year if Borrower has paid all ordinary and necessary expenses of owning and operating the Mortgaged Property and Debt Service Amounts for such calendar year;

(6) waste or abandonment of the Mortgaged Property; or

(7) grossly negligent or reckless unintentional material misrepresentation or omission by Borrower, Guarantor, Key Principal, or any officer, director, partner, manager, member, shareholder, or trustee of Borrower, Guarantor, or Key Principal in connection with on-going financial or other reporting required by the Loan Documents, or any request for action or consent by Lender.

Notwithstanding the foregoing, 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 (A) Borrower, Guarantor, or Key Principal, (B) any Person Controlling Borrower, Guarantor, or Key Principal or (C) any Person Controlled by or under common Control with Borrower, Guarantor, or Key Principal.

**(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 Section 4.02(d) of this Loan Agreement;

(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 clause (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 (A) Borrower, Guarantor, or Key Principal, (B) any Person Controlling Borrower, Guarantor, or Key Principal, or (C) any Person Controlled by or under common Control with Borrower, Guarantor, or Key Principal;

(4) fraud, written material misrepresentation, or material omission by Borrower, Guarantor, Key Principal, or any officer, director, partner, manager, member, shareholder, or trustee of Borrower, Guarantor, or Key Principal in connection with any application for or creation of the Indebtedness; or

(5) fraud, written intentional material misrepresentation, or intentional material omission by Borrower, Guarantor, Key Principal, or any officer, director, partner, manager, member, shareholder, or trustee of Borrower, Guarantor, or Key Principal in connection with on-going financial or other reporting required by the Loan Documents, 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) of this Loan Agreement, the Environmental Indemnity Agreement, and any other express indemnity obligations provided by Borrower under any 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, provided that Borrower's liability for such indemnities shall not include any loss caused by the gross negligence or willful misconduct of Lender as determined by a court of competent jurisdiction pursuant to a final non-appealable court order.

### **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 Guarantor, 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.**

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, exclusive of Borrower's ability to refinance or pay in full the Mortgage Loan on the Maturity Date. In connection with the execution and delivery of this Loan Agreement and the other Loan Documents (and the delivery to, or for the benefit of, Lender of any collateral contemplated thereunder), and the incurrence by Borrower of the obligations under this Loan Agreement and the other Loan Documents, Borrower did not receive less than reasonably equivalent value in exchange for the incurrence of the obligations of Borrower under this Loan Agreement and the other Loan Documents.

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

(1) None of Borrower, Guarantor, or Key Principal, nor to Borrower's knowledge, any Person Controlling Borrower, Guarantor, or Key Principal, nor any Person Controlled by Borrower, Guarantor, or Key Principal that also has a direct or indirect ownership interest in Borrower, Guarantor, or Key Principal, is in violation of any applicable civil or criminal laws or regulations, including those requiring internal controls, intended to prohibit, prevent, or regulate money laundering, drug trafficking, terrorism, or corruption, of the United States and the jurisdiction where the Mortgaged Property is located or where the Person resides, is domiciled, or has its principal place of business.

(2) None of Borrower, Guarantor, or Key Principal, nor to Borrower's knowledge, any Person Controlling Borrower, Guarantor, or Key Principal, nor any Person Controlled by Borrower, Guarantor, or Key Principal that also has a direct or indirect ownership interest in Borrower, Guarantor, or Key Principal, is a Person:

(A) against whom proceedings are pending for any alleged violation of any laws described in Section 4.01(g)(1);

(B) that has been convicted of any violation of, has been subject to civil penalties or Economic Sanctions pursuant to, or had any of its property seized or forfeited under, any laws described in Section 4.01(g)(1); or

(C) 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,

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regardless of where organized, having its principal place of business within the United States or any of its territories, is a Sanctioned Person or is otherwise prohibited from transacting business of the type contemplated by this Loan Agreement and the other Loan Documents under any other applicable law.

(3) Borrower, Guarantor, and Key Principal are in compliance with all applicable Economic Sanctions laws and regulations.

