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**AMENDED AND RESTATED  
SUBORDINATION, ASSIGNMENT AND SECURITY AGREEMENT**

**UTAH  
(Salt Lake County)**

**(Mission Meadowbrook)**

## AMENDED AND RESTATED SUBORDINATION, ASSIGNMENT AND SECURITY AGREEMENT

THIS AMENDED AND RESTATED SUBORDINATION, ASSIGNMENT AND SECURITY AGREEMENT (this "**Assignment**") is made and entered into as of November 2, 2012, by and among (i) MISSION MEADOWBROOK, DST, a Delaware Statutory Trust ("**Borrower**"), (ii) FANNIE MAE, the corporation duly organized under the Federal National Mortgage Association Charter Act, as amended, 12 U.S.C. §1716 et seq. and duly organized and existing under the laws of the United States ("**Lender**"), (iii) MISSION MEADOWBROOK LEASECO, LLC, a Delaware limited liability company ("**Tenant**"), and (iv) ATA PROPERTY MANAGEMENT, LLC (fka MR Property Management, LLC), a Delaware limited liability company (dba Mission Residential Management) ("**Manager**").

### RECITALS

A. Borrower is the owner of a 412-unit Class B Multifamily Residential Property (as defined herein) known as Mission Meadowbrook located in Salt Lake City, Utah (the "**Mortgaged Property**"). A legal description of the Mortgaged Property is attached hereto as Exhibit A.

B. Tenant is the master tenant and operator of the Mortgaged Property pursuant to that certain Master Lease dated as of April 11, 2008, which was amended pursuant to that certain Amendment to Master Lease effective July 1, 2009, between Borrower and Tenant (as may be further amended, modified, supplemented or restated from time to time, the "**Operating Lease**").

C. The Mortgaged Property is subject to that certain Management Agreement (as may be further amended, modified, supplemented or restated from time to time, the "**Management Agreement**") dated as of April 11, 2008, between Tenant and Mission Residential Management, LLC, a Virginia limited liability company ("**Original Manager**"). Pursuant to that certain Assignment and Assumption of Management Agreement dated as of even date herewith, Manager has assumed all rights and obligations of Original Manager in and to the Management Agreement.

D. Pursuant to the terms of that certain Loan Agreement dated as of November 15, 2007 entered into or joined into by RED MORTGAGE CAPITAL, INC., an Ohio corporation ("**Original Lender**"), Borrower and certain other parties, as amended by that certain First Amendment to Loan Agreement and Joinder Agreement dated as of December 11, 2007, that certain Second Amendment to Loan Agreement and Joinder Agreement dated as of January 17, 2008, that certain Third Amendment to Loan Agreement and Joinder Agreement dated as of February 14, 2008, that certain Fourth Amendment to Loan Agreement and Joinder Agreement dated as of March 31, 2008, that certain Fifth Amendment to Loan Agreement and Joinder Agreement dated as of April 11, 2008, and that certain Sixth Amendment to Loan Agreement dated as of even date herewith (as may be further amended, supplemented or otherwise modified from time to time, the "**Loan Agreement**"), Original Lender made a loan to Borrower in the amount of \$24,000,000.00 (the "**Loan**"). The Loan is evidenced by the Note (defined herein) and is secured by a Multifamily Deed of Trust, Assignment of Rents and Security Agreement

(the "**Instrument**") dated as of April 11, 2008 executed by Borrower in favor of Original Lender which encumbers the Mortgaged Property.

E. Pursuant to that certain Subordination, Assignment and Security Agreement dated as of April 11, 2008 (the "**Original SASA**") executed in connection with the Loan, (i) Tenant subordinated its right, title and interest in, to and under the Operating Lease and assigned all of its right, title and interest in and to all Leases, Rents, Equipment, Inventory, Contracts and Accounts to Original Lender as additional security for the Loan; and (ii) Original Manager subordinated its right, title and interest in, to and under the Management Agreement and assigned all of its right, title and interest in and to all Leases, Rents, Equipment, Inventory, Contracts and Accounts to Original Lender as additional security for the Loan.

F. All of Original Lender's right, title and interest in the Loan and the Loan Documents (as defined herein) executed in connection with the Loan have been assigned to Lender pursuant to that certain Assignment of Collateral Agreements and Other Loan Documents dated as of April 11, 2008 (the "**Loan Assignment**"). Lender has not assumed any of the servicing obligations of Original Lender under the Loan or the Loan Documents as a result of the Loan Assignment. The servicer of the Loan is Red Mortgage Capital, LLC, a Delaware limited liability company.

G. The parties are entering into this Assignment to amend and restate the terms of the Original SASA in its entirety.

H. Lender requires and Manager is willing to subordinate its right, title and interest to and under the Management Agreement to the Instrument and to assign all of Manager's interest in any Leases, Rents, Equipment Contracts and Accounts to Lender as additional security for the Loan.

I. Tenant has agreed to attorn to Lender upon the occurrence and during the continuance of an Event of Default under the Loan Documents, to perform its obligations under the Operating Lease and this Assignment for Lender, its successors and assigns in interest, and to permit Lender to terminate the Operating Lease in accordance with the terms hereof without liability.

J. Manager is willing to attorn to Lender upon the occurrence and during the continuance of an Event of Default under the Loan Documents, to perform its obligations under the Management Agreement and this Assignment for Lender, or its successors and assigns in interest, and to permit Lender to terminate the Management Agreement in accordance with the terms hereof without liability.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, Borrower, Lender and Tenant hereby amend and restate the Original SASA and Manager agrees to enter into this Assignment and agree as follows:

**1. DEFINITIONS.** Capitalized terms used in this Assignment and not otherwise defined shall have the meanings assigned to them in the Instrument. All terms used herein which are defined in the Uniform Commercial Code, as in effect from time to time in the jurisdiction in

which the Mortgaged Property is located, shall have the same meanings when used herein. The following terms, when used in this Assignment, shall have the following meanings:

(a) **“Accounts”** means all money, funds, investment property, accounts, general intangibles, deposit accounts, chattel paper, documents, instruments, judgments, claims, settlements of claims, causes of action, refunds, rebates, reimbursements, reserves, deposits, subsidies, proceeds, products, rents and profits, now or hereafter arising, received or receivable, from or on account of Tenant’s operation and Manager’s management of the Mortgaged Property as a Class B Multifamily Residential Property.

(b) **“Contracts”** means any contract or other agreement for the provision of goods or services at or otherwise in connection with the operation, use or management of the Mortgaged Property, including cash deposited to secure performance by parties of their obligations.

(c) **“Equipment”** means all right, title and interest of Tenant and Manager in and to all machinery, equipment, computer equipment (hardware and software), tools, furniture, furnishings, kitchen or restaurant supplies and facilities, office equipment, dining room supplies and facilities, medical supplies and facilities, appliances, supplies, books, records, fixtures, leasehold improvements, all tangible and intangible property, and goods now owned and hereafter acquired, used in connection with the operation of the Mortgaged Property, together with all present and future parts, additions, accessories, replacements, attachments, accessions, replacement parts and substitutions therefore, and the proceeds thereof (cash and non-cash including insurance proceeds).

(d) **“Event of Default”** means the occurrence of any event listed in Section 22 of the Instrument or a default by Borrower, Tenant or Manager of any representation, warranty or covenant under this Assignment, the Operating Lease or the Management Agreement.

(e) **“Impositions”** and **“Imposition Deposits”** shall have the meaning as defined in Section 7(a) of the Instrument.

(f) **“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, which may now or hereafter constitute the Mortgaged Property.

(g) **“Indebtedness”** means the principal of, interest on, and all other amounts due at any time under, the Note, the Instrument or any other Loan Documents, including prepayment premiums, late charges, default interest.

(h) **“Instrument”** shall have the meaning as defined in Recital D above.

(i) **“Inventory”** means all right, title and interest of Tenant in and to inventory of every type and description, now owned and hereafter acquired, including, without limitation, raw materials, work in process, finished goods, goods returned or repossessed or stopped in transit, goods used for demonstration, promotion, marketing or similar purposes, property in, on or with which any of the foregoing may be stored or maintained, all materials and

supplies usable or used or consumed at the Mortgaged Property, and all documents and documents of title relating to any of the foregoing, together with all present and future parts, additions, accessories, attachments, accessions, replacements, replacement parts and substitutions therefor or thereto in any form whatsoever.

(j) **“Land”** means the land described in Exhibit A.

(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 Tenant is a cooperative housing corporation), and all modifications, extensions or renewals thereof. The term “Leases” shall also specifically include, without limitation, the Operating Lease.

(l) **“Loan”** shall have the meaning as defined in Recital D above.

(m) **“Loan Documents”** means the Loan Agreement, Note, the Instrument, this Assignment, all guaranties and any other documents in effect now or executed now or in the future by Borrower, Tenant or any other person or entity in connection with the Loan, as such documents may be amended from time to time.

(n) **“Management Agreement”** shall have the meaning as defined in Recital C above.

(o) **“Mortgaged Property”** shall have the meaning as defined in Recital A above.

(p) **“Multifamily Residential Property”** shall have the meaning as defined in the Loan Agreement.

(q) **“Note”** means that certain Multifamily Note in the original principal amount of \$24,000,000.00 executed by Borrower in favor of Original Lender, and more fully described in the Instrument.

(r) **“Operating Lease”** shall have the meaning as defined in Recital B above.

(s) **“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, healthcare and other services provided at the Mortgaged Property, whether now due, past due, or to become due, and deposits forfeited by tenants. Each of the foregoing shall be considered “Rents” for the purposes of the actions and rights set forth in Section 3 of this Assignment.

(t) **“Taxes”** shall have the meaning as defined in Section 1(y) of the Instrument.

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

(a) This Assignment is also a security agreement under the Uniform Commercial Code for any of the Contracts, Accounts, Equipment, Inventory, Leases and Rents 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 Tenant and Manager, hereby assign and grant to Lender a security interest in the UCC Collateral, to the extent each of Tenant and Manager have an interest in the UCC Collateral. Tenant and Manager hereby authorize 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 Tenant and Manager agree, 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, neither Tenant nor Manager shall create or permit to exist any other lien or security interest in any of the UCC Collateral.

(b) 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 Assignment 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.

(c) Upon an Event of Default, Lender or its designee may (in Lender's sole discretion) terminate Tenant's and Manager's authority to collect Accounts and notify the residents and account debtors that the Accounts have been assigned to Lender or of Lender's security interest therein and, either in its own name or that of Tenant or Manager, demand, collect (including, without limitation, through any lockbox arrangement prescribed by Lender), receive, receipt for, sue for or give acquittance for any or all amounts due or to become due in respect of the Accounts, and may also, in its discretion, file any claim, institute any proceeding or take any other action that Lender may deem necessary or appropriate to protect and realize upon the security interest of Lender in the Accounts. All of Lender's collection expenses shall be charged to Borrower's account and added to the Indebtedness. If Lender is collecting the Accounts as above provided, Lender shall have the right to receive, endorse, assign and deliver in Lender's name, Tenant's name or Manager's name any and all checks, drafts and other instruments for the payment of money relating to the Accounts, and Tenant and Manager hereby waive notice of presentment, protest and non-payment of any instrument so endorsed. If Lender is collecting the Accounts directly as above provided, Tenant and Manager hereby constitute Lender or Lender's designee as Tenant's and Manager's attorney-in-fact with power with respect to the Accounts to: (i) endorse Tenant's or Manager's name upon all notes, acceptances, checks, drafts, money orders or other evidences of payment that may come into Lender's possession; (ii) notify the Post Office to change the address for delivery of mail addressed to Tenant or Manager for the Mortgaged Property to such address as Lender may designate; and (iii) receive, open, and dispose of all such mail addressed to Tenant or Manager.

(d) Upon an Event of Default, Lender may, without demand and without advertisement or notice, at any time or times, sell and deliver any or all Equipment or Inventory

held by or for it at public or private sale, for cash, upon credit or otherwise, at such prices and upon such terms as Lender, in its sole discretion, deems advisable. Subject to the provisions of applicable law, Lender may postpone or cause the postponement of the sale of all or any portion of the Equipment or Inventory by announcement at the time and place of such sale, and such sale may, without further notice, be made at the time and place to which the sale has been postponed or Lender may further postpone such sale by announcement made at such time and place. Without in any way limiting the foregoing, Lender shall, following any Event of Default, have the right, in addition to all other rights provided herein or by law, to enter without legal process upon the Mortgaged Property (provided that such entry be done lawfully) for the purpose of taking possession of the Equipment or Inventory, and the right to maintain such possession on the Mortgaged Property or to remove the Equipment or Inventory or any part thereof to such other places as Lender may desire. Whether or not Lender exercises its right to take possession of the Equipment or Inventory, Tenant and Manager shall, upon Lender's demand, promptly assemble the Equipment or Inventory and make it available to Lender at the Mortgaged Property.

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

(a) As consideration for the material financial benefit to be derived by Tenant from Lender's approval of the Operating Lease and providing the Loan and by Manager from Lender's approval of the Management Agreement and providing the Loan, to the extent permitted by applicable law, Tenant and Manager absolutely and unconditionally assign and transfer to Lender all of Tenant's and Manager's respective right, title and interest in and to any Rents. To the extent permitted by applicable law, it is the intention of Tenant and Manager to establish a present, absolute and irrevocable transfer and assignment to Lender of all of Tenant's and Manager's respective right, title and interest in and to any Rents and to authorize and empower Lender to collect and receive all Rents without the necessity of further action on the part of Tenant or Manager. Promptly upon request by Lender, Tenant and Manager agree to execute and deliver such further assignments as Lender may from time to time reasonably require. To the extent permitted by applicable law, Tenant, Manager 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. However, if this present, absolute and unconditional assignment of Rents is not enforceable by its terms under the laws of the Property Jurisdiction (as that term is defined in Section 30(a) of the Instrument), then it is the intention of Tenant and Manager that in this circumstance this Assignment creates and perfects a lien on Rents in favor of Lender, which lien shall be effective as of the date of this Assignment.

(b) After the occurrence of an Event of Default, Tenant and Manager authorize Lender to collect, sue for and compromise Rents and directs each resident and tenant of the Mortgaged Property to pay all Rents to, or as directed by, Lender. However, until the occurrence of an Event of Default, Lender hereby grants to Tenant and Manager a revocable license to collect and receive all Rents, to hold all Rents in trust for the benefit of Lender and subject to the terms of the Operating Lease and Management Agreement, 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 (subject to the terms of Section 14(c) of this Agreement) management fees and costs under the Management Agreement, 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), resident and tenant improvements and other capital expenditures. So long as no Event of Default has occurred and is continuing, and subject to the terms of the Operating Lease and Management Agreement, the Rents remaining after application pursuant to the preceding sentence may be retained by Tenant or Manager, as applicable, free and clear of, and released from, Lender's rights with respect to Rents under this Assignment. 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, Tenant's and Manager'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. Tenant and Manager shall pay to Lender, within ten (10) days of written demand therefor, 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 Tenant and Manager hereby irrevocably authorize Lender to give, notice to all residents and tenants of the Mortgaged Property instructing them to pay all Rents to Lender. No resident or tenant shall be obligated to inquire further as to the occurrence or continuance of an Event of Default, and no resident or tenant shall be obligated to pay to Tenant or Manager any amounts which are actually paid to Lender in response to such a notice. Any such notice by Lender shall be delivered to each resident and tenant personally, by mail or by delivering such demand to each rental unit. Neither Tenant nor Manager shall interfere with Lender's collection of such Rents and both Tenant and Manager shall cooperate with Lender's collection of such Rents. After an Event of Default, Lender is further authorized to give notice to all Third Party Payment payors (other than governmental entities) at Lender's option, instructing them to pay all Third Party Payments which would be otherwise paid to Tenant or Manager to Lender, to the extent permitted by law. In the case of Third Party Payments from Third Party Payment payors which are governmental entities, including Medicaid, Lender and Tenant have executed a Depository Agreement of even date herewith which establishes special procedures for the receipt and disposition of the Third Party Payments.

(c) Tenant and Manager represent and warrant to Lender that neither Tenant nor Manager has executed any prior assignment of Rents with respect to the Mortgaged Property that Tenant or Manager, respectively, have not performed, and Tenant and Manager covenant and agree that they will not perform any acts and have 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 Assignment there has been no anticipation or prepayment of any Rents for more than two months prior to the due dates of such Rents. Neither Tenant nor Manager shall collect or accept payment of any Rents more than two months prior to the due dates of such Rents (excluding security deposits or rental deposit fees).

(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 Tenant or Manager and even in the absence of waste, to the extent permitted by applicable law, 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 and Leases 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 Assignment, 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 Tenant's or Manager's solvency and without the necessity of giving prior notice (oral or written) to Tenant or Manager, 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, Tenant and Manager, by their execution of this Assignment, expressly consent 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 Lender's entering upon and taking possession and control of the Mortgaged Property, Tenant and Manager shall, to the extent permitted by applicable law, 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 as aforesaid, Lender may exclude Tenant, Manager and their representatives from the Mortgaged Property. Tenant and Manager acknowledge and agree 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, Tenant and Manager only for those Rents actually received. Lender shall not be liable to Tenant, Manager, Borrower, anyone claiming under or through Tenant, Manager or Borrower, or anyone having an interest in the Mortgaged Property, by reason of any act or omission of Lender under this Section 3, but excluding any acts or omissions by Lender that constitute gross negligence or willful misconduct as determined by a court of competent jurisdiction pursuant to a final non-appealable court order, and Tenant, Manager and Borrower hereby release and discharge 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 of the Instrument.

(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 Assignment 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 Assignment or in the Instrument.

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

(a) As consideration for the material financial benefit to be derived by Tenant from Lender's approval of the Operating Lease and providing the Loan and by Manager from Lender's approval of the Management Agreement and providing the Loan, to the extent permitted by applicable law, Tenant and Manager absolutely and unconditionally assign and transfer to Lender all of Tenant's and Manager's respective right, title and interest in, to and under the Leases, including Tenant's and Manager's respective right, power and authority to modify the terms of any such Lease, or extend or terminate any such Lease. To the extent permitted by applicable law, it is the intention of Tenant and Manager to establish a present, absolute and irrevocable transfer and assignment to Lender of all of Tenant's and Manager's respective right, title and interest in, to and under the Leases. To the extent permitted by applicable law, Tenant, Manager 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. 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 it is the intention of Tenant and Manager that in this circumstance this Assignment create and perfect a lien on the Leases in favor of Lender, which lien shall be effective as of the date of this Assignment.

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

(c) Tenant and Manager acknowledge and agree 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 Assignment 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 but excluding any acts or omissions by Lender that constitute gross negligence or willful misconduct as determined by a court of competent jurisdiction pursuant to a final non-appealable court order. 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 Assignment by Tenant and Manager 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 Tenant and Manager, as applicable, prior to such actual entry and taking of possession.

(d) Upon delivery of written notice by Lender to Tenant or Manager 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 Tenant and/or Manager 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) Tenant and Manager 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 (with no material revisions thereto) approved by Lender, shall be on 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 a month-to-month term or with terms of less than six months may be permitted with Lender's prior written consent.

(f) Neither Tenant nor Manager shall lease any portion of the Mortgaged Property for non-residential use except with the prior written consent and approval of Lender with the exception of the Operating Lease which has previously been approved by Lender. Neither Tenant nor Manager shall modify the terms of, 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. Tenant and Manager 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 and renewals or extensions of existing Leases, shall specifically provide that (i) such Leases are subordinate to the lien of this Instrument (unless waived in writing by Lender); (ii) the resident or tenant shall attorn to Lender and any purchaser at a foreclosure sale, such attornment to be self-executing and effective upon acquisition of title to the Mortgaged Property by any purchaser at a foreclosure sale or by Lender in any manner; (iii) the resident or tenant agrees to execute such further evidences of attornment as Lender or any purchaser at a foreclosure sale may from time to time reasonably request; (iv) the Lease shall not be terminated by foreclosure or any other transfer of the Mortgaged Property; (v) after a foreclosure sale of the Mortgaged Property, Lender or any other purchaser at such foreclosure sale may, at Lender's or such purchaser's option, accept or terminate such Lease; and (vi) the resident or 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) Neither Tenant nor Manager shall receive or accept Rent under any Lease (whether residential or non-residential) for more than two months in advance (excluding security deposits).

**5. ASSIGNMENT OF CONTRACTS; CONTRACTS AFFECTING THE MORTGAGED PROPERTY.**

(a) Tenant and Manager, in the name of or on behalf of Tenant, have entered into the Contracts identified on Exhibit B for the provision of goods or services, at or otherwise in connection with the operation, use or management of the Mortgaged Property. Tenant and Manager, in the name of or on behalf of Tenant, may in the future enter into Contracts for the provision of additional goods or services at or otherwise in connection with the operation, use or management of the Mortgaged Property.

(b) As consideration for the material financial benefit to be derived by Tenant from Lender's approval of the Operating Lease and providing the Loan and by Manager from Lender's approval of the Management Agreement and providing the Loan, to the extent permitted by applicable law, Tenant and Manager absolutely and unconditionally assign and transfer to Lender all of Tenant's and Manager's respective right, title and interest in, to and under the Contracts, including Tenant's and Manager's respective right, power and authority to modify the terms of, extend or terminate any such Contract. To the extent permitted by applicable law, it is the intention of Tenant and Manager to establish a present, absolute and irrevocable transfer and assignment to Lender of all of Tenant's and Manager's respective right, title and interest in, to and under the Contracts. To the extent permitted by applicable law, Tenant, Manager and Lender intend this assignment of the Contracts to be immediately effective and to constitute an absolute present assignment and not an assignment for additional security only. However, if this present, absolute and unconditional assignment of the Contracts is not enforceable by its terms under the laws of the Property Jurisdiction, then it is the intention of Tenant and Manager that in this circumstance this Assignment create and perfect a lien on the Contracts in favor of Lender, which lien shall be effective as of the date of this Assignment. The acceptance by Lender of this assignment of the Contracts shall not at any time or in any event obligate Lender to take any action under this Assignment or to expend any money or to incur any expenses.

(c) Until Lender gives written notice to Tenant or Manager of Lender's exercise of its rights under this Section 5 after the occurrence of an Event of Default, Tenant and Manager shall have all rights, power and authority granted to Tenant and Manager, respectively, under any Contract (except as otherwise limited by this Section 5 or any other provision of this Assignment), including the right, power and authority to modify the terms of any Contract or extend or terminate any Contract, with the exception of the Operating Lease. Upon the occurrence of an Event of Default and at the option of Lender, the permission given to Tenant and Manager pursuant to the preceding sentence to exercise all rights, power and authority under Contracts shall terminate.

(d) Upon Lender's delivery of written notice to Tenant or Manager of an Event of Default, Lender shall immediately have all rights, powers and authority granted to Tenant and Manager under any Contract, including the right, power and authority to modify the terms of, extend or terminate any such Contract.

(e) Tenant and Manager hereby represent and warrant and agree with Lender that: (i) the Contracts are assignable and no previous assignment of Tenant's interest nor

Manager's interest in the Contracts has been made; (ii) the Contracts are in full force and effect in accordance with their respective terms and there are, to Tenant's and Manager's knowledge, no defaults thereunder; (iii) Tenant and Manager shall fully perform all of their respective obligations under the Contracts, and Tenant and Manager agree not to materially amend or to modify, assign, sell, pledge, transfer, mortgage or otherwise encumber their respective interests in any of the Contracts so long as this Assignment is in effect, or consent to any transfer, assignment or other disposition thereof without the written approval of Lender; and (iv) each Contract entered into by Tenant or Manager subsequent to the date hereof, the average annual consideration of which, directly or indirectly, is at least \$25,000, shall provide that it shall be terminable for cause.

**6. ASSIGNMENT; BORROWER, TENANT AND MANAGER REPRESENTATIONS, WARRANTIES AND AGREEMENTS.**

(a) Tenant and Manager hereby transfer, assign and set over to Lender, its successors and assigns, all their right, title and interest in and to the Management Agreement. The foregoing assignment is being made by Tenant and Manager to Lender as collateral security for the full payment and performance by Borrower of all of its obligations under the Loan Documents. However, until the occurrence of an Event of Default (as such term is defined in the Loan Documents), Tenant may exercise all rights as Tenant of the Mortgaged Property under the Management Agreement and Manager may exercise all rights as manager of the Mortgaged Property under the Management Agreement, except as otherwise provided in this Assignment. The foregoing assignment shall remain in effect as long as the Loan, or any part thereof, remains unpaid, but shall automatically terminate upon the release of the Security Instrument as a lien on the Mortgaged Property.

(b) Borrower, Tenant and Manager represent and warrant to Lender that (i) after the Loan is made, Borrower, Tenant and/or Manager will have sufficient working capital, including cash flow from the Mortgaged Property or other assets, to adequately own and/or maintain the Mortgaged Property and pay all outstanding debts associated with the Mortgaged Property as they become due, (ii) the Operating Lease and Management Agreement are unmodified and are in full force and effect, (iii) the Operating Lease and Management Agreement are valid and binding agreements enforceable against the parties in accordance with their terms, and (iv) no party is in default in performing any of their obligations under the Operating Lease or Management Agreement. Borrower, Tenant and Manager hereby agree that any default by Borrower, Tenant or Manager under this Assignment, the Operating Lease or the Management Agreement which continues beyond any applicable cure period shall at Lender's option, constitute an Event of Default under the Instrument.

**7. BORROWER, TENANT AND MANAGER COVENANTS.**

(a) Borrower hereby covenants with Lender that during the term of this Assignment: (i) Borrower shall not transfer the responsibility for the operation of the Mortgaged Property from Tenant to any other person or entity without the prior written consent of Lender (except with respect to any Permitted Transfers set forth in the Instrument); (ii) Borrower shall not terminate or amend any of the terms or provisions of the Operating Lease nor shall Borrower assign its rights under the Operating Lease without the prior written consent of Lender; (iii)

within five (5) days of Borrower's receipt, Borrower shall give Lender written notice of any written notice or information that Borrower receives which indicates that either Borrower or Tenant is in default under the terms of the Operating Lease, Tenant is terminating the Operating Lease or that Tenant is otherwise discontinuing its operation of the Mortgaged Property; and (iv) Borrower agrees that after Borrower receives written notice (or otherwise has actual knowledge) of an Event of Default under the Instrument, it will not make any payment of fees under or pursuant to the Operating Lease without Lender's prior written consent.

(b) Tenant hereby covenants with Lender that during the term of this Assignment: (i) Tenant shall not permit a Transfer, whether directly or indirectly, of a Controlling Interest (each as defined in the Instrument) in Tenant without Lender's prior written consent (except with respect to any Permitted Transfers set forth in the Instrument); (ii) Tenant shall not transfer the responsibility for the management of the Mortgaged Property from Manager to any other person or entity without the prior written consent of Lender; (iii) Tenant shall not terminate or materially modify or amend any of the terms or provisions of the Management Agreement nor shall Tenant assign its rights under the Management Agreement without the prior written consent of Lender; (iv) within five (5) days of Tenant's receipt, Tenant shall give Lender written notice of any notice or information that Tenant receives which indicates that either Tenant or Manager is in default under the terms of the Management Agreement, Manager is terminating the Management Agreement or that Manager is otherwise discontinuing its management of the Mortgaged Property; and (v) Tenant agrees that after Tenant receives written notice (or otherwise has actual knowledge) of an Event of Default under the Instrument, it will not make any payment of fees under or pursuant to the Management Agreement without Lender's prior written consent.

(c) Manager hereby covenants with Lender that during the term of this Assignment, Manager shall not permit a Transfer, whether directly or indirectly, of a Controlling Interest in Manager without Lender's prior written consent.

**8. EVENT OF DEFAULT.** Upon receipt by Tenant or Manager of written notice from Lender that an Event of Default has occurred and is continuing, Lender shall have the right to exercise all rights of the owner of the Mortgaged Property under the Operating Lease and Tenant of the Mortgaged Property under the Management Agreement and Tenant shall pay to Lender directly all Rents and other sums due under the Operating Lease and Tenant and Manager shall pay to Lender directly all sums due under the Management Agreement. Lender shall be entitled to mandate the use of a lockbox bank account or other depository account, to be maintained under the control and supervision of Lender, for all income of the Mortgaged Property, including but not limited to Rents, service charges, insurance payments and Third Party Payments. In order to induce Lender to lend funds hereunder, Borrower, Tenant and Manager hereby agree, that, upon the occurrence of an Event of Default and at the option of Lender, Tenant and Manager shall continue to provide all necessary services required under any applicable licensing or regulatory requirements and shall fully cooperate with Lender and any receiver as may be appointed by a court, in performing these services until such time as Lender has arranged for a replacement tenant or manager, and in arranging an orderly transition to a replacement tenant, manager or provider of the necessary services.

**9. OPERATING LEASE AND MANAGEMENT AGREEMENT TERMINATION.** After the occurrence of an Event of Default, Lender shall have the right any time thereafter to terminate the Operating Lease and/or Management Agreement, without cause and without liability, by giving written notice to Tenant or Manager, as applicable, of its election to do so. Lender's notice shall specify the date of termination, which shall not be less than thirty (30) days after the date of such notice, except such lesser notice as Lender deems to be appropriate in the event of an emergency.

**10. TURNOVER OF BOOKS AND RECORDS.** On the effective date of termination of the Operating Lease or Management Agreement as set forth in Section 9 above, Tenant or Manager, as applicable, shall turn over to Lender all books and records relating to the Mortgaged Property and the residents and tenants (copies of which may be retained by Tenant or Manager, at Tenant's or Manager's expense), together with such authorizations and letters of direction addressed to residents, tenants, suppliers, employees, banks and other parties as Lender may reasonably require. Tenant and Manager shall cooperate with Lender in the transfer of operating and management responsibilities to Lender, any receiver, or their designees. A final accounting of unpaid fees (if any) due to Tenant under the Operating Lease or Manager under the Management Agreement shall be made within ninety (90) days after the effective date of termination, but Lender shall not have any liability or obligation to Tenant or Manager for unpaid fees or other amounts payable under the Operating Lease or Management Agreement which accrue before Lender acquires title to the Mortgaged Property, or before Lender becomes a mortgagee in possession.

**11. NOTICE.** Manager's address for notice is c/o Landmark Apartment Trust of America, 4901 Dickens Rd., Suite 101, Richmond, VA 23230. Tenant's address for notice is c/o Forward Capital, 101 Pleasant Street NW, Vienna, VA 22180. Borrower's address for notice is 101 Pleasant Street NW, Vienna, VA 22180. Lender's address for notice is Two Miranova Place, 12<sup>th</sup> Floor, Columbus, Ohio 43215.

All notices to be given by Lender to Tenant shall be given in the same manner as notices to Borrower pursuant to the notice provisions contained in the Instrument.

**12. NO ASSUMPTION OF OBLIGATIONS.** Borrower, Tenant and Manager, by executing this Assignment, agree that Lender does not assume any obligations or duties of Borrower and Tenant concerning the Operating Lease nor any obligations or duties of Tenant and Manager concerning the Management Agreement until and unless Lender shall exercise its rights hereunder.

**13. POWER OF ATTORNEY.** Borrower, Tenant and Manager hereby irrevocably constitute and appoint Lender as Borrower's, Tenant's and Manager's attorney-in-fact to, following an Event of Default, demand, receive and enforce their rights with respect to the provisions set forth in this Assignment, to give appropriate receipts, releases and satisfactions for and on Borrower's, Tenant's and Manager's behalf and to do any and all acts in Borrower's, Tenant's and Manager's names or in the name of Lender with the same force and effect as Borrower, Tenant or Manager could do if this Assignment had not been made. The foregoing appointment shall be deemed to be coupled with an interest and irrevocable.

**14. TENANT AND MANAGER REPRESENTATIONS AND OBLIGATIONS.**

Tenant and Manager represent, warrant and agree to the following:

(a) Tenant and Manager will use commercially reasonable efforts to cooperate with Lender, including attendance at any meetings reasonably requested by Lender (after reasonable prior notice) furnishing financial statements of Tenant and Manager and operating statements for the Mortgaged Property, and allowing Lender to undertake inspections of the Mortgaged Property with not less than two (2) business days' prior written notice unless, in Lender's sole discretion, circumstances dictate otherwise. In addition, Tenant and Manager acknowledge that each have received from Borrower and reviewed a fully executed copy of the Instrument and covenants therein and agree to comply with all provisions and covenants therein applicable to the use and operation of the Mortgaged Property and as to Tenant's and Manager's obligations under the Operating Lease and the Management Agreement, respectively (the "**Operating Covenants**"), including without limitation, arranging for the escrow of Taxes and insurance with Lender (if not arranged by Borrower) and, if necessary, providing insurance coverage in accordance with Lender's requirements. In the event Tenant or Manager fails to so use and operate the Mortgaged Property, Lender shall have the right to enforce the Operating Covenants directly against Tenant and Manager upon Borrower's failure to do so, in accordance with the provisions of the Instrument and this Assignment. Tenant's or Manager's failure to comply with these obligations shall constitute a default under the Operating Lease and Management Agreement, as applicable, a default under this Assignment, and an Event of Default under the Loan Documents. Tenant and Manager agree to comply with all of their respective obligations under the Operating Lease and Management Agreement pertaining to their payment and performance of any repairs and capital improvements at the Mortgaged Property;

(b) the Operating Lease and Management Agreement are and shall be subject and subordinate in all respects to the liens, terms, covenants and conditions of the Instrument and the other Loan Documents, and to all renewals, modifications, consolidations, replacements and extensions thereof, and to all advances heretofore made or which may hereafter be made pursuant to the Instrument (including all sums advanced for the purposes of (i) protecting or further securing the lien of the Instrument, curing defaults by Borrower under the Loan Documents or for any other purposes expressly permitted by the Instrument, or (ii) constructing, renovating, repairing, furnishing, fixturing or equipping the Mortgaged Property);

(c) any fees payable to Tenant by Borrower pursuant to the Operating Lease are and shall be subordinated in right of payment to the prior payment in full of monthly debt service and funding of escrows and reserves as required under the Loan Documents, and the payment of all operating expenses and capital expenditures incurred in connection with the operation and management of the Mortgaged Property. Any fees payable to Manager by Tenant pursuant to the Management Agreement are and shall be subordinated in right of payment to the prior payment in full of the Indebtedness;

(d) if, by reason of its exercise of any other right or remedy under the Operating Lease, Tenant acquires by right of subrogation or otherwise a lien on the Mortgaged Property which (but for this subsection) would be senior to the lien of the Instrument or if, by reason of its exercise of any other right or remedy under the Management Agreement, Manager acquires by right of subrogation or otherwise a lien on the Mortgaged Property which (but for



this subsection) would be senior to the lien of the Instrument, then, in either event, such lien shall be subject and subordinate to the lien of the Instrument;

(e) until Tenant, Manager or Borrower receives written notice (or otherwise acquires actual knowledge) of an Event of Default, Tenant shall be entitled to retain for its own account all payments made under or pursuant to the Operating Lease, subject to the terms of this Assignment and Manager shall be entitled to retain for its own account all payments made under or pursuant to the Management Agreement, subject to the terms of this Assignment;

(f) after Tenant or Borrower receives written notice (or otherwise acquires actual knowledge) of an Event of Default, Tenant will not accept or retain any payment of fees under or pursuant to the Operating Lease, without Lender's prior written consent;

(g) after Manager or Borrower receives written notice (or otherwise acquires actual knowledge) of an Event of Default, Manager will not accept or retain any payment of fees under or pursuant to the Management Agreement, without Lender's prior written consent;

(h) if, after Tenant, Manager or Borrower receives written notice (or otherwise acquires actual knowledge) of an Event of Default, Tenant receives any payment of fees under the Operating Lease other than from Lender, Tenant receives any other payment or distribution of any kind from Borrower or from any other person or entity other than from Lender in connection with the Operating Lease which Tenant is not permitted by this Assignment to retain for its own account, Manager receives any payment of fees under the Management Agreement other than from Lender, Manager receives any other payment or distribution of any kind from Borrower or from any other person or entity other than from Lender in connection with the Management Agreement which Manager is not permitted by this Assignment to retain for its own account, such payment or other distribution will be received and held in trust for Lender and unless Lender otherwise notifies Tenant or Manager, will be promptly remitted, in cash or readily available funds, to Lender, properly endorsed to Lender, to be applied to the principal of, interest on and other amounts due under the Loan Documents in such order and in such manner as Lender shall determine in its sole and absolute discretion. Tenant and Manager hereby irrevocably designate, make, constitute and appoint Lender (and all persons or entities designated by Lender) as Tenant's and Manager's true and lawful attorney in fact with power to endorse the name of Tenant and Manager upon any checks representing payments referred to in this subsection;

(i) during the term of this Assignment, neither Tenant nor Manager will commence, or join with any other creditor in commencing any bankruptcy, reorganization, arrangement, insolvency or liquidation proceedings with respect to Borrower, without Lender's prior written consent, and neither Tenant nor Manager has filed or is subject to any filing for bankruptcy or reorganization under any applicable bankruptcy or insolvency laws;

(j) Tenant will deliver to Lender at the address indicated above and at the same time as such notice is given to Borrower, any notice of default under the Operating Lease;

(k) Manager will deliver to Lender at the address indicated above and at the same time as such notice is given to Tenant, any notice of default under the Management Agreement;

(l) Tenant has not assigned or sublet and is now the sole owner of the interest or leasehold estate created by the Operating Lease, and shall not hereafter transfer the Operating Lease except as permitted by the terms thereof and with Lender's prior written approval;

(m) Manager has not assigned and is now the sole owner of the interest created by the Management Agreement, and shall not hereafter transfer the Management Agreement except as permitted by the terms thereof and with Lender's prior written approval;

(n) Tenant will not seek to terminate the Operating Lease by reason of any default of Borrower without prior written notice thereof to Lender and the lapse thereafter of such time as under the Operating Lease was offered to Borrower in which to remedy the default, and the lapse of 30 days after the expiration of such time as Borrower was permitted to cure such default; provided, however, that with respect to any default of Borrower under the Operating Lease which cannot be remedied within such time, if Lender commences to cure such default within such time and thereafter diligently proceeds with such efforts and pursues the same to completion, Lender shall have such time as is reasonably necessary to complete curing such default. Notwithstanding the foregoing, in the event either Lender or Borrower do not cure or commence curing such default within the time provided to Borrower under the Operating Lease and the nature of the default threatens Tenant's ability to conduct its daily business or threatens to materially or adversely damage its property located on the Mortgaged Property, Tenant shall be permitted to exercise its rights under the Operating Lease;

(o) Manager will not seek to terminate the Management Agreement by reason of any default of Tenant without prior written notice thereof to Lender and the lapse thereafter of such time as under the Management Agreement was offered to Tenant in which to remedy the default, and the lapse of thirty (30) days after the expiration of such time as Tenant was permitted to cure such default; provided, however, that with respect to any default of Tenant under the Management Agreement which cannot be remedied within such time, if Lender commences to cure such default within such time and thereafter diligently proceeds with such efforts and pursues the same to completion, Lender shall have such time as is reasonably necessary to complete curing such default. Notwithstanding the foregoing, in the event either Lender or Tenant do not cure or commence curing such default within the time provided to Tenant under the Management Agreement and the nature of the default threatens Manager's ability to conduct its daily business with respect to the Mortgaged Property or threatens to materially or adversely damage its property located on the Mortgaged Property, Manager shall be permitted to exercise its rights under the Management Agreement;

(p) Tenant will not pay any Rent, fees or other sums due or to become due under the Operating Lease more than thirty (30) days in advance of the date on which the same are due or to become due under the Operating Lease;

(q) Tenant will certify promptly in writing to Lender in connection with any proposed assignment of the Instrument, whether or not any default on the part of Borrower then

exists under the Operating Lease, and will execute such estoppel certificates and subordination agreements as Lender shall reasonably require; and

(r) Manager will certify promptly in writing to Lender in connection with any proposed assignment of the Instrument, whether or not any default on the part of Tenant then exists under the Management Agreement, and will execute such estoppel certificates and subordination agreements as Lender shall reasonably require.

**15. TENANT CERTIFICATIONS.** Tenant certifies as follows:

(a) Tenant has unconditionally accepted delivery of the Mortgaged Property pursuant to the terms of the Operating Lease and is operating the Mortgaged Property as a Class B Multifamily Residential Property;

(b) Except as expressly set forth in the Operating Lease, the Operating Lease does not provide for free Rent, partial Rent, Rent concessions of any kind, for the advance payment of Rent other than as set forth in Section 14(p) above, Rent abatement or offsetting of Rent, and no Rent has been paid for more than thirty (30) days in advance;

(c) Tenant has fully inspected the Mortgaged Property and found the same to be as required by the Operating Lease in good order and repair, and all conditions and duties of an inducement nature under the Operating Lease to be performed by Borrower have been satisfied, including but not limited to payment to Tenant of any Borrower contributions for Improvements, completion by Borrower of the construction of any Improvements to be constructed by Borrower, and payment to Tenant of any consulting fees;

(d) the primary term of the Operating Lease commenced on April 11, 2008 and continues until April 11, 2017, and contains renewal options, as set forth in the Operating Lease;

(e) payment of monthly rent commenced on April 11, 2008 and is paid throughout the term of the Operating Lease;

(f) as of the date of this Assignment, to the best of Tenant's knowledge, neither Borrower nor Tenant is in default under any of the terms, conditions, provisions or agreements of the Operating Lease and Tenant has no offsets, claims or defenses against Borrower with respect to the Operating Lease;

(g) Tenant has paid a security or other deposit to Borrower, pursuant to the terms of the Operating Lease;

(h) Tenant does not, has not and will not use the Mortgaged Property for the storage, treatment, manufacturing, generation, disposal or release into the environment of any petroleum product or substance which is classified as a hazardous substance, pollutant or contaminant under the Federal Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA") or other applicable federal, state and local laws and regulations except for the safe and lawful use and storage of quantities of pre-packaged supplies, cleaning materials and petroleum products customarily used in the operation and maintenance of comparable properties;

(i) Tenant shall not look to Lender, any mortgagee in possession, or successor in title to the Mortgaged Property for accountability for any security deposit or other deposit held by Borrower unless and until such security or other deposit is transferred to Lender;

(j) There is no legal action pending or to the best of Tenant's knowledge threatened which would adversely affect the operations at the Mortgaged Property. Tenant is not currently operating under a consent order or decree, or any other agreement or decree mandated by the courts or a governmental entity that restricts or otherwise affects the operation of the Mortgaged Property;

(k) the Mortgaged Property is operated as a Class B Multifamily Residential Property;

(l) to the best of Tenant's knowledge, there currently exist no grounds for the revocation, suspension or limitation of the Certificate of Occupancy for the Mortgaged Property.

