

AFTER RECORDING RETURN TO:

Stewart Title Guaranty Company

[Redacted]
[Redacted]
Attn: [Redacted]

Office of the Arlington County Attorney
2100 Clarendon Blvd., Suite 403
Arlington, Virginia 22201
Attn: Robert E. Dawson, Assistant County Attorney

(For Recorder's Use)

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

WITH POWER OF SALE

The maximum aggregate amount of principal to be secured at any one time under this County Deed of Trust, Assignment of Rents and Leases and Security Agreement is \$10,736,579.00.

Name of the noteholder secured by this Deed of Trust: THE COUNTY BOARD OF ARLINGTON COUNTY, VIRGINIA, a body politic

Address at which communications to the noteholder may be mailed or delivered: Department of Community Planning, Housing and Development
2100 Clarendon Boulevard, Suite 700
Arlington, Virginia 22201
ATTN: DAVID CRISTEAL

With a copy to:
Office of the County Attorney
2100 Clarendon Boulevard, Suite 403
Arlington, Virginia 22201
ATTN: ROBERT E. DAWSON

(This Document Serves as a Fixture Filing under Section 9-502 of the Virginia Uniform Commercial Code)
Grantor's Organizational Identification Number: [Redacted]

THIS ARLINGTON COUNTY DEED OF TRUST, ASSIGNMENT OF RENTS AND LEASES AND SECURITY AGREEMENT (this "County Deed of Trust") is made as of the [Redacted] day of March/April, 2018 by **CG1 RESTORATION LIMITED PARTNERSHIP**, a Virginia limited partnership whose address is c/o Wesley Housing Development Corporation, 5515 Cherokee Avenue, Suite 200, Alexandria, Virginia 22312 as grantor (the "Grantor"), **in favor of JULIE MASSIE, ESQ. and SUSAN STOUT, ESQ.**, as trustees, each a resident of Arlington County, Virginia (either of whom may act for both and who are collectively referred to herein as "Trustee"), whose address is c/o Office of the Arlington County Attorney, 2100 Clarendon Blvd., Suite 403, Arlington, Virginia 22201, **for the benefit of THE COUNTY BOARD OF ARLINGTON COUNTY, VIRGINIA**, a body corporate and politic of the Commonwealth of Virginia, acting through its County Attorney and County Manager, as beneficiary and grantee for purposes of indexing (together with its successors and assigns, the "County")

RECITALS

- A. The Grantor and the County have executed an Affordable Housing Investment Fund Loan Agreement dated as of the date herewith (the “**Loan Agreement**”), setting forth certain terms and conditions relating to the County’s Affordable Housing Investment Fund loan in the total amount of **Ten Million Seven Hundred Thirty-Six Thousand Five Hundred Seventy-Nine and 00/100 Dollars (\$10,736,579.00)** (the “**County AHIF Loan**”), evidenced by that certain Promissory Note, dated as of the date herewith, and payable to the County (the “**County AHIF Note**”). The Grantor has further executed a Deed of Declaration of Restrictive Covenants dated as of the date herewith (“**Restrictive Covenants**” and together with the Loan Agreement, the “**Agreements**”). The Agreements set forth certain restrictions, covenants and conditions relating to the Grantor’s ownership, operation, and use of those certain parcels of land with buildings and improvements thereon, including but not limited to [REDACTED] () residential buildings which will contain a post-rehabilitation total of two hundred ten (210) residential apartment units and other amenities appurtenant to the residential apartment units located in Arlington County, Virginia and located on those certain parcels of land located in Arlington County, Virginia at 4435 North Pershing Drive, identified as Arlington County Real Property Code Numbers 20024238, as described in **Exhibit A** attached hereto.
- B. The Grantor desires to secure to the County the payment of the indebtedness evidenced by the County AHIF Note and certain other indebtednesses of the Grantor to the County and the performance of certain covenants made by the Grantor to the County, including those covenants made in the Restrictive Covenants, relating to the Premises (as hereinafter defined).

NOW THEREFORE, in consideration of mutual promises herein contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Grantor, Trustee and County hereby agree as follows:

ARTICLE 1

Incorporation of Recitals; Secured Indebtedness; Definitions; Granting Clauses;

Section 1.0. Incorporation of Recitals. The foregoing recitals are incorporated herein by this reference and made a part hereof.

Section 1.1. Principal Secured. This County Deed of Trust secures the aggregate principal amount of Ten Million Seven Hundred Thirty-Six Thousand Five Hundred Seventy-Nine and 00/100 Dollars (\$10,736,579.00) plus such additional amounts as the County may from time to time advance pursuant to the terms and conditions of the Loan Agreement and this County Deed of Trust, together with interest thereon.

Section 1.2. Definitions. Each of the terms defined herein shall have the meaning assigned to it, such definitions to be applicable equally to the singular and the plural forms of such terms and to all genders. Any term used or defined in the Virginia Uniform Commercial Code, as in effect from time to time, and not defined in this County Deed of Trust or the Loan Agreement has the meaning given to the term in the Virginia Uniform Commercial Code, as in effect from time to time, when used in this County Deed of Trust; provided, however, if a term is defined in Title 8.9 of the Virginia Uniform Commercial Code differently than in another title of the Virginia Uniform Commercial Code, the term has the meaning specified in Title 8.9.

Section 1.3. Granting Clause. In consideration of the provisions of this County Deed of Trust and of the sum of TEN DOLLARS (\$10.00) cash in hand paid and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged by the Grantor, Grantor does hereby GRANT, BARGAIN, SELL, CONVEY, TRANSFER, ASSIGN and SET OVER to Trustee, with GENERAL WARRANTY, all of Grantor’s interest, if any, in the following:

(a) those certain parcels of land described in Exhibit A which is attached hereto and incorporated herein by reference (the "**Land**") together with: (i) any and all buildings, structures, improvements, alterations or appurtenances now or hereafter situated or to be situated on the Land (collectively, the "**Improvements**"); and (ii) all right, title and interest of Grantor, now owned or hereafter acquired, in and to (1) all streets, roads, alleys, easements, rights-of-way, licenses, rights of ingress and egress, vehicle parking rights and public places, existing or proposed, abutting, adjacent, used in connection with or pertaining to the Land or the Improvements; (2) any strips or gores between the Land and abutting or adjacent properties; (3) all options to purchase or lease the Land or the Improvements or any portion thereof or interest therein, and any greater estate in the Land or the Improvements; and (4) all water and water rights, timber, crops and mineral interests on or pertaining to the Land (the Land, Improvements and other rights, titles and interests referred to in this clause (a) being herein sometimes collectively called the "**Premises**");

(b) all fixtures, equipment, systems, machinery, furniture, furnishings, appliances, inventory, goods, building and construction materials, supplies, and articles of personal property, of every kind and character, tangible and intangible (including software embedded therein), now owned or hereafter acquired by Grantor, which are now or hereafter attached to or situated in, on or about the Land or the Improvements, or used in or necessary to the complete and proper planning, development, use, occupancy or operation thereof, or acquired (whether delivered to the Land or stored elsewhere) for use or installation in or on the Land or the Improvements, and all renewals and replacements of, substitutions for and additions to the foregoing (the properties referred to in this clause (b) being herein sometimes collectively called the "**Accessories**," all of which are hereby declared to be permanent accessions to the Land);

(c) all (i) plans and specifications for the Improvements; (ii) Grantor's rights, but not liability for any breach by Grantor, under all commitments (including any commitments for financing to pay any of the Secured Indebtedness, as defined below), insurance policies (or additional or supplemental coverage related thereto, including from an insurance provider meeting the requirements of the Loan Documents or from or through any state or federal government sponsored program or entity), contracts and agreements for the design, construction, operation or inspection of the Improvements and other contracts and general intangibles (including but not limited to payment intangibles, trademarks, trade names, goodwill, software and symbols) related to the Premises or the Accessories or the operation thereof; (iii) deposits and deposit accounts arising from or related to any transactions related to the Premises or the Accessories (including but not limited to Grantor's rights in tenants' security deposits, deposits with respect to utility services to the Premises, and any deposits, deposit accounts or reserves hereunder or under any other Loan Documents (hereinafter defined) for taxes, insurance or otherwise), rebates or refunds of impact fees or other taxes, assessments or charges, money, accounts (including deposit accounts), instruments, documents, promissory notes and chattel paper (whether tangible or electronic) arising from or by virtue of any transactions related to the Premises or the Accessories, and any account or deposit account from which Grantor may from time to time authorize Holder (as hereinafter defined) to debit and/or credit payments due with respect to the Loan; (iv) permits, licenses, franchises, certificates, development rights, commitments and rights for utilities, and other rights and privileges obtained in connection with the Premises or the Accessories; (v) leases, rents, royalties, bonuses, issues, profits, revenues and other benefits of the Premises and the Accessories (without derogation of Article 3 hereof); (vi) as-extracted collateral produced from or allocated to the Land including, without limitation, oil, gas and other hydrocarbons and other minerals and all products processed or obtained therefrom, and the proceeds thereof; and (vii) engineering, accounting, title, legal, and other technical or business data concerning the Property which are in the possession of Grantor or in which Grantor can otherwise grant a security interest; and

(d) all (i) accounts and proceeds (cash or non-cash and including payment intangibles) of or arising from the properties, rights, titles and interests referred to above in this Section 1.3, including but not limited to proceeds of any sale, lease or other disposition thereof, proceeds of each policy of insurance (or additional or supplemental coverage related thereto, including from an insurance provider meeting the requirements of the Loan Documents or from or through any state or federal government sponsored program or entity) relating thereto (including premium refunds), proceeds of the taking thereof or of any rights appurtenant thereto, including change of grade of

streets, curb cuts or other rights of access, by condemnation, eminent domain or transfer in lieu thereof for public or quasi-public use under any law, and proceeds arising out of any damage thereto; (ii) all letter-of-credit rights (whether or not the letter of credit is evidenced by a writing) Grantor now has or hereafter acquires relating to the properties, rights, titles and interests referred to in this Section 1.3; (iii) all commercial tort claims Grantor now has or hereafter acquires relating to the properties, rights, titles and interests referred to in this Section 1.3; and (iv) other interests of every kind and character which Grantor now has or hereafter acquires in, to or for the benefit of the properties, rights, titles and interests referred to above in this Section 1.3 and all property used or useful in connection therewith, including but not limited to rights of ingress and egress and remainders, reversions and reversionary rights or interests; and if the estate of Grantor in any of the property referred to above in this Section 1.3 is a leasehold estate, this conveyance shall include, and the lien and security interest created hereby shall encumber and extend to, all other or additional title, estates, interests or rights which are now owned or may hereafter be acquired by Grantor in or to the property demised under the lease creating the leasehold estate; TO HAVE AND TO HOLD the foregoing rights, interests and properties, and all rights, estates, powers and privileges appurtenant thereto (herein collectively called the "**Property**"), unto Trustee, and his or their successors or substitutes in this trust, and to his or their successors and assigns, in trust, in fee simple forever, subject to the terms, provisions and conditions herein set forth, to secure the obligations of the Grantor under the Promissory Notes and Loan Documents (as hereinafter defined) and all other indebtedness and matters defined as "**Secured Indebtedness**" in Section 1.5 of this County Deed of Trust.

Section 1.4. Security Interest. Grantor hereby grants to Holder (as hereinafter defined) a security interest in all of the Property which constitutes personal property or fixtures, all proceeds and products thereof, and all supporting obligations ancillary to or arising in any way in connection therewith (herein sometimes collectively called the "**Collateral**") to secure the obligations of the Grantor under the Promissory Notes and Loan Documents (as hereinafter defined) and all other indebtedness and matters defined as Secured Indebtedness in Section 1.5 of this County Deed of Trust. In addition to its rights hereunder or otherwise, Holder shall have all of the rights of a secured party under the Virginia Uniform Commercial Code, as in effect from time to time, or under the Uniform Commercial Code in force, from time to time, in any other state to the extent the same is applicable law.

Section 1.5. Secured Indebtedness, Promissory Note, Loan Documents, Other Obligations. This County Deed of Trust is made to secure and enforce the payment and performance of the following promissory notes, obligations, indebtedness, duties and liabilities and all renewals, extensions, supplements, increases, and modifications thereof in whole or in part from time to time (collectively the "**Secured Indebtedness**"): (a) the County AHIF Note and all other promissory notes given in substitution therefor or in modification, supplement, increase, renewal or extension thereof, in whole or in part (such promissory note or promissory notes, whether one or more, as from time to time renewed, extended, supplemented, increased or modified and all other notes given in substitution therefor, or in modification, renewal or extension thereof, in whole or in part, being hereinafter called the "**Promissory Notes**," and County, or the subsequent holder at the time in question of the Promissory Notes or any of the Secured Indebtedness, as hereinafter defined, being herein collectively called "**Holder**"); (b) all indebtedness, liabilities, duties, covenants, promises and other obligations whether joint or several, direct or indirect, fixed or contingent, liquidated or unliquidated, and the cost of collection of all such amounts, owed by Grantor to Holder now or hereafter incurred or arising pursuant to or permitted by the provisions of the Promissory Notes, this County Deed of Trust, the Agreements or any other document now or hereafter evidencing, governing, guaranteeing, securing or otherwise executed in connection with the loan evidenced by the Promissory Notes, including but not limited to any loan or credit agreement, letter of credit or reimbursement agreement, tri-party financing agreement, or other agreement between Grantor and Holder, or among Grantor, Holder and any other party or parties, pertaining to the repayment or use of the proceeds of the loan evidenced by the Promissory Notes (the Promissory Notes, this County Deed of Trust, the Agreements, and such other documents relating to the Promissory Notes (but not including the ROFR Agreement), as they or any of them may have been or may be from time to time renewed, extended, supplemented, increased or modified, being herein sometimes collectively called the "**Loan Documents**"); and (c) all other loans and future advances made by Holder to the Grantor and all other debts, obligations and liabilities of the Grantor of every kind and character now or hereafter existing in favor of Holder, whether direct or indirect, primary or secondary, joint or several, fixed or contingent, secured or unsecured, and whether originally payable to Holder or to a third party and subsequently acquired by Holder, it being contemplated that the Grantor may hereafter become indebted to Holder for

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CGI Restoration Limited Partnership (*Grantor*)
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such further debts, obligations and liabilities; provided, however, and notwithstanding the foregoing provisions of this clause (c), this County Deed of Trust shall not secure any such other loan, advance, debt, obligation or liability with respect to which Holder is by applicable law prohibited from obtaining a lien on real estate nor shall this clause (c) operate or be effective to constitute or require any assumption or payment by any person, in any way, of any debt of any other person to the extent that the same would violate or exceed the limit provided in any applicable usury or other law.