**(h) Borrower Single Asset Status.**

Borrower:

(1) does not own or lease 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 leasing, ownership, management, operation, and maintenance of the Mortgaged Property;

(3) has no material financial obligation under or secured by 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 is otherwise bound, or to which the Mortgaged Property is subject or by which it is otherwise encumbered, other than:

(A) unsecured trade payables incurred in the ordinary course of the operation of the Mortgaged Property (exclusive of amounts for rehabilitation, restoration, repairs, or replacements of the Mortgaged Property) that (i) are not evidenced by a promissory note, (ii) are payable within sixty (60) days of the date incurred, and (iii) as of the Effective Date, do not exceed, in the aggregate, four percent (4%) of the original principal balance of the Mortgage Loan;

(B) if the Security Instrument grants a lien on a leasehold estate, Borrower's obligations as lessee under the ground lease creating such leasehold estate; and

(C) obligations under the Loan Documents and obligations secured by the Mortgaged Property to the extent permitted by the Loan Documents;

(4) has 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 (unless Borrower's assets have been included in a consolidated financial statement prepared in accordance with generally accepted accounting principles);

(5) has not commingled its assets or funds with those of any other Person, unless such assets or funds can easily be segregated and identified in the ordinary course of business from those of any other Person;

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

(7) has not assumed, guaranteed, or pledged its assets to secure the liabilities or obligations of any other Person (except in connection with the Mortgage Loan or other mortgage loans that have been paid in full or collaterally assigned to Lender, including in connection with any Consolidation, Extension and Modification Agreement or similar instrument), or held out its credit as being available to satisfy the obligations of any other Person;

(8) has not made loans or advances to any other Person; and

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

**(i) No Bankruptcies or Judgments.**

None of Borrower, Guarantor, or Key Principal, nor to Borrower's knowledge, any Person Controlling Borrower, Guarantor, or Key Principal, nor any Person Controlled by Borrower, Guarantor, or Key Principal that also has a direct or indirect ownership interest in Borrower, Guarantor, or Key Principal, 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 Actions or Litigation.**

(1) There are no claims, actions, suits, or proceedings at law or in equity by or before any Governmental Authority now pending against or, to Borrower's knowledge, threatened against or affecting Borrower or the Mortgaged Property not otherwise covered by insurance (except claims, actions, suits, or proceedings regarding fair housing, anti-discrimination, or equal opportunity, which shall always be disclosed); and

(2) there are no claims, 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 Guarantor or Key Principal, which claims, actions, suits, or proceedings, if adversely determined (individually or in the aggregate) reasonably would be expected to materially adversely affect the financial condition or business of Borrower,

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Guarantor, or Key Principal or the condition, operation, or ownership of the Mortgaged Property (except claims, actions, suits, or proceedings regarding fair housing, anti-discrimination, or equal opportunity, which shall always be deemed material).

**(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, before any fine, penalty, interest, lien, or costs may be added thereto, 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 represents and warrants that:

(1) Borrower is not an Employee Benefit Plan;

(2) no asset of Borrower constitutes "plan assets" (within the meaning of Section 3(42) of ERISA and Department of Labor Regulation Section 2510.3-101) of an Employee Benefit Plan;

(3) no asset of Borrower is subject to any laws of any Governmental Authority governing the assets of an Employee Benefit Plan; and

(4) neither Borrower nor any ERISA Affiliate is subject to any obligation or liability with respect to any ERISA Plan.

**(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 Borrower is bound.

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(2) None of Borrower, Guarantor, or Key Principal is in default under any obligation to Lender.

**(o) Prohibited Person.**

None of Borrower, Guarantor, or Key Principal is a Prohibited Person, nor to Borrower's knowledge, is any Person:

(1) Controlling Borrower, Guarantor, or Key Principal a Prohibited Person; or

(2) Controlled by and having a direct or indirect ownership interest in Borrower, Guarantor, or Key Principal a Prohibited Person.

**(p) No Contravention.**

Neither the execution and delivery of this Loan Agreement and the other Loan Documents to which Borrower is a party, nor the fulfillment of or compliance with the terms and conditions of this Loan Agreement and the other Loan Documents to which Borrower is a party, nor the performance of the obligations of Borrower under this Loan Agreement and the other Loan Documents does or will conflict with or result in any breach or violation of, or constitute a default under, any of the terms, conditions, or provisions of Borrower's organizational documents, or any indenture, existing agreement, or other instrument to which Borrower is a party or to which Borrower, the Mortgaged Property, or other assets of Borrower are subject.

