

SECURITIES AND EXCHANGE COMMISSION

FORM 10-Q

Quarterly report pursuant to sections 13 or 15(d)

Filing Date: **2008-08-14** | Period of Report: **2008-06-30**
SEC Accession No. **0000711642-08-000381**

([HTML Version](#) on [secdatabase.com](#))

FILER

CENTURY PROPERTIES FUND XVII

CIK: **356472** | IRS No.: **942782037** | State of Incorpor.: **CA** | Fiscal Year End: **1231**
Type: **10-Q** | Act: **34** | File No.: **000-11137** | Film No.: **081016956**
SIC: **6500** Real estate

Mailing Address
55 BEATTIE PLACE
P O BOX 1089
GREENVILLE SC 29602

Business Address
55 BEATTIE PLACE
PO BOX 1089 C/O INSIGNIA
FINANCIAL GROUP
GREENVILLE SC 29602
8642391000

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

Form 10-Q

(Mark One)

QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the quarterly period ended June 30, 2008

TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the transition period from _____ to _____

Commission File Number 0-11137

CENTURY PROPERTIES FUND XVII

(Exact name of registrant as specified in its charter)

California
(State or other jurisdiction of
incorporation or organization)

94-2782037
(I.R.S. Employer
Identification No.)

55 Beattie Place, P.O. Box 1089
Greenville, South Carolina 29602
(Address of principal executive offices)

(864) 239-1000
(Registrant's telephone number, including area code)

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days.

Yes No

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

Large accelerated filer

Accelerated filer

Non-accelerated filer

Smaller reporting company

(Do not check if a smaller reporting company)

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

PART I - FINANCIAL INFORMATION

Item 1. Financial Statements.

CENTURY PROPERTIES FUND XVII

CONSOLIDATED BALANCE SHEETS
(in thousands, except unit data)

	June 30, <u>2008</u> (Unaudited)	December 31, <u>2007</u> (Note)
Assets		
Cash and cash equivalents	\$ 25,037	\$ 380
Receivables and deposits	898	819
Restricted escrows	--	117
Other assets	788	518
Investment properties:		
Land	5,763	5,763
Buildings and related personal property	<u>71,843</u>	<u>71,009</u>
	77,606	76,772
Less accumulated depreciation	<u>(53,494)</u>	<u>(51,154)</u>
	<u>24,112</u>	<u>25,618</u>
	<u>\$ 50,835</u>	<u>\$ 27,452</u>
Liabilities and Partners' Deficit		
Liabilities		
Accounts payable	\$ 245	\$ 408
Tenant security deposit liabilities	423	394
Accrued property taxes	364	680
Other liabilities	386	573
Due to affiliates (Note B)	--	309
Mortgage notes payable	<u>61,325</u>	<u>36,202</u>
	<u>62,743</u>	<u>38,566</u>
Partners' Deficit		
General partner	(8,079)	(7,986)
Limited partners (75,000 units issued and outstanding)	<u>(3,829)</u>	<u>(3,128)</u>
	<u>(11,908)</u>	<u>(11,114)</u>
	<u>\$ 50,835</u>	<u>\$ 27,452</u>

Note: The consolidated balance sheet at December 31, 2007 has been derived from the audited financial statements at that date but does not include all the information and footnotes required by generally accepted accounting principles for complete financial statements.

See Accompanying Notes to Consolidated Financial Statements

CENTURY PROPERTIES FUND XVII

CONSOLIDATED STATEMENTS OF OPERATIONS
(Unaudited)
(in thousands, except per unit data)

	Three Months Ended		Six Months Ended	
	June 30,		June 30,	
	<u>2008</u>	<u>2007</u>	<u>2008</u>	<u>2007</u>
Revenues:				
Rental income	\$ 2,892	\$ 2,739	\$ 5,764	\$ 5,418
Other income	<u>422</u>	<u>429</u>	<u>806</u>	<u>810</u>
Total revenues	<u>3,314</u>	<u>3,168</u>	<u>6,570</u>	<u>6,228</u>
Expenses:				
Operating	1,481	1,456	2,904	2,970
General and administrative	199	105	311	212
Depreciation	1,177	1,105	2,340	2,205
Interest	755	744	1,442	1,483
Property taxes	<u>189</u>	<u>185</u>	<u>367</u>	<u>355</u>
Total expenses	<u>3,801</u>	<u>3,595</u>	<u>7,364</u>	<u>7,225</u>
Net loss	\$ <u>(487)</u>	\$ <u>(427)</u>	\$ <u>(794)</u>	\$ <u>(997)</u>
Net loss allocated to general partner	\$ (56)	\$ (50)	\$ (93)	\$ (118)
Net loss allocated to limited partners	<u>(431)</u>	<u>(377)</u>	<u>(701)</u>	<u>(879)</u>
	\$ <u>(487)</u>	\$ <u>(427)</u>	\$ <u>(794)</u>	\$ <u>(997)</u>
Net loss per limited partnership unit	\$ <u>(5.75)</u>	\$ <u>(5.03)</u>	\$ <u>(9.35)</u>	\$ <u>(11.72)</u>

See Accompanying Notes to Consolidated Financial Statements

CENTURY PROPERTIES FUND XVII

CONSOLIDATED STATEMENT OF CHANGES IN PARTNERS' DEFICIT
(Unaudited)
(in thousands, except unit data)

	Limited Partnership <u>Units</u>	General <u>Partner</u>	Limited <u>Partners</u>	<u>Total</u>
Original capital contributions	<u>75,000</u>	\$ <u> --</u>	\$ <u>75,000</u>	\$ <u>75,000</u>
Partners' deficit at December 31, 2007	75,000	\$ (7,986)	\$ (3,128)	\$ (11,114)
Net loss for the six months ended June 30, 2008	<u> --</u>	<u> (93)</u>	<u> (701)</u>	<u> (794)</u>
Partners' deficit at June 30, 2008	<u>75,000</u>	\$ <u>(8,079)</u>	\$ <u>(3,829)</u>	\$ <u>(11,908)</u>

See Accompanying Notes to Consolidated Financial Statements

CENTURY PROPERTIES FUND XVII

CONSOLIDATED STATEMENTS OF CASH FLOWS
(Unaudited)
(in thousands)

	Six Months Ended June 30,	
	<u>2008</u>	<u>2007</u>
Cash flows from operating activities:		
Net loss	\$ (794)	\$ (997)
Adjustments to reconcile net loss to net cash provided by operating activities:		
Depreciation	2,340	2,205
Amortization of loan costs	24	21
Loss on early extinguishment of debt	7	--
Change in accounts:		
Receivables and deposits	(79)	(44)
Other assets	42	(90)
Accounts payable	2	21
Tenant security deposit liabilities	29	65
Accrued property taxes	(316)	(329)
Other liabilities	(187)	86
Due to affiliates	(4)	177
Net cash provided by operating activities	<u>1,064</u>	<u>1,115</u>
Cash flows from investing activities:		
Property improvements and replacements	(999)	(686)
Net receipts from (deposits to) restricted escrows	117	(84)
Net cash used in investing activities	<u>(882)</u>	<u>(770)</u>
Cash flows from financing activities:		
Payments on mortgage notes payable	(520)	(605)
Repayment of mortgage notes payable	(11,664)	--
Proceeds from mortgage notes payable	37,307	--
Loan costs paid	(343)	--
Advances from affiliate	843	--
Repayment of advances from affiliate	(1,148)	--
Net cash provided by (used in) financing activities	<u>24,475</u>	<u>(605)</u>
Net increase (decrease) in cash and cash equivalents	24,657	(260)
Cash and cash equivalents at beginning of period	380	957
Cash and cash equivalents at end of period	<u>\$ 25,037</u>	<u>\$ 697</u>
Supplemental disclosure of cash flow information:		
Cash paid for interest	\$ <u>1,528</u>	\$ <u>1,282</u>
Supplemental disclosure of non-cash activity:		
Property improvements and replacements included in accounts payable	\$ <u>110</u>	\$ <u>111</u>

At December 31, 2007 and 2006, approximately \$275,000 and \$28,000, respectively, of property improvements and replacements were included in accounts payable, and are included in property improvements and replacements for the six months ended June 30, 2008 and 2007, respectively.

See Accompanying Notes to Consolidated Financial Statements

CENTURY PROPERTIES FUND XVII

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
(Unaudited)

Note A - Basis of Presentation

The accompanying unaudited consolidated financial statements of Century Properties Fund XVII (the "Partnership" or the "Registrant") have been prepared in accordance with generally accepted accounting principles for interim financial information and with the instructions to Form 10-Q and Article 8-03 of Regulation S-X. Accordingly, they do not include all of the information and footnotes required by generally accepted accounting principles for complete financial statements. Fox Partners, a California general partnership, is the general partner of the Partnership (the "General Partner"). The general partners of Fox Partners are Fox Capital Management Corporation ("FCMC" or the "Managing General Partner"), Fox Realty Investors ("FRI"), and CPF XVII, LLC. In the opinion of the Managing General Partner, all adjustments (consisting of normal recurring accruals) considered necessary for a fair presentation have been included. Operating results for the three and six month periods ended June 30, 2008 are not necessarily indicative of the results that may be expected for the fiscal year ending December 31, 2008. For further information, refer to the consolidated financial statements and footnotes thereto included in the Partnership's Annual Report on Form 10-KSB for the fiscal year ended December 31, 2007. The Managing General Partner and the general partner of FRI are affiliates of Apartment Investment and Management Company ("AIMCO"), a publicly traded real estate investment trust.

Note B - Transactions with Affiliated Parties

The Partnership has no employees and depends on the Managing General Partner and its affiliates for the management and administration of all Partnership activities. The Partnership Agreement provides for certain payments to affiliates for services and reimbursement of certain expenses incurred by affiliates on behalf of the Partnership.

Affiliates of the Managing General Partner receive 5% of gross receipts from all of the Partnership's properties as compensation for providing property management services. The Partnership paid to such affiliates approximately \$321,000 and \$303,000 for the six months ended June 30, 2008 and 2007, respectively, which are included in operating expenses.

An affiliate of the Managing General Partner charged the Partnership for reimbursement of accountable administrative expenses amounting to approximately \$195,000 and \$130,000 for the six months ended June 30, 2008 and 2007, respectively, which are included in general and administrative expenses and investment properties. The portion of these reimbursements included in investment properties for the six months ended June 30, 2008 and 2007 are construction management services provided by an affiliate of the Managing General Partner of approximately \$91,000 and \$37,000, respectively.

Pursuant to the Partnership Agreement, for managing the affairs of the Partnership, the Managing General Partner is entitled to receive a Partnership management fee equal to 10% of the Partnership's adjusted cash from operations as distributed. There were no Partnership management fees paid during the six months ended June 30, 2008 or 2007, as there were no distributions from operations.

AIMCO Properties, L.P., an affiliate of the Managing General Partner, has made available to the Partnership a credit line of up to \$150,000 per property owned by the Partnership. During the six months ended June 30, 2008, AIMCO Properties, L.P. exceeded this credit limit and advanced the Partnership approximately \$843,000 to fund the real estate taxes at The Village in the Woods Apartments and deposits related to the refinancings at three of the Partnership's investment properties. There were no such advances during the six months ended June 30, 2007. The advances

bore interest at the prime rate plus 2%. Interest expense for the six months ended June 30, 2008 and 2007 was approximately \$22,000 and \$177,000, respectively. During the six months ended June 30, 2008, the Partnership made payments of approximately \$1,148,000 on the advances and associated accrued interest from proceeds from the refinancing of three of the Partnership's investment properties (as discussed in Note C). No such payments were made to affiliates of the Managing General Partner during the six months ended June 30, 2007. At December 31, 2007, the total outstanding advances and accrued interest due to AIMCO Properties, L.P. was approximately \$309,000 and was included in due to affiliates. There were no outstanding advances or associated interest due at June 30, 2008. The Partnership may receive additional advances of funds from AIMCO Properties, L.P. although AIMCO Properties, L.P. is not obligated to provide such advances. For more information on AIMCO Properties, L.P., including copies of its audited balance sheet, please see its reports filed with the Securities and Exchange Commission.

The Partnership insures its properties up to certain limits through coverage provided by AIMCO which is generally self-insured for a portion of losses and liabilities related to workers' compensation, property casualty, general liability and vehicle liability. The Partnership insures its properties above the AIMCO limits through insurance policies obtained by AIMCO from insurers unaffiliated with the Managing General Partner. During the six months ended June 30, 2008, the Partnership was charged by AIMCO and its affiliates approximately \$187,000 for hazard insurance coverage and fees associated with policy claims administration. Additional charges will be incurred by the Partnership during 2008 as other insurance policies renew later in the year. The Partnership was charged by AIMCO and its affiliates approximately \$314,000 for insurance coverage and fees associated with policy claims administration during the year ended December 31, 2007.

Note C - Refinancing of Mortgage Notes Payable

On June 30, 2008, the Partnership refinanced the mortgage encumbering Hampden Heights Apartments. The refinancing replaced the existing mortgage of approximately \$6,130,000, with a new mortgage in the amount of \$14,082,000. The new mortgage requires monthly payments of principal and interest beginning on August 1, 2008 until the loan matures July 1, 2014, with a fixed interest rate of 5.91% and a balloon payment of approximately \$12,873,000 due at maturity. Total capitalized loan costs associated with the new mortgage were approximately \$116,000 for the six months ended June 30, 2008 and are included in other assets. The Partnership recorded a loss on the early extinguishment of debt of approximately \$4,000, which is included in interest expense, as a result of the write off of unamortized loan costs. As a condition of the new mortgage, the lender required AIMCO Properties, L.P., an affiliate of the Managing General Partner, to guarantee certain obligations and liabilities of the Partnership with respect to the new mortgage.

On June 30, 2008, the Partnership refinanced the mortgage encumbering Creekside Apartments. The refinancing replaced the existing mortgage, of approximately \$5,534,000, with a new mortgage in the amount of \$14,625,000. The new mortgage requires monthly payments of principal and interest beginning on August 1, 2008 until the loan matures July 1, 2014 with a fixed interest rate of 5.82% and a balloon payment of approximately \$13,352,000 due at maturity. If no event of default exists at maturity, the maturity date will automatically be extended for one additional year, to July 1, 2015. Total capitalized loan costs associated with the new mortgage were approximately \$148,000 for the six months ended June 30, 2008 and are included in other assets. The Partnership recorded a loss on the early extinguishment of debt of approximately \$3,000, which is included in interest expense, as a result of the write off of unamortized loan costs. As a condition of the new mortgage, the lender required AIMCO Properties, L.P., an affiliate of the Managing General Partner, to guarantee certain obligations and liabilities of the Partnership with respect to the new mortgage.

On June 25, 2008, the Partnership obtained a second mortgage in the principal amount of \$8,600,000 on The Village in the Woods Apartments. The second mortgage requires monthly payments of principal and interest beginning on August 1, 2008 until the loan matures February 1, 2020, with a fixed interest rate of 6.43% and a balloon payment of approximately \$6,996,000 due at maturity. Total capitalized loan costs associated with the new mortgage were approximately \$79,000 for the six months ended June 30, 2008 and are included in other assets. If no event of default exists at maturity, the maturity date will be automatically extended for one additional

year to February 1, 2021. The Partnership may prepay the second mortgage subject to a prepayment penalty. As a condition of the loan, the lender required AIMCO Properties, L.P., an affiliate of the Managing General Partner, to guarantee certain obligations and liabilities of the Partnership with respect to the new mortgage financing.

In connection with the second mortgage, the Partnership also agreed to certain modifications of the first mortgage encumbering The Village in the Woods Apartments. The modification includes monthly payments of principal and interest of approximately \$86,000, beginning August 1, 2008 until the loan matures February 1, 2020, with a fixed interest rate of 8.56% and a balloon payment of approximately \$9,557,000 due at maturity. Total loan costs associated with the modification of the existing mortgage were approximately \$90,000 for the six months ended June 30, 2008 and are included in general and administrative expenses. If no event of default exists at maturity, the maturity date will be automatically extended for one additional year to February 1, 2021. The previous terms of the first mortgage consisted of a fixed interest rate of 8.56% per annum and monthly payments of principal and interest of approximately \$126,000 through the maturity date of February 1, 2020, at which date the mortgage was scheduled to be fully amortized. The Partnership may prepay the first mortgage subject to a prepayment penalty. As a condition of the loan, the lender required AIMCO Properties, L.P., an affiliate of the Managing General Partner, to guarantee certain obligations and liabilities of the Partnership with respect to the modified loan.

Note D - Contingencies

In March 1998, several putative unit holders of limited partnership units of the Partnership commenced an action entitled *Rosalie Nuanes, et al. v. Insignia Financial Group, Inc., et al.* (the "Nuanes action") in the Superior Court of the State of California for the County of San Mateo. The plaintiffs named as defendants, among others, the Partnership, its Managing General Partner and several of their affiliated partnerships and corporate entities. The action purported to assert claims on behalf of a class of limited partners and derivatively on behalf of a number of limited partnerships (including the Partnership) that are named as nominal defendants, challenging, among other things, the acquisition of interests in certain Managing General Partner entities by Insignia Financial Group, Inc. ("Insignia") and entities that were, at one time, affiliates of Insignia; past tender offers by the Insignia affiliates to acquire limited partnership units; management of the partnerships by the Insignia affiliates; and the series of transactions which closed on October 1, 1998 and February 26, 1999 whereby Insignia and Insignia Properties Trust, respectively, were merged into AIMCO. The plaintiffs sought monetary damages and equitable relief, including judicial dissolution of the Partnership. In addition, during the third quarter of 2001, a complaint captioned *Heller v. Insignia Financial Group* (the "Heller action") was filed against the same defendants that are named in the Nuanes action. On or about August 6, 2001, plaintiffs filed a first amended complaint. The Heller action was brought as a purported derivative action, and asserted claims for, among other things, breach of fiduciary duty, unfair competition, conversion, unjust enrichment, and judicial dissolution. On January 28, 2002, the trial court granted defendants motion to strike the complaint. Plaintiffs took an appeal from this order.

On January 8, 2003, the parties filed a Stipulation of Settlement in proposed settlement of the Nuanes action and the Heller action. On June 13, 2003, the court granted final approval of the settlement and entered judgment in both the Nuanes and Heller actions. On August 12, 2003, an objector ("Objector") filed an appeal (the "Appeal") seeking to vacate and/or reverse the order approving the settlement and entering judgment thereto. On May 4, 2004, the Objector filed a second appeal challenging the court's use of a referee and its order requiring Objector to pay those fees.

On March 21, 2005, the Court of Appeals issued opinions in both pending appeals. With regard to the settlement and judgment entered thereto, the Court of Appeals vacated the trial court's order and remanded to the trial court for further findings on the basis that the "state of the record is insufficient to permit meaningful appellate review". The matter was transferred back to the trial court on June 21, 2005. With regard to the second appeal, the Court of Appeals reversed the order requiring the Objector to pay referee fees. With respect to the related Heller

appeal, on July 28, 2005, the Court of Appeals reversed the trial court's order striking the first amended complaint.

On August 18, 2005, Objector and his counsel filed a motion to disqualify the trial court based on a peremptory challenge and filed a motion to disqualify for cause on October 17, 2005, both of which were ultimately denied and/or struck by the trial court. On or about October 13, 2005 Objector filed a motion to intervene and on or about October 19, 2005 filed both a motion to take discovery relating to the adequacy of plaintiffs as derivative representatives and a motion to dissolve the anti-suit injunction in connection with settlement. On November 14, 2005, Plaintiffs filed a Motion For Further Findings pursuant to the remand ordered by the Court of Appeals. Defendants joined in that motion. On February 3, 2006, the Court held a hearing on the various matters pending before it and ordered additional briefing from the parties and Objector. On June 30, 2006, the trial court entered an order confirming its approval of the class action settlement and entering judgment thereto after the Court of Appeals had remanded the matter for further findings. The substantive terms of the settlement agreement remain unchanged. The trial court also entered supplemental orders on July 1, 2006, denying Objector's Motion to File a Complaint in Intervention, Objector's Motion for Leave of Discovery and Objector's Motion to Dissolve the Anti-Suit Injunction. Notice of Entry of Judgment was served on July 10, 2006.

On August 31, 2006, the Objector filed a Notice of Appeal to the Court's June 30, 2006 and July 1, 2006 orders. The matter was argued and submitted and the Court of Appeal issued an opinion on February 20, 2008 affirming the order approving the settlement and judgment entered thereto. On March 12, 2008, the Court of Appeal denied Appellant's Petition for Re-Hearing. On May 21, 2008, the California Supreme Court denied Appellant's Petition for Review. Objector has until August 19, 2008 to file a petition for certiorari with the United States Supreme Court.

The Managing General Partner does not anticipate that any costs to the Partnership, whether legal or settlement costs, associated with these cases will be material to the Partnership's overall operations.

As previously disclosed, AIMCO Properties, L.P. and NHP Management Company, both affiliates of the Managing General Partner, were defendants in a lawsuit, filed as a collective action in August 2003 in the United States District Court for the District of Columbia, alleging that they willfully violated the Fair Labor Standards Act ("FLSA") by failing to pay maintenance workers overtime for time worked in excess of 40 hours per week ("overtime claims"). The plaintiffs also contended that AIMCO Properties, L.P. and NHP Management Company failed to compensate maintenance workers for time that they were required to be "on-call" ("on-call claims"). In March 2007, the court in the District of Columbia decertified the collective action. In July 2007, plaintiffs' counsel filed individual cases in Federal court in 22 jurisdictions. In the second quarter 2008, AIMCO Properties, L.P. settled the overtime cases involving 652 plaintiffs and established a framework for resolving the 88 remaining "on-call" claims and the attorneys' fees claimed by plaintiffs' counsel. As a result, the lawsuits asserted in the 22 Federal courts will be dismissed. At this time, affiliates of the Managing General Partner are attempting to obtain additional information to determine the most equitable allocation of settlement amounts and attorneys' fees. The Managing General Partner is uncertain as to the amount of loss, if any, allocable to the Partnership. Therefore, the Partnership cannot estimate whether a loss will occur or a potential range of loss.

The Partnership is unaware of any other pending or outstanding litigation matters involving it or its investment properties that are not of a routine nature arising in the ordinary course of business.

Environmental

Various Federal, state and local laws subject property owners or operators to liability for management, and the costs of removal or remediation, of certain hazardous substances present on a property. Such laws often impose liability without regard to whether the owner or operator knew of, or was responsible for, the release or presence of the hazardous substances. The presence of, or the failure to manage or remedy properly, hazardous substances may adversely affect occupancy at affected apartment communities and the ability to sell or finance affected properties. In addition to the costs associated with investigation and remediation actions brought by government

agencies, and potential fines or penalties imposed by such agencies in connection therewith, the presence of hazardous substances on a property could result in claims by private plaintiffs for personal injury, disease, disability or other infirmities. Various laws also impose liability for the cost of removal, remediation or disposal of hazardous substances through a licensed disposal or treatment facility. Anyone who arranges for the disposal or treatment of hazardous substances is potentially liable under such laws. These laws often impose liability whether or not the person arranging for the disposal ever owned or operated the disposal facility. In connection with the ownership, operation and management of its properties, the Partnership could potentially be liable for environmental liabilities or costs associated with its properties.

Mold

The Partnership is aware of lawsuits against owners and managers of multifamily properties asserting claims of personal injury and property damage caused by the presence of mold, some of which have resulted in substantial monetary judgments or settlements. The Partnership has only limited insurance coverage for property damage loss claims arising from the presence of mold and for personal injury claims related to mold exposure. Affiliates of the Managing General Partner have implemented policies, procedures, third-party audits and training and the Managing General Partner believes that these measures will prevent or eliminate mold exposure and will minimize the effects that mold may have on residents. To date, the Partnership has not incurred any material costs or liabilities relating to claims of mold exposure or to abate mold conditions. Because the law regarding mold is unsettled and subject to change the Managing General Partner can make no assurance that liabilities resulting from the presence of or exposure to mold will not have a material adverse effect on the Partnership's consolidated financial condition or results of operations.

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

The Private Securities Litigation Reform Act of 1995 provides a "safe harbor" for forward-looking statements in certain circumstances. Certain information included in this Report contains or may contain information that is forward-looking, including, without limitation, statements regarding the effect of redevelopments, the Partnership's future financial performance, including the Partnership's ability to maintain current or meet projected occupancy and rent levels, and the effect of government regulations. Actual results may differ materially from those described in the forward-looking statements and, in addition, will be affected by a variety of risks and factors that are beyond the Partnership's control including, without limitation: natural disasters such as hurricanes; national and local economic conditions; the general level of interest rates; energy costs; the terms of governmental regulations that affect the Partnership's properties and interpretations of those regulations; the competitive environment in which the Partnership operates; financing risks, including the risk that the Partnership's cash flows from operations may be insufficient to meet required payments of principal and interest; real estate risks, including fluctuations in real estate values and the general economic climate in local markets and competition for tenants in such markets; insurance risks; development risks; litigation, including costs associated with prosecuting or defending claims and any adverse outcomes; and possible environmental liabilities, including costs, fines or penalties that may be incurred due to necessary remediation of contamination of properties presently owned or previously owned by the Partnership. Readers should carefully review the Partnership's consolidated financial statements and the notes thereto, as well as the other documents the Partnership files from time to time with the Securities and Exchange Commission.

The Partnership's investment properties consist of four apartment complexes. The following table sets forth the average occupancy of the properties for the six months ended June 30, 2008 and 2007:

Property	Average Occupancy	
	2008	2007
Peakview Place Apartments Englewood, Colorado	97%	97%
Creekside Apartments Denver, Colorado	98%	96%
Hampden Heights Apartments Denver, Colorado	97%	97%
The Village in the Woods Apartments Cypress, Texas	94%	93%

The Partnership's financial results depend upon a number of factors including the ability to attract and maintain tenants at the investment properties, interest rates on mortgage loans, costs incurred to operate the investment properties, general economic conditions and weather. As part of the ongoing business plan of the Partnership, the Managing General Partner monitors the rental market environment of its investment properties to assess the feasibility of increasing rents, maintaining or increasing occupancy levels and protecting the Partnership from increases in expenses. As part of this plan, the Managing General Partner attempts to protect the Partnership from the burden of inflation-related increases in expenses by increasing rents and maintaining a high overall occupancy level. However, the Managing General Partner may use rental concessions and rental rate reductions to offset softening market conditions; accordingly, there is no guarantee that the Managing General Partner will be able to sustain such a plan. Further, a number of factors which are outside the control of the Partnership such as the local economic climate and weather can adversely or positively impact the Partnership's financial results.

Results of Operations

The Partnership realized a net loss of approximately \$487,000 and \$794,000 for the three and six months ended June 30, 2008, respectively, compared to net loss of approximately \$427,000

and \$997,000 for the three and six months ended June 30, 2007, respectively. The increase in net loss for the three months ended June 30, 2008 is due to an increase in total expenses, partially offset by an increase in total revenues. The decrease in net loss for the six months ended June 30, 2008 is due to an increase in total revenues, partially offset by an increase in total expenses. Total revenues increased for both the three and six months ended June 30, 2008 primarily due to an increase in rental income as a result of increases in the average rental rates at all of the Partnership's investment properties.

The increase in total expenses for the three months ended June 30, 2008 is due to increases in operating, general and administrative, depreciation and interest expenses. The increase in total expenses for the six months ended June 30, 2008 is due to increases in general and administrative and depreciation expenses, partially offset by decreases in operating and interest expenses. Property tax expense remained relatively constant for both the comparable periods. Operating expenses increased for the three month period due to increases in salaries and related benefits at Creekside Apartments and Hampden Heights Apartments, partially offset by decreases in temporary agency costs at Creekside Apartments and Hampden Heights Apartments and an increase in capitalized payroll costs at all the Partnership's investment properties. Operating expenses decreased for the six month period due to decreases in salaries and related benefits and contract services at Peakview Place Apartments, temporary agency costs at Creekside Apartments and Hampden Heights Apartments, insurance premiums and repairs and maintenance costs at The Village in the Woods Apartments, and an increase in capitalized payroll costs at all of the Partnership's investment properties, partially offset by an increase in salaries and related benefits at Creekside Apartments and Hampden Heights Apartments and contract services at Hampden Heights Apartments and The Village in the Woods Apartments. Interest expense increased for the three month period due to a decrease in capitalized interest at Creekside Apartments and Hampden Heights Apartments and an increase in interest at Peakview Place Apartments as a result of additional financing in 2007, partially offset by a decrease in interest incurred on advances from an affiliate of the Managing General Partner. Interest expense decreased for the six month period due to a decrease in interest incurred on advances from an affiliate of the Managing General Partner, partially offset by additional interest at Peakview Place Apartments as a result of additional financing in 2007. The increase in depreciation expense for both periods is due to property improvements and replacements being placed into service at all the Partnership's investment properties during the past twelve months.

General and administrative expenses increased for both periods primarily due to costs incurred related to the modification of the existing mortgage at The Village in the Woods Apartments. Also included in general and administrative expenses for the three and six months ended June 30, 2008 and 2007 are management reimbursements to the Managing General Partner as allowed under the Partnership Agreement and costs associated with the quarterly and annual communications with the investors and regulatory agencies and the annual audit required by the Partnership Agreement.

Liquidity and Capital Resources

At June 30, 2008, the Partnership had cash and cash equivalents of approximately \$25,037,000 compared to approximately \$697,000 at June 30, 2007. The increase in cash and cash equivalents of approximately \$24,657,000 from December 31, 2007, is due to approximately \$24,475,000 and \$1,064,000 of cash provided by financing and operating activities, partially offset by approximately \$882,000 of cash used in investing activities. Cash provided by financing activities consisted of advances from affiliates and proceeds from mortgage notes payable, partially offset by loan costs paid, payments of principal made on the mortgages encumbering the Partnership's properties, repayment of mortgage notes payable and repayment of advances from affiliate. Cash used in investing activities consisted of property improvements and replacements, partially offset by net receipts from escrow accounts maintained by the mortgage lenders. The Partnership invests its working capital reserves in interest bearing accounts.

AIMCO Properties, L.P., an affiliate of the Managing General Partner, has made available to the Partnership a credit line of up to \$150,000 per property owned by the Partnership. During the six months ended June 30, 2008, AIMCO Properties, L.P. exceeded this credit limit and advanced the Partnership approximately \$843,000 to fund the real estate taxes at The Village in the Woods Apartments and deposits related to the refinancings at three of the Partnership's investment properties. There were no such advances during the six months ended June 30, 2007. The advances

bore interest at the prime rate plus 2%. Interest expense for the six months ended June 30, 2008 and 2007 was approximately \$22,000 and \$177,000, respectively. During the six months ended June 30, 2008, the Partnership made payments of approximately \$1,148,000 on the advances and associated accrued interest from proceeds from the refinancing of three of the Partnership's investment properties. No such payments were made to affiliates of the Managing General Partner during the six months ended June 30, 2007. At December 31, 2007, the total outstanding advances and accrued interest due to AIMCO Properties, L.P. was approximately \$309,000 and was included in due to affiliates. There were no outstanding advances or associated interest due at June 30, 2008. The Partnership may receive additional advances of funds from AIMCO Properties, L.P. although AIMCO Properties, L.P. is not obligated to provide such advances. For more information on AIMCO Properties, L.P., including copies of its audited balance sheet, please see its reports filed with the Securities and Exchange Commission.

The sufficiency of existing liquid assets to meet future liquidity and capital expenditure requirements is directly related to the level of capital expenditures required at the properties to adequately maintain the physical assets and other operating needs of the Partnership and to comply with Federal, state, and local legal and regulatory requirements. The Managing General Partner monitors developments in the area of legal and regulatory compliance. Capital improvements planned for each of the Partnership's properties are detailed below.

