

	Multifamily Mortgage, Assignment of Rents and Security Agreement	
Document Number	Document Title	

Recording Area

Name and Return Address

Legal Services  
Wisconsin Housing and Economic  
Development Authority  
P.O. Box 1728  
Madison, WI 53701-1728

Parcel Identification Number (PIN)  
See Exhibit A attached

This Security Instrument was drafted by:  
Wisconsin Housing and Economic Development Authority  
201 West Washington Avenue, Suite 700  
P.O. Box 1728  
Madison, Wisconsin 53701-1728

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**MULTIFAMILY MORTGAGE,  
ASSIGNMENT OF RENTS  
AND SECURITY AGREEMENT**

THIS MULTIFAMILY MORTGAGE, ASSIGNMENT OF RENTS AND SECURITY AGREEMENT (the "**Security Instrument**") is dated as of \_\_\_\_\_, 2018, between 2219 LOFTS LIMITED PARTNERSHIP, a Wisconsin limited partnership, whose address is c/o MetroPlains, LLC, 801 Washington Avenue North, Suite 108, Minneapolis, Minnesota 55401, as mortgagor ("**Borrower**"), and WISCONSIN HOUSING AND ECONOMIC DEVELOPMENT AUTHORITY, a Wisconsin public body corporate and politic, whose address is 201 West Washington Avenue, Suite 700, P.O. Box 1728, Madison, Wisconsin 53701-1728, as mortgagee ("**Lender**").

Borrower is indebted to Lender in the original aggregate principal amount of \$472,075.00 (the "**Loan**"), pursuant to the Loan Agreement of even date herewith (the "**Loan Agreement**") and as evidenced by the following two (2) Multifamily Notes (referred to collectively herein as the "**Note**"), given by Borrower and payable to Lender and dated as of the date of this Security Instrument:

1. Note #1 in the principal amount of \$381,500.00, and
2. Note #2 in the principal amount of \$90,575.00.

TO SECURE TO LENDER the repayment of the Indebtedness (as defined below), and all renewals, extensions and modifications of the Indebtedness, and the performance of the covenants and agreements of Borrower contained in the Loan Documents (as defined below), Borrower mortgages, warrants, grants, conveys and assigns to Lender the Mortgaged Property, including the Land located in the City of La Crosse, La Crosse County, State of Wisconsin, and more particularly described in Exhibit A attached to this Security Instrument.

Borrower represents and warrants that Borrower is lawfully seized of the Mortgaged Property and has the right, power and authority to mortgage, grant, convey and assign the Mortgaged Property, and that the Mortgaged Property is unencumbered by any other mortgage liens, state or federal tax liens, or money judgments, except for the Permitted Liens and Encumbrances. Borrower covenants that Borrower will warrant and defend generally the title to the Mortgaged Property against all claims and demands, subject to any easements, mortgages, restrictions and other matters listed in a schedule of exceptions to coverage in any title insurance policy (the "**Permitted Liens and Encumbrances**") issued to Lender contemporaneously with the execution and recordation of this Security Instrument and insuring Lender's interest in the Mortgaged Property.

**Covenants.** Borrower and Lender covenant and agree as follows:

**1. DEFINITIONS.**

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

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

(b) "**Borrower Affiliate**" means, as to Borrower:

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

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

(iii) any entity controlled by or under common control with, or which controls Borrower (the term "**control**" for these purposes means the ability, whether by the ownership of shares or other equity interests, by contract or otherwise, to elect a majority of the directors of a corporation, to make management decisions on behalf of, or independently to select the managing partner of, a partnership, or otherwise to have the power independently to remove and then select a majority of those individuals exercising managerial authority over an entity, and

control shall be conclusively presumed in the case of the ownership of fifty percent (50%) or more of the equity interests); or

(iv) any manager or member of Borrower.

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

(d) **"Environmental Laws"** means all present and future federal, state, and local laws, ordinances, regulations, standards, rules, policies, and other governmental requirements, administrative rulings, court judgments, and decrees, and all amendments thereto, relating to pollution or protection of human health, wildlife, natural resources, or the environment (including ambient air, surface water, ground water, land surface, or subsurface strata) including such laws governing or regulating the use, generation, storage, removal, remediation, recovery, treatment, handling, transport, disposal, control, release, discharge of, or exposure to, Hazardous Materials. Environmental Laws include the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601, et seq., the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et seq., the Toxic Substances Control Act, 15 U.S.C. Section 2601, et seq., the Clean Water Act, 33 U.S.C. Section 1251, et seq., the Hazardous Materials Transportation Act, 49 U.S.C. Section 5101, et seq., the Clean Air Act, 42 U.S.C. Section 7401, et seq., the Safe Drinking Water Act, 42 U.S.C. Section 300f, et seq., the Occupational Safety and Health Act, 29 U.S.C. Chapter 15, et seq., the Federal Water Pollution Control Act, 33 U.S.C. Sections 1251-1376, et seq., the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. Section 136, et seq., and the River and Harbors Appropriation Act, 33 U.S.C. Section 403, et seq., and all regulations adopted thereunder and all state and local analogs. In addition to the foregoing, Environmental Laws also means and includes all voluntary cleanup programs and/or brownfields programs under federal, state, or local law.

(e) **"Environmental Permit"** means any permit, license, agreement (including any agreement or undertaking pursuant to a voluntary cleanup program and/or a brownfields program), or other authorization issued under any Environmental Law with respect to any activities or businesses conducted on or in relation to the Mortgaged Property.

(f) **"Event of Default"** means the occurrence of any event listed in Section 21.

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

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

(i) **"Hazardous Materials"** means any substance, chemical, material, or waste now or in the future defined as a "hazardous substance," "hazardous material," "hazardous waste," "toxic substance," "toxic pollutant," "contaminant," or "pollutant" within the meaning of or regulated or addressed under any Environmental Law. Without limiting the generality of the foregoing, Hazardous Materials includes: Significant Mold; petroleum and petroleum products and compounds containing them or derived from them,

including gasoline, diesel fuel, oil, and others fuels and petroleum products or fractions thereof; radon; carcinogenic materials; explosives; flammable materials; infectious materials; corrosive materials; mutagenic materials; radioactive materials; polychlorinated biphenyls (PCBs) and compounds containing them; lead and lead-based paint; asbestos or asbestos-containing materials in any form that is or could become friable; underground or above-ground storage tanks, whether empty or containing any substance; any substance the presence of which on, under or about the Mortgaged Property is regulated or prohibited by any Governmental Authority; any substance that is designated, classified, or regulated pursuant to any Environmental Law; and any medical products or devices, including those materials defined as "medical waste" or "biological waste" under relevant statutes or regulations pertaining to any Environmental Law.

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

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

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

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

(n) **"Land Use Restriction Agreement"** means, collectively, those certain Land Use Restriction Agreements by and between Lender and Borrower, as may be amended from time to time, as follows:

- i. Land Use Restriction Agreement for Low-Income Housing Tax Credit, dated as of November 29, 2017, as Document No. 1703739,
- ii. Land Use Restriction Agreement, of even date herewith, and
- iii. Any other Land Use Restriction Agreement executed now or in the future with regard to the Mortgaged Property.

(o) **"Leases"** means all present and future leases, subleases, residency agreements, occupancy agreements, licenses, concessions, grants and other possessory interests, and all housing assistance payments contracts, now or hereafter in force, whether oral or written, covering or affecting the Mortgaged Property, or any portion of the Mortgaged Property, and all modifications, extensions or renewals.

(p) **"Lender"** means the entity identified as "Lender" in the first paragraph of this Security Instrument and its successors and assigns, or any subsequent holder of the Note.

(q) **"Loan Agreement"** means that certain Loan Agreement of even date herewith by and between Lender and Borrower.