**(q) Lockbox Arrangement.**

Borrower is not party to any type of lockbox agreement or similar cash management arrangement that has not been approved by Lender in writing, and no direct or indirect owner of Borrower is party to any type of lockbox agreement or similar cash management arrangement with respect to Rents or other income from the Mortgaged Property that has not been approved by Lender in writing.

**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 in which 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. Neither Borrower nor any partner, member, manager, officer, or director of Borrower shall:



(1) make or allow any material change to the organizational documents or organizational structure of Borrower, including changes relating to the Control of Borrower, or

(2) file any action, complaint, petition, or other claim to:

(A) divide, partition, or otherwise compel the sale of the Mortgaged Property, or

(B) otherwise change the Control of Borrower.

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

(1) Borrower, Guarantor, Key Principal, and any Person Controlling Borrower, Guarantor, or Key Principal, or any Person Controlled by Borrower, Guarantor, or Key Principal that also has a direct or indirect ownership interest in Borrower, Guarantor, or Key Principal shall remain in compliance with any applicable civil or criminal laws or regulations (including those requiring internal controls) intended to prohibit, prevent, or regulate money laundering, drug trafficking, terrorism, or corruption, of the United States and the jurisdiction where the Mortgaged Property is located or where the Person resides, is domiciled, or has its principal place of business.

(2) At no time shall Borrower, Guarantor, or Key Principal, or any Person Controlling Borrower, Guarantor, or Key Principal, or any Person Controlled by Borrower, Guarantor, or Key Principal that also has a direct or indirect ownership interest in Borrower, Guarantor, or Key Principal, be a Person:

(A) against whom proceedings are pending for any alleged violation of any laws described in Section 4.02(b)(1);

(B) that has been convicted of any violation of, has been subject to civil penalties or Economic Sanctions pursuant to, or had any of its property seized or forfeited under, any laws described in Section 4.02(b)(1); or

(C) 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 a Sanctioned Person or is otherwise prohibited from transacting business of the type contemplated by this Loan Agreement and the other Loan Documents under any other applicable law.

(3) Borrower, Guarantor, and Key Principal shall at all times remain in compliance with any applicable Economic Sanctions laws and regulations.

**(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 or lease any real property, personal property, or assets other than the Mortgaged Property;

(2) shall not acquire, own, operate, or participate in any business other than the leasing, ownership, management, operation, and maintenance of the Mortgaged Property;

(3) shall not commingle its assets or funds with those of any other Person, unless such assets or funds can easily be segregated and identified in the ordinary course of business from those of any other Person;

(4) shall 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 (unless Borrower's assets are included in a consolidated financial statement prepared in accordance with generally accepted accounting principles);

(5) shall have 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 is otherwise bound, or to which the Mortgaged Property is subject or by which it is otherwise encumbered, other than:

(A) unsecured trade payables incurred in the ordinary course of the operation of the Mortgaged Property (exclusive of amounts (i) to be paid out of the Replacement Reserve Account or Repairs Escrow Account, or (ii) for rehabilitation, restoration, repairs, or replacements of the Mortgaged Property or otherwise approved by Lender) so long as such trade payables (1) are not evidenced by a promissory note, (2) are payable within sixty (60) days of the date incurred, and (3) as of any date, do not exceed, in the aggregate, two percent (2%) of the original principal balance of the Mortgage Loan; provided, however, that otherwise compliant outstanding trade payables may exceed two percent (2%) up to an aggregate amount of four percent (4%) of the original principal balance of the Mortgage Loan for a period (beginning on or after the Effective Date) not to exceed ninety (90) consecutive days;

(B) if the Security Instrument grants a lien on a leasehold estate, Borrower's obligations as lessee under the ground lease creating such leasehold estate; and



(C) obligations under the Loan Documents and obligations secured by the Mortgaged Property to the extent permitted by the Loan Documents;

(6) shall not assume, guaranty, or pledge its assets to secure the liabilities or obligations of any other Person (except in connection with the Mortgage Loan or other mortgage loans that have been paid in full or collaterally assigned to Lender, including in connection with any Consolidation, Extension and Modification Agreement or similar instrument) or hold out its credit as being available to satisfy the obligations of any other Person;

(7) shall not make loans or advances to any other Person; or

(8) shall not enter into, or become a party to, any transaction with any Borrower Affiliate, except in the ordinary course of business and on terms which are no more favorable to any such Borrower Affiliate than would be obtained in a comparable arm's-length transaction with an unrelated third party.

