



---

LOAN AGREEMENT

---

Between

---

and

---

---

Dated: \_\_\_\_\_

AHFC# \_\_\_\_\_

## TABLE OF CONTENTS

	Page
<b>ARTICLE I - DEFINITIONS</b> .....	<b>1</b>
Section 1.1 - Certain Defined Terms: .....	1
Section 1.2 - Computation of Time Periods: .....	3
Section 1.3 - Accounting Terms:.....	4
<b>ARTICLE II - REPRESENTATIONS</b> .....	<b>4</b>
Section 2.1 - Representations, Covenants, and Warranties of the Borrower: .....	4
<b>ARTICLE III - COVENANTS OF THE BORROWER</b> .....	<b>6</b>
Section 3.1 - Adequate Payments: .....	6
Section 3.2 - Payment of Fees and Expenses:.....	7
Section 3.3 - Compliance with Applicable Laws: .....	7
Section 3.4 - Unconditional Obligation:.....	7
Section 3.5 - Lender's Assignment and Participation:.....	7
<b>ARTICLE IV - SPECIAL COVENANTS AND AGREEMENTS</b> .....	<b>8</b>
Section 4.1 - Right of Access to the Property: .....	8
Section 4.2 - Assignment and Assumption: .....	8
Section 4.3 - Records and Financial Statements of Borrower: .....	9
Section 4.4 - Maintenance and Repair; Taxes; Insurance; Utility and Other Charges:.....	9
Section 4.5 - Qualification in Alaska: .....	11
Section 4.6 - Insurance:.....	11
Section 4.7 - Use of the Property:.....	14
Section 4.8 - Notice and Certificates to Lender: .....	14
Section 4.9 - Reserve Accounts:.....	15
<b>ARTICLE V - EVENTS OF DEFAULT AND REMEDIES</b> .....	<b>17</b>
Section 5.3 - Agreement to Pay Attorneys' Fees and Expenses: .....	20
Section 5.4 - No Remedy Exclusive:.....	21
Section 5.5 - No Additional Waiver Implied by One Waiver:.....	21
<b>ARTICLE VI - PREPAYMENT</b> .....	<b>21</b>
Section 6.1 - Prepayment: .....	21
<b>ARTICLE VII - EXPENSES; INDEMNIFICATION</b> .....	<b>22</b>
Section 7.1 - Expenses:.....	22
Section 7.2 - Indemnification: .....	22
<b>ARTICLE VIII - MISCELLANEOUS</b> .....	<b>22</b>
Section 8.1 - Notices:.....	22
Section 8.2 - Severability: .....	23
Section 8.3 - Amendments, Changes and Modifications: .....	23
Section 8.4 - Governing Law:.....	23

Section 8.5 - Term of This Agreement: .....23  
Section 8.6 - Binding Effect: .....23

- Exhibit A - Description of Property
- Exhibit B - Form of Deed of Trust
- Exhibit C - Environmental Indemnity Agreement
- Exhibit D - Form of Mortgage Note

AHFC# \_\_\_\_\_

**LOAN AGREEMENT**

THIS LOAN AGREEMENT, dated as of \_\_\_\_\_, 20\_\_\_\_, by and between \_\_\_\_\_(the "Lender") and \_\_\_\_\_ (the "Borrower").

WITNESSETH:

WHEREAS, the Borrower has applied to the Lender for a loan to acquire, refinance or rehabilitate a multi-family property as more particularly described in Exhibit A attached hereto; and

WHEREAS, the Lender is willing to make such loan on the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the premises and the respective representations and covenants herein contained, the parties hereto agree as follows:

ARTICLE I - DEFINITIONS

Section 1.1 - Certain Defined Terms:

As used in this Agreement, the following terms shall have the respective meanings set forth below (such meanings to be equally applicable to both the singular and plural forms of the terms defined):

"Agreement" means this Loan Agreement.

"AHFC" means Alaska Housing Finance Corporation.

"Assignment of Rents" means the Assignment of Rents contained within the terms of the Deed of Trust of even date herewith.

Borrower"means\_\_\_\_\_

AHFC#\_\_\_\_\_

"Business Day" means any day (other than a Saturday or Sunday) on which banks in the State of Alaska are not required or authorized by law to remain closed, and are not, in fact, closed, and on which the New York Stock Exchange, Inc., is not closed.

"Deed of Trust" means the Multi-Family Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing instrument, securing repayment of the Loan evidenced by the Mortgage Note and executed by the Borrower in favor of the Lender, in substantially the form of Exhibit B hereto.

"Environmental Indemnity Agreement" means the Environmental Indemnity Agreement in the form of Exhibit C hereto executed by the Borrower indemnifying the Lender for any and all costs associated with the liability and removal of any toxic contamination on or near the Property or in any way connected with the Property.

"Event of Default" means any of the events described in Section 5.1 hereof.

"Financing Statements" means each UCC-1 Financing Statement of even date of this Agreement, including financing statements filed as fixture filings, and each extension thereof, executed by the Borrower relating to certain property including fixtures, or goods which may become fixtures, located at the Property.

"Guarantor" means \_\_\_\_\_  
\_\_\_\_\_.

"Indebtedness" means (1) indebtedness or liability for borrowed money or for the deferred purchase price of property or services (excluding current accounts payable incurred in the ordinary course of business); (2) obligations as lessee under leases which should have been, or should be, recorded as capital leases in accordance with generally accepted accounting principles; (3) current liabilities in respect of unfunded vested benefits under plans covered by Title IV of ERISA; (4) obligations issued for the account of any Person; (5) all guarantees, endorsements (other than for collection or deposit in the ordinary course of business), and other contingent obligations to purchase, to provide funds for payment, to supply funds to invest in any Person, or otherwise to assure a credit against loss; and (6) obligations secured by any mortgage, lien, pledge, security interest, or other charge or encumbrance on property, whether or not the obligations have been assumed.