Peakview Place Apartments

During the six months ended June 30, 2008, the Partnership completed approximately \$152,000 of capital improvements at Peakview Place Apartments, consisting primarily of water heater and kitchen and bath upgrades, major landscaping and floor covering replacement. These improvements were funded from operating cash flow. The Partnership regularly evaluates the capital improvement needs of the property. While the Partnership has no material commitments for property improvements and replacements, certain routine capital expenditures are anticipated during the remainder of 2008. Such capital expenditures will depend on the physical condition of the property as well as anticipated cash flow generated by the property.

Creekside Apartments

During the six months ended June 30, 2008, the Partnership completed approximately \$322,000 of capital improvements at Creekside Apartments, consisting primarily of boiler/cooling tower upgrades, heating and air conditioning upgrades, roof replacement, furniture replacements, wood laminate and floor covering replacements. These improvements were funded from operating cash flow and replacement reserves. The Partnership regularly evaluates the capital improvement needs of the property. While the Partnership has no material commitments for property improvements and replacements, certain routine capital expenditures are anticipated during the remainder of 2008. Such capital expenditures will depend on the physical condition of the property as well as anticipated cash flow generated by the property.

Hampden Heights Apartments

During the six months ended June 30, 2008, the Partnership completed approximately \$150,000 of capital improvements at Hampden Heights Apartments, consisting primarily of recreation facility improvements and floor covering replacement. These improvements were funded from operating cash flow and replacement reserves. The Partnership regularly evaluates the capital improvement needs of the property. While the Partnership has no material commitments for property improvements and replacements, certain routine capital expenditures are anticipated during the remainder of 2008. Such capital expenditures will depend on the physical condition of the property as well as anticipated cash flow generated by the property.

The Village in the Woods Apartments

During the six months ended June 30, 2008, the Partnership completed approximately \$210,000 of capital improvements at The Village in the Woods Apartments consisting primarily of cabinets and countertop upgrades, appliance and floor covering replacements. These improvements were funded from operating cash flow. The Partnership regularly evaluates the capital improvement needs of the property. While the Partnership has no material commitments for property improvements and

replacements, certain routine capital expenditures are anticipated during the remainder of 2008. Such capital expenditures will depend on the physical condition of the property as well as anticipated cash flow generated by the property.

Capital expenditures will be incurred only if cash is available from operations or from Partnership reserves. To the extent that capital improvements are completed, the Partnership's distributable cash flow, if any, may be adversely affected at least in the short term.

The Partnership's assets are thought to be sufficient for any near-term needs (exclusive of capital improvements) of the Partnership. On June 30, 2008, the Partnership refinanced the mortgage encumbering Hampden Heights Apartments. The refinancing replaced the existing mortgage of approximately \$6,130,000, with a new mortgage in the amount of \$14,082,000. The new mortgage requires monthly payments of principal and interest beginning on August 1, 2008 until the loan matures July 1, 2014, with a fixed interest rate of 5.91% and a balloon payment of approximately \$12,873,000 due at maturity. Total capitalized loan costs associated with the new mortgage were approximately \$116,000 for the six months ended June 30, 2008 and are included in other assets. The Partnership recorded a loss on the early extinguishment of debt of approximately \$4,000, which is included in interest expense, as a result of the write off of unamortized loan costs. As a condition of the new mortgage, the lender required AIMCO Properties, L.P., an affiliate of the Managing General Partner, to guarantee certain obligations and liabilities of the Partnership with respect to the new mortgage.

On June 30, 2008, the Partnership refinanced the mortgage encumbering Creekside Apartments. The refinancing replaced the existing mortgage, of approximately \$5,534,000, with a new mortgage in the amount of \$14,625,000. The new mortgage requires monthly payments of principal and interest beginning on August 1, 2008 until the loan matures July 1, 2014 with a fixed interest rate of 5.82% and a balloon payment of approximately \$13,352,000 due at maturity. If no event of default exists at maturity, the maturity date will automatically be extended for one additional year, to July 1, 2015. Total capitalized loan costs associated with the new mortgage were approximately \$148,000 for the six months ended June 30, 2008 and are included in other assets. The Partnership recorded a loss on the early extinguishment of debt of approximately \$3,000, which is included in interest expense, as a result of the write off of unamortized loan costs. As a condition of the new mortgage, the lender required AIMCO Properties, L.P., an affiliate of the Managing General Partner, to guarantee certain obligations and liabilities of the Partnership with respect to the new mortgage.

On June 25, 2008, the Partnership obtained a second mortgage in the principal amount of \$8,600,000 on The Village in the Woods Apartments. The second mortgage requires monthly payments of principal and interest beginning on August 1, 2008 until the loan matures February 1, 2020, with a fixed interest rate of 6.43% and a balloon payment of approximately \$6,996,000 due at maturity. Total capitalized loan costs associated with the new mortgage were approximately \$79,000 for the six months ended June 30, 2008 and are included in other assets. If no event of default exists at maturity, the maturity date will be automatically extended for one additional year to February 1, 2021. The Partnership may prepay the second mortgage subject to a prepayment penalty. As a condition of the loan, the lender required AIMCO Properties, L.P., an affiliate of the Managing General Partner, to guarantee certain obligations and liabilities of the Partnership with respect to the new mortgage financing.

In connection with the second mortgage, the Partnership also agreed to certain modifications of the first mortgage encumbering The Village in the Woods Apartments. The modification includes monthly payments of principal and interest of approximately \$86,000, beginning August 1, 2008 until the loan matures February 1, 2020, with a fixed interest rate of 8.56% and a balloon payment of approximately \$9,557,000 due at maturity. Total loan costs associated with the modification of the existing mortgage were approximately \$90,000 for the six months ended June 30, 2008 and are included in general and administrative expenses. If no event of default exists at maturity, the maturity date will be automatically extended for one additional year to February 1, 2021. The previous terms of the first mortgage consisted of a fixed interest rate of 8.56% per annum and monthly payments of principal and interest of approximately \$126,000 through the maturity date of February 1, 2020, at which date the mortgage was scheduled to be fully amortized. The Partnership may prepay the first mortgage subject to a prepayment penalty. As a condition of the loan, the lender required AIMCO Properties, L.P., an affiliate of the Managing General Partner,

to guarantee certain obligations and liabilities of the Partnership with respect to the modified loan.

The debt encumbering Peakview Place Apartments matures in 2018 and 2020, at which time balloon payments of approximately \$2,697,000 and \$8,121,000, respectively, will be due. The Managing General Partner will attempt to refinance the indebtedness encumbering the Partnership's investment properties and/or sell the properties prior to their maturity dates. If the properties cannot be refinanced or sold for a sufficient amount, the Partnership will risk losing such properties through foreclosure.

There were no distributions made to the partners during the six months ended June 30, 2008 or 2007. Future cash distributions will depend on the levels of net cash generated from operations, the timing of debt maturities, refinancings and/or property sales. The Partnership's cash available for distribution is reviewed on a monthly basis. Subsequent to June 30, 2008, the Partnership distributed approximately \$21,806,000 (approximately \$284.93 per limited partnership unit) of refinancing proceeds from three of the Partnership's investment properties.

In addition, the Partnership paid a management incentive fee of approximately \$2,423,000 to the General Partner. There can be no assurance; however, that the Partnership will generate sufficient funds from operations, after required capital improvement expenditures, to permit any additional distributions to its partners during 2008 or subsequent periods.

Other

In addition to its indirect ownership of the general partner interest in the Partnership, AIMCO and its affiliates owned 52,866 limited partnership units (the "Units") in the Partnership representing 70.49% of the outstanding Units at June 30, 2008. A number of these Units were acquired pursuant to tender offers made by AIMCO or its affiliates. It is possible that AIMCO or its affiliates will acquire additional Units in exchange for cash or a combination of cash and units in AIMCO Properties, L.P., the operating partnership of AIMCO, either through private purchases or tender offers. Pursuant to the Partnership Agreement, unitholders holding a majority of the Units are entitled to take action with respect to a variety of matters that include, but are not limited to, voting on certain amendments to the Partnership Agreement and voting to remove the General Partner. As a result of its ownership of 70.49% of the outstanding Units, AIMCO and its affiliates are in a position to influence all voting decisions with respect to the Partnership. However, DeForest Ventures I L.P., from whom AIMCO, through its merger with Insignia Financial Group, Inc., acquired 25,833.5 (approximately 34.45%) of its Units, had agreed for the benefit of third party unitholders, that it would vote such Units: (i) against any increase in compensation payable to the General Partner and (ii) on all other matters submitted by it or its affiliates, in proportion to the votes cast by third party Unit holders. Except for the foregoing, no other limitations are imposed on AIMCO and its affiliates right to vote each Unit held. Although the General Partner owes fiduciary duties to the limited partners of the Partnership, the Managing General Partner owes fiduciary duties to both the General Partner and AIMCO as the sole stockholder of the Managing General Partner.

Critical Accounting Policies and Estimates

The consolidated financial statements are prepared in accordance with accounting principles generally accepted in the United States which require the Partnership to make estimates and assumptions. The Partnership believes that of its significant accounting policies, the following may involve a higher degree of judgment and complexity.

Impairment of Long-Lived Assets

Investment properties are recorded at cost, less accumulated depreciation, unless the carrying amount of the asset is not recoverable. If events or circumstances indicate that the carrying amount of a property may not be recoverable, the Partnership will make an assessment of its recoverability by comparing the carrying amount to the Partnership's estimate of the undiscounted future cash flows, excluding interest charges, of the property. If the carrying amount exceeds the aggregate undiscounted future cash flows, the Partnership would recognize an impairment loss to the extent the carrying amount exceeds the estimated fair value of the property.

Real property investment is subject to varying degrees of risk. Several factors may adversely affect the economic performance and value of the Partnership's investment properties. These factors include, but are not limited to, general economic climate; competition from other apartment communities and other housing options; local conditions, such as loss of jobs or an increase in the supply of apartments that might adversely affect apartment occupancy or rental rates; changes in governmental regulations and the related cost of compliance; increases in operating costs (including real estate taxes) due to inflation and other factors, which may not be offset by increased rents; and changes in tax laws and housing laws, including the enactment of rent control laws or other laws regulating multi-family housing. Any adverse changes in these factors could cause impairment of the Partnership's assets.

Capitalized Costs Related to Redevelopment and Construction Projects

The Partnership capitalizes costs incurred in connection with capital expenditure activities, including redevelopment and construction projects. Costs including interest, property taxes and operating costs associated with redevelopment and construction projects are capitalized during periods in which redevelopment and construction projects are in progress in accordance with SFAS No. 34, "Capitalization of Interest Costs", and SFAS No. 67, "Accounting for Costs and the Initial Rental Operations of Real Estate Properties." Included in these capitalized costs are payroll costs associated with time spent by site employees in connection with the planning, execution and control of all capital expenditure activities at the property level.

Revenue Recognition

The Partnership generally leases apartment units for twelve-month terms or less. The Partnership will offer rental concessions during particularly slow months or in response to heavy competition from other similar complexes in the area. Rental income attributable to leases, net of any concessions, is recognized on a straight-line basis over the term of the lease. The Partnership evaluates all accounts receivable from residents and establishes an allowance, after the application of security deposits, for accounts greater than 30 days past due on current tenants and all receivables due from former tenants.

Item 4T. Controls and Procedures.

(a) Disclosure Controls and Procedures.

The Partnership's management, with the participation of the principal executive officer and principal financial officer of the Managing General Partner, who are the equivalent of the Partnership's principal executive officer and principal financial officer, respectively, has evaluated the effectiveness of the Partnership's disclosure controls and procedures (as such term is defined in Rules 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934, as amended (the "Exchange Act")) as of the end of the period covered by this report. Based on such evaluation, the principal executive officer and principal financial officer of the Managing General Partner, who are the equivalent of the Partnership's principal executive officer and principal financial officer, respectively, have concluded that, as of the end of such period, the Partnership's disclosure controls and procedures are effective.

(b) Changes in Internal Control Over Financial Reporting.

There have not been any changes in the Partnership's internal control over financial reporting (as such term is defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act) during the fiscal quarter to which this report relates that have materially affected, or are reasonably likely to materially affect, the Partnership's internal control over financial reporting.

PART II - OTHER INFORMATION

Item 1. Legal Proceedings.

In March 1998, several putative unit holders of limited partnership units of the Partnership commenced an action entitled *Rosalie Nuanes, et al. v. Insignia Financial Group, Inc., et al.* (the "Nuanes action") in the Superior Court of the State of California for the County of San Mateo. The plaintiffs named as defendants, among others, the Partnership, its Managing General Partner and several of their affiliated partnerships and corporate entities. The action purported to assert claims on behalf of a class of limited partners and derivatively on behalf of a number of limited partnerships (including the Partnership) that are named as nominal defendants, challenging, among other things, the acquisition of interests in certain Managing General Partner entities by Insignia Financial Group, Inc. ("Insignia") and entities that were, at one time, affiliates of Insignia; past tender offers by the Insignia affiliates to acquire limited partnership units; management of the partnerships by the Insignia affiliates; and the series of transactions which closed on October 1, 1998 and February 26, 1999 whereby Insignia and Insignia Properties Trust, respectively, were merged into AIMCO. The plaintiffs sought monetary damages and equitable relief, including judicial dissolution of the Partnership. In addition, during the third quarter of 2001, a complaint captioned *Heller v. Insignia Financial Group* (the "Heller action") was filed against the same defendants that are named in the Nuanes action. On or about August 6, 2001, plaintiffs filed a first amended complaint. The Heller action was brought as a purported derivative action, and asserted claims for, among other things, breach of fiduciary duty, unfair competition, conversion, unjust enrichment, and judicial dissolution. On January 28, 2002, the trial court granted defendants motion to strike the complaint. Plaintiffs took an appeal from this order.

On January 8, 2003, the parties filed a Stipulation of Settlement in proposed settlement of the Nuanes action and the Heller action. On June 13, 2003, the court granted final approval of the settlement and entered judgment in both the Nuanes and Heller actions. On August 12, 2003, an objector ("Objector") filed an appeal (the "Appeal") seeking to vacate and/or reverse the order approving the settlement and entering judgment thereto. On May 4, 2004, the Objector filed a second appeal challenging the court's use of a referee and its order requiring Objector to pay those fees.

On March 21, 2005, the Court of Appeals issued opinions in both pending appeals. With regard to the settlement and judgment entered thereto, the Court of Appeals vacated the trial court's order and remanded to the trial court for further findings on the basis that the "state of the record is insufficient to permit meaningful appellate review". The matter was transferred back to the trial court on June 21, 2005. With regard to the second appeal, the Court of Appeals reversed the order requiring the Objector to pay referee fees. With respect to the related Heller appeal, on July 28, 2005, the Court of Appeals reversed the trial court's order striking the first amended complaint.

On August 18, 2005, Objector and his counsel filed a motion to disqualify the trial court based on a peremptory challenge and filed a motion to disqualify for cause on October 17, 2005, both of which were ultimately denied and/or struck by the trial court. On or about October 13, 2005 Objector filed a motion to intervene and on or about October 19, 2005 filed both a motion to take discovery relating to the adequacy of plaintiffs as derivative representatives and a motion to dissolve the anti-suit injunction in connection with settlement. On November 14, 2005, Plaintiffs filed a Motion For Further Findings pursuant to the remand ordered by the Court of Appeals. Defendants joined in that motion. On February 3, 2006, the Court held a hearing on the various matters pending before it and ordered additional briefing from the parties and Objector. On June 30, 2006, the trial court entered an order confirming its approval of the class action settlement and entering judgment thereto after the Court of Appeals had remanded the matter for further findings. The substantive terms of the settlement agreement remain unchanged. The trial court also entered supplemental orders on July 1, 2006, denying Objector's Motion to File a Complaint in Intervention, Objector's Motion for Leave of Discovery and Objector's Motion to Dissolve the Anti-Suit Injunction. Notice of Entry of Judgment was served on July 10, 2006.

On August 31, 2006, the Objector filed a Notice of Appeal to the Court's June 30, 2006 and July 1, 2006 orders. The matter was argued and submitted and the Court of Appeal issued an opinion on February 20, 2008 affirming the order approving the settlement and judgment entered thereto. On March 12, 2008, the Court of Appeal denied Appellant's Petition for Re-Hearing. On May 21, 2008, the California Supreme court denied Appellant's Petition for Review. Objector has until August 19, 2008 to file a petition for certiorari with the United States Supreme Court.

The Managing General Partner does not anticipate that any costs to the Partnership, whether legal or settlement costs, associated with these cases will be material to the Partnership's overall operations.

As previously disclosed, AIMCO Properties, L.P. and NHP Management Company, both affiliates of the Managing General Partner, were defendants in a lawsuit, filed as a collective action in August 2003 in the United States District Court for the District of Columbia, alleging that they willfully violated the Fair Labor Standards Act ("FLSA") by failing to pay maintenance workers overtime for time worked in excess of 40 hours per week ("overtime claims"). The plaintiffs also contended that AIMCO Properties, L.P. and NHP Management Company failed to compensate maintenance workers for time that they were required to be "on-call" ("on-call claims"). In March 2007, the court in the District of Columbia decertified the collective action. In July 2007, plaintiffs' counsel filed individual cases in Federal court in 22 jurisdictions. In the second quarter 2008, AIMCO Properties, L.P. settled the overtime cases involving 652 plaintiffs and established a framework for resolving the 88 remaining "on-call" claims and the attorneys' fees claimed by plaintiffs' counsel. As a result, the lawsuits asserted in the 22 Federal courts will be dismissed. At this time, affiliates of the Managing General Partner are attempting to obtain additional information to determine the most equitable allocation of settlement amounts and attorneys' fees. The Managing General Partner is uncertain as to the amount of loss, if any, allocable to the Partnership. Therefore, the Partnership cannot estimate whether a loss will occur or a potential range of loss.

Item 6. Exhibits.

See Exhibit Index.

SIGNATURES

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

CENTURY PROPERTIES FUND XVII

By: Fox Partners
General Partner

By: Fox Capital Management Corporation
Managing General Partner

Date: August 14, 2008

By: /s/Martha L. Long
Martha L. Long
Senior Vice President

Date: August 14, 2008

By: /s/Stephen B. Waters
Stephen B. Waters
Vice President

CENTURY PROPERTIES FUND XVII

EXHIBIT INDEX

<u>Exhibit Number</u>	<u>Description of Exhibit</u>
2.5	Master Indemnity Agreement incorporated by reference to Exhibit 2.5 to Current Report on Form 8-K filed by Insignia with the Securities and Exchange Commission on September 1, 1995.
3.4	Agreement of Limited Partnership incorporated by reference to Exhibit A to the Prospectus of the Registrant dated March 29, 1982 and as thereafter supplemented contained in the Registrant's Registration Statement on Form S-11 (Reg. No. 2-75411).
10.2	Multifamily Note dated January 27, 2000, by and between Century Properties Fund XVII, a California limited partnership, and GMAC Commercial Mortgage Corporation, a California Corporation; incorporated by reference to the Partnership's Annual Report on Form 10-KSB for the fiscal year ended December 31, 1999.
10.10	Multifamily Note dated August 31, 2007 between Apartment CCG 17, L.P., a California limited partnership, and Capmark Bank, a Utah industrial bank, and incorporated by reference to the Registrant's Current Report on Form 8-K dated August 31, 2007.
10.11	Amended and Restated Multifamily Note dated August 31, 2007 between Apartment CCG 17, L.P., a California limited partnership, and Federal Home Loan Mortgage Corporation, and incorporated by reference to the Registrant's Current Report on Form 8-K dated August 31, 2007.
10.12	Multifamily Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing dated June 25, 2008 between Capmark Bank and Century Properties Fund XVII, a California limited partnership, incorporated by reference to the Registrant's Current Report on Form 8-K dated June 25, 2008.
10.13	Multifamily Note dated June 25, 2008 between Capmark Bank and Century Properties XVII, a California limited partnership, incorporated by reference to the Registrant's Current Report on Form 8-K dated June 25, 2008.
10.14	Multifamily Deed of Trust, Assignment of Rents and Security Agreement dated June 30, 2008 between Keycorp Real Estate Capital Markets, Inc. and Apartment Lodge 17A LLC, a Colorado limited liability company, incorporated by reference to the Registrant's Current Report on Form 8-K dated June 30, 2008.
10.15	Multifamily Note dated June 30, 2008 between Keycorp Real Estate Capital Markets, Inc. and Apartment Lodge 17A LLC, a Colorado limited liability company, incorporated by reference to the Registrant's Current Report on Form 8-K dated June 30, 2008.
10.16	Multifamily Deed of Trust, Assignment of Rents and Security Agreement dated June 30, 2008 between PNC ARCS LLC and Apartment Creek 17A LLC, a Colorado limited liability company, incorporated by reference to the Registrant's Current Report on Form 8-K dated June 30, 2008.
10.17	Multifamily Note dated June 30, 2008 between PNC ARCS LLC and Apartment Creek 17A LLC, a Colorado limited liability company, incorporated by reference to the Registrant's Current Report on Form 8-K dated June 30, 2008.

- 10.18 Amended and Restated Multifamily Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing (Recast Transaction) dated June 25, 2008 between Century Properties Fund XVII, a California limited partnership, and Federal Home Loan Mortgage Corporation, incorporated by reference herein.
- 10.19 Amended and Restated Multifamily Note (Recast Transaction) dated June 25, 2008 between Century Properties Fund XVII, a California limited partnership, and Federal Home Loan Mortgage Corporation, incorporated by reference herein.
- 31.1 Certification of equivalent of Chief Executive Officer pursuant to Securities Exchange Act Rules 13a-14(a)/15d-14(a), as Adopted Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
- 31.2 Certification of equivalent of Chief Financial Officer pursuant to Securities Exchange Act Rules 13a-14(a)/15d-14(a), as Adopted Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
- 32.1 Certification of the equivalent of the Chief Executive Officer and Chief Financial Officer pursuant to 18 U.S.C. Section 1350, as Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.

CERTIFICATION

I, Martha L. Long, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Century Properties Fund XVII;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)), for the registrant and have:
 - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: August 14, 2008

/s/Martha L. Long

Martha L. Long

Senior Vice President of Fox Capital Management Corporation,
equivalent of the chief executive officer of the Partnership

CERTIFICATION

I, Stephen B. Waters, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Century Properties Fund XVII;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)), for the registrant and have:
 - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: August 14, 2008

/s/Stephen B. Waters

Stephen B. Waters

Vice President of Fox Capital Management Corporation,
equivalent of the chief financial officer of the Partnership

**Certification of CEO and CFO
Pursuant to 18 U.S.C. Section 1350,
As Adopted Pursuant to
Section 906 of the Sarbanes-Oxley Act of 2002**

In connection with the Quarterly Report on Form 10-Q of Century Properties Fund XVII (the "Partnership"), for the quarterly period ended June 30, 2008 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), Martha L. Long, as the equivalent of the chief executive officer of the Partnership, and Stephen B. Waters, as the equivalent of the chief financial officer of the Partnership, each hereby certifies, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that, to the best of his knowledge:

- (1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Partnership.

/s/Martha L. Long

Name: Martha L. Long

Date: August 14, 2008

/s/Stephen B. Waters

Name: Stephen B. Waters

Date: August 14, 2008

This certification is furnished with this Report pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 and shall not be deemed filed by the Partnership for purposes of Section 18 of the Securities Exchange Act of 1934, as amended.

Prepared by, and after recording
return to:
Brian J. Iwashyna, Esquire
Troutman Sanders LLP
P.O. Box 1122
Richmond, Virginia 23218-1122

AMENDED AND RESTATED
MULTIFAMILY DEED OF TRUST,
ASSIGNMENT OF RENTS
AND SECURITY AGREEMENT AND FIXTURE FILING
[RECAST TRANSACTION]

(TEXAS - REVISION DATE 02-15-2008)

**AMENDED AND RESTATED
MULTIFAMILY DEED OF TRUST,
ASSIGNMENT OF RENTS AND
SECURITY AGREEMENT AND FIXTURE FILING
(Recast Transaction)**

THIS AMENDED AND RESTATED MULTIFAMILY DEED OF TRUST, ASSIGNMENT OF RENTS AND SECURITY AGREEMENT AND FIXTURE FILING (“**Amended and Restated Instrument**”) is made effective as of the 25th day of June, 2008, by **CENTURY PROPERTIES FUND XVII**, a California limited partnership (“**Borrower**”) and the **FEDERAL HOME LOAN MORTGAGE CORPORATION** (“**Lender**”).

RECITALS

- A. Borrower is the maker of a Multifamily Note (the "**Note**"), dated as of January 27, 2000, in the original principal amount of Fourteen Million Five Hundred Thousand and 00/100 Dollars (\$14,500,000.00), evidencing a loan (the "**Loan**") to Borrower in such amount from GMAC Commercial Mortgage Corporation, a California corporation (the "**Original Lender**").
- B. The Note is secured by that certain Multifamily Deed of Trust, Assignment of Rents, and Security Agreement and Fixture Filing dated as of January 27, 2000, from Borrower, as grantor, to Original Lender, as beneficiary, recorded in the land records of Harris County, Texas (the "**Land Records**") as File Number U199401 (the "**Instrument**"). The Instrument encumbers, among other things, Borrower's interest in the land described in Exhibit A to the Instrument and to this Amended and Restated Instrument.
- C. Pursuant to an Exceptions to Non-Recourse Guaranty dated as of January 27, 2000, AIMCO Properties, L.P., a Delaware limited partnership, guaranteed some or all of Borrower's obligations under the terms of the Note and the Instrument.
- D. Original Lender (i) endorsed the Note to Lender and (ii) assigned the Instrument to Lender by Assignment of Security Instrument dated as of January 27, 2000 and recorded in the Land Records as File Number U199402.
- E. Borrower has confirmed to Lender that Borrower has no defenses or offsets of any kind against any of the indebtedness due under the Note.
- F. Borrower has represented to Lender that State of Texas taxes were paid in full on the Loan and are payable on the Amended and Restated Instrument only to the extent, if any, that the principal balance of the Amended and Restated Note described below exceeds the unpaid principal amount of the Loan.
- G. By Amended and Restated Multifamily Note dated effective as of the date of this Amended and Restated Instrument, Borrower and Lender have amended and restated the Note so as to, among other things, (i) reflect an aggregate current unpaid balance of Eleven Million One Hundred Ten Thousand One Hundred Twenty-Seven and 00/100 Dollars (\$11,110,127.00) and (ii) amend the terms of payment. Borrower and Lender now also desire to amend and restate the Instrument as provided below.

NOW, THEREFORE, in consideration of these premises, and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties agree that the Instrument is amended and restated in its entirety in the form attached hereto and made a part hereof.

**MULTIFAMILY DEED OF TRUST,
ASSIGNMENT OF RENTS AND
SECURITY AGREEMENT AND FIXTURE FILING
(TEXAS - REVISION DATE 02-15-2008)**

THIS MULTIFAMILY DEED OF TRUST, ASSIGNMENT OF RENTS AND SECURITY AGREEMENT AND FIXTURE FILING (the "**Instrument**") is made to be effective this 25th day of June, 2008, by **CENTURY PROPERTIES FUND XVII**, a limited partnership organized and existing under the laws of California, whose address is c/o AIMCO, Stanford Place 3, 4582 So. Ulster Street Parkway, Suite 1100, Denver, Colorado 80237, as trustor ("**Borrower**"), to **STEWART TITLE GUARANTY COMPANY**, as trustee ("**Trustee**"), for the benefit of **FEDERAL HOME LOAN MORTGAGE CORPORATION**, whose address is 8200 Jones Branch Drive, McLean, Virginia 22102, as beneficiary ("**Lender**"). Borrower's organizational identification number, if applicable, is 198418201476.

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

TO SECURE TO LENDER the repayment of the Indebtedness evidenced by Borrower's Multifamily Note payable to Lender, dated as of the date of this Instrument, and maturing on February 1, 2021 (the "**Maturity Date**"), in the principal amount of \$11,110,127.00, and all renewals, extensions and modifications of the Indebtedness, and the performance of the covenants and agreements of Borrower contained in the Loan Documents.

Borrower warrants and represents that Borrower is lawfully seized of the Mortgaged Property and has the right, power and authority to grant, convey and assign the Mortgaged Property, and that the Mortgaged Property is unencumbered, except as shown on the schedule of exceptions to coverage in the title policy issued to and accepted by Lender contemporaneously with the execution and recordation of this Instrument and insuring Lender's interest in the Mortgaged Property (the "**Schedule of Title Exceptions**"). Borrower covenants that Borrower will warrant and defend generally the title to the Mortgaged Property against all claims and demands, subject to any easements and restrictions listed in the Schedule of Title Exceptions.

UNIFORM COVENANTS
REVISION DATE 02-15-2008

Covenants. In consideration of the mutual promises set forth in this Instrument, Borrower and Lender covenant and agree as follows:

1. DEFINITIONS. The following terms, when used in this Instrument (including when used in the above recitals), shall have the following meanings:

(a) **"Attorneys' Fees and Costs"** means (i) fees and out-of-pocket costs of Lender's and Loan Servicer's attorneys, as applicable, including costs of Lender's and Loan Servicer's in-house counsel, support staff costs, costs of preparing for litigation, computerized research, telephone and facsimile transmission expenses, mileage, deposition costs, postage, duplicating, process service, videotaping and similar costs and expenses; (ii) costs and fees of expert witnesses, including appraisers; and (iii) investigatory fees.

(b) **"Borrower"** means all persons or entities identified as "Borrower" in the first paragraph of this Instrument, together with their successors and assigns.

(c) **"Business Day"** means any day other than a Saturday, a Sunday or any other day on which Lender or the national banking associations are not open for business.

(d) **"Collateral Agreement"** means any separate agreement between Borrower and Lender for the purpose of establishing replacement reserves for the Mortgaged Property, establishing a fund to assure the completion of repairs or improvements specified in that agreement, or assuring reduction of the outstanding principal balance of the Indebtedness if the occupancy of or income from the Mortgaged Property does not increase to a level specified in that agreement, or any other agreement or agreements between Borrower and Lender which provide for the establishment of any other fund, reserve or account.

(e) **"Controlling Entity"** means an entity which owns, directly or indirectly through one or more intermediaries, (i) a general partnership interest or a Controlling Interest of the limited partnership interests in Borrower (if Borrower is a partnership or joint venture), (ii) a manager's interest in Borrower or a Controlling Interest of the ownership or membership interests in Borrower (if Borrower is a limited liability company), (iii) a Controlling Interest of any class of voting stock of Borrower (if Borrower is a corporation), (iv) a trustee's interest or a Controlling Interest of the beneficial interests in Borrower (if Borrower is a trust), or (v) a managing partner's interest or a Controlling Interest of the partnership interests in Borrower (if Borrower is a limited liability partnership).

(f) **"Controlling Interest"** means (i) 51 percent or more of the ownership interests in an entity, or (ii) a percentage ownership interest in an entity of less than 51 percent, if the owner(s) of that interest actually direct(s) the business and affairs of the entity without the requirement of consent of any other party. The Controlling Interest shall be deemed to be 51 percent unless otherwise stated in Exhibit B.

(g) **"Environmental Permit"** means any permit, license, or other authorization issued under any Hazardous Materials Law with respect to any activities or businesses conducted on or in relation to the Mortgaged Property.

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

(i) **"Fixtures"** means all property owned by Borrower which is so attached to the Land or the Improvements as to constitute a fixture under applicable law, including: machinery, equipment, engines, boilers, incinerators, installed building materials; systems and equipment for the purpose of supplying or distributing heating, cooling, electricity, gas, water, air, or light; antennas, cable, wiring and conduits used in connection with radio, television, security, fire prevention, or fire detection or otherwise used to carry electronic signals; telephone systems and equipment; elevators and related machinery and equipment; fire detection, prevention and extinguishing systems and apparatus; security and access control systems and apparatus; plumbing systems; water heaters, ranges, stoves, microwave ovens, refrigerators, dishwashers, garbage disposers, washers, dryers and other appliances; light fixtures, awnings, storm windows and storm doors; pictures, screens, blinds, shades, curtains and curtain rods; mirrors; cabinets, paneling, rugs and floor and wall coverings; fences, trees and plants; swimming pools; and exercise equipment.