**(e) ERISA.**

Borrower covenants that:

(1) no asset of Borrower shall constitute "plan assets" (within the meaning of Section 3(42) of ERISA and Department of Labor Regulation Section 2510.3-101) of an Employee Benefit Plan;

(2) no asset of Borrower shall be subject to the laws of any Governmental Authority governing the assets of an Employee Benefit Plan; and

(3) neither Borrower nor any ERISA Affiliate shall incur any obligation or liability with respect to any ERISA Plan.

**(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, Guarantor, Key Principal, or the Mortgaged Property, which claims, actions, suits, or proceedings, if adversely determined reasonably would be expected to materially adversely affect the financial condition or business of Borrower, Guarantor, or Key Principal, or the condition, operation, 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 or among 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; and

(4) any Bankruptcy Event or Guarantor Bankruptcy Event.

**(h) Restrictions on Distributions.**

No distributions or dividends of any nature with respect to Rents or other income from the Mortgaged Property shall be made to any Person having a direct ownership interest in Borrower if an Event of Default has occurred and is continuing.

**(i) Lockbox Arrangement.**

Borrower shall not enter into any type of lockbox agreement or similar cash management arrangement that has not been approved by Lender in writing, and no direct or indirect owner of Borrower shall enter into any type of lockbox agreement or similar cash management arrangement with respect to Rents or other income from the Mortgaged Property that has not been approved by Lender in writing. Lender's approval of any such cash management arrangement may be conditioned upon requiring Borrower to enter into a lockbox agreement or similar cash management arrangement with Lender in form and substance acceptable to Lender with regard to Rents and other income from the Mortgaged Property.

## 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 default exists under any of the Loan Documents.

#### (c) No Defenses.

The Loan Documents are not currently subject to any right of rescission, set-off, counterclaim, or defense by either Borrower or Guarantor, including the defense of usury, and neither Borrower nor Guarantor has asserted any right of rescission, set-off, counterclaim, or defense with respect thereto.

#### (d) Loan Document Taxes.

All mortgage, mortgage recording, stamp, intangible, or any other similar taxes required to be paid by any Person under applicable law currently in effect in connection with the execution, delivery, recordation, filing, registration, perfection, or enforcement of any of the Loan Documents, including the Security Instrument, have been paid or will be paid in the ordinary course of the closing of the Mortgage Loan.

### 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 of which Borrower has notice or knowledge; provided, however, any such written notice by Borrower to Lender 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 reasonably requested in writing by Lender.

**(b) Further Assurances.**

**(1) Other Documents As Lender May Require.**

Within ten (10) days after request by Lender, Borrower shall, subject to Section 5.02(d) below, execute, acknowledge, and deliver, at its cost and expense, all further acts, deeds, conveyances, assignments, financing statements, transfers, documents, agreements, assurances, and such other instruments as Lender may reasonably 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.**

Within ten (10) days after request by Lender, Borrower shall provide, or cause to be provided, to Lender, at Borrower's cost and expense, such further documentation or information reasonably 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, subject to Section 5.02(d) below:

(1) comply with the reasonable 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 within ten (10) days of the request, at Borrower's cost and expense, such

further documentation or information as Lender or Investor may reasonably require, 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 reasonably required by Lender or such Investor.

**(d) Limitations on Further Acts of Borrower.**

Nothing in Section 5.02(b) and 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;

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

(3) materially changing the rights and obligations of Borrower or Guarantor under the commitment letter.

**(e) Financing Statements; Record Searches.**

(1) Borrower shall pay all costs and expenses associated with:

(A) any filing or recording of 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 (including an “all assets” or “all personal property” collateral description or words of similar import) in form and substance 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).