"Lender" means \_\_\_\_\_  
\_\_\_\_\_.

AHFC# \_\_\_\_\_

"Lien" means any mortgage, pledge, security interest, encumbrance, lien, or charge of any kind (including any agreement to give any of the foregoing, any conditional sales or other title retention agreement, any lease in the nature thereof, and the filing of or any agreement to give any financing agreement under the Uniform Commercial Code of any jurisdiction).

"Loan" means the loan by the Lender to the Borrower in the amount of \$ \_\_\_\_\_.

"Mortgage Note" means the note evidencing the indebtedness of the Borrower for the Loan.

"Mortgage Servicer" means the organization selected by the Lender to service the Loan and which may be the Lender itself.

"Permitted Encumbrances" shall have the meaning ascribed thereto in Section 4.12.

"Person" means a person, firm, or corporation.

"Property" means the real estate described in Exhibit A hereto and the improvements thereon.

"Security Agreement" means the Security Agreement contained within the terms of the Deed of Trust of even date herewith.

"Security Documents" means the Deed of Trust, the Security Agreement, the Financing Statements, and this Agreement.

"Title Company" means \_\_\_\_\_, or such other company approved by the Lender.

"Title Policy" means an ALTA lender's extended coverage policy, or equivalent, of title insurance on the Property encumbered by the Deed of Trust in the aggregate liability equal to the amount of the Loan and in a form satisfactory to the Lender, showing the Deed of Trust as a first lien on the Property, for the benefit of the Lender and the Trustee, issued by the Title Company, subject only to those exceptions approved by the Lender, in writing, together with any endorsements required from time to time by the Lender.

"Unpledged Amounts" means amounts referred to in Section 3.2 and amounts in the reserve and escrow accounts referred to in Section 4.9.

AHFC# \_\_\_\_\_

Section 1.2 - Computation of Time Periods:

In this Agreement, in the computation of a period of time from a specified date to a later specified date, the word "from" means "from and including" and the words "to" and "until" each means "to but excluding."

Section 1.3 - Accounting Terms:

All accounting terms not specifically defined herein shall be construed in accordance with generally accepted United States accounting principles consistently applied, except as otherwise stated herein.

ARTICLE II - REPRESENTATIONS

Section 2.1 - Representations, Covenants, and Warranties of the Borrower:

To induce the Lender to enter into this Agreement and make the Loan, the Borrower makes the following representations, covenants and warranties:

(a) The Borrower (i) is a/an \_\_\_\_\_,  
\_\_\_\_\_ ,  
duly organized and existing under the laws of the State of Alaska, and qualified to transact business under the laws of said State, (ii) is not under conservatorship, in receivership, or under other legal incapacity, (iii) has the power and authority to own properties and assets and to carry on a business, as now being conducted and as now contemplated to be conducted, and (iv) has the legal ability and authority to execute and perform all the undertakings of this Agreement.

(b) The execution and performance of this Agreement, the Deed of Trust, the Mortgage Note, and any Security Documents or other instruments required to be executed and performed by the Borrower pursuant to the Security Documents (i) have not violated and will not violate any provision of law, rule, or regulation or any order of any court or other agency or government, and (ii) have not violated and will not violate any provision of any indenture, agreement, or other instrument to which the Borrower is a party or by which the Borrower or its property is bound, or result in the creation or imposition of any prohibited lien, charge, or encumbrance of any nature.

(c) The Borrower will, at time of closing of the Loan, have good and marketable title to the Property free and clear of any lien or encumbrance except Permitted Encumbrances.

AHFC# \_\_\_\_\_

(d) There is no action, suit, or proceeding at law or in equity or by or before any governmental instrumentality or other agency now pending, or, to the knowledge of the Borrower, threatened against or affecting the Borrower or any of

its properties or rights, which, if adversely determined, would materially impair its right to carry on business substantially as now conducted or as now contemplated to be conducted, or would materially adversely affect its financial condition. The Borrower is not in material default in the performance, observance or fulfillment of any of the obligations, covenants, or conditions contained in any material agreement or instrument to which it is a party.

(e) The operation of the Property, in the manner presently contemplated and as described herein, will not conflict with any zoning, water or air pollution or other ordinance, order, law, or regulation applicable thereto.

(f) The Borrower has filed, or caused to be filed, all federal, state, and local tax returns which are required to be filed and has paid, or caused to be paid, all taxes as shown on said returns or any assessment received by it, to the extent that such taxes have become due.

(g) The Borrower will not sell, transfer, or exchange the Property or any portion thereof at any time to any person or organization unless the Borrower has obtained the prior written approval of the Lender. Prior to any such sale, transfer, or exchange, the Borrower will notify the Lender in writing and deliver to the Lender an assignment agreement acceptable to the Lender, executed by any buyer or successor or other person acquiring the Property or any interest therein and specifying that such acquisition is subject to the requirements of this Agreement. This provision shall not act to waive any other restriction on such sale, transfer, or exchange.

(h) The Borrower will not discriminate against tenants or prospective tenants on the basis of race, creed, religion, color, sex, age, marital status, changes in marital status, pregnancy, parenthood, sexual orientation, national origin, or status as a student in the lease, use, or occupancy of the Property or in connection with the employment or application for employment of persons for the operation and management of the Property and will comply with all provisions of state and federal law with respect thereto.

(i) The Borrower shall lease all residential units of the Property in accordance with the Fair Housing Act (42 USC 3601 et seq.).

(j) The Borrower will not:

(i) except pursuant to the provisions of this Agreement or the Security Documents or except upon a sale, transfer, or conveyance of the

AHFC# \_\_\_\_\_



Property in accordance with the terms of this Agreement, grant commercial leases relating to the Property or permit the sale, transfer, conveyance, or encumbrance of the Property or any part thereof (except Permitted Encumbrances) during the effective term of this Agreement; or

(ii) permit the use of the Property for any purpose other than primarily as multi-family housing as set forth in its loan application to the Lender and as described in Section 4.7 of this Agreement or other such uses as shall be consistent with the Borrower's Loan Application and approved by the Lender so long as the Loan is outstanding.

(k) The Borrower has not executed and will not execute any other agreement with provisions contradictory to or in opposition to or inconsistent with the provisions hereof and that in any event, except for the provisions and requirements in the Mortgage Note, the requirements of this Agreement are paramount and controlling as to the rights and obligations herein set forth and supersede any other requirements in conflict herewith.

(l) All utilities required for the operation of the Property, including, but not limited to, power transmission lines, water supply, and electric and telephone facilities, are available for use at the boundaries of the Property or within a reasonable distance from the Property, and satisfactory arrangements have been made (or will be made) for the provision of such services to the Property.

(m) To the best of the Borrower's knowledge, after diligent inquiry, the Property does not contain, nor will the Property produce, any hazardous wastes, hazardous substances, hazardous materials, toxic substances, or toxic pollutants, as those terms are used in the Resource Conservation and Recovery Act, the Comprehensive Environmental Response Compensation and Liability Act, the Hazardous Materials Transportation Act, the Toxic Substance Control Act, the Clean Air Act, the Clean Water Act, and any regulation promulgated pursuant thereto, or in any other applicable local, state, or federal environmental law, rule, or regulation. Additional representations by the Borrower relating to environmental matters are contained in Exhibit C attached hereto and hereby incorporated by reference.

### ARTICLE III - COVENANTS OF THE BORROWER

#### Section 3.1 - Adequate Payments:

The Borrower agrees to make all Loan payments due in accordance with the terms of the Mortgage Note and the payments into the escrow and reserve accounts referred to in Sections 4.4 and 4.9. The Borrower agrees to make all payments for taxes, insurance, and other charges as required by the Deed of Trust or this Agreement. The Mortgage Note sets forth the principal, interest, and loan servicing costs due on the Loan.

AHFC# \_\_\_\_\_

### Section 3.2 - Payment of Fees and Expenses:

In the event the Borrower is in default under any provision of this Agreement, the Borrower shall be liable to, and upon demand shall pay to the Lender, and the Mortgage Servicer all reasonable fees and disbursements of such persons and their agents (including attorneys' fees and expenses) which are reasonably incurred in connection with the default or the exercise of any remedies, or incidental thereto.

### Section 3.3 - Compliance with Applicable Laws:

All work performed in connection with the Property shall be performed in strict compliance with all applicable federal, state, and municipal laws, ordinances, rules, and regulations now in force or that may be enacted hereafter.

### Section 3.4 - Unconditional Obligation:

The obligations of the Borrower to make the payments required by Sections 3.1 and 3.2 hereof and to perform and observe the other agreements on its part contained herein shall be absolute and unconditional, irrespective of any defense or any rights of setoff, recoupment, or counterclaim it might otherwise have against the Lender, and during the term of this Agreement, the Borrower shall pay absolutely the payments to be made on account of the Loan as prescribed in Sections 3.1 and 3.2 and all other payments required hereunder, free of any deductions and without abatement, diminution, or setoff. Until such time as the principal and interest on the Loan has been fully paid, the Borrower (i) will not suspend or discontinue any payments provided for in Sections 3.1 and 3.2 hereof; (ii) will perform and observe all of its other covenants contained in this Agreement; and (iii) except as otherwise expressly provided in this Agreement, will not terminate this Agreement for any cause, including, without limitation, the occurrence of any act or circumstances that may constitute failure of consideration, destruction of or damage to the Property, commercial frustration of purpose, any change in the tax laws or other laws of the United States of America or of the State of Alaska or any political subdivision or either of these, or any failure of the Lender to perform and observe any covenant, whether express or implied, or any duty, liability, or obligation arising out of or connected with this Agreement, except to the extent permitted by this Agreement.

### Section 3.5 - Lender's Assignment and Participation:

The Lender reserves, and is hereby granted by the Borrower, the right to assign this Agreement, and the Security Documents or the Loan, in whole or in part, or to obtain a participation in this Loan with AHFC or any third party. In the event of such assignment or participation, all of the obligations of the Borrower shall inure to the benefit of the Lender's successor, assignee, or designee, and

AHFC# \_\_\_\_\_

Borrower recognizes and agrees that in the event of a participation with Lender in this transaction, Lender and its participating parties, or any of them, shall have the full right and authority to enforce the terms, covenants and conditions hereof, together with any rights conferred to any participant by an assignment of this Agreement, the Mortgage Note, the Security Documents, or any loan documents relating to the Loan.

#### ARTICLE IV - SPECIAL COVENANTS AND AGREEMENTS

##### Section 4.1 - Right of Access to the Property:

The Borrower agrees that during the term of this Agreement the Lender, and its duly authorized agents, shall have the right at all reasonable times during normal business hours to enter upon the Property to examine, inspect, repair, or conduct environmental remediation at the Property; provided, however, that this right is subject to federal and State of Alaska laws and regulations applicable to the Property.

##### Section 4.2 - Assignment and Assumption:

The rights and obligations of the Borrower under this Agreement may be assigned or transferred by the Borrower to any person in whole or in part, subject, however, to each of the following conditions:

(a) Any assignee's or transferee's creditworthiness and management ability shall be satisfactory to the Lender and the Assignee shall execute, prior to the sale or transfer, a written assumption agreement containing such terms as the Lender may require, including, if required by the Lender, an increase in the rate of interest payable under the Note.

(b) Any assignment from the Borrower shall retain for the Borrower such rights and interests as will permit it to perform its obligations under this Agreement and any assignee from the Borrower shall assume in writing the obligations of the Borrower hereunder to the extent of the interest assigned.

(c) No assignment shall relieve the Borrower from primary liability for any of its obligations hereunder, unless the Lender approves the Borrower's release from liability. The Lender's consent to the Borrower's release is subject to the Lender's determination that the sale terms, transferee's creditworthiness, and management ability do not increase the risk of default.

(d) The Borrower shall give the Lender thirty (30) days prior written notice of any proposed sale or assignment and shall, within thirty (30) days after delivery thereof, furnish or cause to be furnished to the Lender a true and complete copy of each such assignment together with an instrument of

AHFC# \_\_\_\_\_

assumption and an opinion of the Borrower's counsel satisfactory to the Lender stating that provisions of this Section 4.2 have been complied with.

Section 4.3 - Records and Financial Statements of Borrower:

The Lender shall be permitted at all reasonable times during the term of this Agreement to examine the books and records of the Borrower with respect to the Property, subject to the limitations expressed in Section 4.1.

Section 4.4 - Maintenance and Repair; Taxes; Insurance; Utility and Other Charges:

The provisions of this Section shall be in addition to any similar requirements contained in the Deed of Trust. The Borrower agrees to maintain, to the extent permitted by applicable law and regulation, the Property, or cause the Property to be so maintained, during the term of this Agreement (i) in a reasonably safe condition, and (ii) in good repair and in good operating condition, ordinary wear and tear excepted, making from time to time all necessary repairs thereto and renewals and replacements thereof.

The Borrower agrees to pay or cause to be paid during the term of this Agreement all taxes and governmental charges of any kind lawfully assessed or levied upon the Property or any part thereof, including any taxes levied against the Property which, if not paid, will become a charge on the receipts from the Property prior to or on a parity with the charge thereon and the pledge or assignment thereof to be created there from or under the Deed of Trust or this Agreement, all utility and other charges incurred in the operation, maintenance, use, occupancy and upkeep of the Property and all assessments and charges lawfully made by any governmental body for public improvements that may be secured by a lien on the Property, provided that, with respect to special assessments or other governmental charges that may lawfully be paid in installments over a period of years, the Borrower shall be obligated to pay only such installments as are required to be paid during the term of this Agreement.

Funds to pay real property taxes, insurance and other charges on the Property shall be secured in an escrow account and initially collected from the Borrower on a pro-rata basis at the closing of the loan and thereafter through monthly payments by the Borrower in an amount determined by the Lender or its Loan Servicer that is sufficient to cover the required payments. Borrower shall pay to Lender on the day monthly installments of principal or interest are payable under the Mortgage Note (or on another day designated in writing by Lender), until the Mortgage Note is paid in full, a sum equal to one-twelfth of the taxes and assessments which may be levied on the Property, the yearly premium installments for fire and other hazard insurance, rent loss insurance and other such insurance covering the Property as Lender may require pursuant to Section

AHFC# \_\_\_\_\_

4.6 hereof, all as reasonably estimated initially and from time to time by Lender on the basis of assessments and bills and reasonable estimates thereof. Any waiver by Lender of a requirement that Borrower pay such funds may be revoked by Lender, in Lender's sole discretion, at any time upon notice in writing to Borrower. Lender may require Borrower to pay to Lender, in advance, such other funds for other taxes, charges, premiums, assessments and impositions in connection with Borrower or the Property which Lender shall reasonably deem necessary to protect Lender's interests (herein "Other Impositions"). Lender may require funds for Other Impositions to be paid by Borrower in a lump sum or in periodic installments, at Lender's option.

The funds shall be held in an institution(s) the deposits or accounts of which are insured or guaranteed by a Federal or state agency. The Lender shall apply the funds to pay such taxes, assessments, insurance premiums and Other Impositions so long as Borrower is not in breach of any covenant of Borrower in this Agreement. The Lender shall not be required to pay Borrower any interest, earnings or profits on the funds. The Lender shall give to Borrower, without charge, an annual accounting of the funds in Lender's normal format showing credits and debits to the funds and the purpose for which each debit to the funds was made. The funds are pledged as additional collateral under the Deed of Trust.

If the amount of the funds held by Lender at the time of an annual accounting thereof shall exceed the amount deemed necessary by Lender to provide for the payment of taxes, assessments, insurance premiums, and Other Impositions, as they fall due, such excess shall be credited to Borrower on the next monthly installment or installments of funds due. If at any time the amount of the funds held by Lender shall be less than the amount deemed necessary by Lender to pay taxes, assessments, insurance premiums and Other Impositions, as they fall due, Borrower shall pay to Lender any amount necessary to make up the deficiency within thirty (30) days after notice from Lender to Borrower requesting payment thereof.

Upon Borrower's breach of any covenant or agreement of Borrower in this Agreement, Lender may apply, in any amount and in any order as Lender shall determine in Lender's sole discretion, any funds held by Lender at the time of application (i) to pay taxes, assessments, insurance premiums and Other Impositions which are now or will hereafter become due, or (ii) as a credit against sums secured by this Agreement. Upon payment in full of all sums to be paid under this Agreement, Lender shall promptly refund to Borrower any funds held by Lender.