(r) **"Loan Documents"** shall have the meaning set forth in the Loan Agreement.

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

(t) **"Mortgaged Property"** means all of Borrower's present and future right, title and interest in and to all of the following:

- (1) the Land;
- (2) the Improvements;
- (3) the Fixtures;

- (4) the Personalty;
- (5) all current and future rights, including air rights, development rights, zoning rights and other similar rights or interests, easements, tenements, rights-of-way, strips and gores of land, streets, alleys, roads, sewer rights, waters, watercourses, and appurtenances related to or benefitting the Land or the Improvements, or both, and all rights-of-way, streets, alleys and roads which may have been or may in the future be vacated;
- (6) all proceeds paid or to be paid by any insurer with respect to the Land, the Improvements, the Fixtures, the Personalty or any other part of the Mortgaged Property, whether or not Borrower obtained the insurance pursuant to Lender's requirement;
- (7) all awards, payments and other compensation made or to be made by any municipal, state or federal authority with respect to the Land, the Improvements, the Fixtures, the Personalty or any other part of the Mortgaged Property, including any awards or settlements resulting from condemnation proceedings or the total or partial taking of the Land, the Improvements, the Fixtures, the Personalty or any other part of the Mortgaged Property under the power of eminent domain or otherwise and including any conveyance in lieu thereof;
- (8) all contracts, options and other agreements for the sale of the Land, the Improvements, the Fixtures, the Personalty or any other part of the Mortgaged Property entered into by Borrower now or in the future, including cash or securities deposited to secure performance by parties of their obligations;
- (9) all proceeds from the conversion, voluntary or involuntary, of any of the above into cash or liquidated claims, and the right to collect such proceeds;
- (10) all Rents and Leases;
- (11) all earnings, royalties, accounts receivable, issues and profits from the Land, the Improvements or any other part of the Mortgaged Property, and all undisbursed proceeds of the loan secured by this Security Instrument and, if Borrower is a cooperative housing corporation, maintenance charges or assessments payable by shareholders or residents;
- (12) all Imposition Deposits;
- (13) all refunds or rebates of Impositions by any municipal, state or federal authority or insurance company (other than refunds applicable to periods before the real property tax year in which this Security Instrument is dated);
- (14) all tenant security deposits which have not been forfeited by any tenant under any Lease; and
- (15) all names under or by which any of the above Mortgaged Property may be operated or known, and all trademarks, trade names, domain names, general intangibles and goodwill relating to any of the Mortgaged Property.

(u) **"Note"** means, collectively, all the Multifamily Notes described on page 1 of this Security Instrument, and all schedules, riders, allonges and addenda, as such Multifamily Notes may be amended from time to time.

(v) **"Partnership Agreement"** means that certain First Amended and Restated Agreement of Limited Partnership of 2219 Lofts Limited Partnership, dated as of March 10, 2016, as amended by that certain Transfer Agreement dated as of October 14, 2016,.

(w) **"Personalty"** means all equipment, inventory, general intangibles which are used now or in

the future in connection with the ownership, management or operation of the Land or the Improvements or are located on the Land or in the Improvements, including furniture, furnishings, machinery, building materials, appliances, goods, supplies, tools, books, records (whether in written or electronic form), computer equipment (hardware and software) and other tangible personal property (other than Fixtures) which are used now or in the future in connection with the ownership, management or operation of the Land or the Improvements or are located on the Land or in the Improvements (other than property belonging to tenants), and any operating agreements relating to the Land or the Improvements, and any surveys, plans and specifications and contracts for architectural, engineering and construction services relating to the Land or the Improvements and all other intangible property and rights relating to the operation of, or used in connection with, the Land or the Improvements, including all governmental permits relating to any activities on the Land.

(x) **"Rents"** means all rents (whether from residential or non-residential space), housing assistance payments, revenues and other income of the Land or the Improvements, including parking fees, laundry and vending machine income and fees and charges for food, health care and other services provided at the Mortgaged Property, whether now due, past due, or to become due, and deposits forfeited by tenants.

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

(z) **"Transfer"** means (A) a sale, assignment, transfer or other disposition (whether voluntary, involuntary or by operation of law); (B) the granting, creating or attachment of a lien, encumbrance or security interest (whether voluntary or, if not being legally contested by Borrower, involuntary or by operation of law); (C) the issuance or other creation of an ownership interest in a legal entity, including a partnership interest, interest in a limited liability company, or corporate stock; (D) the withdrawal, retirement, removal or involuntary resignation of a partner in a partnership or a member in a limited liability company; or (E) the merger, dissolution, liquidation, or consolidation of a legal entity. "Transfer" does not include (i) a conveyance of the Mortgaged Property at a judicial foreclosure sale under this Security Instrument or (ii) the Mortgaged Property becoming part of a bankruptcy estate by operation of law under the United States Bankruptcy Code.

## **2. UNIFORM COMMERCIAL CODE SECURITY AGREEMENT.**

This Security Instrument is also a security agreement under the Uniform Commercial Code for any of the Mortgaged Property which, under applicable law, may be subject to a security interest under the Uniform Commercial Code, whether acquired now or in the future, and all products and cash and non-cash proceeds thereof (collectively, the **"UCC Collateral"**), and Borrower, as debtor, hereby grants to Lender, as secured party, a security interest in the UCC Collateral. Borrower hereby authorizes Lender to file financing statements, continuation statements and financing statement amendments in such form as Lender may require to perfect or continue the perfection of this security interest and Borrower agrees, if Lender so requests, to execute and deliver to Lender such financing statements, continuation statements and amendments. Borrower shall pay all filing costs and all costs and expenses of any record searches for financing statements that Lender may require. Without the prior written consent of Lender, and other than Permitted Liens and Encumbrances, Borrower shall not create or permit to exist any other lien or security interest in any of the UCC Collateral. If an Event of Default has occurred and is continuing after the expiration of any applicable cure period, Lender shall have the remedies of a secured party under the Uniform Commercial Code, in addition to all remedies provided by this Security Instrument or existing under applicable law. In exercising any remedies, Lender may exercise its remedies against the UCC Collateral separately or together, and in any order, without in any way affecting the availability of Lender's other remedies. This Security Instrument constitutes a financing statement with respect to any part of the Mortgaged Property which is or may become a Fixture.

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

(a) As part of the consideration for the Indebtedness, Borrower absolutely and unconditionally assigns and transfers to Lender all Rents. It is the intention of Borrower to establish a present, absolute and irrevocable transfer and assignment to Lender of all Rents and to authorize and empower Lender to collect and receive all Rents without the necessity of further action on the part of Borrower. Promptly upon request by Lender, Borrower agrees to execute and deliver such further assignments as Lender may from time to time require. Borrower and Lender intend this assignment of Rents to be immediately effective and to constitute an absolute present assignment and not an assignment for additional security only. For purposes of giving effect

to this absolute assignment of Rents, and for no other purpose, Rents shall not be deemed to be a part of the "Mortgaged Property," as such term is defined in Section 1(t). However, if this present, absolute and unconditional assignment of Rents is not enforceable by its terms under the laws of the State of Wisconsin, then the Rents shall be included as a part of the Mortgaged Property and it is the intention of Borrower that in this circumstance this Security Instrument create and perfect a lien on Rents in favor of Lender, which lien shall be effective as of the date of this Security Instrument.

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

(c) Borrower represents and warrants to Lender that: i) Borrower has not executed any prior assignment of Rents (other than Permitted Liens and Encumbrances); ii) Borrower has not executed and shall not execute any instrument which would prevent Lender from exercising its rights under this Section 3, and iii) at the time of execution of this Security Instrument there has been no anticipation or prepayment of any Rents for more than two months prior to the due dates of such Rents. Borrower shall not collect or accept payment of any Rents more than two months prior to the due dates of such Rents.

(d) If an Event of Default has occurred and is continuing after the expiration of any applicable cure period, Lender may, regardless of the adequacy of Lender's security or the solvency of Borrower and even in the absence of waste, enter upon and take and maintain full control of the Mortgaged Property in order to perform all acts that Lender in its discretion determines to be necessary or desirable for the operation and maintenance of the Mortgaged Property, including the execution, cancellation or modification of Leases, the collection of all Rents, the making of repairs to the Mortgaged Property and the execution or termination of contracts providing for the management, operation or maintenance of the Mortgaged Property, for the purposes of enforcing the assignment of Rents pursuant to Section 3(a), protecting the Mortgaged Property or the security of this Security Instrument, or for such other purposes as Lender in its discretion may deem necessary or desirable. Alternatively, if an Event of Default has occurred and is continuing, regardless of the adequacy of Lender's security, without regard to Borrower's solvency and without the necessity of giving prior notice (oral or written) to Borrower, Lender may apply to any court having jurisdiction for the appointment of a receiver for the Mortgaged Property to take any or all of the actions set forth in the preceding sentence. If Lender elects to seek the appointment of a receiver for the Mortgaged Property at any time after an Event of Default has occurred and is continuing after the expiration of any applicable cure period, Borrower, by its execution of this Security Instrument, expressly consents to the appointment of such receiver, including the appointment of a receiver *ex parte* if permitted by applicable law; further, Borrower expressly consents to such receiver serving without bond, Borrower hereby expressly waiving any bonding requirement set forth in applicable law. Lender or the receiver, as the case may be, shall be entitled to receive a reasonable fee for managing the Mortgaged Property. Immediately upon appointment of a receiver or immediately upon Lender entering upon and taking possession and control of the Mortgaged Property, Borrower shall surrender possession of the Mortgaged



Property to Lender or the receiver, as the case may be, and shall deliver to Lender or the receiver, as the case may be, all documents, records (including records on electronic or magnetic media), accounts, surveys, plans, and specifications relating to the Mortgaged Property and all security deposits and prepaid Rents. In the event Lender takes possession and control of the Mortgaged Property, Lender may exclude Borrower and its representatives from the Mortgaged Property. Borrower acknowledges and agrees that the exercise by Lender of any of the rights conferred under this Section 3 shall not be construed to make Lender a mortgagee-in-possession of the Mortgaged Property so long as Lender has not itself entered into actual possession of the Land and Improvements.

(e) If Lender enters the Mortgaged Property, Lender shall be liable to account only to Borrower and only for those Rents and "Housing Assistance Payments", as such term is defined in Section 47 below, actually received. With the exception of claims arising out of Lender's reckless or willful misconduct, Lender shall not be liable to Borrower, anyone claiming under or through Borrower or anyone having an interest in the Mortgaged Property, by reason of any act or omission of Lender under this Section 3, and Borrower hereby releases and discharges Lender from any such liability to the fullest extent permitted by law.

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

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

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

(a) As part of the consideration for the Indebtedness, Borrower absolutely and unconditionally assigns and transfers to Lender all of Borrower's right, title and interest in, to and under the Leases, including Borrower's right, power and authority to modify the terms of any such Lease, or extend or terminate any such Lease. It is the intention of Borrower to establish a present, absolute and irrevocable transfer and assignment to Lender of all of Borrower's right, title and interest in, to and under the Leases. Borrower and Lender intend this assignment of the Leases to be immediately effective and to constitute an absolute present assignment and not an assignment for additional security only. For purposes of giving effect to this absolute assignment of the Leases, and for no other purpose, the Leases shall not be deemed to be a part of the "Mortgaged Property," as such term is defined in Section 1(t). However, if this present, absolute and unconditional assignment of the Leases is not enforceable by its terms under the laws of the State of Wisconsin, then the Leases shall be included as a part of the Mortgaged Property and it is the intention of Borrower that in this circumstance this Security Instrument create and perfect a lien on the Leases in favor of Lender, which lien shall be effective as of the date of this Security Instrument.

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

(c) Borrower acknowledges and agrees that the exercise by Lender, either directly or by a receiver, of any of the rights conferred under this Section 4 shall not be construed to make Lender a mortgagee-in-possession of the Mortgaged Property so long as Lender has not itself entered into actual possession of the Land and the Improvements. The acceptance by Lender of the assignment of the Leases pursuant to Section 4(a) shall not at any time or in any event obligate Lender to take any action under this Security Instrument or to expend any money or to incur any expenses. Lender shall not be liable in any way for any injury or damage to person or property sustained by any person or persons, firm or corporation in or about the Mortgaged Property, except such injury or damage caused by Lender's negligent acts or those of Lender's agents or employees. Prior to Lender's actual entry into and taking possession of the Mortgaged Property, Lender shall not (i) be obligated to perform any of the terms, covenants and conditions contained in any Lease

(or otherwise have any obligation with respect to any Lease); (ii) be obligated to appear in or defend any action or proceeding relating to the Lease or the Mortgaged Property; or (iii) be responsible for the operation, control, care, management or repair of the Mortgaged Property or any portion of the Mortgaged Property. The execution of this Security Instrument by Borrower shall constitute conclusive evidence that all responsibility for the operation, control, care, management and repair of the Mortgaged Property is and shall be that of Borrower, prior to such actual entry and taking of possession.

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

(e) Borrower shall, promptly upon Lender's request, deliver to Lender an executed copy of each residential Lease then in effect. All Leases for residential dwelling units shall be on forms approved by Lender, shall be for initial terms of at least six months and not more than two years, and shall not include options to purchase. If customary in the applicable market, residential Leases with terms of less than six months may be permitted with Lender's prior written consent.

(f) Borrower shall not lease any portion of the Mortgaged Property for non-residential use except with the prior written consent of Lender and Lender's prior written approval of the Lease agreement. Borrower shall not modify the terms of, or extend or terminate, any Lease for non-residential use (including any Lease in existence on the date of this Security Instrument) without the prior written consent of Lender. Borrower shall, without request by Lender, deliver an executed copy of each non-residential Lease to Lender promptly after such Lease is signed. All non-residential Leases, including renewals or extensions of existing Leases, shall specifically provide that (1) such Leases are subordinate to the lien of this Security Instrument (unless waived in writing by Lender); (2) the tenant shall attorn to Lender and any purchaser at a foreclosure sale, such attornment to be self-executing and effective upon acquisition of title to the Mortgaged Property by any purchaser at a foreclosure sale or by Lender in any manner; (3) the tenant agrees to execute such further evidences of attornment as Lender or any purchaser at a foreclosure sale may from time to time request; (4) the Lease shall not be terminated by foreclosure or any other transfer of the Mortgaged Property; (5) after a foreclosure sale of the Mortgaged Property, Lender or any other purchaser at such foreclosure sale may, at Lender's or such purchaser's option, accept or terminate such Lease; and (6) the tenant shall, upon receipt of written notice from Lender of the occurrence of an Event of Default and the expiration of any applicable cure period, pay all Rents payable under the Lease to Lender.

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

## **5. PAYMENT OF INDEBTEDNESS; PERFORMANCE UNDER LOAN DOCUMENTS; PREPAYMENT PREMIUM.**

Borrower shall pay the Indebtedness when due in accordance with the terms of the Note and the other Loan Documents and shall perform, observe and comply with all other provisions of the Note and the other Loan Documents. Borrower shall pay a prepayment premium in connection with certain prepayments of the Indebtedness, including a payment made after Lender's exercise of any right of acceleration of the Indebtedness, if so provided in the Note.

## **6. EXCULPATION.**

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

## **7. DEPOSITS FOR TAXES, INSURANCE, AND OTHER CHARGES.**

(a) Imposition Deposits, Generally. Borrower shall deposit with Lender on the day monthly installments of principal or interest, or both, are due under the Note (or on another day designated in writing by Lender), until the Indebtedness is paid in full, an additional amount sufficient to accumulate with Lender the

entire sum required to pay, when due, the premiums for fire and other hazard insurance, rent loss insurance and such other insurance as Lender may require under Section 18, any Taxes and amounts for other charges and expenses which Lender at any time reasonably deems necessary to protect the Mortgaged Property, to prevent the imposition of liens on the Mortgaged Property, or otherwise to protect Lender's interests, all as reasonably estimated from time to time by Lender. The amounts deposited under the preceding sentence are collectively referred to in this Security Instrument as the "**Imposition Deposits**". The obligations of Borrower for which the Imposition Deposits are required are collectively referred to in this Security Instrument as "**Impositions**". The amount of the Imposition Deposits shall be sufficient to enable Lender to pay each Imposition before the last date upon which such payment may be made without any penalty or interest charge being added. Lender shall maintain records indicating how much of the monthly Imposition Deposits and how much of the aggregate Imposition Deposits held by Lender are held for the purpose of paying Taxes and each other obligation of Borrower for which Imposition Deposits are required. Any waiver by Lender of the requirement that Borrower remit Imposition Deposits to Lender may be revoked by Lender, in Lender's discretion, at any time upon notice to Borrower. Lender may require Borrower to make Imposition Deposits for any insurance premiums, at any time upon written notice to Borrower.

(b) Use of Imposition Deposits. Lender shall apply the Imposition Deposits to pay Impositions so long as no Event of Default has occurred and is continuing after the expiration of any applicable cure period. Lender will invest Imposition Deposits according to Lender's investment policy. Lender shall not be required to pay Borrower any interest earnings or profits on the Imposition Deposits, unless applicable law requires. Borrower hereby pledges and grants to Lender a security interest in the Imposition Deposits as additional security for all of Borrower's obligations under this Security Instrument and the other Loan Documents. Any amounts deposited with Lender under this Section 7 shall not be trust funds, nor shall they operate to reduce the Indebtedness, unless applied by Lender for that purpose under Section 7(e).

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

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

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

## **8. COLLATERAL AGREEMENTS.**

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

## **9. APPLICATION OF PAYMENTS.**

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

#### **10. COMPLIANCE WITH LAWS.**

Borrower shall comply with all laws, ordinances, regulations and requirements of any Governmental Authority and all recorded lawful covenants and agreements relating to or affecting the Mortgaged Property, including all laws, ordinances, regulations, requirements and covenants pertaining to health and safety, construction of improvements on the Mortgaged Property, fair housing, zoning and land use, and Leases. Borrower also shall comply with all applicable laws that pertain to the maintenance and disposition of tenant security deposits. Borrower shall at all times maintain records sufficient to demonstrate compliance with the provisions of this Section 10. Borrower shall take appropriate measures to prevent, and shall not engage in or knowingly permit, any illegal activities at the Mortgaged Property that could endanger tenants or visitors, result in damage to the Mortgaged Property, result in forfeiture of the Mortgaged Property, or otherwise materially impair the lien created by this Security Instrument or Lender's interest in the Mortgaged Property. Borrower represents and warrants to Lender that no portion of the Mortgaged Property has been or will be purchased with the proceeds of any illegal activity.

#### **11. USE OF PROPERTY.**

Unless required by applicable law, Borrower shall not (a) except for any change in use approved by Lender, allow changes in the use for which all or any part of the Mortgaged Property is being used at the time this Security Instrument was executed, (b) convert any individual dwelling units or common areas to commercial use, (c) initiate or acquiesce in a change in the zoning classification of the Mortgaged Property, or (d) establish any condominium or cooperative regime with respect to the Mortgaged Property.

#### **12. PROTECTION OF LENDER'S SECURITY.**

(a) If Borrower fails to perform any of its obligations under this Security Instrument or any other Loan Document, or if any action or proceeding is commenced which purports to affect the Mortgaged Property, Lender's security or Lender's rights under this Security Instrument, including eminent domain, insolvency, code enforcement, civil or criminal forfeiture, enforcement of Environmental Laws, fraudulent conveyance or reorganizations or proceedings involving a bankrupt or decedent, then Lender at Lender's option may make such appearances, disburse such sums and take such actions as Lender reasonably deems necessary to perform such obligations of Borrower (and shall provide written notice to Borrower of such actions) and to protect Lender's interest, including (1) payment of fees and out-of-pocket expenses of attorneys, accountants, inspectors and consultants, (2) entry upon the Mortgaged Property to make repairs or secure the Mortgaged Property, (3) procurement of the insurance required by Section 18, and (4) payment of amounts which Borrower has failed to pay under Sections 15 and 17.

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

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

#### **13. INSPECTION.**

Upon 24 hours' notice, Lender, its agents, representatives, and designees may make or cause to be made entries upon and inspections of the Mortgaged Property (including environmental inspections and tests) during normal business hours, or at any other reasonable time, subject to rights of tenants and any applicable local ordinances.

#### **14. BOOKS AND RECORDS; FINANCIAL REPORTING.**

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

(b) Borrower shall furnish to Lender all of the following:

- (1) within 60 days after the end of each fiscal year of Borrower, a statement of income and expenses for Borrower's operation of the Mortgaged Property for that fiscal year, a statement of changes in financial position of Borrower relating to the Mortgaged Property for that fiscal year and, when requested by Lender, a balance sheet showing all assets and liabilities of Borrower relating to the Mortgaged Property as of the end of that fiscal year;
- (2) within 60 days after the end of each fiscal year of Borrower, and at any other time upon Lender's request, a rent schedule for the Mortgaged Property showing the name of each tenant, and for each tenant, the space occupied, the lease expiration date, the rent payable for the current month, the date through which rent has been paid, and any related information requested by Lender;
- (3) within 60 days after the end of each fiscal year of Borrower, and at any other time upon Lender's request, an accounting of all security deposits held pursuant to all Leases, including the name of the institution (if any) and the names and identification numbers of the accounts (if any) in which such security deposits are held and the name of the person to contact at such financial institution, along with any authority or release necessary for Lender to access information regarding such accounts;
- (4) within 60 days after the end of each fiscal year of Borrower, and at any other time upon Lender's request, a statement that identifies all owners of any interest in Borrower and the interest held by each, if Borrower is a corporation, all officers and directors of Borrower, and if Borrower is a limited liability company, all managers who are not members;
- (5) upon Lender's request, a monthly property management report for the Mortgaged Property, showing the number of inquiries made and rental applications received from tenants or prospective tenants and deposits received from tenants and any other information requested by Lender;
- (6) upon Lender's request, a balance sheet, a statement of income and expenses for Borrower and a statement of changes in financial position of Borrower for Borrower's most recent fiscal year;
- (7) upon Lender's request, a statement of income and expense for the Mortgaged Property for the prior month or quarter; and
- (8) where necessary for reporting to HUD or Farmers Home Administration, the foregoing reports will also be prepared according to HUD or Farmers Home Administration contracts, as applicable.

(c) Each of the statements, schedules and reports required by Section 14(b) shall be certified to be complete and accurate by an individual having authority to bind Borrower, and shall be in such form and contain such detail as Lender may reasonably require. Lender also may require that any fiscal year-end statements, schedules or reports be audited at Borrower's expense by independent certified public accountants acceptable to Lender.

(d) If Borrower fails to provide in a timely manner the statements, schedules and reports required by Section 14(b), Lender shall have the right to have Borrower's books and records audited, at Borrower's expense, by independent certified public accountants selected by Lender in order to obtain such statements, schedules and reports, and all related costs and expenses of Lender shall become immediately due and payable and shall become an additional part of the Indebtedness as provided in Section 12.

(e) If an Event of Default has occurred and is continuing after the expiration of any applicable cure period, Borrower shall deliver to Lender upon written demand all books and records relating to the Mortgaged Property or its operation.

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

(g) If an Event of Default has occurred and Lender has not previously required Borrower to furnish a quarterly statement of income and expense for the Mortgaged Property, Lender may require Borrower to furnish such a statement within 45 days after the end of each fiscal quarter of Borrower following such Event of Default.

## **15. TAXES; OPERATING EXPENSES.**

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

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

(c) As long as no Event of Default exists and Borrower has timely delivered to Lender any bills or notices that it has received, Borrower shall not be obligated to pay Taxes or any other individual Imposition to the extent that sufficient Imposition Deposits are held by Lender, or any other lender which has a lien with respect to the Mortgaged Property for the purpose of paying that specific Imposition. If an Event of Default exists and is continuing after the expiration of any applicable cure period, Lender may exercise any rights Lender may have with respect to Imposition Deposits without regard to whether Impositions are then due and payable. Lender shall have no liability to Borrower for failing to pay any Impositions to the extent that any Event of Default has occurred and is continuing after the expiration of any applicable cure period, insufficient Imposition Deposits are held by Lender at the time an Imposition becomes due and payable or Borrower has failed to provide Lender with bills and notices as provided above.

(d) Borrower, at its own expense, may contest by appropriate legal proceedings, conducted diligently and in good faith, the amount or validity of any Imposition, if (1) Borrower notifies Lender of the commencement or expected commencement of such proceedings, (2) the Mortgaged Property is not in danger of being sold or forfeited, (3) Borrower deposits with Lender reserves sufficient to pay the contested Imposition, if requested by Lender, and (4) Borrower furnishes whatever additional security is required in the proceedings or is reasonably requested by Lender, which may include the delivery to Lender of the reserves established by Borrower to pay the contested Imposition.

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

## **16. LIENS; ENCUMBRANCES.**

Borrower acknowledges that, to the extent provided in Section 20, the grant, creation or existence of any mortgage, security interest or other lien or encumbrance (a "**Lien**") on the Mortgaged Property (other than the lien of this Security Instrument or as otherwise described in the Permitted Liens and Encumbrances), or on certain ownership interests in Borrower, whether voluntary or, if not being legally contested by Borrower, involuntary or by operation of law, and whether or not such Lien has priority over the lien of this Security Instrument, is a "**Transfer**" which constitutes an Event of Default.

## **17. PRESERVATION, MANAGEMENT AND MAINTENANCE OF MORTGAGED PROPERTY.**

(a) Borrower (1) shall not commit waste or permit impairment or deterioration of the Mortgaged Property, (2) shall not abandon the Mortgaged Property, (3) shall restore or repair promptly, in a good and workmanlike manner, any damaged part of the Mortgaged Property to the equivalent of its original condition immediately preceding the damage, or such other condition as Lender may approve in writing, whether or not insurance proceeds or condemnation awards are sufficient to cover any costs of such restoration or repair, but only if Lender has made available all insurance proceeds, or condemnation awards, paid in connection therewith, (4) shall keep the Mortgaged Property in good repair, including the replacement of Personalty and Fixtures with items of equal or better function and quality, (5) shall provide for professional management of the Mortgaged Property by a residential rental property manager satisfactory to Lender under a contract approved by Lender in writing, and (6) shall give notice to Lender of and, unless otherwise directed in writing by Lender,

shall appear in and defend any action or proceeding purporting to affect the Mortgaged Property, Lender's security or Lender's rights under this Security Instrument. Borrower shall not (and shall not permit any tenant or other person to) remove, demolish or alter the Mortgaged Property or any part of the Mortgaged Property except in connection with the replacement of tangible Personalty or Fixtures.

(b) If, in connection with the making of the Loan evidenced by the Note or at any later date, Lender waives in writing the requirement of Section 17(a)(5) above that Borrower enter into a written contract for management of the Mortgaged Property and if, after the date of this Security Instrument, Borrower intends to change the management of the Mortgaged Property, Lender shall have the right to approve such new property manager and the written contract for the management of the Mortgaged Property and require that Borrower and such new property manager enter into an Assignment of Management Agreement on a form approved by Lender. If required by Lender (whether before or after an Event of Default), Borrower will cause any Affiliate of Borrower to whom fees are payable for the management of the Mortgaged Property to enter into an agreement with Lender, in a form approved by Lender, providing for subordination of those fees and such other provisions as Lender may require.

## **18. PROPERTY AND LIABILITY INSURANCE.**

(a) Borrower shall keep the Improvements insured at all times against such hazards as Lender may from time to time require, which insurance shall include but not be limited to coverage against loss by fire and allied perils, general boiler and machinery coverage, and business income coverage. Lender's insurance requirements may change from time to time throughout the term of the Indebtedness. If Lender so requires, such insurance shall also include sinkhole insurance, mine subsidence insurance, earthquake insurance, and, if the Mortgaged Property does not conform to applicable zoning or land use laws, building ordinance or law coverage. If any of the Improvements is located in an area identified by the Federal Emergency Management Agency (or any successor to that agency) as an area having special flood hazards, and if flood insurance is available in that area, Borrower shall insure such Improvements against loss by flood.

(b) All premiums on insurance policies required under Section 18(a) shall be paid in the manner provided in Section 7, unless Lender has designated in writing another method of payment. All such policies shall also be in a form approved by Lender. All policies of property damage insurance shall include a non-contributing, non-reporting mortgage clause in favor of, and in a form approved by, Lender. Lender shall have the right to hold the original policies or duplicate original policies of all insurance required by Section 18(a). Borrower shall promptly deliver to Lender a copy of all renewal and other notices received by Borrower with respect to the policies and all receipts for paid premiums. At least 30 days prior to the expiration date of a policy, Borrower shall deliver to Lender the original (or a duplicate original) of a renewal policy in form satisfactory to Lender.

(c) Borrower shall maintain at all times commercial general liability insurance, workers' compensation insurance and such other liability, errors and omissions and fidelity insurance coverages as Lender may from time to time require.

(d) All insurance policies and renewals of insurance policies required by this Section 18 shall be in such amounts and for such periods as Lender may from time to time require, and shall be issued by insurance companies satisfactory to Lender.

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

(f) In the event of loss, Borrower shall give immediate written notice to the insurance carrier and to Lender. Borrower hereby authorizes and appoints Lender as attorney-in-fact for Borrower to make proof of loss, to adjust and compromise in good faith any claims under policies of property damage insurance, to appear in and prosecute any action arising from such property damage insurance policies, to collect and receive the proceeds of property damage insurance, and to deduct from such proceeds Lender's expenses incurred in the collection of such proceeds. This power of attorney is coupled with an interest and therefore is irrevocable. However, nothing contained in this Section 18 shall require Lender to incur any expense or take any action. Lender may, at Lender's option, (1) hold the balance of such proceeds to be used to reimburse Borrower for the cost of restoring and repairing the Mortgaged Property to the equivalent of its original condition or to a condition approved by Lender (the "**Restoration**"), or (2) apply the balance of such proceeds to the payment

of the Indebtedness, whether or not then due. To the extent Lender determines to apply insurance proceeds to Restoration, Lender shall do so in accordance with Lender's then-current policies relating to the restoration of casualty damage on similar multifamily properties.

(g) Lender shall not exercise its option to apply insurance proceeds to the payment of the Indebtedness if all of the following conditions are met: (1) no Event of Default (or any event which, with the giving of notice or the passage of time, or both, would constitute an Event of Default) has occurred and is continuing; (2) Lender determines, in its reasonable discretion, that there will be sufficient funds to complete the Restoration; (3) Lender determines, in its reasonable discretion, that the rental income from the Mortgaged Property after completion of the Restoration will be sufficient to meet all operating costs and other expenses, Imposition Deposits, deposits to reserves and loan repayment obligations relating to the Mortgaged Property; (4) Lender determines, in its reasonable discretion, that the Restoration will be completed before the earlier of (A) one year before the maturity date of the Note or (B) two years after the date of the loss or casualty; and (5) upon Lender's request, Borrower provides Lender evidence of the availability during and after the Restoration of the insurance required to be maintained by Borrower pursuant to this Section 18.

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

(i) Notwithstanding anything contained herein to the contrary, full or partial prepayment through the use of insurance or condemnation proceeds shall not be subject to any prepayment penalty set forth herein.

## **19. CONDEMNATION.**

(a) Borrower shall promptly notify Lender of any action or proceeding relating to any condemnation or other taking, or conveyance in lieu thereof, of all or any part of the Mortgaged Property, whether direct or indirect (a "**Condemnation**"). Borrower shall appear in and prosecute or defend any action or proceeding relating to any Condemnation unless otherwise directed by Lender in writing. Borrower authorizes and appoints Lender as attorney-in-fact for Borrower to commence, appear in and prosecute, in Lender's or Borrower's name, any action or proceeding relating to any Condemnation and to settle or compromise in good faith any claim in connection with any Condemnation. This power of attorney is coupled with an interest and therefore is irrevocable. However, nothing contained in this Section 19 shall require Lender to incur any expense or take any action. Borrower hereby transfers and assigns to Lender all right, title and interest of Borrower in and to any award or payment (collectively, the "**Condemnation Proceeds**") with respect to (i) any Condemnation, or any conveyance in lieu of Condemnation, and (ii) any damage to the Mortgaged Property caused by governmental action that does not result in a Condemnation.

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

(c) Lender shall not exercise its option to apply Condemnation Proceeds to the payment of the Indebtedness if all of the following conditions are met: (1) no Event of Default (or any event which, with the giving of notice or the passage of time, or both, would constitute an Event of Default) has occurred and is continuing; (2) Lender determines, in its reasonable discretion, that there will be sufficient funds to complete the Restoration; (3) Lender determines, in its reasonable discretion, that the rental income from the Mortgaged Property after completion of the Restoration will be sufficient to meet all operating costs and other expenses, Imposition Deposits, deposits to reserves and loan repayment obligations relating to the Mortgaged Property; (4) Lender determines, in its reasonable discretion, that the Restoration will be completed before the earlier of (A) one year before the maturity date of the Note or (B) two years after the date of the loss or casualty; and (5) upon Lender's request, Borrower provides Lender evidence of the availability during and after the Restoration of the insurance required to be maintained by Borrower pursuant to Section 18.



## **20. TRANSFERS OF THE MORTGAGED PROPERTY OR INTERESTS IN BORROWER.**

(a) The occurrence of any of the following events shall constitute an Event of Default under this Security Instrument:

- (1) a Transfer of all or any part of the Mortgaged Property or any interest in the Mortgaged Property;
- (2) a Transfer of a Controlling Interest (as that term is defined below) in Borrower;
- (3) a Transfer of a Controlling Interest in any entity which owns, directly or indirectly through one or more intermediate entities, a Controlling Interest in Borrower;
- (4) a conversion of Borrower from one type of legal entity into another type of legal entity, whether or not there is a Transfer.

Lender shall not be required to demonstrate any actual impairment of its security or any increased risk of default in order to exercise any of its remedies with respect to an Event of Default under this Section 20.

(b) The occurrence of any of the following events shall not constitute an Event of Default under this Security Instrument, notwithstanding any provision of Section 20(a) to the contrary:

- (1) a Transfer to which Lender has consented;
- (2) a Transfer that occurs by devise, descent, or by operation of law upon the death of a natural person;
- (3) the grant of a leasehold interest in an individual dwelling unit for a term of two years or less not containing an option to purchase;
- (4) a Transfer of obsolete or worn out Personalty or Fixtures that are contemporaneously replaced by items of equal or better function and quality, which are free of liens, encumbrances and security interests other than those created by the Loan Documents or consented to by Lender;
- (5) the grant of an easement, if before the grant Lender determines that the easement will not materially affect the operation or value of the Mortgaged Property or Lender's interest in the Mortgaged Property, and Borrower pays to Lender, upon demand, all costs and expenses incurred by Lender in connection with reviewing Borrower's request; and
- (6) the creation of a tax lien or a mechanic's, materialman's or judgment lien against the Mortgaged Property which is bonded off, insured over in a manner acceptable to Lender, released of record or otherwise remedied to Lender's satisfaction within 30 days of the date of creation.

(c) Lender shall consent, without any adjustment to the rate at which the Indebtedness secured by this Security Instrument bears interest or to any other economic terms of the Indebtedness, to a Transfer that would otherwise violate this Section 20 if, prior to the Transfer, Borrower has satisfied each of the following requirements:

- (1) the submission to Lender of all information required by Lender to make the determination required by this Section 20(c);
- (2) the absence of any Event of Default;
- (3) the transferee meets all of the eligibility, credit, management and other standards (including any standards with respect to previous relationships between Lender and the transferee and the organization of the transferee) customarily applied by Lender at the time of the proposed Transfer to the approval of borrowers in connection with

the origination or purchase of similar mortgages on multifamily properties;

- (4) the Mortgaged Property, at the time of the proposed Transfer, meets all standards as to its physical condition that are customarily applied by Lender at the time of the proposed Transfer to the approval of properties in connection with the origination or purchase of similar mortgages on multifamily properties;
  - (5) in the case of a Transfer of all or any part of the Mortgaged Property, or direct or indirect ownership interests in Borrower, if transferor or any other person has obligations under any Loan Document, the execution by the transferee or one or more individuals or entities acceptable to Lender of an assumption agreement that is acceptable to Lender and that, among other things, requires the transferee to perform all obligations of transferor or such person set forth in such Loan Document, and may require that the transferee comply with any provisions of this Security Instrument or any other Loan Document which previously may have been waived by Lender;
  - (6) if a guaranty has been executed and delivered in connection with the Note, this Security Instrument or any of the other Loan Documents, Borrower causes one or more individuals or entities acceptable to Lender to execute and deliver to Lender a guaranty in a form acceptable to Lender; and
  - (7) Lender's receipt of all of the following:
    - (A) a non-refundable review fee in the amount of \$3,000 and a transfer fee equal to 1 percent of the outstanding Indebtedness immediately prior to the Transfer.
    - (B) In addition, Borrower shall be required to reimburse Lender for all of Lender's out-of-pocket costs (including reasonable attorneys' fees) incurred in reviewing the Transfer request, to the extent such expenses exceed \$3,000.
- (d) For purposes of this Section, the following terms shall have the meanings set forth below:
- (1) **"Initial Owners"** means, with respect to Borrower or any other entity, the persons or entities who on the date of the Note own in the aggregate 100% of the ownership interests in Borrower or that entity.
  - (2) A Transfer of a **"Controlling Interest"** shall mean, with respect to any entity, a Transfer of any ownership interest which would cause the Initial Owners to own less than 51% of all ownership interests in such entity.

## 21. EVENTS OF DEFAULT.

The occurrence of any one or more of the following shall constitute an Event of Default under this Security Instrument. Borrower shall have 30 calendar days (or such longer period if cure cannot be completed in 30 calendar days and such cure is diligently being prosecuted to completion) to cure upon notice under Section 30 of a non-monetary Event of Default specified in Sections 21 (b) through (n) below:

- (a) any failure by Borrower to pay or deposit when due any amount required by the Note, this Security Instrument or any other Loan Document;
- (b) any failure by Borrower to maintain the insurance coverage required by Section 18;
- (c) any failure by Borrower to comply with the provisions of Section 32;
- (d) fraud or material misrepresentation or material omission by Borrower, or any of its officers, directors, trustees, partners, members, managers, or any guarantor in connection with (A) the application for or creation of the Indebtedness, (B) any financial statement, rent roll, or other report or information provided to Lender during the term of the Indebtedness, or (C) any request for Lender's consent to any proposed action, including a request for disbursement of funds under any Collateral Agreement. For avoidance of doubt, any breach by Borrower of the representations and warranties in the Loan Agreement shall constitute a "material

misrepresentation or material omission by Borrower" for purposes of this Section 21(d);

(e) any Event of Default under Section 20;

(f) the commencement of a forfeiture action or proceeding, whether civil or criminal, which, in Lender's reasonable judgment, could result in a forfeiture of the Mortgaged Property or otherwise materially impair the lien created by this Security Instrument or Lender's interest in the Mortgaged Property;

(g) a determination by Lender that (i) Borrower has failed to maintain the physical condition of the Mortgaged Property in a commercially reasonable manner; and (ii) as a result of such failure, Lender's security for the Loan has been materially impaired;

(h) any failure by Borrower to perform any of its obligations under this Security Instrument;

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

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

(k) the abandonment of the Mortgaged Property, or any portion thereof, without the written consent of Lender;

(l) the breach or incorrectness in any material respect of any representation or warranty made by Borrower to Lender in any of the Loan Documents, in any financial statement or in any other document delivered by or on behalf of Borrower to Lender in connection with the Loan;

(m) the occurrence of any event of default, the acceleration of any indebtedness or the commencement of foreclosure proceedings under or in connection with the terms of any of the Loan Documents, or under or in connection with the terms of any other mortgage, agreement, instrument or document pursuant to which a lien or encumbrance exists on the Mortgaged Property, whether in favor of Lender or another; and

(n) the liquidation, termination or dissolution of Borrower.

## **22. REMEDIES CUMULATIVE.**

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

## **23. FORBEARANCE.**

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

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

shall not be a waiver of Lender's right to require prompt payment when due of all other payments on account of the Indebtedness or to exercise any remedies for any failure to make prompt payment. Enforcement by Lender of any security for the Indebtedness shall not constitute an election by Lender of remedies so as to preclude the exercise of any other right available to Lender. Lender's receipt of any awards or proceeds under Sections 18 and 19 shall not operate to cure or waive any Event of Default.

#### **24. LOAN CHARGES.**

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

#### **25. WAIVER OF STATUTE OF LIMITATIONS.**

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

#### **26. WAIVER OF MARSHALLING.**

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

#### **27. FURTHER ASSURANCES.**

Borrower shall execute, acknowledge, and deliver, at its sole cost and expense, all further acts, deeds, conveyances, assignments, estoppel certificates, financing statements, transfers and assurances as Lender may require from time to time in order to better assure, grant, and convey to Lender the rights intended to be granted, now or in the future, to Lender under this Security Instrument and the Loan Documents; provided no such acts, deeds, conveyances, assignments, estoppel certificates, or other documents or instruments shall materially change the economic terms of the transactions described herein or materially expand the liabilities of the parties hereunder.

#### **28. ESTOPPEL CERTIFICATE.**

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

## **29. GOVERNING LAW; CONSENT TO JURISDICTION AND VENUE.**

(a) This Security Instrument, and any other Loan Document that does not itself expressly identify the law that is to apply to it, shall be governed by the laws of the State of Wisconsin, ("**Wisconsin**"), without giving effect to conflicts of laws principles.

(b) Borrower agrees that any controversy arising under or in relation to the Note, this Security Instrument, or any other Loan Document shall be litigated exclusively in Wisconsin. The state and federal courts and authorities with jurisdiction in Wisconsin shall have exclusive jurisdiction over all controversies which shall arise under or in relation to the Note, any security for the Indebtedness, or any other Loan Document. Borrower irrevocably consents to service, jurisdiction, and venue of such courts for any such litigation and waives any other venue to which it might be entitled by virtue of domicile, habitual residence or otherwise.

## **30. NOTICE.**

(a) All notices, demands and other communications (the "**notice**") under or concerning this Security Instrument shall be in writing. Each notice shall be addressed to the intended recipient at its address set forth in this Security Instrument, and shall be deemed given on the earliest to occur of (1) the date when the notice is received by the addressee; (2) the first Business Day (as defined below) after the notice is delivered to a recognized overnight courier service, with arrangements made for payment of charges for next Business Day delivery; or (3) the third Business Day after the notice is deposited in the United States mail with postage prepaid, certified mail, return receipt requested. As used in this Section 30, the term "**Business Day**" means any day other than a Saturday, a Sunday or any legal holiday observed by the State of Wisconsin.

(b) Any party to this Security Instrument may change the address to which notices intended for it are to be directed by means of notice given to the other party in accordance with this Section 30. Each party agrees that it will not refuse or reject delivery of any notice given in accordance with this Section 30, that it will acknowledge, in writing, the receipt of any notice upon request by the other party and that any notice rejected or refused by it shall be deemed for purposes of this Section 30 to have been received by the rejecting party on the date so refused or rejected, as conclusively established by the records of the U.S. Postal Service or the courier service.

(c) Any notice under the Note and any other Loan Document which does not specify how notices are to be given shall be given in accordance with this Section 30.

## **31. SALE OF NOTE; CHANGE IN SERVICER.**

The Note or a partial interest in the Note (together with this Security Instrument and the other Loan Documents) may be sold one or more times without prior notice to Borrower. A sale may result in a change of the Loan Servicer. There also may be one or more changes of the Loan Servicer unrelated to a sale of the Note. If there is a change of the Loan Servicer, Borrower will be given notice of the change.

## **32. SINGLE ASSET BORROWER.**

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

## **33. SUCCESSORS AND ASSIGNS BOUND.**

This Security Instrument shall bind, and the rights granted by this Security Instrument shall inure to, the respective successors and assigns of Lender and Borrower. However, a Transfer not permitted by Section 20 shall be an Event of Default.

## **34. JOINT AND SEVERAL LIABILITY.**

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

## **35. RELATIONSHIP OF PARTIES; NO THIRD PARTY BENEFICIARY.**

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

(b) No creditor of any party to this Security Instrument and no other person shall be a third party beneficiary of this Security Instrument or any other Loan Document. Without limiting the generality of the preceding sentence, (1) any arrangement (a "**Servicing Arrangement**") between Lender and any Loan Servicer for loss sharing or interim advancement of funds shall constitute a contractual obligation of such Loan Servicer that is independent of the obligation of Borrower for the payment of the Indebtedness, (2) Borrower shall not be a third party beneficiary of any Servicing Arrangement, and (3) no payment by the Loan Servicer under any Servicing Arrangement will reduce the amount of the Indebtedness.

### **36. SEVERABILITY; AMENDMENTS.**

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

### **37. CONSTRUCTION.**

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

### **38. LOAN SERVICING.**

All actions regarding the servicing of the Loan evidenced by the Note, including the collection of payments, the giving and receipt of notice, inspections of the Property, inspections of books and records, and the granting of consents and approvals, may be taken by the Loan Servicer unless Borrower receives notice to the contrary. If Borrower receives conflicting notices regarding the identity of the Loan Servicer or any other subject, any such notice from Lender shall govern.

