

Prepared by, and after recording, return to:
Tara P. Ellis (MS Bar # 101034)
Balch & Bingham LLP
188 E. Capitol Street
Suite 1400
Jackson, Mississippi 39202
601.718.4642

Indexing Instructions:

STATE OF MISSISSIPPI
COUNTY OF _____

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

GRANTOR: _____

BENEFICIARY: MISSISSIPPI HOME CORPORATION
735 Riverside Drive
Jackson, Mississippi 39202
Phone: 601-718-4642

TRUSTEE: Christian B. Waddell, Esq.
Balch & Bingham LLP
188 East Capitol St., Suite 1400
Jackson, MS 39201
Phone: 601.961.9900

**THIS DEED OF TRUST SECURES A LINE OF CREDIT WHEREBY THE LENDER
HAS AGREED TO MAKE ONE OR MORE FUTURE ADVANCES TO THE
BORROWER**

TABLE OF CONTENTS

	<u>Page</u>
1. DEFINITIONS.....	2
2. UNIFORM COMMERCIAL CODE SECURITY AGREEMENT.....	6
3. ASSIGNMENT OF RENTS; APPOINTMENT OF RECEIVER; LENDER IN POSSESSION.....	7
4. ASSIGNMENT OF LEASES; LEASES AFFECTING THE MORTGAGED PROPERTY.....	9
5. PAYMENT OF INDEBTEDNESS; PERFORMANCE UNDER LOAN DOCUMENTS.....	10
6. APPLICATION OF PAYMENTS.....	11
7. COMPLIANCE WITH LAWS.....	11
8. USE AND MAINTENANCE OF PROPERTY.....	11
9. PROTECTION OF LENDER’S SECURITY.....	11
10. INSPECTION.....	12
11. BOOKS AND RECORDS; FINANCIAL REPORTING.....	12
12. TAXES; OPERATING EXPENSES.....	12
13. LIENS; ENCUMBRANCES.....	12
14. ENVIRONMENTAL HAZARDS.....	12
15. CONDEMNATION.....	18
16. TRANSFERS OF THE MORTGAGED PROPERTY OR INTERESTS IN GUARANTOR.....	18
17. EVENTS OF DEFAULT.....	19
18. REMEDIES CUMULATIVE.....	20
19. FORBEARANCE.....	20
20. LOAN CHARGES.....	21
21. WAIVER OF STATUTE OF LIMITATIONS.....	21
22. WAIVER OF MARSHALING.....	21

23.	FURTHER ASSURANCES	21
24.	ESTOPPEL CERTIFICATE.....	21
25.	GOVERNING LAW; CONSENT TO JURISDICTION AND VENUE	22
26.	NOTICE.....	22
27.	SUCCESSORS AND ASSIGNS BOUND.....	23
28.	JOINT AND SEVERAL LIABILITY	23
29.	RELATIONSHIP OF PARTIES; NO THIRD PARTY BENEFICIARY.....	23
30.	SEVERABILITY; AMENDMENTS.....	23
31.	CONSTRUCTION AND INTERPRETATION SUBROGATION	23
32.	ACCELERATION; REMEDIES.....	23
33.	INSURANCE AFTER FORECLOSURE.	24
34.	REMEDIES NOT EXCLUSIVE; NO WAIVER OF REMEDIES.....	24
35.	RELEASE.....	25
36.	FURTHER ASSURANCES.	25
37.	INVALIDITY OF CERTAIN PROVISIONS.	25
38.	ILLEGALITY OF TERMS.....	25
39.	LENDER'S RIGHT TO DEAL WITH TRANSFEREE.....	25
40.	ENTIRE AGREEMENT.....	26
41.	SUBSTITUTE TRUSTEE.....	26
42.	ATTACHED EXHIBITS.....	26

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

THIS DEED OF TRUST, ASSIGNMENT OF RENTS AND LEASES, SECURITY AGREEMENT AND FIXTURE FILING (the “**Instrument**”) is dated as of the _____ day of _____, 20____, among _____, organized and existing under the laws of the State of Mississippi, whose address is _____, as grantor (“**Guarantor**”), to Christian B. Waddell, whose address is 188 East Capitol Street, Suite 1400, Jackson, Mississippi 39201, as trustee (“**Trustee**”), for the benefit of Mississippi Home Corporation, a governmental instrumentality duly created, organized and existing under the laws of the State of Mississippi, whose address is 735 Riverside Drive, Jackson, Mississippi 39202, as beneficiary (“**Lender**”).

Guarantor, in consideration of the Indebtedness (as hereinafter defined) and the trust created by this Instrument, irrevocably grants, conveys and assigns to Trustee and Trustee’s successors and assigns, for the benefit and security of Lender, in trust, with power of sale, the Mortgaged Property (as hereinafter defined), including but not limited to the Land located in _____ County, State of Mississippi and described in Exhibit A attached to this Instrument (the “**Land**”).

TO SECURE TO LENDER the repayment of the Indebtedness evidenced by Guarantor’s Guaranty, securing payment of _____’s (“**Borrower**”) Promissory Note payable to Lender dated as of the date of this Instrument and maturing on the **1ST day of _____, 20____**, in the principal amount of \$_____ (the “**Note**”), such Indebtedness extended incurred by Borrower in relation to Borrower’s participation in Lender’s Blight Elimination Program, and all renewals, extensions and modifications of the Indebtedness, and all future indebtedness incurred by Borrower or Guarantor in favor of Lender, and the performance of the covenants and agreements of Borrower and Guarantor contained in the Loan Documents.

Guarantor represents and warrants that Guarantor is lawfully seized of the Mortgaged Property (as hereinafter defined) and has the right, power and authority to mortgage, grant, convey and assign the Mortgaged Property, and that the Mortgaged Property is unencumbered, other than the Permitted Encumbrances. Guarantor covenants that Guarantor will warrant and defend generally the title to the Mortgaged Property against all claims and demands, subject to any easements and restrictions listed in a schedule of exceptions to coverage in any title insurance policy issued to Lender contemporaneously with the execution and recordation of this Instrument and insuring Lender’s interest in the Mortgaged Property.