The Borrower may, at the Borrower's expense and in the Borrower's name, in good faith contest any such taxes, assessments and other charges and, in the event of any such contest, may permit the taxes, assessments or other charges so contested to remain unpaid during that period of such contest and any appeal

AHFC# \_\_\_\_\_

there from unless by such nonpayment the Property or any part thereof will be subject to loss or forfeiture.

Section 4.5 - Qualification in Alaska:

The Borrower agrees that throughout the term of this Agreement Borrower or any successor or assignee as permitted by Section 4.2 hereof, will be qualified to do business in the State of Alaska.

Section 4.6 - Insurance:

The Borrower agrees to cause the Property to be insured in such amounts and for such occurrences as follows:

General:

Original insurance policies must be with a company having a Best Guide financial rating of at least A- or better. Renewal and replacement policies must be rated A- or otherwise approved by the Lender. The Borrower shall notify the Lender of any insurer rating downgrade of which the Borrower is aware and to the extent commercially practicable replace any insurer not rated by Best Guide in its highest rating category. Policies must be acquired at initial occupancy and submitted to the Lender for approval prior to permanent loan recordation. Renewal insurance policies must be submitted thirty (30) days prior to the expiration date of any current insurance policy. Evidence of the required insurance is to be provided to the Lender prior to recordation and to the Mortgage Servicer annually thereafter.

Binders are acceptable prior to recordation or renewal as long as referenced endorsements and all required coverage information is attached.

Specific:

1. Property Insurance - Buildings:

(a) Amount: the amount of insurance must be at least equal to the lesser of one hundred percent (100%) of the improvements located on the Property or the unpaid principal balance of the Loan. However, in no event may the amount of insurance coverage be less than the minimum amount necessary to fully compensate the Lender for any damage or loss on a cost replacement basis.

(b) Perils: insurance must include coverage against loss from all risks, including fire, extended coverage, vandalism and malicious mischief.

AHFC# \_\_\_\_\_

(c) Deductible: a deductible of no greater than \$5,000.00 per occurrence may apply to losses for all perils.

(d) Replacement Cost Coverage: all policies must include a replacement cost coverage endorsement through which the full cost of repair or replacement will be paid in case of loss.

(e) Automatic Increase Endorsement: amounts of insurance should be adjusted annually to reflect current replacement costs.

(f) Flood Insurance: flood insurance is required for Property located within a "Special Flood Hazard Area" as identified by the United States Department of Housing and Urban Development.

(g) Avalanche Insurance: avalanche insurance is required for Property located within designated avalanche hazard zones.

(h) Lender's Loss Payable Clause: the Lender's interest shall be protected by attachment of a Lender's Loss Payable Endorsement to all insurance policies and must contain a thirty (30) day notice of cancellation clause.

2. Property Insurance - Contents:

Appliances, furnishings, and equipment not insured as a part of the buildings are to be insured under the conditions indicated under paragraph 1 above in this Section, except replacement cost coverage is not required.

3. Loss of Rents:

(a) The amount of insurance shall be not less than one hundred percent (100%) of the projected or actual annual gross rental income for the Property.

(b) Rental income insurance must cover the same perils covered by property insurance.

4. Boiler and Machinery Insurance:

All high pressure vessels must be insured through a boiler and machinery insurance policy, which includes repair and replacement coverage and is written on a "broad form" basis.

AHFC# \_\_\_\_\_

5. Liability Insurance:

(a) Liability insurance must be provided through a comprehensive general liability insurance policy, which includes owned and non-owned automobiles and personal injury liability.

(b) The limit of liability may not be less than \$1,000,000.00 per occurrence for bodily injury and property damage combined with an aggregate limit of not less than \$2,000,000.00. If the Property contains an elevator, the minimum limit of liability per occurrence shall be \$3,000,000.00.

(c) It is required that the Lender be named as additional insured. The Lender will accept written confirmation to this requirement prior to recordation.

(d) Umbrella policies may be acquired, but are not a Lender requirement.

(e) For directors and officers, liability insurance is recommended but not required.

(f) If liability insurance coverage is not part of the general property insurance policy (items 1-2), a separate binder is required; the premium for the liability premium may be paid outside of the required monthly payment due the Loan Servicer. However, if this is the case, evidence of applicable required coverage must be provided to the Loan Servicer annually.

6. Other Coverage:

(a) Workers' compensation insurance, as mandated by Alaska law, is required. A copy of such policy need not be submitted to the Lender, but a binder evidencing coverage shall be provided to the Lender, if requested by the Lender.

(b) Fidelity bonds or equivalent insurance (to include fidelity and fiduciary coverage for employees, for example, employee dishonesty and embezzlement) are required for any one who either handles or is responsible for funds held or administered by or on behalf of the Borrower for this Property, whether or not they receive compensation for their services. A copy of such policy need not be submitted to the Lender, but a binder evidencing coverage shall be provided to the Lender upon request. Fidelity bonds or insurance limits should equal at least three months rental

AHFC# \_\_\_\_\_



revenue plus any Property reserve funds handled for or on behalf of the Borrower, or such other amount as approved by the Lender.

(c) Any management companies utilized by the Borrower must also be insured or bonded in an amount at least equal to three (3) months gross potential rents, plus any Property reserve funds held by the management company. A copy of such policy need not be submitted to Lender, but a certification evidencing coverage is to be provided to the Lender upon request.

(d) If the Borrower handles all Property related funds and does not employ persons or a management company to handle Property funds, items (b) and (c) of this paragraph 6 do not apply.