ARTICLE 2
Representations, Warranties and Covenants

Section 2.1. Grantor represents, warrants, and covenants as follows:

(a) **Payment and Performance.** Grantor will make due and punctual payment of the Secured Indebtedness. Grantor will timely and properly perform and comply with all of the covenants, agreements, and conditions imposed upon it by this County Deed of Trust and the other Loan Documents and will not permit a default to occur hereunder or thereunder. Time shall be of the essence in this County Deed of Trust.

(b) **Title and Permitted Encumbrances.** The Grantor covenants to maintain, lawful, good and marketable title to the Property, the Grantor is lawfully seized and possessed of the Property and every part thereof, as described above, and has the right to convey the same, free and clear of all liens, charges, claims, security interests, and encumbrances except for (i) the matters, if any, set forth under the heading "Permitted Encumbrances" in **Exhibit B** hereto and any encumbrances set forth on the County's title policy, (ii) the liens and security interests evidenced by this County Deed of Trust, (iii) statutory liens for real estate taxes and assessments on the Property which are not yet delinquent, and (iv) other liens and security interests (if any) in favor of County (the matters described in the foregoing clauses (i), (ii), (iii) and (iv) being herein called the "**Permitted Encumbrances**"). Grantor, and Grantor's successors and assigns, will warrant and forever defend title to the Property, subject as aforesaid, to Trustee and his successors or substitutes and assigns, against the claims and demands of all persons claiming or to claim the same or any part thereof through Grantor. Grantor will punctually pay, perform, observe and keep all covenants, obligations and conditions in or pursuant to any Permitted Encumbrance and will not modify or permit modification of any Permitted Encumbrance without the prior written consent of Holder, other than the documents related to the Senior Debt (as defined in the Loan Agreement). Inclusion of any matter as a Permitted Encumbrance does not constitute approval or waiver by Holder of any existing or future violation or other breach thereof by Grantor, by the Property or otherwise. No part of the Property constitutes all or any part of the principal residence of Grantor if Grantor is an individual. If any right or interest of Holder in the Property or any part thereof shall be endangered or questioned or shall be attacked directly or indirectly, Trustee and Holder, or either of them (whether or not named as parties to legal proceedings with respect thereto), are hereby authorized and empowered to take such steps as in their discretion may be proper for the defense of any such legal proceedings or the protection of such right or interest of Holder, including but not limited to the employment of independent counsel, the prosecution or defense of litigation, and the compromise or discharge of adverse claims. All expenditures so made of every kind and character shall be a demand obligation (which obligation Grantor hereby promises to pay) owing by Grantor to Holder or Trustee (as the case may be), and the party (Holder or Trustee, as the case may be) making such expenditures shall be subrogated to all rights of the person receiving such payment.

(c) **Taxes and Other Impositions.** Grantor will pay, or cause to be paid, all taxes, assessments and other charges or levies imposed upon or against or with respect to the Property or the ownership, use, occupancy or enjoyment of any portion thereof, or any utility service thereto, as the same become due and payable, including but not limited to all real estate taxes assessed against the Property or any part thereof, and shall deliver promptly to Holder such evidence of the payment thereof as Holder may require.

(d) **Insurance.**

(i) Grantor covenants and agrees that Grantor shall maintain the following insurance:

1. To the extent required by law, Workers' Compensation insurance in accordance with the Virginia Workers' Compensation Act; and

2. Commercial General Liability insurance with limits not less than \$1,000,000.00 per occurrence and \$3,000,000.00 in the aggregate, including coverage for contractual liability, personal injury, broadform property damage, products and completed operations; and

3. Automobile Liability insurance with limits not less than \$1,000,000.00, including coverage for owned, non-owned and hired vehicles, as applicable; provided, however, that if the Grantor does not own or lease vehicles for purposes of this County Deed of Trust, then no automobile insurance shall be required; and

4. All Risk / Property and Fire insurance covering the entire Property for full replacement value.

5. Crime insurance, to include employee dishonesty, in the amount of \$250,000.00 per occurrence, with a deductible not to exceed \$25,000.00.

(ii) In addition to the insurance foregoing, prior to commencing the Renovation Project, the Grantor shall maintain coverage of the type now known as builder's completed value risk insurance, as delineated on a Builder's Risk 100% Value Non-Reporting Form. Such insurance shall insure against direct physical loss or damage by fire, lightning wind, storm, explosion, collapse, earth movement, land movement or earthquake, flood, vandalism, malicious mischief, glass breakage and such other causes as are covered by such form of insurance. Such policy shall include (A) a "Replacement Cost Endorsement" in amount not less than 100% of the then full replacement cost, to be determined at least once annually and subject to reasonable approval by the County, and (B) an endorsement to include coverage for budgeted soft costs (including gap loan interest, building permit fees, construction inspection fees, builder's risk insurance, and property taxes during construction and/or renovation). The replacement cost coverage shall be for work performed and equipment, supplies and materials furnished to and which will become part of the Property without deduction for physical depreciation and with a deductible not exceeding \$50,000.00 per occurrence.

(iii) All insurance required by this County Deed of Trust shall be with a company reasonably acceptable to the County and authorized to transact business in the Commonwealth of Virginia. The required insurance shall be provided under an occurrence form, and shall be maintained continuously so long as any County Promissory Note relating to this County Deed of Trust is outstanding. Should any of the required insurance be provided under a form of coverage that includes an annual aggregate limit or provides that claims investigation or legal defense costs be included in such annual aggregate limit, such annual aggregate limit shall be three times the occurrence limits specified above.

(iv) Commercial, General Liability, All Risk / Property, Fire and Automobile Liability insurance policies shall be endorsed to name as an "Additional Insured" the County, and its respective officers, agents and employees and shall further provide that such insurance is primary insurance to any insurance or self-insurance maintained by the County and that the insurance of the Additional Insureds shall not be called upon to contribute to a loss covered by the County's insurance.

(v) Grantor shall deliver certificates of insurance to the County showing that Grantor has in effect the insurance required by this County Deed of Trust. The Grantor shall deliver a new or amended certificate of insurance promptly after any change is made in any insurance policy which would alter the information on the certificate previously delivered to the County. Acceptance or approval of insurance shall in no way modify or

change the indemnification clause contained in Section 8.04 of the Loan Agreement, which shall remain in full force and effect.

(vi) All policies and bonds shall be endorsed to provide thirty (30) days prior written notice to the County of cancellation, reduction in coverage, or intent not to renew (10 days for cancellation due to nonpayment of premium) and such written notice shall be provided to the address for notices to the County.

(vii) Grantor covenants and agrees that during the pendency of the Restrictive Covenants recorded against the Property, Grantor and any successor shall use any insurance proceeds awarded to repair or replace any damage to the Property if such repair or replacement is feasible.

(e) **Intentionally Omitted.**

(f) **Condemnation.** Grantor shall notify Holder promptly of any threatened or pending proceeding for condemnation affecting the Property or arising out of damage to the Property, and Grantor shall, at Grantor's expense, diligently prosecute any such proceedings. Holder, subject to the rights of senior lien holders, shall have the right (but not the obligation) to participate in any such proceeding and to be represented by counsel of its own choice. Holder, subject to the rights of senior lien holders, shall be entitled to receive all sums which may be awarded or become payable to Grantor for the condemnation of the Property, or any part thereof, for public or quasi-public use, or by virtue of private sale in lieu thereof, and any sums which may be awarded or become payable to Grantor for injury or damage to the Property. Grantor shall, promptly upon request of Holder, execute such additional assignments and other documents as may be necessary from time to time to permit such participation and to enable Holder to collect and receipt for any such sums. All such sums are hereby assigned to Holder, and shall, after deduction therefrom of all reasonable expenses actually incurred by Holder, including reasonable attorneys' fees, at Holder's option be (1) released to Grantor, or (2) applied (upon compliance with such terms and conditions as may be reasonably required by Holder) to repair or restoration of the Property so affected, or (3) applied to the payment of the Secured Indebtedness in such order and manner as Holder, in its sole discretion, may elect, whether or not due; provided, however, that during the 15-year compliance period of the Property in accordance with the federal low-income housing tax credit program, such sums shall be applied to repair or restoration unless such repair or restoration is not feasible. In any event the unpaid portion of the Secured Indebtedness shall remain in full force and effect and the payment thereof shall not be excused. Holder shall not be, under any circumstances, liable or responsible for failure to collect or to exercise diligence in the collection of any such sum or for failure to see to the proper application of any amount paid over to Grantor. Holder is hereby authorized, in the name of Grantor, to execute and deliver valid acquittances for, and to appeal from, any such award, judgment or decree. All costs and expenses (including but not limited to reasonable attorneys' fees) incurred by Holder in connection with any condemnation shall be a demand obligation owing by Grantor (which Grantor hereby promises to pay) to Holder pursuant to this County Deed of Trust.

(g) **Compliance with Legal Requirements.** The Property and the use, operation and maintenance thereof and all activities thereon do and shall at all times comply with all applicable Legal Requirements (hereinafter defined). The Property is not, and shall not be, dependent on any other property or premises or any interest therein other than the Property to fulfill any requirement of any Legal Requirement. Grantor shall not, by act or omission, permit any building or other improvement not subject to the lien of this County Deed of Trust to rely on the Property or any interest therein to fulfill any requirement of any Legal Requirement. No improvement upon or use of any part of the Property constitutes a nonconforming use under any zoning law or similar law or ordinance. Grantor has obtained and shall preserve in force all requisite zoning, utility, building, health, environmental and operating permits from the governmental authorities having jurisdiction over the Property.

If Grantor receives a notice or claim from any person that the Property, or any use, activity, operation or maintenance thereof or thereon, is not in compliance with any Legal Requirement, Grantor will promptly furnish a copy of such notice or claim to Holder. Grantor has received no notice and has no knowledge of any such noncompliance. As used in this County Deed of Trust: (i) the term "**Legal Requirement**" means any Law (hereinafter

defined), agreement, covenant, restriction, easement or condition (including, without limitation of the foregoing, any condition or requirement imposed by any insurance or surety company), as any of the same now exists or may be changed or amended or come into effect in the future; and (ii) the term "Law" means any applicable federal, state or local law, statute, ordinance, code, rule, regulation, license, permit, authorization, decision, order, injunction or decree, domestic or foreign.

(h) **Maintenance, Repair and Restoration.** Grantor will keep the Property in good order, repair, operating condition and appearance in accordance with industry standards for similar affordable residential projects, causing all necessary repairs, renewals, replacements, additions and improvements to be promptly made, and will not allow any of the Property to be misused, abused or wasted or to deteriorate. Notwithstanding the foregoing, Grantor will not, without the prior written consent of Holder, (i) remove from the Property any fixtures or personal property covered by this County Deed of Trust except such as is replaced by Grantor by an article of equal suitability and value, owned by Grantor, free and clear of any lien or security interest (except that created by this County Deed of Trust), or (ii) make any structural alteration to the Property or any other alteration thereto which impairs the value thereof. If any act or occurrence of any kind or nature (including any condemnation or any casualty for which insurance was not obtained or obtainable) shall result in damage to or loss or destruction of the Property, Grantor shall give prompt notice thereof to Holder and Grantor shall promptly, at Grantor's sole cost and expense and regardless of whether insurance or condemnation proceeds (if any) shall be available or sufficient for the purpose, secure the Property as necessary and commence and continue diligently to completion to restore, repair, replace and rebuild the Property as nearly as possible to its value, condition and character immediately prior to the damage, loss or destruction.