WHEREAS, the Guarantor has, concurrently herewith, executed and delivered to the Lender its Guaranty, guaranteeing payment of the Note; and

NOW, THEREFORE, FOR GOOD AND VALUABLE CONSIDERATION, including the Indebtedness hereby secured, the receipt and sufficiency of which is hereby acknowledged, the Guarantor hereby grants, bargains, sells, warrants and conveys, with the

power of sale, to the Trustee, his successors and assigns forever for the benefit and security of the Lender, under and subject to the terms and conditions hereinafter set forth, all of the Guarantor's right, title and interest in and to the Mortgaged Property, including the Land and all Improvements now and hereafter located thereon;

TO HAVE AND TO HOLD, unto the Trustee, and successors in trust, for purposes of securing the following: (a) payment of the Indebtedness evidenced by the Guaranty and the Note, and including the principal thereof and interest thereon, if applicable, and any and all modifications, extensions and renewals thereof, and the performance of all obligations of the Guarantor under the Guaranty; (b) performance and observance by the Guarantor of all the terms, covenants and provisions of this Instrument; (c) performance and observance by the parties thereto of all the terms, covenants and provisions of the other Loan Documents; (d) payment of all sums advanced by the Lender to perform any of the terms, covenants and provisions of this Instrument or any of the other Loan Documents, or otherwise advanced by the Lender pursuant to the provisions hereof or any of such other documents to protect the property hereby mortgaged and pledged; (e) performance and observance of all the terms, covenants and provisions of any other instrument given to evidence or further secure the payment and performance of any Indebtedness hereby secured or any obligation secured hereby; (f) payment of any future or further advances which may be made by the Lender at its sole option to and for the benefit of Borrower or Guarantor and their respective successors, assigns and legal representatives; and (g) performance and observance of all of the terms, covenants and provisions of any other instrument given to evidence or further secure the payments and performance of any Indebtedness hereby secured or any obligation secured hereby.

PROVIDED, HOWEVER, that if Borrower shall pay the principal and all of the interest as provided in the Note, and shall pay all other sums herein provided for, or secured hereby, and shall well and truly keep and perform all of the covenants herein contained, then this Instrument shall be released, otherwise to remain in full force and effect.

Covenants. To protect the security of this Instrument, the Guarantor and the Lender covenant and agree as follows:

1. **DEFINITIONS.** Capitalized terms used but not defined in this Instrument shall have the meanings ascribed to such terms in that certain Construction and Term Loan Agreement of even date herewith ("Loan Agreement"). In addition to the terms defined elsewhere herein, the following terms, when used in this Instrument, shall have the following meanings:

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

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

(c) **"Environmental Inspections"** is defined in Section 14(g).

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

(e) “**Event of Default**” means the occurrence of any event listed in Section 17.

(f) “**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 disposers, washers, dryers and other appliances; light fixtures, awnings, storm windows and storm doors; pictures, screens, blinds, shades, curtains and curtain rods; mirrors; cabinets, paneling, rugs and floor and wall coverings; fences, trees and plants; swimming pools; and exercise equipment.

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

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

(i) “**Indebtedness**” means the principal of, interest on, and all other amounts due at any time under, the Note, this Instrument or any other Loan Document, including prepayment premiums, late charges, default interest, and advances as provided herein to protect the security of this Instrument.

(j) “**Lien**” is defined in Section 13.

(k) “**Leases**” means all present and future leases, subleases, licenses, concessions or grants or other possessory interests now or hereafter in force, whether oral or written, covering or affecting the Mortgaged Property, or any portion of the Mortgaged Property (including proprietary leases or occupancy agreements if Guarantor is a cooperative housing corporation), and all modifications, extensions or renewals.

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

(m) **“Loan Documents”** means the Note, this Instrument, the MHC Participation Agreement, the Grantee and Blight Partner Participation Agreement, the Guaranty, and any other documents now or in the future executed by Borrower or Guarantor or any other person in connection with the Loan or the Blight Elimination Program, as such documents may be amended from time to time.

(n) **“Mortgaged Property”** means all of Guarantor’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 benefiting the Land or the Improvements, or both, and all rights-of-way, streets, alleys and roads which may have been or may in the future be vacated;
- (6) all proceeds paid or to be paid by any insurer of the Land, the Improvements, the Fixtures, the Personalty or any other part of the Mortgaged Property, whether or not Guarantor 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 Guarantor 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 Instrument and, if Guarantor 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 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, and goodwill relating to any of the Mortgaged Property.

(o) **“Note”** means the Promissory Note described on page 1 of this Instrument.

(p) **“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, 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.

(q) **“Property Jurisdiction”** is defined in Section 25(a).

(r) **“Rents”** means all rents (whether from residential or non-residential space), revenues and other income of the Land or the Improvements, including subsidy payments received from any sources (including, but not limited to payments under any Housing Assistance Payments Contract), 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.

(s) **“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.

(t) **“Transfer”** means (1) a sale, assignment, transfer or other disposition (whether voluntary, involuntary or by operation of law); (2) the granting, creating or attachment of a Lien, encumbrance or security interest (whether voluntary, involuntary or by operation of law); (3) 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; (4) the withdrawal, retirement, removal or involuntary resignation of a partner in a partnership or a member or manager in a limited liability company; or (5) the merger, dissolution, liquidation, or consolidation of a legal entity. **“Transfer”** does not include (i) a conveyance of the Mortgaged Property at a judicial or non-judicial foreclosure sale under this Instrument or (ii) the Mortgaged Property becoming part of a bankruptcy estate by operation of law under the United States Bankruptcy Code. For purposes of defining the term **“Transfer,”** the term **“partnership”** shall mean a general partnership, a limited partnership, a joint venture and a limited liability partnership, and the term **“partner”** shall mean a general partner, a limited partner and a joint venturer.

(u) **“Trustee”** means all persons identified as “Trustee” in the first paragraph of this Instrument, together with their successors and assigns.

(v) **“UCC Collateral”** is defined in Section 2.

2. UNIFORM COMMERCIAL CODE SECURITY AGREEMENT. This 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, **“UCC Collateral”**), and Guarantor as debtor, hereby grants to Lender as secured party, a security interest in the UCC Collateral. Guarantor 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 Guarantor agrees, if Lender so requests, to execute and deliver to Lender such financing statements, continuation statements and amendments. Guarantor 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, Guarantor shall not create or permit to exist any other lien or security interest in any of the UCC Collateral, except for the Permitted Encumbrances. If an Event of Default has occurred and is continuing, Lender shall have the remedies of a secured party under the Uniform Commercial Code, in addition to all remedies provided by this Instrument or existing under applicable law. In exercising any remedies, Lender may exercise its remedies against the UCC Collateral separately or together, and in any order, without in any way affecting the availability of Lender’s other remedies. This 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, Guarantor absolutely and unconditionally assigns and transfers to Lender all Rents. It is the intention of Guarantor 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 Guarantor. Promptly upon request by Lender, Guarantor agrees to execute and deliver such further assignments as Lender may from time to time require. Guarantor and Lender intend this assignment of Rents to be immediately effective and to constitute an absolute present assignment and not an assignment for additional security only. For purposes of giving effect to this absolute assignment of Rents, and for no other purpose, Rents shall not be deemed to be a part of the Mortgaged Property. However, if this present, absolute and unconditional assignment of Rents is not enforceable by its terms under the laws of the Property Jurisdiction, then the Rents shall be included as a part of the Mortgaged Property and it is the intention of the Guarantor that in this circumstance this Instrument create and perfect a lien on Rents in favor of Lender, which lien shall be effective as of the date of this Instrument.

(b) After the occurrence of an Event of Default, Guarantor authorizes Lender to collect, sue for and compromise Rents and directs each tenant of the Mortgaged Property to pay all Rents to, or as directed by, Lender, and Guarantor shall, upon Guarantor's receipt of any Rents from any sources (including, but not limited to subsidy payments under any Housing Assistance Payments Contract), pay the total amount of such receipts to the Lender. However, until the occurrence of an Event of Default, Lender hereby grants to Guarantor a revocable license to collect and receive all Rents, to hold all Rents in trust for the benefit of Lender and to apply all Rents to pay the installments of interest and principal then due and payable under the Note and the other amounts then due and payable under the other Loan Documents, including Imposition Deposits, and to pay the current costs and expenses of managing, operating and maintaining the Mortgaged Property, including utilities, Taxes and insurance premiums (to the extent not included in Imposition Deposits), tenant improvements and other capital expenditures. So long as no Event of Default has occurred and is continuing, the Rents remaining after application pursuant to the preceding sentence may be retained by Guarantor free and clear of, and released from, Lender's rights with respect to Rents under this Instrument. From and after the occurrence of an Event of Default, and without the necessity of Lender entering upon and taking and maintaining control of the Mortgaged Property directly, or by a receiver, Guarantor'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. Guarantor 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 Guarantor 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 Guarantor 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. Guarantor shall not interfere with and shall cooperate with Lender's collection of such Rents.

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

(d) If an Event of Default has occurred and is continuing, Lender may, regardless of the adequacy of Lender's security or the solvency of Guarantor and even in the absence of waste, enter upon and take and maintain full control of the Mortgaged Property in order to perform all acts that Lender in its discretion determines to be necessary or desirable for the operation and maintenance of the Mortgaged Property, including the execution, cancellation or modification of Leases, the collection of all Rents, the making of repairs to the Mortgaged Property and the execution or termination of contracts providing for the management, operation or maintenance of the Mortgaged Property, for the purposes of enforcing the assignment of Rents pursuant to Section 3(a), protecting the Mortgaged Property or the security of this Instrument, or for such other purposes as Lender in its discretion may deem necessary or desirable. Alternatively, if an Event of Default has occurred and is continuing, regardless of the adequacy of Lender's security, without regard to Guarantor's solvency and without the necessity of giving prior notice (oral or written) to Guarantor, 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, Guarantor, by its execution of this Instrument, expressly consents to the appointment of such receiver, including the appointment of a receiver *ex parte* if permitted by applicable law. Lender or the receiver, as the case may be, shall be entitled to receive a reasonable fee for managing the Mortgaged Property. Immediately upon appointment of a receiver or immediately upon the Lender's entering upon and taking possession and control of the Mortgaged Property, Guarantor 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 Guarantor and its representatives from the Mortgaged Property. Guarantor 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 Guarantor and only for those Rents actually received. Lender shall not be liable to Guarantor, anyone claiming under or through Guarantor or anyone having an interest in the Mortgaged Property, by reason of any act or omission of Lender under this Section 3, and Guarantor 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 herein.

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

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

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

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

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

appear in or defend any action or proceeding relating to the Lease or the Mortgaged Property; or (iii) be responsible for the operation, control, care, management or repair of the Mortgaged Property or any portion of the Mortgaged Property. The execution of this Instrument by Guarantor 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 Guarantor, prior to such actual entry and taking of possession.

(d) Upon delivery of notice by Lender to Guarantor of Lender's exercise of Lender's rights under this Section 4 at any time after the occurrence of an Event of Default, and without the necessity of Lender entering upon and taking and maintaining control of the Mortgaged Property directly, by a receiver, or by any other manner or proceeding permitted by the laws of the Property Jurisdiction, Lender immediately shall have all rights, powers and authority granted to Guarantor 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) Guarantor 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 (2) 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) Guarantor 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. Guarantor shall not modify the terms of, or extend or terminate, any Lease for non-residential use (including any Lease in existence on the date of this Instrument) without the prior written consent of Lender. Guarantor 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 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 after the occurrence of an Event of Default of a written request from Lender, pay all Rents payable under the Lease to Lender.

(g) Guarantor shall not receive or accept Rent under any Lease (whether residential or non-residential) for more than one month in advance.

5. PAYMENT OF INDEBTEDNESS; PERFORMANCE UNDER LOAN DOCUMENTS. Guarantor 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.

6. APPLICATION OF PAYMENTS. If at any time Lender receives, from Guarantor 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, Guarantor's obligations under this Instrument and the Note shall remain unchanged.

7. COMPLIANCE WITH TERMS OF BLIGHT ELIMINATION PROGRAM AND LAWS. Guarantor shall comply with (a) all regulations and rules pertaining to Lender's Blight Elimination Program, including, without limitation, the BEP Program Guide and the BEP Compliance Manual, both of which are incorporated herein and made a part hereof by reference and (b) 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. Guarantor also shall comply with all applicable laws that pertain to the maintenance and disposition of tenant security deposits. Guarantor shall at all times maintain records sufficient to demonstrate compliance with the provisions of this Section 7. Guarantor shall take appropriate measures to prevent, and shall not engage in or knowingly permit, any illegal activities at the Mortgaged Property that could endanger tenants or visitors, result in damage to the Mortgaged Property, result in forfeiture of the Mortgaged Property, or otherwise materially impair the lien created by this Instrument or Lender's interest in the Mortgaged Property. Guarantor 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.

8. USE AND MAINTENANCE OF PROPERTY. Unless required by applicable law, Guarantor 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 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. Further, Guarantor shall pay when due all claims for labor performed and materials furnished to and for the Mortgaged Property.

9. PROTECTION OF LENDER'S SECURITY.

(a) If Guarantor fails to perform any of its obligations under this Instrument or any other Loan Document, or if any action or proceeding is commenced which purports to affect the Mortgaged Property, Lender's security or Lender's rights under this Instrument, including eminent domain, insolvency, code enforcement, civil or criminal forfeiture, enforcement of Hazardous Materials Laws, fraudulent conveyance or reorganizations or proceedings involving a bankrupt or decedent, then Lender at Lender's option may make such appearances, disburse such sums and take such actions as Lender reasonably deems necessary to perform such obligations of Guarantor 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) payment of any other amounts which Guarantor has failed to pay as required herein.

(b) Any amounts disbursed by Lender under this Section 9, or under any other provision of this Instrument that treats such disbursement as being made under this Section 10, shall be added to, and become part of, the principal component of the Indebtedness, shall be immediately due and payable and shall bear interest from the date of disbursement until paid at the “**Default Rate**,” as defined in the Note.

(c) Nothing in this Section 9 shall require Lender to incur any expense or take any action.

10. INSPECTION. Lender and any Governmental Authority and their agents, representatives, and designees may make or cause to be made entries upon and inspections of the Mortgaged Property (including Environmental Inspections).

11. BOOKS AND RECORDS; FINANCIAL REPORTING.

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

12. TAXES; OPERATING EXPENSES.

(a) Guarantor shall pay, or cause to be paid, all Taxes when due and before the addition of any interest, fine, penalty or cost for nonpayment.

13. LIENS; ENCUMBRANCES. Guarantor acknowledges that, other than the Permitted Encumbrances, the grant, creation or existence of any mortgage, deed of trust, deed to secure debt, security interest or other lien or encumbrance (a “**Lien**”) on the Mortgaged Property (other than the lien of this Instrument) or on certain ownership interests in Guarantor, whether voluntary, involuntary or by operation of law, and whether or not such Lien has priority over the lien of this Instrument, is a Transfer which constitutes an Event of Default.

14. ENVIRONMENTAL HAZARDS.

(a) Except for matters covered by a written program of operations and maintenance approved in writing by Lender (an “**O&M Program**”) or matters described in Section 14(b), Guarantor shall not cause or permit any of the following:

- (1) the presence, use, generation, release, treatment, processing, storage (including storage in above ground and underground storage tanks), handling, or disposal of any Hazardous Materials on or under the Mortgaged Property or any other property of Guarantor that is adjacent to the Mortgaged Property;
- (2) the transportation of any Hazardous Materials to, from, or across the Mortgaged Property;
- (3) any occurrence or condition on the Mortgaged Property or any other property of Guarantor that is adjacent to the Mortgaged Property, which occurrence or condition is or may be in violation of Hazardous Materials Laws; or
- (4) any violation of or noncompliance with the terms of any Environmental Permit with respect to the Mortgaged Property or any property of Guarantor that is adjacent to the Mortgaged Property.

The matters described in clauses (1) through (4) above are referred to collectively in this Section 14 as “**Prohibited Activities or Conditions.**”

(b) Prohibited Activities or Conditions shall not include the safe and lawful use and storage of quantities of (1) pre-packaged supplies, cleaning materials and petroleum products customarily used in the operation and maintenance of comparable properties, (2) cleaning materials, personal grooming items and other items sold in pre-packaged containers for consumer use and used by tenants and occupants of residential dwelling units in the Mortgaged Property; and (3) petroleum products used in the operation and maintenance of motor vehicles from time to time located on the Mortgaged Property’s parking areas, so long as all of the foregoing are used, stored, handled, transported and disposed of in compliance with Hazardous Materials Laws.

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

(d) If an O&M Program has been established with respect to Hazardous Materials, Guarantor shall comply in a timely manner with, and cause all employees, agents, and contractors of Guarantor and any other persons present on the Mortgaged Property to comply with the O&M Program. All costs of performance of Guarantor’s obligations under any O&M Program shall be paid by Guarantor, and Lender’s out-of-pocket costs incurred in connection with the monitoring and review of the O&M Program and Guarantor’s performance shall be paid by Guarantor upon demand by Lender. Any such out-of-pocket costs of Lender which Guarantor

fails to pay promptly shall become an additional part of the Indebtedness as provided in Section 9.

(e) Guarantor represents and warrants to Lender that, except as previously disclosed by Guarantor to Lender in writing:

- (1) Guarantor has not at any time engaged in, caused or permitted any Prohibited Activities or Conditions;
- (2) to the best of Guarantor's knowledge after reasonable and diligent inquiry, no Prohibited Activities or Conditions exist or have existed;
- (3) except to the extent previously disclosed by Guarantor to Lender in writing, the Mortgaged Property does not now contain any underground storage tanks, and, to the best of Guarantor's knowledge after reasonable and diligent inquiry, the Mortgaged Property has not contained any underground storage tanks in the past. If there is an underground storage tank located on the Property which has been previously disclosed by Guarantor to Lender in writing, that tank complies with all requirements of Hazardous Materials Laws;
- (4) Guarantor has complied with all Hazardous Materials Laws, including all requirements for notification regarding releases of Hazardous Materials. Without limiting the generality of the foregoing, Guarantor has obtained all Environmental Permits required for the operation of the Mortgaged Property in accordance with Hazardous Materials Laws now in effect and all such Environmental Permits are in full force and effect;
- (5) no event has occurred with respect to the Mortgaged Property that constitutes, or with the passing of time or the giving of notice would constitute, noncompliance with the terms of any Environmental Permit;
- (6) there are no actions, suits, claims or proceedings pending or, to the best of Guarantor's knowledge after reasonable and diligent inquiry, threatened that involve the Mortgaged Property and allege, arise out of, or relate to any Prohibited Activity or Condition; and
- (7) Guarantor has not received any complaint, order, notice of violation or other communication from any Governmental Authority with regard to air emissions, water discharges, noise emissions or Hazardous Materials, or any other environmental, health or safety matters affecting the Mortgaged Property or any

other property of Guarantor that is adjacent to the Mortgaged Property.

The representations and warranties in this Section 14 shall be continuing representations and warranties that shall be deemed to be made by Guarantor throughout the term of the loan evidenced by the Note, until the Indebtedness has been paid in full.

(f) Guarantor shall promptly notify Lender in writing upon the occurrence of any of the following events:

- (1) Guarantor's discovery of any Prohibited Activity or Condition;
- (2) Guarantor's receipt of or knowledge of any complaint, order, notice of violation or other communication from any Governmental Authority or other person with regard to present or future alleged Prohibited Activities or Conditions or any other environmental, health or safety matters affecting the Mortgaged Property or any other property of Guarantor that is adjacent to the Mortgaged Property; and
- (3) any representation or warranty in this Section 14 becomes untrue after the date of this Agreement.

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

(g) Guarantor shall pay promptly the costs of any environmental inspections, tests or audits ("**Environmental Inspections**") required by Lender in connection with any foreclosure or deed in lieu of foreclosure, or as a condition of Lender's consent to any Transfer under Section 16, or required by Lender following a reasonable determination by Lender that Prohibited Activities or Conditions may exist. Any such costs incurred by Lender (including the fees and out-of-pocket costs of attorneys and technical consultants whether incurred in connection with any judicial or administrative process or otherwise) which Guarantor fails to pay promptly shall become an additional part of the Indebtedness as provided in Section 9. The results of all Environmental Inspections made by Lender shall at all times remain the property of Lender and Lender shall have no obligation to disclose or otherwise make available to Guarantor or any other party such results or any other information obtained by Lender in connection with its Environmental Inspections. Lender hereby reserves the right, and Guarantor hereby expressly authorizes Lender, to make available to any party, including any prospective bidder at a foreclosure sale of the Mortgaged Property, the results of any Environmental Inspections made by Lender with respect to the Mortgaged Property. Guarantor consents to Lender notifying any party (either as part of a notice of sale or otherwise) of the results of any of Lender's Environmental Inspections. Guarantor acknowledges that Lender cannot control or otherwise assure the truthfulness or accuracy of the results of any of its Environmental Inspections and that the release of such results to prospective bidders at a foreclosure sale of the Mortgaged Property may have a material and adverse effect upon the amount which a party may bid at such sale. Guarantor agrees that Lender shall have no liability whatsoever as a result of delivering the results of any of its Environmental Inspections to any third party, and Guarantor hereby releases

and forever discharges Lender from any and all claims, damages, or causes of action, arising out of, connected with or incidental to the results of, the delivery of any of Lender's Environmental Inspections.

(h) If any investigation, site monitoring, containment, clean-up, restoration or other remedial work ("**Remedial Work**") is necessary to comply with any Hazardous Materials Law or order of any Governmental Authority that has or acquires jurisdiction over the Mortgaged Property or the use, operation or improvement of the Mortgaged Property under any Hazardous Materials Law, Guarantor shall, by the earlier of (1) the applicable deadline required by Hazardous Materials Law or (2) thirty (30) days after notice from Lender demanding such action, begin performing the Remedial Work, and thereafter diligently prosecute it to completion, and shall in any event complete the work by the time required by applicable Hazardous Materials Law. If Guarantor fails to begin on a timely basis or diligently prosecute any required Remedial Work, Lender may, at its option, cause the Remedial Work to be completed, in which case Guarantor shall reimburse Lender on demand for the cost of doing so. Any reimbursement due from Guarantor to Lender shall become part of the Indebtedness as provided in Section 9.

(i) Guarantor shall cooperate with any inquiry by any Governmental Authority and shall comply with any governmental or judicial order which arises from any alleged Prohibited Activity or Condition.

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

- (1) any breach of any representation or warranty of Guarantor in this Section 14;
- (2) any failure by Guarantor to perform any of its obligations under this Section 14;
- (3) the existence or alleged existence of any Prohibited Activity or Condition;
- (4) the presence or alleged presence of Hazardous Materials on or under the Mortgaged Property or any property of Guarantor that is adjacent to the Mortgaged Property; and
- (5) the actual or alleged violation of any Hazardous Materials Law.

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

(l) Guarantor shall not, without the prior written consent of those Indemnitees who are named as parties to a claim or legal or administrative proceeding (a "**Claim**"), settle or compromise the Claim if the settlement (1) results in the entry of any judgment that does not include as an unconditional term the delivery by the claimant or plaintiff to Lender of a written release of those Indemnitees, satisfactory in form and substance to Lender; or (2) may materially and adversely affect Lender, as determined by Lender in its discretion.

(m) Lender agrees that the indemnity under this Section 14 shall be limited to the assets of Guarantor.

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

(1) pay or satisfy any judgment or decree that may be entered against any Indemnitee or Indemnitees in any legal or administrative proceeding incident to any matters against which Indemnitees are entitled to be indemnified under this Section 14;

(2) reimburse Indemnitees for any expenses paid or incurred in connection with any matters against which Indemnitees are entitled to be indemnified under this Section 14; and

(3) reimburse Indemnitees for any and all expenses, including fees and out-of-pocket expenses of attorneys and expert witnesses, paid or incurred in connection with the enforcement by Indemnitees of their rights under this Section 14, or in monitoring and participating in any legal or administrative proceeding.

(o) In any circumstances in which the indemnity under this Section 16 applies, Lender may employ its own legal counsel and consultants to prosecute, defend or negotiate any claim or legal or administrative proceeding and Lender, with the prior written consent of Guarantor (which shall not be unreasonably withheld, delayed or conditioned), may settle or compromise any action or legal or administrative proceeding. Guarantor shall reimburse Lender upon demand for all costs and expenses incurred by Lender, including all costs of settlements entered into in good faith, and the fees and out-of-pocket expenses of such attorneys and consultants.

(p) The provisions of this Section 14 shall be in addition to any and all other obligations and liabilities that Guarantor may have under applicable law or under other Loan Documents, and each Indemnitee shall be entitled to indemnification under this Section 14 without regard to whether Lender or that Indemnitee has exercised any rights against the Mortgaged Property or any other security, pursued any rights against any guarantor, or pursued any other rights available under the Loan Documents or applicable law. If Guarantor consists of more than one person or entity, the obligation of those persons or entities to indemnify the Indemnitees under this Section 14 shall be joint and several. The obligation of Guarantor to

indemnify the Indemnitees under this Section 14 shall survive any repayment or discharge of the Indebtedness, any foreclosure proceeding, any foreclosure sale, any delivery of any deed in lieu of foreclosure, and any release of record of the lien of this Instrument.

15. CONDEMNATION.

(a) Guarantor 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**”). Guarantor shall appear in and prosecute or defend any action or proceeding relating to any Condemnation unless otherwise directed by Lender in writing. Guarantor authorizes and appoints Lender as attorney-in-fact for Guarantor to commence, appear in and prosecute, in Lender’s or Guarantor’s name, any action or proceeding relating to any Condemnation and to settle or compromise 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 20 shall require Lender to incur any expense or take any action. Guarantor hereby transfers and assigns to Lender all right, title and interest of Guarantor in and to any award or payment with respect to (i) any Condemnation, or any conveyance in lieu of Condemnation, and (ii) any damage to the Mortgaged Property caused by governmental action that does not result in a Condemnation.

(b) Lender may apply such awards or proceeds, after the deduction of Lender’s expenses incurred in the collection of such amounts, at Lender’s option, to the restoration or repair of the Mortgaged Property or to the payment of the Indebtedness, with the balance, if any, to Guarantor. Unless Lender otherwise agrees in writing, any application of any awards or proceeds to the Indebtedness shall not extend or postpone the due date under the Note. Guarantor agrees to execute such further evidence of assignment of any awards or proceeds as Lender may require.

16. TRANSFERS OF THE MORTGAGED PROPERTY OR INTERESTS IN GUARANTOR.

(a) The occurrence of any of the following events shall constitute an Event of Default under this 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 in Guarantor; and
- (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 Guarantor

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 16.

(b) For purposes of this Section, the following terms shall have the meanings set forth below:

- (1) “A Transfer of a “**Controlling Interest**” shall mean, with respect to any entity, the following:
- (i) if such entity is a general partnership or a joint venture, a Transfer of any general partnership interest or joint venture interest which would cause the Initial Owners to own less than 51% of all general partnership or joint venture interests in such entity;
 - (ii) if such entity is a limited partnership, a Transfer of any general partnership interest or of any general or limited partnership interest which would cause the Initial Owners to own less than 51% of all partnership interests in such entity;
 - (iii) if such entity is a limited liability company or a limited liability partnership, a Transfer of any membership or other ownership interest which would cause the Initial Owners to own less than 51% of all membership or other ownership interests in such entity;
 - (iv) if such entity is a corporation (other than a Publicly-Held Corporation) with only one class of voting stock, a Transfer of any voting stock which would cause the Initial Owners to own less than 51% of voting stock in such corporation;
 - (v) if such entity is a corporation (other than a Publicly-Held Corporation) with more than one class of voting stock, a Transfer of any voting stock which would cause the Initial Owners to own less than a sufficient number of shares of voting stock having the power to elect the majority of directors of such corporation; and
 - (vi) if such entity is a trust, the removal, appointment or substitution of a trustee of such trust other than (A) in the case of a land trust, or (B) if the trustee of such trust after such removal, appointment or substitution is a trustee identified in the trust agreement approved by Lender.
- (2) “**Publicly-Held Corporation**” shall mean a corporation the outstanding voting stock of which is registered under Section 12(b) or 12(g) of the Securities and Exchange Act of 1934, as amended.

17. EVENTS OF DEFAULT. The occurrence of any one or more of the following shall constitute an Event of Default under this Instrument:

- (a) any failure by Guarantor or Borrower to pay or deposit when due any amount required by the Note, this Instrument or any other Loan Document;

(b) fraud or material misrepresentation or material omission by Guarantor, or any of its officers, directors, trustees, general partners or managers, in connection with this Instrument;

(c) any Event of Default under Section 16;

(d) any failure by Guarantor to perform any of its obligations under this Instrument (other than those specified in Sections 17(a) through (c)), as and when required, which continues for a period of thirty (30) days after notice of such failure by Lender to Guarantor, but no such notice or grace period shall apply in the case of any such failure which could, in Lender's judgment, absent immediate exercise by Lender of a right or remedy under this Instrument, result in harm to Lender, impairment of the Note or this Instrument or any other security given under any other Loan Document;

(e) any failure by Borrower or Guarantor to perform any of its obligations as and when required under any Loan Document or any other act or omission of Guarantor constituting an Event of Default under any other Loan Document;

(f) any failure by Borrower or Guarantor to perform any of its obligations as and when required under the Blight Elimination Program Compliance Manual or the BEP Program Guide or any other terms or conditions of the Blight Elimination Program as administered by Lender; and

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

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

19. FORBEARANCE.

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

(b) Any forbearance by Lender in exercising any right or remedy under the Note, this Instrument, or any other Loan Document or otherwise afforded by applicable law,

shall not be a waiver of or preclude the exercise of any other right or remedy. 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 17 and 18 shall not operate to cure or waive any Event of Default.

20. LOAN CHARGES. If any applicable law limiting the amount of interest or other charges permitted to be collected from Guarantor 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 Guarantor 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 Guarantor 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.

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

22. WAIVER OF MARSHALING. Notwithstanding the existence of any other security interests in the Mortgaged Property held by Lender or by any other party, Lender shall have the right to determine the order in which any or all of the Mortgaged Property shall be subjected to the remedies provided in this 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. Guarantor and any party who now or in the future acquires a security interest in the Mortgaged Property and who has actual or constructive notice of this Instrument waives any and all right to require the marshaling of assets or to require that any of the Mortgaged Property be sold in the inverse order of alienation or that any of the Mortgaged Property be sold in parcels or as an entirety in connection with the exercise of any of the remedies permitted by applicable law or provided in this Instrument.

23. FURTHER ASSURANCES. Guarantor 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 Instrument and the Loan Documents.

24. ESTOPPEL CERTIFICATE. Within ten (10) days after a request from Lender, Guarantor shall deliver to Lender a written statement, signed and acknowledged by Guarantor,

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

25. GOVERNING LAW; CONSENT TO JURISDICTION AND VENUE.

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

(b) Guarantor agrees that any controversy arising under or in relation to the Note, this Instrument, or any other Loan Document shall be litigated exclusively in the Property Jurisdiction; provided, however, that at the sole discretion of Lender, Lender may institute proceedings in or request transfer of proceedings to the Federal and state courts in Hinds County, Mississippi. Guarantor 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.

26. NOTICE.

(a) All notices, demands and other communications (“**notice**”) under or concerning this Instrument shall be in writing. Each notice shall be addressed to the intended recipient at its address set forth in the Loan Agreement, 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 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 26, the term “**Business Day**” means any day other than a Saturday, a Sunday or any other day on which Lender is not open for business.

(b) Any party to this Instrument may change the address to which notices intended for it are to be directed by means of notice given to the other party in accordance with this Section 26. Each party agrees that it will not refuse or reject delivery of any notice given in accordance with this Section 26, 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 26 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 26.

27. SUCCESSORS AND ASSIGNS BOUND. This Instrument shall bind, and the rights granted by this Instrument shall inure to, the respective successors and assigns of Lender and Guarantor. However, a Transfer not permitted by Section 16 shall be an Event of Default.

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

29. RELATIONSHIP OF PARTIES; NO THIRD PARTY BENEFICIARY. The relationship between Lender and Guarantor shall be solely that of creditor and debtor, respectively, and nothing contained in this Instrument shall create any other relationship between Lender and Guarantor.

30. SEVERABILITY; AMENDMENTS. The invalidity or unenforceability of any provision of this Instrument shall not affect the validity or enforceability of any other provision, and all other provisions shall remain in full force and effect. This Instrument contains the entire agreement among the parties as to the rights granted and the obligations assumed in this Instrument. This Instrument may not be amended or modified except by a writing signed by the party against whom enforcement is sought.

31. CONSTRUCTION AND INTERPRETATION 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 Guarantor 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 Guarantor'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.

32. ACCELERATION; REMEDIES. At any time during the existence of an Event of Default, Lender, at Lender's option, may declare the Indebtedness to be immediately due and payable without further demand, and may invoke the power of sale and any other remedies permitted by applicable law or provided in this Instrument, including, but not limited to, commencing an action to appoint a receiver or specifically enforce any of the covenants hereto, sell the Mortgaged Property or any portion thereof or exercise any or all of the remedies available to a secured party under the Uniform Commercial Code or in any other Loan Document. Guarantor acknowledges that the power of sale granted in this Instrument may be exercised by Lender without prior judicial hearing. Lender shall be entitled to collect all costs and expenses incurred in pursuing such remedies, including attorneys' fees, costs of documentary evidence, abstracts and title reports.

If Lender directs the Trustee to invoke the power of sale, Lender shall send to Guarantor, in the manner provided in Section 26, notice of Lender's election to cause the Mortgaged Property to be sold. Trustee shall give notice of sale and shall sell the Mortgaged Property according to the laws of the State of Mississippi to the highest and best bidder during legal hours, at any front door of the county courthouse of the county in which the Mortgaged Property is situated after having advertised for three consecutive weeks preceding the sale in a newspaper published in the county where the Mortgaged Property is situated, or if none is so published, then

in some newspaper having general circulation therein, and by posting notice for the same time at the courthouse of the same county or in accordance with such other laws of the State of Mississippi governing sales of land under deeds of trust in force at the time the publication of said notice has begun. The advertisement and the notice shall disclose the original Guarantor in this Instrument. Guarantor waives the provisions of Miss. Code Ann. § 89-1-55 as far as this section restricts the right of Trustee to offer at sale more than 160 acres at a time, and Trustee may offer the Mortgaged Property as a whole, regardless of how it is described. If the Mortgaged Property is situated in two or more counties or in two judicial districts of the same county, then the Trustee shall have power, in case the Trustee is directed to foreclose under this Instrument, to select in which county, or judicial district, the sale of all the Mortgaged Property shall be made, and the selection shall be binding upon the Guarantor and the Lender and all persons claiming through or under them, whether by contract or by law. Should the Lender be a corporation or an unincorporated association, then any officer thereof may declare the Guarantor to be in default as provided herein and request the Trustee to sell the Mortgaged Property. The Trustee may sell the Mortgaged Property at the time and place and under the terms designated in the notice of sale in one or more parcels and in such order as the Lender may determine. The Trustee may postpone sale of all or any parcel of the Mortgaged Property by public announcement subject to the provisions of Miss. Code Ann. § 11-5-99 which sets forth the procedural requirements for the continuation of a sale. The Lender or Lender's designee may purchase the Mortgaged Property at any sale.

Trustee shall deliver to the purchaser at the sale, within a reasonable time after the sale, a deed conveying the Mortgaged Property so sold without any express or implied covenant or warranty. The recitals in Trustee's deed shall be prima facie evidence of the truth of the statements made in those recitals. Trustee shall apply the proceeds of the sale in the following order: (a) to all costs and expenses of the sale, including Trustee's fees not to exceed 5% of the gross sales price, attorneys' fees and costs of title evidence; (b) to the Indebtedness in such order as Lender, in Lender's discretion, directs; and (c) the excess, if any, to the person or persons legally entitled to it.