**16. MANAGER CERTIFICATIONS.** Manager certifies as follows:

(a) Manager is managing the Mortgaged Property as a Class B Multifamily Residential Property;

(b) The primary term of the Management Agreement commenced on April 11, 2008 and the initial term expired on April 11, 2011, provided however that the Management Agreement contains one year automatic renewals. The Management Agreement is currently subject to one of the automatic renewal periods. Manager has no rights or options of purchase or first refusal under the Management Agreement or with respect to the Mortgaged Property or any part thereof;

(c) as of the date of this Assignment, to the best of Manager's knowledge, neither Tenant nor Manager is in default under any of the terms, conditions, provisions or agreements of the Management Agreement and Manager has no offsets, claims or defenses against Tenant with respect to the Management Agreement;

(d) Manager does not, has not and will not use the Mortgaged Property for the storage, treatment, manufacturing, generation, disposal or release into the environment of any petroleum product or substance which is classified as a hazardous substance, pollutant or contaminant under CERCLA or other applicable federal, state and local laws and regulations except for the safe and lawful use and storage of quantities of pre-packaged supplies, cleaning materials and petroleum products customarily used in the operation and maintenance of comparable properties.

**17. LICENSING REQUIREMENTS.** Tenant and Manager are in all respects legally authorized to operate the Mortgaged Property as a Class B Multifamily Residential Property under the applicable laws of the Property Jurisdiction. If any licensing or similar regulatory requirement is imposed upon or otherwise becomes applicable to the Mortgaged Property, Borrower, Tenant and/or Manager shall obtain all such licenses required to lawfully operate the Mortgaged Property as a Class B Multifamily Residential Property and shall maintain

such licenses in full force and effect. Borrower, Tenant and Manager acknowledge and agree that all such licenses are subject to the terms of this Assignment.

18. **CONSIDERATION.** As consideration for the material financial benefit to be derived by Tenant and Borrower as a result of Lender's approval of the Operating Lease and making the Loan to Borrower, Tenant and Borrower both acknowledge receipt of good and valuable consideration for Tenant's and Borrower's entry into this Assignment. Borrower and Tenant acknowledge that Tenant is owned by parties who directly or indirectly have an ownership interest in Borrower, are under common management and control and that Tenant will benefit from the Loan. Manager will derive pecuniary gain from the management of the Mortgaged Property. Accordingly, Borrower, Tenant and Manager acknowledge receipt of good and valuable consideration for Manager's and Borrower's entry into this Assignment.

19. **COLLECTIONS.** Tenant and Manager agree that all monies collected on behalf of Borrower shall be deposited in one or more bank accounts in the name of Tenant or Borrower and Tenant and Manager hereby pledge a security interest in the bank accounts to Lender, so that such bank accounts are security for the Loan and shall be subject to the terms of the Instrument and other Loan Documents.

20. **MODIFICATIONS TO LOAN DOCUMENTS.** Any amendments heretofore or hereafter made to any of the Loan Documents, other than this Assignment, shall not require the consent of Tenant or Manager.

21. **LENDER REQUESTS.** Within ten (10) days of written request of Lender, Tenant and Manager will promptly make available to Lender at Borrower's offices or at the office of Manager at the Mortgaged Property, copies of all Leases, Contracts, licenses, books, records, monthly reports, statements of account, budgets, third party payment documentation including but not limited to reimbursement agreements, surveys, statements of deficiencies and plans of correction, and cost reports related to any payments or the right to receive payments from federal, state or local programs, boards, bureaus or agencies, and other items which Tenant or Manager is required to maintain or otherwise maintains under the Operating Lease or Management Agreement, respectively, or which Tenant or Manager maintains for its own purposes with respect to the Mortgaged Property. Upon an Event of Default under the Instrument, Tenant and Manager will furnish promptly to Lender evidence of deposits and withdrawals from any account held or controlled by Tenant or Manager relating to the Mortgaged Property.

22. **TENANT AND MANAGER ASSIGNMENT.** As additional collateral security for the Loan and the observance and performance by Borrower of the terms, covenants and conditions of the Loan Documents, Tenant and Manager, to the extent permissible under applicable law and regulations, and subject to the terms of this Assignment hereby transfer, set over and assign to Lender all of Tenant's and Manager's respective right, title and interest in and to all licenses and any other agreements or permits of any nature whatsoever now or hereafter obtained or entered into by Tenant or Manager with respect to the occupancy, use, operation, maintenance and administration of the Mortgaged Property as a Class B Multifamily Residential Property.

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

24. **GOVERNING LAW.**

(a) This Assignment shall be governed by and construed in accordance with the laws of the Property Jurisdiction, and applicable federal law.

(b) Tenant and Manager agree that any controversy arising under or in relation to this Assignment shall be litigated exclusively in the Property Jurisdiction and Tenant, Manager, Borrower and Lender irrevocably consent to service, jurisdiction, and venue of such course for any such litigation and waive any other venue to which Tenant, Manager, Borrower or Lender might be entitled by virtue of domicile, habitual residence or otherwise.

25. **SUCCESSORS AND ASSIGNS.** This Assignment shall be binding upon Borrower, Tenant and Lender and their respective successors, transferees and assigns, and shall inure to the benefit of and may be enforced by Lender and its successors, transferees and assigns. Borrower and Tenant shall not assign any of their respective rights and obligations under this Assignment without the prior written consent of Lender.

26. **ENTIRE AGREEMENT; AMENDMENTS AND WAIVERS.** This Assignment contains the complete and entire understanding of the parties as to its subject matter. No amendment to this Assignment will be valid unless it is made in writing and executed by the parties to this Assignment. No specific waiver or forbearance for any breach of any of the terms of this Assignment shall be considered as a general waiver of that or any other term of this Assignment.

27. **RELATIONSHIP OF PARTIES.** Nothing contained in this Assignment shall constitute Lender as a joint venturer, partner or agent of Borrower, Tenant or Manager, or render Lender liable for any debts, obligations, acts, omissions or representations of Borrower, Tenant or Manager except as provided herein.

28. **ENFORCEABILITY.** The determination of invalidity, illegality, or unenforceability of any provision of this Assignment, pursuant to judicial decree, shall not affect the validity or enforceability of any other provision of this Assignment, each of which shall remain in full force and effect.

29. **RECITALS.** The recitals set forth above are incorporated herein by reference as if fully set forth in the body of this Assignment.

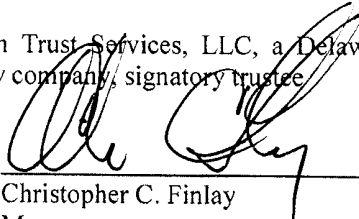
*[Remainder of page intentionally left blank.]*

IN WITNESS WHEREOF, Borrower, Lender, Tenant and Manager have executed this Assignment as of the day and year first above written.

**BORROWER:**

**MISSION MEADOWBROOK, DST,** a Delaware Statutory Trust

By: Mission Trust Services, LLC, a Delaware limited liability company, signatory trustee

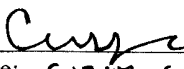
By:   
Name: Christopher C. Finlay  
Title: Manager

STATE OF Virginia )  
COUNTY OF Fairfax ) ss:

On this 10<sup>th</sup> day of October, 2012, before me, a Notary Public in and for the said jurisdiction, personally appeared Christopher C. Finlay, who acknowledged himself to be the Manager of Mission Trust Services, LLC, a Delaware limited liability company, the signatory trustee of Mission Meadowbrook DST, a Delaware statutory trust, which executed the foregoing instrument, and who acknowledged that he, as such Manager of said limited liability company, the signatory trustee of said Delaware statutory trust, did execute the foregoing instrument for and on behalf of said limited liability company, who did execute the foregoing instrument for and on behalf of said Delaware statutory trust and that such signing is the free act and deed of said Delaware statutory trust for the uses, purposes and consideration therein set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

My Commission Expires:  
July 31, 2013

  
Name: Corey Gibson  
Notary Public

(NOTARIAL SEAL)



**LENDER:**

FANNIE MAE

*Michael W. Dick*

By:

Name: Michael W. Dick

Title: Asst. Vice President

STATE OF District )  
COUNTY OF of Columbia ) ss:

On this 13<sup>th</sup> day of October, 2012, before me, a Notary Public in and for the said jurisdiction, personally appeared Michael W. Dick, who acknowledged him/herself to be the Asst. Vice President of Fannie Mae, which executed the foregoing instrument, and who acknowledged that s/he, as such Asst. Vice President of said corporation, did execute the foregoing instrument for and on behalf of said corporation, and that such signing is the free act and deed of said corporation for the uses, purposes and consideration therein set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

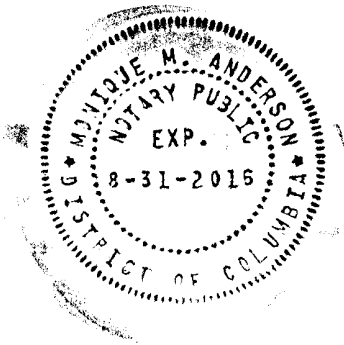
My Commission Expires:

August 31, 2016

(NOTARIAL SEAL)

*Monique M. Anderson*  
Name: Monique M. Anderson  
Notary Public

MONIQUE M. ANDERSON  
NOTARY PUBLIC DISTRICT OF COLUMBIA  
My Commission Expires August 31, 2016









# Fidelity National Title

INSURANCE COMPANY

LOAN POLICY NO. 27-041-06-99416

NTS File No. 08ATL1189

## EXHIBIT "A"

Beginning at a point on the East line of Lot 1, Block 4, Ten Acre Plat "B", Big Field Survey, said point being North 00°02'50" West 10.00 feet from the Southeast corner of said Lot 1, said point also being on the North right-of-way line of 3900 South Street (Project No. 0141), said point of beginning also being North 00°02'50" West 43.00 feet and North 89°55'15" West 33.00 feet from the Salt Lake County Monument located at the intersection of 3900 South and 700 West Street; thence along the said Northerly right-of-way line, North 89°55'15" West 1167.898 feet; thence North 85°10'29" West 199.249 feet; thence South 87°14'14" West 289.737 feet; thence North 559.609 feet to the North line of Lot 2, of said Block 4; thence South 89°59'34" East 1037.593 feet along the North line of Lot 2 and Lot 1 of said Block 4; thence South 56.84 feet; thence East 617.828 feet to the East line of said Lot 1; thence South 00°02'50" East 507.048 feet along the said East line to the point of beginning

Less and excepting therefrom any portion lying within the following described property:

Beginning at a point on a fence line which is North 0°02'50" West 428.488 feet and West 617.901 feet and North 96.90 feet from the Southeast corner of Lot 1, Block 4, Ten Acre Plat "B", Big Field Survey, (said Southeast corner of Lot 1 being North 0°02'50" West 33.00 feet and North 89°55'15" West 33.00 feet from a Salt Lake County Monument in the intersection of 3900 South and 700 West Streets) and running thence South 89°54'28" West along said fence line 1037.594 feet; thence North 50.10 feet to the North line of Lot 2 of said Block 4; thence South 89°59'54" East along the North lines of Lot 2 and Lot 1 of said Block 4, 1037.593 feet; thence South 48.30 feet to the point of beginning.

Also less and excepting therefrom any portion lying within the following described property:

Beginning at a point on the East line of Lot 1, Block 4, Ten Acre Plat "B", Big Field Survey, said point being North 00°02'50" West 508.048 feet from the Southeast corner of said Lot 1, said point also being North 00°02'50" West 541.048 feet and North 89°55'15" West 33.0 feet from the Salt Lake County Monument located at the intersection of 3900 South and 700 West Street; thence West 617.828 feet; thence North 65.84 feet to the North line of said Lot 1, Block 4; thence along the said North line South 89°59'34" East 617.781 feet to the East line of said Lot 1; thence South 00°02'50" East 65.76 feet along the said line to the point of beginning.

BEING THE SAME land shown on that certain plat of survey entitled "ALTA/ACSM Land Title Survey" by Bush & Gudgell, Inc., dated March 10, 2008, last revised April 2, 2008.

AND BEING THE SAME real estate conveyed by deed from Rayman Associates Salt Lake City Limited Partnership, an Illinois limited partnership, to Mission Meadowbrook, DST, a Delaware statutory trust, by Deed recorded on April 14, 2008 in the land records of Salt Lake County, Utah, in Record Book 9594, Page 1288.

15-35-400-084

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**EXHIBIT B**

**Contracts**

**Corporate Contracts**

<u>Vendor:</u>	<u>Type:</u>
Apartment Guide	Advertisement
MFIP	Liability and renter's insurance
MyNewPlace	Advertisement
RealPage	On-Site Software Products
Rent.com	Advertisement
Satisfacts	Resident Services
Waste Remedies	Utility Analysis Services
Hunter Warfield	Collections
Level One	Call Center
Buyer's Access	Purchasing Program
Grace Hill	Training
Ellis	Shopping Services

**Property Specific**

<u>Vendor:</u>	<u>Type:</u>
Comcast	Cable
Mac-Gray	Laundry
Aeroscape	Landscape
For Rent	Advertisement
Apartments.com	Advertisement