Insurance funds will be secured in an escrow account initially funded on a pro rata basis at the Loan closing and through monthly payments thereafter in an amount and manner as described in Section 4.4 hereof and which will be made in conjunction with the principal, interest, and tax payment, except that liability, workers' compensation and fidelity insurance coverage premiums may be paid directly by the Borrower so long as evidence is provided to the Lender annually to verify that appropriate coverage is in place.

All insurance companies providing insurance under this section shall be authorized to do so under the laws of the State.

#### Section 4.7 - Use of the Property:

The Loan to the Borrower was approved to acquire, refinance, construct, or moderately rehabilitate multi-family properties containing five (5) or more residential units.

The Borrower will maintain complete and accurate records pertaining to the provision of residential housing units and will permit, upon reasonable prior notice, any duly authorized representative of the Lender or Mortgage Servicer to inspect the books and records of the Borrower pertaining to the Property, to verify that the Property is being used for its intended purpose under this Agreement and the Borrower's loan application. The Lender's determination of compliance with this section shall be conclusive.

#### Section 4.8 - Notice and Certificates to Lender:

The Borrower agrees to provide the Lender with the following:

AHFC# \_\_\_\_\_

(a) Within one hundred twenty (120) days of the end of the calendar year, a signed copy of the Borrower's federal income tax return, and the previous year's operating statement relating to the Property as required by Section 4.3.

(b) Upon knowledge of an Event of Default under this Agreement, written notice of such Event of Default, such notice to include a description of the nature of such event and what steps are being taken to remedy such Event of Default.

Section 4.9 - Reserve Accounts:

(a) A Replacement Reserve Account (the "Replacement Reserve Account") controlled by the Lender shall be established and maintained until the termination of this Agreement. An amount is to be deposited by the Borrower as necessary in the Replacement Reserve Account to cause the amount to be sufficient to replace major structural elements as identified by the origination appraisal. An initial deposit of \$\_\_\_\_\_ is required at closing. Deposits to the Replacement Reserve Account shall be made by monthly installments in the initial amount of \$\_\_\_\_\_ for total deposits during the following twelve (12) months of \$\_\_\_\_\_. The monthly Replacement Reserve Account payments shall be due and be made on the due date for each payment under the Mortgage Note. Specific examples of qualified replacements may include, but are not limited to, the roof, floor coverings, appliances, window coverings, boilers and hot water heaters (and other mechanical building components), exterior painting and painting of interior common area, parking lot repairs, landscaping replacement items, and elevators, if applicable. The Replacement Reserve Account shall not be used for routine maintenance and repairs or for the purchase of new equipment such as office furniture, computers or other items of personal property not integrated within the physical structure of the building. All disbursements from the Replacement Reserve Account shall be subject to the Lender's approval, which shall not be unreasonably delayed or withheld.

The Lender reserves the right to increase the annual reserve requirement and the amount of the monthly payments required to be made to the Replacement Reserve Account. The additional amount, as may be determined by the Lender to be reasonably necessary to fulfill the purpose of the Replacement Reserve Account, will be determined after a review of the account balance, the prior use of the account, and the anticipated future needs of the Property. Notice of increases to the Replacement Reserve Account requirement will be provided to the Borrower.

At such times as the amount held in the Replacement Reserve Account equals or exceeds five times the annual Replacement Reserve Account requirement, monthly payments may be temporarily discontinued. However,

AHFC#\_\_\_\_\_

monthly payments to the Replacement Reserve Account shall resume at any time the disbursements from the account reduce the account balance below such five-year cap amount or if the annual reserve requirement is increased by the Lender as described in the preceding paragraph and the amount in the account is less than five times the new annual reserve requirement.

Amounts in the Replacement Reserve Account shall not be pledged to or available to pay principal or interest on this Loan unless the Lender determines there has been a default in the payment of any amounts owed under this Agreement and, elects to apply amounts in the Replacement Reserve Account to the payment of any such amounts remaining. Upon payment in full of all sums to be paid under this Agreement, the Lender shall refund to Borrower the amounts remaining in the Replacement Reserve Account.

(b) If a completion escrow account is required to be established as part of this Loan, such an agreement shall be attached to this Agreement and is hereby incorporated by reference.

(c) If an operating deficit escrow is required to be established as part of this Loan, such an agreement shall be attached to this Agreement and is hereby incorporated by reference.

#### Section 4.10 - Property Change in Use:

If without the consent of the Lender, there is a change in use of the Property from the original intent of the Loan, then the Lender may demand payment in full on the Loan, including all principal and interest due under the terms of the Mortgage Note.

#### Section 4.11 - Liens:

The Borrower shall not create, incur, assume, or suffer to exist any Lien (including any pledge, encumbrance, or security interest) of any kind upon the Property without the prior written consent of the Lender except the following "Permitted Encumbrances":

(a) liens for taxes, assessments, or other governmental charges or levies not at the time delinquent or thereafter payable without penalty or being contested in good faith, provided provision is made to the satisfaction of the Lender for the eventual payment thereof in the event it is found that such is payable by the Borrower;

(b) liens of carriers, warehousemen, mechanics, and materialmen incurred in the ordinary course of business for sums not overdue or being contested in good faith, provided provision is made to the satisfaction of the

AHFC# \_\_\_\_\_

Lender for the eventual payment thereof in the event it is found that such is payable by the Borrower;

(c) liens incurred in the ordinary course of business in connection with workers' compensation, unemployment insurance, or other forms of governmental insurance or benefits, or to secure performance and statutory obligations entered into in the ordinary course of business or to secure obligations on surety bonds, easements, rights-of-way, restrictions, and similar encumbrances incurred in the ordinary course of business and not interfering with the ordinary conduct of the business of the Borrower;

(d) judgment liens in existence less than forty-five (45) days after the entry thereof or with respect to which execution has been stayed or the payment of which is covered in full by insurance;

(e) such minor defects and irregularities of title as may exist and be approved by the Lender with respect to the Property and which do not, in the aggregate, materially and adversely affect its or their value or impair its or their use;

(f) the security interests created by the Security Documents; and

(g) exceptions referred to in the Title Policy.