**(f) Loan Document Taxes.**

Borrower shall pay, on demand, any transfer taxes, documentary taxes, assessments, or charges made by any Governmental Authority in connection with the execution, delivery, recordation, filing, registration, perfection, or enforcement of any of the Loan Documents or the Mortgage Loan.

**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 rent control, and Borrower has no knowledge of any action or proceeding (or threatened action or proceeding) regarding noncompliance or nonconformity with any of the foregoing.

(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, other than those permits or approvals which will be timely obtained in the ordinary course of business.

(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 at least:

- (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 or ground lessee of the Mortgaged Property.

**(d) Condition of the Mortgaged Property.**

(1) Borrower has not made any claims, and to Borrower's knowledge, no claims have been made, against any contractor, engineer, architect, or other party with respect to the construction or condition of the Mortgaged Property or the existence of any structural or other material defect therein; and

(2) neither the Land nor the Improvements has sustained any damage other than damage which has been fully repaired, or is fully insured and is being repaired in the ordinary course of business.

**(e) Personal Property.**

Borrower owns (or, to the extent disclosed on the Exceptions to Representations and Warranties Schedule, leases) all of the Personal Property that is material to and is used in connection with the management, ownership, and operation 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) change the use of all or any part of the Mortgaged Property;
- (2) convert any individual dwelling units or common areas to commercial use, or convert any common area or commercial use to individual dwelling units;
- (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;
- (5) subdivide the Land; or
- (6) suffer, permit, or initiate the joint assessment of any Mortgaged Property with any other real property constituting a tax lot separate from such Mortgaged Property which could cause the part of the Land to be included or assessed under or as part of another tax lot or parcel, or any part of any other property to be included or assessed under or as part of the tax lot or parcels for 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 (ordinary wear and tear excepted) (including the replacement of Personalty and Fixtures with items of equal or better function and quality) and subject to Section 9.03(b)(3) and Section 10.03(d) 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 any insurance proceeds or amounts received in connection with a Condemnation Action are 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 Force Majeure, 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 written notice of such

Additional Lender Repairs (subject to Force Majeure, 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 written notice of such Additional Lender Replacements (subject to Force Majeure, 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 Permitted Encumbrances and mechanics' or materialmen's liens which attach automatically under the laws of any Governmental Authority upon the commencement of any work upon, or delivery of any materials to, the Mortgaged Property and for which Borrower is not delinquent in the payment for any such work or materials);

(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 and bonding 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 Force Majeure exists and Borrower is diligently pursuing the reinstitution 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, subject to Force Majeure); 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 written 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 written 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 (ordinary wear and tear excepted) 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 or Repair, or to conduct any Environmental Inspection pursuant to the Environmental Indemnity Agreement), and shall cooperate and provide access to all areas of the Mortgaged Property (subject to the rights of tenants under the Leases):

(A) during normal business hours;

(B) at such other reasonable time upon reasonable notice of not less than one (1) Business Day;

(C) at any time when exigent circumstances exist; or



(D) at any time after an Event of Default has occurred and is continuing;  
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, and Leases;

(2) procure and maintain all required permits, licenses, charters, registrations, 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 an assignment of management agreement or other agreement with Lender, in a form approved by Lender, providing for subordination of those fees and such other provisions as Lender may require.

**(c) Property Condition Assessment.**

If, in connection with any inspection of the Mortgaged Property, Lender determines that the condition of the Mortgaged Property has deteriorated (ordinary wear and tear excepted) since the Effective Date, Lender may obtain, at Borrower's expense, a property condition assessment of the Mortgaged Property. Lender's right to obtain a property condition 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 property condition 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;

(3) require that all Residential Leases have 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 for properties comparable to the Mortgaged Property, Residential Leases with terms of less than six (6) months (but in no case less than one (1) month) may be permitted with Lender's prior written consent); and

(4) 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 written request, promptly provide Lender a copy of any Residential Lease then in effect.

**(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; 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 or reduces the number or size of residential units at the Mortgaged Property; 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 results in such non-Material Commercial Lease being 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 after a request by Borrower, 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 an Event of Default has occurred and is continuing;

(2) 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 a Residential Lease or a non-Residential Lease) for more than two (2) months in advance.