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

(k) **"Hazard Insurance"** is defined in Section 19.

(l) **"Hazardous Materials"** means petroleum and petroleum products and compounds containing them, including gasoline, diesel fuel and oil; explosives; flammable materials; radioactive materials; polychlorinated biphenyls ("PCBs") and compounds containing them; lead and lead-based paint; asbestos or asbestos-containing materials in any form that is or could become friable; underground or above-ground storage tanks, whether empty or containing any substance; any substance the presence of which on the Mortgaged Property is prohibited by any federal, state or local authority; any substance that requires special handling and any other material or substance now or in the

future that (i) is defined as a "hazardous substance," "hazardous material," "hazardous waste," "toxic substance," "toxic pollutant," "contaminant," or "pollutant" by or within the meaning of any Hazardous Materials Law, or (ii) is regulated in any way by or within the meaning of any Hazardous Materials Law.

(m) "**Hazardous Materials Laws**" means all federal, state, and local laws, ordinances and regulations and standards, rules, policies and other governmental requirements, administrative rulings and court judgments and decrees in effect now or in the future and including all amendments, that relate to Hazardous Materials or the protection of human health or the environment and apply to Borrower or to the Mortgaged Property. Hazardous Materials Laws include, but are not limited to, the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601, *et seq.*, the Resource Conservation and Recovery Act of 1976, 42 U.S.C. Section 6901, *et seq.*, the Toxic Substance Control Act, 15 U.S.C. Section 2601, *et seq.*, the Clean Water Act, 33 U.S.C. Section 1251, *et seq.*, and the Hazardous Materials Transportation Act, 49 U.S.C. Section 5101 *et seq.*, and their state analogs.

(n) "**Impositions**" and "**Imposition Deposits**" are defined in Section 7(a).

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

(p) "**Indebtedness**" means the principal of, interest at the fixed or variable rate set forth in the Note on, and all other amounts due at any time under, the Note, this Instrument or any other Loan Document, including prepayment premiums, late charges, default interest, and advances as provided in Section 12 to protect the security of this Instrument.

(q) "**Initial Owners**" means, with respect to Borrower or any other entity, the persons or entities that (i) on the date of the Note, or (ii) on the date of a Transfer to which Lender has consented, own in the aggregate 100 percent of the ownership interests in Borrower or that entity.

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

(s) "**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.

(t) "**Lender**" means the entity identified as "Lender" in the first paragraph of this Instrument, or any subsequent holder of the Note.

(u) "**Loan Documents**" means the Note, this Instrument, all guaranties, all indemnity agreements, all Collateral Agreements, O&M Programs, the MMP and any other documents now or in the future executed by Borrower, any guarantor or any other person in connection with the loan evidenced by the Note, as such documents may be amended from time to time.

(v) "**Loan Servicer**" means the entity that from time to time is designated by Lender to collect payments and deposits and receive Notices under the Note, this Instrument and any other Loan Document, and otherwise to service the loan evidenced by the Note for the benefit of Lender. Unless Borrower receives Notice to the contrary, the Loan Servicer is the entity identified as "Lender" in the first paragraph of this Instrument.

(w) "**MMP**" means a moisture management plan to control water intrusion and prevent the development of Mold or moisture at the Mortgaged Property throughout the term of this Instrument. At a minimum, the MMP must contain a provision for (i) staff training, (ii) information to be provided to tenants, (iii) documentation of the plan, (iv) the appropriate protocol for incident response and remediation and (v) routine, scheduled inspections of common space and unit interiors.

(x) "**Mold**" means mold, fungus, microbial contamination or pathogenic organisms.

(y) "**Mortgaged Property**" means all of Borrower's present and future right, title and interest in and to all of the following:

(i) the Land;

- (ii) the Improvements;
 - (iii) the Fixtures;
 - (iv) the Personalty;
 - (v) all current and future rights, including air rights, development rights, zoning rights and other similar rights or interests, easements, tenements, rights-of-way, strips and gores of land, streets, alleys, roads, sewer rights, waters, watercourses, and appurtenances related to or benefiting the Land or the Improvements, or both, and all rights-of-way, streets, alleys and roads which may have been or may in the future be vacated;
 - (vi) all proceeds paid or to be paid by any insurer of the Land, the Improvements, the Fixtures, the Personalty or any other part of the Mortgaged Property, whether or not Borrower obtained the insurance pursuant to Lender's requirement;
 - (vii) all awards, payments and other compensation made or to be made by any municipal, state or federal authority with respect to the Land, the Improvements, the Fixtures, the Personalty or any other part of the Mortgaged Property, including any awards or settlements resulting from condemnation proceedings or the total or partial taking of the Land, the Improvements, the Fixtures, the Personalty or any other part of the Mortgaged Property under the power of eminent domain or otherwise and including any conveyance in lieu thereof;
 - (viii) all contracts, options and other agreements for the sale of the Land, the Improvements, the Fixtures, the Personalty or any other part of the Mortgaged Property entered into by Borrower now or in the future, including cash or securities deposited to secure performance by parties of their obligations;
 - (ix) all proceeds from the conversion, voluntary or involuntary, of any of the above into cash or liquidated claims, and the right to collect such proceeds;
 - (x) all Rents and Leases;
 - (xi) all earnings, royalties, accounts receivable, issues and profits from the Land, the Improvements or any other part of the Mortgaged Property, and all undisbursed proceeds of the loan secured by this Instrument;
 - (xii) all Imposition Deposits;
 - (xiii) all refunds or rebates of Impositions by any municipal, state or federal authority or insurance company (other than refunds applicable to periods before the real property tax year in which this Instrument is dated);
 - (xiv) all tenant security deposits which have not been forfeited by any tenant under any Lease and any bond or other security in lieu of such deposits; and
 - (xv) all names under or by which any of the above Mortgaged Property may be operated or known, and all trademarks, trade names, and goodwill relating to any of the Mortgaged Property.
- (z) ~~"Note" means the Multifamily Note described on page 6 of this Instrument, including all schedules, riders, allonges and addenda, as such Multifamily Note may be amended from time to time.~~
- (aa) **"O&M Program"** is defined in Section 18(d).
- (bb) **"Personalty"** means all:
- (i) accounts (including deposit accounts) of Borrower related to the Mortgaged Property;
 - (ii) equipment and inventory owned by Borrower, which are used now or in the future in connection with the ownership, management or operation of the Land or Improvements or are located on the Land or Improvements, including furniture, furnishings, machinery, building materials, goods,

supplies, tools, books, records (whether in written or electronic form), and computer equipment (hardware and software);

- (iii) other tangible personal property owned by Borrower which is used now or in the future in connection with the ownership, management or operation of the Land or Improvements or is located on the Land or in the Improvements, including ranges, stoves, microwave ovens, refrigerators, dishwashers, garbage disposers, washers, dryers and other appliances (other than Fixtures);
- (iv) any operating agreements relating to the Land or the Improvements;
- (v) any surveys, plans and specifications and contracts for architectural, engineering and construction services relating to the Land or the Improvements;
- (vi) all other intangible property, general intangibles 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 and including subsidy or similar payments received from any sources, including a governmental authority; and
- (vii) any rights of Borrower in or under letters of credit.

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

(dd) **"Rents"** means all rents (whether from residential or non-residential space), revenue and the income of the Land and the Improvements, parking fees, laundry and vending machine income and fees and charges for food, health care and the services provided at the Mortgaged Property, whether now due, past due, or to become due and deposits forfeited by tenants and Borrowers, cooperative housing corporation association maintenance fees, charges or assessments payable by shareholders, residents and proprietary leasees, occupancy agreements, whether now due, past due, or to become due.

(ee) **"Taxes"** means all taxes, assessments, yaultentals and other charges, if any, whether general, special or otherwise, including all assessments for schools, public betterments and general local improvements which are levied, assessed or imposed by any public authority or quasi-public authority and which, if not paid, will become a lien on the Land or the Improvements.

(ff) **"Transfer"** is defined in Section 21.

2. UNIFORM COMMERCIAL CODE SECURITY AGREEMENT.

(a) This Instrument is also a security agreement under the Uniform Commercial Code for any of the Mortgaged Property which, under applicable law, may be subjected to security interests under the Uniform Commercial Code, whether such Mortgaged Property is now or acquired in the future, and all products and cash and non-cash proceeds hereof (collectively, **"UCC Collateral"**) and Borrower hereby grants Lender security interests in the UCC Collateral. Borrower hereby authorizes Lender to prepare and file financing statements, continuation statements and financing statement amendments in such form as Lender may require to perfect or continue the perfection of this security interest and Borrower agrees Lender so requests to execute and deliver Lender such financing statements, continuation statements and amendments. Borrower shall pay all filing costs and all costs and expenses of any record searches for financing statements and/or amendments that Lender may require. Without prior written consent of Lender, Borrower shall not create or permit to exist any other lien or security interest in any of the UCC Collateral.

(b) Unless Borrower gives Notice to Lender within 30 days after the occurrence of any of the following, and executes and delivers to Lender modifications or supplements of this Instrument (and any financing statement which may be filed in connection with this Instrument) as Lender may require, Borrower shall not (i) change its name, identity, structure or jurisdiction of organization; (ii) change the location of its place of business (or chief executive office if more than one place of business); or (iii) add to or change any location at which any of the Mortgaged Property is stored, held or located.

(c) If an Event of Default has occurred and is continuing, Lender shall have the remedies of a secured party under the Uniform Commercial Code, in addition to all remedies provided by this Instrument or existing under applicable law. In exercising any remedies, Lender may exercise its remedies against the UCC Collateral separately or together, and in any order, without in any way affecting the availability of Lender's other remedies.

(d) This Instrument constitutes a financing statement with respect to any part of the Mortgaged Property that is or may become a Fixture, if permitted by applicable law.

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

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

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

(c) Borrower represents and warrants to Lender that Borrower has not executed any prior assignment of Rents (other than an assignment of Rents securing any prior indebtedness that is being assigned to Lender, or paid off and discharged with the proceeds of the loan evidenced by the Note), that Borrower has not performed, and Borrower covenants and agrees that it will not perform, any acts and has not executed, and shall not execute, any instrument which would prevent Lender from exercising its rights under this Section 3, and that at the time of execution of this Instrument there has been no anticipation or prepayment of any Rents for more than two months prior to the due dates of such Rents. Borrower shall not collect or accept payment of any Rents more than two months prior to the due dates of such Rents.

(d) If an Event of Default has occurred and is continuing, Lender may, regardless of the adequacy of Lender's security or the solvency of Borrower and even in the absence of waste, enter upon and take and maintain full control of the Mortgaged Property in order to perform all acts that Lender in its discretion determines to be necessary or desirable for the operation and maintenance of the Mortgaged Property, including the execution, cancellation or modification of Leases, the collection of all Rents, the making of repairs to the Mortgaged Property and the execution or termination of contracts providing for the management, operation or maintenance of the Mortgaged Property, for the purposes of enforcing the assignment of Rents pursuant to Section 3(a), protecting the Mortgaged Property or the security of this Instrument, or for such other purposes as Lender in its discretion may deem necessary or desirable. Alternatively, if an Event of Default has occurred and is continuing, regardless of the adequacy of Lender's security, without regard to Borrower's solvency and without the necessity of giving prior notice (oral or written) to Borrower, Lender may apply to any court having jurisdiction for the appointment of a receiver for the Mortgaged Property to take any or all of the actions set forth in the preceding sentence. If Lender elects to seek the appointment of a receiver for the Mortgaged Property at any time after an Event of Default has occurred and is continuing, Borrower, by its execution of this Instrument, expressly consents to the appointment of such receiver, including the appointment of a receiver *ex parte* if permitted by applicable law. If Borrower is a housing cooperative corporation or association, Borrower hereby agrees that if a receiver is appointed, the order appointing the receiver may contain a provision requiring the receiver to pay the installments of interest and principal then due and payable under the Note and the other amounts then due and payable under the other Loan Documents, including Imposition Deposits, it being acknowledged and agreed that the Indebtedness is an obligation of the Borrower and must be paid out of maintenance charges payable by the Borrower's tenant shareholders under their proprietary leases or occupancy agreements. Lender or the receiver, as the case may be, shall be entitled to receive a reasonable fee for managing the Mortgaged Property. Immediately upon appointment of a receiver or immediately upon the Lender's entering upon and taking possession and control of the Mortgaged Property, Borrower shall surrender possession of the Mortgaged Property to Lender or the receiver, as the case may be, and shall deliver to Lender or the receiver, as the case may be, all documents, records (including records on electronic or magnetic media), accounts, surveys, plans, and specifications relating to the Mortgaged Property and all security deposits and prepaid Rents. In the event Lender takes possession and control of the Mortgaged Property, Lender may exclude Borrower and its representatives from the Mortgaged Property. Borrower acknowledges and agrees that the exercise by Lender of any of the rights conferred under this Section 3 shall not be construed to make Lender a mortgagee-in-possession of the Mortgaged Property so long as Lender has not itself entered into actual possession of the Land and Improvements.

(e) If Lender enters the Mortgaged Property, Lender shall be liable to account only to Borrower and only for those Rents actually received. Except to the extent of Lender's gross negligence or willful misconduct, 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 Section 3(d), and Borrower hereby releases and discharges Lender from any such liability to the fullest extent permitted by law.

(f) If the Rents are not sufficient to meet the costs of taking control of and managing the Mortgaged Property and collecting the Rents, any funds expended by Lender for such purposes shall become an additional part of the Indebtedness as provided in Section 12.

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

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

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

(b) Until Lender gives Notice to Borrower of Lender's exercise of its rights under this Section 4, Borrower shall have all rights, power and authority granted to Borrower under any Lease (except as otherwise limited by this Section or any other provision of this Instrument), including the right, power and authority to modify the terms of any Lease or extend or terminate any Lease. Upon the occurrence of an Event of Default, the permission given to Borrower pursuant to the preceding sentence to exercise all rights, power and authority under Leases shall automatically terminate. Borrower shall comply with and observe Borrower's obligations under all Leases, including Borrower's obligations pertaining to the maintenance and disposition of tenant security deposits.

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

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

(e)

Borrower shall, promptly upon Lender's request, deliver to Lender an executed copy of each residential Lease then in effect. All Leases for residential dwelling units shall be on forms approved by Lender, shall be for initial terms of at least six months and not more than two years, and shall not include options to purchase.

(f) Borrower shall not lease any portion of the Mortgaged Property for non-residential use except with the prior written consent of Lender and Lender's prior written approval of the Lease agreement. Borrower shall not modify the terms of, or extend or terminate, any Lease for non-residential use (including any Lease in existence on the date of this Instrument) without the prior written consent of Lender. However, Lender's consent shall not be required for the modification or extension of a non-residential Lease if such modification or extension is on terms at least as favorable to Borrower as those customary at that time in the applicable market and the income from the extended or modified Lease will not be less than the income received from the Lease as of the date of this Instrument. Borrower shall, without request by Lender, deliver an executed copy of each non-residential Lease to Lender promptly after such Lease is signed. All non-residential Leases, including renewals or extensions of existing Leases, shall specifically provide that (i) such Leases are subordinate to the lien of this Instrument; (ii) the tenant shall attorn to Lender and any purchaser at a foreclosure sale, such attornment to be self-executing and effective upon acquisition of title to the Mortgaged Property by any purchaser at a foreclosure sale or by Lender in any manner; (iii) the tenant agrees to execute such further evidences of attornment as Lender or any purchaser at a foreclosure sale may from time to time request; (iv) the Lease shall not be terminated by foreclosure or any other transfer of the Mortgaged Property; (v) after a foreclosure sale of the Mortgaged Property, Lender or any other purchaser at such foreclosure sale may, at Lender's or such purchaser's option, accept or terminate such Lease; and (vi) the tenant shall, upon receipt after the occurrence of an Event of Default of a written request from Lender, pay all Rents payable under the Lease to Lender.

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

(h) If Borrower is a cooperative housing corporation or association, notwithstanding anything to the contrary contained in this subsection or in Section 21, so long as Borrower remains a cooperative housing corporation or association and is not in breach of any covenant of this Instrument, Lender hereby consents to:

- (i) the execution of leases of apartments for a term in excess of two years from Borrower to a tenant shareholder of Borrower, so long as such leases, including proprietary leases, are and will remain subordinate to the lien of the Instrument; and
- (ii) the surrender or termination of such leases of apartments where the surrendered or terminated lease is immediately replaced or where the Borrower makes its best efforts to secure such immediate replacement by a newly executed lease of the same apartment to a tenant shareholder of the Borrower. However, no consent is hereby given by Lender to any execution, surrender, termination or assignment of a lease under terms that would waive or reduce the obligation of the resulting tenant shareholder under such lease to pay cooperative assessments in full when due or the obligation of the former tenant shareholder to pay any unpaid portion of such assessments.

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

6. EXCULPATION. Borrower's personal liability for payment of the Indebtedness and for performance of the other obligations to be performed by it under this Instrument is limited in the manner, and to the extent, provided in the Note.

7. DEPOSITS FOR TAXES, INSURANCE AND OTHER CHARGES.

(a) Unless this requirement is waived in writing by Lender, which waiver may be contained in this Section 7(a), Borrower shall deposit with Lender on the day monthly installments of principal or interest, or both, are due under the Note (or on another day designated in writing by Lender), until the Indebtedness is paid in full, an additional amount sufficient to accumulate with Lender the entire sum required to pay, when due, the items marked "Collect" below. Lender will not require the Borrower to make Imposition Deposits with respect to the items marked "Deferred" below.

- [Deferred] Hazard Insurance premiums or other insurance premiums required by Lender under Section 19,
- [Deferred] Taxes,
- [Deferred] water and sewer charges (that could become a lien on the Mortgaged Property),
- [N/A] ground rents,
- [Deferred] assessments or other charges (that could become a lien on the Mortgaged Property)

The amounts deposited under the preceding sentence are collectively referred to in this Instrument as **Imposition Deposits**. The obligations of Borrower for which the Imposition Deposits are required are collectively referred to in this Instrument as **Impositions**. The amount of the Imposition Deposits shall be sufficient to enable Lender to pay each Imposition before the date upon which such payment may be made without a penalty, interest charge being added. Lender shall maintain records indicating how much of the monthly Imposition Deposits and how much of the aggregate Imposition Deposits is being used for the purpose of paying taxes, insurance premiums and each other Imposition.

(b) Imposition Deposits shall be held in a institution (which may be Lender if Lender is such an institution) whose deposit account is insured or guaranteed by a federal agency. Lender shall be obligated to open additional accounts for Imposition Deposits in additional institutions when the amount of the Imposition Deposits exceeds the maximum amount of federal deposit insurance guaranty. Lender shall apply Imposition Deposits to pay Impositions so long as even if Default has occurred, is continuing. Unless applicable law requires, Lender shall be required to pay Borrower's interest, earnings, profits of the Imposition Deposits. As additional security for Borrower's obligations under this Instrument and the other Loan Documents, Borrower hereby pledges and grants to Lender a security interest in the Imposition Deposits and proceeds and interest and dividends of the Imposition Deposits. Any amount deposited with Lender under Section 7 shall be trust funds, shall be operated to reduce the indebtedness, unless applied for another purpose under Section 7(e).

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

(d) If at any time the amount of the Imposition Deposits held by Lender for payment of a specific Imposition exceeds the amount reasonably deemed necessary by Lender, the excess shall be credited against future installments of Imposition Deposits. If at any time the amount of the Imposition Deposits held by Lender for payment of a specific Imposition is less than the amount reasonably estimated by Lender to be necessary, Borrower shall pay to Lender the amount of the deficiency within 15 days after Notice from Lender.

(e) If an Event of Default has occurred and is continuing, Lender may apply any Imposition Deposits, in any amounts and in any order as Lender determines, in Lender's discretion, to pay any Impositions or as a credit against the Indebtedness. Upon payment in full of the Indebtedness, Lender shall refund to Borrower any Imposition Deposits held by Lender.

(f) If Lender does not collect an Imposition Deposit with respect to an Imposition either marked "Deferred" in Section 7(a) or pursuant to a separate written waiver by Lender, then on or before the date each such Imposition is due, or on the date this Instrument requires each such Imposition to be paid, Borrower must provide Lender with proof of payment of each such Imposition for which Lender does not require collection of Imposition Deposits. Lender may revoke its deferral or waiver and require Borrower to deposit with Lender any or all of the Imposition Deposits listed in Section 7(a), regardless of whether any such item is marked "Deferred" in such section, upon Notice to Borrower, (i) if Borrower does not timely pay any of the Impositions, (ii) if Borrower fails to provide timely proof to Lender of such payment, or (iii) at any time during the existence of an Event of Default.

(g) In the event of a Transfer prohibited by or requiring Lender's approval under Section 21, Lender's waiver of the collection of any Imposition Deposit in this Section 7 may be modified or rendered void by Lender at Lender's option by Notice to Borrower and the transferee(s) as a condition of Lender's approval of such Transfer.

8. COLLATERAL AGREEMENTS. Borrower shall deposit with Lender such amounts as may be required by any Collateral Agreement and shall perform all other obligations of Borrower under each Collateral Agreement.

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

10. COMPLIANCE WITH LAWS AND ORGANIZATIONAL DOCUMENTS.

(a) Borrower shall comply with all laws, ordinances, regulations and requirements of any Governmental Authority and all recorded lawful covenants and agreements relating to or affecting the Mortgaged Property, including all laws, ordinances, regulations, requirements and covenants pertaining to health and safety, construction of improvements on the Mortgaged Property, fair housing, disability accommodation, zoning and land use, and Leases. Borrower also shall comply with all applicable laws that pertain to the maintenance and disposition of tenant security deposits.

(b) Borrower shall at all times maintain records sufficient to demonstrate compliance with the provisions of this Section 10.

(c) Borrower shall take appropriate measures to prevent, and shall not engage in or knowingly permit, any illegal activities at the Mortgaged Property that could endanger tenants or visitors, result in damage to the Mortgaged Property, result in forfeiture of the Mortgaged Property, or otherwise materially impair the lien created by this Instrument or Lender's interest in the Mortgaged Property. Borrower represents and warrants to Lender that no portion of the Mortgaged Property has been or will be purchased with the proceeds of any illegal activity.

(d) Borrower shall at all times comply with all laws, regulations and requirements of any Governmental Authority relating to Borrower's formation, continued existence and good standing in the Property Jurisdiction. Borrower shall at all times comply with its organizational documents, including but not limited to its partnership agreement (if Borrower is a partnership), its by-laws (if Borrower is a corporation or housing cooperative corporation or association) or its operating agreement (if Borrower is a limited liability company, joint venture or tenancy-in-common). If Borrower is a housing cooperative corporation or association, Borrower shall at all times maintain its status as a "cooperative housing corporation" as such term is defined in Section 216(b) of the Internal Revenue Code of 1986, as amended, or any successor statute thereto.

11. USE OF PROPERTY. Unless required by applicable law, Borrower shall not (a) allow changes in the use for which all or any part of the Mortgaged Property is being used at the time this Instrument was executed, except for any change in use approved by Lender, (b) convert any individual dwelling units or common areas to commercial use, (c) initiate a change in the zoning classification of the Mortgaged Property or acquiesce without Notice to and consent of Lender in a change in the zoning classification of the Mortgaged Property, (d) establish any condominium or cooperative regime with respect to the Mortgaged Property, (e) combine all or any part of the Mortgaged Property with all or any part of a tax parcel which is not part of the Mortgaged Property, or (f) subdivide or otherwise split any tax parcel constituting all or any part of the Mortgaged Property without the prior consent of Lender. Notwithstanding anything contained in this Section to the contrary, if Borrower is a housing cooperative corporation or association, Lender acknowledges and consents to Borrower's use of the Mortgaged Property as a housing cooperative.

12. PROTECTION OF LENDER'S SECURITY; INSTRUMENT SECURES FUTURE ADVANCES.

(a) If Borrower fails to perform any of its obligations under this Instrument or any other Loan Document, or if any action or proceeding is commenced which purports to affect the Mortgaged Property, Lender's security or Lender's rights under this Instrument, including eminent domain, insolvency, code enforcement, civil or criminal forfeiture, enforcement of Hazardous Materials Laws, fraudulent conveyance or reorganizations or proceedings involving a bankrupt or decedent, then Lender at Lender's option may make such appearances, file such documents, disburse such sums and take such actions as Lender reasonably deems necessary to perform such obligations of Borrower and to protect Lender's interest, including (i) payment of Attorneys' Fees and Costs, (ii) payment of fees and

out-of-pocket expenses of accountants, inspectors and consultants, (iii) entry upon the Mortgaged Property to make repairs or secure the Mortgaged Property, (iv) procurement of the insurance required by Section 19, (v) payment of amounts which Borrower has failed to pay under Sections 15 and 17, and (vi) advances made by Lender to pay, satisfy or discharge any obligations of Borrower for the payment of money that is secured by a pre-existing mortgage, deed of trust or other lien encumbering the Mortgaged Property (a "**Prior Lien**").

(b) Any amounts disbursed by Lender under this Section 12, or under any other provision of this Instrument that treats such disbursement as being made under this Section 12, shall be secured by this Instrument, shall be added to, and become part of, the principal component of the Indebtedness, shall be immediately due and payable and shall bear interest from the date of disbursement until paid at the "**Default Rate**," as defined in the Note.

(c) Nothing in this Section 12 shall require Lender to incur any expense or take any action.

13. INSPECTION.

(a) Lender, its agents, representatives, and designees may make or cause to be made entries upon and inspections of the Mortgaged Property (including environmental inspections and tests) during normal business hours, or at any other reasonable time, upon reasonable notice to Borrower if the inspection is to include occupied residential units (which notice need not be in writing). Notice to Borrower shall not be required in the case of an emergency, as determined in Lender's discretion, or when an Event of Default has occurred and is continuing.

(b) If Lender determines that Mold has developed as a result of a water intrusion event or leak, Lender, at Lender's discretion, may require that a professional inspector inspect the Mortgaged Property as frequently as Lender determines is necessary until any issue with Mold and its cause(s) are resolved to Lender's satisfaction. Such inspection shall be limited to a visual and olfactory inspection of the area that has experienced the Mold, water intrusion event or leak. Borrower shall be responsible for the cost of such professional inspection and any remediation deemed to be necessary as a result of the professional inspection. After any issue with Mold, water intrusion or leaks is remedied to Lender's satisfaction, Lender shall not require a professional inspection any more frequently than once every three years unless Lender is otherwise aware of Mold as a result of a subsequent water intrusion event or leak.

(c) If Lender or Loan Servicer determines not to conduct an annual inspection of the Mortgaged Property, and in lieu thereof Lender requests a certification, Borrower shall be prepared to provide and must actually provide to Lender a factually correct certification each year that the annual inspection is waived to the following effect:

Borrower has not received any written complaint, notice, letter or other written communication from tenants, management agent or governmental authorities regarding mold, fungus, microbial contamination or pathogenic organisms ("**Mold**") or any activity, condition, event or omission that causes or facilitates the growth of Mold on or in any part of the Mortgaged Property or if Borrower has received any such written complaint, notice, letter or other written communication that Borrower has investigated and determined that no Mold activity, condition or event exists or alternatively has fully and properly remediated such activity, condition, event or omission in compliance with the Moisture Management Plan for the Mortgaged Property.

If Borrower is unwilling or unable to provide such certification, Lender may require a professional inspection of the Mortgaged Property at Borrower's expense.

14. BOOKS AND RECORDS; FINANCIAL REPORTING.

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

(b) Within 120 days after the end of each fiscal year of Borrower, Borrower shall furnish to Lender a statement of income and expenses for Borrower's operation of the Mortgaged Property for that fiscal year, a statement of changes in financial position of Borrower relating to the Mortgaged Property for that fiscal year and, when requested by Lender, a balance sheet showing all assets and liabilities of Borrower relating to the Mortgaged Property as of the end of that fiscal year. If Borrower's fiscal year is other than the calendar year, Borrower must also submit to Lender a year-end statement of income and expenses within 120 days after the end of the calendar year.

(c) Within 120 days after the end of each calendar year, and at any other time, upon Lender's request, Borrower shall furnish to Lender each of the following. However, Lender shall not require any of the following more frequently than quarterly except when there has been an Event of Default and such Event of Default is continuing, in which case Lender may, upon written request to Borrower, require Borrower to furnish any of the following more frequently:

(i) 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;

- (ii) 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
- (iii) a statement that identifies all owners of any interest in Borrower and any Controlling Entity and the interest held by each (unless Borrower or any Controlling Entity is a publicly-traded entity in which case such statement of ownership shall not be required), if Borrower or a Controlling Entity is a corporation, all officers and directors of Borrower and the Controlling Entity, and if Borrower or a Controlling Entity is a limited liability company, all managers who are not members.

(d) At any time upon Lender's request, Borrower shall furnish to Lender each of the following. However, Lender shall not require any of the following more frequently than quarterly except when there has been an Event of Default and such Event of Default is continuing, in which case Lender may require Borrower to furnish any of the following more frequently:

- (i) a balance sheet, a statement of income and expenses for Borrower and a statement of changes in financial position of Borrower for Borrower's most recent fiscal year;
- (ii) a quarterly or year-to-date income and expense statement for the Mortgaged Property; and
- (iii) a monthly property management report for the Mortgaged Property, showing the number of inquiries made and rental applications received from tenants or prospective tenants and deposits received from tenants and any other information requested by Lender.

(e) Upon Lender's request any time when an Event of Default has occurred and is continuing Borrower shall furnish to Lender monthly income and expense statements and rent schedules for the Mortgaged Property.

(f) An individual having authority to bind Borrower shall certify each of the statements, schedules and reports required by Sections 14(b) through 14(e) to be complete and accurate. Each of the statements, schedules and reports required by Sections 14(b) through 14(e) shall be such form and contain such details Lender may reasonably require. Lender also may require that any of the statements, schedules or reports listed in Section 14(b) and 4(c)(i) and (ii) be audited by Borrower's expense by independent certified public accountants acceptable to Lender any time when an Event of Default has occurred and is continuing or any time that Lender in its reasonable judgment determines that audited financial statements are required for an accurate assessment of the financial condition of Borrower of the Mortgaged Property.

(g) If Borrower fails to provide in a timely manner the statements, schedules and reports required by Sections 14(b) through 14(e) Lender shall give Borrower Notice specifying the statements, schedules and reports required by Section 14(b) through 14(e) that Borrower has failed to provide. If Borrower has not provided the required statements, schedules and reports within 10 Business Days following such Notice, then Lender shall have the right to have Borrower's books and records audited by Borrower's expense by independent certified public accountants selected by Lender in order to obtain such statements, schedules and reports, and all related costs and expenses of Lender shall become immediately due and payable and shall become an additional part of the indebtedness provided in Section 12. Notice to Borrower shall not be required in the case of an emergency as determined in Lender's discretion, or when an Event of Default has occurred and is continuing.

(h) 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.

- (i) Borrower authorizes Lender to obtain a credit report on Borrower at any time.

15. TAXES; OPERATING EXPENSES.

(a) Subject to the provisions of Section 15(c) and Section 15(d) Borrower shall pay or cause to be paid all Taxes when due and before the addition of any interest, fine, penalty or cost for nonpayment.

(b) Subject to the provisions of Section 15(c) Borrower shall (i) pay the expenses of operating, managing, maintaining and repairing the Mortgaged Property (including utilities, repairs and replacements) before the date

upon which each such payment may be made without any penalty or interest charge being added, and (ii) pay insurance premiums at least 30 days prior to the expiration date of each policy of insurance, unless applicable law specifies some lesser period.

(c) If Lender is collecting Imposition Deposits, to the extent that Lender holds sufficient Imposition Deposits for the purpose of paying a specific Imposition, then Borrower shall not be obligated to pay such Imposition, so long as no Event of Default exists and Borrower has timely delivered to Lender any bills or premium notices that it has received. If an Event of Default exists, Lender may exercise any rights Lender may have with respect to Imposition Deposits without regard to whether Impositions are then due and payable. Lender shall have no liability to Borrower for failing to pay any Impositions to the extent that (i) any Event of Default has occurred and is continuing, (ii) insufficient Imposition Deposits are held by Lender at the time an Imposition becomes due and payable or (iii) Borrower has failed to provide Lender with bills and premium notices as provided above.

(d) Borrower, at its own expense, may contest by appropriate legal proceedings, conducted diligently and in good faith, the amount or validity of any Imposition other than insurance premiums, if (i) Borrower notifies Lender of the commencement or expected commencement of such proceedings, (ii) the Mortgaged Property is not in danger of being sold or forfeited, (iii) if Borrower has not already paid the Imposition, Borrower deposits with Lender reserves sufficient to pay the contested Imposition, if requested by Lender, and (iv) Borrower furnishes whatever additional security is required in the proceedings or is reasonably requested by Lender.

(e) Borrower shall promptly deliver to Lender a copy of all notices of, and invoices for, Impositions, and if Borrower pays any Imposition directly, Borrower shall furnish to Lender, on or before the date this Instrument requires such Impositions to be paid, receipts evidencing that such payments were made.

16. LIENS; ENCUMBRANCES. Borrower acknowledges that, to the extent provided in Section 21, the grant, creation or existence of any mortgage, deed of trust, deed to secure debt, security interest or other lien or encumbrance (a "**Lien**") on the Mortgaged Property (other than the lien of this Instrument) or on certain ownership interests in Borrower, whether voluntary, involuntary or by operation of law, and whether or not such Lien has priority over the lien of this Instrument, is a "**Transfer**" which constitutes an Event of Default and subjects Borrower to personal liability under the Note.

17. PRESERVATION, MANAGEMENT AND MAINTENANCE OF MORTGAGED PROPERTY.

(a) Borrower shall not commit waste or permit impairment or deterioration of the Mortgaged Property.

(b) Borrower shall not abandon the Mortgaged Property.

(c) Borrower shall restore or repair promptly, in a good and workmanlike manner, any damaged part of the Mortgaged Property to the equivalent of its original condition, or such other condition as Lender may approve in writing, whether or not insurance proceeds or condemnation awards are available to cover any costs of such restoration or repair; however, Borrower shall not be obligated to perform such restoration or repair if (i) no Event of Default has occurred and is continuing, and (ii) Lender has elected to apply any available insurance proceeds and/or condemnation awards to the payment of Indebtedness pursuant to Section 19(h)(ii), (iii), (iv) or (v), or pursuant to Section 20.

(d) Borrower shall keep the Mortgaged Property in good repair, including the replacement of Personalty and Fixtures with items of equal or better function and quality.

(e) Borrower shall provide for professional management of the Mortgaged Property by a residential rental property manager satisfactory to Lender at all times under a contract approved by Lender in writing, which contract must be terminable upon not more than 30 days notice without the necessity of establishing cause and without payment of a penalty or termination fee by Borrower or its successors.

(f) Borrower shall give Notice to Lender of and, unless otherwise directed in writing by Lender, shall appear in and defend any action or proceeding purporting to affect the Mortgaged Property, Lender's security or Lender's rights under this Instrument. Borrower shall not (and shall not permit any tenant or other person to) remove, demolish or alter the Mortgaged Property or any part of the Mortgaged Property, including any removal, demolition or alteration occurring in connection with a rehabilitation of all or part of the Mortgaged Property, except (i) in connection with the replacement of tangible Personalty, (ii) if Borrower is a cooperative housing corporation or association, to the extent permitted with respect to individual dwelling units under the form of proprietary lease or occupancy agreement and (iii) repairs and replacements in connection with making an individual unit ready for a new occupant.

(g) Unless otherwise waived by Lender in writing, Borrower must have or must establish and must adhere to the MMP. If the Borrower is required to have an MMP, the Borrower must keep all MMP documentation at the Mortgaged Property or at the management agent's office and available for the Lender or the Loan Servicer to review during any annual assessment or other inspection of the Mortgaged Property that is required by Lender.

(h) If Borrower is a housing cooperative corporation or association, until the Indebtedness is paid in full Borrower shall not reduce the maintenance fees, charges or assessments payable by shareholders or residents under proprietary leases or occupancy agreements below a level which is sufficient to pay all expenses of the Borrower, including, without limitation, all operating and other expenses for the Mortgaged Property and all payments due pursuant to the terms of the Note and any Loan Documents.

18. ENVIRONMENTAL HAZARDS.

- (a) Except for matters described in Section 18(b), Borrower shall not cause or permit any of the following:
- (i) the presence, use, generation, release, treatment, processing, storage (including storage in above ground and underground storage tanks), handling, or disposal of any Hazardous Materials on or under the Mortgaged Property or any other property of Borrower that is adjacent to the Mortgaged Property;
 - (ii) the transportation of any Hazardous Materials to, from, or across the Mortgaged Property;
 - (iii) any occurrence or condition on the Mortgaged Property or any other property of Borrower that is adjacent to the Mortgaged Property, which occurrence or condition is or may be in violation of Hazardous Materials Laws;
 - (iv) any violation of or noncompliance with the terms of any Environmental Permit with respect to the Mortgaged Property or any property of Borrower that is adjacent to the Mortgaged Property; or
 - (v) any violation or noncompliance with the terms of any O&M Program as defined in subsection (d).

The matters described in clause (i) through (v) above except as otherwise provided in Section 18(b) are referred to collectively in this Section 18 as "**Prohibited Activities or Conditions.**"

(b) Prohibited Activities or Conditions shall include a lawful condition permitted by an O&M Program or the safe and lawful use and storage of quantities of (i) pre-packaged supplies, cleaning materials and petroleum products customarily used in the operation and maintenance of comparable multifamily properties (ii) cleaning materials, personal grooming items and other items sold in pre-packaged containers for consumer use and used by tenants and occupants of residential dwelling units in the Mortgaged Property and (iii) petroleum products used in the operation and maintenance of motor vehicles from time to time located on the Mortgaged Property's parking areas so long as all of the foregoing are used, stored, handled, transported and disposed of in compliance with Hazardous Material Laws.

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

(d) As required by Lender, Borrower shall have established a written operations and maintenance program with respect to certain Hazardous Materials. Each such operations and maintenance program and any additional revised operations and maintenance programs established on the Mortgaged Property pursuant to this Section 18 must be approved by Lender and shall be referred to hereinafter as an "O&M Program." Borrower shall comply in a timely manner with and cause all employees, agents and contractors of Borrower and any other persons present on the Mortgaged Property to comply with each O&M Program. Borrower shall pay all costs of performance of Borrower's obligations under any O&M Program and Lender's out-of-pocket costs incurred in connection with the monitoring and review of each O&M Program and Borrower's performance shall be paid by Borrower upon demand by Lender. Any such out-of-pocket costs of Lender that Borrower fails to pay promptly shall become an additional part of the Indebtedness as provided in Section 12.

(e) Borrower represents and warrants to Lender that, except as previously disclosed by Borrower to Lender in writing which written disclosure may be certain environmental assessments and other written reports accepted by Lender in connection with the funding of the Indebtedness and dated prior to the date of this Instrument):

- (i) Borrower has not at any time engaged in, caused or permitted any Prohibited Activities or Conditions on the Mortgaged Property;
- (ii) to the best of Borrower's knowledge after reasonable and diligent inquiry, no Prohibited Activities or Conditions exist or have existed on the Mortgaged Property;

- (iii) the Mortgaged Property does not now contain any underground storage tanks, and, to the best of Borrower's knowledge after reasonable and diligent inquiry, the Mortgaged Property has not contained any underground storage tanks in the past. If there is an underground storage tank located on the Mortgaged Property that has been previously disclosed by Borrower to Lender in writing, that tank complies with all requirements of Hazardous Materials Laws;
 - (iv) to the best of Borrower's knowledge after reasonable and diligent inquiry, Borrower has complied with all Hazardous Materials Laws, including all requirements for notification regarding releases of Hazardous Materials. Without limiting the generality of the foregoing, Borrower has obtained all Environmental Permits required for the operation of the Mortgaged Property in accordance with Hazardous Materials Laws now in effect and all such Environmental Permits are in full force and effect;
 - (v) to the best of Borrower's knowledge after reasonable and diligent inquiry, no event has occurred with respect to the Mortgaged Property that constitutes, or with the passing of time or the giving of notice would constitute, noncompliance with the terms of any Environmental Permit;
 - (vi) there are no actions, suits, claims or proceedings pending or, to the best of Borrower's knowledge after reasonable and diligent inquiry, threatened that involve the Mortgaged Property and allege, arise out of, or relate to any Prohibited Activity or Condition; and
 - (vii) Borrower has not received any written complaint, order, notice of violation or other communication from any Governmental Authority with regard to air emissions, water discharges, noise emissions or Hazardous Materials, or any other environmental, health or safety matters affecting the Mortgaged Property or any other property of Borrower that is adjacent to the Mortgaged Property.
- (f) Borrower shall promptly notify Lender in writing upon the occurrence of any of the following events:
- (i) Borrower's discovery of any Prohibited Activity or Condition;
 - (ii) Borrower's receipt of or knowledge of any written complaint, order, notice of violation or other communication from any tenant, management agent, Governmental Authority or other person with regard to present or future alleged Prohibited Activities or Conditions, or any other environmental, health or safety matters affecting the Mortgaged Property or any other property of Borrower that is adjacent to the Mortgaged Property; or
 - (iii) Borrower's breach of any of its obligations under this Section 18.

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

(g) Borrower shall pay promptly the costs of any environmental inspections, tests or audits, the purpose of which is to identify the extent or cause of potential for a Prohibited Activity or Condition ("**Environmental Inspections**"), required by Lender in connection with any foreclosure or deed in lieu of foreclosure, as a condition of Lender's consent to any Transfer under Section 21 or required by Lender following a reasonable determination by Lender that Prohibited Activities or Conditions may exist. Any such costs incurred by Lender (including Attorneys' Fees and Costs and the costs of technical consultants, whether incurred in connection with any judicial or administrative process or otherwise) that Borrower fails to pay promptly shall become an additional part of the Indebtedness as provided in Section 12. As long as (i) no Event of Default has occurred and is continuing, (ii) Borrower has actually paid for or reimbursed Lender for all costs of any such Environmental Inspections performed or required by Lender, and (iii) Lender is not prohibited by law or contract from doing so, Lender shall make available to Borrower, without representation of any kind, copies of Environmental Inspections prepared by third parties and delivered to Lender. Lender hereby reserves the right and Borrower hereby expressly authorizes Lender to make available to any party, including any prospective bidder at foreclosure sale of the Mortgaged Property, the results of any Environmental Inspections made by or for Lender with respect to the Mortgaged Property. Borrower consents to Lender notifying any party (either as part of a notice of sale or otherwise) of the results of any Environmental Inspections made by or for Lender. Borrower acknowledges that Lender cannot control or otherwise assure the truthfulness or accuracy of the results of any Environmental Inspections and that the release of such results to prospective bidders at foreclosure sale of the Mortgaged Property may have a material and adverse effect upon the amount that a party may bid at such sale.

Borrower agrees that Lender shall have no liability whatsoever as a result of delivering the results to any third party of any Environmental Inspections made by or for Lender, and Borrower hereby releases and forever discharges Lender from any and all claims, damages, or causes of action, arising out of, connected with or incidental to the results of, the delivery of any of Environmental Inspections made by or for Lender.

(h) If any investigation, site monitoring, containment, clean-up, restoration or other remedial work ("**Remedial Work**") is necessary to comply with any Hazardous Materials Law or order of any Governmental Authority that has or acquires jurisdiction over the Mortgaged Property or the use, operation or improvement of the Mortgaged Property, or is otherwise required by Lender as a consequence of any Prohibited Activity or Condition or to prevent the occurrence of a Prohibited Activity or Condition, Borrower shall, by the earlier of (i) the applicable deadline required by Hazardous Materials Law or (ii) 30 days after Notice from Lender demanding such action, begin performing the Remedial Work, and thereafter diligently prosecute it to completion, and shall in any event complete the work by the time required by applicable Hazardous Materials Law. If Borrower fails to begin on a timely basis or diligently prosecute any required Remedial Work, Lender may, at its option, cause the Remedial Work to be completed, in which case Borrower shall reimburse Lender on demand for the cost of doing so. Any reimbursement due from Borrower to Lender shall become part of the Indebtedness as provided in Section 12.

(i) Borrower shall comply with all Hazardous Materials Laws applicable to the Mortgaged Property. Without limiting the generality of the previous sentence, Borrower shall (i) obtain and maintain all Environmental Permits required by Hazardous Materials Laws and comply with all conditions of such Environmental Permits; (ii) cooperate with any inquiry by any Governmental Authority; and (iii) comply with any governmental or judicial order that arises from any alleged Prohibited Activity or Condition.

(j) Borrower shall indemnify, hold harmless and defend (i) Lender, (ii) any prior owner or holder of the Note, (iii) the Loan Servicer, (iv) any prior Loan Servicer, (v) the officers, directors, shareholders, partners, employees and trustees of any of the foregoing, and (vi) the heirs, legal representatives, successors and assigns of each of the foregoing (collectively, the "**Indemnitees**") from and against all proceedings, claims, damages, penalties and costs (whether initiated or sought by Governmental Authorities or private parties), including Attorneys' Fees and Costs and remediation costs, whether incurred in connection with any judicial or administrative process or otherwise, arising directly or indirectly from any of the following:

- (i) any breach of any representation or warranty of Borrower in this Section 18;
- (ii) any failure by Borrower to perform any of its obligations under this Section 18;
- (iii) the existence or alleged existence of any Prohibited Activity or Condition;
- (iv) the presence or alleged presence of Hazardous Materials on or under the Mortgaged Property or in any of the Improvements or on or under any property of Borrower that is adjacent to the Mortgaged Property; and
- (v) the actual or alleged violation of any Hazardous Materials Law.

(k) Counsel selected by Borrower to defend Indemnitees shall be subject to the approval of those Indemnitees. In any circumstances in which the indemnity under this Section 18 applies, Lender may employ its own legal counsel and consultants to prosecute, defend, negotiate, or settle any claim, legal or administrative proceeding, and Lender, with the prior written consent of Borrower (which shall not be unreasonably withheld, delayed or conditioned) may settle or compromise any action, legal or administrative proceeding. However, unless an Event of Default has occurred and continuing the interests of Borrower and Lender are in conflict as determined by Lender in its discretion, Lender shall permit Borrower to undertake the actions referenced in this Section 18 in accordance with this Section 18(k) and Section 18(l) so long as Lender approves such action which approval shall not be unreasonably withheld or delayed. Borrower shall reimburse Lender on demand for all costs and expenses incurred by Lender, including all costs of settlements entered into in good faith, consultants' fees and Attorneys' Fees and Costs.

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

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

- (i) any amendment or modification of any Loan Document;
- (ii) any extensions of time for performance required by any Loan Document;
- (iii) any provision in any of the Loan Documents limiting Lender's recourse to property securing the Indebtedness, or limiting the personal liability of Borrower or any other party for payment of all or any part of the Indebtedness;
- (iv) the accuracy or inaccuracy of any representations and warranties made by Borrower under this Instrument or any other Loan Document;
- (v) the release of Borrower or any other person, by Lender or by operation of law, from performance of any obligation under any Loan Document;
- (vi) the release or substitution in whole or in part of any security for the Indebtedness; and
- (vii) Lender's failure to properly perfect any lien or security interest given as security for the Indebtedness.

(n) Borrower shall, at its own cost and expense, do all of the following:

- (i) pay or satisfy any judgment or decree that may be entered against any Indemnitee or Indemnitees in any legal or administrative proceeding incident to any matters against which Indemnitees are entitled to be indemnified under this Section 18;
- (ii) reimburse Indemnitees for any expenses paid or incurred in connection with any matters against which Indemnitees are entitled to be indemnified under this Section 18; and
- (iii) reimburse Indemnitees for any and all expenses, including Attorneys' Fees and Costs, paid or incurred in connection with the enforcement by Indemnitees of their rights under this Section 18, or in monitoring and participating in any legal or administrative proceeding.

(o) The provisions of this Section 18 shall be in addition to any and all the obligations and liabilities that Borrower may have under applicable law under the Loan Documents and each Indemnitee shall be entitled to indemnification under this Section 18 without regard to whether the Lender or that Indemnitee has exercised any rights against the Mortgaged Property or any other security pursuant to any rights against any guarantor or pursuant to any other rights available under the Loan Documents or applicable law. If Borrower consists of more than one person or entity, the obligation of those persons or entities to indemnify the Indemnitees under this Section 18 shall be joint and several. The obligation of Borrower to indemnify the Indemnitees under this Section 18 shall survive any repayment or discharge of the Indebtedness, any foreclosure proceeding, any foreclosure sale, any delivery of any deed in lieu of foreclosure, and any release of record of the lien of this Instrument. Notwithstanding the foregoing, if Lender has never been a mortgagee-in-possession of the Mortgaged Property, Borrower shall have no obligation to indemnify the Indemnitees under this Section 18 after the date of the release of record of the lien of this Instrument by payment in full at the Maturity Date or by voluntary prepayment in full.

19. PROPERTY AND LIABILITY INSURANCE.

(a) Borrower shall keep the improvements insured at all times against such hazards as Lender may from time to time require, which insurances shall include but not be limited to coverage against loss by fire, wind, storm and allied perils, general boiler and machinery coverage and business interruption including loss of rental value insurance for the Mortgaged Property with extra expense insurance. If Lender requires such insurances, shall also include sink hole insurance, subsidence insurance, earthquake insurance and if the Mortgaged Property does not conform to applicable zoning and use laws, building ordinance or law coverage. In the event any updated reports or other documentation are reasonably required by Lender to determine whether such additional insurances are necessary or prudent, Borrower shall pay for all such documentation at its sole cost and expense. Borrower acknowledges and agrees that Lender's insurance requirements may change from time to time throughout the term of the Indebtedness. If any of the improvements located in an area identified by the Federal Emergency Management Agency (or any successor to that agency) as a special flood hazard, Borrower shall insure such improvements against

loss by flood. All insurance required pursuant to this Section 19(a) shall be referred to as "**Hazard Insurance**." All policies of Hazard Insurance must include a non-contributing, non-reporting mortgagee clause in favor of, and in a form approved by, Lender.

(b) All premiums on insurance policies required under this Section 19 shall be paid in the manner provided in Section 7, unless Lender has designated in writing another method of payment. All such policies shall also be in a form approved by Lender. Borrower shall deliver to Lender a legible copy of each insurance policy (or duplicate original) and Borrower shall promptly deliver to Lender a copy of all renewal and other notices received by Borrower with respect to the policies and all receipts for paid premiums. At least 5 days prior to the expiration date of any insurance policy, Borrower shall deliver to Lender evidence acceptable to Lender that the policy has been renewed. If Borrower has not delivered a legible copy of each renewal policy (or a duplicate original) prior to the expiration date of any insurance policy, Borrower shall deliver a legible copy of each renewal policy (or a duplicate original) in a form satisfactory to Lender within 120 days after the expiration date of the original policy.

(c) Borrower shall maintain at all times commercial general liability insurance, workers' compensation insurance and such other liability, errors and omissions and fidelity insurance coverages as Lender may from time to time require. All policies for general liability insurance must contain a standard additional insured provision, in favor of, and in a form approved by, Lender.

(d) All insurance policies and renewals of insurance policies required by this Section 19 shall be in such amounts and for such periods as Lender may from time to time require, and shall be issued by insurance companies satisfactory to Lender.

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

(f) In the event of loss, Borrower shall give immediate written notice to the insurance carrier and to Lender. Borrower hereby authorizes and appoints Lender as attorney-in-fact for Borrower to make proof of loss, to adjust and compromise any claims under policies of Hazard Insurance, to appear in and prosecute any action arising from such Hazard Insurance policies, to collect and receive the proceeds of Hazard Insurance, and to deduct from such proceeds Lender's expenses incurred in the collection of such proceeds. This power of attorney is coupled with an interest and therefore is irrevocable. However, nothing contained in this Section 19 shall require Lender to incur any expense or take any action. Lender may, at Lender's option, (i) require a "repair or replacement" settlement, in which case the proceeds will be used to reimburse Borrower for the cost of restoring and repairing the Mortgaged Property to the equivalent of its original condition or to a condition approved by Lender (the "**Restoration**"), or (ii) require an "actual cash value" settlement in which case the proceeds may be applied to the payment of the Indebtedness, whether or not then due. To the extent Lender determines to require a repair or replacement settlement and apply insurance proceeds to Restoration, Lender shall apply the proceeds in accordance with Lender's then-current policies relating to the restoration of casualty damage on similar multifamily properties.

(g) Notwithstanding any provision to the contrary in this Section 19, as long as no Event of Default, or any event which, with the giving of Notice or the passage of time, or both, would constitute an Event of Default, has occurred and is continuing,

- (i) in the event of a casualty resulting in damage to the Mortgaged Property which will cost \$10,000 or less to repair, the Borrower shall have the sole right to make proof of loss, adjust and compromise the claim and collect and receive any proceeds directly without the approval or prior consent of the Lender so long as the insurance proceeds are used solely for the Restoration of the Mortgaged Property; and
- (ii) in the event of a casualty resulting in damage to the Mortgaged Property which will cost more than \$10,000 but less than \$50,000 to repair, the Borrower is authorized to make proof of loss and adjust and compromise the claim without the prior consent of Lender, and Lender shall hold the applicable insurance proceeds to be used to reimburse Borrower for the cost of Restoration of the Mortgaged Property and shall not apply such proceeds to the payment of sums due under this Instrument.

(h) Lender will have the right to exercise its option to apply insurance proceeds to the payment of the Indebtedness only if Lender determines that at least one of the following conditions is met:

- (i) an Event of Default (or any event, which, with the giving of Notice or the passage of time, or both, would constitute an Event of Default) has occurred and is continuing;
- (ii) Lender determines, in its discretion, that there will not be sufficient funds from insurance proceeds, anticipated contributions of Borrower of its own funds or other sources acceptable to Lender to complete the Restoration;
- (iii) Lender determines, in its discretion, that the rental income from the Mortgaged Property after completion of the Restoration will not be sufficient to meet all operating costs and other expenses, Imposition Deposits, deposits to reserves and loan repayment obligations relating to the Mortgaged Property;
- (iv) Lender determines, in its discretion, that the Restoration will not be completed at least one year before the Maturity Date (or six months before the Maturity Date if Lender determines in its discretion that re-leasing of the Mortgaged Property will be completed within such six-month period); or
- (v) Lender determines that the Restoration will not be completed within one year after the date of the loss or casualty.

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

(j) Unless Lender otherwise agrees in writing, any application of any insurance proceeds to the Indebtedness shall not extend or postpone the due date of any monthly installments referred to in the Note, Section 7 of this Instrument or any Collateral Agreement, or change the amount of such installments.

(k) Borrower agrees to execute such further evidence of assignment of any insurance proceeds as Lender may require.

20. CONDEMNATION.

(a) Borrower shall promptly notify Lender in writing of any action or proceeding or notice relating to any proposed or actual condemnation or other taking, or conveyance in lieu thereof, of all or any part of the Mortgaged Property, whether direct or indirect (a "**Condemnation**"). Borrower shall appear in and prosecute or defend any action or proceeding relating to any Condemnation unless otherwise directed by Lender in writing. Borrower authorizes and appoints Lender as attorney-in-fact for Borrower to commence, appear in and prosecute, in Lender's or Borrower's name, any action or proceeding relating to any Condemnation and to settle or compromise any claim in connection with any Condemnation, after consultation with Borrower and consistent with commercially reasonable standards of a prudent lender. This power of attorney is coupled with an interest and therefore is irrevocable. However, nothing contained in this Section 20 shall require Lender to incur any expense or take any action. Borrower hereby transfers and assigns to Lender all right, title and interest of Borrower in and to any award or payment with respect to (i) any Condemnation, or any conveyance in lieu of Condemnation, and (ii) any damage to the Mortgaged Property caused by governmental action that does not result in a Condemnation.

(b) Lender may apply such awards or proceeds, after the deduction of Lender's expenses incurred in the collection of such amounts (including Attorneys' Fees and Costs) at Lender's option, to the restoration or repair of the Mortgaged Property or to the payment of the Indebtedness, with the balance, if any, to Borrower. Unless Lender otherwise agrees in writing, any application of any awards or proceeds to the Indebtedness shall not extend or postpone the due date of any monthly installments referred to in the Note, Section 7 of this Instrument or any Collateral Agreement, or change the amount of such installments. Borrower agrees to execute such further evidence of assignment of any awards or proceeds as Lender may require.

21. TRANSFERS OF THE MORTGAGED PROPERTY OR INTERESTS IN BORROWER. [RIGHT TO UNLIMITED TRANSFERS -- WITH LENDER APPROVAL].

- (a) **"Transfer"** means
- (i) a sale, assignment, transfer or other disposition (whether voluntary, involuntary or by operation of law);
 - (ii) the granting, creating or attachment of a lien, encumbrance or security interest (whether voluntary, involuntary or by operation of law);
 - (iii) the issuance or other creation of an ownership interest in a legal entity, including a partnership interest, interest in a limited liability company or corporate stock;
 - (iv) the withdrawal, retirement, removal or involuntary resignation of a partner in a partnership or a member or manager in a limited liability company; or
 - (v) the merger, dissolution, liquidation, or consolidation of a legal entity or the reconstitution of one type of legal entity into another type of legal entity.

For purposes of defining the term "Transfer," the term "partnership" shall mean a general partnership, a limited partnership, a joint venture and a limited liability partnership, and the term "partner" shall mean a general partner, a limited partner and a joint venturer.

- (b) "Transfer" does not include
- (i) a conveyance of the Mortgaged Property at a judicial or non-judicial foreclosure sale under this Instrument,
 - (ii) the Mortgaged Property becoming part of a bankruptcy estate by operation of law under the United States Bankruptcy Code, or
 - (iii) a lien against the Mortgaged Property for local taxes and/or assessments not then due and payable.

(c) The occurrence of any of the following Transfers shall not constitute an Event of Default under this Instrument, notwithstanding any provision of Section 21(e) to the contrary:

- (i) a Transfer to which Lender has consented;
- (ii) a Transfer that occurs in accordance with Section 21(d);
- (iii) the grant of a leasehold interest in an individual dwelling unit for a term of two years or less not containing an option to purchase;
- (iv) a Transfer of obsolete or worn out Personalty or Fixtures that are contemporaneously replaced by items of equal or better function and quality, which are free of liens, encumbrances and security interests other than those created by the Loan Documents or consented to by Lender;
- (v) the creation of a mechanic's, materialman's, or judgment lien against the Mortgaged Property, which is released of record or otherwise remedied to Lender's satisfaction within 60 days of the date of creation;
- (vi) if Borrower is a housing cooperative, corporation or association, the Transfer of more than 49 percent of the shares in the housing cooperative or the assignment of more than 49 percent of the occupancy agreements or leases relating thereto by tenant shareholders of the housing cooperative or association to other tenant shareholders; and
- (vii) any Transfer of an interest in Borrower or any interest in a Controlling Entity (which, if such Controlling Entity were Borrower, would result in an Event of Default) listed in (A) through (F) below (a **"Preapproved Transfer"**), under the terms and conditions listed as items (1) through (7) below:
 - (A) a sale or transfer to one or more of the transferor's immediate family members; or

- (B) a sale or transfer to any trust having as its sole beneficiaries the transferor and/or one or more of the transferor's immediate family members; or
 - (C) a sale or transfer from a trust to any one or more of its beneficiaries who are immediate family members of the transferor ; or
 - (D) the substitution or replacement of the trustee of any trust with a trustee who is an immediate family member of the transferor; or
 - (E) a sale or transfer to an entity owned and controlled by the transferor or the transferor' s immediate family members; or
 - (F) a sale or transfer to an individual or entity that has an existing interest in the Borrower or in a Controlling Entity.
- (1) Borrower shall provide Lender with prior written Notice of the proposed Preapproved Transfer, which Notice must be accompanied by a non-refundable review fee in the amount of \$3,000.00.
 - (2) For the purposes of these Preapproved Transfers, a transferor's immediate family members will be deemed to include a spouse, parent, child or grandchild of such transferor.
 - (3) Either directly or indirectly, [See Exhibit B] shall retain at all times a managing interest in the Borrower.
 - (4) At the time of the proposed Preapproved Transfer, no Event of Default shall have occurred and be continuing and no event or condition shall have occurred and be continuing that, with the giving of Notice or the passage of time, or both, would become an Event of Default.
 - (5) Lender shall be entitled to collect all costs, including the cost of all title searches, title insurance and recording costs, and all Attorneys' Fees and Costs.
 - (6) Lender shall not be entitled to collect a transfer fee as a result of these Preapproved Transfers.
 - (7) In the event of a Transfer prohibited by or requiring Lender's approval under this Section 21, this Section (c)(vii) may be modified or rendered void by Lender at Lender's option by Notice to Borrower and the transferee(s), as a condition of Lender's consent.

(d) The occurrence of any of the following Transfers shall not constitute an Event of Default under this Instrument, provided that Borrower has notified Lender in writing within 30 days following the occurrence of any of the following, and such Transfer does not constitute an Event of Default under any other Section of this Instrument:

- (i) a change of the Borrower's name, provided that UCC financing statements and/or amendments sufficient to continue the perfection of Lender's security interest have been properly filed and copies have been delivered to Lender;
- (ii) a change of the form of the Borrower not involving a transfer of the Borrower's assets and not resulting in any change in liability of any Initial Owner, provided that UCC financing statements and/or amendments sufficient to continue the perfection of Lender's security interest have been properly filed and copies have been delivered to Lender;
- (iii) the merger of the Borrower with another entity when the Borrower is the surviving entity;
- (iv) a Transfer that occurs by devise, descent, or by operation of law upon the death of a natural person; and
- (v) the grant of an easement, if before the grant Lender determines that the easement will not materially affect the operation or value of the Mortgaged Property or Lender's interest in the Mortgaged Property, and Borrower pays to Lender, upon demand, all costs and expenses, including Attorneys' Fees and Costs, incurred by Lender in connection with reviewing Borrower's request.

(e) The occurrence of any of the following Transfers shall constitute an Event of Default under this Instrument:

- (i) a Transfer of all or any part of the Mortgaged Property or any interest in the Mortgaged Property;
- (ii) if Borrower is a limited partnership, a Transfer of (A) any general partnership interest, or (B) limited partnership interests in Borrower that would cause the Initial Owners of Borrower to own less than a Controlling Interest of all limited partnership interests in Borrower;
- (iii) if Borrower is a general partnership or a joint venture, a Transfer of any general partnership or joint venture interest in Borrower;
- (iv) if Borrower is a limited liability company, (A) a Transfer of any membership interest in Borrower which would cause the Initial Owners to own less than a Controlling Interest of all the membership interests in Borrower, (B) a Transfer of any membership or other interest of a manager in Borrower that results in a change of manager or (C) a change in a nonmember manager;
- (v) if Borrower is a corporation (A) the Transfer of any voting stock in Borrower which would cause the Initial Owners to own less than a Controlling Interest of any class of voting stock in Borrower or (B) if the outstanding voting stock in Borrower is held by 100 or more shareholders, one or more Transfers by a single transferor within a 12-month period affecting an aggregate of 5 percent or more of that stock;
- (vi) if Borrower is a trust, (A) a Transfer of any beneficial interest in Borrower which would cause the Initial Owners to own less than a Controlling Interest of all the beneficial interests in Borrower, (B) the termination or revocation of the trust, or (C) the removal, appointment or substitution of a trustee of Borrower;
- (vii) if Borrower is a limited liability partnership, (A) a Transfer of any partnership interest in Borrower which would cause the Initial Owners to own less than a Controlling Interest of all partnership interests in Borrower, or (B) a transfer of any partnership or other interest of a managing partner in Borrower that results in a change of manager; and
- (viii) a Transfer of any interest in a Controlling Entity which, if such Controlling Entity were Borrower, would result in an Event of Default under any of Sections 21(e)(i) through (vii) above.