(i) **No Other Liens.** Grantor will not, without the prior written consent of Holder, create, place or permit to be created or placed, or through any act or failure to act, acquiesce in the placing of, or allow to remain, any deed of trust, mortgage, voluntary or involuntary lien, whether statutory, constitutional or contractual, security interest, encumbrance or charge, or conditional sale or other title retention document, against or covering the Property, or any part thereof, other than the Permitted Encumbrances, regardless of whether the same are expressly or otherwise subordinate to the lien or security interest created in this County Deed of Trust, and should any of the foregoing become attached hereafter in any manner to any part of the Property without the prior written consent of Holder, Grantor will cause the same to be promptly discharged and released. Grantor will own all parts of the Property and will not acquire any fixtures, equipment or other property (including software embedded therein) forming a part of the Property pursuant to a lease, license, security agreement or similar agreement, whereby any party has or may obtain the right to repossess or remove same, without the prior written consent of the Holder. If Holder consents to the voluntary grant by Grantor of any deed of trust, lien, security interest, or other encumbrance (hereinafter called "**Subordinate Lien**") covering any of the Property or if the foregoing prohibition is determined by a court of competent jurisdiction to be unenforceable as to a Subordinate Lien, any such Subordinate Lien shall contain express covenants to the effect that: (1) the Subordinate Lien is unconditionally subordinate to this County Deed of Trust and all Leases (hereinafter defined); (2) if any action (whether judicial or pursuant to a power of sale) shall be instituted to foreclose or otherwise enforce the Subordinate Lien, no tenant of any of the Leases (hereinafter defined) shall be named as a party defendant, and no action shall be taken that would terminate any occupancy or tenancy without the prior written consent of Holder; (3) Rents (hereinafter defined), if collected by or for the holder of the Subordinate Lien, shall be applied first to the payment of the Secured Indebtedness then due and expenses incurred in the ownership, operation and maintenance of the Property in such order as Holder may determine, prior to being applied to any indebtedness secured by the Subordinate Lien; (4) written notice of default under the Subordinate Lien and written notice of the commencement of any action (whether judicial or pursuant to a power of sale) to foreclose or otherwise enforce the Subordinate Lien or to seek the appointment of a receiver for all or any part of the Property shall be given to Holder with or promptly after the occurrence of any such default or commencement; and (5) neither the holder of the Subordinate Lien, nor any purchaser at foreclosure thereunder, nor anyone claiming by, through or under any of them shall succeed to any of Grantor's rights hereunder without the prior written consent of Holder. Notwithstanding the foregoing, the lien of this County Deed of Trust shall be subordinate to the lien of the Senior Debt (as defined in the Loan Agreement) (the "**Senior Trust**"), which Senior Trust is to be recorded and filed for record in the Arlington County Land Records either prior to or after the recordation of this County Deed of Trust, and shall have this County Deed of Trust and other documents relating to the County AHIF Loan subordinated to the

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Julie Massie and Susan Stout (*Trustee / Grantee*)

Senior Trust.

(j) **Operation of Property.** Grantor will operate the Property in a good and workmanlike manner and in accordance with all Legal Requirements and will pay all fees or charges of any kind in connection therewith. Grantor will keep the Property occupied so as not to impair the insurance carried thereon. Grantor will not use or occupy or conduct any activity on, or, using commercially reasonable efforts, allow the use or occupancy of or the conduct of any activity on, the Property in any manner which violates any Legal Requirement or which constitutes a public or private nuisance or which makes void, voidable or cancelable, or increases the premium of, any insurance then in force with respect thereto. Grantor will not initiate or consent to any zoning reclassification of the Property or seek any variance under existing zoning ordinances applicable to the Property or use or permit the use of the Property in such a manner which would result in such use becoming a nonconforming use under applicable zoning ordinances or other Legal Requirement. Grantor will not impose any easement (other than utility easements in the ordinary course of the operation of the Property), restrictive covenant or encumbrance upon the Property, execute or file any subdivision plat or condominium declaration affecting the Property or consent to the annexation of the Property to any municipality, without the prior written consent of Holder. Grantor will preserve, protect, renew, extend and retain all material rights and privileges granted for or applicable to the Property. Without the prior written consent of Holder, there shall be no drilling or exploration for or extraction, removal or production of any mineral, hydrocarbon, gas, natural element, compound or substance (including sand and gravel) from the surface or subsurface of the Land regardless of the depth thereof or the method of mining or extraction thereof. Grantor will cause all debts and liabilities of any character (including without limitation all debts and liabilities for labor, material and equipment (including software embedded therein) and all debts and charges for utilities servicing the Property) incurred in the construction, maintenance, operation and development of the Property to be promptly paid, except to the extent Grantor is contesting the same in good faith.

(k) **Financial Matters.** Grantor is solvent after giving effect to all borrowings contemplated by the Loan Documents and no proceeding under any Debtor Relief Law (hereinafter defined) is pending (or, to Grantor's knowledge, threatened) by or against Grantor, or any partner of Grantor as a debtor. All reports, statements, plans, budgets, applications, agreements and other data and information heretofore furnished or hereafter to be furnished by or on behalf of Grantor to Holder in connection with the loan or loans evidenced by the Loan Documents (including, without limitation, all financial statements and financial information) are and will be true, correct and complete in all material respects as of their respective dates and do not and will not omit to state any fact or circumstance necessary to make the statements contained therein not materially misleading. No material adverse change has occurred since the dates of such reports, statements and other data in the financial condition of Grantor or, to Grantor's knowledge, of any tenant under any lease described therein. For the purposes of this paragraph, "Grantor" shall also include any person liable directly or indirectly for the Secured Indebtedness or any part thereof and any partner of Grantor.

(l) **Status of Grantor; Suits and Claims; Loan Documents.** If Grantor is a corporation, partnership, limited liability company, or other legal entity, Grantor is and will continue to be (i) duly organized, validly existing and in good standing under the laws of its state of organization, (ii) authorized to do business in, and in good standing in, each state in which the Property is located, and (iii) possessed of all requisite power and authority to carry on its business and to own and operate the Property. Each Loan Document executed by Grantor has been duly authorized, executed and delivered by Grantor, and the obligations thereunder and the performance thereof by Grantor in accordance with their terms are and will continue to be within Grantor's power and authority (without the necessity of joinder or consent of any other person), are not and will not be in contravention of any Legal Requirement or any other document or agreement to which Grantor or the Property is subject, and do not and will not result in the creation of any encumbrance against any assets or properties of Grantor, or any other person liable, directly or indirectly, for any of the Secured Indebtedness, except as expressly contemplated by the Loan Documents. There is no suit, action, claim, investigation, inquiry, proceeding or demand pending (or, to Grantor's knowledge, threatened) against Grantor or against any other person liable directly or indirectly for the Secured Indebtedness or which affects the Property (including, without limitation, any challenges or other similar actions pertains to Grantor's title to the

Property) or the validity, enforceability or priority of any of the Loan Documents. There is no judicial or administrative action, suit or proceeding pending (or, to Grantor's knowledge, threatened) against Grantor, or against any other person liable directly or indirectly for the Secured Indebtedness, except as has been disclosed in writing to Holder in connection with the loan evidenced by the Promissory Notes. The Loan Documents constitute legal, valid and binding obligations of Grantor enforceable in accordance with their terms, except as the enforceability thereof may be limited by Debtor Relief Laws (hereinafter defined) and except as the availability of certain remedies may be limited by general principles of equity. Grantor is not a "foreign person" within the meaning of the Internal Revenue Code of 1986, as amended, Sections 1445 and 7701 (i.e. Grantor is not a non-resident alien, foreign corporation, foreign partnership, foreign trust or foreign estate as those terms are defined therein and in any regulations promulgated thereunder). Each loan evidenced by the Promissory Notes is solely for business and/or investment purposes, and is not intended for personal, family, household or agricultural purposes. Grantor further warrants that the proceeds of the Promissory Note shall be used for commercial purposes and stipulates that each loan evidenced by the Promissory Notes shall be construed for all purposes as a commercial loan. Grantor's exact legal name is correctly set forth at the end of this County Deed of Trust. If Grantor is not an individual, Grantor is an organization of the type and (if not an unregistered entity) is incorporated in or organized under the laws of the state specified in the introductory paragraph of this County Deed of Trust. If Grantor is an unregistered entity (including, without limitation, a general partnership) it is organized under the laws of the state specified in the introductory paragraph of this County Deed of Trust. Grantor will not cause or permit any change to be made in its name, identity (including its trade name or names), or corporate structure or partnership, unless Grantor shall have notified Holder in writing of such change at least 30 days prior to the effective date of such change, and shall have first taken all action required by Holder for the purpose of further perfecting or protecting the lien and security interest of Holder in the Property, other than the admission of investor partners (if any) and any Transfer (as defined in the Loan Agreement) allowed under Section 5.03 of the Loan Agreement. In addition, Grantor shall not change its corporate structure or partnership without first obtaining the prior written consent of Holder, other than the admission of investor partners (if any) of Grantor and any Transfer (as defined in the Loan Agreement) allowed under Section 5.3 of the Loan Agreement. Grantor's principal place of business and chief executive office, and the place where Grantor keeps its books and records, including recorded data of any kind or nature, regardless of the medium of recording including, without limitation, software, writings, plans, specifications and schematics concerning the Property, has for the preceding four months (or, if less, the entire period of the existence of Grantor) been and will continue to be (unless Grantor notifies Holder of any change in writing at least 30 days prior to the date of such change) the address of Grantor set forth at the end of this County Deed of Trust. If Grantor is an individual, Grantor's principal residence has for the preceding four months been and will continue to be (unless Grantor notifies Holder of any change in writing at least 30 days prior to the date of such change) the address of the principal residence of Grantor set forth at the end of this County Deed of Trust. Grantor's organizational identification number, if any, assigned by the state of incorporation or organization is correctly set forth on the first page of this County Deed of Trust. Grantor shall promptly notify Holder (i) of any change of its organizational identification number, or (ii) if Grantor does not now have an organization identification number and later obtains one, of such organizational identification number.

(m) **Intentionally Omitted.**

(n) **Further Assurances.** Grantor will, promptly on request of Holder, (i) correct any defect, error or omission which may be discovered in the contents, execution or acknowledgment of this County Deed of Trust or any other Loan Document; (ii) execute, acknowledge, deliver, procure and record and/or file such further documents (including, without limitation, further deeds of trust, security agreements, and assignments of rents or leases) and do such further acts as may be necessary, desirable or proper in the reasonable determination of Holder to carry out more effectively the purposes of this County Deed of Trust and the other Loan Documents, to more fully identify and subject to the liens and security interests hereof any property intended to be covered hereby (including specifically, but without limitation, any renewals, additions, substitutions, replacements, or appurtenances to the Property) or as deemed advisable by Holder to protect the lien or the security interest hereunder against the rights or interests of third persons; and (iii) provide such certificates, documents, reports, information, affidavits and other instruments and do such further acts as may be necessary, desirable or proper in the reasonable determination of Holder to enable Holder to comply with the requirements or requests of any agency having jurisdiction over Holder or any

examiners of such agencies with respect to the indebtedness secured hereby, Grantor or the Property. Grantor shall pay all costs connected with any of the foregoing, which shall be a demand obligation owing by Grantor (which Grantor hereby promises to pay) to Holder pursuant to this County Deed of Trust.

(o) **Fees and Expenses.** Without limitation of any other provision of this County Deed of Trust or of any other Loan Document and to the extent not prohibited by applicable law, Grantor will pay, and will reimburse to Holder and/or Trustee on demand to the extent paid by Holder and/or Trustee: (i) all appraisal fees, filing, registration and recording fees, recordation, transfer and other taxes, brokerage fees and commissions, abstract fees, title search or examination fees, title policy and endorsement premiums and fees, uniform commercial code search fees, judgment and tax lien search fees, escrow fees, reasonable attorneys' fees, architect fees, engineer fees, construction consultant fees, environmental inspection fees, survey fees, and all other costs and expenses of every character incurred by Grantor or Holder and/or Trustee in connection with the preparation of the Loan Documents, the evaluation, closing and funding of the loan evidenced by the Loan Documents, and any and all amendments and supplements to this County Deed of Trust, the Promissory Notes or any other Loan Documents or any approval, consent, waiver, release or other matter requested or required hereunder or thereunder, or otherwise attributable or chargeable to Grantor as owner of the Property; and (ii) all costs and expenses, including reasonable attorneys' fees and expenses, incurred or expended in connection with the exercise of any right or remedy, or the defense of any right or remedy or the enforcement of any obligation of Grantor, hereunder or under any other Loan Document.

(p) **Indemnification.** Grantor shall indemnify, defend and hold Holder, Trustee, and respective County Board members, officers, employees, agents, successors and assigns harmless from and against: (a) any and all claims, liabilities and losses whatsoever (together with any expenses related thereto, including but not limited to, damages, court costs and reasonable attorneys fees) occurring to or resulting from any and all persons, firms or corporations furnishing or supplying work, services, materials, or supplies in connection with the performance of this County Deed of Trust, (b) any and all claims, liabilities and losses occurring or resulting to any person, firm, or corporation for damage, injury, or death arising out of or connected with Grantor's performance of this County Deed of Trust, including but not limited to any such claims, liabilities or losses which occur on or adjacent to the Property, and (c) such claims, liabilities, or losses which arise out of the renovation, construction and operation of the Property. "**Grantor's performance**" includes Grantor's action or inaction and the action or inaction of Grantor's officers, employees, agents, contractors, and subcontractors. This indemnification and hold harmless obligation shall not extend to any claim to the extent arising out of the gross negligence or willful misconduct of Holder, Trustee, or respective County employees and agents. The provision of this Section 2.1(p) shall survive the expiration of the Term or other termination of the Loan Agreement and the re-conveyance of this County Deed of Trust.

(q) **Records and Financial Reports.** Grantor will keep accurate books and records in accordance with sound accounting principles in which full, true and correct entries shall be promptly made with respect to the Property and the operation thereof, and will permit all such books and records, and all recorded data of any kind or nature, regardless of the medium of recording including, without limitation, all software, writings, plans, specifications and schematics to be inspected and copied, and the Property to be inspected and photographed, by Holder and its representatives during normal business hours and at any other reasonable times. Grantor will furnish to Holder all required financial statements and fulfill all reporting requirements as set forth in any of the other Loan Documents. Each financial statement submitted pursuant to this paragraph shall be prepared in accordance with generally accepted accounting principles, consistently applied, and be certified in writing as true and correct in all material respects by Grantor (or if Grantor is not a natural person, by a representative of Grantor acceptable to Holder). Grantor will furnish to Holder at Grantor's expense all evidence which Holder may from time to time reasonably request upon forty eight (48) hours advanced notice as to compliance with all provisions of the Loan Documents. Any inspection or audit of the Property or the books and records, including recorded data of any kind or nature, regardless of the medium of recording including, without limitation, software, writings, plans, specifications and schematics of Grantor, or the procuring of documents and financial and other information, by or on behalf of Holder shall be for Holder's protection only, and shall not constitute any assumption of responsibility to Grantor or anyone else with regard to the condition, construction, maintenance or operation of the Property nor Holder's approval of any

certification given to Holder nor relieve Grantor of any of Grantor's obligations. Holder may from time to time assign or grant participations in the Secured Indebtedness and Grantor consents to the delivery by Holder to any acquirer or prospective acquirer of any interest or participation in or with respect to all or part of the Secured Indebtedness such information as Holder now or hereafter has relating to the Property, Grantor, any party obligated for payment of any part of the Secured Indebtedness, any tenant or guarantor under any lease affecting any part of the Property and any agent or guarantor under any management agreement affecting any part of the Property, subject in all cases to usual and customary confidentiality requirements and all applicable laws, including but not limited to the Virginia Freedom of Information Act.