**(d) Assignment of Rents.**

Borrower shall not:

(1) perform any acts nor 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; nor

(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 reasonably 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 to purchase or right of first offer to purchase, 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 and all rights of the tenant thereunder are expressly 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 affirmatively elects to terminate such Lease pursuant to the terms of the subordination, non-disturbance and attornment agreement.

**(b) Residential Lease Form.**

All Residential Leases entered into from and after the Effective Date shall be on forms approved by Lender.



## **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 written 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, in all material respects, 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;

(2) within one hundred twenty (120) days after the end of each calendar year:

(A) for any Borrower and any Guarantor that is an entity, a statement of income and expenses and a statement of cash flows for such calendar year;

(B) for any Borrower and any Guarantor that is an individual, or a trust established for estate-planning purposes, a personal financial statement for such calendar year;

(C) when requested in writing by Lender, balance sheet(s) showing all assets and liabilities of Borrower and Guarantor and a statement of all contingent liabilities as of the end of such calendar year;

(D) if an energy consumption metric for the Mortgaged Property is required to be reported to any Governmental Authority, the Fannie Mae Energy Performance Metrics report, as generated by ENERGY STAR® Portfolio Manager, for the Mortgaged Property for such calendar year, which report must include the ENERGY STAR score, the Source Energy Use Intensity (EUI), the month and year ending period for such ENERGY STAR score and such Source Energy Use Intensity, and the ENERGY STAR Portfolio Manager Property Identification Number; provided that, if the Governmental Authority does not require the use of ENERGY STAR Portfolio Manager for the reporting of the energy consumption metric and Borrower does not use ENERGY STAR Portfolio Manager, then Borrower shall furnish to Lender the Source Energy Use Intensity for the Mortgaged Property for such calendar year;

(E) 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;

(F) 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

(G) written confirmation of:

(i) any changes occurring since the Effective Date (or that no such changes have occurred since the Effective Date) in (1) the direct owners of Borrower, (2) the indirect owners (and any non-member managers) of Borrower that Control Borrower (excluding any Publicly-Held Corporations or Publicly-Held Trusts), or (3) the indirect owners of Borrower that hold twenty-five percent (25%) or more of the ownership interests in Borrower (excluding any Publicly-Held Corporations or Publicly-Held Trusts), and their respective interests;

(ii) the names of all officers and directors of (1) any Borrower which is a corporation, (2) any corporation which is a general partner of any Borrower which is a partnership, or (3) any corporation which is the managing member or non-member manager of any Borrower which is a limited liability company; and

(iii) the names of all managers who are not members of (1) any Borrower which is a limited liability company, (2) any limited liability company which is a general partner of any Borrower which is a partnership, or (3) any limited liability company which is the managing member or non-member manager of any Borrower which is a limited liability company; and

(H) if not already provided pursuant to Section 8.02(b)(2)(A) above, 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 calendar year;

(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 written 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; and

(4) upon Lender's written 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

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Multifamily Loan and Security Agreement

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prospective tenants and deposits received from tenants or prospective tenants, and any other information requested by Lender;

(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;

(D) a statement of real estate owned directly or indirectly by Borrower and Guarantor for such period as requested by Lender, which statement(s) shall be delivered within thirty (30) days after the end of such month requested by Lender; and

(E) a statement that identifies:

(i) the direct owners of Borrower and their respective interests;

(ii) the indirect owners (and any non-member managers) of Borrower that Control Borrower (excluding any Publicly-Held Corporations or Publicly-Held Trusts) and their respective interests; and

(iii) the indirect owners of Borrower that hold twenty-five percent (25%) or more of the ownership interests in Borrower (excluding any Publicly-Held Corporations or Publicly-Held Trusts) and their respective interests.

**(c) Audited Financials.**

In the event Borrower or Guarantor receives or obtains any audited financial statements and such financial statements are required to be delivered to Lender under Section 8.02(b), Borrower shall deliver or cause to be delivered to Lender the audited versions of such financial statements.

**(d) 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) Lender's Right to Obtain Audited Books and Records.**

Lender may require that Borrower's or Guarantor's books and records be audited, at Borrower's expense, by an independent certified public accountant selected by Lender in order to produce or audit any statements, schedules, and reports of Borrower, Guarantor, or the Mortgaged Property required by Section 8.02, if: