

For purposes of calculating the tax due, Shelby County of Alabama, the maximum sum of indebtedness secured hereby is \$9,500,000.

This instrument has been prepared by Martha Feltenstein, Esq.
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919 Third Avenue, New York, New York 10022

RECORDING REQUESTED BY AND WHEN
RECORDED MAIL TO:
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INDENTURE OF MORTGAGE, DEED OF TRUST,
SECURITY AGREEMENT, FINANCING STATEMENT, FIXTURE FILING
AND ASSIGNMENT OF RENTS AND LEASES

Dated and Effective as of October 31, 1995

between

ATLANTIC-ALABAMA (5) INCORPORATED,
AS TRUSTEE OF SCA-ALABAMA MULTIFAMILY TRUST
Mortgagor

and

MORGAN GUARANTY TRUST COMPANY OF NEW YORK
FOR ITSELF AND AS AGENT
Mortgagee

Inst # 1995-32175

11/07/1995-32175
11:36 AM CERTIFIED
SHELBY COUNTY JUDGE OF PROBATE
064 SNA 14416.00

THIS INSTRUMENT SHALL CONSTITUTE A SECURITY AGREEMENT AND UNIFORM COMMERCIAL CODE FINANCING STATEMENT WITH RESPECT TO PERSONALTY AND FIXTURES UNDER THE UNIFORM COMMERCIAL CODE OF ALABAMA, AS AMENDED. ATLANTIC-ALABAMA (5) INCORPORATED, AS TRUSTEE FOR SCA-ALABAMA MULTIFAMILY TRUST IS THE RECORD OWNER OF THE MORTGAGED PROPERTY (HEREINAFTER DEFINED). PART OF THIS MORTGAGED PROPERTY DESCRIBED HEREIN IS OR IS TO BECOME FIXTURES ON THE LAND PARCELS (HEREINAFTER DEFINED) DESCRIBED HEREIN. THE NAMES AND ADDRESSES OF THE DEBTOR AND THE SECURED PARTY ARE:

DEBTOR:

SCA-ALABAMA MULTIFAMILY TRUST
C/O SECURITY CAPITAL ATLANTIC
INCORPORATED
7777 MARKET CENTER AVENUE
EL PASO, TEXAS 79912

SECURED PARTY:

MORGAN GUARANTY TRUST COMPANY
OF NEW YORK
60 WALL STREET
NEW YORK, NEW YORK 10260

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INDENTURE OF MORTGAGE, DEED OF TRUST,
SECURITY AGREEMENT, FINANCING STATEMENT,
FIXTURE FILING AND ASSIGNMENT OF
RENTS AND LEASES

THIS INDENTURE OF MORTGAGE, DEED OF TRUST, SECURITY AGREEMENT, FINANCING STATEMENT, FIXTURE FILING AND ASSIGNMENT OF LEASES AND RENTS (herein, together with all amendments and supplements hereto, called this "Mortgage"), dated as of the 31st day of October, 1995, between MORGAN GUARANTY TRUST COMPANY OF NEW YORK, the mortgagee hereunder (herein called "Mortgagee", which term shall include each of its successors and assigns), having an address at 60 Wall Street, New York, New York 10260, ATLANTIC-ALABAMA (5) INCORPORATED, AS TRUSTEE FOR SCA-ALABAMA MULTIFAMILY TRUST, an Alabama business trust, the mortgagor hereunder (herein called "Mortgagor") having an address c/o Security Capital Atlantic Incorporated, 7777 Market Center Avenue, El Paso, Texas 79912. Notwithstanding anything to the contrary herein contained, this instrument shall be deemed to be and shall be enforceable as a mortgage, security agreement, assignment of rents and leases and financing statement.

W I T N E S S E T H :

WHEREAS, the Mortgagor is the record and beneficial owner of the fee simple interests in the Land Parcels (as hereinafter defined) as described in Exhibits A-1 through A-3.

WHEREAS, Security Capital Atlantic Incorporated (herein called the "Borrower"), certain banks (herein called the "Banks") and Mortgagee, as agent for the Banks, are parties to a Credit Agreement dated as of June 27, 1994 (the "Original Credit Agreement");

WHEREAS, the Original Credit Agreement has been amended by that certain First Amendment to Credit Agreement, dated as of July 25, 1994, among the Borrower, the Mortgagee, as agent, and the Banks that were parties thereto, by that certain Second Amendment to Credit Agreement, dated as of September 14, 1994, among the Borrower, the Mortgagee, as agent, and the Banks that were parties thereto and by that certain Amended and Restated Credit Agreement, dated as of August 2, 1995, among the Borrower, the Mortgagee, as agent, and the Banks (as so amended and restated to date and as the same may be further amended, supplemented or otherwise modified from time to time, the "Credit Agreement");

WHEREAS, pursuant to the Credit Agreement, the Banks have agreed to make loans to the Borrower, which is the indirect parent of the Mortgagor, and such loans are to be evidenced by promissory notes executed and delivered in connection with such Credit Agreement, made by the Borrower as maker, each such Note

(as defined in the Credit Agreement) to be in favor of a Bank as payee;

WHEREAS, certain subsidiaries (herein called the "Subsidiaries") of the Borrower executed a Guaranty (herein called the "Original Guaranty") dated as of June 27, 1994 in favor of the Banks and the Mortgagee, as agent for the Banks;

WHEREAS, the Original Guaranty has been amended by that certain Amended and Restated Guaranty, dated as of August 2, 1995 (as so amended and restated to date and as the same may be further amended, supplemented or otherwise modified from time to time, the "Guaranty");

WHEREAS, the Mortgagor has agreed to guarantee the due and punctual payment of amounts payable by the Borrower and arising out of or in connection with the Credit Agreement or any other Loan Document, pursuant to the Guaranty;

WHEREAS, in order to induce the Banks and the Mortgagee to enter into the Credit Agreement, the Mortgagor has agreed to grant this Mortgage in and to the Mortgaged Property (as hereafter defined) to secure the Mortgagor's obligations under the Guaranty; and

WHEREAS, the Mortgagor and the Mortgagee intend these recitals to be a material part of this Mortgage.

NOW, THEREFORE, in consideration of the Credit Agreement and the making of Loans to the Borrower pursuant thereto, which Loans materially and substantially benefit the Mortgagor, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Mortgagor hereby agrees as follows:

TO SECURE:

(i) payment and performance of all covenants, conditions, liabilities and obligations contained in, and payment of the indebtedness guaranteed by, the Guaranty, including, without limitation, the guaranty by the Mortgagor of any funding losses or expenses described in Section 2.12 of the Credit Agreement and any expenses or indemnities described in Section 9.03 of the Credit Agreement; and

(ii) payment and performance of all covenants, conditions, liabilities and obligations of the Mortgagor contained in this Mortgage and the Guaranty and any extensions, renewals or modifications of this Mortgage or the Guaranty;

(all of the foregoing indebtedness, monetary liabilities and obligations set forth in clauses (i) and (ii) above, collectively, the "Indebtedness"; and payment of the Indebtedness together with the performance of all covenants, conditions and obligations set forth in clauses (i) and (ii) above, collectively, the "Obligations"). Notwithstanding the foregoing, Mortgagor and Mortgagee hereby agree that the maximum principal amount of Obligations secured by this Mortgage shall be limited to \$9,500,000.

GRANTING CLAUSES

NOW, THEREFORE, THIS MORTGAGE WITNESSETH: that the Mortgagor, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, has mortgaged, warranted, granted a security interest in, granted, bargained, sold, conveyed, pledged, and assigned, and by these presents does hereby mortgage, warrant, grant a security interest in, grant, bargain, sell, convey, pledge, and assign unto the Mortgagee and its successors and assigns forever all its estate, right, title and interest now owned or hereafter acquired in, to and under any and all of the property (herein called the "Mortgaged Property") described in the following Granting Clauses:

I. Each parcel of land described in Exhibits A-1 through A-3 hereto (as such exhibits may be amended or supplemented from time to time pursuant to the Credit Agreement, herein collectively called the "Land Parcels") together with the entire right, title and interest of the Mortgagor in and to such Land Parcels, subject to Permitted Exceptions (as hereinafter defined) together with (a) all right, title and interest of the Mortgagor in and to all buildings, structures and other improvements now standing, or at any time hereafter constructed or placed, upon the Land Parcels, including all of the Mortgagor's right, title and interest in and to all equipment and fixtures of every kind and nature on the Land Parcels or in any such buildings, structures or other improvements (such buildings, structures, other improvements, equipment and fixtures being herein collectively called the "Improvements"), (b) all right, title and interest of the Mortgagor in and to all and singular tenements, hereditaments, easements, rights of way, rights, privileges and appurtenances in and to each Land Parcel belonging or in any way appertaining thereto, including without limitation all right, title and interest of the Mortgagor in, to and under any streets, ways, alleys, vaults, gores or strips of land adjoining each Land Parcel and (c) all claims or demands of the Mortgagor, in law or in equity, in possession or expectancy of, in and to the Land Parcels together with rents, income, revenues, issues and profits from and in respect of the property described above in this Granting Clause I and the present and continuing right to make claim for, collect, receive and receipt for the

same as hereinafter provided. It is the intention of the parties hereto that, so far as may be permitted by law, all of the foregoing, whether now owned or hereafter acquired by the Mortgagor, affixed, attached or annexed to each Land Parcel shall be and remain or become and constitute a part of the Mortgaged Property and the security covered by and subject to the lien of this Mortgage. All such right, title and interest of the Mortgagor in and to a Land Parcel, the interest of the Mortgagor in and to the Improvements located thereon and such other property with respect thereto described in Granting Clause I is herein called a "Property" and all such Properties are herein collectively called the "Properties".

II. All right, title and interest of the Mortgagor in and to (i) all extensions, improvements, betterments, renewals, substitutes and replacements of and on the Properties described in the foregoing Granting Clause I and (ii) all additions and appurtenances thereto not presently leased to or owned by the Mortgagor and hereafter leased to, acquired by or released to the Mortgagor or constructed, assembled or placed upon the Mortgaged Property immediately upon such leasing, acquisition, release, construction, assembling or placement, and without any further grant or other act by the Mortgagor.

III. All the estate, right, title and interest of the Mortgagor in and to (i) all judgments, insurance proceeds, awards of damages and settlements resulting from condemnation proceedings or the taking of the Properties, or any part thereof, under the power of eminent domain or for any damage (whether caused by such taking or otherwise) to the Properties, or any part thereof, or to any rights appurtenant thereto, and all proceeds of any sales or other dispositions of the Properties or any part thereof; and the Mortgagee is hereby authorized to collect and receive said awards and proceeds and to give proper receipts and acquittances thereto, subject to the conditions and limitations hereinafter set forth; and (ii) all contract rights, general intangibles, actions and rights in action, relating to the Properties including, without limitation, all rights to insurance proceeds and unearned premiums arising from or relating to damage to the Properties; and (iii) all proceeds, products, replacements, additions, substitutions, renewals and accessions of and to the Properties.

IV. As additional security for the obligations secured hereby, the Mortgagor does hereby pledge and presently and absolutely assign to the Mortgagee from and after the date hereof (including any period of redemption), primarily and on a parity with said real estate, and not secondarily, all the rents, issues and profits of the Properties and all rents, issues, profits, revenues, royalties, bonuses, rights, and benefits due, payable or accruing (including all deposits of money as advance rent, for security or as earnest money or as down payment for the purchase

of all or any part of the Properties) (the "Rents") under any and all present and future leases, subleases, underlettings, concession agreements, licenses, contracts or other agreements relative to the ownership or occupancy of all or any portion of the Properties and does hereby transfer and assign to the Mortgagee all such leases and agreements (the "Leases"). The Mortgagee hereby grants to the Mortgagor the right to collect and use the Rents as they become due and payable under the Leases, until an Event of Default has occurred and is continuing provided that the existence of such right shall not operate to subordinate this assignment to any subsequent assignment, in whole or in part by the Mortgagor, and any such subsequent assignment shall be subject to the rights of the Mortgagee under this Mortgage. The Mortgagor further agrees to execute and deliver such assignments of leases or assignments of land sale contracts as the Mortgagee may from time to time request. Upon the occurrence and during the continuance of an Event of Default (1) the Mortgagor agrees, upon demand, to deliver to the Mortgagee such additional assignments thereof as the Mortgagee may request and agrees that the Mortgagee may assume the management of the Properties, and collect the Rents, applying the same upon the Obligations and (2) the Mortgagor hereby authorizes and directs all tenants, purchasers or other persons occupying or otherwise acquiring any interest in any part of the Properties to pay the Rents due under the Leases to the Mortgagee upon request of the Mortgagee. The Mortgagor hereby appoints the Mortgagee as its true and lawful attorney in fact to manage said property and collect the Rents, with full power to bring suit for collection of the Rents and possession of the Properties, giving and granting unto said Mortgagee full power and authority to do and perform all and every act and thing whatsoever requisite and necessary to be done in the protection of the security hereby conveyed; provided, however, that (i) this power of attorney coupled with an interest and assignment of rents shall not be construed as an obligation upon the Mortgagee to manage said property or to make or cause to be made any repairs or to take any other action that may be needful or necessary and (ii) the Mortgagee agrees that until such Event of Default has occurred and is continuing as aforesaid, the Mortgagee shall not exercise its rights pursuant to said power of attorney coupled with an interest and shall permit the Mortgagor to perform the aforementioned management responsibilities. Upon the Mortgagee's receipt of the Rents, at the Mortgagee's option, it may pay: (1) reasonable charges for collection hereunder, costs of necessary repairs and other costs requisite and necessary in connection with the management of the premises, during the continuance of this power of attorney coupled with an interest and assignment of rents including general and special taxes and assessments and insurance premiums and (2) the Indebtedness secured hereby. This power of attorney coupled with an interest and assignment of leases and rents shall be irrevocable until this Mortgage shall have been satisfied and all of the Mortgaged Property released of record and the

releasing of this Mortgage shall act as a revocation of this power of attorney coupled with an interest and assignment of leases and rents with respect to such portion of the Mortgaged Property so released. After the occurrence and during the continuance of an Event of Default, the Mortgagee shall have and hereby expressly reserves the right and privilege (but assumes no obligation) to demand, collect, sue for, receive and recover the Rents, or any part thereof, now existing or hereafter made, and apply the same in accordance with law.

V. All of the Mortgagor's right, title and interest in and to all personal and intangible property and equipment of every nature whatsoever now or hereafter located in, arising from or on or utilized in connection with the Mortgaged Property, including but not limited to (a) all screens, window shades, blinds, wainscoting, storm doors and windows, floor coverings, and awnings; (b) all apparatus, machinery, accessions, equipment and appliances not included as fixtures; (c) all items of furniture, furnishings, and personal property; (d) all extensions, additions, improvements, betterments, renewals, substitutions, and replacements to or of any of the foregoing (a)-(c) (all of said property in (a)-(d) other than (i) personalty leased by Mortgagor or subject to an installment sales contract, (ii) personalty owned by lessees or persons claiming through lessees unless Mortgagor has rights thereto under applicable leases or otherwise being collectively, the "Equipment"), (e) all accounts receivable arising from the sale or other disposition of all or any of the Mortgagor's Equipment; (f) the Operating Account (as defined in the Subsidiary Cash Collateral Agreement) and any funds available in such account from time to time in accordance with the Subsidiary Cash Collateral Agreement; (g) all accounts, general intangibles, chattel paper, cash or monies of the Mortgagor, wherever located, whether in the form of cash or checks, and all cash equivalents including, without limitation, all deposits and certificates of deposit, instruments, whether negotiable or non-negotiable, debt notes both certificated and uncertificated, repurchase obligations for underlying notes of the types described herein, and commercial paper (i) received in connection with the sale or other disposition of all or any of the Mortgagor's real property, buildings, structures and other improvements, fixtures and Equipment and all extensions, renewals, improvements, substitutions and replacements thereto whether owned or leased, now or hereafter acquired, (ii) maintained by the Mortgagor in a segregated account in trust for the benefit of the Mortgagee or (iii) held by the Mortgagee; (h) trade names, trademarks, logos and signage; and (i) all proceeds (as defined in the Uniform Commercial Code) of all of the foregoing Granting Clauses I-V; it being mutually agreed, intended and declared, that the Mortgaged Property and all of the property rights and fixtures owned by the Mortgagor shall, so far as permitted by law, be deemed to form a part and parcel of the Land Parcels and for the purpose of this

Mortgage to be real estate and covered by this Mortgage, it being also agreed that if any of the property herein mortgaged is of a nature so that a security interest therein can be perfected under the Uniform Commercial Code, this instrument shall constitute a security agreement, fixture filing and financing statement, and the Mortgagor agrees to execute, deliver and file or refile any financing statement, continuation statement, or other instruments the Mortgagee may reasonably require from time to time to perfect or renew such security interest under the Uniform Commercial Code. To the extent permitted by law, (i) all of the fixtures are or are to become fixtures on Land Parcels; and (ii) this instrument, upon recording or registration in the real estate records of the proper office, shall constitute a "fixture-filing" within the meaning of Sections 9-313 and 9-402 of the Uniform Commercial Code. The remedies for any violation of the covenants, terms and conditions of the agreements herein contained shall be as prescribed herein or by general law, or, as to that part of the security in which a security interest may be perfected under the Uniform Commercial Code, by the specific statutory consequences now or hereafter enacted and specified in the Uniform Commercial Code, all at the Mortgagee's sole election.

VI. All of the Mortgagor's right, title, and interest in, to and under (i) all contracts, including the Management Agreements, and agreements relating to the Properties, and other documents, books and records related to the operation of the Properties; (ii) all consents, licenses (including, to the extent permitted by law, any licenses permitting the sale of liquor at any of the Properties), warranties, guaranties and building and other permits required or useful for the construction, completion, occupancy and operation of each and every Property; (iii) all of the Mortgagor's rights under any contracts for the sale of any portion of the Mortgaged Property; and (iv) all plans and specifications, engineering reports, land planning, maps, surveys, and any other reports, exhibits or plans and specifications used or to be used in connection with the construction, operation or maintenance of each and every Property, together with all amendments and modifications thereof.

TO HAVE AND TO HOLD THE Mortgaged Property, whether now owned or held or hereafter acquired, unto the Mortgagee and its successors and assigns forever, IN TRUST FOREVER, with power of sale and assent to decree (to the extent permitted by applicable law) and to secure the performance of, and compliance with, the obligations, covenants and conditions of this Mortgage, the Guaranty and the other Loan Documents all as herein set forth, and Mortgagor hereby binds itself and its successors and assigns to warrant and forever defend the Mortgaged Property unto Mortgagee and its assigns and successors against the claims of all parties whomsoever.

To the extent that it is to be recorded in the State of Alabama this instrument shall be deemed to be and shall be enforceable as a mortgage (and not as a deed of trust) and as a security agreement, fixture filing statement, assignment of leases and rents and financing statement; Trustee shall have no rights, powers or obligations; and any provision relating to the Trustee be, and with respect to the Trustee only, shall be of no force or effect, and shall be inapplicable to this Mortgage.

With respect to any portion of the Mortgaged Property which constitutes personal property or fixtures governed by the Uniform Commercial Code of the state in which such property is located (hereinafter called the "Code"), this Mortgage shall constitute a security agreement between Mortgagor, as the Debtor, and Mortgagee, as the Secured Party, and the Mortgagor hereby grants to Mortgagee a security interest in such portion of the Mortgaged Property, including any proceeds thereof. Cumulative of all other rights of Mortgagee hereunder, Mortgagee shall have all of the rights conferred upon secured parties by the Code. Mortgagor will execute and deliver to Mortgagee all financing statements that may from time to time be required by Mortgagee to establish and maintain the validity and priority of the security interest of Mortgagee, or any modification thereof, and all costs and expenses of any searches reasonably required by Mortgagee. Mortgagor hereby authorizes Mortgagee to execute and file, without Mortgagor's joinder, any and all financing statements or continuation statements necessary or desirable to perfect or maintain the validity and priority of Mortgagee's security interest. Mortgagor agrees that a copy of this Mortgage may be filed as a financing statement in any public office. Mortgagee may exercise any or all of the remedies of a secured party available to it under the Code with respect to such property, and it is expressly agreed that if upon default Mortgagee should proceed to dispose of such property in accordance with the provisions of the Code, five (5) business days' notice by Mortgagee to Mortgagor shall be deemed to be reasonable notice under any provision of the Code requiring such notice; provided, however, that Mortgagee may at its option dispose of such property in accordance with Mortgagee's rights and remedies with respect to the Real Estate pursuant to the provisions of this Mortgage, in lieu of proceeding under the Code.

Mortgagor shall give advance notice in writing to Mortgagee of any proposed change in Mortgagor's name, identity or structure and will execute and deliver to Mortgagee, prior to or concurrently with the occurrence of any such change, all additional financing statements that Mortgagee may require to establish and maintain the validity and priority of Mortgagee's security interest with respect to any Mortgaged Property described or referred to herein.

Some of the items of Mortgaged Property described herein are goods that are or are to become fixtures related to the Real Estate, and it is intended that, as to those goods, this Mortgage shall be effective as a financing statement filed as a fixture filing from the date of its filing for record in the real estate records of the county in which the Mortgaged Property is situated. Information concerning the security interest created by this instrument may be obtained from Mortgagee, as secured party, at the address of Mortgagee stated above. The mailing address of the Mortgagor, as debtor, is stated above.

1. Definitions. All capitalized terms used but not otherwise defined herein shall have the meanings assigned to them in the Credit Agreement. The words "herein," "hereof" and "hereunder" and other words of like import refer to this Mortgage as a whole and not to any particular Section, subsection or other subdivision. In addition, wherever used in this Mortgage, the following terms, and the singular and plural thereof, shall have the following meanings:

Acquisition Cost: As defined in the Credit Agreement.

Affiliate: With respect to any specified Person means any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person. For the purposes of this definition, "control" when used with respect to any specified Person means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities or other beneficial interest, by contract or otherwise; and the terms "controlling" and "controlled" have the meanings correlative to the foregoing.

Appraised Value: As defined in the Credit Agreement.

Alteration: As defined in Section 9(c) hereof.

Assignment: As defined in the recitals hereof.

Bank: As defined in the recitals hereof.

Borrower: As defined in the recitals hereof.

Cash and Cash Equivalents: Shall mean (a) cash, and (b) Temporary Cash Investments (as defined in the Credit Agreement).

Casualty Amount: As defined in Section 5(b) hereof.

Commitment: As defined in the Credit Agreement.

Credit Agreement: As defined in the recitals hereof.

Default: As defined in the Credit Agreement.

Default Rate: The Base Rate (as defined in the Credit Agreement) from time to time in effect, plus four (4) percent.

Domestic Business Day: As defined in the Credit Agreement.

Environmental Claim: As defined in the Credit Agreement.

Equipment: As defined in Granting Clause V hereof.

ERISA: As defined in the Credit Agreement.

Event of Default: As defined in the Credit Agreement.

GAAP: Shall mean United States generally accepted accounting principles, consistently applied.

Governmental Authority: Any Federal, state or local government or any other political subdivision thereof exercising executive, legislative, judicial, regulatory or administrative functions.

Grant: Shall mean grant, grant a security interest in, bargain, sell, lien, mortgage, convey, pledge, hypothecate, assign, transfer, warrant and set over.

Guaranty: As defined in the recitals hereof.

Impositions: All taxes (including, without limitation, all ad valorem, sales (including those imposed on lease rentals), use, single business, gross receipts, value added, intangible transactions, privilege or license or similar taxes), assessments (including, without limitation, all assessments for public improvements or benefits, whether or not commenced or completed prior to the date hereof and whether or not commenced or completed within the term of this Mortgage), water, sewer or other rents and charges, excises, levies, fees (including, without limitation, license, permit, inspection, authorization and similar fees), and all other governmental charges, in each case whether general or special, ordinary or extraordinary, or foreseen or unforeseen, of every character in respect of the Mortgaged Property (including all interest and penalties thereon), which at any time prior to, during or in respect of the term hereof may be assessed or imposed on or in respect of or be a Lien upon (a) the Mortgagor (including, without limitation, all income, franchise, single business or other taxes imposed on the Mortgagor for the privilege of doing business in the jurisdiction in which the Mortgaged Property is located) or the Mortgagee arising as a result of or with respect to its capacity as the

Mortgagee hereunder, (b) the Mortgaged Property or any other collateral delivered or pledged in connection with the Loans, or any part thereof, or any Rents therefrom or any estate, right, title or interest therein, or (c) any occupancy, operation, use or possession of, or sales from, or activity conducted on, or in connection with the Mortgaged Property or the leasing or use of all or any part thereof. Nothing contained in this Mortgage shall be construed to require the Mortgagor to pay any tax, assessment, levy or charge imposed on the Mortgagee in the nature of a franchise, capital levy, estate, inheritance, succession, income or net revenue tax.

Improvements: As defined in Granting Clause I hereof.

Indebtedness: As defined in the recitals hereof.

Indemnified Parties: As defined in Section 30 hereof.

Independent Architect: An architect selected by the Mortgagor, and acceptable to the Mortgagee, such acceptance not to be unreasonably withheld or delayed, licensed to practice in the State in which the relevant Property is located and having at least ten (10) years of experience.

Insurance Requirements: Shall mean all terms of any insurance policy required hereunder covering or applicable to the Properties or Equipment or any part thereof, all requirements of the issuer of any such policy, and all orders, rules, regulations and other requirements of the National Board of Fire Underwriters (or any other body exercising similar functions) applicable to or affecting the Properties or Equipment or any part thereof or any use of the Properties or Equipment or any part thereof.

Land Parcels: As defined in Granting Clause I.

Leases: As defined in Granting Clause IV hereof.

Legal Requirements: All applicable laws, ordinances, rules, regulations, and requirements of Governmental Authorities (including, without limitation, Environmental Laws (as defined in the Credit Agreement), land use laws, all zoning and building codes with respect to the Mortgaged Property and ERISA and the rules and regulations promulgated thereunder.

Lien: As defined in the Credit Agreement.

Loan: As defined in the Credit Agreement.

Loan Documents: As defined in the Credit Agreement.

Management Agreements: Property Management Contract and REIT Management Contract.

Material Adverse Effect: As defined in the Credit Agreement.

Mortgage: As defined in the recitals hereof.

Mortgage Escrow Amounts: As defined in Section 7(a).

Mortgage Escrow Security: As defined in Section 7(b).

Mortgaged Property: As defined in the granting clause to this Mortgage. Wherever the term "Mortgaged Property" is used in this Mortgage it shall include each Property then subject to the lien of this mortgage.

Mortgagee: As defined in the recitals hereof.

Mortgagor: As defined in the recitals hereof.

Notes: As defined in the Credit Agreement.

Obligations: As defined in the recitals hereof.

Officer's Certificate: A certificate delivered to the Mortgagee and signed by the President or a Vice President of the Mortgagor.

Operating Account: As defined in the Subsidiary Cash Collateral Agreement.

Original Credit Agreement: As defined in the recitals hereof.

Original Guaranty: As defined in the recitals hereof.

Permitted Exceptions: (a) Liens for taxes, assessments or other governmental charges not yet due and payable or which are being contested in good faith by appropriate proceedings promptly instituted and diligently conducted in accordance with Section 6(c);

(b) Statutory Liens of carriers, warehousemen, mechanics, materialmen and other similar liens imposed by law, which are incurred in the ordinary course of business for sums not more than sixty (60) days delinquent or which are being contested in good faith in accordance with Section 6(c);

(c) Deposits made in the ordinary course of business to secure liability to insurance carriers;

(d) Liens for purchase money obligations for Equipment; provided that: (i) the debt secured by any such Lien does not exceed the purchase price of such Equipment, and (ii)

any such Lien encumbers only the asset so purchased and the proceeds upon sale, disposition, loss or destruction thereof;

(e) Easements, rights-of-way, restrictions and other similar charges or encumbrances against real property not interfering in any material respect with the use or ordinary conduct of the business of any Mortgagor and not diminishing in any material respect the value of the Property to which it is attached;

(f) Liens arising from filing UCC financing statements regarding leases of Equipment permitted by this Agreement;

(g) Liens and judgments which have been or will be bonded or released of record within thirty (30) days after the Mortgagor has received notice of the filing of such Lien or judgment;

(h) Those matters set forth on EXHIBIT B-1 through B-3 hereof;

(i) Liens in favor of the Mortgagee under the Assignment; and

(j) Any other Liens, matters and exceptions consented to in writing by the Mortgagee in its sole discretion.

Person: As defined in the Credit Agreement.

Proceeds: As defined in Section 5(b) hereof.

Properties: As defined in Granting Clause I hereof.

Property Management Contract: As defined in the Credit Agreement.

REIT Management Contract: As defined in the Credit Agreement.

Renewal Lease: As defined in Section 11(b) hereof.

Rents: As defined in Granting Clause IV hereof.

Subsidiary Cash Collateral Agreement: As defined in the Credit Agreement.

Taking: Shall mean a temporary or permanent taking by any Governmental Authority as the result or in lieu or in anticipation of the exercise of the right of condemnation or eminent domain, of all or any part of a Property, or any interest therein or right accruing thereto, including any right of access

thereto or any change of grade affecting any Land Parcel or any part thereof.

Tenant: Shall mean any Person leasing any portion of a Property and obligated to pay rent pursuant to a Lease.

Work: As defined in Section 5(b) hereof.

REPRESENTATIONS, WARRANTIES, COVENANTS AND AGREEMENTS

The Mortgagor represents and warrants to and covenants and agrees with the Mortgagee as follows:

2. Warranty.

(a) This Mortgage upon its due execution and proper recordation is and will remain a valid, enforceable and perfected first Lien on and a security interest in the Mortgaged Property, subject only to the Permitted Exceptions.

(b) This Mortgage and each of the Loan Documents executed by the Mortgagor are the legal, valid and binding obligations of the Mortgagor, enforceable against the Mortgagor in accordance with their terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium and other laws affecting creditor's rights generally in effect from time to time.

(c) The Mortgagor owns good and insurable fee simple title to the Properties, subject only to the Permitted Exceptions. The Mortgagor will preserve such title to its respective Properties and will forever warrant and defend same and the validity and priority of the lien hereof from and against any and all claims whatsoever;

(d) On the date hereof, to Mortgagor's knowledge, no portion of the Improvements at any Property has been materially damaged, destroyed or injured by fire or other casualty which is not now fully restored or in the process of being restored;

(e) The Mortgagor has and will maintain, in effect at all times until the Indebtedness and Obligations are satisfied in full, all necessary material licenses, permits, authorizations, registrations and approvals to own, use, occupy and operate each of the Properties as a stabilized, multifamily property and has full power and authority to carry on its business at each of the Properties as currently conducted and has not received any written notice of any violation of any such licenses, permits, authorizations,

registrations or approvals that materially impair the value of the Property for which such notice was given or which would affect the use or operation of any Property in any material respect;

(f) As of the date hereof, the Mortgagor has not received any written notice of any Taking or threatened Taking of any Property or any portion thereof;

(g) Each Property and the Equipment located thereon is owned by the Mortgagor;

(h) Each Property is in compliance in all material respects with all applicable laws, ordinances, rules, regulations, and requirements of governmental authorities, including, without limitation, all land use laws and all zoning and building codes, and has adequate access to public streets, roads or highways;

(i) Each Property constitutes a separate tax lot, with a separate tax assessment, independent of any other land or improvements;

(j) All utility services necessary for the operation of each Property have been connected and are available in adequate capacities directly from utility lines and without the need for private easements not presently existing; and

(k) To the actual knowledge of the Mortgagor, the Mortgagor is not in material default under the terms, conditions or provisions of any of the Leases or Agreements described in Section 11 hereof.

3. Payment and Performance of Obligations Secured.
The Mortgagor shall promptly pay when due the principal of and interest on the Indebtedness, any prepayments, late charges and fees provided for in the Guaranty, and all other payment Obligations secured by this Mortgage, all in lawful money of the United States of America, and shall further perform fully and in a timely manner all Obligations of the Mortgagor. All sums payable by the Mortgagor hereunder shall be paid without demand, counterclaim, offset or deduction all without relief from valuation and appraisal laws. The Mortgagor waives all rights now or hereafter conferred by statute or otherwise to any such demand, counterclaim, setoff or deduction.

4. Insurance.

(a) Insurance Coverage Requirements. The Mortgagor shall keep, or cause to be kept, in full force and effect insurance, of the types and minimum limits as follows during the term of this Mortgage:

(i) Property Insurance. Insurance with respect to the Properties and the Equipment against any peril included within the classification "All Risks of Physical Loss" with extended coverage in an amount in no event less than the greater of Acquisition Cost or Appraised Value;

(ii) Liability Insurance. Comprehensive general liability insurance, including bodily injury, death and property damage liability, and umbrella liability insurance against any and all claims, including all legal liability to the extent insurable imposed upon the Mortgagee, or the Trustee, and all court costs and attorneys' fees and expenses, arising out of or connected with the possession, use, leasing, operation, maintenance or condition of each of the Properties in such amounts as are generally required by institutional lenders for properties comparable to the Properties but in no event for limits of less than \$1,000,000 per occurrence per Property with combined single limit coverage for bodily injury or property damage and excess (umbrella) liability coverage of no less than \$50,000,000 per occurrence per Property;

(iii) Workers' Compensation Insurance. Statutory workers' compensation insurance (to the extent the risks to be covered thereby are not already covered by other policies of insurance maintained by the Mortgagor), with respect to any work on or about each Property;

(iv) Business Interruption. Business interruption and/or loss of "rental value" insurance for each Property in an amount equal to one (1) year's "rental value" attributable to such Property and based on the "rental value" for the immediately preceding year and otherwise sufficient to avoid any co-insurance penalty, the term "rental value" to mean the sum of (A) the total Rents payable under the Leases at each Property and (B) the total amount of all other amounts to be received by the Mortgagor or third parties which are the legal obligation of the Tenants, reduced to the extent such amounts would not be received because of operating expenses not incurred during a period of non-occupancy of that portion of such Property then not being occupied;

(v) Flood Insurance. If all or any portion of any Property is located within a Federally designated flood hazard zone, flood insurance in such amount as generally required by institutional lenders for properties comparable to the Properties (provided, however, that if the Mortgagor believes that it is no longer obligated to maintain flood insurance with respect to any Property pursuant to this provision, the Mortgagor shall notify the Mortgagee of such circumstances and the Mortgagee shall have the opportunity

to contest by appropriate legal or mutually agreeable arbitration proceedings whether or not the Mortgagor's obligation remains in effect in light of the criteria set forth in this provision); and

(vi) Other Insurance. Such other insurance with respect to any Property and the Equipment located therein against loss or damage as are reasonably requested by the Mortgagee provided such insurance is of the kind from time to time customarily insured against and in such amounts as are generally required by institutional lenders for properties comparable to the Properties.

(b) Ratings of Insurers. All insurance coverage shall be provided by one or more domestic primary insurers having an Alfred M. Best Company, Inc. rating of "A-" or better and financial size category of not less than "X". All insurers providing insurance required by this Mortgage shall be authorized to issue insurance in the state where each Property is located.

The insurance coverage required under Section 4(a) may be effected under a blanket policy or policies covering the Mortgaged Property and other property and assets not constituting a part of the Mortgaged Property; provided that any such blanket policy shall specify, except in the case of public liability insurance, the portion of the total coverage of such policy that is allocated to each Property and the Equipment located thereon, and any sublimits in such blanket policy applicable to the Mortgaged Property, which amounts shall not be less than the amounts required pursuant to Section 4(a) and which shall in any case comply in all other respects with the requirements of this Section 4.

(c) Form of Insurance Policies; Endorsements. All insurance policies shall be in such form and with such endorsements as are comparable to the forms of and endorsements to the Mortgagor's insurance policies in effect on the date hereof and otherwise in accordance with commercially reasonable standards applied by prudent owners of stabilized, multifamily properties of the same quality of the Properties. Certified copies of all of the above-mentioned insurance policies have been delivered to and shall be held by the Mortgagee. All such policies shall name the Mortgagee as an additional insured or loss payee, as appropriate, shall provide that all Proceeds be payable as set forth in Section 5 hereof, and shall contain: (i) a standard "non-contributory mortgagee" endorsement or its equivalent relating, inter alia, to recovery by the Mortgagee notwithstanding the negligent or willful acts or omissions of the Mortgagor; (ii) a waiver of subrogation endorsement as to the Mortgagee providing that no policy

shall be impaired or invalidated by virtue of any act, failure to act, negligence of, or violation of declarations, warranties or conditions contained in such policy by the Mortgagor, the Mortgagee or any other named insured, additional insured or loss payee, except for the willful misconduct of the Mortgagee knowingly in violation of the conditions of such policy; (iii) an endorsement indicating that neither the Mortgagee nor the Mortgagor shall be or be deemed to be a co-insurer with respect to any risk insured by such policies and shall provide for a deductible per loss of an amount not more than that which is customarily maintained by prudent owners of stabilized, multifamily properties of the same quality as the Properties, but in no event in excess of \$100,000; (iv) a provision that such policies shall not be cancelled or amended, including, without limitation, any amendment reducing the scope or limits of coverage, without at least thirty (30) days prior written notice to the Mortgagee in each instance; and (v) effective waivers by the insurer of all claims for insurance premiums against any loss payees, additional insureds and named insureds (other than the Mortgagor). Certificates of insurance with respect to all renewal and replacement policies shall be delivered to the Mortgagee not less than thirty (30) days prior to the expiration date of any of the insurance policies required to be maintained hereunder which certificates shall bear notations evidencing payment of applicable premiums and originals (or certified copies) of such insurance policies shall be delivered to the Mortgagee promptly after the Mortgagor's receipt thereof. If the Mortgagor fails to maintain and deliver to the Mortgagee the original policies (or certified copies) or certificates of insurance required by this Mortgage, the Mortgagee may, at its option, after ten (10) days' prior written notice to the Mortgagor, procure such insurance, and the Mortgagor shall reimburse the Mortgagee for the amount of all premiums paid by the Mortgagee thereon promptly, upon demand by the Mortgagee, with interest thereon at the Default Rate from the date paid by the Mortgagee to the date of repayment, and such sum shall be a part of the Indebtedness secured by this Mortgage.

The Mortgagee shall not by the fact of approving, disapproving, accepting, preventing, obtaining or failing to obtain any insurance, incur any liability for or with respect to the amount of insurance carried, the form or legal sufficiency of insurance contracts, solvency of insurance companies, or payment or defense of lawsuits, and the Mortgagor hereby expressly assumes full responsibility therefor and all liability, if any, with respect thereto.

(d) Compliance with Insurance Requirements. The Mortgagor shall comply with all Insurance Requirements and

shall not bring or keep any article upon any of the Properties or cause or permit any condition to exist thereon which would be prohibited by or could invalidate insurance coverage maintained, or required hereunder to be maintained, by the Mortgagor on or with respect to any part of the Mortgaged Property pursuant to this Section 4.

(e) Compliance With Alabama State Law. Notwithstanding the foregoing provisions of this Section 4, to the extent this transaction is subject to § 5-19-20 of the Code of Alabama 1975, as amended, Mortgagor shall not be required to maintain insurance that may not be required by a creditor under such section, and Mortgagor shall have the option of providing any insurance required under this Mortgage through an existing policy or policies independently obtained and paid for by Mortgagor, subject to Mortgagee's right, for reasonable cause before credit is extended, to decline the insurance provided by Mortgagor.

5. Condemnation and Insurance Proceeds.

(a) The Mortgagor will promptly notify the Mortgagee in writing upon obtaining knowledge of (i) the institution of any proceedings relating to any Taking of, or (ii) the occurrence of any casualty, damage or injury to, the Properties or Equipment located thereon or any portion thereof the restoration of which is estimated by the Mortgagor in good faith to cost more than \$150,000.

(b) In the event of any Taking of, or casualty or other damage or injury, to any Property, or Equipment located thereon, the Mortgagor's right, title and interest in and to all compensation, awards, proceeds, damages, claims, insurance recoveries, causes and rights of action (whether accrued prior to or after the date hereof) and payments which the Mortgagor may receive or to which the Mortgagor may become entitled with respect to such Property or any part thereof (collectively, "Proceeds"), in connection with any such Taking, casualty or other damage or injury to any Property, or any part thereof, or Equipment located thereon are hereby assigned to and shall be paid to the Mortgagee, except as otherwise set forth herein. Notwithstanding anything to the contrary set forth in this Mortgage, in the event such Proceeds are not in excess of \$250,000 (the "Casualty Amount"), then the Mortgagee hereby consents to and agrees that such Proceeds are to be paid directly to the Mortgagor to be applied to restoration of such Property in accordance with the terms hereof. Subject to the provisions of Sections 5(c) and 5(d) hereof, promptly after the occurrence of any damage or destruction to all or any portion of such Property or a Taking of a portion of such Property, the Mortgagor shall commence and diligently

prosecute to completion (to Mortgagee's reasonable satisfaction) the repair, restoration and rebuilding of such Property (in the case of a Taking, to the extent it is capable of being restored) (such repair, restoration and rebuilding are sometimes hereinafter collectively referred to as the "Work") in compliance in all material respects with all Legal Requirements and free and clear of any and all Liens except the Permitted Exceptions. The Mortgagor will, in good faith and in a commercially reasonable manner, file and prosecute the adjustment, compromise or settlement of any claim for insurance or Proceeds of a Taking and, subject to the Mortgagor's right to receive the direct payment of any Proceeds whose amount is less than the Casualty Amount, will cause the same to be collected and held and applied in accordance with the provisions of this Mortgage. The Mortgagor hereby irrevocably authorizes and empowers the Mortgagee, in the name of the Mortgagor as its true and lawful attorney-in-fact, to file and prosecute such claim and to collect and to make receipt for any such payment, and, in the event the Mortgagor fails so to act for a period of twenty (20) days following the Mortgagor's receipt of written notice from the Mortgagee or if an Event of Default shall have occurred and be continuing, then in such case the Mortgagee may file such claim and prosecute it with counsel satisfactory to it at the expense of the Mortgagor. The Mortgagee shall have the right to approve, such approval not to be unreasonably withheld, any settlement which might result in any Proceeds in excess of the Casualty Amount, and the Mortgagor will deliver or cause to be delivered to the Mortgagee all instruments reasonably requested by the Mortgagee to permit such approval. The Mortgagor will pay all costs, fees and expenses reasonably and actually incurred by the Mortgagee (including all reasonable attorneys' fees and expenses actually incurred, the reasonable fees of insurance experts and adjusters and reasonable costs incurred in any litigation or arbitration) in connection with the settlement of any claim for insurance or Taking Proceeds and seeking and obtaining of any payment on account thereof in accordance with the foregoing provisions. If any insurance or Taking Proceeds are received by the Mortgagor, such Proceeds shall be received in trust for the Mortgagee, shall be used to pay for the cost of the Work in accordance with the terms hereof, and in the event such Proceeds are in excess of the Casualty Amount shall be forthwith paid to the Mortgagee to be held by the Mortgagee in a segregated account in trust for the Mortgagor, in each case to be applied or disbursed in accordance with the provisions hereof.

(c) Upon the occurrence and during the continuance of an Event of Default hereunder, all Proceeds shall be paid over to the Mortgagee and shall be applied (i) first toward

reimbursement of the Mortgagee's reasonable costs and expenses actually incurred in connection with recovery of the Proceeds and disbursement of the Proceeds (as further described below), including, without limitation, reasonable administrative costs and inspection fees, (ii) next, to the curing of the Event of Default if same is a payment default, (iii) next, if the Event of Default has not been cured as and set forth in clause (ii), to the payment or prepayment of the Indebtedness secured hereby in such order as the Mortgagee shall determine.

(d) If Proceeds are not required to be applied towards payment of the Indebtedness pursuant to Section 5(c) above, then the Mortgagee shall make the Proceeds which it is holding pursuant to the terms hereof available to the Mortgagor (after payment of any reasonable expenses actually incurred by the Mortgagee in connection with the collection thereof) for payment of or reimbursement of the Mortgagor's expenses incurred or payable with respect to the Work, upon the following terms and subject to the following conditions:

(i) there shall be no continuing Event of Default hereunder;

(ii) if the estimated cost of the Work (as estimated by the architect referred to in clause (v) below) shall exceed the Proceeds available, the Mortgagor shall deposit with or deliver to the Mortgagee an amount equal to such excess in the form of Cash and Cash Equivalents or otherwise provide a guaranty, bond or other security reasonably satisfactory to the Mortgagee in an amount equal to such excess; and

(iii) the Mortgagee shall be furnished with an estimate of the cost of the Work accompanied by an Independent Architect's certification as to such costs and appropriate plans and specifications for the Work. The plans and specifications shall require that the Work be done in a first-class workmanlike manner at least equivalent to the quality and character of the original work in the Improvements (provided, however, that in the case of a partial Taking the restoration of the Property shall be done to the extent reasonably practicable after taking into account the consequences of such Taking), so that upon completion thereof, the Property shall be at least equal in value and general utility to the Property immediately prior to the damage or destruction. The Mortgagor shall restore all Improvements such that when they are fully restored and/or repaired that such Improvements and their contemplated use fully comply with all applicable Legal Requirements including, without limitation, zoning,

environmental and building laws, codes, ordinances and regulations.

(e) Disbursement of the Proceeds shall be made from time to time (but not more frequently than once in any month) by the Mortgagee as the Work progresses upon receipt by the Mortgagee of (i) an Officers' Certificate dated not more than thirty (30) days prior to the application for such payment, requesting such payment or reimbursement and setting forth the Work performed which is the subject of such request, the parties which performed such Work and the actual cost thereof, and also certifying that such Work and materials are free and clear of Liens other than Permitted Exceptions and (ii) an Independent Architect's certificate certifying performance of the Work together with an estimate of the cost to complete the Work. No payment made prior to the final completion of the Work shall exceed ninety percent (90%) of the value of the Work performed or materials furnished and incorporated into the Improvements from time to time, and at all times the undisbursed balance of said Proceeds together with all amounts deposited, bonded, guaranteed or otherwise funded pursuant to clause (ii) above, shall be at least sufficient to pay for the cost of completion of the Work, free and clear of Liens other than Permitted Exceptions; final payment shall be made upon receipt by the Mortgagee of a certification by an Independent Architect, as to the completion substantially in accordance with the submitted plans and specifications, and the filing of a notice of completion and the receipt by the Mortgagee of final lien waivers from each contractor or materialman. The Mortgagee may at its option require an endorsement to its title insurance policy insuring the continued priority of the Lien of this Mortgage (subject to Permitted Exceptions) as to all sums advanced hereunder, such endorsement to be paid for by the Mortgagor.

(f) In the event that any condition to application of Proceeds to the Work contained in Section 5(d) above is not satisfied, then upon thirty (30) days prior written notice the Commitments shall be reduced in an aggregate amount equal to all Proceeds with respect to the Taking of or damage or injury to the Mortgaged Property in question and if pursuant to the Credit Agreement such reduction necessitates the payment or prepayment of all or any portion of the Indebtedness secured hereby, the Mortgagee may so apply such Proceeds.

(g) In the event that, after the completion of the Work and payment of all costs of completion, there are excess Proceeds, then upon thirty (30) days prior written notice the Commitments shall be reduced in an aggregate amount equal to such excess Proceeds with respect to the

Taking of or damage or injury to the Mortgaged Property and, if pursuant to the Credit Agreement such reduction necessitates the payment or prepayment of all or any portion of the Indebtedness secured hereby, the Mortgagee may so apply such proceeds.

(h) In the event of a Taking of all of any Property the Commitments shall be reduced in an aggregate amount equal to the Proceeds received by the Mortgagor for such Property and if pursuant to the Credit Agreement such reduction necessitates the payment or prepayment of all or any portion of the Indebtedness secured hereby, the Mortgagee may so apply such proceeds.

6. Impositions, Liens and Other Items.

(a) Subject to its right of contest set forth in Section 6(c), the Mortgagor shall pay all Impositions which are attributable to or affect the Properties or the Mortgagor, prior to the date such Impositions shall become delinquent or late charges may be imposed thereon, directly to the applicable taxing authority with respect thereto, unless and to the extent the Mortgagee shall pay such Impositions from any Mortgage Escrow Amounts retained in the Operating Account pursuant to Section 7 hereof.

(b) Subject to its right of contest set forth in Section 6(c), the Mortgagor shall at all times keep the Properties and the Equipment located thereon free from all Liens (other than the Lien hereof and Permitted Exceptions) and shall pay when due and payable all claims and demands of mechanics, materialmen, laborers and others which, if unpaid, might result in or permit the creation of a Lien on the Properties or any portion thereof and the Equipment located thereon, whether ranked senior, pari passu or junior to the priority of the Lien created hereby, and shall in any event cause the prompt, full and unconditional discharge of all Liens imposed on or against the Properties, or any portion thereof and the Equipment located thereon within forty-five (45) Domestic Business Days after receiving written notice of the filing (whether from the Mortgagee, the lienor or any other Person) thereof. The Mortgagor shall do or cause to be done, at the sole cost of the Mortgagor, everything necessary to fully preserve the first priority of the Lien of this Mortgage against the Properties and the Equipment located thereon subject only to the Permitted Exceptions. Upon the occurrence of an Event of Default with respect to its Obligations, the Mortgagee may (but shall not be obligated to) make such payment or discharge such Lien, and the Mortgagor shall reimburse the Mortgagee on demand for all such advances pursuant to Section 12 hereof.

(c) Nothing contained herein shall be deemed to require the Mortgagor to pay, or cause to be paid, any Imposition, to satisfy any Lien or to comply with any Legal Requirement or Insurance Requirement so long as the Mortgagor is in good faith, and by proper legal proceedings, diligently contesting the validity, amount or application thereof, provided that in each case, at the time of the commencement of any such action or proceeding, and during the pendency of such action or proceeding (i) no Event of Default shall exist and be continuing hereunder, (ii) adequate reserves with respect thereto are maintained on the Mortgagor's books in accordance with GAAP, (iii) such contest operates to suspend collection or enforcement as the case may be, of the contested Imposition or Lien and such contest is maintained and prosecuted continuously and with diligence, (iv) in the case of any Insurance Requirement, the failure of the Mortgagor to comply therewith shall not impair the validity of any insurance required to be maintained by the Mortgagor under Section 4 or the right to full payment of any claims thereunder, and (v) in the case of Impositions and Liens the amount of which contest exceeds \$500,000, during such contest, the Mortgagor, at the request of the Mortgagee, shall provide security in the form required by Section 5(d)(ii) assuring the discharge of the Mortgagor's obligations being contested and of any additional interest, charge, or penalty arising from such contest. Notwithstanding the foregoing, the Mortgagor promptly shall comply with any contested Legal Requirement or Insurance Requirement or shall pay any contested Imposition or Lien, and compliance therewith or payment thereof shall not be deferred, if, at any time a Property or any portion thereof, or any Equipment located thereon shall be, in the Mortgagee's reasonable judgment, in danger of being forfeited or lost or the Mortgagee may be subject to civil or criminal damages as a result thereof. If such action or proceeding is terminated or discontinued adversely to the Mortgagor, the Mortgagor shall promptly comply with such contested Imposition, Lien, Legal Requirements or Insurance Requirements, as the case may be, and upon written demand, shall deliver to the Mortgagee reasonable evidence of the Mortgagor's compliance.

7. Funds for Taxes and Insurance.

(a) Upon the occurrence and during the continuance of any Event of Default by the Mortgagor hereunder, the Mortgagee may at its sole election, retain, or cause to be retained, in the Operating Account in accordance with Section 3(e) of the Subsidiary Cash Collateral Agreement, additional amounts sufficient to discharge the obligations of the Mortgagor under Sections 4 and 6 hereof as and when they become due (such amounts, the "Mortgage Escrow")

Amounts"). Upon the Mortgagee's election to retain Mortgage Escrow Amounts in accordance with the foregoing, the Mortgagee may initially retain in the Operating Account a sum which bears the same relation to the annual insurance premiums for all insurance required by the terms hereof and Impositions assessed against the Properties for the insurance period or tax year then in effect, as the case may be, as (i) the number of months elapsed as of the date of such election since the last preceding installment of said premiums or Impositions shall have been paid bears to (ii) twelve (12). For the purpose of this computation, the month in which such last preceding installment of premiums or Impositions was paid and the month in which the Mortgagee makes such election shall be included and deemed to have elapsed. During each month thereafter, until the Mortgagee shall elect that the provisions of this Section 7 shall no longer be applicable, the Mortgagee may retain with respect to the Mortgage Escrow Amounts a sum equal to one-twelfth of such insurance premiums and such Impositions for the then-current annual insurance period and tax year, so that as each installment of such premiums and Impositions shall become due and payable, the Mortgagee shall have retained a sum sufficient to pay the same. If the amount of such premiums and Impositions has not been definitely ascertained at the time when any such monthly deposits are to be retained, the Mortgagee may retain Mortgage Escrow Amounts based upon the amount of such premiums and Impositions for the preceding year, subject to adjustment as and when the amount of such premiums and Impositions are ascertained.

(b) At any time after the Mortgagee's election to retain Mortgage Escrow Amounts pursuant to Section 7(a) above, subject to the conditions of the next succeeding sentence, the Mortgagor may elect to replace any Mortgage Escrow Amounts then being retained by the Mortgagee and satisfy its obligations under this Section 7 by delivery of Cash and Cash Equivalents (any such security, "Mortgage Escrow Security") in an amount sufficient (including the amount of the Mortgage Escrow Amounts so replaced) to discharge the Impositions and insurance premiums which shall become due during the six (6) month period immediately after the date of delivery of such Mortgage Escrow Security (and for each six (6) month period thereafter for so long as the Mortgagor elects to post such security in lieu of the Mortgagee's retention of such amounts) and with maturities corresponding to the respective due dates of such obligations. Notwithstanding the foregoing, it shall be a condition to the Mortgagor's delivery of any Mortgage Escrow Security (other than cash) in satisfaction of its obligations under this Section 7, that the Mortgagor, at its expense, execute, acknowledge and deliver or cause to be delivered to the Mortgagee such additional security

agreements, financing statements and other documents or instruments including, without limitation, an opinion of counsel satisfactory to the Mortgagee, and take all such actions which in the reasonable opinion of the Mortgagee or its counsel may be necessary to grant and convey to the Mortgagee a perfected security interest in and to any and all the Mortgage Escrow Security.

(c) The Mortgage Escrow Amounts (or any Mortgage Escrow Security posted in lieu thereof pursuant to Section 7(b)) shall be held by the Mortgagee and shall be applied to the payment of the obligations in respect of which such Mortgage Escrow Amounts were retained except upon the occurrence of an Event of Default and the acceleration of the Notes in which case all or any portion of such Mortgage Escrow Amounts (or any Mortgage Escrow Security posted in lieu thereof) may be so transferred or otherwise applied to the Indebtedness in such order or priority as the Mortgagee may elect or the Mortgagee may exercise any of its rights or remedies with respect to same under the Subsidiary Cash Collateral Agreement, at law or in equity. Any Mortgage Escrow Amounts retained by (or Mortgage Escrow Security posted with) the Mortgagee in excess of the actual obligations for which they were retained, shall be held and applied to the obligations for the ensuing year or otherwise applied in accordance with the terms of the Subsidiary Cash Collateral Agreement. Any such application of said amounts or any portion thereof to any Indebtedness secured hereby shall not be construed to cure or waive any Default or notice of Default hereunder or invalidate any act done pursuant to any such Default or notice.

(d) If the Mortgagee elects to retain Mortgage Escrow Amounts from funds deposited in the Operating Account, the Mortgagor shall deliver to the Mortgagee all tax bills, bond and assessment statements, statements of insurance premiums, and statements for any other obligations referred to above as soon as the same are received by the Mortgagor and the Mortgagee shall cause the same to be paid when due to the extent of Mortgage Escrow Amounts available therefor. It is expressly acknowledged and agreed that the Mortgagee shall have no obligation whatsoever to advance any amounts in payment of all or any portion of such obligations to the extent that Mortgage Escrow Amounts retained (or Mortgage Escrow Amounts delivered) are insufficient to pay any such obligations as and when the same become due.

8. The Mortgagee and Trustees.

(a) The Trustees accept the trusts hereby created and agree to perform the duties herein required of them upon the terms and conditions hereof.

The duties and obligations of the Trustees in respect of this Mortgage shall be as set forth in this Section 8.

(i) Except upon the occurrence and during the continuance of an Event of Default actually known to the Mortgagee,

(A) the Trustees shall undertake to perform such duties and obligations and only such duties and obligations as are specifically set forth in this Mortgage and the Loan Documents or as otherwise directed by a letter of direction from the Mortgagee, and no implied covenants or obligations shall be read into this Mortgage or the Loan Documents against the Trustees; and

(B) in the absence of bad faith, the Trustees may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished to the Trustees and conforming to the requirements of this Mortgage and the Loan Documents; but in the case of any such certificates or opinions which by any provision hereof or thereof are specifically required to be furnished to the Mortgagee, the Trustees shall be under a duty to examine the same to determine whether or not they conform to the requirements of this Mortgage and the Loan Documents.

(ii) In case an Event of Default known to the Mortgagee has occurred and is continuing, the Trustees shall exercise the rights and powers vested in the Trustees by this Mortgage and the Loan Documents, with reasonable care.

(iii) No provision of this Mortgage shall be construed to relieve the Trustees from liability for their own negligence or willful misconduct, except that

(A) this Subsection shall not be construed to limit the effect of subsection (b) of this Section 8;

(B) the Trustees shall not be liable for any error of judgment made in good faith by an officer of the Trustees, unless it shall be proved that such Trustees were negligent in ascertaining the pertinent facts; and

(C) the Trustees shall not be liable with respect to any action taken or omitted to be taken in good faith in accordance with the direction of the Mortgagee relating to the time, method and place of conducting any proceeding for any remedy available to the Trustees, or exercising any trust or power conferred upon the Trustees under this Mortgage or the other Loan Documents.

(iv) Whether or not therein expressly so provided, every provision of this Mortgage relating to the conduct or affecting the liability of or affording protection to the Trustees shall be subject to the provisions of this Section 8(a).

(v) No provision of this Mortgage shall require the Trustees to expend or risk their own funds or otherwise incur any personal financial liability in the performance of any of their duties hereunder, or in the exercise of any of their rights or powers, if they shall have reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to them.

(b) At any time or times for the purpose of meeting the Legal Requirements of any jurisdiction in which any part of a Mortgaged Property may at the time be located, the Trustee shall act as trustee pursuant to this Mortgage in such jurisdiction for such portion of the Mortgaged Property located in such jurisdiction with such powers to act in such capacity in such jurisdiction as are necessary or desirable, subject to the other provisions of this Section 8.

(i) The Trustee shall, to the extent permitted by law, but to such extent only, be appointed subject to the terms set forth in Section 8(b)(iii) hereof.

(ii) As of the date hereof there is no appointment of a trustee, and the provisions of this Section 8 relating to the Trustees and with respect to the Trustee only, shall be of no force or effect, and shall be inapplicable to this Mortgage.

(iii) To the extent permitted by law, but to such extent only, the Trustee is appointed herein subject to the following terms, namely:

(A) Subject to the terms hereof and to the extent permitted by law, all rights, powers, duties and obligations under this Mortgage granted to or imposed upon the Mortgagee and the Trustee shall be exercised solely by the Mortgagee.

(B) The rights, powers, duties and obligations hereby conferred or imposed upon the Mortgagee and the Trustee in respect of any Property covered by such appointment shall be exercised or performed by the Mortgagee separately, or at the election of the Mortgagee by the Mortgagee and the Trustee jointly, except to the extent that (i) under any law of any jurisdiction in which any particular act is to be performed by the Mortgagee and/or

the Trustee and the Mortgagee shall be incompetent or unqualified to perform such act or (ii) the Mortgagee shall deem it inconvenient or undesirable to perform such act, then in any such event such rights, powers, duties and obligations shall be exercised and performed by the Trustee at the written direction of the Mortgagee.

(C) The Mortgagee at any time, by an instrument in writing executed by it, may accept the resignation of or remove the Trustee. Upon the written request of the Mortgagee, the Mortgagor shall join with the Mortgagee in the execution, delivery and performance of all instruments and agreements necessary or proper to effectuate such resignation or removal. A successor to the Trustee so resigned or removed may be appointed in the manner provided in this Section 8.

(D) Upon the resignation or removal of the Trustee, the Mortgagee shall have power to appoint and, upon the written request of the Mortgagee, the Mortgagor shall, for such purpose, join with the Mortgagee in the execution, delivery and performance of all instruments and agreements necessary or proper to appoint one or more Persons reasonably approved by the Mortgagee to act as successor Trustee together with the Mortgagee of all or any part of the Mortgaged Property so designated, with such power as provided for in this Section 8, and to vest in such Person or Persons in the capacity aforesaid, any property, title, right or power deemed necessary or desirable, subject to the other provisions of this Section 8. If the Mortgagor does not join in such appointment within fifteen (15) days after the receipt by it of a request so to do, or in case an Event of Default has occurred and is continuing, the Mortgagee acting alone shall make such appointment. Should any written instrument from the Mortgagor be required by any successor Trustee so appointed for more fully confirming to such trustee such property, title, right or power, any and all such instruments shall, on request, be executed, acknowledged and delivered by the Mortgagor.

(E) The Trustee shall not be personally liable by reason of any act or omission of the Mortgagee or any other trustee hereunder and the Mortgagee shall not be personally liable by reason of any act or omission of the Trustee; neither shall knowledge of the Mortgagee be imputed to the Trustee nor shall knowledge of the Trustee be imputed to the Mortgagee.

(F) Any notice delivered to the Mortgagee shall be deemed to have been sufficiently delivered without any delivery to the Trustee.

(G) Any obligation of the Mortgagor to file or give notices, reports or information to the Mortgagee hereunder shall be satisfied by the delivery thereof to the Mortgagee.

(H) Any successor to the Trustee (herein, called the "Successor Trustee") shall execute, acknowledge and deliver to his predecessor (herein called the "Predecessor Trustee"), the Mortgagee and the Mortgagor, an instrument accepting such appointment. Thereupon, the Successor Trustee shall, without any further act, deed or conveyance, become vested with the estates, properties, rights, powers, duties and trusts of the Predecessor Trustee in the trusts created by this Mortgage, with the same effect as if originally named as Trustee. At the written request of the Mortgagor, the Mortgagee or the Successor Trustee, the Predecessor Trustee shall execute and deliver an instrument, in recordable form, transferring to the Successor Trustee, upon the trusts herein expressed, the Mortgaged Property and shall duly assign, transfer, deliver and pay over to the Successor Trustee, any property and money subject to the lien hereof held by him. If any written instrument from the Mortgagor or the Mortgagee be required by the Successor Trustee for more fully and certainly vesting in and confirming to the Successor Trustee such estates, properties, rights, powers and trusts, then, at the request of the Successor Trustee, all such instruments shall be made, executed, acknowledged and delivered by the Mortgagor or the Mortgagee to the Successor Trustee.

(c) The Mortgagor covenants and agrees:

(i) to pay to the Trustees from time to time reasonable compensation for all services rendered by them hereunder;

(ii) to reimburse each of the Mortgagee and the Trustees upon request for all reasonable expenses, disbursements and advances incurred or made by it or him in accordance with any provision of this Mortgage (including reasonable compensation, expenses and disbursements of agents and counsel), except any such expense, disbursement or advance as may be attributable to its negligence or bad faith; and

(iii) to indemnify the Mortgagee and the Trustees for, and to hold each harmless against, any loss, liability or expense incurred without negligence, willful misconduct or bad faith on its part, arising out of or in connection with the acceptance or administration of the trust or trusts hereunder or the enforcement of remedies hereunder including

the costs and expenses of defending against any claim or liability in connection with the exercise or performance of any of the powers or duties hereunder or thereunder (except any liability incurred by the Trustees with negligence, willful misconduct or bad faith on its or their part).

The obligations of the Mortgagor under this Section 8(c) to pay or reimburse the Trustees and to indemnify the Mortgagee for expenses, disbursements and advances shall constitute additional Indebtedness hereunder and shall survive the satisfaction and discharge of this Mortgage. When the Trustees or the Mortgagee incur expenses or render services after an occurrence of an Event of Default hereunder, the expenses and compensation for services are intended to constitute expenses of administration under any Bankruptcy Law.

(d) To the extent permitted by law, but to such extent only, the Individual Trustee is appointed herein by the Mortgagee subject to the following terms, namely:

(i) Subject to the terms hereof and to the extent permitted by law, all the rights, powers, duties and obligations under this Mortgage granted to or imposed upon the Individual Trustees shall be exercised solely by the Mortgagee except as herein provided.

(ii) The rights, powers, duties and obligations hereby conferred or imposed upon the Individual Trustee in respect of any property covered by such appointment shall be exercised or performed by the Mortgagee separately, or at the election of the Mortgagee by the Mortgagee and the Individual Trustee jointly, except to the extent that (i) under any law of any jurisdiction in which any particular act is to be performed by the Individual Trustees the Mortgagee shall be incompetent or unqualified to perform such act or (ii) the Mortgagee shall deem it inconvenient or undesirable to perform such act, then in any such event such rights, powers, duties and obligations shall be exercised and performed by the Individual Trustee at the written direction of the Mortgagee.

(iii) The Mortgagee at any time, by an instrument in writing executed by it, may accept the resignation of or remove any Individual Trustee. Upon the written request of the Mortgagee, the Mortgagor shall join with the Mortgagee in the execution, delivery and performance of all instruments and agreements necessary or proper to effectuate such resignation or removal. A successor to the Individual Trustee so resigned or removed may be appointed in the manner provided in this Section.

(iv) Upon the death, resignation or removal of any Individual Trustee, the Mortgagee shall have power to appoint and, upon the written request of the Mortgagee, the Mortgagor shall, for such purpose, join with the Mortgagee in the execution, delivery and performance of all instruments and agreements necessary or proper to appoint, one or more persons approved by the Mortgagee to act as Successor Individual Trustee together with the Mortgagee of all or any part of the Mortgaged Property, with such powers as provided for in this Section 8, and to vest in such person or persons in the capacity aforesaid, any property, title, right or power deemed necessary or desirable, subject to the other provisions of this Section 8. If the Mortgagor does not join in such appointment, within fifteen (15) days after the receipt by it of a request so to do, or in case an Event of Default has occurred and is continuing, the Mortgagee acting alone shall make such appointment.

(v) Should any written instrument from the Mortgagor be required by any Successor Individual Trustee so appointed for more fully confirming to such trustee such property, title, right or power, any and all such instruments shall, on request, be executed, acknowledged and delivered by the Mortgagor.

(vi) No Individual Trustee hereunder shall be personally liable by reason of any act or omission of the Mortgagee or any other trustee hereunder and the Mortgagee shall not be personally liable by reason of any act or omission of the Individual Trustee; neither shall knowledge of the Mortgagee be imputed to the Individual Trustee nor shall knowledge of the Individual Trustee be imputed to the Mortgagee.

(vii) Any notice delivered to the Mortgagee shall be deemed to have been sufficiently delivered without any delivery to the Individual Trustee.

(viii) Any obligation of the Mortgagor to file or give notices, reports or information to the Trustees hereunder shall be satisfied by the delivery thereof to the Mortgagee.

Any successor to the Individual Trustee (herein, in this subsection (h) called the "Successor Individual Trustee") shall execute, acknowledge and deliver to his predecessor (herein, in this subsection (h), called the "Predecessor Individual Trustee"), the Mortgagee and the Mortgagor, an instrument accepting such appointment. Thereupon, the Successor Individual Trustee shall, without any further act, deed or conveyance, become vested with the estates, properties, rights, powers, duties and trusts of the Predecessor Individual Trustee

in the trusts created by this Mortgage, with the same effect as if originally named as Individual Trustee. At the written request of the Mortgagor, the Mortgagee or the Successor Individual Trustee, the Predecessor Individual Trustee shall execute and deliver an instrument transferring to the Successor Individual Trustee, upon the trusts herein expressed, the Mortgaged Property and shall duly assign, transfer, deliver and pay over to the Successor Individual Trustee, any property and money subject to the lien hereof held by him. If any written instrument from the Mortgagor or the Mortgagee be required by the Successor Individual Trustee for more fully and certainly vesting in and confirming to the Successor Individual Trustee such estates, properties, rights, powers and trusts, then, at the request of the Successor Individual Trustee, all such instruments shall be made, executed, acknowledged and delivered by the Mortgagor or the Mortgagee to the Successor Individual Trustee.

(e) At any time or times, (i) for the purpose of meeting the Legal Requirements of any jurisdiction in which any part of a Mortgaged Property may at the time be located or (ii) if the Mortgagee deems it to be necessary or desirable for the protection of its interests, the Mortgagee shall have the power to appoint, and upon written request of the Mortgagee, the Mortgagor shall for such purpose join with the Mortgagee in the execution, delivery and performance of all instruments and agreements necessary or proper to appoint, one or more Persons approved by the Mortgagee either to act as co-trustee, jointly with the Mortgagee, of all or any part of the Mortgaged Property, or to act as separate trustee of any such property, in either case with such powers as may be provided in the instrument of appointment which shall expressly designate the property affected and the capacity of the appointee as either a co-trustee or separate trustee, and to vest in such person or persons in the capacity aforesaid, any property, title, right or power deemed necessary or desirable, subject to the other provisions of this Section 8. If the Mortgagor does not join in such appointment within 15 days after the receipt by it of a request so to do, or in case an Event of Default has occurred and is continuing, the Mortgagee alone shall make such appointment.

Should any written instrument from the Mortgagor be required by any co-trustee or separate trustee so appointed for more fully confirming to such co-trustee or separate trustee such property, title, right or power, any and all such instruments shall, by request, be executed, acknowledged and delivered by the Mortgagor.

Every co-trustee or separate trustee shall, to the extent permitted by law, but to such extent only, be

appointed subject to the same terms as hereinabove set forth for the Individual Trustee.

9. Maintenance of Mortgaged Property; Alterations; Inspection; Utilities.

(a) The Mortgagor shall keep and maintain the Mortgaged Property and every part thereof in good condition and repair, subject to ordinary wear and tear, and shall not permit or commit any impairment, deterioration or intentional waste of any Property and the Equipment located thereon in any material respect. The Mortgagor further covenants to do all other acts which from the character or use of any Property may be reasonably necessary to protect the security hereof, the specific enumerations herein not excluding the general. The Mortgagor shall not remove or demolish any Improvement on any Property except as the same may be necessary in connection with an Alteration or a restoration in connection with a Taking or casualty, or in the ordinary course of business in accordance with the terms and conditions hereof.

(b) Except as may be necessary in connection with an Alteration permitted by Section 9(c) below, the Mortgagor shall not make any changes or allow any changes to be made in the use of a Property as a stabilized, multifamily property and related uses or initiate or agree to any change in any zoning or other land use classification adversely affecting all or any portion of a Property now or hereafter in effect and affecting all or any portion of a Property.

(c) Provided that no Event of Default shall have occurred and be continuing hereunder, the Mortgagor shall have the right, without the Mortgagee's consent, to undertake any alteration, improvement, demolition or removal (any such alteration, improvement, demolition or removal, an "Alteration") of a Property or any portion thereof so long as any such Alteration is (i) required pursuant to or in connection with any Lease or (ii) does not in the aggregate cost more than \$500,000. The Mortgagee shall not unreasonably withhold its consent to any Alteration in excess of \$500,000. Any Alteration which involves an estimated cost of more than \$250,000 in the aggregate for any Property shall be conducted under the supervision of an Independent Architect and no such Alteration shall be undertaken until five (5) Domestic Business Days after there shall have been filed with the Mortgagee, for information purposes only and not for approval by the Mortgagee, detailed plans and specifications and cost estimates therefor, prepared and approved in writing by such Independent Architect. Such plans and specifications may be revised at any time and from time to time provided that

material revisions of such plans and specifications are filed with the Mortgagee, for information purposes only, together with the written approval thereof by such Independent Architect. All work done in connection with any Alteration shall be performed with due diligence in a good and workmanlike manner, all materials used in connection with any Alteration shall not be less than the standard of quality of the materials currently used at such Property and all work performed and all materials used shall be in accordance with all applicable Legal Requirements and the insurance requirements of the insurance policies required hereby.

(d) The Mortgagee and any Persons authorized by them may at all reasonable times and upon reasonable notice enter and examine any Property and may inspect all work done, labor performed and materials furnished in and about any Property subject in all instances to the rights of tenants under Leases. The Mortgagee shall not have any duty to make any such inspection and shall not have any liability or obligation for making (except for its gross negligence or willful misconduct) or not making any such inspection.

10. Books and Records, Financial Statements, Reports and Other Information.

(a) Books and Records. The Mortgagor will keep and maintain on a fiscal year basis proper books and client records, in which accurate and complete entries shall be made of all dealings or transactions of or in relation to the Mortgaged Property and the business and affairs of the Mortgagor relating to the Mortgaged Property, in accordance with GAAP and the Credit Agreement. The Mortgagee and its authorized representatives shall have the right at reasonable times and upon reasonable notice to examine the books and records of the Mortgagor relating to the operation of the Mortgaged Property and to make such copies or extracts thereof as the Mortgagee may reasonably require.

(b) Other Information. The Mortgagor will, within a reasonable time after written request by the Mortgagee, furnish or cause to be furnished to the Mortgagee, in such manner and in such detail as may be reasonably requested by the Mortgagee, such reasonable additional information which has been prepared by the Mortgagor, the Property Manager (as defined in the Credit Agreement) or the REIT Manager (as defined in the Credit Agreement) in the ordinary course of business with respect to the Mortgaged Property.

11. Compliance with Leases and Agreements.

(a) The Leases are in full force and effect and the Mortgagor has neither given to, nor received any written notice of default from, any Tenants under any Leases which individually or in the aggregate might have a Material Adverse Effect and, to the Mortgagor's knowledge, no events or circumstances exist which with or without the giving of notice, the passage of time or both, may constitute a default under any of the Leases which in the aggregate might have a Material Adverse Effect. The Mortgagor will promptly notify the Mortgagee upon the occurrence of any of the foregoing events.

(b) The Mortgagor may, at all times, lease each Property in its discretion reasonably exercised consistent with other first-class stabilized, multifamily properties and in a manner consistent with past practice. Each Lease entered into after the date hereof (including the renewal or extension on or after the date hereof of any Lease entered into prior to the date hereof if the rent payable during such renewal or extension, or a formula to compute such rent, is not provided for in such Lease, such a renewal or extension a "Renewal Lease") either (A) shall provide for payment of rent and all other material amounts payable thereunder at rates at least equal to the fair market rental value (taking into account the type and quality of the tenant), as of the date such Lease is executed by the Mortgagor, of the space covered by such Lease or Renewal Lease for the term thereof, and (B) shall not have a Material Adverse Effect on the value of the Property in which it is to be located, or (C) shall be consented to by the Mortgagee. The Mortgagor may, without the consent of the Mortgagee, amend, modify or waive the provisions of any Lease or terminate, reduce rents under or shorten the term of any Lease provided that such action (taking into account, in the case of a termination, reduction in rent or shortening of term, the planned alternative use of the affected space) does not have a Material Adverse Effect upon the value of the Property in which it is located, taken as whole, in the aggregate with other Renewal Leases and new Leases relating to such Property; and provided further that such Lease, as amended, modified or waived, is otherwise in compliance with the requirements of this Mortgage and a certified copy of the amendment, modification or waiver is delivered to the Mortgagee upon the request of the Mortgagee.

(c) The Mortgagor shall (i) promptly perform and observe all of the material terms, covenants and conditions required to be performed and observed by the Mortgagor under the Leases such that there will be no Material Adverse

Effect on the value of the Property in which it is located; and (ii) collect the Rents under the Leases at such times as are customary in the ordinary course of the Mortgagor's business and may collect such security deposits as are permitted by Legal Requirements and are commercially reasonable in the prevailing market and collect escalations, percentage rent and other charges in accordance with the terms of each Lease.

(d) To the extent permitted by applicable Legal Requirements, all Leases entered into by the Mortgagor after the date hereof shall be subject and subordinate to this Mortgage (through either subordination provisions in the Leases or separate nondisturbance agreements), and shall provide that the Tenant thereunder shall attorn to the Mortgagee, or any other Person succeeding to the interest of the Mortgagee, on the terms set forth in Section 11(e); provided that the Mortgagee, at the request of the Mortgagor, shall enter into a subordination, attornment and nondisturbance agreement, in form and substance reasonably acceptable to the Mortgagee with any existing Tenant or any Tenant entering into a Lease after the date hereof (other than a Lease to an Affiliate of the Mortgagor), but only if the premises in question are leased for a commercial use. All actual, out-of-pocket costs and expenses of the Mortgagee in connection with the negotiation, preparation, execution and delivery of any nondisturbance agreement including, without limitation, reasonable attorneys' fees and disbursements, shall be paid by the Mortgagor.