Lender shall not be required to demonstrate any actual impairment to its security or any increased risk of default in order to exercise any of its remedies with respect to an Event of Default under this Section 21.

(f) Lender shall consent, without any adjustment to the rate at which the indebtedness secured by this Instrument bears interest to any other economic terms of the indebtedness set forth in the Note, to a Transfer that would otherwise violate this Section 21 if prior to the Transfer, Borrower has satisfied each of the following requirements:

- (i) the submission to Lender of all information required by Lender to make the determination required by this Section 21(f);
- (ii) the absence of any Event of Default;
- (iii) the transferee meets all of the eligibility, credit, management and other standards (including but not limited to any standards with respect to previous relationships between Lender and the transferee) customarily applied by Lender at the time of the proposed Transfer to the approval of borrowers in connection with the origination or purchase of similar mortgages on multifamily properties;
- (iv) the transferee's organization, credit and experience in the management of similar properties are deemed by the Lender, in its discretion, to be appropriate to the overall structure and documentation of the existing financing;

- (v) the Mortgaged Property, at the time of the proposed Transfer, meets all standards as to its physical condition, occupancy, net operating income and the collection of reserves that are customarily applied by Lender at the time of the proposed Transfer to the approval of properties in connection with the origination or purchase of similar mortgages on multifamily properties;
- (vi) in the case of a Transfer of all or any part of the Mortgaged Property, (A) the execution by the transferee of Lender's then-standard assumption agreement that, among other things, requires the transferee to perform all obligations of Borrower set forth in the Note, this Instrument and any other Loan Documents, and may require that the transferee comply with any provisions of this Instrument or any other Loan Document which previously may have been waived or modified by Lender, (B) if Lender requires, the transferee causes one or more individuals or entities acceptable to Lender to execute and deliver to Lender a guaranty in a form acceptable to Lender, and (C) the transferee executes such additional Collateral Agreements as Lender may require;
- (vii) in the case of a Transfer of any interest in a Controlling Entity, if a guaranty has been executed and delivered in connection with the Note, this Instrument or any of the other Loan Documents, the Borrower causes one or more individuals or entities acceptable to Lender to execute and deliver to Lender a guaranty in a form acceptable to Lender; and
- (viii) Lender's receipt of all of the following:
 - (A) a review fee in the amount of \$3,000.00;
 - (B) a transfer fee in an amount equal to 1 percent of the unpaid principal balance of the Indebtedness immediately before the applicable Transfer; and
 - (C) the amount of Lender's out-of-pocket costs (including reasonable Attorneys' Fees and Costs) incurred in reviewing the Transfer request.

22. EVENT OF DEFAULT The occurrence of any one of the following shall constitute an Event of Default under this Instrument:

- (a) any failure by Borrower to pay or deposit when due any amount required by the Note, this Instrument or any other Loan Document;
- (b) any failure by Borrower to maintain the insurance coverage required by Section 19;
- (c) any failure by Borrower to comply with the provisions of Section 33;
- (d) fraud in this representation or material omission by Borrower and its officers, directors, trustees, general partners, managers or any guarantor in connection with (i) the application for creation of the Indebtedness, (ii) any financial statements scheduled to be reported or information provided to Lender during the term of the Indebtedness or (iii) any request for Lender's consent to any proposed action including request for disbursement of funds under any Collateral Agreement;
- (e) any failure by Borrower to comply with the provisions of Section 20;
- (f) any Event of Default under Section 21;
- (g) the commencement of forfeiture or proceedings, whether civil or criminal, which Lender's reasonable judgment could result in forfeiture of the Mortgaged Property or otherwise materially impair the lien created by this Instrument or Lender's interest in the Mortgaged Property;
- (h) any failure by Borrower to perform any of its obligations under this Instrument (other than those specified in Sections 22(a) through (g)) and when required, which continues for a period of 30 days after Notice of such failure by Lender to Borrower. However, Borrower's failure to perform its obligations as described in this Section 22(h) is the nature that cannot be cured within the 30-day grace period, but reasonably could be cured within 90 days, the Borrower shall have an additional time as determined by Lender in its discretion, not to exceed an additional 60 days, in which to cure such default provided that the Borrower has diligently commenced to cure such default during the 30-day grace period and diligently pursues the cure of such default. However, such Notice of grace period shall

apply in the case of any such failure which could, in Lender's judgment, absent immediate exercise by Lender of a right or remedy under this Instrument, result in harm to Lender, impairment of the Note or this Instrument or any other security given under any other Loan Document;

(i) any failure by Borrower to perform any of its obligations as and when required under any Loan Document other than this Instrument which continues beyond the applicable cure period, if any, specified in that Loan Document;

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

(k) any voluntary filing by Borrower for bankruptcy protection under the United States Bankruptcy Code or any reorganization, receivership, insolvency proceeding or other similar proceeding pursuant to any other federal or state law affecting debtor and creditor rights to which Borrower voluntarily becomes subject, or the commencement of any involuntary case against Borrower by any creditor (other than Lender) of Borrower pursuant to the United States Bankruptcy Code or other federal or state law affecting debtor and creditor rights which case is not dismissed or discharged within 90 days after filing; and

(l) any representations and warranties by Borrower in this Instrument which is false or misleading in any material respect.

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

24. FORBEARANCE.

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

(b) Any forbearance by Lender in exercising any right or remedy under the Note, this Instrument, or any other Loan Document or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any other right or remedy, or the subsequent exercise of any right or remedy. The acceptance by Lender of payment of all or any part of the Indebtedness after the due date of such payment, or in an amount which is less than the required payment, shall not be a waiver of Lender's right to require prompt payment when due of all other payments on account of the Indebtedness or to exercise any remedies for any failure to make prompt payment. Enforcement by Lender of any security for the Indebtedness shall not constitute an election by Lender of remedies so as to preclude the exercise of any other right available to Lender. Lender's receipt of any awards or proceeds under Sections 19 and 20 shall not operate to cure or waive any Event of Default.

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

26. WAIVER OF STATUTE OF LIMITATIONS. Borrower hereby waives the right to assert any statute of limitations as a bar to the enforcement of the lien of this Instrument or to any action brought to enforce any Loan Document.

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

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

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

30. GOVERNING LAW; CONSENT TO JURISDICTION AND VENUE.

(a) This Instrument, and any Loan Document which does not itself expressly identify the law that is to apply to it, shall be governed by the laws of the jurisdiction in which the Land is located (the "**Property Jurisdiction**").

(b) Borrower agrees that any controversy arising under or in relation to the Note, this Instrument, or any other Loan Document may be litigated in the Property Jurisdiction. The state and federal courts and authorities with jurisdiction in the Property Jurisdiction shall have jurisdiction over all controversies that shall arise under or in relation to the Note, any security for the Indebtedness, or any other Loan Document. Borrower irrevocably consents to service, jurisdiction, and venue of such courts for any such litigation and waives any other venue to which it might be entitled by virtue of domicile, habitual residence or otherwise. However, nothing in this Section 30 is intended to limit Lender's right to bring any suit, action or proceeding relating to matters under this Instrument in any court of any other jurisdiction.

31. NOTICE.

(a) All Notices, demands and other communications ("**Notice**") under or concerning this Instrument shall be in writing. Each Notice shall be addressed to the intended recipient at its address set forth in this Instrument, and shall be deemed given on the earliest to occur of (i) the date when the Notice is received by the addressee; (ii) the first Business Day after the Notice is delivered to a recognized overnight courier service, with arrangements made for payment of charges for next Business Day delivery; or (iii) the third Business Day after the Notice is deposited in the United States mail with postage prepaid, certified mail, return receipt requested.

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

(c) Any Notice under the Note and any other Loan Document that does not specify how Notices are to be given shall be given in accordance with this Section 31.

32. SALE OF NOTE; CHANGE IN SERVICER; LOAN SERVICING. The Note or a partial interest in the Note (together with this Instrument and the other Loan Documents) may be sold one or more times without prior Notice to Borrower. A sale may result in a change of the Loan Servicer. There also may be one or more changes of the Loan Servicer unrelated to a sale of the Note. If there is a change of the Loan Servicer, Borrower will be given Notice of the change. All actions regarding the servicing of the loan evidenced by the Note, including the collection of payments, the giving and receipt of Notice, inspections of the Mortgaged Property, inspections of books and records, and the granting of consents and approvals, may be taken by the Loan Servicer unless Borrower receives Notice to the contrary. If Borrower receives conflicting Notices regarding the identity of the Loan Servicer or any other subject, any such Notice from Lender shall govern.

33. SINGLE ASSET BORROWER. Until the Indebtedness is paid in full, Borrower (a) shall not own any real or personal property other than the Mortgaged Property and personal property related to the operation and maintenance of the Mortgaged Property; (b) shall not operate any business other than the management and operation of the Mortgaged Property; and (c) shall not maintain its assets in a way difficult to segregate and identify.

34. SUCCESSORS AND ASSIGNS BOUND. This Instrument shall bind, and the rights granted by this Instrument shall inure to, the respective successors and assigns of Lender and Borrower. However, a Transfer not permitted by Section 21 shall be an Event of Default.

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

36. RELATIONSHIP OF PARTIES; NO THIRD PARTY BENEFICIARY.

(a) The relationship between Lender and Borrower shall be solely that of creditor and debtor, respectively, and nothing contained in this Instrument shall create any other relationship between Lender and Borrower.

(b) No creditor of any party to this Instrument and no other person shall be a third party beneficiary of this Instrument or any other Loan Document. Without limiting the generality of the preceding sentence, (i) any arrangement (a "**Servicing Arrangement**") between the Lender and any Loan Servicer for loss sharing or interim advancement of funds shall constitute a contractual obligation of such Loan Servicer that is independent of the obligation of Borrower for the payment of the Indebtedness, (ii) Borrower shall not be a third party beneficiary of any Servicing Arrangement, and (iii) no payment by the Loan Servicer under any Servicing Arrangement will reduce the amount of the Indebtedness.

37. SEVERABILITY; AMENDMENTS. The invalidity or unenforceability of any provision of this Instrument shall not affect the validity or enforceability of any other provision, and all other provisions shall remain in full force and effect. This Instrument contains the entire agreement among the parties as to the rights granted and the obligations assumed in this Instrument. This Instrument may not be amended or modified except by a writing signed by the party against whom enforcement is sought; provided, however, that in the event of a Transfer prohibited by or requiring Lender's approval under Section 21, any or some or all of the Modifications to Instrument set forth in Exhibit B (if any) may be modified or rendered void by Lender at Lender's option by Notice to Borrower and the transferee(s).

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

39. DISCLOSURE OF INFORMATION. Lender may furnish information regarding Borrower or the Mortgaged Property to third parties with an existing or prospective interest in the servicing, enforcement, evaluation, performance, purchase or securitization of the Indebtedness, including but not limited to trustees, master servicers, special servicers, rating agencies, and organizations maintaining databases on the underwriting and performance of multifamily mortgage loans, as well as governmental regulatory agencies having regulatory authority over Lender.

Borrower irrevocably waives any and all rights it may have under applicable law to prohibit such disclosure, including but not limited to any right of privacy.

40. NO CHANGE IN FACTS OR CIRCUMSTANCES. Borrower warrants that (a) all information in the application for the loan submitted to Lender (the "**Loan Application**") and in all financial statements, rent schedules, reports, certificates and other documents submitted in connection with the Loan Application are complete and accurate in all material respects; and (b) there has been no material adverse change in any fact or circumstance that would make any such information incomplete or inaccurate.

41. SUBROGATION. If, and to the extent that, the proceeds of the loan evidenced by the Note, or subsequent advances under Section 12, are used to pay, satisfy or discharge a Prior Lien, such loan proceeds or advances shall be deemed to have been advanced by Lender at Borrower's request, and Lender shall automatically, and without further action on its part, be subrogated to the rights, including lien priority, of the owner or holder of the obligation secured by the Prior Lien, whether or not the Prior Lien is released.

42. ADJUSTABLE RATE MORTGAGE - THIRD PARTY CAP AGREEMENT "CAP COLLATERAL."

(a) If the Note provides for interest to accrue at an adjustable or variable interest rate (other than during the "Extension Period," as defined in the Note, if applicable), then the definition of "Mortgaged Property" shall include the "**Cap Collateral.**" The "Cap Collateral" shall mean

- (i) any interest rate cap agreement, interest rate swap agreement, or other interest rate-hedging contract or agreement obtained by Borrower as a requirement of any Loan Document or as a condition of Lender's making the Loan (a "**Cap Agreement**");
- (ii) any and all moneys (collectively, "**Cap Payments**") payable pursuant to any Cap Agreement by the interest rate cap provider or other counterparty to a Cap Agreement or any guarantor of the obligations of any such cap provider or counterparty (a "**Cap Provider**");
- (iii) all rights of Borrower under any Cap Agreement and all rights of Borrower to all Cap Payments, including contract rights and general intangibles, whether existing now or arising after the date of this Instrument;
- (iv) all rights, liens and security interests or guaranties granted by a Cap Provider or any other person to secure or guaranty payment of any Cap Payment whether existing now or granted after the date of this Instrument;
- (v) all documents, writings, books, files, records and other documents arising from or relating to any of the foregoing, whether existing now or created after the date of this Instrument; and
- (vi) all cash and non-cash proceeds and products of (ii) - (v) above.

(b) ~~As additional security for Borrower's obligation under the Loan Documents, Borrower hereby assigns and pledges to Lender all of Borrower's right, title and interest in and to the Cap Collateral. Borrower has instructed and will instruct each Cap Provider and any guarantor of a Cap Provider's obligations to make Cap Payments directly to Lender or to Loan Servicer on behalf of Lender.~~

(c) ~~So long as there is no Event of Default, Lender or Loan Servicer will remit to Borrower each Cap Payment received by Lender or Loan Servicer with respect to any month for which Borrower has paid in full the monthly installment of principal and interest or interest only as applicable due under the Note. Alternatively at Lender's option so long as there is no Event of Default, Lender may apply a Cap Payment received by Lender or Loan Servicer with respect to any month to the applicable monthly payment of accrued interest due under the Note if Borrower has paid in full the remaining portion of such monthly payment of principal and interest or interest only as applicable.~~

(d) ~~Following an Event of Default, in addition to any other rights and remedies Lender may have, Lender may retain any Cap Payments and apply them to the indebtedness in such order and amounts as Lender determines. Neither the existence of a Cap Agreement nor anything in this Instrument shall relieve Borrower of its primary obligation to timely pay in full all amounts due under the Note and other wise due on account of the Indebtedness.~~

(e) If the Note does not provide for interest to accrue at an adjustable or variable interest rate (other than during the Extension Period) then this Section 42 shall be of no force or effect.

43. ACCELERATION; REMEDIES. At any time during the existence of an Event of Default, Lender, at Lender's option, may declare the Indebtedness to be immediately due and payable without further demand, and may invoke the power of sale and any other remedies permitted by Texas law or provided in this Instrument or in any other Loan Document. Borrower acknowledges that the power of sale granted in this Instrument may be exercised by Lender without prior judicial hearing. Lender shall be entitled to collect all costs and expenses incurred in pursuing such remedies, including attorneys' fees, costs of documentary evidence, abstracts and title reports.

(a) If Lender invokes the power of sale, Lender may, by and through the Trustee, or otherwise, sell or offer for sale the Mortgaged Property in such portions, order and parcels as Lender may determine, with or without having first taken possession of the Mortgaged Property, to the highest bidder for cash at public auction. Such sale shall be made at the courthouse door of the county in which all or any part of the Land to be sold is situated (whether the parts or parcel, if any, situated in different counties are contiguous or not, and without the necessity of having any Personalty present at such sale) on the first Tuesday of any month between the hours of 10:00 a.m. and 4:00 p.m., after advertising the time, place and terms of sale and that portion of the Mortgaged Property to be sold by posting or causing to be posted written or printed notice of sale at least twenty-one (21) days before the date of the sale at the courthouse door of the county in which the sale is to be made and at the courthouse door of any other county in which a portion of the Land may be situated, and by filing such notice with the County Clerk(s) of the county(s) in which all or a portion of the Land may be situated, which notice may be posted and filed by the Trustee acting, or by any person acting for the Trustee, and Lender has, at least twenty-one (21) days before the date of the sale, served written or printed notice of the proposed sale by certified mail on each debtor obligated to pay the Indebtedness according to Lender's records by the deposit of such notice, enclosed in a postpaid wrapper, properly addressed to such debtor at debtor's most recent address as shown by Lender's records, in a post office or official depository under the care and custody of the United States Postal Service. The affidavit of any person having knowledge of the facts to the effect that such service was completed shall be *prima facie* evidence of the fact of service.

(b) Trustee shall deliver to the purchaser at the sale, within a reasonable time after the sale, a deed conveying the Mortgaged Property so sold in fee simple with covenants of general warranty. Borrower covenants and agrees to defend generally the purchaser's title to the Mortgaged Property against all claims and demands. The recitals in Trustee's deed shall be *prima facie* evidence of the truth of the statements contained in those recitals. Trustee shall apply the proceeds of the sale in the following order: (i) to all reasonable costs and expenses of the sale, including reasonable Trustee's fees not to exceed 5% of the gross sales price, attorneys' fees and costs of title evidence; (ii) to the Indebtedness in such order as Lender, in Lender's discretion, directs; and (iii) the excess, if any, to the person or persons legally entitled to the excess.

(c) If all or any part of the Mortgaged Property is sold pursuant to this Section 43, Borrower will be divested of any and all interest and claim to the Mortgaged Property, including any interest or claim to all insurance policies, utility deposits, bonds, loan commitments and other intangible property included as a part of the Mortgaged Property. Additionally, after a sale of all or any part of the Land, Improvements, Fixtures and Personalty, Borrower will be considered a tenant at sufferance of the purchaser of the same, and the purchaser shall be entitled to immediate possession of such property. If Borrower shall fail to vacate the Mortgaged Property immediately, the purchaser may and shall have the right, without further notice to Borrower, to go into any justice court in any precinct or county in which the Mortgaged Property is located and file an action in forcible entry and detainer, which action shall lie against Borrower or its assigns or legal representatives, as a tenant at sufferance. This remedy is cumulative of any and all remedies the purchaser may have under this Instrument or otherwise.

(d) In any action for a deficiency after a foreclosure under this Instrument, if any person against whom recovery is sought requests the court in which the action is pending to determine the fair market value of the Mortgaged Property, as of the date of the foreclosure sale, the following shall be the basis of the court's determination of fair market value:

- (i) the Mortgaged Property shall be valued "as is" and in its condition as of the date of foreclosure, and no assumption of increased value because of post-foreclosure repairs, refurbishment, restorations or improvements shall be made;
- (ii) any adverse effect on the marketability of title because of the foreclosure or because of any other title condition not existing as of the date of this Instrument shall be considered;

- (iii) the valuation of the Mortgaged Property shall be based upon an assumption that the foreclosure purchaser desires a prompt resale of the Mortgaged Property for cash within a six month-period after foreclosure;
- (iv) although the Mortgaged Property may be disposed of more quickly by the foreclosure purchaser, the gross valuation of the Mortgaged Property as of the date of foreclosure shall be discounted for a hypothetical reasonable holding period (not to exceed 6 months) at a monthly rate equal to the average monthly interest rate on the Note for the twelve months before the date of foreclosure;
- (v) the gross valuation of the Mortgaged Property as of the date of foreclosure shall be further discounted and reduced by reasonable estimated costs of disposition, including brokerage commissions, title policy premiums, environmental assessment and clean-up costs, tax and assessment, prorations, costs to comply with legal requirements and attorneys' fees;
- (vi) expert opinion testimony shall be considered only from a licensed appraiser certified by the State of Texas and, to the extent permitted under Texas law, a member of the Appraisal Institute, having at least five years' experience in appraising property similar to the Mortgaged Property in the county where the Mortgaged Property is located, and who has conducted and prepared a complete written appraisal of the Mortgaged Property taking into considerations the factors set forth in this Instrument; no expert opinion testimony shall be considered without such written appraisal;
- (vii) evidence of comparable sales shall be considered only if also included in the expert opinion testimony and written appraisal referred to in subsection (vi), above; and
- (viii) an affidavit executed by Lender to the effect that the foreclosure bid accepted by Trustee was equal to or greater than the value of the Mortgaged Property determined by Lender based upon the factors and methods set forth in subsections (i) through (vii) above before the foreclosure shall constitute *prima facie* evidence that the foreclosure bid was equal to or greater than the fair market value of the Mortgaged Property on the foreclosure date.

(e) Lender may, at Lender's option, comply with these provisions in the manner permitted or required by Title 5, Section 51.002 of the Texas Property Code (relating to the sale of real estate) or by Chapter 9 of the Texas Business and Commerce Code (relating to the sale of collateral after default by a debtor), as those titles and chapters now exist or may be amended or succeeded in the future, or by any other present or future articles or enactments relating to same subject. Unless expressly excluded, the Mortgaged Property shall include Rents collected before a foreclosure sale, but attributable to the period following the foreclosure sale, and Borrower shall pay such Rents to the purchaser at such sale. At any such sale:

- (i) whether made under the power contained in this Instrument, Section 51.002 of the Texas Property Code, Chapter 9 of the Texas Business and Commerce Code, any other legal requirement or by virtue of any judicial proceedings or any other legal right, remedy or recourse, it shall not be necessary for Trustee to have physically present, or to have constructive possession of, the Mortgaged Property (Borrower shall deliver to Trustee any portion of the Mortgaged Property not actually or constructively possessed by Trustee immediately upon demand by Trustee) and the title to and right of possession of any such property shall pass to the purchaser as completely as if the property had been actually present and delivered to the purchaser at the sale;
- (ii) each instrument of conveyance executed by Trustee shall contain a general warranty of title, binding upon Borrower;
- (iii) the recitals contained in any instrument of conveyance made by Trustee shall conclusively establish the truth and accuracy of the matters recited in the Instrument, including nonpayment of the Indebtedness and the advertisement and conduct of the sale in the manner provided in this Instrument and otherwise by law and the appointment of any successor Trustee;
- (iv) all prerequisites to the validity of the sale shall be conclusively presumed to have been satisfied;
- (v)

the receipt of Trustee or of such other party or officer making the sale shall be sufficient to discharge to the purchaser or purchasers for such purchaser(s)' purchase money, and no such purchaser or purchasers, or such purchaser(s)' assigns or personal representatives, shall thereafter be obligated to see to the application of such purchase money or be in any way answerable for any loss, misapplication or nonapplication of such purchase money;

- (vi) to the fullest extent permitted by law, Borrower shall be completely and irrevocably divested of all of Borrower' s right, title, interest, claim and demand whatsoever, either at law or in equity, in and to the property sold, and such sale shall be a perpetual bar to any claim to all or any part of the property sold, both at law and in equity, against Borrower and against any person claiming by, through or under Borrower; and
- (vii) to the extent and under such circumstances as are permitted by law, Lender may be a purchaser at any such sale.

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

45. TRUSTEE.

(a) Trustee may resign by giving of notice of such resignation in writing to Lender. If Trustee shall die, resign or become disqualified from acting under this Instrument or shall fail or refuse to act in accordance with this Instrument when requested by Lender or if for any reason and without cause Lender shall prefer to appoint a substitute trustee to act instead of the original Trustee named in this Instrument or any prior successor or substitute trustee, Lender shall have full power to appoint a substitute trustee and, if preferred, several substitute trustees in succession who shall succeed to all the estate, rights, powers and duties of the original Trustee named in this Instrument. Such appointment may be executed by an authorized officer, agent or attorney-in-fact of Lender (whether acting pursuant to a power of attorney or otherwise), and such appointment shall be conclusively presumed to be executed with authority and shall be valid and sufficient without proof of any action by Lender.

(b) Any successor Trustee appointed pursuant to this Section shall, without any further act, deed or conveyance, become vested with all the estates, properties, rights, powers and trusts of the predecessor Trustee with like effect as if originally named as Trustee in this Instrument; but, nevertheless, upon the written request of Lender or such successor Trustee, the Trustee ceasing to act shall execute and deliver an instrument transferring to such successor Trustee, all the estates, properties, rights, powers and trusts of the Trustee so ceasing to act, and shall duly assign, transfer and deliver any of the property and monies held by the Trustee ceasing to act to the successor Trustee.

(c) Trustee may authorize one or more parties to act on Trustee' s behalf to perform the ministerial functions required of Trustee under this Instrument, including the transmittal and posting of any notices.

46. VENDOR' S LIEN; RENEWAL AND EXTENSION. The Note is in renewal and extension, but not in extinguishment, of the following indebtedness: N/A.

47. NO FIDUCIARY DUTY. Lender owes no fiduciary or other special duty to Borrower.

48. FIXTURE FILING. This Instrument is also a fixture filing under the Uniform Commercial Code of Texas.

49. ADDITIONAL PROVISIONS REGARDING ASSIGNMENT OF RENTS. Section 3 shall not be construed to require a *pro tanto* or other reduction of the Indebtedness resulting from the assignment of Rents. If the provisions of Section 3 and the preceding sentence cause the assignment of Rents in Section 3 to be deemed to be an assignment for additional security only, Lender shall be entitled to all rights, benefits and remedies attendant to such collateral assignment. The assignment of Rents contained in Section 3 shall terminate upon the release of this Instrument.

50. LOAN CHARGES. Borrower and Lender intend at all times to comply with the laws of the State of Texas governing the maximum rate or amount of interest payable on or in connection with the Indebtedness (or applicable United States federal law to the extent that it permits Lender to contract for, charge, take, reserve or receive a greater amount of interest than under Texas law). If the applicable law is ever judicially interpreted so as to render usurious any amount payable under the Note, this Instrument or any other Loan Document, or contracted for, charged, taken, reserved or received with respect to the Indebtedness, or if acceleration of the maturity of the Indebtedness, or if

any prepayment by Borrower results in Borrower having paid any interest in excess of that permitted by any applicable law, then Borrower and Lender expressly intend that all excess amounts collected by Lender shall be applied to reduce the unpaid principal balance of the Indebtedness (or, if the Indebtedness has been or would thereby be paid in full, shall be refunded to Borrower), and the provisions of the Note, this Instrument and the other Loan Documents immediately shall be deemed reformed and the amounts thereafter collectible under the 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. The right to accelerate the maturity of the Indebtedness does not include the right to accelerate any interest which has not otherwise accrued on the date of such acceleration, and Lender does not intend to collect any unearned interest in the event of acceleration. All sums paid or agreed to be paid to Lender for the use, forbearance or detention of the Indebtedness shall, to the extent permitted by any applicable law, be amortized, prorated, allocated and spread throughout the full term of the Indebtedness until payment in full so that the rate or amount of interest on account of the Indebtedness does not exceed the applicable usury ceiling. Notwithstanding any provision contained in the Note, this Instrument or any other Loan Document that permits the compounding of interest, including any provision by which any accrued interest is added to the principal amount of the Indebtedness, the total amount of interest that Borrower is obligated to pay and Lender is entitled to receive with respect to the Indebtedness shall not exceed the amount calculated on a simple (i.e., noncompounded) interest basis at the maximum rate on principal amounts actually advanced to or for the account of Borrower, including all current and prior advances and any advances made pursuant to the Instrument or any other Loan Document (such as for the payment of Impositions and similar expenses or costs).

51. ENTIRE AGREEMENT. THIS INSTRUMENT, THE NOTE AND THE OTHER LOAN DOCUMENTS REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.

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

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

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

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

CENTURY PROPERTIES FUND XVII, a California limited partnership

By: Fox Partners, a California general partnership, its managing general partner

By: Fox Capital Management Corporation, a California corporation, its managing general partner

By: /s/Patti K. Fielding
Patti K. Fielding
Executive Vice President and
Treasurer

STATE OF Colorado, Denver City and County ss:

BEFORE ME, the undersigned, a Notary Public in and for said County and State, on this day personally appeared Patti K. Fielding, Executive Vice President and Treasurer of Fox Capital Management Corporation, a California corporation, managing general partner of Fox Partners, a California general partnership, managing general partner of Century Properties Fund XVII, a California limited partnership, the limited partnership that executed the foregoing instrument, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that the same was the act of the said limited partnership, and that she executed the same as the act of such limited partnership for the purposes and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 25th day of June, 2008.

Sonya L. Surret
Notary Public in and for Denver City and County, State of Colorado

FEDERAL HOME LOAN MORTGAGE CORPORATION

By: /s/Phillip F. Cathlina
Name: Phillip F. Cathlina
Title: Regional Underwriting and Credit
Director

STATE OF Illinois, Chicago/Cook City/County ss:

BEFORE ME, the undersigned, a Notary Public in and for said County and State, on this day personally appeared Phillip F. Cathlina, Regional Underwriting and Credit Director of the Federal Home Loan Mortgage Corporation, the corporation that executed the foregoing instrument, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that the same was the act of the said corporation, and that he/she executed the same as the act of such corporation for the purposes and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 23rd day of June, 2008.

Jessica Broderick
Notary Public in and for Cook County, State of Illinois

SEEN AND AGREED:

GUARANTOR:

AIMCO PROPERTIES, L.P., a Delaware limited partnership

By: AIMCO-GP, Inc., a Delaware corporation, General Partner

By: /s/Patti K. Fielding
Patti K. Fielding
Executive Vice President and Treasurer

STATE OF COLORADO, Denver City/County ss:

~~BEFORE ME, the undersigned Notary Public in and for the State of Colorado, personally appeared Patti K. Fielding, Executive Vice President and Treasurer of AIMCO-GP, Inc., a Delaware corporation, the general partner of AIMCO Properties, L.P., a Delaware limited partnership, who executed the foregoing instrument, knowing the person whose name is subscribed to the foregoing instrument and acknowledging to the best of his or her knowledge that he or she is a limited partner in the partnership and that the execution of the same for such partnership is for the purposes and consideration therein expressed and he or she is duly authorized to do so.~~

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 25th day of June 2008.

Sonya L. Surret
Notary Public in and for Denver City and County, State of Colorado

EXHIBIT A

[DESCRIPTION OF THE LAND]

EXHIBIT B

MODIFICATIONS TO INSTRUMENT

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

I. TRANSACTION SPECIFIC MODIFICATIONS

1. Section 21(c)(vii) is deleted in its entirety.
2. In the third paragraph of text on page three which starts with the phrase "TO SECURE TO LENDER...", the words "Multifamily Note" are revised to read "Amended and Restated Multifamily Note"
3. In Section 1(z), the words "Multifamily Note" are revised to read "Amended and Restated Multifamily Note".
4. Section 33 is deleted in its entirety and is replaced with the following:

“33. LIMITS ON ASSETS OF BORROWER.

(a) Until the Indebtedness is paid in full, Borrower (i) shall not acquire any real or personal property other than (1) the Mortgaged Property and personal property related to the operation and maintenance of the Mortgaged Property, and (2) Highland Park (collectively, the “**Permitted Properties**”), and (3) personal property related to the operation and maintenance of any of the Permitted Properties; (ii) shall not operate any business other than the management and operation of the Mortgaged Property and the Permitted Property; and (iii) shall not maintain its assets in a way difficult to segregate and identify. Notwithstanding anything to the contrary set forth herein or otherwise in the Loan Documents, it shall not be breach or an Event of Default for the Borrower to have an ownership interest in the entities that currently own the properties known as Peakview Place, Creekside and Hampden Heights ("Permitted Assets")._

(b) Borrower shall not obtain any financing secured by any of the Permitted Properties or partnership interests of Borrower if the result would be that the loan to value ration - being the ration of the aggregate of all financing secured by such Permitted Property or partnership interests of Borrower to the then current value of such Permitted Property, as determined by Lender - exceeds 65%.

(c) In the event a Permitted Property is encumbered with a first priority mortgage, trust deed, or deed of trust purchased by Freddie Mac, then the terms and conditions of that mortgage, trust deed or deed of trust will supersede the terms and conditions of Section 33(b).

(d) Borrower shall not be restricted in its ability to incur unsecured debt which relates to the operation of any of the Permitted Properties or the Permitted Assets in the ordinary course of business.”

5. The definition of “**Governmental Authority**” is modified to add the following at the end thereof:
“except as related to a Permitted Property or a Permitted Asset other than the Mortgaged Property.”
6. A new Section 53 is added as follows:

“53. NO NOVATION; NO DEFENSES.

(a) Neither this Instrument nor the Note is a substitution or novation of the indebtedness of the Original Note. Neither this Instrument nor the Note extinguishes the indebtedness of the Original Note or discharges or releases or in any way adversely affects the lien or lien priorities of the Original Mortgage or any other security for the indebtedness of the Original Note. In the event that any of the provisions of this Instrument shall be construed by a court of competent jurisdiction as operating to affect the lien priority of the Original Mortgage over claims which would otherwise be subordinate thereto, then at the sole option of Lender, Lender may treat such provisions as void and of no force or effect and enforce the provisions of the Original Mortgage as modified by this Instrument excluding

such provisions, or at the sole option of Lender, Lender may enforce the Original Mortgage pursuant to the terms therein contained, independent of this Instrument to the extent that third persons acquiring an interest in such real property between the time of recording of the Original Mortgage and the recording hereof are prejudiced by this Instrument. However, if Lender elects either such option, the parties hereto, as between themselves, shall in all events be bound by all the terms and conditions of this Instrument and the Note until all Indebtedness owing from Borrower to Lender shall have been paid in full.

(b) Borrower hereby confirms that it has no defenses or offsets of any kind against any of the indebtedness due under the Original Note. Borrower hereby waives any claim which it may have with respect to the Original Note or Original Mortgage, or any other document executed in connection therewith or related thereto, as the same may have been modified, or as hereby or hereafter modified. Borrower agrees not to raise any such defenses or claims in any civil proceedings or otherwise.

II. AIMCO STANDARD.

A. The definition of Attorneys Fees and Costs in Section 1(a) is deleted and every reference in this Instrument to "Attorneys Fees and Costs" is deleted and replaced with "attorneys fees and costs".

B. Section 1(m) is changed to read as follows:

(m) "**Hazardous Materials Laws**" means all federal, state, and local laws, ordinances, rules, regulations, administrative rulings, court judgments, and decrees, and all mandatory standards, policies and other governmental requirements in effect now or in the future, including all amendments, that relate to Hazardous Materials and apply to Borrower or to the Mortgaged Property. Hazardous Materials Laws include, but are not limited to, the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. Section 9601, *et seq.*, the Resource Conservation and Recovery Act of 1976, 42 U.S.C. Section 6901, *et seq.*, the Toxic Substance Control Act, 15 U.S.C. Section 2601, *et seq.*, the Clean Water Act, 33 U.S.C. Section 1251, *et seq.*, and the Hazardous Materials Transportation Act, 49 U.S.C. Section 5101, and their state analogs.

C. Section 1(q) is modified to read as follows:

(q) "**Initial Owners**" means, with respect to Borrower or any other entity, the persons or entities that (i) on the date of the Note, or (ii) on the date of a Transfer to which Lender has consented or to which consent is not required, own in the aggregate 100 percent of the ownership interests in Borrower or that entity.

D. Section 1(bb) is modified to read as follows:

(bb) "**Personalty**" means all

(i) accounts (including deposit accounts);

(ii) equipment and inventory owned by Borrower, which are used now or in the future exclusively in connection with the ownership, management or operation of the Land or Improvements or are located on the Land or Improvements, including furniture, furnishings, machinery, building materials, goods, supplies, tools, books, records (whether in written or electronic form), computer equipment (hardware and software);

(iii) other tangible personal property including ranges, stoves, microwave ovens, refrigerators, dishwashers, garbage disposers, washers, dryers and other appliances (other than Fixtures) which are used now or in the future exclusively in connection with the ownership, management or operation of the Land or the Improvements or are located on the Land or in the Improvements;

(iv) any operating agreements relating exclusively to the Land or the Improvements;

- (v) any surveys, plans and specifications and contracts for architectural, engineering and construction services relating exclusively to the Land or the Improvements;
- (vi) all other intangible property, general intangibles and rights relating exclusively to the operation of, or used exclusively in connection with, the Land or the Improvements, including all governmental permits relating exclusively to any activities on the Land and including subsidy or similar payments received from any sources, including a governmental authority; and
- (vii) any rights of Borrower in or under letters of credit which is issued now or in the future exclusively in connection with the ownership, management or operation of the Land or the Improvements.

E. The second and third sentences of Section 2 (a) are modified to read as follows:

Borrower hereby authorizes Lender to prepare and file financing statements, continuation statements and financing statement amendments in such form as Lender may reasonably require to perfect or continue the perfection of this Security Instrument and Borrower agrees, if Lender so requests, to execute and deliver to Lender such financing statements, continuation statements and amendments. Borrower shall pay all filing costs and all costs and expenses of any record searches for financing statements and/or amendments that Lender reasonably may require.

F. Section 4(b) is changed to read as follows:

(b) Until Lender gives notice to Borrower of Lender's exercise of its rights under this Section 4, Borrower shall have all rights, power and authority granted to Borrower under any Lease (except as otherwise limited by this Section or any other provision of this Instrument), including the right, power and authority to modify the terms of any Lease or extend or terminate any Lease. Upon the occurrence and during the continuance of an Event of Default, the permission given to Borrower pursuant to the preceding sentence to exercise all rights, power and authority under Leases shall automatically terminate. Borrower shall comply with and observe Borrower's obligations under all Leases, including Borrower's obligations pertaining to the maintenance and disposition of tenant security deposits.

G. Except in a case where Lender in its discretion determines that an emergency exists, Lender may take actions specified in Section 12(a) only if Lender has provided Borrower with Notice of Borrower's failure to perform any of its obligations under this Instrument or any other Loan Document and Borrower does not cure the failure within 10 days after such Notice. If Lender so determines that an emergency exists, Lender shall notify Borrower of the action taken within ten days after the action is taken.

H. Section 11(f) is deleted and replaced with the following:

(f) subdivide or otherwise split any tax parcel constituting all or any part of the Mortgaged Property without the prior consent of Lender, which consent shall not be unreasonably withheld.

I. The first sentence of Section 13(a) is deleted and replaced with the following:

Lender, its agents, representatives, and designees may make or cause to be made entries upon and inspections of the Mortgaged Property (including environmental inspections and tests) during normal business hours, or at any other reasonable time upon at least 48 hours prior written notice to Borrower.

J. The last sentence of Section 14(b) is deleted.

K. Sections 14(c)(iii) and 14(d)(ii) are modified to read as follows:

(c)(iii) a statement that identifies all owners of any interest in Borrower and each general partner in Borrower, and confirming that the ownership of each other Controlling Entity has not changed in a manner that violates Section 21 of this Instrument;

(d) (ii) a quarterly or year to date income and expense statements for the Mortgaged Property relating to a quarterly period ending no later than 45 days before the request;

L. For purposes of Section 14(b) through (e), Borrower shall be deemed to have delivered any statement or document "upon Lender's request" if Borrower has delivered the document promptly following Lender's request.

M. Notwithstanding Section 14(f) or (g), unless an Event of Default has occurred and is continuing, Lender may require that the financial statements required by Sections 14(b), 14(c)(i) and 14(c)(ii) be audited, but may not require that any other financial statements required by Section 14 be audited. Certification of a statement by the chief financial officer of the entity that is the subject of the statement or, in the case of a partnership, the chief financial officer of the general partner, will be acceptable to Lender as certification by an individual having authority to bind Borrower.

N. Section 15(b) is deleted and replaced with the following:

(b) Subject to the provisions of Section 15(c) and Section 19(b), Borrower shall pay the expenses of operating, managing, maintaining and repairing the Mortgaged Property (including insurance premiums, utilities, repairs and replacements) before the last date upon which each such payment may be made without any penalty or interest charge being added.

O. So long as Borrower is contesting the amount and validity of any Imposition other than insurance premiums diligently and in good faith as described in Section 15(d) and all of the conditions specified in clauses (i) through (iv) of Section 15(d) are satisfied, Lender will refrain from applying Imposition Deposits to payment of the contested Imposition.

P. Section 16 is modified to read as follows:

16. **LIENS; ENCUMBRANCES.** Borrower acknowledges that, to the extent provided in Section 21, the grant, creation or existence of any mortgage, deed of trust, deed to secure debt, security interest or other lien or encumbrance (a "Lien") on the Mortgaged Property (other than (i) the lien of this Instrument, and (ii) the Subordinate Debt defined in Section RR of Exhibit B to this Instrument), or on certain ownership interests in Borrower, whether voluntary, involuntary or by operation of law, and whether or not such lien has priority over the lien of this Instrument, is a "Transfer" which constitutes an Event of Default and subjects Borrower to personal liability under the Note.

Q. The following is added to the end of Section 17(f):

and (iv) in connection with repairs to the Mortgaged Property which are required to address lifesafety issues or that result in the displacement of tenants occupying less than ten percent of the occupied units at the Mortgaged Property at any one time.

R. For purposes of Section 8(b), "pre-packaged supplies, cleaning material and petroleum products customarily used in the operation and maintenance of comparable multifamily properties" shall include, without limitation, pool, spa, maintenance and gardening materials.

S. The second sentence of Section 18(c) is modified to read as follows:

Borrower shall not lease or allow the sublease or use of all or any portion of the Mortgaged Property to any tenant or subtenant for nonresidential use by any user that, in the ordinary course of its business, would be reasonably expected to cause or permit any Prohibited Activity or Condition.

- T. For purposes of Section 18(d), Borrower shall only be obligated to pay out-of-pocket expenses incurred by Lender in connection with the monitoring and review of an O&M Program and Borrower's performance to the extent such expenses are reasonable.
- U. Borrower's representation and warranty in Section 18(e)(iv) regarding requirements for notification regarding releases of Hazardous Materials shall relate only to such releases, if any, at the Mortgaged Property.
- V. Section 18(e)(iii) is modified by inserting the following at the beginning thereof:
- (iii) except to the extent previously disclosed by Borrower to Lender in writing,
 - W. Section 18(e)(v) is modified to read as follows:
 - (v) to the best of Borrower's knowledge after reasonable and diligent inquiry, no event has occurred with respect to the Mortgaged Property that constitutes, or with the passing of time or the giving of notice would reasonably be expected to constitute, noncompliance with the terms of any Environmental Permit;
- X. Section 18(f)(ii) is deleted and replaced with the following:
- (ii) Borrower's receipt of or knowledge of any written complaint, order, notice of violation or other communication from any Governmental Authority or other person with regard to present or future alleged Prohibited Activities or Conditions, affecting the Mortgaged Property or any other property of Borrower that is adjacent to the Mortgaged Property;
- Y. Section 18(g) is modified to read as follows:
- (g) Borrowers shall promptly pay the costs of any environmental inspections, tests or audits, a purpose of which is to identify the extent or cause of or potential for a Prohibited Activity or Condition ("**Environmental Inspections**") required by Lender in connection with or in preparation for any foreclosure or deed in lieu of foreclosure. Borrowers shall also promptly pay the reasonable costs of any Environmental Inspections required by Lender in connection with, or as a condition of Lender's consent to any Transfer under Section 21, or required by Lender following a reasonable determination by Lender that Prohibited Activities or Conditions may exist. Any such costs incurred by Lender (including the fees and out-of-pocket costs of attorneys and technical consultants whether incurred in connection with any judicial or administrative process or otherwise) which Borrower fails to promptly pay shall become an additional part of the Indebtedness as provided in Section 12. The results of all Environmental Inspections made by Lender in connection with or in preparation for any foreclosure or deed in lieu of foreclosure shall at all times remain the property of Lender and Lender shall have no obligation to disclose such results to or otherwise make such results available to Borrower or any other party. Lender will make available to Borrower the results of all other Environmental Inspections made by Lender. Lender hereby reserves the right, and Borrower hereby expressly authorizes Lender, to make available to any party, including any prospective bidder at a foreclosure sale of the Mortgaged Property, the results of any Environmental Inspections made by or for Lender with respect to the Mortgaged Property. Borrower consents to Lender notifying any party (either as part of a notice of sale or otherwise) of the results of any Environmental Inspections made by or for Lender. Except in the case of an Environmental Inspection performed in connection with a foreclosure or deed in lieu of foreclosure, or a disclosure of Environmental Inspection results that Lender is required by law to make, Lender shall notify Borrower of its intention to disclose such information and shall give Borrower ten days to provide supplemental information, explanations or corrections to accompany the disclosure. Borrower acknowledges that Lender cannot control or otherwise assure the truthfulness or accuracy of the results of any Environmental Inspections made by or for Lender and that the release of such results to prospective bidders at a foreclosure sale of the Mortgaged Property may have a material and adverse effect upon the amount which a party may bid at such sale.

Borrower agrees that Lender shall have no liability whatsoever as a result of delivering the results of any of its Environmental Inspections to any third party, and Borrower hereby releases and forever discharges Lender from any and all claims, damages, or causes of action, arising, out of, connected with or incidental to the results of, the delivery of any Environmental Inspections made by or for Lender.

Z. Lender shall not commence Remedial Work under the second sentence of Section 18(h) unless Lender has given Borrower notice of its intention to do so and Borrower has not begun performing the Remedial Work within 10 days after such notice.

AA. The following sentence is added at the end of Section 18(j):

However, Borrower shall have no obligation to indemnify any of the foregoing parties to the extent that the proceedings, claims, damages, penalties or costs arise out of the gross negligence or willful misconduct of Lender, any prior owner or holder of the Note, the Loan Servicer or any prior Loan Servicer.

BB. Section 18(k) is deleted and replaced with the following:

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

CC. For purposes of Section 19(d), an insurance company will be acceptable to Lender if it has a rating in Best's Key Rating Guide of at least "A-" and a financial size category of at least "v".

DD. Section 19(g) is deleted and replaced with the following:

(g) Notwithstanding any provision to the contrary in this Section 19, as long as no Event of Default, or any event which, with the giving of Notice or the passage of time, or both, would constitute an Event of Default, has occurred and is continuing,

(i) in the event of a casualty resulting in damage to the Mortgaged Property which will cost \$250,000 or less to repair, the Borrower shall have the sole right to make proof of loss, adjust and compromise the claim and collect and receive any proceeds directly without the approval or prior consent of the Lender so long as the insurance proceeds are used solely for the Restoration of the Mortgaged Property; and

(ii) in the event of a casualty resulting in damage to the Mortgaged Property which will cost more than \$250,000 but less than \$500,000 to repair, the Borrower is authorized to make proof of loss and adjust and compromise the claim without the prior consent of Lender, and Lender shall hold the applicable insurance proceeds to be used to reimburse Borrower for the cost of Restoration of the Mortgaged Property and shall not apply such proceeds to the payment of sums due under this Instrument.

EE. For purposes of Section 19(i), Lender shall automatically succeed to rights of Borrower in and to insurance policies and unearned premiums only to the extent permitted by the applicable policies and insurance companies.

FF. Section 21(e)(ii) is modified to read as follows:

(ii) if Borrower is a limited partnership, a Transfer of (A) any general partnership interest (except for a Transfer to a Qualified REIT Subsidiary, as defined in Section 856(i)(2) of the Internal Revenue Code of 1986, of Apartment Investment and Management Company, a Maryland corporation or to a Qualified REIT Subsidiary, as defined in Section 856(1)(i) of the Internal Revenue Code of 1986, 100% owned by AIMCO OP), or (B) limited partnership interests in Borrower that would cause the Initial Owners of Borrower to own less than 51% of all limited partnership interests in Borrower;

GG. New Sections 21(c)(viii), 21(c)(ix), 21(c)(x), and 21(c)(xi) are added, as follows:

- (viii) The Transfer of any limited or general partnership interests in Borrower provided no Change of Control [as defined in new Section 21(g)] occurs as a result of such Transfer.
- (ix) The Transfer of shares of common stock, limited partnership interests or other beneficial or ownership interests or other forms of securities in AIMCO REIT or AIMCO OP, and the issuance of all varieties of convertible debt, equity and other similar securities of AIMCO REIT or AIMCO OP, and the subsequent Transfer of such securities; provided, however, that no Change of Control occurs as a result of such Transfer, either upon such Transfer or upon the subsequent conversion to equity of such convertible debt or other securities.
- (x) The issuance by AIMCO REIT or AIMCO OP of additional common stock, limited partnership interests or other beneficial or ownership interests, convertible debt, equity and other similar securities, and the subsequent Transfer of such convertible debt or securities; provided, however, that no Change of Control occurs as the result of such Transfer, either upon such Transfer or upon the subsequent conversion to equity of such convertible debt or other securities.
- (xi) So long as AIMCO REIT owns 100% of the stock of AIMCO-LP, Inc., a Transfer of limited partnership interests that results in AIMCO-LP, Inc. owning not less than 50.1% of the limited partnership interests in AIMCO OP.

HH. Section 21(c)(ix) shall apply only to a Transfer of an interest in a Controlling Entity that is prohibited by Section 21(e)(viii).

II. A new Section 21(g) is added, as follows:

- (g) For purposes of this Section 21, the following terms shall be defined as follows:
 - (i) "Change of Control" shall mean the earliest to occur of:
 - (A) the date an Acquiring Person becomes (by acquisition, consolidation, merger or otherwise), directly or indirectly, the beneficial owner of more than forty percent (40%) of the total Voting Equity Capital of AIMCO REIT then outstanding, or
 - (B) the date on which AIMCO REIT shall cease to hold (whether directly or indirectly through a wholly owned intermediary entity such as AIMCO-LP, Inc. or AIMCO-GP, Inc.) at least 50.1% of the limited partnership interests in AIMCO OP, or
 - (C) the date on which AIMCO REIT shall cease for any reason to hold (whether directly or indirectly) (1) the interests in the Managing General Partner held as of the date of this Instrument (as evidenced by organizational charts and documents submitted to Lender as of such date) and (2) the Controlling Interest(s) in the Borrower, or
 - (D) the replacement (other than solely by reason of retirement at age sixty-five or older, death or disability) of more than 50% (or such lesser percentage as is required for decision making by the board of directors of trustees, if applicable) of the members of the board of directors (or trustee, if applicable) of AIMCO REIT over a one-year period where such replacement shall not have been approved by a vote of at least a majority of the board of directors (or trustees, if applicable) of AIMCO REIT then still in office who either were members of such board of directors (or trustees, if applicable) at the beginning of such one year period or whose election as

members of the board of directors (or trustees, if applicable) was previously so approved.

- (ii) "Acquiring Person" shall mean a "person" or group of "persons" within the meaning of Sections 13(d) and 14(d) of the Securities Exchange Act of 1934, as amended. However, notwithstanding the foregoing, "Acquiring Person" shall not be deemed to include any member of the Borrower Control Group unless such member has, directly or indirectly, disposed of, sold or otherwise transferred to, or encumbered or restricted (whether by means of voting trust agreement or otherwise) for the benefit of an Acquiring Person, all or any portion of the Voting Equity Capital of AIMCO REIT directly or indirectly owned or controlled by such member or such member directly or indirectly votes all or any portion of the Voting Equity Capital of AIMCO REIT, directly or indirectly, owned or controlled by such member for the taking of any action which, directly or indirectly constitutes or would result in a Change of Control, in which event such member of the Borrower Control Group shall be deemed to constitute an Acquiring Person to the extent of the Voting Equity Capital of AIMCO REIT owned or controlled by such member.
- (iii) "Borrower Control Group" shall mean a majority of the board of directors of AIMCO REIT.
- (iv) A "Person" shall mean an individual, an estate, a trust, a corporation, a partnership, a limited liability company or any other organization or entity (whether governmental or private).
- (v) "Security" shall have the same meaning as in Section 2(1) of the Securities Act of 1933, as amended.
- (vi) "Controlling Interest(s)" shall mean:
 - (A) with respect to a partnership, such majority and/or managing general partner interests which, together with a majority of limited partnership interests if necessary for consent purposes, vest in the holder of such interests the sole power, right and authority to control the day to day operations of the Borrower; including, without limitation, the authority to manage, operate and finance the Mortgaged Property,
 - (B) with respect to a corporation, the number of shares which entitle the holder to elect a majority of the board of directors of the Borrower, and
 - (C) with respect to a limited liability company, such majority and/or managing member interests as vest in the holder of such interests the sole power, right and authority to control the day to day operations of the Borrower; including, without limitation, the authority to manage, operate and finance the Mortgaged Property.
- (vii) "AIMCO REIT" shall mean Apartment Investment and Management Company, a corporation organized and existing under the laws of the State of Maryland.
- (viii) "AIMCO OP" shall mean AIMCO Properties, L.P., a limited partnership organized and existing under the laws of the State of Delaware.
- (ix) "Managing General Partner" shall mean the entity executing this Instrument on behalf of the Borrower and/or its successors or assigns in interest.

- (x) "Voting Equity Capital" shall mean Securities of any class or classes, the holders of which are ordinarily, in the absence of contingencies, entitled to elect a majority of the board of directors (or Persons performing similar functions).

JJ. Section 21(f)(vi) is modified to replace clause (A) with the following:

(A) the execution by Borrower, Guarantor, the transferee, and any new guarantor of Lender's then-standard assumption agreement that, among other things, (1) requires the transferee to perform all obligations of Borrower set forth in the Note, this Instrument and any other Loan Documents, (2) if Borrower has provided Lender with a current environmental report pertaining to the Mortgaged Property establishing to Lender's reasonable satisfaction that no Prohibited Activities or Conditions exist, releases the transferor Borrower and the original Guarantor from liability under Section 18 of this Instrument other than for conditions that may have existed prior to the date of the transfer, and (3) may require that the transferee comply with any provisions of this Instrument or any other Loan document that previously may have been waived or modified by Lender.

KK. Section 21(h) is hereby added as follows:

(h) Lender shall consent to a one-time substitution of the Mortgaged Property for another multifamily apartment rental property (the "**Substitution**"), which shall not result in an adjustment to the rate at which the Indebtedness secured by this Instrument bears interest provided that Borrower has satisfied each of the following requirements:

- (i) there shall exist no Event of Default uncured within any applicable grace period.
- (ii) the loan to value ratio with respect to the substituted property (the "Substituted Property") at the time of the proposed Substitution is not greater than the lesser of (A) the loan to value ratio of the Mortgaged Property which exists as of the date hereof, or (B) the then current loan to value ratio of the Mortgaged Property at the time of any such Substitution based on an MAI appraisal (prepared by an appraiser acceptable to Lender and paid for by Borrower) at the time of any such Substitution. (As used herein, "loan to value ratio" means the ratio of (A) the outstanding principal balance of the Indebtedness to (B) the value of the Substituted Property as determined by Lender in its discretion, expressed as a percentage);
- (iii) the debt service coverage ratio with respect to the Substituted Property for the last twelve full months preceding the proposed Substitution is not less than the greater of (A) the debt service coverage ratio for the Mortgaged Property which exists as of the date hereof, or (B) the then current debt service coverage ratio for the Mortgaged Property at the time of any such Substitution. (As used herein, the term "debt service coverage ratio" means the ratio of (1) the annual net operating income from the Substituted Property's operations during the preceding twelve month period which is available for repayment of debt, after deducting reasonable and customary operating expenses, to (2) the annual principal and interest payable under the Note);
- (iv) any such Substitution shall be approved only following the date which is ten years from the date of this Instrument;
- (v) Lender shall have received an environmental report on the Substituted Property showing that no Phase II environmental report is required;
- (vi)

Lender shall have received an engineering report on the Substituted Property showing that there are at least ten (10) years of useful life remaining with respect to the Substituted Property;

- (vii) Lender shall have received the amount of Lender's out-of-pocket costs (including, without limitation, reasonable Attorneys' Fees and the costs of engineering reports, appraisals and environmental reports) incurred in reviewing the Substitution request and implementing the Substitution;
- (viii) Lender shall have received a new currently dated mortgagee's title insurance policy in the form and containing the exceptions acceptable to Lender according to its standards for title insurance policies in place at the time of the Substitution, insuring the mortgage secured by the Substituted Property;
- (ix) Lender shall have received a currently dated survey of the Substituted Property, acceptable to Lender in accordance with its standards and requirements for surveys in place at the time of the substitution;
- (x) The physical condition, location and other aspects of the Substituted Property shall be substantially comparable to the Mortgaged Property as determined by Lender in its reasonable discretion;
- (xi) If the Substitution is approved, (A) Borrower shall have executed and delivered to Lender for recordation an amendment to this Instrument in form and substance acceptable to Lender in its discretion, substituting the Substituted Property for the Mortgaged Property; and (B) Borrower shall have executed and delivered such additional documentation, including without limitation new Uniform Commercial Code Financing Statements, as Lender may reasonably require to grant Lender a perfected first lien and security interest in the Substituted Property and to otherwise implement the Substitution in accordance with this Section.

LL. Section 22(a) is modified to read as follows:

(a) any failure by Borrower to pay or deposit (i) any payment of principal or interest or any Imposition Deposit within three days after it is due, or (ii) any other amount required by the Note, this Instrument, or any other Loan Document when due.

MM. Section 22(e) is deleted and replaced with the following:

(e) Intentionally omitted.

NN. Section 22(l) is deleted and replaced with the following:

(l) any of Borrower's representations and warranties in this Instrument is knowingly false or misleading in any material respect.

OO. Section 28 shall obligate Borrower to provide only such further assurances as Lender reasonably may require.

PP. The words "Except as otherwise disclosed to Lender in writing, before the date of this Instrument" are added at the beginning of the second sentence of Section 39.

QQ. Section 30(b) is deleted and replaced with the following:

(b) Borrower agrees that any controversy arising under or in relation to the Note, this Instrument, or any other Loan Document shall be litigated exclusively in the

Property Jurisdiction. The state and federal courts and authorities with jurisdiction in the Property Jurisdiction shall have exclusive jurisdiction over all controversies which shall arise under or in relation to the Note, any security for the Indebtedness, or any other Loan Document. Borrower irrevocably consents to service, jurisdiction, and venue of such courts for any such litigation and waives any other venue to which it might be entitled by virtue of domicile, habitual residence or otherwise.

RR. Section **54. Subordinate Debt** is added as follows:

54. SUBORDINATE DEBT. Borrower may incur indebtedness other than the Indebtedness provided each of the following terms and conditions are satisfied:

(a) any such indebtedness ("**Subordinate Debt**") shall be incurred by Borrower solely for or in respect of the operation of the Mortgaged Property in the ordinary course of business as a residential apartment rental project. Such Subordinate Debt shall be and remain payable to, held by, and in favor of only an "**AIMCO Subordinate Lender**", which shall be defined as: AIMCO REIT, AIMCO OP or any entity in which AIMCO REIT or AIMCO OP holds Controlling Interest(s), whether directly or indirectly, and which entity shall have a term of existence not expiring prior to 10 years after the maturity date of the Note;

(b) except (1) as set forth in Subsection (c), or (2) for any debt secured by an ownership interest in Borrower, any such Subordinate Debt shall be unsecured, and shall not be evidenced by a note or any like instrument;

(c) any Subordinate Debt may be evidenced by a note and/or secured by a lien on the Mortgaged Property and/or the other assets of Borrower provided that:

- (i) the total debt service coverage ratio with respect to the Mortgaged Property after the proposed Subordinate Debt is incurred and/or secured by the Mortgaged Property will equal at least a ratio of 1.10:1, as determined by Lender in its reasonable discretion. (As used herein, the term "total debt service coverage ratio" means the ratio of (A) the annual net operating income from the Mortgaged Property during the preceding 12 month period which is available for repayment of debt, after deducting reasonable and customary operating expenses, to (B) the aggregate annual principal and interest payable under the Note, the proposed Subordinate Debt and any other then existing Subordinate Debt encumbering the Mortgaged Property);
- (ii) the principal amount of such Subordinate Debt, together with the Indebtedness and all other Subordinate Debt then encumbering the Mortgaged Property, shall not exceed 85% of the value of the Mortgaged Property at the time the Borrower incurs the proposed Subordinate Debt, as determined by Lender, in Lender's sole discretion;
- (iii) any note and security instrument evidencing or securing such Subordinate Debt (A) shall by its terms be expressly subordinate to the Indebtedness and to all amendments, extensions and renewals thereof; (B) shall provide that the AIMCO Subordinate Lender cannot exercise its remedies for a default under such Subordinate Debt without the prior written consent of the Lender; (C) shall provide that, so long as the Indebtedness is outstanding, all payments under any such note and/or security therefor shall accrue if the same are unpaid; (D) shall provide that payments shall be made in the following order: (1) amounts due with respect to the operation and maintenance of the Mortgaged Property, including, without limitation, all monthly installments of principal and interest on the Indebtedness and any other operating expenses, capital expenses and tax and insurance payments, (2) amounts due with respect to any Subordinate Debt which is secured by a lien on the Mortgaged Property, and (3)

amounts due with respect to any Subordinate Debt not secured by a lien on the Mortgaged Property; (E) shall provide that the AIMCO Subordinate Lender shall provide Lender with notice of any default under the Subordinate Debt not cured within any applicable grace period at the same time it provides such notice to the Borrower; and (F) shall prominently state that the instrument and the Subordinate Debt are not assignable or otherwise transferable except to another AIMCO Subordinate Lender;

- (iv) Borrower delivers to Lender evidence in writing that the Subordinate Debt loan documents, the total debt service coverage ratio and the aggregate loan to value ratio limitations set forth herein comply in all respects with the provisions of this Section; and
- (v) Borrower's incurring of Subordinate Debt and, if applicable, placement of a subordinate lien on the Mortgaged Property securing such Subordinate Debt shall not constitute an Event of Default under this instrument.

(d) Borrower and the AIMCO Subordinate Lender shall execute such instruments and documents in connection with the status of such Subordinate Debt as Lender shall from time to time reasonably request, such document to be in the form of the subordination agreement attached hereto as Appendix 1. Borrower shall bear any and all expenses necessary in connection with its compliance with the provisions of this subsection (d), including, without limitation, reasonable Attorneys' Fees.

SS. Section 37 is modified by deleting: “; provided, however, that in the event of a Transfer prohibited by or requiring Lender's approval under Section 21, any or some or all of the Modifications to Instrument set forth in Exhibit B (if any) may be modified or rendered void by Lender at Lender’ s option by notice to Borrower and the transferee(s)”. Except for Section TT below and except for the definitions of the terms used in Section TT and not defined therein, the modifications set forth in this Exhibit B shall be null and void unless title to the Mortgaged Property is vested in an entity whose Controlling Interest(s) are directly or indirectly held by AIMCO REIT or AIMCO OP.

TT. Section **55. AIMCO- Held Subordinate Debt** is added as follows:

55. AIMCO-HELD SUBORDINATE DEBT. In connection with a Transfer of the Mortgaged Property which has been consented to by Lender pursuant to Section 21(c), and provided that no Change of Control of Borrower has occurred prior to such Transfer, the proposed transferee (the “**New Borrower**”) may incur indebtedness, other than the Indebtedness and such other indebtedness as is permitted under the terms of this Instrument, secured by a lien upon the Mortgaged Property, provided each of the following terms and conditions are satisfied:

(a) any such indebtedness (“**AIMCO-Held Subordinate Debt**”) shall be incurred by the New Borrower solely in connection with its purchase of the Mortgaged Property;

(b) The AIMCO-Held Subordinate Debt (and any and all documents evidencing such Subordinate Debt) shall be and remain held by and in favor of an AIMCO Subordinate Lender;

(c) on the date of the Transfer, Lender and the AIMCO Subordinate Lender shall execute and record among the applicable land records a subordination agreement in the form of the subordination agreement attached hereto as Appendix 1, or at Lender’ s option in substantially the form of any subordination agreement which may have been entered into by and between Lender (or predecessor to Lender’ s interest hereunder) and any entity in which AIMCO REIT or AIMCO OP holds Controlling Interest(s), whether directly or indirectly, prior to the Transfer and whether or not in connection with the Mortgaged Property, with such modifications as Lender reasonably requires; provided, however, that (i) the AIMCO Subordinate Lender shall have the right to further sell or otherwise transfer the AIMCO-Held Subordinate Debt to AIMCO REIT, AIMCO OP or any entity in which AIMCO REIT or AIMCO OP holds Controlling Interest(s), whether

directly or indirectly, and (ii) the AIMCO Subordinate Lender shall have the right, without Lender's consent, to accept a Transfer of title to the Mortgaged Property from Borrower by (A) deed in lieu of foreclosure or (B) a foreclosure which results in AIMCO Subordinate Lender or an entity in which AIMCO REIT or AIMCO OP hold Controlling Interest(s), directly or indirectly, holding title to the Mortgaged Property, in satisfaction of the AIMCO-Held Subordinate Debt, and such Transfer shall not constitute an Event of Default under this Instrument. As a prerequisite to foreclosure in satisfaction of the AIMCO-Held Subordinate Debt, AIMCO Subordinate Lender shall provide Lender with thirty (30) days prior written notice of the commencement of such foreclosure. Lender shall acknowledge its receipt of such notice in writing within ten (10) business days, and with such acknowledgement shall provide an estimate of the reasonable fees and expenses it expects to incur in connection with the foreclosure. AIMCO Subordinate Lender shall deposit such estimated sum in escrow with Lender or a representative designated by Lender. Promptly upon the conclusion of the foreclosure, any excess sums not expended shall be returned to AIMCO Subordinate Lender or AIMCO Subordinate Lender shall pay to Lender the amount by which the Lender's actual reasonable expenditures exceed the deposited sum.

(d) the combined debt service coverage ratio with respect to the Mortgaged Property after the proposed AIMCO-Held Subordinate Debt is incurred will equal at least a ratio of 1.10:1, as determined by Lender in its reasonable discretion (if the AIMCO-Held Subordinate Debt requires a balloon payment, such payment cannot be due prior to the Maturity Date of the Note.); and Lender has advised the Borrower and New Borrower in writing of such determination prior to the Transfer;

(e) the principal amount of the AIMCO-Held Subordinate Debt, together with the Indebtedness and all other Subordinate Debt then encumbering the Mortgaged Property, shall not exceed 85% of the value of the Mortgaged Property at the time the Borrower incurs the proposed AIMCO-Held Subordinate Debt, as determined by Lender in its sole discretion; and Lender has advised the Borrower and New Borrower in writing of such determination prior to the Transfer;

(f) (i) not less than 40 days prior to the Transfer, the New Borrower must have submitted to Lender or, if Lender is then Freddie Mac, to a party designated by Freddie Mac (the "Designated Seller"), a complete and accurate application, together with all required supporting documentation including a written term sheet specifying all of the terms of the proposed AIMCO-Held Subordinate Debt, for a subordinate mortgage loan in the principal amount of the proposed AIMCO-Held Subordinate Debt (the "Subordinate Loan"); and (ii) 10 days prior to the Transfer, Lender or the Designated Seller must have failed to issue to the proposed transferee a written commitment to provide the Subordinate Loan at an interest rate and upon terms at least as favorable to the proposed transferee as those of the proposed AIMCO-Held Subordinate Debt (and if such commitment is issued, Lender or the Designated Seller shall provide financing to the New Borrower in the amount of the proposed AIMCO-Held Subordinate Loan); and

(g) Borrower has paid all costs and expenses incurred by Lender in connection with the AIMCO-Held Subordinate Debt, including, without limitation, a review fee equal to 0.1% of the outstanding principal balance of the Loan and reasonable attorneys' fees.

Notwithstanding anything in this Instrument which may be deemed to be to the contrary, (i) AIMCO Subordinate Lender shall have the right to sell or otherwise transfer the AIMCO-Held Subordinate Debt to AIMCO REIT, AIMCO OP or any entity in which AIMCO REIT or AIMCO OP holds Controlling Interest(s), whether directly or indirectly, and (ii) shall have the right, without Lender's consent, to accept a Transfer of title to the Mortgaged Property from Borrower by deed-in-lieu of foreclosure or a foreclosure which results in AIMCO Subordinate Lender or an entity in which AIMCO REIT or AIMCO OP hold Controlling Interest(s), directly or indirectly, holding title to the Mortgaged Property, as more specifically set forth above. Such Transfer shall not constitute an Event of Default under this Instrument, and this entire Exhibit B shall automatically be reinstated in its entirety including and without limitation, Sections RR and TT.

APPENDIX 1 TO SECURITY INSTRUMENT

SUBORDINATION AND INTERCREDITOR AGREEMENT

THIS SUBORDINATION AND INTERCREDITOR AGREEMENT ("Agreement") made as of the _____ day of _____, _____, by and between _____, a _____, having an office at _____ (hereinafter referred to as the "Subordinate Mortgagee") and _____, a _____, having an office at _____ (hereinafter referred to as the "Senior Mortgagee").

WITNESSETH:

WHEREAS, the Senior Mortgagee is the owner and holder of that certain mortgage described on Exhibit A attached hereto (said mortgage, and any extensions, modifications, substitutions and consolidations thereof, being hereinafter referred to as the "Senior Mortgage"), covering the _____ estate of _____ (the "Borrower") in certain premises located in the County of _____ and State of _____,

as more particularly described on Exhibit B attached hereto and made a part hereof, together with all improvements located thereon (collectively, the "Mortgaged Property"), and the note secured thereby (said note, and any extensions, modifications or substitutions thereof, being hereinafter referred to as the "Senior Note"), evidencing and securing, a certain loan made by the Senior Mortgagee to the Borrower (the "Senior Loan"); and

WHEREAS, the Borrower is about to execute and deliver to the Subordinate Mortgagee (i) a note (said note, and any extensions, modifications or substitutions thereof, being hereinafter referred to as the "Subordinate Note") in the principal sum of _____ Dollars (\$ _____); (ii) a subordinate mortgage (said mortgage, and any extensions, modifications, substitutions and consolidations thereof, being hereinafter referred to as the "Subordinate Mortgage") securing said Subordinate Note; and (iii) a collateral assignment of leases and rents covering the Mortgaged Property, evidencing and securing a certain subordinate loan to be made by the Subordinate Mortgagee to the Borrower (the "Subordinate Loan"); and

WHEREAS, the Subordinate Mortgage is intended to be recorded immediately prior to this Agreement in the office of _____ County, State of _____; and

WHEREAS, the Senior Mortgagee is unwilling to allow the Borrower to further encumber the Mortgaged Property with the Subordinate Mortgage unless the Subordinate Mortgage is subordinated to the Senior Mortgage in the manner hereinafter set forth;

NOW, THEREFORE, in consideration of the mutual promises contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the parties hereto, the Subordinate Mortgagee and the Senior Mortgagee hereby agree as follows:

(1) The Subordinate Mortgage, any other document evidencing, securing or guaranteeing the indebtedness secured by the Subordinate Mortgage or otherwise executed in connection with the Subordinate Mortgage (collectively, together with any extensions, refinancing, modifications, substitutions or consolidations thereof, being hereinafter collectively referred to as the "Subordinate Loan Documents") and all advances made thereunder are hereby, and shall continue to be, subject and subordinate in lien and in payment to the lien and payment of the Senior Mortgage and any other document evidencing, securing or guaranteeing, the indebtedness secured by the Senior Mortgage or otherwise executed in connection with the Senior Mortgage (collectively, together with any extensions, refinancing, modifications, substitutions or consolidations thereof, being hereinafter collectively referred to as the "Senior Loan Documents") and all advances made thereunder without regard to the application of such advances, together with all interest, prepayment premiums and all other sums due under the Senior Loan Documents. All of the terms, covenants and conditions of the Subordinate Mortgage and the Subordinate Loan Documents are hereby, and shall continue to be, subordinate to all of the terms, covenants and conditions of the Senior Mortgage and the Senior Loan Documents. The foregoing shall apply, notwithstanding the availability of other collateral to the Senior Mortgagee or the actual date and time of execution, delivery, recordation, filing or perfection of the Senior Mortgage or the Subordinate Mortgage, or the lien or priority of payment thereof, and notwithstanding the fact that the Senior Loan or any claim for the Senior Loan is subordinated, avoided or disallowed, in whole or in part, under Title 11 of

the United States Code (the "Bankruptcy Code") or other applicable federal or state law. In the event of a proceeding, whether voluntary or involuntary, for insolvency, liquidation, reorganization, dissolution, bankruptcy or other similar proceeding pursuant to the Bankruptcy Code or other applicable federal or state law, the Senior Loan shall include all interest accrued on the Senior Loan, in accordance with and at the rates specified in the Senior Loan Documents, both for periods before and for periods after the commencement of any of such proceedings, even if the claim for such interest is not allowed pursuant to applicable law.

(2) In addition, without limiting the foregoing, the Subordinate Mortgagee agrees that all rights of the Subordinate Mortgagee under the Subordinate Mortgage or under the Subordinate Loan Documents in and to the Mortgaged Property and the proceeds thereof including assignments of leases and rents, issues and profits and the rights with respect to insurance proceeds and condemnation awards) shall be expressly subject and subordinate:

(a) to the rights of the Senior Mortgagee in and to the Mortgaged Property and the proceeds thereof (including assignments of leases and rents, issues and profits and rights with respect to insurance proceeds and condemnation awards) on the terms set forth in the Senior Mortgage and the Senior Loan Documents; and

(b) to any and all advances made and other expenses incurred under, and as permitted in, the Senior Mortgage and the Senior Loan Documents.

(3) The Subordinate Mortgagee hereby represents and warrants that (a) it is now the owner and holder of the Subordinate Mortgage; (b) the Subordinate Mortgage is now in full force and effect; (c) the Subordinate Mortgage has not been modified or amended; (d) the Borrower is not in default in the observance and/or performance of any of the obligations thereunder required to be observed and performed by the Borrower; (e) no event has occurred, which, with the passing of time or the giving of notice or both would constitute a default thereunder; (f) all payments due thereon to and including the date hereof, have been paid in full; (g) the principal balance of the Subordinate Mortgage is as set forth on Exhibit C hereto; (h) interest on the principal balance shall be calculated at the annual rate of interest as set forth on Exhibit C hereto; (i) no scheduled monthly payments under the Subordinate Note have been prepaid; and (j) any rights of the Subordinate Mortgagee in and to the lien, estate or other interest in the Mortgaged Property are not subject to the rights of any third parties by way of subrogation, indemnification or otherwise.

(4) The Subordinate Mortgagee hereby agrees that so long as any sum shall remain outstanding on the Senior Loan Documents:

(a) The Subordinate Mortgagee shall simultaneously send to the Senior Mortgagee due notice of all defaults under the Subordinate Loan Documents as well as copies of all notices required to be delivered to the Borrower under the Subordinate Loan Documents. Notice under the Subordinate Mortgage shall not be deemed effective until such notice has been received by the Senior Mortgagee. The Senior Mortgagee shall have the right, but shall not have any obligation whatsoever, to cure any such default within ten (10) days after the expiration of the applicable grace period permitted to the Borrower under the Subordinate Loan Documents.

(b) The Subordinate Mortgagee shall not, without the prior written consent of the Senior Mortgagee take any Enforcement Action (hereinafter defined). For the purposes of this Agreement, the term "Enforcement Action" shall mean with respect to the Subordinate Loan Documents, the acceleration of all or any part of the indebtedness secured by the Subordinate Loan Documents, any foreclosure proceedings, the exercise of any power of sale, the acceptance by the holder of the Subordinate Mortgage of a deed or assignment in lieu of foreclosure, the obtaining of a receiver, the seeking of default interest, the taking of possession or control of the Mortgaged Property, the suing on the Subordinate Note or any guaranty or other obligation contained in the Subordinate Loan Documents, the exercising of any banker's lien or rights of set-off or recoupment, the commencement of any bankruptcy, reorganization or insolvency proceedings against the Mortgagor under any federal or state law, or the taking of any other enforcement action against the Mortgaged Property;

(c) In the event (i) the Senior Loan becomes due or is declared due and payable prior to its stated maturity, (ii) the Subordinate Mortgagee receives any prepayment of principal or interest, in part or in whole, under the Subordinate Mortgage contrary to the terms of the Subordinate Loan Documents, (iii) Borrower is in default under the Senior Loan Documents, or (iv) any payment, distribution, division or application, partial or complete, voluntary or involuntary, by operation of law or otherwise, by or on behalf of Borrower, or of all or any part of the property, assets or business of the Borrower or the

proceeds thereof, in whatever form, is made to any creditor or creditors of the Borrower or to any holder of indebtedness of the Borrower by reason of or in connection with any liquidation, dissolution or other winding up of the Borrower or its business, or any receivership or custodianship for the Borrower of all or substantially all of its property, or any insolvency or bankruptcy proceedings or composition or restructuring of any debts of Borrower or assignment for the benefit of creditors or any proceeding by or against the Borrower for any relief under any bankruptcy, reorganization or insolvency law or laws, federal or state, or any law, federal or state, relating to the relief of debtors, readjustment of indebtedness, reorganization, composition or extension, then, and in any such event, any payment or distribution of any kind or character, whether in cash, property or securities which shall be payable or deliverable with respect to any or all of the Subordinate Loan shall be paid forthwith or delivered directly to the Senior Mortgagee for application to the payment of the Senior Loan to the extent necessary to make payment in full of all sums due under the Senior Loan remaining unpaid after giving effect to any concurrent payment or distribution to the Senior Mortgagee or, received by the Subordinate Mortgagee, shall be held in trust by the Subordinate Mortgagee, for the benefit of the Senior Mortgagee. In any such event, the Senior Mortgagee may, but shall not be obligated to, demand, claim and collect any such payment or distribution that would, but for these subordination provisions, be payable or deliverable with respect to the Subordinate Loan. Subordinate Mortgagee hereby grants to Senior Mortgagee an irrevocable power of attorney coupled with an interest for the purpose of exercising any and all rights and remedies available to Senior Mortgagee pursuant to this Paragraph 4(c). In the event of the occurrence of (i), (ii) or (iii) above and until the Senior Loan shall have been fully paid and satisfied and all of the obligations of the Borrower to the Senior Mortgagee have been performed in full, no payment shall be made to or accepted by the Subordinate Mortgagee in respect of the Subordinate Loan;

(d) No tenant under any lease of any portion of the Mortgaged Property will be made a party defendant in any foreclosure of the Subordinate Mortgage nor will any Enforcement Action or any other action be taken that would terminate any leases or other rights held by or granted to or by third parties with respect to the Mortgaged Property;

(e) (i) If, after the consent required under paragraph 4(b) above has been obtained, any action or proceeding shall be brought to foreclose the Subordinate Mortgage or commence any other Enforcement Action, no portion of the rents, issues and profits of the Mortgaged Property shall be collected except through a receiver appointed by the court in which such foreclosure action or proceeding is brought, after due notice of the application for the appointment of such receiver shall have been given to the Senior Mortgagee and the rents, issues and profits so collected by such receiver shall be applied first to the payment of maintenance of taxes and insurance on the Mortgaged Property, and then to the payment of principal and interest due and owing on the Senior Mortgage prior to the payment, if any, of any principal or interest due and owing on the Subordinate Mortgage; (ii) if during the pendency of any such foreclosure action or proceeding, an action or proceeding shall be brought by the Senior Mortgagee for the foreclosure of the Senior Mortgage and an application is made by the Senior Mortgagee for an extension of such receivership for the benefit of the Senior Mortgagee, all such rents, issues and profits held by such receiver as of the date of such application shall be applied by the receiver solely for the benefit of the Senior Mortgagee, and the Subordinate Mortgagee shall not be entitled to any portion thereof until all sums due and owing pursuant to the Senior Mortgage have been paid in full and applied as aforesaid; (iii) notice of the announcement of any foreclosure of the Subordinate Mortgage shall be given to the Senior Mortgagee and true copies of all notices thereof and papers served or entered in such action shall be delivered to the Senior Mortgagee;

(f) In the event the Senior Mortgagee shall release, for the purposes of restoration of all or any part of the improvements on or within the Mortgaged Property, its right, title and interest in and to the proceeds under policies of insurance thereon, and/or its right, title and interest in and to any awards, or its right, title and interest in and to other compensation made for any damages, losses or compensation for other rights by reason of a taking in eminent domain, the Subordinate Mortgagee shall release for such purpose all of its right, title and interest, if any, in and to all such insurance proceeds, awards or compensation and the Subordinate Mortgagee agrees that the balance of such proceeds remaining shall be applied to the reduction of principal under the Senior Mortgage, and if the Senior Mortgagee holds such proceeds, awards or compensation and/or monitors the disbursement thereof, the Subordinate Mortgagee agrees that the Senior Mortgagee shall also hold and monitor the disbursement of such proceeds, awards and compensation to which the Subordinate Mortgagee is entitled. Nothing contained in this Agreement shall be deemed to require the Senior Mortgagee, in any way whatsoever, to act for or on behalf of the Subordinate Mortgagee or to

hold or monitor any proceeds, awards or compensation in trust for or on behalf of the Subordinate Mortgagee, and all or any of such sums so held or monitored may be commingled with any funds of the Senior Mortgagee;

(g) If the Subordinate Mortgagee shall acquire by indemnification, subordination or otherwise, any lien, estate, right or other interest in the Mortgaged Property, that lien, estate, right or other interest shall be subordinate to the Senior Mortgage as provided herein, and the Subordinate Mortgagee hereby waives any and all rights it may acquire by subrogation or otherwise to the lien of the Senior Mortgage or any portion thereof;

(h) The Subordinate Mortgagee shall not pledge, assign, hypothecate, transfer, convey or sell the Subordinate Loan or any interest in the Subordinate Loan or modify, waive or amend any of the terms or provisions of the Subordinate Mortgage, without the prior written consent of the Senior Mortgagee; provided, however, that the Subordinate Mortgagee may modify, amend and/or waive any provision of the Subordinate Loan Documents without the consent or approval of the Senior Mortgagee if, following such modification, amendment and/or waiver, the Subordinate Loan Documents comply with the terms and provisions of Subparagraph (c) of the Section of the Senior Mortgage entitled "Subordinate Debt";

(i) As to all leases now or hereafter in effect with respect to the Mortgaged Property, the Subordinate Mortgagee agrees to approve all leases which are approved by the Senior Mortgagee. The Subordinate Mortgagee shall also enter into recognition and non-disturbance agreements with any tenants to whom the Senior Mortgagee has granted recognition and non-disturbance, on the same terms and conditions given by the Senior Mortgagee;

(j) The Subordinate Mortgagee hereby expressly consents to and authorizes, at the option of the Senior Mortgagee, the release of all or any portion of the Mortgaged Property from the lien of the Senior Mortgage, and hereby waives any equitable right in respect of marshalling it might have, in connection with any release of all or any portion of the Mortgaged Property by the Senior Mortgagee under the Senior Mortgage, to require the separate sales of any portion of the Mortgaged Property or to require the Senior Mortgagee to exhaust its remedies against any portion of the Mortgaged Property, or any combination of the portions of the Mortgaged Property or any other collateral, or to require the Senior Mortgagee to proceed against any portion of the Mortgaged Property or combination of the portions of the Mortgaged Property or any other collateral, before proceeding against any other portion of the Mortgaged Property or combination of the portions of the Mortgaged Property, and further, in the event of any foreclosure, the Subordinate Mortgagee hereby expressly consents to and authorizes, at the option of the Senior Mortgagee, the sale, either separately or together, of all or any portion of the Mortgaged Property;

(k) The Subordinate Mortgagee shall not collect payments for the purpose of escrowing taxes, assessments or other charges imposed on the Mortgaged Property or insurance premiums due on the insurance policies required under the Senior Mortgage or the Subordinate Mortgage if the Senior Mortgagee is collecting payments for such purposes, however, the Subordinate Mortgagee may collect payments for such purposes if the Senior Mortgagee is not collecting the same, provided such payments shall be held in trust by the Subordinate Mortgagee to be applied only for such purposes;

(l) After request by the Senior Mortgagee, the Subordinate Mortgagee shall within ten (10) days furnish the Senior Mortgagee with a statement, duly acknowledged and certified setting forth the original principal amount of the Subordinate Note, the unpaid principal balance, all accrued but unpaid interest and any other sums due and owing thereunder, the rate of interest, the monthly payments and that there exists no defaults under the Subordinate Loan Documents;

(m) In any case commenced by or against the Borrower or a general partner of Borrower under Chapter 11 of the Bankruptcy Code or any similar provision thereof or any similar federal or state statute (a "Reorganization Proceeding"), the Senior Mortgagee shall have the exclusive right to exercise any voting rights in respect of the Senior Mortgagee and the other Senior Loan Documents, and the Subordinate Mortgagee shall have the exclusive right to exercise any voting rights in respect of its claims against the Borrower or a general partner of the Borrower;

(n) In any Reorganization Proceeding with respect to the Borrower or any general partner of the Borrower, upon any payment or distribution (whether in cash, property, securities, or otherwise)

to creditors of the Borrower or any such general partner, (i) the indebtedness under the Senior Loan Documents shall first be paid in full in cash before the Subordinate Mortgagee shall be entitled to receive any payment or other distribution on or in respect of indebtedness under the Subordinate Loan Documents, and (ii) until all indebtedness under the Senior Loan Documents is paid in full in cash, any payment or distribution to which the Subordinate Mortgagee would be entitled but for this Subordination and Intercreditor Agreement (whether in cash, property, securities or otherwise) shall be made to the Senior Mortgagee.

(o) In any Reorganization Proceeding with respect to the Borrower or any general partner of the Borrower, (i) the Subordinate Mortgagee shall file a proof of claim in respect of its claims against the Borrower or any general partner of the Borrower and shall send to the Senior Mortgagee a copy thereof together with evidence of the filing with the appropriate court or other authority, (ii) if the Subordinate Mortgagee should fail to file such proof of claim by the tenth (10th) business day before the last day for filing of proofs of claim, or if the Senior Mortgagee reasonably believes that the proof of claim so filed is less than the proper amount thereof, then the Senior Mortgagee may file such proof of claim, or corrected proof of claim, on behalf of the Subordinate Mortgagee, and (iii) if objection is made to the allowance of any claim of the Subordinate Mortgagee, the Senior Mortgagee shall have the right to intervene and fully participate in such proceedings and if such rights are denied and the Subordinate Mortgagee fails to defend such claim, then the Senior Mortgagee may defend such claim in the name of the Subordinate Mortgagee and Subordinate Mortgagee grants to Senior Mortgagee an irrevocable power of attorney coupled with an interest for the purpose of exercising any and all rights and remedies available to Senior Mortgagee at law and in equity, including without limitation such rights and remedies available to Senior Mortgagee pursuant to this Paragraph 4; and

(p) To the extent any payment under the Senior Loan Documents (whether by or on behalf of the Borrower, as proceeds of security or enforcement of any right of set-off or otherwise) is for any reason repaid or returned to the Borrower or its insolvent estate, or avoided, set aside or required to be paid to the Borrower, a trustee, receiver or other similar party under any bankruptcy, insolvency, receivership or similar law, then the Senior Loan or part thereof originally intended to be satisfied shall be deemed to be reinstated and outstanding to the extent of any repayment, return, or other action as if such payment had not occurred.

(5) The Senior Mortgagee hereby consents to the placing of the Subordinate Mortgage on the Mortgaged Property subject to the terms of this Agreement. This consent is limited to the Subordinate Mortgage described above and shall not be deemed to (a) be a consent to any future encumbrances or to any modification, renewal, extension or increase of the Subordinate Mortgage, (b) be a waiver of the limitation on further encumbrances contained in the Senior Mortgage, (c) be a consent to or waiver of any other term or condition of the Senior Mortgage, or (d) prejudice any right or rights which the Senior Mortgagee may now or in the future have under or in connection with the Senior Mortgage.

(6) The Senior Mortgagee and the Subordinate Mortgagee shall cooperate fully with each other in order to promptly and fully carry out the terms and provisions of this Agreement. Each party hereto shall from time to time execute and deliver such other agreements, documents or instruments and take such other actions as may be reasonably necessary or desirable to effectuate the terms of this Agreement.

(7) No failure or delay on the part of any party hereto in exercising any right, power or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy hereunder.

(8) Each party hereto acknowledges that to the extent that no adequate remedy at law exists for breach of its obligations under this Agreement, in the event either party fails to comply with its obligations hereunder, the other party shall have the right to obtain specific performance of the obligations of such defaulting party, injunctive relief or such other equitable relief as may be available.

(9) Any notice to be given under this Agreement shall be in writing and shall be deemed to be given when received by the party to whom it is addressed. Notices shall be in writing and sent by registered mail, hand delivery or by special courier (in each case, return receipt requested). Notices to the other party hereto shall be sent to the address first set forth herein or such other address or addressees as shall be designated by such party in a written notice to the other parties.

(10) In the event of any conflict between the provisions of this Agreement and the provisions of the Subordinate Mortgage or the other Subordinate Loan Documents, the provisions of this Agreement shall prevail.

(11) No person, including, without limitation, Borrower, other than the parties hereto and their successors and assigns as holders of the Senior Mortgage and the Subordinate Mortgagee shall have any rights under this Agreement.

(12) This Agreement may be executed in two or more counterparts each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

(13) No amendment, supplement, modification, waiver or termination of this Agreement shall be effective against a party against whom the enforcement of such amendment, supplement, modification, waiver or termination would be asserted, unless such amendment, supplement, modification, waiver or termination was made in a writing signed by such party.

(14) In case any one or more of the provisions contained in this Agreement, or any application thereof, shall be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein, and, any other application thereof, shall not in any way be affected or impaired thereby.

(15) This Agreement shall be construed in accordance with and governed by the laws of the state where the Mortgaged Property is located.

(16) This Agreement shall bind and inure to the benefit of the Senior Mortgagee and the Subordinate Mortgagee and their respective successors, permitted transferees and assigns.

IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the day and year first above written.

[ADD SIGNATURES, ACKNOWLEDGMENTS AND EXHIBITS]

**AMENDED AND RESTATED
MULTIFAMILY NOTE
(Recast Transaction)**

THIS AMENDED AND RESTATED MULTIFAMILY NOTE (“**Amended and Restated Note**”) is made effective as of the 25th day of June, 2008, by **CENTURY PROPERTIES FUND XVII**, a California limited partnership (“**Borrower**”) and the **FEDERAL HOME LOAN MORTGAGE CORPORATION** (“**Lender**”)

RECITALS

- A. Borrower is the maker of a Multifamily Note (the "**Note**"), dated as of January 27, 2000, in the original principal amount of Fourteen Million Five Hundred Thousand and 00/100 Dollars (\$14,500,000.00), evidencing a loan (the "**Loan**") to Borrower in such amount from GMAC Commercial Mortgage Corporation, a California corporation (the "**Original Lender**").
- B. The Note is secured by that certain Multifamily Deed of Trust, Assignment of Rents, and Security Agreement and Fixture Filing dated as of January 27, 2000, from Borrower, as grantor, to Original Lender, as beneficiary, recorded in the land records of Harris County, Texas (the "**Land Records**") as Instrument Number U199401 (the "**Instrument**"). The Instrument encumbers, among other things, Borrower's interest in the land described in Exhibit A to the Instrument.
- C. Pursuant to an Exceptions to Non-Recourse Guaranty dated as of January 27, 2000, AIMCO Properties, L.P., a Delaware limited partnership, guaranteed some or all of Borrower's obligations under the terms of the Note and the Instrument.
- D. Original Lender (i) endorsed the Note to Lender and (ii) assigned the Instrument to Lender by Assignment of Security Instrument dated as of January 27, 2000 and recorded in the Land Records as Instrument Number U199402.
- E. Borrower has confirmed to Lender that Borrower has no defenses or offsets of any kind against any of the indebtedness due under the Note.
- F. Borrower and Lender have now agreed to amend and restate the Note so as to, among other things, (i) reflect a current unpaid balance of Eleven Million One Hundred Ten Thousand One Hundred Twenty-Seven and 00/100 Dollars (\$11,110,127.00) and (ii) amend the terms of payment.

NOW, THEREFORE, in consideration of these premises, and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties agree that the Note is amended and restated in its entirety in the form attached hereto and made a part hereof.

MULTIFAMILY NOTE
MULTISTATE - FIXED TO FLOAT
(REVISION DATE 2-15-2008)

US \$11,110,127.00

Effective Date: As of June 25, 2008

FOR VALUE RECEIVED, the undersigned (together with such party's or parties' successors and assigns, "**Borrower**"), jointly and severally (if more than one) promises to pay to the order of **FEDERAL HOME LOAN MORTGAGE CORPORATION**, the principal sum of Eleven Million One Hundred Ten Thousand One Hundred Twenty-Seven and 00/100 Dollars (US \$11,110,127.00), with interest on the unpaid principal balance, as hereinafter provided.

1. Defined Terms.

(a) As used in this Note:

"**Adjustable Interest Rate**" means the variable annual interest rate calculated for each Interest Adjustment Period so as to equal the Index Rate for such Interest Adjustment Period (truncated at the fifth (5th) decimal place if necessary) plus the Margin.

"**Amortization Period**" means a period of 360 full consecutive calendar months.

"**Base Recourse**" means a portion of the Indebtedness equal to zero percent (0%) of the original principal balance of this Note.

"**Business Day**" means any day other than a Saturday, a Sunday or any other day on which Lender or the national banking associations are not open for business.

"**Default Rate**" means (i) during the Fixed Rate Period, an annual interest rate equal to four (4) percentage points above the Fixed Interest Rate; and (ii) during the Extension Period, a variable annual interest rate equal to four (4) percentage points above the Adjustable Interest Rate in effect from time to time. However, at no time will the Default Rate exceed the Maximum Interest Rate.

"**Extended Maturity Date**" means, if the Extension Period becomes effective pursuant to this Note, the earlier of (i) February 1, 2021, and (ii) the date on which the unpaid principal balance of this Note becomes due and payable by acceleration or otherwise pursuant to the Loan Documents or the exercise by Lender of any right or remedy thereunder.

"**Extension Period**" means the twelve (12) consecutive calendar months period commencing on the Scheduled Initial Maturity Date.

"**Fixed Interest Rate**" means the annual interest rate of Eight and Five Hundred Sixty Thousandths percent (8.560%).

"**Fixed Rate Period**" means the period beginning on the date of this Note and continuing through January 31, 2020.

"Index Rate" means, for any Interest Adjustment Period, the Reference Bill® Index Rate for such Interest Adjustment Period.

"Initial Maturity Date" means the earlier of (i) February 1, 2020 (the **"Scheduled Initial Maturity Date"**), and (ii) the date on which the unpaid principal balance of this Note becomes due and payable by acceleration or otherwise pursuant to the Loan Documents or the exercise by Lender of any right or remedy thereunder.

"Installment Due Date" means, for any monthly installment of interest only or principal and interest, the date on which such monthly installment is due and payable pursuant to Section 3 of this Note. The **"First Installment Due Date"** under this Note is August 1, 2008.

"Interest Adjustment Period" means each successive one calendar month period during the Extension Period and until the entire Indebtedness is paid in full.

"Lender" means the holder from time to time of this Note.

"LIBOR Index" means the British Bankers Association's (BBA) one (1) month LIBOR Rate for United States Dollar deposits, as displayed on the LIBOR Index Page used to establish the LIBOR Index Rate.

"LIBOR Index Rate" means, for any Interest Adjustment Period after the first Interest Adjustment Period, the BBA's LIBOR Rate for the LIBOR Index released by the BBA most recently preceding the first day of such Interest Adjustment Period, as such LIBOR Rate is displayed on the LIBOR Index Page.

The LIBOR Index Rate for the first Interest Adjustment Period means the British Bankers Association's (BBA) LIBOR Rate for the LIBOR Index released by the BBA most recently preceding the first day of the month in which the first Interest Adjustment Period begins, as such LIBOR Rate is displayed on the LIBOR Index Page. **"LIBOR Index Page"** is the Bloomberg L.P., page "BBAM", or such other page for the LIBOR Index as may replace page BBAM on that service, or at the option of Lender (i) the applicable page for the LIBOR Index on another service which electronically transmits or displays BBA LIBOR Rates, or (ii) any publication of LIBOR rates available from the BBA. In the event the BBA ceases to set or publish a LIBOR rate/interest settlement rate for the LIBOR Index, Lender will designate an alternative index, and such alternative index shall constitute the LIBOR Index Page.

"Loan" means the loan evidenced by this Note.

"Margin" means two and one-half (2.5) percentage points (250 basis points).

"Maturity Date" means the Extended Maturity Date unless pursuant to Section 3(e) of this Note the Extension Period does not or cannot become effective, in which case the Maturity Date means the Initial Maturity Date.

"Maximum Interest Rate" means the rate of interest that results in the maximum amount of interest allowed by applicable law.

"Prepayment Premium Period" means the period during which, if a prepayment of principal occurs, a prepayment premium will be payable by Borrower to Lender. The Prepayment Premium Period is the period from and including the date of this Note until but not including the first day of the Window Period. For this Note, the Prepayment Premium Period equals the Yield Maintenance Period.

"Reference Bills®" means the unsecured general obligations of the Federal Home Loan Mortgage Corporation (**"Freddie Mac"**) designated by Freddie Mac as "Reference Bills® Securities" and having original durations to maturity most comparable to the term of the Reference Bill Index, and issued by Freddie Mac at regularly scheduled auctions. In the event Freddie Mac shall at any time cease to designate any unsecured general obligations of Freddie Mac as "Reference Bills Securities", then at the option of Lender (i) Lender may select from time to time another unsecured general obligation of Freddie Mac having original durations to maturity most comparable to the term of the Reference Bill Index and issued by Freddie Mac at regularly scheduled auctions, and the term "Reference Bills" as used in this Note shall mean such other unsecured general obligations as selected by Lender; or (ii) for any one or more Interest Adjustment Periods, Lender may use the applicable LIBOR Index Rate as the Index Rate for such Interest Adjustment Period(s).

"Reference Bill Index" means the one-month Reference Bills. One-month reference bills have original durations to maturity of approximately 30 days.

"Reference Bill Index Rate" means, for any Interest Adjustment Period after the first Interest Adjustment Period, the Money Market Yield for the Reference Bills as established by the Reference Bill auction conducted by Freddie Mac most recently preceding the first day of such Interest Adjustment Period, as displayed on the Reference Bill Index Page. The Reference Bill Index Rate for the first Interest Adjustment Period means the Money Market Yield for the Reference Bills as established by the Reference Bill auction conducted by Freddie Mac most recently preceding the first day of the month in which the first Interest Adjustment Period begins, as displayed on the Reference Bill Index Page. The **"Reference Bill Index Page"** is the Freddie Mac Debt Securities Web Page (accessed via the Freddie Mac internet site at www.freddiemac.com), or at the option of Lender, any publication of Reference Bills auction results available from Freddie Mac. However, if Freddie Mac has not conducted a Reference Bill auction within the 60-calendar day period prior to the first day of an Interest Adjustment Period, the Reference Bill Index Rate for such Interest Adjustment Period will be the LIBOR Index Rate for such Interest Adjustment Period.

"Remaining Amortization Period" means, at any point in time, the number of consecutive calendar months equal to the number of months in the Amortization Period minus the number of scheduled monthly installments of principal and interest that have elapsed since the date of this Note.

"Security Instrument" means the multifamily mortgage, deed to secure debt or deed of trust effective as of the effective date of this Note, from Borrower to or for the benefit of Lender and securing this Note.

"Treasury Security" means the 8.75% U.S. Treasury Security due May 15, 2020.

"Window Period" means the Extension Period.

"Yield Maintenance Period" means the period from and including the date of this Note until but not including February 1, 2020.

(b) Other capitalized terms used but not defined in this Note shall have the meanings given to such terms in the Security Instrument.

2. Address for Payment. All payments due under this Note shall be payable at c/o Capmark Finance Inc., 116 Welsh Road, Horsham, Pennsylvania 19044, Attn: Servicing - Account Manager, or such other place as may be designated by Notice to Borrower from or on behalf of Lender.

3. Payments.

(a) During the Fixed Rate Period, interest will accrue on the outstanding principal balance of this Note at the Fixed Interest Rate, subject to the provisions of Section 8 of this Note. During the Extension Period, interest will accrue on the outstanding principal balance of this Note at the Adjustable Interest Rate, subject to the provisions of Section 8 of this Note.

(b) During the Fixed Rate Period, interest under this Note shall be computed, payable and allocated on the basis of a 360-day year consisting of twelve 30-day months. During the Extension Period, interest under this Note shall be computed, payable and allocated on the basis of an actual/360 interest calculation schedule (interest is payable for the actual number of days in each month, and each month's interest is calculated by multiplying the unpaid principal amount of this Note as of the first day of the month for which interest is being calculated by the applicable Adjustable Interest Rate, dividing the product by 360, and multiplying the quotient by the number of days in the month for which interest is being calculated). For convenience in determining the amount of a monthly installment of principal and interest under this Note, Lender will use a 30/360 interest calculation payment schedule (each year is treated as consisting of twelve 30-day months). However, as provided above, the portion of the monthly installment actually payable as and allocated to interest will be based upon an actual/360 interest calculation schedule, and the amount of each installment attributable to principal and the amount attributable to interest will vary based upon the number of days in the month for which such installment is paid. Each monthly payment of principal and interest will first be applied to pay in full interest due, and the balance of the monthly payment paid by Borrower will be credited to principal.

(c) Unless disbursement of principal is made by Lender to Borrower on the first day of a calendar month, interest for the period beginning on the date of disbursement and ending on and including the last day of such calendar month shall be payable by Borrower simultaneously with the execution of this Note. If disbursement of principal is made by Lender to Borrower on the first day of a calendar month, then no payment will be due from Borrower at the time of the execution of this Note. The Installment Due Date for the first monthly installment payment under Section 3(d) of interest only or principal and interest, as applicable, will be the First Installment Due Date set forth in Section 1(a) of this Note. Except as provided in this Section 3(c) and in Section 10, accrued interest will be payable in arrears.

(d) Beginning on the First Installment Due Date, and continuing until and including the monthly installment due on the Initial Maturity Date, principal and accrued interest shall be payable by Borrower in consecutive monthly installments due and payable on the first day of each calendar month. The amount of the monthly installment of principal and interest payable pursuant to this Section 3(d) on an Installment Due Date shall be Eighty-Five Thousand Nine Hundred and 14/100 Dollars (\$85,900.14).

(e) Except as otherwise provided in this Section 3(e), all remaining Indebtedness, including all principal and interest, shall be due and payable by Borrower on the Initial Maturity Date. However, so long as (i) the Initial Maturity Date has not occurred prior to the Scheduled Initial Maturity Date, and (ii) no Event of Default or event or circumstance which, with the giving of notice or passage of time or both, could constitute an Event of Default exists on the Scheduled Initial Maturity Date, then the Extension Period automatically will become effective and the date for full payment of the Indebtedness automatically shall be extended until the Extended Maturity Date. If the Extension Period becomes effective, monthly installments of principal and interest or interest only will be payable during the Extension Period as provided in Section 3(f). Anything in Section 21 of the Security Instrument to the contrary notwithstanding, during the Extension Period, Borrower will not request that Lender consent to, and Lender will not consent to, a Transfer that, absent such consent, would constitute an Event of Default.

(f) If the Extension Period becomes effective, beginning on March 1, 2020 and continuing until and including the monthly installment due on the Extended Maturity Date, principal and accrued interest shall be payable by Borrower in consecutive monthly installments due and payable on the first day of each calendar month. The amount of the monthly installment of principal and interest payable pursuant to this Section 3(f) on an Installment Due Date shall be calculated so as to equal the monthly payment amount which would be payable on the Installment Due Date as if the unpaid principal balance of this Note as of the first day of the Interest Adjustment Period immediately preceding the Installment Due Date was to be fully amortized, together with interest thereon at the Adjustable Interest Rate in

effect for such Interest Adjustment Period, in equal consecutive monthly payments paid on the first day of each calendar month over the Remaining Amortization Period.

(g) During the Extension Period, Lender shall provide Borrower with Notice, given in the manner specified in the Security Instrument, of the amount of each monthly installment due under this Note. However, if Lender has not provided Borrower with prior notice of the monthly payment due on any Installment Due Date, then Borrower shall pay on that Installment Due Date an amount equal to the monthly installment payment for which Borrower last received notice. If Lender at any time determines that Borrower has paid one or more monthly installments in an incorrect amount because of the operation of the preceding sentence, or because Lender has miscalculated the Adjustable Interest Rate or has otherwise miscalculated the amount of any monthly installment, then Lender shall give notice to Borrower of such determination. If such determination discloses that Borrower has paid less than the full amount due for the period for which the determination was made, Borrower, within 30 calendar days after receipt of the notice from Lender, shall pay to Lender the full amount of the deficiency. If such determination discloses that Borrower has paid more than the full amount due for the period for which the determination was made, then the amount of the overpayment shall be credited to the next installment(s) of interest only or principal and interest, as applicable, due under this Note (or, if an Event of Default has occurred and is continuing, such overpayment shall be credited against any amount owing by Borrower to Lender).

(h) All payments under this Note shall be made in immediately available U.S. funds.

(i) Any regularly scheduled monthly installment of interest only or principal and interest payable pursuant to this Section 3 that is received by Lender before the date it is due shall be deemed to have been received on the due date for the purpose of calculating interest due.

(j) Any accrued interest remaining past due for 30 days or more, at Lender's discretion, may be added to and become part of the unpaid principal balance of this Note and any reference to "accrued interest" shall refer to accrued interest which has not become part of the unpaid principal balance. Any amount added to principal pursuant to the Loan Documents shall bear interest at the applicable rate or rates specified in this Note and shall be payable with such interest upon demand by Lender and absent such demand, as provided in this Note for the payment of principal and interest.

(k) In accordance with Section 14, interest charged under this Note cannot exceed the Maximum Interest Rate. If the Adjustable Interest Rate at any time exceeds the Maximum Interest Rate, resulting in the charging of interest hereunder to be limited to the Maximum Interest Rate, then any subsequent reduction in the Adjustable Interest Rate shall not reduce the rate at which interest under this Note accrues below the Maximum Interest Rate until the total amount of interest accrued hereunder equals the amount of interest which would have accrued had the Adjustable Interest Rate at all times been in effect.

4. Application of Payments. If at any time Lender receives, from Borrower or otherwise, any amount applicable to the Indebtedness which is less than all amounts due and payable at such time, Lender may apply the amount received to amounts then due and payable in any manner and in any order determined by Lender, in Lender's discretion. Borrower agrees that neither Lender's acceptance of a payment from Borrower in an amount that is less than all amounts then due and payable nor Lender's application of such payment shall constitute or be deemed to constitute either a waiver of the unpaid amounts or an accord and satisfaction.

5. Security. The Indebtedness is secured by, among other things, the Security Instrument, and reference is made to the Security Instrument for other rights of Lender as to collateral for the Indebtedness.

6. Acceleration. If an Event of Default has occurred and is continuing, the entire unpaid principal balance, any accrued interest, any prepayment premium payable under Section 10, and all other amounts payable under this Note and any other Loan Document, shall at once become due and payable, at the option of Lender, without any prior notice to Borrower (except if notice is required by applicable law, then after such notice). Lender may exercise this option to accelerate regardless of any prior forbearance. For purposes of exercising such option, Lender shall calculate the prepayment premium as if prepayment occurred on the date of acceleration. If prepayment occurs thereafter, Lender shall recalculate the prepayment premium as of the actual prepayment date.

7. Late Charge.

(a) If any monthly installment of interest or principal and interest or other amount payable under this Note or under the Security Instrument or any other Loan Document is not received in full by Lender (i) during the Fixed Rate Period, within ten (10) days after the installment or other amount is due, or (ii) during the Extension Period, within five (5) days after the installment or other amount is due, counting from and including the date such installment or

other amount is due (unless applicable law requires a longer period of time before a late charge may be imposed, in which event such longer period shall be substituted), Borrower shall pay to Lender, immediately and without demand by Lender, a late charge equal to five percent (5%) of such installment or other amount due (unless applicable law requires a lesser amount be charged, in which event such lesser amount shall be substituted).

(b) Borrower acknowledges that its failure to make timely payments will cause Lender to incur additional expenses in servicing and processing the Loan and that it is extremely difficult and impractical to determine those additional expenses. Borrower agrees that the late charge payable pursuant to this Section represents a fair and reasonable estimate, taking into account all circumstances existing on the date of this Note, of the additional expenses Lender will incur by reason of such late payment. The late charge is payable in addition to, and not in lieu of, any interest payable at the Default Rate pursuant to Section 8.

8. Default Rate.

(a) So long as (i) any monthly installment under this Note remains past due for thirty (30) days or more or (ii) any other Event of Default has occurred and is continuing, then notwithstanding anything in Section 3 of this Note to the contrary, interest under this Note shall accrue on the unpaid principal balance from the Installment Due Date of the first such unpaid monthly installment or the occurrence of such other Event of Default, as applicable, at the Default Rate.

(b) From and after the Maturity Date, the unpaid principal balance shall continue to bear interest at the Default Rate until and including the date on which the entire principal balance is paid in full.

(c) Borrower acknowledges that (i) its failure to make timely payments will cause Lender to incur additional expenses in servicing and processing the Loan, (ii) during the time that any monthly installment under this Note is delinquent for thirty (30) days or more, Lender will incur additional costs and expenses arising from its loss of the use of the money due and from the adverse impact on Lender's ability to meet its other obligations and to take advantage of other investment opportunities; and (iii) it is extremely difficult and impractical to determine those additional costs and expenses. Borrower also acknowledges that, during the time that any monthly installment under this Note is delinquent for thirty (30) days or more or any other Event of Default has occurred and is continuing, Lender's risk of nonpayment of this Note will be materially increased and Lender is entitled to be compensated for such increased risk. Borrower agrees that the increase in the rate of interest payable under this Note to the Default Rate represents a fair and reasonable estimate, taking into account all circumstances existing on the date of this Note, of the additional costs and expenses Lender will incur by reason of the Borrower's delinquent payment and the additional compensation Lender is entitled to receive for the increased risks of nonpayment associated with a delinquent loan.

9. Limits on Personal Liability.

(a) Except as otherwise provided in this Section 9, Borrower shall have no personal liability under this Note, the Security Instrument 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 the Indebtedness and the performance of such obligations shall be Lender's exercise of its rights and remedies with respect to the Mortgaged Property and to any other collateral held by Lender as security for the Indebtedness. This limitation on Borrower's liability shall not limit or impair Lender's enforcement of its rights against any guarantor of the Indebtedness or any guarantor of any other obligations of Borrower.

(b) Borrower shall be personally liable to Lender for the amount of the Base Recourse, plus any other amounts for which Borrower has personal liability under this Section 9.

(c) In addition to the Base Recourse, Borrower shall be personally liable to Lender for the repayment of a further portion of the Indebtedness equal to any loss or damage suffered by Lender as a result of the occurrence of any of the following events:

- (i) Borrower fails to pay to Lender upon demand after an Event of Default all Rents to which Lender is entitled under Section 3(a) of the Security Instrument and the amount of all security deposits collected by Borrower from tenants then in residence. However, Borrower will not be personally liable for any failure described in this subsection (i) if Borrower is unable to pay to Lender all Rents and security deposits as required by the Security Instrument because of a valid order issued in a bankruptcy, receivership, or similar judicial proceeding.
- (ii) Borrower fails to apply all insurance proceeds and condemnation proceeds as required by the Security Instrument. However, Borrower will not be personally liable for any failure described in this subsection (ii) if Borrower is unable to apply insurance or condemnation proceeds as required by the Security Instrument because of a valid order issued in a bankruptcy, receivership, or similar judicial proceeding.

- (iii) Borrower fails to comply with Section 14(g) or (h) of the Security Instrument relating to the delivery of books and records, statements, schedules and reports.
- (iv) Borrower fails to pay when due in accordance with the terms of the Security Instrument the amount of any item below marked "Deferred"; provided however, that if no item is marked "Deferred", this Section 9(c)(iv) shall be of no force or effect.

[Deferred]	Hazard Insurance premiums or other insurance premiums,
[Deferred]	Taxes,
[Deferred]	water and sewer charges (that could become a lien on the Mortgaged Property),
[N/A]	ground rents,
[Deferred]	assessments or other charges (that could become a lien on the Mortgaged Property)

(d) In addition to the Base Recourse, Borrowers shall be personally liable to Lender for:

- (i) the performance of all of Borrower's obligations under Section 18 of the Security Instrument (relating to environmental matters);
- (ii) the costs of any audit under Section 14(g) of the Security Instrument; and
- (iii) any costs and expenses incurred by Lender in connection with the collection of any amount for which Borrower is personally liable under this Section 9, including Attorneys' Fees and Costs and the costs of conducting any independent audit of Borrower's books and records to determine the amount for which Borrower has personal liability.

(e) ~~Payments made by Borrower with respect to the Indebtedness and amounts received by Lender from the enforcement of its rights under the Security Instrument and the Loan Documents shall be applied first to the portion of the Indebtedness for which Borrower has no personal liability.~~

(f) ~~Notwithstanding the Base Recourse, Borrowers shall be personally liable to Lender for the repayment of all of the Indebtedness upon the occurrence of any of the following Events of Default:~~

- (i) Borrower's ownership of any property or operation of any business not permitted by Section 33 of the Security Instrument;
- (ii) a Transfer (including, but not limited to, a lien or encumbrance) that is an Event of Default under Section 21 of the Security Instrument, other than a Transfer consisting solely of the involuntary removal or involuntary withdrawal of a general partner in a limited partnership or a manager in a limited liability company; or
- (iii) fraud or written material misrepresentation by Borrower or any officer, director, partner, member or employee of Borrower in connection with the application for or creation of the Indebtedness or any request for any action or consent by Lender.

(g) To the extent that Borrower has personal liability under this Section 9, Lender may exercise its rights against Borrower personally without regard to whether Lender has exercised any rights against the Mortgaged Property or any other security, or pursued any rights against any guarantor, or pursued any other rights available to Lender under this Note, the Security Instrument, any other Loan Document or applicable law. To the fullest extent permitted by applicable law, in any action to enforce Borrower's personal liability under this Section 9, Borrower waives any right to set off the value of the Mortgaged Property against such personal liability.

10. Voluntary and Involuntary Prepayments.

(a) Any receipt by Lender of principal due under this Note prior to the Maturity Date, other than principal required to be paid in monthly installments pursuant to Section 3, constitutes a prepayment of principal under this Note. Without limiting the foregoing, any application by Lender, prior to the Maturity Date, of any proceeds of collateral or other security to the repayment of any portion of the unpaid principal balance of this Note constitutes a prepayment under this Note.

(b) Borrower may voluntarily prepay all of the unpaid principal balance of this Note on an Installment Due Date so long as Borrower designates the date for such prepayment in a Notice from Borrower to Lender given at least 30 days prior to the date of such prepayment. If an Installment Due Date (as defined in Section 1(a)) falls on a day which is not a Business Day, then with respect to payments made under this Section 10 only, the term "Installment Due Date" shall mean the Business Day immediately preceding the scheduled Installment Due Date.

(c) Notwithstanding subsection (b) above, Borrower may voluntarily prepay all of the unpaid principal balance of this Note on a Business Day other than an Installment Due Date if Borrower provides Lender with the Notice set forth in subsection (b) and meets the other requirements set forth in this subsection. Borrower acknowledges that Lender has agreed that Borrower may prepay principal on a Business Day other than an Installment Due Date only because Lender shall deem any prepayment received by Lender on any day other than an Installment Due Date to have been received on the Installment Due Date immediately following such prepayment and Borrower shall be responsible for all interest that would have been due if the prepayment had actually been made on the Installment Due Date immediately following such prepayment.

(d) Unless otherwise expressly provided in the Loan Documents, Borrower may not voluntarily prepay less than all of the unpaid principal balance of this Note. In order to voluntarily prepay all or any part of the principal of this Note, Borrower must also pay to Lender, together with the amount of principal being prepaid, (i) all accrued and unpaid interest due under this Note, plus (ii) all other sums due to Lender at the time of such prepayment, plus (iii) any prepayment premium calculated pursuant to Section 10(e).

(e) Except as provided in Section 10(f), a prepayment premium shall be due and payable by Borrower in connection with any prepayment of principal under this Note during the Prepayment Premium Period. The prepayment premium shall be whichever is the greater of subsections (A) and (B) below:

- (A) 1.0% of the amount of principal being prepaid; or
- (B) the product obtained by multiplying:
 - (1) the amount of principal being prepaid or accelerated,

by

- (2) the excess (if any) of the Monthly Note Rate over the Assumed Reinvestment Rate,
- by
- (3) the Present Value Factor.

For purposes of subsection (B), the following definitions shall apply:

Monthly Note Rate: one-twelfth (1/12) of the Fixed Interest Rate expressed as a decimal calculated to five digits.

Prepayment Date: in the case of a voluntary prepayment, the date on which the prepayment is made; in the case of the application by Lender of collateral or security to a portion of the principal balance, the date of such application.

Assumed Reinvestment Rate: one-twelfth (1/12) of the yield rate as of the close of the trading session which is Business Days before the Prepayment Date on the Treasury Security, as reported in *The Wall Street Journal*, expressed as a decimal calculated to five digits. In the event that no yield is published on the applicable date for the Treasury Security, Lender, in its discretion, shall select the non-callable Treasury Security maturing in the same year as the Treasury Security with the lowest yield published in *The Wall Street Journal* as of the applicable date. If the publication of such yield rates in *The Wall Street Journal* is discontinued for any reason, Lender shall select a security with a comparable rate and term to the Treasury Security. This selection of an alternate security pursuant to this Section shall be made in Lender's discretion.

Present Value Factor: the factor that discounts to present value the costs resulting to Lender from the difference in interest rates during the months remaining in the Yield Maintenance Period, using the Assumed Reinvestment Rate as the discount rate, with monthly compounding, expressed numerically as follows:

$$[1 - (1/(1+ARR))^n] / ARR$$

n = the number of months remaining in Yield Maintenance Period provided however, if a prepayment occurs on an Installment Due Date, then the number of months remaining in the Yield Maintenance Period shall be calculated beginning with the month in which such prepayment occurs and if such prepayment occurs on a Business Day other than an Installment Due Date, then the number of months remaining in the Yield Maintenance Period shall be calculated beginning with the month immediately following the date of such prepayment.

ARR = Assumed Reinvestment Rate

(f) Notwithstanding any other provision of this Section 10, no prepayment premium shall be payable with respect to (i) any prepayment made during the Window Period, or (ii) any prepayment occurring as a result of the application of any insurance proceeds or condemnation award under the Security Instrument.

(g) Unless Lender agrees otherwise in writing, a permitted or required prepayment of less than the unpaid principal balance of this Note shall not extend or postpone the due date of any subsequent monthly installments or change the amount of such installments.

(h) Borrower recognizes that any prepayment of any of the unpaid principal balance of this Note, whether voluntary or involuntary or resulting from an Event of Default by Borrower, will result in Lender's incurring loss, including reinvestment loss, additional expense and frustration or impairment of Lender's ability to meet its commitments to third parties. Borrower agrees to pay to Lender upon demand damages for the detriment caused by any prepayment, and agrees that it is extremely difficult and impractical to ascertain the extent of such damages. Borrower therefore acknowledges and agrees that the formula for calculating prepayment premiums set forth in this Note represents a reasonable estimate of the damages Lender will incur because of a prepayment. Borrower further acknowledges that any lockout and the prepayment premium provisions of this Note are a material part of the consideration for the Loan, and that the terms of this Note are in other respects more favorable to Borrower as a result of the Borrower's voluntary agreement to the lockout and prepayment premium provisions.

11. Costs and Expenses. To the fullest extent allowed by applicable law, Borrower shall pay all expenses and costs, including Attorneys' Fees and Costs incurred by Lender as a result of any default under this Note or in connection with efforts to collect any amount due under this Note, or to enforce the provisions of any of the other Loan Documents, including those incurred in post-judgment collection efforts and in any bankruptcy proceeding (including any action for relief from the automatic stay of any bankruptcy proceeding) or judicial or non-judicial foreclosure proceeding.

12. Forbearance. Any forbearance by Lender in exercising any right or remedy under this Note, the Security Instrument, or any other Loan Document or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of that or any other right or remedy. The acceptance by Lender of any payment after the due date of such payment, or in an amount which is less than the required payment, shall not be a waiver of Lender's right to require prompt payment when due of all other payments or to exercise any right or remedy with respect to any failure to make prompt payment. Enforcement by Lender of any security for Borrower's obligations under this Note shall not constitute an election by Lender of remedies so as to preclude the exercise of any other right or remedy available to Lender.

13. Waivers. Borrower and all endorsers and guarantors of this Note and all other third party obligors waive presentment, demand, notice of dishonor, protest, notice of acceleration, notice of intent to demand or accelerate payment or maturity, presentment for payment, notice of nonpayment, grace, and diligence in collecting the Indebtedness.

14. Loan Charges. Neither this Note 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. If any applicable law limiting the amount of interest or other charges permitted to be collected from Borrower in connection with the Loan is interpreted so that any interest or other charge provided for in any Loan Document, whether considered separately or together with other charges provided for in any other Loan Document, violates that law, and Borrower is entitled to the benefit of that law, that interest or charge is hereby reduced to the extent necessary to eliminate that violation. The amounts, if any, previously paid to Lender in excess of the permitted amounts shall be applied by Lender to reduce the unpaid principal balance of this Note. For the purpose of determining whether any applicable law limiting the amount of interest or other charges permitted to be collected from Borrower has been violated, all Indebtedness that constitutes interest, as well as all other charges made in connection with the Indebtedness that constitute interest, shall be deemed to be allocated and spread ratably over the stated term of this Note. Unless otherwise required by applicable law, such allocation and spreading shall be effected in such a manner that the rate of interest so computed is uniform throughout the stated term of this Note.

15. Commercial Purpose. Borrower represents that Borrower is incurring the Indebtedness solely for the purpose of carrying on a business or commercial enterprise, and not for personal, family, household, or agricultural purposes.

16. Counting of Days. Except where otherwise specifically provided, any reference in this Note to a period of "days" means calendar days, not Business Days.

17. Governing Law. This Note shall be governed by the law of the Property Jurisdiction.

18. Captions. The captions of the Sections of this Note are for convenience only and shall be disregarded in construing this Note.

19. Notices; Written Modifications.

(a) All Notices, demands and other communications required or permitted to be given pursuant to this Note shall be given in accordance with Section 31 of the Security Instrument.

(b) Any modification or amendment to this Note shall be ineffective unless in writing signed by the party sought to be charged with such modification or amendment; provided, however, that in the event of a Transfer under the terms of the Security Instrument that requires Lender's consent, any or some or all of the Modifications to Multifamily Note set forth in Exhibit A to this Note may be modified or rendered void by Lender at Lender's option, by Notice to Borrower and the transferee, as a condition of Lender's consent.

20. Consent to Jurisdiction and Venue. Borrower agrees that any controversy arising under or in relation to this Note may be litigated in the Property Jurisdiction. The state and federal courts and authorities with jurisdiction in the Property Jurisdiction shall have jurisdiction over all controversies that shall arise under or in relation to this Note. 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. However, nothing in this Note is intended to limit any right that Lender may have to bring any suit, action or proceeding relating to matters arising under this Note in any court of any other jurisdiction.

21. WAIVER OF TRIAL BY JURY. BORROWER AND LENDER EACH (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.

22. State-Specific Provisions. N/A.

ATTACHED EXHIBIT. The Exhibit noted below, if marked with an "X" in the space provided, is attached to this Note:

Exhibit A Modifications to Multifamily Note

IN WITNESS WHEREOF, and in consideration of the Lender's agreement to lend Borrower the principal amount set forth above, Borrower has signed and delivered this Note under seal or has caused this Note to be signed and delivered under seal by its duly authorized representative.

CENTURY PROPERTIES FUND XVII, a California limited
partnership

By: Fox Partners, a California general partnership, its managing general
partner

By: Fox Capital Management Corporation, a California
corporation, its managing general partner

By: /s/Patti K. Fielding
Patti K. Fielding
Executive Vice President and Treasurer

FEDERAL HOME LOAN MORTGAGE CORPORATION

By: /s/Phillip F. Cathlina

Name: Phillip F. Cathlina

Title: Regional Underwriting and Credit
Director

SEEN AND AGREED:

AIMCO PROPERTIES, L.P., a Delaware limited partnership

By: AIMCO-GP, Inc., a Delaware corporation, its general partner

By: /s/Patti K. Fielding

Patti K. Fielding

Executive Vice President and Treasurer

EXHIBIT A

MODIFICATIONS TO MULTIFAMILY NOTE

The following modifications are made to the text of the Note that precedes this Exhibit.

1. The definition of "Default Rate" set forth in Section 1(a) of this Note is deleted and replaced with the following:

"Default Rate" means (i) during the Fixed Rate Period, an annual interest rate equal to the greater of (A) three (3) percentage points above the Fixed Interest Rate or (B) four percentage (4) points above the then-prevailing Prime Rate; and (ii) during the Extension Period, a variable annual interest rate equal to four (4) percentage points above the Adjustable Interest Rate in effect from time to time. However, at no time will the Default Rate exceed the Maximum Interest Rate.

2. The following definition is added to Section 1(a) of this Note:

"Prime Rate" means the rate of interest announced by *The Wall Street Journal* from time to time as the "Prime Rate".

3. The second sentence of Section 9(c)(i) is deleted and replaced with the following:

However, Borrower will not be personally liable for any failure described in this subsection (i) if Borrower is unable to pay to Lender all Rents and security deposits as required by the Security Instrument (a) because of a valid order issued in a bankruptcy, receivership, or similar judicial proceeding, or (b) if such funds have been applied by Borrower as required or permitted by the Security Instrument prior to the occurrence of an Event of Default.

4. Section 19(b) of this Note is modified by deleting: "provided, however, in the event of a Transfer under the terms of the Security Instrument that requires Lender's consent, any or some or all of the Modifications to Multifamily Notes set forth in Exhibit A to this Note may be modified or rendered void by Lender at Lender's option, by Notice to Borrower and the transferee, as a condition of Lender's consent" in the last sentence of the Section; and by adding the following new sentence:

The Modifications to Multifamily Note set forth in this Exhibit A shall be null and void unless title to the Mortgaged Property is vested in an entity whose Controlling Interest(s) are directly or indirectly held by AIMCO REIT or AIMCO OP. The capitalized terms used in this Section are defined in the Security Instrument.

5. Section 20 of this Note is deleted and replaced with the following:

20. Consent to Jurisdiction and Venue. Borrower agrees that any controversy arising under or in relation to this Note shall be litigated exclusively in the jurisdiction in which the Land is located (the "**Property Jurisdiction**"). The state and federal courts and authorities with jurisdiction in the Property Jurisdiction shall have exclusive jurisdiction over all controversies which shall arise under or in relation to this Note. 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.