33. INSURANCE AFTER FORECLOSURE. In case of an insured loss after foreclosure proceedings have been instituted, the proceeds of any insurance policy or policies, if not applied in repairing and restoring the Project, shall be used to pay the amount due in accordance with any judgment of foreclosure that may be entered in any such proceedings, and the balance, if any, shall be paid as the court may direct.

34. REMEDIES NOT EXCLUSIVE; NO WAIVER OF REMEDIES.

(a) Lender shall be entitled to enforce payment and performance of any Indebtedness or obligations secured hereby and to exercise all rights and powers under this Deed of Trust or under any of the other Loan Documents or other agreement or any laws now or hereafter in force, notwithstanding that some or all of the said Indebtedness and obligations secured hereby may now or hereafter be otherwise secured, whether by mortgage, deed of trust, pledge, lien, assignment or otherwise. Neither the acceptance of this Deed of Trust nor its enforcement, whether by court action or other powers herein contained, shall prejudice or in any manner affect Lender's right to realize upon or enforce any other security now or hereafter held by Lender, it being agreed that Lender shall be entitled to enforce this Deed of Trust and any other security now or hereafter held by Lender in such order and manner as it may in its absolute

discretion determine. No remedy herein conferred upon or reserved to Lender is intended to be exclusive of any other remedy herein or by law provided or permitted, but each shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute. Every power or remedy given by any of the Loan Documents to Lender or to which it may be otherwise entitled, may be exercised, concurrently or independently, from time to time and as often as it may be deemed expedient by Lender and Lender may pursue inconsistent remedies. Failure by Lender to exercise any right which it may exercise hereunder, or the acceptance by Lender of partial payments, shall not be deemed a waiver by Lender of any Event of Default hereunder or of its right to exercise any such rights thereafter.

(b) In the event Lender at any time holds additional security for any of the Indebtedness secured by this Deed of Trust, it may enforce the sale thereof or otherwise realize upon the same, at its option, either before or concurrently with exercising remedies under this Deed of Trust or after a sale is made hereunder.

35. RELEASE. Upon payment of the Indebtedness, Lender or Trustee shall cancel this Instrument. If Trustee is requested to cancel this Instrument, the Note shall be surrendered to Trustee. Guarantor shall pay Lender's reasonable costs incurred in canceling this Instrument.

36. FURTHER ASSURANCES. Guarantor will do, execute, acknowledge and deliver at no cost to Guarantor all and every further acts, deeds, conveyances, transfers and assurances necessary or advisable, in the reasonable judgment of Lender, for the better assuring, conveying, mortgaging, assigning and confirming unto Lender all property mortgaged hereby or property intended so to be, whether now owned by Guarantor or hereafter acquired.

37. INVALIDITY OF CERTAIN PROVISIONS. If the lien of this Deed of Trust is invalid or unenforceable as to any part of the Indebtedness secured by this Deed of Trust, or if such lien is invalid or unenforceable as to any part of the Project, the unsecured or partially secured portion of the Indebtedness secured by this Deed of Trust shall be completely paid prior to the payment of the remaining and secured or partially secured portion thereof, and all payments made on the Indebtedness secured by this Deed of Trust, whether voluntary or under foreclosure or other enforcement action or procedure, shall be considered to have been first paid on and applied to the full payment of that portion thereof which is not secured or fully secured by the lien of this Deed of Trust.

38. ILLEGALITY OF TERMS. Nothing herein or in the Note contained nor any transaction related thereto shall be construed or shall so operate either presently or prospectively, (a) to require Guarantor to pay interest at a rate greater than is now lawful in such case to contract for, but shall require payment of interest only to the extent of such lawful rate, or (b) to require Guarantor to make any payment or do any act contrary to law. If any provision contained in this Deed of Trust shall otherwise so operate to invalidate this Deed of Trust, in whole or in part, then such provision only shall be held for naught as though not herein contained and the remainder of this Deed of Trust shall remain operative and in full force and effect, and Lender shall be given a reasonable time to correct any such error.

39. LENDER'S RIGHT TO DEAL WITH TRANSFEREE. In the event of the voluntary sale, or transfer by operation of law, or otherwise, of all or any part of the Mortgaged

Property, Lender is hereby authorized and empowered to deal with such vendee or transferee, or the debt secured hereby, or with reference to any of the terms or conditions hereof, as fully and to the same extent as it might with Guarantor, without in any way releasing or discharging Guarantor from the covenants and/or undertakings hereunder, and without Lender waiving its rights to accelerate the Note.

40. ENTIRE AGREEMENT. The Loan Documents, including, without limitation, this Deed of Trust set forth all of the covenants, promises, agreements, conditions and understandings of the parties relating to the subject matter of the Loan, and there are no covenants, promises, agreements, conditions or understandings, either oral or written, between them relating to the subject matter of the Loan Documents other than as are therein set forth.

41. SUBSTITUTE TRUSTEE. Lender, at Lender's option, may from time to time remove Trustee and appoint a successor trustee by instrument recorded in the county in which this Instrument is recorded. Without conveyance of the Mortgaged Property, the successor trustee shall succeed to all the title, power and duties conferred upon the Trustee in this Instrument and by applicable law.

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

Exhibit A Description of the Land (required).

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

GUARANTOR:

_____, **LP**

BY: _____
Name _____

ITS: _____

BY: _____
Name _____

ITS: _____

ACKNOWLEDGEMENT

STATE OF _____

COUNTY OF _____

Personally appeared before me, the undersigned authority in and for the said county and state, on this the _____ day of _____, 20____, within my jurisdiction, the within named _____, who acknowledged that he/she is the _____ of _____, a Mississippi _____, and that for and on behalf of said _____ and as its act and deed, he/she executed the above and foregoing instrument, after first having been duly authorized by said company so to do.

NOTARY PUBLIC

My Commission Expires:

[S E A L]

EXHIBIT A