#### ARTICLE V - EVENTS OF DEFAULT AND REMEDIES

##### Section 5.1 - Events of Default:

Any one of the following, which occurs and continues, shall constitute an Event of Default:

(a) failure by the Borrower to pay or cause to be paid, when the same becomes due, any amounts required to be paid under Sections 3.1 or 3.2 hereof; or

(b) any representation or warranty made by the Borrower in this Agreement or any of the Security Documents to which the Borrower is a party shall be false in any material respect or shall omit any material fact on the date as of which made; or

(c) the Borrower shall fail to perform or observe any term, covenant, or agreement contained in this Agreement or any of the Security Documents to which the Borrower is a party on its part to be performed or observed and with respect to any such term, covenant, or agreement contained herein or in the Security Documents, any such failure remains unremedied for fifteen (15) days after such failure shall first become known to any agent or officer of the Borrower; or

AHFC# \_\_\_\_\_

(d) an Event of Default as defined in any Security Document shall occur under any such Security Document; or

(e) the Borrower shall default in any payment of indebtedness (or of any obligation under a conditional sale or other title retention agreement, or of any obligation secured by a purchase money mortgage, or of any obligation under notes payable or drafts accepted representing extensions of credit) beyond any period of grace provided with respect thereto; or the Borrower shall default in the performance or observance of any other agreement or any term or condition contained in any other agreement under which any such obligation is created (or if any other default hereunder or under such agreement shall occur and be continuing) and the effect of such default is to cause, or to permit, the holder or holders of such obligation (or a trustee on behalf of such holder or holders) to cause such obligation to become due prior to any stated maturity; or

(f) the Borrower shall commence (by petition, application, or otherwise) a voluntary case or other proceeding under the laws of any jurisdiction seeking liquidation, reorganization, or other relief with respect to itself or its debts under any bankruptcy, insolvency, or other similar law now or hereafter in effect, or seeking the appointment of a trustee, self-trusteeship, receiver, custodian, or other similar official of it or any substantial part of its property; or shall consent (by answer or failure to answer, or otherwise) to any such relief or to the appointment of or taking possession by any such official in an involuntary case or other proceeding commenced against it; or shall make an assignment for the benefit of creditors; or shall generally not pay its debts as they become due or not be able to pay its debts as they become due; or admit in writing its inability to pay its debts as they become due; or shall take any action to authorize any of the foregoing; or

(g) an involuntary case or other proceeding shall be commenced under the laws of any jurisdiction against the Borrower seeking liquidation, reorganization, or other relief with respect to it or its debts under any bankruptcy, insolvency, or other similar law now or hereafter in effect, or seeking the appointment of a trustee, receiver, custodian, or other similar official of it or any substantial part of its property, and such involuntary case or other proceeding shall remain undismissed and unstayed for a period of fifteen (15) days or a trustee, receiver, custodian, or other official shall be appointed in such involuntary case; or

(h) a judgment or order for the payment of money in excess of \$100,000 shall be rendered against the Borrower and such judgment or order shall continue unsatisfied, unbonded, and unstayed for a period of forty-five (45) days; provided, however, it shall not be an Event of Default if during this period the claim is settled and only formal documentation of the settlement remains to be completed and is being diligently pursued; or

AHFC# \_\_\_\_\_

(i) any judgment, writ, attachment, execution, injunction, or similar process in excess of \$100,000 shall be issued or levied against the Property and such process shall not be released, vacated, or fully bonded within forty-five (45) days after its issue or levy; provided, however, it shall not be an Event of Default if during this period the claim is settled and only formal documentation of the settlement remains to be completed and is being diligently pursued; or

(j) the Deed of Trust shall cease to be in full force and effect as a first lien upon the Property; or

(k) the Title Policy does not insure obligations advanced or incurred by the Lender after the date of the Title Policy or the Lender reasonably believes that the obligations might not be entitled to priority over mechanics' or materialmen's liens or any other liens on the Property, unless the Lender receives, at the Borrower's expense, title policy endorsements satisfactory to the Lender's insuring such priority; or

(l) there is a material adverse change affecting the viability of the Borrower or in the viability of the Property; or

(m) failure by the Borrower to establish, fund, or maintain the reserve or escrow accounts described at Sections 4.4 and 4.9 hereof.

#### Section 5.2 - Remedies on Default:

Whenever any Event of Default shall have occurred and shall continue:

(a) Whenever there is an Event of Default under Section 5.1, the Lender, by written notice to the Borrower, may declare the unpaid balance of the Loan to be due and payable immediately.

(b) The Lender may have access to and may inspect, examine, and make copies of the books and records and any and all accounts, data, and federal income tax and other tax returns of the Borrower.

(c) The Lender may take whatever action at law or in equity, to collect the payments and other amounts then due and thereafter to become due, to remedy any Event of Default, or to enforce performance and observance of any obligation, agreement, or covenant of the Borrower under this Agreement.

In case the Lender shall have proceeded to enforce its rights under this Agreement and such proceedings shall have been discontinued or abandoned for any reason or shall have been determined adversely to the Lender, then, and in every such case, the Borrower and the Lender shall be restored respectively to their several positions and rights hereunder, and all rights, remedies, and powers

AHFC# \_\_\_\_\_

of the Borrower and the Lender shall continue as though no such action had been taken.