(r) **Taxes on Promissory Note or Deed of Trust.** Grantor will promptly pay all income, franchise and other taxes owing by Grantor and any stamp, documentary, recordation and transfer taxes or other taxes (unless such payment by Grantor is prohibited by law) which may be required to be paid with respect to the Promissory Notes, this County Deed of Trust or any other instrument evidencing or securing any of the Secured Indebtedness. In the event of the enactment after this date of any law of any governmental entity applicable to Holder, the Promissory Notes, the Property or this County Deed of Trust deducting from the value of property for the purpose of taxation any lien or security interest thereon, or imposing upon Holder the payment of the whole or any part of the taxes or assessments or charges or liens herein required to be paid by Grantor, or changing in any way the laws relating to the taxation of deeds of trust or mortgages or security agreements or debts secured by deeds of trust or mortgages or security agreements or the interest of the mortgagee or secured party in the property covered thereby, or the manner of collection of such taxes, so as to affect this County Deed of Trust or the Secured Indebtedness or Holder, then, and in any such event, Grantor, upon demand by Holder, shall pay such taxes, assessments, charges or liens, or reimburse Holder therefor; provided, however, that if in the opinion of counsel for Holder (i) it might be unlawful to require Grantor to make such payment or (ii) the making of such payment might result in the imposition of interest beyond the maximum amount permitted by law, then and in such event, Holder may elect, by notice in writing given to Grantor, to declare all of the Secured Indebtedness to be and become due and payable sixty (60) days from the giving of such notice.

(s) **Intentionally Omitted.**

Section 2.2. Performance by Holder on Grantor's Behalf. Grantor agrees that, if Grantor fails to perform any act or to take any action which under any Loan Document Grantor is required to perform or take, or to pay any money which under any Loan Document Grantor is required to pay, and whether or not the failure then constitutes a default hereunder or thereunder, and whether or not there has occurred any default or defaults hereunder or the Secured Indebtedness has been accelerated, Holder, after giving at least two (2) business days' prior notice to the Grantor, in Grantor's name or its own name, may, but shall not be obligated to, perform or cause to be performed such act or take such action or pay such money, and any expenses so incurred by Holder and any money so paid by Holder shall be a demand obligation owing by Grantor to Holder (which obligation Grantor hereby promises to pay), shall be a part of the indebtedness secured hereby, and Holder, upon making such payment, shall be subrogated to all of the rights of the person, entity or body politic receiving such payment. Holder and its designees shall have the right to enter upon the Property at any time and from time to time for any such purposes. No such payment or performance by Holder shall waive or cure any default or waive any right, remedy or recourse of Holder. Any such payment may be made by Holder in reliance on any statement, invoice or claim without inquiry into the validity or accuracy thereof. Each amount due and owing by Grantor to Holder pursuant to this County Deed of Trust shall bear interest, from the date such amount becomes due until paid, at the rate per annum provided in the Promissory Notes for interest on past due principal owed on the Promissory Notes but never in excess of the maximum nonusurious amount permitted by applicable law, which interest shall be payable to Holder on demand; and all such amounts, together with such interest thereon, shall automatically and without notice be a part of the indebtedness secured hereby. The amount and nature of any expense by Holder hereunder and the time when paid shall be fully established by the certificate of Holder or any of Holder's officers or agents.

Section 2.3. Absence of Obligations of Holder with Respect to Property. Notwithstanding anything

in this County Deed of Trust to the contrary, including, without limitation, the definition of "Property" and/or the provisions of Article 3 hereof, (i) to the extent permitted by applicable law, the Property is composed of Grantor's rights, title and interests therein but not Grantor's obligations, duties or liabilities pertaining thereto, (ii) Holder neither assumes nor shall have any obligations, duties or liabilities in connection with any portion of the items described in the definition of "Property" herein, either prior to or after obtaining title to such Property, whether by foreclosure sale, the granting of a deed in lieu of foreclosure or otherwise, and (iii) Holder may, at any time prior to or after the acquisition of title to any portion of the Property as above described, advise any party in writing as to the extent of Holder's interest therein and/or expressly disaffirm in writing any rights, interests, obligations, duties and/or liabilities with respect to such Property or matters related thereto. Without limiting the generality of the foregoing, it is understood and agreed that Holder shall have no obligations, duties or liabilities prior to or after acquisition of title to any portion of the Property, as lessee under any lease or purchaser or seller under any contract or option unless Holder elects otherwise by written notification.

Section 2.4. Authorization to File Financing Statements; Power of Attorney. Grantor hereby authorizes Holder at any time and from time to time to file any initial financing statements, amendments thereto and continuation statements as authorized by applicable law, reasonably required by Holder to establish or maintain the validity, perfection and priority of the security interests granted in this County Deed of Trust. For purposes of such filings, Grantor agrees to furnish any information reasonably requested by Holder promptly upon request by Holder. Grantor also ratifies its authorization for Holder to have filed any like initial financing statements, amendments thereto or continuation statements if filed prior to the date of this County Deed of Trust. Grantor hereby irrevocably constitutes and appoints Holder and any officer or agent of Holder, with full power of substitution, as its true and lawful attorneys-in-fact with full irrevocable power and authority in the place and stead of Grantor or in Grantor's own name to execute in Grantor's name any such documents and to otherwise carry out the purposes of this Section 2.4, to the extent that Grantor's authorization above is not sufficient. To the extent permitted by law, Grantor hereby ratifies all acts said attorneys-in-fact shall lawfully do, have done in the past or cause to be done in the future by virtue hereof. This power of attorney is a power coupled with an interest and shall be irrevocable.

ARTICLE 3
Assignment of Rents and Leases

Section 3.1. Assignment. Grantor hereby assigns to Holder all Rents (hereinafter defined) and all of Grantor's rights in and under all Leases (hereinafter defined). So long as no Default (hereinafter defined) has occurred and is continuing, Grantor shall have a license (which license shall terminate automatically and without further notice upon the occurrence of a Default) to collect, but not prior to accrual, the Rents under the Leases and, where applicable, subleases, such Rents to be held in trust for Holder, and to otherwise deal with all Leases as permitted by this County Deed of Trust. Each month, provided no Default has occurred and is continuing, Grantor may retain such Rents as were collected that month and held in trust for Holder; provided, however, that all Rents collected by Grantor shall be applied solely to the ordinary and necessary expenses of owning and operating the Property, paid to Holder or as otherwise set forth in the Loan Agreement. Upon the revocation of such license, all Rents shall be paid directly to Holder and not through the Grantor, all without the necessity of any further action by Holder, including, without limitation, any action to obtain possession of the Land, Improvements or any other portion of the Property or any action for the appointment of a receiver. Grantor hereby authorizes and directs the tenants under the Leases to pay Rents to Holder upon written demand by Holder, without further consent of Grantor, without any obligation of such tenants to determine whether a Default has in fact occurred and regardless of whether Holder has taken possession of any portion of the Property, and the tenants may rely upon any written statement delivered by Holder to the tenants. Any such payments to Holder shall constitute payments to Grantor under the Leases, and Grantor hereby irrevocably appoints Holder as its attorney-in-fact to do all things, after a Default, which Grantor might otherwise do with respect to the Property and the Leases thereon, including, without limitation, (i) collecting Rents with or without suit and applying the same, less expenses of collection, to any of the obligations secured hereunder or to expenses of operating and maintaining the Property (including reasonable reserves for anticipated expenses), at the option of the Holder, all in such manner as may be determined by Holder, or at the option of Holder, holding the same as security for the

payment of the Secured Obligations, (ii) leasing, in the name of Grantor, the whole or any part of the Property which may become vacant, and (iii) employing agents therefor and paying such agents reasonable compensation for their services. The curing of such Default, unless other Defaults also then exist, shall entitle Grantor to recover its aforesaid license to do any such things which Grantor might otherwise do with respect to the Property and the Leases thereon and to again collect such Rents. The powers and rights granted in this paragraph shall be in addition to the other remedies herein provided for upon the occurrence of a Default and may be exercised independently of or concurrently with any of said remedies. Nothing in the foregoing shall be construed to impose any obligation upon Holder to exercise any power or right granted in this paragraph or to assume any liability under any Lease of any part of the Property and no liability shall attach to Holder for failure or inability to collect any Rents under any such Lease. The assignment contained in this Section shall become null and void upon the release of this County Deed of Trust. As used herein: (i) "Lease" means each existing or future lease, sublease (to the extent of Grantor's rights thereunder) or other agreement under the terms of which any person has or acquires any right to occupy or use the Property, or any part thereof, or interest therein, and each existing or future guaranty of payment or performance thereunder, and all extensions, renewals, modifications and replacements of each such lease, sublease, agreement or guaranty; and (ii) "Rents" means all of the rents, revenue, income, profits and proceeds derived and to be derived from the Property or arising from the use or enjoyment of any portion thereof or from any Lease, including but not limited to the proceeds from any negotiated lease termination or buyout of such Lease, liquidated damages following default under any such Lease, all proceeds payable under any policy of insurance covering loss of rents resulting from untenability caused by damage to any part of the Property, all of Grantor's rights to recover monetary amounts from any tenant in bankruptcy including, without limitation, rights of recovery for use and occupancy and damage claims arising out of Lease defaults, including rejections, under any applicable Debtor Relief Law (hereinafter defined), together with any sums of money that may now or at any time hereafter be or become due and payable to Grantor by virtue of any and all royalties, overriding royalties, bonuses, delay rentals and any other amount of any kind or character arising under any and all present and all future oil, gas, mineral and mining leases covering the Property or any part thereof, and all proceeds and other amounts paid or owing to Grantor under or pursuant to any and all contracts and bonds relating to the construction or renovation of the Property.

Section 3.2. Intentionally Omitted.

Section 3.3. Intentionally Omitted.

Section 3.4. No Liability of Holder. Holder's acceptance of this assignment shall not be deemed to constitute Holder a "mortgagee in possession," nor obligate Holder to appear in or defend any proceeding relating to any Lease or to the Property, or to take any action hereunder, expend any money, incur any expenses, or perform any obligation or liability under any Lease, or assume any obligation for any deposit delivered to Grantor by any tenant and not as such delivered to and accepted by Holder. Holder shall not be liable for any injury or damage to person or property in or about the Property, or for Holder's failure to collect or to exercise diligence in collecting Rents, but shall be accountable only for Rents that it shall actually receive. Neither the assignment of Leases and Rents nor enforcement of Holder's rights regarding Leases and Rents (including collection of Rents) nor possession of the Property by Holder nor Holder's consent to or approval of any Lease (nor all of the same), shall render Holder liable on any obligation under or with respect to any Lease or constitute affirmation of, or any subordination to, any Lease, occupancy, use or option.

If Holder seeks or obtains any judicial relief regarding Rents or Leases, the same shall in no way prevent the concurrent or subsequent employment of any other appropriate rights or remedies nor shall same constitute an election of judicial relief for any foreclosure or any other purpose. Holder neither has nor assumes any obligations as lessor or landlord with respect to any Lease. The rights of Holder under this Article 3 shall be cumulative of all other rights of Holder under the Loan Documents or otherwise.

ARTICLE 4
Default

Section 4.1. Events of Default. Subject to Section 4.2 herein, the occurrence of any one of the following shall be a default under this County Deed of Trust ("**Event of Default**" or "**Default**"):

(a) **Failure to Pay Indebtedness.** Any of the Secured Indebtedness is not paid when due, after any applicable cure period, regardless of how such amount may have become due.

(b) **Nonperformance of Covenants.** Any covenant, agreement or condition herein or in any other Loan Document (other than covenants otherwise addressed in another paragraph of this Section, such as covenants to pay the Secured Indebtedness) is not fully and timely performed, observed or kept, and such failure is not cured within the applicable notice and cure period (if any) provided for herein or in such other Loan Document.

(c) **Default under other Loan Documents.** The occurrence of a Default under any other Loan Document after any applicable notice and cure period.

(d) **Representations.** Any statement, representation or warranty in any of the Loan Documents, or in any financial statement or any other writing heretofore or hereafter delivered to Holder in connection with the Secured Indebtedness is false, misleading or erroneous in any material and adverse respect on the date hereof or on the date as of which such statement, representation or warranty is made.