(e) Each Lease entered into from and after the date hereof shall provide that: in the event of the enforcement by the Mortgagee of any remedy under this Mortgage, the Tenant under such Lease shall, at the option of the Mortgagee or of any other Person succeeding to the interest of the Mortgagee as a result of such enforcement, subject to the Mortgagee's and such Tenant's delivery of a nondisturbance agreement if such nondisturbance agreement is required pursuant to the provisions of Section 11(d) above, attorn to the Mortgagee or to such Person and shall recognize the Mortgagee or such successor in interest as lessor under such Lease without change in the provisions thereof; provided, however, the Mortgagee or such successor in interest shall not be liable for or bound by (i) any payment of an installment of rent or additional rent which may have been made more than thirty (30) days before the due date of such installment, (ii) any amendment or modification to or termination of any such Lease not in conformity with Section 11(b), (iii) any act or omission of or default by the Mortgagor under any such Lease or (iv) any credits, claims, setoffs or defenses which any Tenant may have against the Mortgagor. Each such Tenant, upon reasonable

request by the Mortgagee or such successor in interest, shall execute and deliver an instrument or instruments confirming such attornment, subject to the Mortgagee's delivery of a nondisturbance agreement to such Tenant if such nondisturbance agreement is required pursuant to the provisions of Section 11(d) above.

12. The Mortgagee's Right to Perform. Upon the occurrence and continuance of an Event of Default with respect to the performance of any of the Obligations contained herein, the Mortgagee, without waiving or releasing the Mortgagor from any Obligation or Default under this Mortgage, after delivery of notice thereof to Mortgagor, may (but shall not be obligated to), at any time perform the same, and the cost thereof, with interest at the Default Rate from the date of payment by the Mortgagee to the date such amount is paid by the Mortgagor, shall immediately be due from the Mortgagor to the Mortgagee, and the same shall be secured by this Mortgage and shall be a Lien on the Mortgaged Property prior to any right, title to, interest in or claim upon the Mortgaged Property attaching subsequent to the Lien of this Mortgage. No payment or advance of money by the Mortgagee under this Section 12 shall be deemed or construed to cure the Mortgagor's Default or waive any right or remedy of the Mortgagee hereunder.

13. The Mortgagor's Existence; Organization and Authority. The Mortgagor shall do all things necessary to preserve and keep in full force and effect its existence, franchises, rights and privileges as a business trust and its right to own property or transact business in each state in which the Properties are located. The Mortgagor is not required to obtain any consent, approval or authorization from or to file any declaration or statement with, any Governmental Authority or other agency in connection with or as a condition to the execution, delivery or performance of this Mortgage, the Notes or the other Loan Documents other than that which have been already obtained or filed.

14. Protection of Security; Costs and Expenses. The Mortgagor shall appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of the Mortgagee or the Trustees hereunder and shall pay all costs and expenses, including, without limitation, cost of evidence of title and reasonable attorneys' fees and disbursements, in any such action or proceeding in which the Mortgagee may appear, and in any suit brought by the Mortgagee to foreclose this Mortgage or to enforce or establish any other rights or remedies of the Mortgagee hereunder. If an Event of Default occurs and is continuing under this Mortgage, or if any action or proceeding is commenced in which it becomes necessary to defend or uphold the Lien or priority of this Mortgage or which adversely affects the Mortgagee's interest in the Mortgaged

Property, or any part thereof, including, but not limited to, eminent domain, enforcement of, or proceedings of any nature whatsoever under any Legal Requirement affecting the Mortgaged Property or involving the Mortgagor's bankruptcy, insolvency, arrangement, reorganization or other form of debtor relief, then the Mortgagee, upon reasonable notice to the Mortgagor, may, but without obligation to do so and without releasing the Mortgagor from any obligation hereunder, may make such appearances, disburse such sums and take such action as the Mortgagee deems necessary or appropriate to protect the Mortgagee's interest in the Mortgaged Property, including, but not limited to, disbursement of reasonable attorneys' fees, entry upon any Property to make repairs or take other action to protect the security hereof, and payment, purchase, contest or compromise of any encumbrance, charge or lien which in the judgment of the Mortgagee appears to be prior or superior hereto. The Mortgagor further agrees to pay all costs and expenses of the Mortgagee or Trustee including, without limitation, reasonable attorneys' fees and disbursements incurred by the Mortgagee or Trustee in connection with (a) the negotiation, preparation, execution and delivery of this Mortgage, the Notes and the other Loan Documents, and (b) the performance of their respective obligations and exercise of their respective rights under this Mortgage, the Notes, the Credit Agreement or the other Loan Documents. All of the costs, expenses and amounts set forth in this Section 14 shall be payable by the Mortgagor on demand, together with interest thereon at the highest rate then in effect with respect to the Notes (except during the continuance of an Event of Default in which case interest shall accrue at the Default Rate), from the date of any such payment by the Mortgagee (or the Trustees) until the date of repayment by the Mortgagor, shall be deemed to be Indebtedness hereunder and shall be a Lien on the Mortgaged Property prior to any right, title, interest or claim upon the Mortgaged Property. Nothing contained in this Section 14 shall be construed to require the Mortgagee to incur any expense, make any appearance, or take any other action.

15. Management of the Properties. The Mortgagor covenants and agrees with the Mortgagee that the Properties will be managed at all times in a manner consistent with the standards of prudent institutional investors for multifamily residential properties of a quality similar to the Properties. The Mortgagor covenants to comply in all material respects with the Management Agreements as in force as of the date hereof.

16. Remedies. Upon the occurrence and continuance of an Event of Default, the Mortgagee may take such actions against the Mortgagor and/or against the Mortgaged Property or any portion thereof as the Mortgagee determines is necessary to protect and enforce its rights hereunder, without notice or demand except as set forth below. Any such actions taken by the Mortgagee may be cumulative and may be pursued independently,

concurrently, singly, successively, together or otherwise, at such time and in such order as the Mortgagee may determine in its sole discretion, to the fullest extent permitted by law, without impairing or otherwise affecting the other rights and remedies of the Mortgagee permitted by law, equity or contract or as set forth herein or in the other Loan Documents. Such actions may include the following:

(a) Acceleration. Subject to any applicable provisions of the Notes, the Guaranty and the other Loan Documents, the Mortgagee may declare all or any portion of the unpaid principal balance under the Notes, together with all accrued and unpaid interest thereon, and all other unpaid Indebtedness, to be immediately due and payable by Mortgagor and to make demand upon the Mortgagor for all sums payable under the Guaranty.

(b) Entry. The Mortgagee, personally, or by its agents or attorneys, or the Trustee, at the Mortgagee's election, may enter into and upon all or any part of the Mortgaged Property (including any Property and any part thereof), and may exclude the Mortgagor, its agents and servants therefrom; and, the Mortgagee, having and holding the same, may use, operate, manage and control the Mortgaged Property or any part thereof and conduct the business thereof, either personally or by its superintendents, managers, agents, servants, attorneys or receiver. Upon every such entry, the Mortgagee may, at the expense of the Mortgaged Property or the Mortgagor, from time to time, either by purchase, repair or construction, maintain and restore the Mortgaged Property or any part thereof, and may insure and reinsure the same in such amount and in such manner as may seem to them to be advisable. Similarly, from time to time, the Mortgagee may, at the expense of the Mortgaged Property or the Mortgagor make all necessary or proper repairs, renewals, replacements, alterations, additions, betterments and improvements to and on the Mortgaged Property or any part thereof as it may seem advisable. The Mortgagee shall also have the right to manage and operate the Mortgaged Property or any part thereof and to carry on the business thereof and exercise all rights and powers of the Mortgagor with respect thereto, either in the name of the Mortgagor or otherwise, as may seem to them to be advisable. In confirmation of GRANTING CLAUSE IV, in the case of the occurrence and continuation of an Event of Default, the Mortgagee shall be entitled to collect and receive all Rents) to be applied in the order of priorities and amounts as the Mortgagee shall elect in its sole discretion. In the event the Mortgagee elects, in its sole discretion, to apply the Rents to any matter, the Mortgagor shall not have cause to claim that the Rents so applied by the Mortgagee were misappropriated by the

Mortgagee. All actions which may be taken by the Mortgagee pursuant to this subparagraph (b) may be taken by the Trustee, upon the direction of the Mortgagee. The Mortgagee or the Trustee, as applicable, shall be liable to account only for rents, issues and profits and other proceeds actually received by the Mortgagee or the Trustee.

(c) Foreclosure. (i) The Mortgagee, with or without entry, personally or by its agents or attorneys, insofar as applicable, may (i) sell or instruct the Trustee, if applicable, to sell, to the extent permitted by law and pursuant to the power of sale granted herein, all and singular the Mortgaged Property, and all estate, right, title and interest, claim and demand therein, and right of redemption thereof, at one or more sales, as an entirety or in parcels, and at such times and places as required or permitted by law and as are customary in any county or parish in which a Property is located and upon such terms as the Mortgagee may fix and specify in the notice of sale to be given to the Mortgagor (and on such other notice published or otherwise given as provided by law), or as may be required by law; (ii) institute (or instruct the Trustee to institute) proceedings for the complete or partial foreclosure of this Mortgage under the provisions of the laws of the jurisdiction or jurisdictions in which the Mortgaged Property or any part thereof is located, or under any other applicable provision of law; or (iii) take all steps to protect and enforce the rights of the Mortgagee, whether by action, suit or proceeding in equity or at law (for the specific performance of any covenant, condition or agreement contained in this Mortgage, or in aid of the execution of any power herein granted, or for any foreclosure hereunder, or for the enforcement or any other appropriate legal or equitable remedy), or otherwise, as the Mortgagee, being advised by counsel and its financial advisor, shall deem most advisable to protect and enforce any of their rights or duties hereunder.

(ii) The Mortgagee (or the Trustee, as applicable), may conduct any number of sales from time to time. The power of sale shall not be exhausted by any one or more such sales as to any part of the Mortgaged Property remaining unsold, but shall continue unimpaired until the entire Mortgaged Property shall have been sold.

(iii) With respect to any Property, this Mortgage is made upon any statutory conditions of the state in which such Property is located, and, for any breach thereof or any breach of the terms of this Mortgage, the Mortgagee shall have the statutory power of sale, if any, provided for by the laws of such State.

(iv) Without limiting the generality of the foregoing provisions of this Section 16(c), Mortgagee may, whether or not possession of the Mortgaged Property is taken, after giving notice by publication once a week for three (3) consecutive weeks of the time, place and terms of each such sale, together with a description of the property to be sold, by publication in some newspaper published in the county wherein the Mortgaged Property (or any portion thereof to be sold) is located, sell the Mortgaged Property (or such portion thereof as Mortgagee may from time to time elect to sell) in front of the main or front courthouse door of any county in which the Mortgaged Property (or any portion thereof to be sold) is located, at public outcry, to the highest bidder for cash. At any foreclosure sale any part or all of the Mortgaged Property, real, personal or mixed may be offered for sale in parcels or en masse for one total price, the proceeds of any such sale en masse to be accounted for in one account without distinction between the items included therein or without assigning to them any portion of such proceeds.

(d) Specific Performance. The Mortgagee, in its sole and absolute discretion, or the Trustee, at the Mortgagee's election, may institute an action, suit or proceeding at law or in equity for the specific performance of any covenant, condition or agreement contained herein or in the Notes, the Guaranty or any other Loan Document, or in aid of the execution of any power granted hereunder or for the enforcement of any other appropriate legal or equitable remedy.

(e) Enforcement of Guaranty. The Mortgagee or the Trustee, at the Mortgagee's election, may recover judgement on any portion of the Indebtedness, either before, during or after any proceedings for the foreclosure (or partial foreclosure) or enforcement of this Mortgage.

(f) Sale of Mortgaged Property; Application of Proceeds.

(i) The Mortgagee (or the Trustee, if applicable), may postpone any sale of all or any part of the Mortgaged Property to be made under or by virtue of this Section 16 by public announcement at the time and place of such sale, or by publication, if required by law, and, from time to time, thereafter, may further postpone such sale by public announcement made at the time of sale fixed by the preceding postponement; provided, however, whenever it becomes necessary to postpone any sale that has been advertised to occur on a certain day, the same may be postponed by announcement of the auctioneer or attorney, at the time set for sale, of the date to which said sale is

postponed and the original notice shall be published once again, with a statement at the bottom thereof stating that said sale has been postponed and setting forth the date when said sale will occur.

(ii) Upon the completion of any sale made by the Mortgagee or the Trustee under or by virtue of this Section 16, the Mortgagee shall execute and deliver to the accepted purchaser or purchasers a good and sufficient deed or deeds or other appropriate instruments, conveying, assigning and transferring all its estate, right, title and interest in and to the property and rights so sold. The Mortgagee or the Trustee, as applicable, is hereby appointed the true and lawful irrevocable attorney-in-fact, coupled with an interest, of the Mortgagor in its name and stead or in the name of the Mortgagee to make all necessary conveyances, assignments, transfers and deliveries of the property and rights so sold, and, for that purpose, the Mortgagee or the Trustee, as applicable, may execute all necessary deeds and other instruments of assignment and transfer, and may substitute one or more persons with like power, the Mortgagor hereby ratifying and confirming all that such attorney or attorneys or such substitute or substitutes shall lawfully do by virtue hereof. The Mortgagor shall, nevertheless, if so requested in writing by the Mortgagee, ratify and confirm any such sale or sales by executing and delivering to the Mortgagee or to such purchaser or purchasers all such instruments as may be advisable, in the judgment of the Mortgagee, for such purposes and as may be designated in such request. Any such sale or sales made under or by virtue of this Section 16 shall, to the fullest extent permitted by law, operate to divest all the estate, right, title, interest, claim and demand, whether at law or in equity, of the Mortgagor in and to the property and rights so sold, and shall be a perpetual bar, at law and in equity, of the Mortgagor in and to the property and rights so sold, and shall be a perpetual bar, at law and in equity, against the Mortgagor, its successors and assigns and any Person claiming through or under the Mortgagor and their successors and assigns.

(iii) The receipt of the Mortgagee or the Trustee, as applicable, for the purchase money paid as a result of any such sale shall be a sufficient discharge therefor to any purchaser of the property or rights, or any part thereof, so sold. No such purchaser, after paying such purchase money and receiving such receipt, shall be bound to see to the application of such purchase money upon or for any trust or purpose of this Mortgage, or shall be answerable, in any manner, for any loss, misapplication or non-application of any such purchase money or any part thereof, nor shall any such purchaser be bound to inquire as

to the authorization, necessity, expediency or regularity of such sale.

(iv) Upon any sale made under or by virtue of this Section 16, the Mortgagee may bid for and acquire the Mortgaged Property or any part thereof and, in lieu of paying cash therefor, may make settlement for the purchase price by crediting against amounts owed under the Guaranty secured by this Mortgage the net proceeds of sale, after deducting therefrom the expense of the sale and the costs of the action and any other sums which the Mortgagee is authorized to deduct under this Mortgage. The person making such sale shall accept such settlement without requiring the production of the Notes, the Guaranty or this Mortgage, and without such production there shall be deemed credited to the Indebtedness and obligations under this Mortgage the net proceeds of such sale. The Mortgagee, upon acquiring the Mortgaged Property or any part thereof shall be entitled to own, hold, lease, rent, operate, manage or sell the same in any manner permitted by applicable laws.

(g) Voluntary Appearance; Receivers. After the happening, and during the continuance of, any Event of Default, and immediately upon commencement of (i) any action, suit or other legal proceeding by the Mortgagee to obtain judgment for the principal and interest on the Notes and any other sums required to be paid pursuant to this Mortgage, or (ii) any action, suit or other legal proceeding by the Mortgagee of any other nature in aid of the enforcement of the Loan Documents or any of them, the Mortgagor will (a) enter its voluntary appearance in such action, suit or proceeding, and (b) if required by the Mortgagee, consent to the appointment of one or more receivers of the Mortgaged Property and of the earnings, revenues, rents, issues, profits and income thereof. After the happening of, and during the continuance of, any Event of Default, or upon the filing of a bill in equity to foreclose this Mortgage or to enforce the specific performance hereof or in aid thereof, or upon the commencement of any other judicial proceeding to enforce any right of the Mortgagee, the Mortgagee shall, to the fullest extent permitted by law, be entitled, as a matter of right, if it shall so elect, without notice to any other party and without regard to the adequacy of the security of the Mortgaged Property, forthwith, either before or after declaring the principal and interest on the Notes to be due and payable, to the appointment of such a receiver or receivers. Any receiver or receivers so appointed shall have such powers as a court or courts shall confer, which may include, without limitation, any or all of the powers which the Mortgagee is authorized to exercise by the provisions of this Section 16, and shall have the right to

incur such obligations and to issue such certificates therefor as the court shall authorize.

(h) Retention of Possession. Notwithstanding the appointment of any receiver, liquidator or trustee of the Mortgagor, or any of its property, or of the Mortgaged Property or any part thereof, the Mortgagee or the Trustee, as applicable, to the extent permitted by law, shall be entitled to retain possession and control of all property now or hereafter granted to or held by the Mortgagee or the Trustee, as applicable, under this Mortgage.

(i) Suits by the Mortgagee. All rights of action under this Mortgage may be enforced by the Mortgagee without the possession of the Notes or the Guaranty and without the production thereof or this Mortgage at any trial or other proceeding relative thereto. Any such suit or proceeding instituted by the Mortgagee shall be brought in the name of the Mortgagee and any recovery of judgment shall be subject to the rights of the Mortgagee.

(j) Remedies Cumulative. No remedy herein conferred upon or reserved to the Mortgagee is intended to be exclusive of any other remedy, and each such remedy shall be cumulative and in addition to every other remedy given hereunder or under any Loan Document or now or hereafter existing at law or in equity. No delay or omission of the Mortgagee to exercise any right or power accruing upon any Event of Default shall impair any such right or power, or shall be construed to be a waiver of any such Event of Default or an acquiescence therein. Every power and remedy given by this Mortgage to the Trustee and/or the Mortgagee may be exercised from time to time and as often as may be deemed expedient by the Trustee (at the Mortgagee's discretion) and the Mortgagee and each of them.

(k) Waiver of Rights. The Mortgagor agrees that to the fullest extent permitted by law it will not, at any time, (a) insist upon, plead or claim or take any benefit or advantage of any stay, extension or moratorium law, wherever enacted, now or at any time hereafter in force, which may affect the covenants and terms of performance of this Mortgage, (b) claim, take or insist upon any benefit or advantage of any law, now or at any time hereafter in force, providing for valuation or appraisal of the Mortgaged Property, or any part thereof, prior to any sale or sales thereof which may be made pursuant to any provision herein contained, or pursuant to the decree, judgment or order of any court of competent jurisdiction, or (c) after any such sale or sales, claim or exercise any right, under any statute heretofore or hereafter enacted by the United States of America, any State thereof or otherwise, to redeem the

property and rights sold pursuant to such sale or sales or any part hereof. The Mortgagor hereby expressly waives all benefits and advantages of such laws, and covenants, to the fullest extent permitted by law, not to hinder, delay or impede the execution of any power herein granted or delegated to the Mortgagee or Trustees, but will suffer and permit the execution of every power as though no such laws had been made or enacted. The Mortgagor for itself, and all who may claim through or under it, waive, to the extent that they lawfully may do so, any and all homestead rights, any and all rights to reinstatement, any and all right to have the property comprising the Mortgaged Property marshaled upon any foreclosure of the lien hereof.

17. Application of Proceeds. The proceeds of any sale or foreclosure of the Mortgaged Property shall be applied to the following in such priority as the Mortgagee shall elect in its sole discretion: (a) to the payment of the costs and expenses of the foreclosure proceedings (including, without limitation, reasonable counsel fees and disbursements actually incurred and advertising costs and expenses), liabilities and advances made or incurred under this Mortgage, and reasonable receivers' and trustees' fees and commissions together with interest at the Default Rate, (b) to the payment of any other sums advanced by the Mortgagee in accordance with the terms hereof and not repaid to it by the Mortgagor, together with interest at the Default Rate from and after the occurrence of an Event of Default, (c) to the payment of all sums due under the Guaranty in such order as the Mortgagee may elect, (d) to the payment of all sums due under any other Loan Document, in such order as the Mortgagee shall elect, and (e) to the payment of any surplus to the Mortgagor or other party legally entitled thereto.

18. Notice of Certain Occurrences. The Mortgagor shall give notice to the Mortgagee promptly upon the occurrence of: (a) any Default or Event of Default; and (b) any litigation or proceeding affecting the Mortgagor or the Properties which is reasonably likely, if adversely determined, to have a Material Adverse Effect.

19. WAIVER OF TRIAL BY JURY. **THE MORTGAGOR HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS MORTGAGE OR THE TRANSACTIONS CONTEMPLATED HEREBY.**

20. Trust Funds. All security deposits paid under the Leases shall be treated as trust funds not to be commingled with any other funds of the Mortgagor. Within ten (10) days after request by the Mortgagee, the Mortgagor shall furnish the Mortgagee satisfactory evidence of compliance with this Section 20, together with a statement of all security deposits by tenants

under the Leases, which statement shall be certified by the Mortgagor.

21. Notices. Any notice, election, request or demand which by any provision of this Mortgage is required or permitted to be given or served shall be in writing and shall be given in accordance with Section 9.01 of the Credit Agreement.

22. No Oral Modification. This Mortgage may not be altered, amended, modified, changed or terminated orally but only by a written agreement signed by the party against which enforcement is sought.

23. Partial Invalidity. In the event any one or more of the provisions contained in this Mortgage shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, but each shall be construed as if such invalid, illegal or unenforceable provision had never been included hereunder.

24. Successors and Assigns. Mortgagor shall not sell, convey, pledge or otherwise transfer all or any portion of the Mortgaged Property except in accordance with Section 9.08 or Section 9.09 of the Credit Agreement. All covenants of the Mortgagor contained in this Mortgage are imposed solely and exclusively for the benefit of the Mortgagee and its successors and assigns, and no other Person shall have standing to require compliance with such covenants or be deemed, under any circumstances, to be the beneficiary of such covenants, any or all of which may be freely waived in whole or in part by the Mortgagee at any time if in its sole discretion it deems it advisable to do so. All such covenants of the Mortgagor shall run with the land and bind the Mortgagor, the successors and assigns of the Mortgagor (and each of them) and all subsequent owners, encumbrancers and Tenants of the Mortgaged Property, and shall inure to the benefit of the Mortgagee, its successors and assigns. The word "the Mortgagee" shall be construed to mean the Mortgagee named herein or in the Assignment.

25. Governing Law. This Mortgage and the obligations arising hereunder shall be governed by and construed in accordance with the laws of the State of New York, except that the creation, perfection and enforcement of security interests and procedures relating thereto shall be governed, with respect to each Mortgaged Property, by the law of the state where such Mortgaged Property is located. Whenever possible, each provision of this Mortgage shall be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of this Mortgage shall be prohibited by, or invalid under, applicable law, such provision shall be severable and shall not affect the validity of the extent of such prohibition or

invalidity without invalidating the remaining provisions of this Mortgage. Nothing contained in this Mortgage or in any Loan Document shall require either the Mortgagor to pay or the Mortgagee to accept any sum in any amount which would, under applicable law, subject the Mortgagee or any Trustee to penalty or adversely affect the enforceability of this Mortgage. In the event that the payment of any sum due hereunder or under any Loan Document would have such result under applicable law, then, ipso facto, the obligation of the Mortgagor to make such payments shall be reduced to the highest sum then permitted under applicable law and appropriate adjustment shall be made by the Mortgagor and the Mortgagee.

26. Certain Representations, Warranties and Covenants.

(a) Recording Fees, Taxes, Etc. The Mortgagor hereby agrees to take all such further reasonable actions, and to pay all taxes (including any taxes arising due to any future advances under the Credit Agreement), recording fees, charges, costs and other reasonable expenses including, without limitation, reasonable attorneys, and reasonable professional fees and disbursements which are currently or in the future shall be imposed, and which may be required or necessary to establish, preserve, protect or enforce the Lien of this Mortgage.

(b) No Offsets. The Mortgagor warrants, covenants and represents to the Mortgagee that there exists no cause of action at law or in equity that would constitute any offset, counterclaim or deduction against the Indebtedness or the Obligations.

(c) Tax Filings. The Mortgagor (or its predecessors) has filed all Federal, state and local tax returns required to be filed prior to the date hereof and has paid or made adequate provision for the payment of all Federal, state and local taxes, charges and assessments shown to be due from the Mortgagor on such tax returns (or has filed all appropriate extensions or is contesting such taxes in good faith with adequate reserves).

(d) Solvency. The fair saleable value of the Mortgagor's assets exceeds and will, immediately following the delivery of the Guaranty and the consummation of the other transactions contemplated to take place simultaneously therewith, exceed the Mortgagor's liabilities, including, without limitation, subordinated, unliquidated, disputed and contingent liabilities. The Mortgagor's assets do not and, immediately following the delivery of the Guaranty and the consummation of the other transactions contemplated to take place simultaneously therewith will not, constitute unreasonably small capital to carry out its business as conducted or as proposed to be conducted. The Mortgagor does not intend to, and does not

believe that it will, incur debts and liabilities (including, without limitation, contingent liabilities) beyond its ability to pay such debts as they mature.

(e) Liens. No Lien (other than Permitted Exceptions), including, without limitation, any tax lien, has been levied against any of the Properties.

27. No Waiver. No failure by the Mortgagee to insist upon the strict performance of any term hereof or to exercise any right, power or remedy consequent upon a breach thereof shall constitute a waiver of any such term or right, power or remedy or of any such breach. No waiver of any breach shall affect or alter this Mortgage, which shall continue in full force and effect, or shall affect or alter the rights of the Mortgagee with respect to any other then existing or subsequent breach.

28. Further Assurances.

(a) The Mortgagor, at its own expense, will execute, acknowledge and deliver all such reasonable further acts, documents or instruments including, without limitation, security agreements on any personalty included or to be included in the Mortgaged Property or covered by the Subsidiary Cash Collateral Agreement and a separate assignment of each Lease and take all such actions as the Mortgagee from time to time may reasonably request to better assure, transfer and confirm unto the Mortgagee the rights now or hereafter intended to be granted to the Mortgagee under this Mortgage, the Guaranty or the other Loan Documents.

(b) The Mortgagor covenants to give notice to the Mortgagee no less than thirty (30) days prior to a change of address.

29. Additional Security. Without notice to or consent of the Mortgagor and without impairment of the Lien and rights created by this Mortgage, the Mortgagee may accept (but the Mortgagor shall not be obligated to furnish) from the Mortgagor additional security for the Guaranty. Neither the giving of this Mortgage nor the acceptance of any such additional security shall prevent the Mortgagee from resorting, at its discretion, either to such additional security, or, to the security created by this Mortgage, or both, without affecting the Mortgagee's Lien and rights under this Mortgage.

30. Indemnification by the Mortgagor. The Mortgagor will protect, indemnify and save harmless the Mortgagee, the Banks, and every Trustee and all officers, directors, stockholders, partners, employees, successors and assigns of any of the foregoing (collectively, the "Indemnified Parties") from and against all liabilities, obligations, claims, damages,

penalties, causes of action, costs and expenses (including all reasonable attorneys' fees and expenses actually incurred) imposed upon or incurred by or asserted against the Indemnified Parties or the Mortgaged Property or any part of its interest therein, by reason of the occurrence or existence of any of the following (to the extent the insurance Proceeds payable on account of the following shall be inadequate) prior to (i) the payment in full of the Notes, or (ii) the acceptance by the Mortgagee of a deed-in-lieu of foreclosure or a foreclosure judgment or sale pursuant to a power of sale, with respect to the applicable Property, unless caused solely by the actual willful misconduct or gross negligence of the Indemnified Party (other than such willful misconduct or gross negligence imputed to the Indemnified Party because of its interest in the Mortgaged Property): (a) ownership of the Mortgagor's interest in the Mortgaged Property, or any interest therein, or receipt of any Rents or other sum therefrom, (b) any accident, injury to or death of any persons or loss of or damage to property occurring on or about the Mortgaged Property or any appurtenances thereto, (c) any design, construction, operation, repair, maintenance, use, non-use or condition of the Mortgaged Property or appurtenances thereto, including claims or penalties arising from violation of any Legal Requirement or Insurance Requirement, as well as any claim based on any patent or latent defect, whether or not discoverable by the Mortgagee, any claim the insurance as to which is inadequate, and any Environmental Claim, (d) any failure on the part of the Mortgagor to perform or comply with any of the material terms of any Lease within the applicable notice or grace periods, (e) any performance of any labor or services or the furnishing of any materials or other property in respect of the Mortgaged Property or any part thereof, (f) any negligence or tortious act or omission on the part of the Mortgagor or any of its agents, contractors, servants, employees, sublessees, licensees or invitees, (g) any contest referred to in Section 6 hereof, or (h) any obligation or undertaking relating to the performance or discharge of any of the terms, covenants and conditions of the landlord contained in the Leases. Any amounts payable to the Indemnified Parties under this Section 30 which are not paid within ten (10) Domestic Business Days after written demand therefor by the Mortgagee, setting forth in reasonable detail the amount of such demand and the basis therefor, shall bear interest from the date of demand at the Default Rate, and shall be part of the Indebtedness and secured by this Mortgage. In case any action, suit or proceeding is brought against the Indemnified Parties by reason of any such occurrence, the Mortgagor shall at the Mortgagor's expense resist and defend such action, suit or proceeding or will cause the same to be resisted and defended by counsel for the insurer of the liability or by counsel designated by the Mortgagor (unless reasonably disapproved by the Mortgagee promptly after the Mortgagee has been notified of such counsel); provided, however, that nothing herein shall compromise the right of the Mortgagee

to appoint its own counsel for its defense with respect to any action which in its reasonable opinion presents a conflict or potential conflict between the Mortgagee and the Mortgagor that would make such separate representation advisable. So long as the Mortgagor is resisting and defending such action, suit or proceeding as provided above in a prudent and commercially reasonable manner, the Mortgagee shall not be entitled to settle such action, suit or proceeding and claim the benefit of this Section 30 with respect to such action, suit or proceeding and the Mortgagee agrees that it will not settle any such action, suit or proceeding without the consent of the Mortgagor; provided, however, that if the Mortgagor is not diligently defending such action, suit or proceeding in a prudent and commercially reasonable manner as provided above, the Mortgagee may settle such action, suit or proceeding subject only to the consent of the Mortgagor, which consent shall not be unreasonably withheld or delayed, and claim the benefit of this Section 30 with respect to settlement of such action, suit or proceeding. The Mortgagee will give the Mortgagor prompt notice after it obtains actual knowledge of any potential claim by it for indemnification hereunder, however the failure of the Mortgagee to give such notice to Mortgagor shall not affect Mortgagor's obligations hereunder, except to the extent Mortgagor shall be materially prejudiced thereby.

31. Release. In addition to the provisions set forth in Sections 9.08 and 9.09 of the Credit Agreement, if the principal of and interest on the Notes shall be paid in full at maturity or earlier as permitted in accordance with the terms thereof and all other Indebtedness payable to the Mortgagee hereunder by the Mortgagor or secured hereby or by the other Loan Documents and all of the Obligations shall have been performed and all Commitments have been terminated, then this Mortgage and all the other Loan Documents shall be discharged and satisfied or assigned to the mortgagor or to any other Person at the Mortgagor's direction and without recourse to the Mortgagee or any Trustee, at the Mortgagor's option, without warranty at the expense of the Mortgagor upon its written request. Concurrently with such release and satisfaction or assignment of this Mortgage and all the other Loan Documents, the Mortgagee will return to the Mortgagor the Notes and all insurance policies relating to the Mortgaged Property which may be held by the Mortgagee and, on the written request and at the expense of the Mortgagor, will execute and deliver such proper instruments of release (including appropriate UCC-3 termination statements) as may reasonably be requested by the Mortgagor to evidence such release and satisfaction or assignment, and any such instrument, when duly executed by the Mortgagee and duly recorded in the places where this Mortgage and each other Loan Document is recorded, shall conclusively evidence the release and satisfaction or assignment of this Mortgage and the other Loan Documents.

32. Conflict with Credit Agreement. Except the matters governed by the law of the state in which the Mortgaged Property is located as provided in Section 25, in the event of any conflict between the terms of this Mortgage and the terms of the Credit Agreement, the terms of the Credit Agreement shall govern.

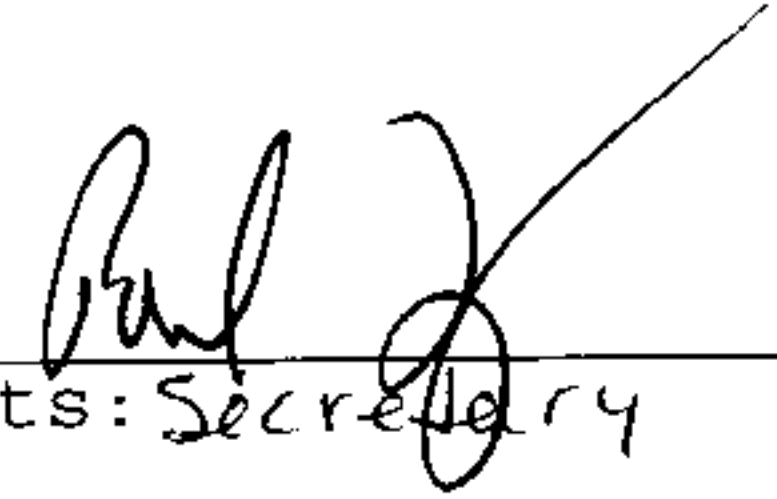
33. Counterparts. This Mortgage may be executed in multiple counterparts, which may be recorded in multiple locations. Such counterparts, together, shall constitute one and the same agreement.

IN WITNESS WHEREOF, this Mortgage has been duly signed,
sealed and delivered by the Mortgagor as of the date first
hereinabove written.

Mortgagor:

Atlantic-Alabama (5) Incorporated,
as Trustee for SCA-Alabama Multifamily
Trust

By:


Its: Secretary

State of New Mexico)
) s.s.:
County of Santa Fe)

I HEREBY CERTIFY that on the 31st day of October, 1995, before me personally came Paul Szurek to me known or satisfactorily proven to be the person whose name is subscribed to the foregoing instrument, who being by be duly sworn, did depose and say that he is the Secretary of ATLANTIC-ALABAMA (5) INCORPORATED, the corporation described in and which executed the above instrument in its capacity as the Trustee of SCA-ALABAMA MULTIFAMILY TRUST and that he signed his name thereto by authority of the board of directors of said corporation.

IN WITNESS WHEREOF, I have set with my hand my Notarial Seal, the day and year first above written.

Clement A. N. Valente
Notary Public

My Commission expires on: 6/20/98

Exhibit A-1
Colony Woods I
(Jefferson Co., AL)

Lot 1, according to the Survey of Colony Woods Apartments, as recorded in Map Book 170,
page 72, in the Probate Office of Jefferson County, Alabama.

Exhibit A-2
Cahaba Forest Apartments
(Shelby Co., AL)

PARCEL I

Lot 15, Cahaba Park South, 1st Addition as recorded in Map Book 153, page 49 in the Probate Office of Jefferson County, Alabama; being situated in Jefferson County, Alabama.

Parcel III (Signage Easement)

A non-exclusive easement to construct and maintain signage on a structure not exceeding fourteen feet in height and eight feet in width on the 10' by 10' easement for signage in the southwestern corner of Lot 13-D, as shown on Resurvey No. 2 of Cahaba Park South, recorded in Map Book 13, page 57 in the Probate Office of Shelby County, Alabama.

Morning Sun Villas
(Shelby County, AL)

A parcel of land situated in the East half of the Northeast quarter of Section 1, Township 19 South, Range 2 West, Shelby County, Alabama, and being more particularly described as follows:

Begin at a capped iron pipe found at the Northeast corner of said Section and run thence in a Southerly direction along the East line thereof for a distance of 436.00 feet to a point located in a curve to the right in the Northwestern right-of-way line of Meadow Ridge Road, said curve being concave to the Northwest, having a radius of 1598.48 feet, a central angel of 4°10'47" and a chord which forms an interior or counterclockwise angle of 120°10'53" with the preceding course; thence turn an angle to the right and run in a Southwesterly direction with said proposed right-of-way line and along the arc of said curve for a distance of 116.61 feet to the end of said curve; thence continue to run with said proposed right-of-way line in a Southwesterly direction along a line tangent to said curve for a distance of 337.88 feet to the beginning of a curve to the left, said curve being concave to the Southeast, having a radius of 827.77 feet and subtending a central angel of 33°45'00"; thence continue to run with said proposed right-of-way line in a Southwesterly direction along the arc of said curve for a distance of 487.60 feet to a point of reverse curvature located at the beginning of a curve to the right; said curve being concave to the Northwest, having a radius of 966.13 feet, and subtending a central angle of 10°15'00"; thence continue to run with said proposed right-of-way line in a Southwesterly direction along the arc of said curve for a distance of 307.73 feet to the end of said curve; thence turn an angle to the right of 67°07'30" seconds, as measured from the chord of said curve and , leaving said proposed right-of-way line, run in a Northwesternly direction for a distance of 101.95 feet; thence turn an angle to the left of 90°00' and run in a Southwesterly direction for a distance of 10.00 feet; thence turn an angle to the right of 90°00' and run in Northwesternly direction for a distance of 20.00 feet; thence turn an angle to the right of 90°00' and run in a Northeasterly direction for a distance of 10.00 feet; thence turn an angle to the left of 90°00' and run in a Northwesternly direction for a distance of 294.00 feet to a point located in the West line of the Northeast quarter of the Northeast quarter of the aforesaid Section 1; thence turn an angle to the right of 75°38'01" and run in a Northerly direction along said West line of said quarter-quarter section for a distance of 973.33 feet; thence turn an angle to the right of 65°23'12" and run in a Northeasterly direction for a distance of 362.69 feet; thence turn an angle to the left of 65°23'12" and run in a Northerly direction for a distance of 50.00 feet; thence turn angle to the right of 92°17'02" and run in a Easterly direction along the North line of said quarter-quarter section for a distance of 997.59 feet to the point of beginning.

PARCEL II

Together with the right accruing to the subject property of the following:

1. Storm Sewer and Drainage Easement between Daniel U.S. Properties, Ltd., and Daniel Properties IV dated August 1, 1986 and recorded in Real Record 86, Page 349 in the Office of the Judge of Probate.
2. Sewer Line Easement and Connection Agreement between Daniel U.S. Properties, Ltd., and Daniel Properties IV dated September 23, 1985 and recorded in Real Record 43, Page 611 in the Office of the Judge of Probate, as modified by that certain First Modification to Sewer Line Easement and Connection Agreement dated August 14, 1986 and recorded in Real Record 86, Page 355 aforesaid records, as further modified by that certain Quitclaim Deed with Reservation of Rights dated January 31, 1994 and recorded as Instrument #1994-03407 aforesaid records.
3. Quitclaim Deed with Reservation of Rights dated January 31, 1994 and recorded as instrument #1994-03407.

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(Shelby County, AL)

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Together with the right accruing to the subject property of the following:

1. Storm Sewer and Drainage Easement between Daniel U.S. Properties, Ltd., and Daniel Properties IV dated August 1, 1986 and recorded in Real Record 86, Page 349 in the Office of the Judge of Probate.
2. Sewer Line Easement and Connection Agreement between Daniel U.S. Properties, Ltd., and Daniel Properties IV dated September 23, 1985 and recorded in Real Record 43, Page 611 in the Office of the Judge of Probate, as modified by that certain First Modification to Sewer Line Easement and Connection Agreement dated August 14, 1986 and recorded in Real Record 86, Page 355 aforesaid records, as further modified by that certain Quitclaim Deed with Reservation of Rights dated January 31, 1994 and recorded as Instrument #1994-03407 aforesaid records.
3. Quitclaim Deed with Reservation of Rights dated January 31, 1994 and recorded as instrument #1994-03407.

EXHIBIT B-1

Exhibit B-1
Colony Woods I
(Jefferson Co., AL)

1. Defects, liens, encumbrances, adverse claims or other matters, if any, created, first appearing in the public records or attaching subsequent to the effective date hereto but prior to the date the proposed insured acquires for value of record the estate or interest or mortgage thereon covered by this Commitment.
2. Any owner's policy issued pursuant hereto will contain under Schedule B the standard exceptions set forth on the inside cover. Any loan policy will also contain under Schedule B thereof, the standard exceptions set forth on the inside cover of this commitment relating to the owner's policy.
3. Standard Exceptions 2 and 3 may be removed from the policy when a satisfactory survey and inspection of the premises is made.
4. Taxes and assessments for the year 1995, and subsequent years, which are not yet due and payable. Tax information has been based on the present assessment roles, but is subject to any future adjustments that may be made by either the Tax Assessor or the Board of Equalization of Jefferson County, Alabama.
5. Easement and buffer zone as shown by recorded map.
6. Restrictions or Covenants recorded in Real 2846, page 640, in the Probate Office of Jefferson County, Alabama, but omitting any covenant or restriction based on race, color, religion, sex, handicap, familial status, or national origin.
7. Mineral and mining rights and rights incident thereto recorded in Volume 2804, page 500, in the Probate Office of Jefferson County, Alabama. ³⁶⁰⁴
8. Rights of tenants under lease *as shown on map*

EXCERPT

Exhibit B-2
Cahaba Forest Apartments
(Shelby Co., AL)

1. Defects, liens, encumbrances, adverse claims or other matters, if any, created, first appearing in the public records or attaching subsequent to the effective date hereto but prior to the date the proposed insured acquires for value of record the estate or interest or mortgage thereon covered by this Commitment.
2. Any owner's policy issued pursuant hereto will contain under Schedule B the standard exceptions set forth on the inside cover. Any loan policy will also contain under Schedule B thereof, the standard exceptions set forth on the inside cover of this commitment relating to the owner's policy.
3. Standard Exceptions 2 and 3 may be removed from the policy when a satisfactory survey and inspection of the premises is made.
4. Taxes and assessments for the year 1993, and subsequent years, which are not yet due and payable. Tax information has been based on the present assessment rolls, but is subject to any future adjustments that may be made by either the Tax Assessor or the Board of Equalization of Jefferson County, Alabama.
5. Oil, Gas and Sulphur and rights relating thereto as reserved in deed as recorded in Vol. 3897, page 113. (Parcel 1)
6. Restrictions and covenants contained in Covenant and Agreement recorded in Real Vol. 2602, page 306; as amended by instruments recorded in Real Vol. 2694, page 653 and Real Vol. 2756, page 661, refiled in Real Vol. 2897, page 702. (Parcel 1)
7. Agreement between Investment Southeastern, Ltd., a Georgia limited partnership, and Kavach-Eddleman Properties, an Alabama general partnership, and 280 Associates, Ltd. an Alabama limited partnership, recorded in Real Vol. 2748, page 377. (Parcel 1)
8. Sanitary Sewer Easement, utilities easement and building line along Cahaba Park Circle, all set out on the Map of Cahaba Park South 1st Addition as recorded in Map Book 133, page 49 in the Probate Office; and, as set out on the Map of Cahaba Park South 1st Addition Resurvey No. 1 as recorded in Map Book 139, page 18 in the Probate Office. (Parcel 1)
9. Reciprocal Easement Agreement as recorded in Real 2748 page 384 in the Probate Office. (Parcel 1)
10. Rights of tenants in possession, under unrecorded leases. (Parcel 1)
11. Declaration of Easement and Joint Use Agreement by Cahaba Forest Apartments dated February 8, 1994, recorded as Instrument No. 9402-5273 in the Probate Office of Jefferson County, Alabama. (Parcel 1)
12. Regulatory Agreement for Multifamily Housing Projects recorded as Instrument No. 9402-5279 in the Probate Office. (Parcel 1)
13. Utility Easement as shown on the Map and Plat of Cahaba Park South, 1st Addition, Map Book 133, page 49 in the Probate Office. (Parcel 1)
14. Rights of others to use said 10 foot signage easement described in Real 309, page 713 in Probate Office of Shelby County, Alabama. (Parcel II, signage easement)
15. Restrictions, covenants and conditions as to said signage easement as set out in Real 248, page 69, Real 248, page 62, Real 248, page 63 and Real 309, page 713 in Probate Office of Shelby County, Alabama. (Parcel II, signage easement)

Exhibit B-3
Morning Sun Villas
(Shelby Co., AL)

out
out
out
~~Schedule B of the policy or policies to be issued will contain exceptions to the following matters unless the same are disposed of to the satisfaction of the Company.~~

Defects, liens, encumbrances, adverse claims or other matters, if any, created, first appearing in the public records or attaching subsequent to the effective date hereto but prior to the date the proposed Insured acquires for value of record the estate or interest or mortgage thereon covered by this Commitment.

Any owner's policy issued pursuant hereto will contain under Schedule B the standard exceptions set forth on the inside cover. Any loan policy will also contain under Schedule B thereof, the standard exceptions set forth on the inside cover of this commitment relating to the owner's policy.

~~Standard Exceptions 2 and 3 may be removed from the policy when a satisfactory survey and inspection of the premises is made.~~

- 1996
4. Taxes and assessments for the year 1995, and subsequent years, which are not yet due and payable. Tax information has been based on the present assessment roles, but is subject to any future adjustments that may be made by either the Tax Assessor or the Board of Equalization of Shelby County, Alabama.
 5. Rights of way granted by Daniel U.S. Properties, Ltd. to Alabama Power Company dated as of August 23, 1984 and recorded in Real Book 2, page 792, in the Probate Office of Shelby County, Alabama (the "Probate Office") and dated August 23, 1984 and recorded in Real Book 2, page 797 in the Probate Office.
 6. Title to all minerals within and underlying the Property, together with all mining rights and other rights, privileges and immunities relating thereto, including rights set out in Deed Book 32, page 48 in the Probate Office.
NOTE: Except as to subsidence, the Company hereby insures the Insured against loss which the Insured shall sustain by reason of physical damage to the surface of the land resulting from the exercise subsequent to the date of policy and without the consent of the surface owner and/or mortgagee of any right to strip mine or to use the surface of the land described in this policy for the extraction therefrom of minerals referred to in the above exception.
 7. The rights of tenants only, in possession under residential leases, *with NO outstanding options to purchase or rights of first Refusal*
 8. Terms and provisions of Quitclaim Deed with Reservation of Rights between Daniel U.S. Properties Limited Partnership II and Daniel Properties IV Limited Partnership dated January 31, 1994 and recorded in Instrument NO. 1994-03407 in the Probate Office.

9. *matters of survey*

1995-32175
11/07/1995-32175
11:36 AM CERTIFIED
SHELBY COUNTY JUDGE OF PROBATE
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