### **39. DISCLOSURE OF INFORMATION.**

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

### **40. NO CHANGE IN FACTS OR CIRCUMSTANCES.**

All information in the application for the loan submitted to Lender (the "**Loan Application**") and in all financial statements, rent rolls, reports, certificates and other documents submitted in connection (as may have been amended in writing) with the Loan Application, are complete and accurate in all material respects. There has been no material adverse change in any fact or circumstance that would make any such information incomplete or inaccurate.

### **41. SUBROGATION.**

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

#### **42. ACCELERATION; CROSS DEFAULT; MERGER.**

(a) At any time during the existence of an Event of Default and after the expiration of any applicable cure period, Lender, at Lender's option, and without notice, may declare the Indebtedness to be immediately due and payable without further demand or notice and may pursue any remedies permitted by applicable law or provided in this Security Instrument or in any other Loan Document, including the enforcement of its rights under this Security Instrument by foreclosure proceedings. Lender shall be entitled to collect all costs and expenses incurred in pursuing such remedies, including attorneys' fees and costs of documentary evidence, abstracts and title reports.

(b) The occurrence of an Event of Default under any Multifamily Note described on page 1 of this Security Instrument shall constitute an Event of Default under all of the Multifamily Notes (if more than one) described on page 1 of this Security Instrument.

(c) Borrower waives the application of the doctrine of merger as applied to any foreclosure affecting the Property (or other manner of obtaining title to the Property) and agrees that such doctrine shall not affect the enforceability of any obligation described in this Security Instrument.

#### **43. RELEASE.**

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

#### **44. ACCELERATED REDEMPTION PERIODS.**

Borrower hereby agrees to the provisions of Sections 846.101 and 846.103 of Wisconsin Statutes, as applicable (or any successor provision thereto) permitting Lender to elect a shortened redemption period on the conditions specified therein in the event of a foreclosure of this Security Instrument.

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

**BORROWER AND LENDER EACH (A) COVENANT AND AGREE NOT TO ELECT A TRIAL BY JURY WITH RESPECT TO ANY ISSUE ARISING OUT OF THIS SECURITY INSTRUMENT OR THE RELATIONSHIP BETWEEN THE PARTIES AS LENDER AND BORROWER THAT IS TRIABLE OF RIGHT BY A JURY AND (B) WAIVE ANY RIGHT TO TRIAL BY JURY WITH RESPECT TO SUCH ISSUE TO THE EXTENT THAT ANY SUCH RIGHT EXISTS NOW OR IN THE FUTURE. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS SEPARATELY GIVEN BY EACH PARTY KNOWINGLY AND VOLUNTARILY WITH THE BENEFIT OF COMPETENT LEGAL COUNSEL (OR THE OPPORTUNITY TO CONSULT LEGAL COUNSEL, WHICH SUCH PARTY HAS WAIVED).**

#### **46. AMBIGUITIES.**

Lender and Borrower have both participated fully in the review and revision of this Security Instrument and the other Loan Documents. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in interpreting this Security Instrument or any other Loan Document. The language in this Security Instrument and the other Loan Documents shall be interpreted as to its fair meaning and not strictly for or against any party.

#### **47. ASSIGNMENT OF HOUSING ASSISTANCE PAYMENTS.**

(a) Borrower has, or may in the future, enter into one or more housing assistance payments contracts, or similar contracts or agreements that benefit the Mortgaged Property. As part of the consideration for the Indebtedness, Borrower absolutely and unconditionally assigns and transfers to Lender all housing assistance payments, or similar payments, to which Borrower is entitled under any and all such contracts or similar agreements, irrespective of the source of funding ("**Housing Assistance Payments**"). It is the intention of Borrower to establish a present, absolute and irrevocable transfer and assignment to Lender of all Housing Assistance Payments and to authorize and empower Lender to collect and receive all Housing Assistance Payments without the necessity of further action on the part of Borrower. Promptly upon request by Lender, Borrower agrees to execute and deliver such further assignments, and consents to such assignments, as Lender may from time to time require. Borrower and Lender intend this assignment of Housing Assistance Payments to be immediately effective and to constitute an absolute present assignment and not an assignment for additional security only. For purposes of giving effect to this

absolute assignment of Housing Assistance Payments, and for no other purpose, Housing Assistance Payments shall not be deemed to be a part of the "Mortgaged Property," as such term is defined in Section 1(t). However, if this present, absolute and unconditional assignment of Housing Assistance Payments is not enforceable by its terms under the laws of the State of Wisconsin, then the Housing Assistance Payments shall be included as a part of the Mortgaged Property and it is the intention of Borrower that in this circumstance this Security Instrument creates and perfects a lien on Housing Assistance Payments in favor of Lender, which lien shall be effective as of the date of this Security Instrument.

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

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

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

*[Signature and Acknowledgement Page Follows.]*



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

**BORROWER:**

2219 LOFTS LIMITED PARTNERSHIP,  
a Wisconsin limited partnership

By: 2219 Lofts GP, LLC,  
a Minnesota limited liability company  
Its: General Partner

By: \_\_\_\_\_  
Robert G. McCready  
Co-President

STATE OF \_\_\_\_\_ )  
COUNTY OF \_\_\_\_\_ ) SS

This instrument was acknowledged before me on \_\_\_\_\_, 2018, by Robert G. McCready, as Co-President of 2219 Lofts GP, LLC, as General Partner of 2219 LOFTS LIMITED PARTNERSHIP.

\_\_\_\_\_  
\*  
Notary Public, State of \_\_\_\_\_  
My Commission expires: \_\_\_\_\_  
\*print name

**Project No.** 6076  
**Loan No.** 6076  
**MID No.** 52881

This Security Instrument was drafted by:  
Wisconsin Housing and Economic Development Authority  
201 West Washington Avenue, Suite 700  
P.O. Box 1728  
Madison, Wisconsin 53701-1728

**EXHIBIT A**

**LEGAL DESCRIPTION**

Lot 10 of John Koller's Addition to City of LaCrosse, LaCrosse County, Wisconsin.

AND

Part of the Southeast Quarter of the Northwest Quarter of Section 8, Township 15 North of Range 7 West, in the City of LaCrosse, LaCrosse County, Wisconsin, described as follows: Beginning at a stone monument at the Northwest corner of J. Koller's Addition to the City of LaCrosse; thence Northwesterly along the Northeast line of South Avenue 200.32 feet to an iron pipe; thence Northeast, at right angles with said Street line 144.3 feet to an iron pipe in the Southwesterly line of the Chicago, Burlington & Quincy Railroad Company right-of-way; thence Southeasterly along said right-of-way 139 feet; thence West along said right-of-way line 38 feet; thence Southeasterly along said right-of-way line 292.45 feet to the North line of said J. Koller's Addition; thence Westerly along said North plat line 266.9 feet to the point of beginning, EXCEPT the right-of-way of the Chicago, Burlington & Quincy Railroad Company.

AND

All that parcel of land located in the South half of the Southeast Quarter of the Northwest Quarter of Section 8, Township 15 North, Range 7 West of the Fourth Principal Meridian at City of LaCrosse, County of LaCrosse, State of Wisconsin, described as follows: Beginning at a point on the North line of said South half of the Southeast Quarter of the Northwest Quarter of Section 8, 50 feet perpendicularly distant, Southwesterly of, the Chicago, Burlington & Quincy Railroad Company former main line track center line; thence East along said North line, 53 feet more or less to a point 20 feet perpendicularly distant Southwesterly of said track center line; thence Southeasterly along a line 20 feet normally distant Southwesterly of said main line track center line, 150 feet to a point; thence Southwesterly along a straight line, 30 feet more or less to a point, 10 feet radially distant Northerly of said Railroad Company's track No. 2 center line; thence Northwesterly along a line 50 feet normally distant, Southwesterly of said main tract center line, 200 feet more or less to the point of beginning.

Property Identification No. 17-50281-70