(e) **Bankruptcy or Insolvency.** The owner of the Property or any person liable, directly or indirectly, for any of the Secured Indebtedness (or any general partners):

(i) (A) Executes an assignment for the benefit of creditors, or takes any action in furtherance thereof; or (B) admits in writing its inability to pay, or fails to pay, its debts generally as they become due; or (C) as a debtor, files a petition, case, proceeding or other action pursuant to, or voluntarily seeks the benefit or benefits of, Title 11 of the United States Code as now or hereafter in effect or any other federal, state or local law, domestic or foreign, as now or hereafter in effect relating to bankruptcy, insolvency, liquidation, receivership, reorganization, arrangement, composition, extension or adjustment of debts, or similar laws affecting the rights of creditors (Title 11 of the United States Code and such other laws being herein called "**Debtor Relief Laws**"), or takes any action in furtherance thereof; or (D) seeks the appointment of a receiver, trustee, custodian or liquidator of the Property or any part thereof or of any significant portion of its other property; or

(ii) Suffers the filing of a petition, case, proceeding or other action against it as a debtor under any Debtor Relief Law or seeking appointment of a receiver, trustee, custodian or liquidator of the Property or any part thereof or of any significant portion of its other property, and (A) admits, acquiesces in or fails to contest diligently the material allegations thereof, or (B) the petition, case, proceeding or other action results in entry of any order for relief or order granting relief sought against it, or (C) in a proceeding under Debtor Relief Laws, the case is converted from one chapter to another, or (D) fails to have the petition, case, proceeding or other action permanently dismissed or discharged on or before the earlier of trial thereon or sixty (60) days next following the date of its filing; or

(iii) Conceals, removes, or permits to be concealed or removed, any part of its property, with intent to hinder, delay or defraud its creditors or any of them, or makes or suffers a transfer of any of its property which may be fraudulent under any bankruptcy, fraudulent conveyance or similar law; or makes any transfer of its property to or for the benefit of a creditor at a time when other creditors similarly situated have not been paid; or suffers or permits, while insolvent, any creditor to obtain a lien (other than as described in subparagraph (iv) below) upon any of its property through legal proceedings which are not vacated and such lien discharged prior to enforcement thereof and in any event within sixty (60) days from the date thereof; or

(iv) Fails to have discharged within a period of sixty (60) days any attachment, sequestration, or similar writ levied upon any of its property; or

(v) Fails to pay promptly any final money judgment against it.

(f) **Transfer of the Property.** Any sale, lease, conveyance, assignment, pledge, encumbrance, or transfer of all or any part of the Property or any interest therein, voluntarily or involuntarily, whether by operation of law or otherwise, except: (i) sales or transfers of items of the Accessories which have become obsolete or worn beyond practical use and which have been replaced by adequate substitutes, owned by Grantor, having a value equal to or greater than the replaced items when new; (ii) the grant, in the ordinary course of business, of a leasehold interest in a part of the Improvements to a tenant for occupancy, not containing a right or option to purchase and not in contravention of any provision of this County Deed of Trust or of any other Loan Document; and (iii) any total or partial sale, lease, assignment or other conveyance permitted by Section 5.03 of the Loan Agreement. Holder may, in its sole discretion, waive a default under this paragraph, but it shall have no obligation to do so, and any waiver may be conditioned upon such one or more of the following (if any) which Holder may require: the grantee's integrity, reputation, character, creditworthiness and management ability being satisfactory to Holder in its sole judgment and grantee executing, prior to such sale or transfer, a written assumption agreement containing such terms as Holder may require, a principal paydown on the Promissory Notes, an increase in the rate of interest payable under the Promissory Notes, a transfer fee, a modification of the term of the Promissory Notes, and any other modification of the Loan Documents which Holder may require. Without limiting the generality of the foregoing, the following provision is set forth herein in order to comply with the requirements of §6.2-417 of the Code of Virginia, if such requirements are applicable to the Property: NOTICE - THE DEBT SECURED HEREBY IS SUBJECT TO CALL IN FULL OR THE TERMS THEREOF BEING MODIFIED IN THE EVENT OF SALE OR CONVEYANCE OF THE PROPERTY CONVEYED.

(g) **Transfer of Assets.** Any sale, lease, conveyance, assignment, pledge, encumbrance, or transfer of all or any substantial part of the Collateral (unless consented to or otherwise permitted), excluding the Property, voluntarily or involuntarily, whether by operation of law or otherwise, except: (i) sales or transfers in the ordinary course of Grantor's business; (ii) sales or transfers for which Grantor receives consideration substantially equivalent to the fair market value of the transferred asset; and (iii) any total or partial sale, lease, assignment or other conveyance permitted by Section 5.03 of the Loan Agreement.

(h) **Transfer of Ownership of Grantor.** The sale, pledge, encumbrance, assignment or transfer, voluntarily or involuntarily, whether by operation of law or otherwise, of any interest in Grantor (if Grantor is not a natural person but is a corporation, partnership, limited liability company, trust or other legal entity), without the prior written consent of Holder (including, without limitation, if Grantor is a partnership, limited liability company or joint venture, the withdrawal from or admission into it of any partner, member or joint venturer); provided, however that no sale, pledge, encumbrance, assignment or transfer of any interest in Grantor shall be a default of this County Deed of Trust if such sale, pledge, encumbrance, assignment or transfer of any interest in Grantor is permitted pursuant to Section 5.03 of the Loan Agreement.

(i) **Grant of Easement, Etc.** Without the prior written consent of Holder, Grantor grants any easement or dedication, files any plat, condominium declaration, or restriction, or otherwise encumbers the Property, or seeks or permits any zoning reclassification or variance, unless such action is expressly permitted by the Loan Documents or does not affect the Property.

(j) **Abandonment.** The owner of the Property abandons any of the Property.

(k) **Default Under Other Lien.** A default or event of default occurs under any lien, security interest or assignment covering the Grantor's interest in the Property or any part thereof (whether or not Holder has consented, and without hereby implying Holder's consent, to any such lien, security interest or assignment not created

hereunder) and any applicable cure period has expired, or the holder of any such lien, security interest or assignment declares a default or institutes foreclosure or other proceedings for the enforcement of its remedies thereunder.

(l) **Intentionally Omitted.**

(m) **Intentionally Omitted.**

(n) **Liquidation, Etc.** The liquidation, termination, dissolution, merger, consolidation or failure to maintain good standing in the Commonwealth of Virginia and/or the state of incorporation or organization, if different (or in the case of an individual, the death or legal incapacity) of the Grantor, but excluding any change in corporate structure and partnership as otherwise permitted in this County Deed of Trust or the Loan Agreement.

(o) **Material, Adverse Change.** In Holder's reasonable opinion, the prospect of payment of all or any part of the Secured Indebtedness has been impaired because of a material adverse change in the financial condition, results of operations, businesses or properties of the Grantor since the dates of the latest financial statements furnished to the County; provided, however, a change in property value alone shall not constitute a material adverse change.

(p) **Enforceability; Priority.** Any Loan Document shall for any reason without Holder's specific written consent cease to be in full force and effect, or shall be declared null and void or unenforceable in whole or in part, or the validity or enforceability thereof, in whole or in part, shall be challenged or denied by any party thereto other than Holder; or the liens, mortgages or security interests of Holder in any of the Property become unenforceable in whole or in part, or cease to be of the priority herein required, or the validity or enforceability thereof, in whole or in part, shall be challenged or denied by Grantor or any person obligated to pay any part of the Secured Indebtedness.

(q) **Other Indebtedness.** A default or event of default occurs under any document executed and delivered in connection with any other indebtedness in excess of One Hundred Thousand Dollars (\$100,000.00) (to County or any other person or entity) by the Grantor and such default remains uncured beyond any applicable notice, grace or cure period under such other indebtedness.

Section 4.2. Notice and Cure. Notwithstanding anything to the contrary in this County Deed of Trust, unless a shorter cure period is specified for a default in the performance of any term, provision, covenant or agreement contained in this County Deed of Trust, including the obligations enumerated in this Article 4, no default shall mature into an "Event of Default" and the County shall not exercise any right or remedy on account thereof unless the default continues for ten (10) days in the event of a monetary default or sixty (60) days in the event of a nonmonetary default after the date upon which the County shall have given written notice of the default to the Grantor; provided, however, if the nonmonetary default is of a nature that cannot be cured within sixty (60) days, an Event of Default shall not arise hereunder if Grantor commences to cure the default within sixty (60) days and thereafter prosecutes the curing of such default with due diligence and in good faith to completion and in no event later than one hundred twenty (120) days after receipt of notice of the default. Notwithstanding the foregoing, the Investor Limited Partner or its successors or any guarantor shall have the right but not the obligation, to cure an Event of Default within the same cure period as the Grantor.

ARTICLE 5 **Remedies**

Section 5.1. Certain Remedies. If a Default shall occur, Holder may (but shall have no obligation to) exercise any one or more of the following remedies, without notice (unless notice is required by applicable statute):

(a) **Acceleration.** Holder may at any time and from time to time declare any or all of the

Secured Indebtedness immediately due and payable. Upon any such declaration, such Secured Indebtedness shall thereupon be immediately due and payable, without presentment, demand, protest, notice of protest, notice of acceleration or of intention to accelerate or any other notice or declaration of any kind, all of which are hereby expressly waived by Grantor. Without limitation of the foregoing, upon the occurrence of a default described in clauses (A), (C) or (D) of subparagraph (i) of paragraph (e) of Section 4.1, hereof, all of the Secured Indebtedness shall thereupon be immediately due and payable, without presentment, demand, protest, notice of protest, declaration or notice of acceleration or intention to accelerate, or any other notice, declaration or act of any kind, all of which are hereby expressly waived by Grantor.

(b) Enforcement of Assignment of Rents. In addition to the rights of Holder under Article 3 hereof, prior or subsequent to taking possession of any portion of the Property or taking any action with respect to such possession, Holder may: (1) collect and/or sue for the Rents in Holder's own name, give receipts and releases therefor, and after deducting all expenses of collection, including reasonable attorneys' fees and expenses, apply the net proceeds thereof to the Secured Indebtedness in such manner and order as Holder may elect and/or to the operation and management of the Property, including the payment of management, brokerage and attorney's fees and expenses; and (2) require Grantor to transfer all security deposits and records thereof to Holder together with original counterparts of the Leases.

(c) Foreclosure. Grantor hereby authorizes and empowers the Trustee, or his successor or substitute, and it shall be his special duty at the request of Holder to take possession of and/or to sell the Property or any part thereof. Prior to any sale of the Property by Trustee, Trustee shall notify Grantor in accordance with all applicable laws. In the event of a postponement of any sale of the Property, which may be done in the sole discretion of Trustee, no new or additional notice need be given by Trustee to Grantor for the next scheduled sale of the Property. Any sale made by Trustee hereunder may be as an entirety or in such parcels as Holder may request at such time and place, and after such previous public advertisement as Trustee shall deem advantageous and proper and at such times and containing such information as required by applicable laws and rules, without regard to any right of the Grantor or any other person to the marshalling of assets. Public advertisement prior to foreclosure sale of the time, place and terms of sale by publication once a week for two (2) weeks or once a day for three (3) days, which may be consecutive, in a newspaper published or having a general circulation in the city or county in which the Property to be sold, or any portion thereof is located shall be sufficient. Except as may be required by Section 58.1-3340 of the Virginia Code, no purchaser of the Property shall be required to see to the proper application of the purchase money. To the extent permitted by applicable law, any sale may be adjourned by announcement at the time and place appointed for such sale without further notice except as may be required by law. The sale by Trustee of less than the whole of the Property shall not exhaust the power of sale herein granted, and Trustee is specifically empowered to make successive sale or sales under such power until the whole of the Property shall be sold; and, if the proceeds of such sale of less than the whole of the Property shall be less than the aggregate of the Secured Indebtedness and the expense of executing this trust as provided herein, this County Deed of Trust and the lien hereof shall remain in full force and effect as to the unsold portion of the Property just as though no sale had been made; provided, however, that Grantor shall never have any right to require the sale of less than the whole of the Property but Holder shall have the right, at its sole election, to request Trustee to sell less than the whole of the Property. Trustee may, after any request or direction by Holder, sell not only the real property but also the Collateral and other interests which are a part of the Property, or any part thereof, as a unit and as a part of a single sale, or may sell any part of the Property separately from the remainder of the Property. It shall not be necessary for Trustee to have taken possession of any part of the Property or to have present or to exhibit at any sale any of the Collateral. After each sale, Trustee shall make to the purchaser or purchasers at such sale good and sufficient conveyances, conveying the property so sold to the purchaser or purchasers in fee simple, subject to the Permitted Encumbrances (and to such leases and other matters, if any, as Trustee may elect upon request of Holder), and shall receive the proceeds of said sale or sales and apply the same as herein provided. Payment of the purchase price to the Trustee shall satisfy the obligation of purchaser at such sale therefor, and such purchaser shall not be responsible for the application thereof. The power of sale granted herein shall not be exhausted by any sale held hereunder by Trustee or his substitute or successor, and such power of sale may be exercised from time to time and as many times as Holder may deem necessary until all of the Property has been duly sold and all Secured Indebtedness has been fully paid. In the event any sale hereunder is not completed or is defective in the opinion of

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Holder, such sale shall not exhaust the power of sale hereunder and Holder shall have the right to cause a subsequent sale or sales to be made hereunder. Any and all statements of fact or other recitals made in any deed or deeds or other conveyances given by Trustee or any successor or substitute appointed hereunder as to nonpayment of the Secured Indebtedness or as to the occurrence of any default, or as to Holder's having declared all of said indebtedness to be due and payable, or as to the request to sell, or as to notice of time, place and terms of sale and the properties to be sold having been duly given, or as to the refusal, failure or inability to act of Trustee or any substitute or successor trustee, or as to the appointment of any substitute or successor trustee, or as to any other act or thing having been duly done by Holder or by such Trustee, substitute or successor, shall be taken as prima facie evidence of the truth of the facts so stated and recited. The Trustee or his successor or substitute may appoint or delegate any one or more persons as agent to perform any act or acts necessary or incident to any sale held by Trustee, including the posting of notices and the conduct of sale, but in the name and on behalf of Trustee, his successor or substitute. If Trustee or his successor or substitute shall have given notice of sale hereunder, any successor or substitute Trustee thereafter appointed may complete the sale and the conveyance of the property pursuant thereto as if such notice had been given by the successor or substitute Trustee conducting the sale.

(d) **Uniform Commercial Code.** Without limitation of Holder's rights of enforcement with respect to the Collateral or any part thereof in accordance with the procedures for foreclosure of real estate, Holder may exercise its rights of enforcement with respect to the Collateral or any part thereof under the Virginia Uniform Commercial Code, as in effect from time to time (or under the Uniform Commercial Code in force, from time to time, in any other state to the extent the same is applicable law) and in conjunction with, in addition to or in substitution for those rights and remedies: (1) Holder may enter upon Grantor's premises to take possession of, assemble and collect the Collateral or, to the extent and for those items of the Collateral permitted under applicable law, to render it unusable; (2) Holder may require Grantor to assemble the Collateral and make it available at a place Holder designates which is mutually convenient to allow Holder to take possession or dispose of the Collateral; (3) written notice mailed to Grantor as provided herein at least five (5) days prior to the date of public sale of the Collateral or prior to the date after which private sale of the Collateral will be made shall constitute reasonable notice; provided that, if Holder fails to comply with this clause (3) in any respect, its liability for such failure shall be limited to the liability (if any) imposed on it as a matter of law under the Virginia Uniform Commercial Code, as in effect from time to time (or under the Uniform Commercial Code, in force from time to time, in any other state to the extent the same is applicable law); (4) any sale made pursuant to the provisions of this paragraph shall be deemed to have been a public sale conducted in a commercially reasonable manner if held contemporaneously with and upon the same notice as required for the sale of the Property under power of sale as provided in paragraph (c) above in this Section 5.1; (5) in the event of a foreclosure sale, whether made by Trustee under the terms hereof, or under judgment of a court, the Collateral and the other Property may, at the option of Holder, be sold as a whole; (6) it shall not be necessary that Holder take possession of the Collateral or any part thereof prior to the time that any sale pursuant to the provisions of this Section is conducted and it shall not be necessary that the Collateral or any part thereof be present at the location of such sale; (7) with respect to application of proceeds from disposition of the Collateral under Section 5.2 hereof, the costs and expenses incident to disposition shall include the reasonable expenses of retaking, holding, preparing for sale or lease, selling, leasing and the like and the reasonable attorneys' fees and legal expenses (including, without limitation, the allocated costs for in-house legal services) incurred by Holder; (8) any and all statements of fact or other recitals made in any bill of sale or assignment or other instrument evidencing any foreclosure sale hereunder as to nonpayment of the Secured Indebtedness or as to the occurrence of any default, or as to Holder having declared all of such indebtedness to be due and payable, or as to notice of time, place and terms of sale and of the properties to be sold having been duly given, or as to any other act or thing having been duly done by Holder, shall be taken as prima facie evidence of the truth of the facts so stated and recited; (9) Holder may appoint or delegate any one or more persons as agent to perform any act or acts necessary or incident to any sale held by Holder, including the sending of notices and the conduct of the sale, but in the name and on behalf of Holder; (10) Holder may comply with any applicable state or federal law or regulatory requirements in connection with a disposition of the Collateral, and such compliance will not be considered to affect adversely the commercial reasonableness of any sale of the Collateral; (11) Holder may sell the Collateral without giving any warranties as to the Collateral, and specifically disclaim all warranties including, without limitation, warranties relating to title, possession, quiet enjoyment and the like, and all warranties of quality, merchantability and fitness for a specific purpose, and this procedure will not be considered to affect adversely the

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commercial reasonableness of any sale of the Collateral; (12) Grantor acknowledges that a private sale of the Collateral may result in less proceeds than a public sale; and (13) Grantor acknowledges that the Collateral may be sold at a loss to Grantor, and that, in such event, Holder shall have no liability or responsibility to Grantor for such loss.

(e) **Lawsuits.** Holder may proceed by a suit or suits in equity or at law, whether for collection of the indebtedness secured hereby, the specific performance of any covenant or agreement herein contained or in aid of the execution of any power herein granted, or for any foreclosure hereunder or for the sale of the Property under the judgment or decree of any court or courts of competent jurisdiction. Grantor hereby assents to the passage of a decree for the sale of the Property by any equity court having jurisdiction.

(f) **Entry on Property.** Holder is authorized, prior or subsequent to the institution of any foreclosure proceedings, to the fullest extent permitted by applicable law, to enter upon the Property, or any part thereof, and to take possession of the Property and all books and records, and all recorded data of any kind or nature, regardless of the medium of recording including, without limitation, all software, writings, plans, specifications and schematics relating thereto, and to exercise without interference from Grantor any and all rights which Grantor has with respect to the management, possession, operation, protection or preservation of the Property. Holder shall not be deemed to have taken possession of the Property or any part thereof except upon the exercise of its right to do so, and then only to the extent evidenced by its demand and overt act specifically for such purpose. All costs, expenses and liabilities of every character incurred by Holder in managing, operating, maintaining, protecting or preserving the Property shall constitute a demand obligation of Grantor (which obligation Grantor hereby promises to pay) to Holder pursuant to this County Deed of Trust. If necessary to obtain the possession provided for above, Holder may invoke any and all legal remedies to dispossess Grantor. In connection with any action taken by Holder pursuant to this Section, Holder shall not be liable for any loss sustained by Grantor resulting from any failure to let the Property or any part thereof, or from any act or omission of Holder in managing the Property unless such loss is caused by the willful misconduct and bad faith of Holder, nor shall Holder be obligated to perform or discharge any obligation, duty or liability of Grantor arising under any lease or other agreement relating to the Property or arising under any Permitted Encumbrance or otherwise arising. Grantor hereby assents to, ratifies and confirms any and all actions of Holder with respect to the Property taken under this Section.

(g) **Receiver.** Holder shall as a matter of right be entitled to the appointment of a receiver or receivers for all or any part of the Property, whether such receivership be incident to a proposed sale (or sales) of such property or otherwise, and without regard to the value of the Property or the solvency of any person or persons liable for the payment of the indebtedness secured hereby, and Grantor does hereby irrevocably consent to the appointment of such receiver or receivers, waives notice of such appointment, of any request therefor or hearing in connection therewith, and any and all defenses to such appointment, agrees not to oppose any application therefor by Holder, and agrees that such appointment shall in no manner impair, prejudice or otherwise affect the rights of Holder to application of Rents as provided in this County Deed of Trust. Nothing herein is to be construed to deprive Holder of any other right, remedy or privilege it may have under the law to have a receiver appointed. Any money advanced by Holder in connection with any such receivership shall be a demand obligation (which obligation Grantor hereby promises to pay) owing by Grantor to Holder pursuant to this County Deed of Trust.

(h) **Termination of Commitment to Lend.** Holder may terminate any commitment or obligation to lend or disburse funds under any Loan Document or enter into any other credit arrangement to or for the benefit of Grantor.

(i) **Other Rights and Remedies.** Holder may exercise any and all other rights and remedies which Holder may have under the Loan Documents, or at law or in equity or otherwise.

Section 5.2. Proceeds of Foreclosure. The proceeds of any sale held by Trustee or Holder or any receiver or public officer in foreclosure of the liens and security interests evidenced hereby shall be applied in accordance with the requirements of applicable laws and to the extent consistent therewith, **FIRST**, to the payment of

all necessary costs and expenses incident to such foreclosure sale, including but not limited to reasonable attorneys' fees and legal expenses, advertising costs, auctioneer's fees, costs of title rundowns and lien searches, inspection fees, appraisal costs, reasonable fees for professional services, environmental assessment and remediation fees, all court costs and charges of every character, and a reasonable fee (not exceeding five percent (5%) of the gross proceeds of such sale) to Trustee acting under the provisions of paragraph (c) of Section 5.1 hereof if foreclosed by power of sale as provided in said paragraph, and to the payment of the other Secured Indebtedness, including specifically without limitation the principal, accrued interest and reasonable attorneys' fees due and unpaid on the Promissory Notes and the amounts due and unpaid and owed to Holder under this County Deed of Trust, the order and manner of application to the items in this clause FIRST to be in Holder's sole discretion; and SECOND, the remainder, if any there shall be, shall be paid to Grantor, or to Grantor's heirs, devisees, representatives, successors or assigns, or such other persons (including the holder or beneficiary of any inferior lien) as may be entitled thereto by law; provided, however, that if Holder is uncertain which person or persons are so entitled, Holder may interplead such remainder in any court of competent jurisdiction, and the amount of any attorneys' fees, court costs and expenses incurred in such action shall be a part of the Secured Indebtedness and shall be reimbursable (without limitation) from such remainder.

Section 5.3. Holder as Purchaser. Holder shall have the right to become the purchaser at any sale held by Trustee or substitute or successor or by any receiver or public officer or at any public sale, and Holder shall have the right to credit upon the amount of Holder's successful bid, to the extent necessary to satisfy such bid, all or any part of the Secured Indebtedness in such manner and order as Holder may elect.

Section 5.4. Foreclosure as to Matured Debt. Upon the occurrence of an Event of Default, Holder shall have the right to proceed with foreclosure (judicial or nonjudicial) of the liens and security interests hereunder without declaring the entire Secured Indebtedness due, and in such event any such foreclosure sale may be made subject to the unmatured part of the Secured Indebtedness; and any such sale shall not in any manner affect the unmatured part of the Secured Indebtedness, but as to such unmatured part this County Deed of Trust shall remain in full force and effect just as though no sale had been made. The proceeds of such sale shall be applied as provided in Section 5.2 hereof except that the amount paid under clause FIRST thereof shall be only the matured portion of the Secured Indebtedness and any proceeds of such sale in excess of those provided for in clause FIRST (modified as provided above) shall be applied to the prepayment (without penalty) of any other Secured Indebtedness in such manner and order and to such extent as Holder deems advisable, and the remainder, if any, shall be applied as provided in clause SECOND of Section 5.2 hereof. Several sales may be made hereunder without exhausting the right of sale for any unmatured part of the Secured Indebtedness.

Section 5.5. Remedies Cumulative. All rights and remedies provided for herein and in any other Loan Document are cumulative of each other and of any and all other rights and remedies existing at law or in equity, and Trustee and Holder shall, in addition to the rights and remedies provided herein or in any other Loan Document, be entitled to avail themselves of all such other rights and remedies as may now or hereafter exist at law or in equity for the collection of the Secured Indebtedness and the enforcement of the covenants herein and the foreclosure of the liens and security interests evidenced hereby, and the resort to any right or remedy provided for hereunder or under any such other Loan Document or provided for by law or in equity shall not prevent the concurrent or subsequent employment of any other appropriate right or rights or remedy or remedies.

Section 5.6. Discretion as to Security. Holder may resort to any security given by this County Deed of Trust or to any other security now existing or hereafter given to secure the payment of the Secured Indebtedness, in whole or in part, and in such portions and in such order as may seem best to Holder in its sole and uncontrolled discretion, and any such action shall not in anywise be considered as a waiver of any of the rights, benefits, liens or security interests evidenced by this County Deed of Trust.

Section 5.7. Grantor's Waiver of Certain Rights. To the full extent Grantor may do so, Grantor agrees that Grantor will not at any time insist upon, plead, claim or take the benefit or advantage of any law now or hereafter in force providing for any appraisal, valuation, stay, extension or redemption, homestead, moratorium,

reinstatement, marshalling or forbearance, and Grantor, for Grantor, Grantor's heirs, devisees, representatives, successors and assigns, and for any and all persons ever claiming any interest in the Property, to the extent permitted by applicable law, hereby waives and releases all rights of redemption, valuation, appraisal, stay of execution, notice of intention to mature or declare due the whole of the Secured Indebtedness, notice of election to mature or declare due the whole of the Secured Indebtedness and all rights to a marshalling of assets of Grantor, including the Property, or to a sale in inverse order of alienation in the event of foreclosure of the liens and/or security interests hereby created. Grantor shall not have or assert any right under any statute or rule of law pertaining to the marshalling of assets, sale in inverse order of alienation, the exemption of homestead, the administration of estates of decedents, or other matters whatsoever to defeat, reduce or affect the right of Holder under the terms of this County Deed of Trust to a sale of the Property for the collection of the Secured Indebtedness without any prior or different resort for collection, or the right of Holder under the terms of this County Deed of Trust to the payment of the Secured Indebtedness out of the proceeds of sale of the Property in preference to every other claimant whatsoever. Grantor waives any right or remedy which Grantor may have or be able to assert pursuant to any provision of Virginia law pertaining to the rights and remedies of sureties. If any law referred to in this Section and now in force, of which Grantor or Grantor's heirs, devisees, representatives, successors or assigns or any other persons claiming any interest in the Property might take advantage despite this Section, shall hereafter be repealed or cease to be in force, such law shall not thereafter be deemed to preclude the application of this Section.

Section 5.8. Delivery of Possession After Foreclosure. In the event there is a foreclosure sale hereunder and at the time of such sale and to the extent allowed under applicable law, Grantor or Grantor's heirs, devisees, representatives, or successors as owners of the Property are occupying or using the Property, or any part thereof, each and all shall immediately become the tenant of the purchaser at such sale, which tenancy shall be a tenancy from day to day, terminable at the will of purchaser, at a reasonable rental per day based upon the value of the property occupied, such rental to be due daily to the purchaser; and to the extent permitted by applicable law, the purchaser at such sale shall, notwithstanding any language herein apparently to the contrary, have the sole option to demand immediate possession following the sale or to permit the occupants to remain as tenants at will. After such foreclosure and to the extent allowed under applicable law, any Leases to tenants or subtenants that are subject to this County Deed of Trust (either by their date, their express terms, or by agreement of the tenant or subtenant) shall, at the sole option of Holder or any purchaser at such sale, either (i) continue in full force and effect, and the tenant(s) or subtenant(s) thereunder will, upon request, attorn to and acknowledge in writing to the purchaser or purchasers at such sale or sales as landlord thereunder, or (ii) upon notice to such effect from Holder, the Trustees or any purchaser or purchasers, terminate within thirty (30) days from the date of sale. In the event the tenant fails to surrender possession of the Property upon demand and to the extent allowed under applicable law, the purchaser shall be entitled to institute and maintain a summary action for possession of the Property (such as an action for forcible detainer) in any court having jurisdiction.

ARTICLE 6
Miscellaneous

Section 6.1. Scope of Deed of Trust. This County Deed of Trust is a deed of trust of both real and personal property, a security agreement, an assignment of rents and leases, a financing statement and fixture filing and a collateral assignment, and also covers proceeds and fixtures.

Section 6.2. Effective as a Financing Statement. This County Deed of Trust shall be effective as a financing statement filed as a fixture filing with respect to all fixtures included within the Property and is to be filed for record in the real estate records of each county where any part of the Property (including said fixtures) is situated. This County Deed of Trust shall also be effective as a financing statement covering as-extracted collateral (including oil and gas), accounts and general intangibles under the Virginia Uniform Commercial Code, as in effect from time to time, and the Uniform Commercial Code, as in effect from time to time, in any other state where the Property is situated which will be financed at the wellhead or minehead of the wells or mines located on the Property and is to be filed for record in the real estate records of each county where any part of the Property is situated. This County Deed

of Trust shall also be effective as a financing statement covering any other Property and may be filed in any other appropriate filing or recording office. The mailing address of Grantor and the Holder are set forth in the preamble of this County Deed of Trust and the address of Holder from which information concerning the security interests hereunder may be obtained is the address of Holder set forth at the end of this County Deed of Trust. A carbon, photographic or other reproduction of this County Deed of Trust or of any financing statement relating to this County Deed of Trust shall be sufficient as a financing statement for any of the purposes referred to in this Section.

Section 6.3. Notice to Account Debtors. In addition to the rights granted elsewhere in this County Deed of Trust, Holder may at any time notify the account debtors or obligors of any accounts, chattel paper, general intangibles, negotiable instruments or other evidences of indebtedness included in the Collateral to pay Holder directly.

Section 6.4. Waiver by Holder. Holder may at any time and from time to time by a specific writing intended for the purpose: (a) waive compliance by Grantor with any covenant herein made by Grantor to the extent and in the manner specified in such writing; (b) consent to Grantor's doing any act which hereunder Grantor is prohibited from doing, or to Grantor's failing to do any act which hereunder Grantor is required to do, to the extent and in the manner specified in such writing; (c) release any part of the Property or any interest therein from the lien and security interest of this County Deed of Trust, without the joinder of Trustee; or (d) release any party liable, either directly or indirectly, for the Secured Indebtedness or for any covenant herein or in any other Loan Document, without impairing or releasing the liability of any other party. No such act shall in any way affect the rights or powers of Holder or Trustee hereunder except to the extent specifically agreed to by Holder in such writing.

Section 6.5. No Impairment of Security. The lien, security interest and other security rights of Holder hereunder or under any other Loan Document shall not be impaired by any indulgence, moratorium or release granted by Holder including, but not limited to, any renewal, extension or modification which Holder may grant with respect to any Secured Indebtedness, or any surrender, compromise, release, renewal, extension, exchange or substitution which Holder may grant in respect of the Property, or any part thereof or any interest therein, or any release or indulgence granted to any endorser, guarantor or surety of any Secured Indebtedness. The taking of additional security by Holder shall not release or impair the lien, security interest or other security rights of Holder hereunder or affect the liability of Grantor or of any endorser, guarantor or surety, or improve the right of any junior lienholder in the Property (without implying hereby Holder's consent to any junior lien).

Section 6.6. Acts Not Constituting Waiver by Holder. Holder may waive any default without waiving any other prior or subsequent default. Holder may remedy any default without waiving the default remedied. Neither failure by Holder to exercise, nor delay by Holder in exercising, nor discontinuance of the exercise of any right, power or remedy (including but not limited to the right to accelerate the maturity of the Secured Indebtedness or any part thereof) upon or after any default shall be construed as a waiver of such default or as a waiver of the right to exercise any such right, power or remedy at a later date. No single or partial exercise by Holder of any right, power or remedy hereunder shall exhaust the same or shall preclude any other or further exercise thereof, and every such right, power or remedy hereunder may be exercised at any time and from time to time. No modification or waiver of any provision hereof nor consent to any departure by Grantor therefrom shall in any event be effective unless the same shall be in writing and signed by Holder and then such waiver or consent shall be effective only in the specific instance, for the purpose for which given and to the extent therein specified. No notice to nor demand on Grantor in any case shall of itself entitle Grantor to any other or further notice or demand in similar or other circumstances. Remittances in payment of any part of the Secured Indebtedness other than in the required amount in immediately available U.S. funds shall not, regardless of any receipt or credit issued therefor, constitute payment until the required amount is actually received by Holder in immediately available U.S. funds and shall be made and accepted subject to the condition that any check or draft may be handled for collection in accordance with the practice of the collecting bank or banks. Acceptance by Holder of any payment in an amount less than the amount then due on any Secured Indebtedness shall be deemed an acceptance on account only and shall not in any way excuse the existence of a default hereunder notwithstanding any notation on or accompanying such partial payment to the contrary.

Section 6.7. Grantor's Successors. If the ownership of the Property or any part thereof becomes vested in a person other than Grantor, Holder may, without notice to Grantor, deal with such successor or successors in interest with reference to this County Deed of Trust and to the Secured Indebtedness in the same manner as with Grantor, without in any way vitiating or discharging Grantor's liability hereunder or for the payment of the indebtedness or performance of the obligations secured hereby. No transfer of the Property, no forbearance on the part of Holder, and no extension of the time for the payment of the Secured Indebtedness given by Holder shall operate to release, discharge, modify, change or affect, in whole or in part, the liability of Grantor hereunder for the payment of the indebtedness or performance of the obligations secured hereby or the liability of any other person hereunder for the payment of the indebtedness secured hereby. Each Grantor agrees that it shall be bound by any modification of this County Deed of Trust or any of the other Loan Documents made by Holder and any subsequent owner of the Property, with or without notice to such Grantor, and no such modifications shall impair the obligations of such Grantor under this County Deed of Trust or any other Loan Document. Nothing in this Section or elsewhere in this County Deed of Trust shall be construed to imply Holder's consent to any transfer of the Property.

Section 6.8. Place of Payment; Forum; Waiver of Jury Trial. All Secured Indebtedness which may be owing hereunder at any time by Grantor shall be payable at the place designated in the Promissory Notes (or if no such designation is made, at the address of Holder indicated at the end of this County Deed of Trust). Grantor hereby irrevocably submits generally and unconditionally for itself and in respect of its property to the non-exclusive jurisdiction of any Virginia state court, or any United States federal court, sitting in the city or county in which the Secured Indebtedness is payable, and to the non-exclusive jurisdiction of any state or United States federal court sitting in the state in which any of the Property is located, over any suit, action or proceeding arising out of or relating to this County Deed of Trust or the Secured Indebtedness. Grantor hereby irrevocably waives, to the fullest extent permitted by law, any objection that Grantor may now or hereafter have to the laying of venue in any such court and any claim that any such court is an inconvenient forum. Grantor hereby agrees and consents that, in addition to any methods of service of process provided for under applicable law, all service of process in any such suit, action or proceeding in any Virginia state court, or any United States federal court, sitting in the state in which the Secured Indebtedness is payable may be made by certified or registered mail, return receipt requested, directed to Grantor at its address stated in this County Deed of Trust, or at a subsequent address of Grantor of which Holder received actual notice from Grantor in accordance with this County Deed of Trust, and service so made shall be complete five (5) days after the same shall have been so mailed. Nothing herein shall affect the right of County to serve process in any manner permitted by law or limit the right of County to bring proceedings against Grantor in any other court or jurisdiction. TO THE FULLEST EXTENT PERMITTED BY LAW, GRANTOR WAIVES THE RIGHT TO TRIAL BY JURY IN CONNECTION WITH ANY ACTION, SUIT OR OTHER PROCEEDING ARISING OUT OF OR RELATING TO THIS COUNTY DEED OF TRUST OR ANY OTHER LOAN DOCUMENT.

Section 6.9. Intentionally Omitted.

Section 6.10. Application of Payments to Certain Indebtedness. If any part of the Secured Indebtedness cannot be lawfully secured by this County Deed of Trust or if any part of the Property cannot be lawfully subject to the lien and security interest hereof to the full extent of such indebtedness, then all payments made shall be applied on said indebtedness first in discharge of that portion thereof which is not secured by this County Deed of Trust.

Section 6.11. Nature of Loan; Compliance with Usury Laws. The loans evidenced by the Promissory Notes is being made solely for the purpose of carrying on or acquiring a business or commercial enterprise. It is the intent of Grantor and Holder and all other parties to the Loan Documents to conform to and contract in strict compliance with applicable usury law from time to time in effect. All agreements between Holder and Grantor (or any other party liable with respect to any indebtedness under the Loan Documents) are hereby limited by the provisions of this Section which shall override and control all such agreements, whether now existing or hereafter arising. In no way, nor in any event or contingency (including but not limited to prepayment, default, demand for payment, or acceleration of the maturity of any obligation), shall the interest taken, reserved, contracted for, charged, chargeable,

or received under this County Deed of Trust, the Promissory Notes or any other Loan Document or otherwise, exceed the maximum nonusurious amount permitted by applicable law (the "**Maximum Amount**"). If, from any possible construction of any document, interest would otherwise be payable in excess of the Maximum Amount, any such construction shall be subject to the provisions of this Section and such document shall ipso facto be automatically reformed and the interest payable shall be automatically reduced to the Maximum Amount, without the necessity of execution of any amendment or new document. If Holder shall ever receive anything of value which is characterized as interest under applicable law and which would apart from this provision be in excess of the Maximum Amount, an amount equal to the amount which would have been excessive interest shall, without penalty, be applied to the reduction of the principal amount owing on the Secured Indebtedness in the inverse order of its maturity and not to the payment of interest, or refunded to Grantor or the other payor thereof if and to the extent such amount which would have been excessive exceeds such unpaid principal. The right to accelerate maturity of the Promissory Notes or any other Secured Indebtedness does not include the right to accelerate any interest which has not otherwise accrued on the date of such acceleration, and Holder does not intend to charge or receive any unearned interest in the event of acceleration. All interest paid or agreed to be paid to Holder shall, to the extent permitted by applicable law, be amortized, prorated, allocated and spread throughout the full stated term (including any renewal or extension) of such indebtedness so that the amount of interest on account of such indebtedness does not exceed the Maximum Amount. As used in this Section, the term "applicable law" shall mean the laws of the Commonwealth of Virginia or the federal laws of the United States applicable to this transaction, whichever laws allow the greater interest, as such laws now exist or may be changed or amended or come into effect in the future.

Section 6.12. Substitute Trustee. The Trustee may resign by an instrument in writing addressed to Holder, or Trustee may be removed at any time with or without cause by an instrument in writing executed by Holder. In case of the death, resignation, removal, or disqualification of Trustee, or if for any reason Holder shall deem it desirable to appoint a substitute or successor trustee to act instead of the herein named trustee or any substitute or successor trustee, then Holder shall have the right and is hereby authorized and empowered to appoint a successor trustee(s), or a substitute trustee(s), without other formality than appointment and designation in writing executed by Holder and the authority hereby conferred shall extend to the appointment of other successor and substitute trustees successively until the Secured Indebtedness has been paid in full, or until the Property is fully and finally sold hereunder. If Holder is a corporation or association and such appointment is executed on its behalf by an officer of such corporation or association, such appointment shall be conclusively presumed to be executed with authority and shall be valid and sufficient without proof of any action by the board of directors or any superior officer of the corporation or association. Upon the making of any such appointment and designation, all of the estate and title of Trustee in the Property shall vest in the named successor or substitute Trustee(s) and he shall thereupon succeed to, and shall hold, possess and execute, all the rights, powers, privileges, immunities and duties herein conferred upon Trustee. All references herein to "Trustee" shall be deemed to refer to Trustee (including any successor(s) or substitute(s) appointed and designated as herein provided) from time to time acting hereunder.

Section 6.13. No Liability of Trustee. The Trustee shall not be liable for any error of judgment or act done by Trustee in good faith, or be otherwise responsible or accountable under any circumstances whatsoever (including Trustee's negligence), except for Trustee's gross negligence or willful misconduct. The Trustee shall have the right to rely on any instrument, document or signature authorizing or supporting any action taken or proposed to be taken by him hereunder, believed by him in good faith to be genuine. All moneys received by Trustee shall, until used or applied as herein provided, be held in trust for the purposes for which they were received, but need not be segregated in any manner from any other moneys (except to the extent required by law), and Trustee shall be under no liability for interest on any moneys received by him hereunder. Grantor hereby ratifies and confirms any and all acts which the herein named Trustee or his successor or successors, substitute or substitutes, in this trust, shall do lawfully by virtue hereof. Grantor will reimburse Trustee for, and save him harmless against, any and all liability and expenses which may be incurred by him in the performance of his duties. The foregoing indemnity shall not terminate upon discharge of the Secured Indebtedness or foreclosure, or release or other termination, of this County Deed of Trust.

Section 6.14. Releases.

(a) **Release of Deed of Trust.** If all of the Secured Indebtedness be paid as the same becomes due and payable and all of the covenants, warranties, undertakings and agreements made in this County Deed of Trust are kept and performed, and all other obligations, if any, of Holder for further advances have been terminated, then, and in that event only, all rights under this County Deed of Trust shall terminate (except to the extent expressly provided herein with respect to indemnifications, representations and warranties and other rights which are to continue following the release hereof) and the Property shall become wholly clear of the liens, security interests, conveyances and assignments evidenced hereby, and such liens and security interests shall be released by Holder in due form at Grantor's cost. Without limitation, all provisions herein for indemnity of Holder or Trustee shall survive discharge of the Secured Indebtedness, and any foreclosure, release or termination of this County Deed of Trust.

(b) **Release Fee.** If permitted by applicable law Grantor shall pay to Holder, at the time of complete release of the lien of this County Deed of Trust, a release fee in the amount of Twenty-Five and No/100 Dollars (\$25.00) if the release instrument is delivered to Holder for execution or Fifty and No/100 Dollars (\$50.00), if Holder is required to prepare the release instrument. In addition, Grantor shall pay to Holder a fee in the amount of Twenty-Five and No/100 Dollars (\$25.00) for each other document or instrument which Grantor requires the Trustee to execute.

Section 6.15. Notices. All notices, requests, consents, demands and other communications required or which any party desires to give hereunder or under any other Loan Document shall be in writing and, unless otherwise specifically provided in such other Loan Document, shall be deemed sufficiently given or furnished if delivered by personal delivery, by nationally recognized overnight courier service that provides written confirmation of delivery, or by registered or certified United States mail, postage prepaid, addressed to the party to whom directed at the addresses specified in this County Deed of Trust (unless changed by similar notice in writing given by the particular party whose address is to be changed). Any such notice or communication shall be deemed to have been given either at the time of personal delivery or, in the case of courier or mail, as of the date of first attempted delivery at the address and in the manner provided herein, upon receipt. Notwithstanding the foregoing, no notice of change of address shall be effective except upon receipt. This Section shall not be construed in any way to affect or impair any waiver of notice or demand provided in any Loan Document or to require giving of notice or demand to or upon any person in any situation or for any reason.

Section 6.16. Invalidity of Certain Provisions. A determination that any provision of this County Deed of Trust is unenforceable or invalid shall not affect the enforceability or validity of any other provision and the determination that the application of any provision of this County Deed of Trust to any person or circumstance is illegal or unenforceable shall not affect the enforceability or validity of such provision as it may apply to other persons or circumstances.

Section 6.17. Gender; Titles; Construction. Within this County Deed of Trust, words of any gender shall be held and construed to include any other gender, and words in the singular number shall be held and construed to include the plural, unless the context otherwise requires. Titles appearing at the beginning of any subdivisions hereof are for convenience only, do not constitute any part of such subdivisions, and shall be disregarded in construing the language contained in such subdivisions. The use of the words "herein," "hereof," "hereunder" and other similar compounds of the word "here" shall refer to this entire County Deed of Trust and not to any particular Article, Section, paragraph or provision. The term "person" and words importing persons as used in this County Deed of Trust shall include firms, associations, partnerships (including limited partnerships), joint ventures, trusts, corporations, limited liability companies and other legal entities, including public or governmental bodies, agencies or instrumentalities, as well as natural persons.

Section 6.18. Intentionally Omitted.

Section 6.19. Holder's Consent. Except where otherwise expressly provided herein, in any instance hereunder where the approval, consent or the exercise of judgment of Holder is required or requested, (a) the granting or denial of such approval or consent and the exercise of such judgment shall be within the sole discretion of Holder, and Holder shall not, for any reason or to any extent, be required to grant such approval or consent or exercise such judgment in any particular manner, regardless of the reasonableness of either the request or Holder's judgment, and (b) no approval or consent of Holder shall be deemed to have been given except by a specific writing intended for the purpose and executed by an authorized representative of Holder.

Section 6.20. Grantor. The obligations of Grantor hereunder shall be joint and several. If any Grantor, or any signatory who signs on behalf of any Grantor, is a corporation, partnership or other legal entity, Grantor and any such signatory, and the person or persons signing for it, represent and warrant to Holder that this instrument is executed, acknowledged and delivered by Grantor's duly authorized representatives. If Grantor is an individual, no power of attorney granted by Grantor herein shall terminate on Grantor's disability.

Section 6.21. Execution; Recording. This County Deed of Trust has been executed in several counterparts, all of which are identical, and all of which counterparts together shall constitute one and the same instrument. The date or dates reflected in the acknowledgments hereto indicate the date or dates of actual execution of this County Deed of Trust, but such execution is as of the date shown on the first page hereof, and for purposes of identification and reference the date of this County Deed of Trust shall be deemed to be the date reflected on the first page hereof. Grantor will cause this County Deed of Trust and all amendments and supplements thereto and substitutions therefor and all financing statements and continuation statements relating thereto to be recorded, filed, re-recorded and refiled in such manner and in such places as Trustee or Holder shall reasonably request and will pay all such recording, filing, re-recording and refileing taxes, fees and other charges.

Section 6.22. Successors and Assigns. The terms, provisions, covenants and conditions hereof shall be binding upon Grantor, and the heirs, devisees, representatives, successors and assigns of Grantor, and shall inure to the benefit of Trustee and Holder and shall constitute covenants running with the Land. All references in this County Deed of Trust to Grantor shall be deemed to include all such heirs, devisees, representatives, successors and assigns of Grantor.

Section 6.23. Modification or Termination. The Loan Documents may only be modified or terminated by a written instrument or instruments intended for that purpose and executed by the party against which enforcement of the modification or termination is asserted. Any alleged modification or termination which is not so documented shall not be effective as to any party.

Section 6.24. No Partnership, Etc. The relationship between Holder and Grantor is solely that of lender and borrower. Holder has no fiduciary or other special relationship with Grantor. Nothing contained in the Loan Documents is intended to create any partnership, joint venture, association or special relationship between Grantor and Holder or in any way make Holder a co-principal with Grantor with reference to the Property. All agreed contractual duties between or among Holder, Grantor and Trustee are set forth herein and in the other Loan Documents and any additional implied covenants or duties are hereby disclaimed. Any inferences to the contrary of any of the foregoing are hereby expressly negated.

Section 6.25. Applicable Law. THIS COUNTY DEED OF TRUST, AND ITS VALIDITY, ENFORCEMENT AND INTERPRETATION, SHALL BE GOVERNED BY VIRGINIA LAW AND CONSTRUED, INTERPRETED AND ENFORCED IN ACCORDANCE WITH AND PURSUANT TO THE LAWS OF THE COMMONWEALTH OF VIRGINIA (WITHOUT REGARD TO ANY CONFLICT OF LAWS PRINCIPLES) AND APPLICABLE UNITED STATES FEDERAL LAW, EXCEPT AS OTHERWISE REQUIRED BY MANDATORY PROVISIONS OF LAW AND EXCEPT TO THE EXTENT THAT REMEDIES PROVIDED BY THE LAWS OF ANY JURISDICTION OTHER THAN THE COMMONWEALTH OF VIRGINIA ARE GOVERNED BY THE LAWS OF SUCH OTHER JURISDICTION.

Section 6.26. Short Form Incorporation. The following short form provisions are incorporated into this County Deed of Trust by reference as permitted by Section 55-60, Code of Virginia (Repl. Vol. 1986);

- (1) Exemptions waived.
- (2) Subject to call upon default.
- (3) Renewal, extension or reinstatement permitted.
- (4) Substitution of trustee permitted.
- (5) Any trustee may act.

Section 6.27. Execution Under Seal. Grantor agrees that this instrument is executed under seal. If Grantor is a corporation, the designation ("SEAL") on this instrument shall be as effective as the affixing of Grantor's corporate seal physically to this instrument.

Section 6.28. Entire Agreement. The Loan Documents constitute the entire understanding and agreement between Grantor and Holder with respect to the transactions arising in connection with the Secured Indebtedness and supersede all prior written or oral understandings and agreements between Grantor and Holder with respect to the matters addressed in the Loan Documents. Grantor hereby acknowledges that, except as incorporated in writing in the Loan Documents, there are not, and were not, and no persons are or were authorized by Holder to make, any representations, understandings, stipulations, agreements or promises, oral or written, with respect to the matters addressed in the Loan Documents.

Section 6.29. No Waiver of Sovereign Immunity by County. Notwithstanding any other provision of this County Deed of Trust to the contrary, nothing in this County Deed of Trust nor any action taken by County pursuant to this County Deed of Trust nor any document which arises out of this County Deed of Trust shall constitute or be construed as a waiver of either the sovereign immunity or governmental immunity of County, or of its elected and appointed officials, officers and employees.

SIGNATURE ON THE FOLLOWING PAGE

IN WITNESS WHEREOF, Grantor has executed this instrument under seal as of the date first written on page 1 hereof.

GRANTOR:

CGI RESTORATION LIMITED PARTNERSHIP, a Virginia limited partnership

By: CG1 Joint Venture GP LLC, a Virginia limited liability company, its General Partner

By: Wesley CG Managing Member LLC, a Virginia limited liability company, its Managing Member

By: Wesley Housing Development Corporation of Northern Virginia, a Virginia nonstock corporation, its Sole Member

By: _____
Shelley Murphy, President

ACKNOWLEDGMENT

COMMONWEALTH OF VIRGINIA
COUNTY OF ARLINGTON

On this the ___ day of _____, 2018, before me, personally appeared Shelley Murphy, who acknowledged herself to be President of Wesley Housing Development Corporation of Northern Virginia, a Virginia nonstock corporation in the above instrument, and that she, as President, being authorized to do so, executed the foregoing instrument for the purposes therein contained, by signing the name of Wesley Housing Development Corporation of Northern Virginia, a Virginia nonstock corporation and sole member of Wesley CG Managing Member LLC, a Virginia limited liability company and managing member of CG1 Joint Venture GP LLC, a Virginia limited liability company and general partner of CGI Restoration Limited Partnership, by herself as President of Wesley Housing Development Corporation of Northern Virginia.

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

Notary Public

My Commission Expires: _____

ACKNOWLEDGED AND AGREED TO:

**THE COUNTY BOARD OF ARLINGTON COUNTY,
VIRGINIA**, a corporate and body politic of the
Commonwealth of Virginia

By: _____
Mark Schwartz, County Manager

Approved as to form:

By: _____
Stephen A. MacIsaac, County Attorney

EXHIBIT A

Legal Description

All that certain piece or parcel of land, together with the improvements thereon and appurtenances thereunto belonging, lying, situate and being in the County of Arlington, State of Virginia, and being more particularly described as follows:

[TO BE PROVIDED BY BORROWER]

(End of Exhibit "A")

EXHIBIT B

PERMITTED ENCUMBRANCES

1. The Virginia Housing Development Authority (VHDA) Deed of Trust from CG1 Restoration Limited Partnership, to Paul M. Brennan, Esq. and Frederick W. Bryant, Esq. as trustees, for the benefit of the VHDA, securing (a) a Deed of Trust Note with a principal balance of Twelve Million Five Hundred Thousand and 00/100 Dollars (\$12,500,000.00) and (b) a Gap Loan Deed of Trust Note with a principal balance of Fourteen Million Seven Hundred Fifty Thousand and 00/100 Dollars, recorded on the same day as and prior to this instrument.
2. The VHDA Regulatory Agreement by and between VHDA and CG1 Restoration Limited Partnership, dated the date herewith, recorded on the same day as and prior to this instrument.
3. The Arlington County Deed of Declaration of Restrictive Covenants from CG1 Restoration Limited Partnership for the benefit of the County Board, dated the date herewith, recorded on the same day as and after this instrument.
4. The **Deed of Trust** from CG1 Restoration Limited Partnership, to, [REDACTED], as trustee, for the benefit of Wesley Housing Development Corporation of Northern Virginia, securing a Promissory Note with a principal balance of Seven Hundred Thousand and 00/100 Dollars (\$700,000.00), recorded on the same day as and after this instrument.
5. The **Deed of Trust** from CG1 Restoration Limited Partnership, to, [REDACTED], as trustee, for the benefit of Culpepper Garden I, Incorporated, securing a Promissory Note with a principal balance of Fifteen Million Nine Hundred Sixty-Six Thousand Three Hundred Fifty and 00/100 Dollars (\$15,966,350.00), recorded on the same day as and after this instrument.
6. The **Deed of Trust** from CG1 Restoration Limited Partnership, to, [REDACTED], as trustee, for the benefit of Culpepper Garden I, Incorporated, securing a Promissory Note with a principal balance of One Million and 00/100 Dollars (\$1,000,000.00), recorded on the same day as and after this instrument.
7. The Subordination and Intercreditor Agreement by and among CG1 Restoration Limited Partnership, VHDA, the Arlington County Board, VHTE, and the Culpepper Garden I, Incorporated, dated the date herewith, recorded on the same day as and after this instrument.
8. The UCC Financing Statement naming CG1 Restoration Limited Partnership as debtor and VHDA as secured party, recorded on the same day as and after this instrument.
9. The UCC Financing Statement naming CG1 Restoration Limited Partnership as debtor and the County Board as secured party, recorded on the same day as and after this instrument.
10. The UCC Financing Statement naming CG1 Restoration Limited Partnership as debtor and Culpepper Garden I, Incorporated as secured party, recorded on the same day as and after this instrument.
11. The UCC Financing Statement naming CG1 Restoration Limited Partnership as debtor and Culpepper Garden I, Incorporated as secured party, recorded on the same day as and after this instrument.

(End of Exhibit "B")