The Borrower covenants that, in case an Event of Default shall occur with respect to the payment of any Loan payment payable under Article III hereof, then, upon demand of the Lender, the Borrower will pay to the Lender the whole amount that then shall have become due and payable under said Article.

In case the Borrower shall fail forthwith to pay such amounts upon such demand, the Lender shall be entitled and empowered to institute any action or proceeding at law or in equity for the collection of the sums so due and unpaid, and may prosecute any such action or judgment or final decree against the Borrower and collect in the manner provided by law the moneys adjudged or decreed to be payable.

In case proceedings shall be pending for the bankruptcy or for the reorganization of the Borrower under the federal bankruptcy laws or any other applicable law, or in case a receiver or trustee shall have been appointed for the Property of the Borrower or in the case of any other similar judicial proceedings relative to the Borrower, or the creditors or property of the Borrower, then the Lender shall be entitled and empowered, by intervention in such proceedings or otherwise, to file and prove a claim or claims for the whole amount owing and unpaid pursuant to this Agreement, and to collect and receive any moneys or other property payable or deliverable on any such claims, and to distribute such amounts as provided in this Agreement. Any receiver, assignee or trustee in bankruptcy or reorganization is hereby authorized to make such payments to the Lender, including expenses and fees of counsel incurred by it up to the date of such distribution.

The Borrower is obligated and fully liable for any amounts due under this Agreement and the Security Documents executed pursuant hereto. The Lender has the right to sue, under this Agreement and the Security Documents, and obtain judgment against the Borrower for satisfaction of the amount due under this Agreement or the Security Documents, either before or after a judicial foreclosure of the Deed of Trust pursuant to Alaska Statutes 09.45.170 - .220.

Section 5.3 - Agreement to Pay Attorneys' Fees and Expenses:

The Lender shall have the right, but not the obligation, to commence, appear in, and defend any action or proceeding which might affect its security or its rights, duties, or liabilities relating to the Property, this Agreement or the the enforcement of performance or observance of any obligation or agreement on the part of the Borrower herein contained, the Borrower agrees to pay to the Security Documents. In the event the Borrower should default under any of the provisions of this Agreement and the Lender should employ attorneys or incur other expenses for the collection of the payments due under this Agreement for

AHFC# \_\_\_\_\_

Lender the reasonable fees of such attorneys and such other expenses so incurred by the Lender.

Section 5.4 - No Remedy Exclusive:

No remedy herein conferred upon or reserved to the Lender is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Lender to exercise any remedy reserved to it in this Article, it shall not be necessary to give any notice, other than such notice as may be herein expressly required.

Section 5.5 - No Additional Waiver Implied by One Waiver:

In the event any agreement or covenant contained in this Agreement should be breached by the Borrower and thereafter waived by the Lender, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

## ARTICLE VI - PREPAYMENT

Section 6.1 - Prepayment:

Prepayments of the amounts payable under Sections 3.1 and 3.2 hereof, in whole or in part, may be made by payment to the Lender in accordance with the terms of the Mortgage Note. If the loan is prepaid in whole or in part, a prepayment penalty will be charged on the date of any such prepayment in an amount equal to five percent (5%) of the amount of such prepayment; which said prepayment penalty or charge shall decline .083% (.00083) for each full month of the loan beginning from the date of the Mortgage Note so that after five (5) years from such date hereof, there shall be no prepayment penalty or charge.

Each payment and prepayment made by the Borrower under the Mortgage Note shall be made in immediately available funds on the date when payments are required to be made under the Mortgage Note. Prepayments shall be applied against the outstanding principal balance of the Mortgage Note and shall not extend or postpone the due date of any subsequent monthly installments or change the amount of such installments, unless the Lender shall agree otherwise in writing. If the date of any payment due under the terms of the Mortgage Note falls on a day, which is not a Business Day, then for all purposes thereof the same will be deemed to have fallen on the next succeeding Business Day, and, in the case of prepayments, such extension of time shall be included in the computation of interest thereunder.

AHFC# \_\_\_\_\_



## ARTICLE VII - EXPENSES; INDEMNIFICATION

### Section 7.1 - Expenses:

The Borrower covenants and agrees to pay and to indemnify the Lender, and its assigns, against all costs and charges, including reasonable fees and disbursements of attorneys, accountants, consultants, and other experts, incurred in good faith in connection with this Agreement.

### Section 7.2 - Indemnification:

The Borrower releases the Lender, and its assigns, from, and covenants and agrees that neither the Lender, or its assigns, or their respective officers, employees, or agents shall be liable for, and covenants and agrees, to the extent permitted by law, to indemnify and hold harmless the Lender, and its assigns, and their respective officers, employees, and agents from and against, any and all losses, claims, damages, liabilities, or expenses, of every conceivable kind, character, and nature whatsoever arising out of, resulting from, or in any way connected with (1) the Property, or the conditions, occupancy, use, possession, conduct, or management of, or work done in or about, or from the planning, design, acquisition, installation, or construction of, the Property or any part thereof; (2) any certifications, covenants, or representations made in connection therewith and the carrying out of any of the transactions contemplated in this Agreement. The Borrower further covenants and agrees, to the extent permitted by law, to pay or to reimburse the Lender and its assigns, and their respective officers, employees, and agents for any and all costs, reasonable attorneys' fees, liabilities, or expenses incurred in connection with investigating, defending against, or otherwise in connection with any such losses, claims, damages, liabilities, expenses, or actions, except to the extent that the same arise out of the negligence or willful misconduct of the party claiming such payment or reimbursement. The provisions of this Section shall survive the payment of the Mortgage Note.

Note: Additional indemnification covenants are contained in the Environmental Indemnity Agreement, Exhibit C attached hereto and incorporated herein by reference.

## ARTICLE VIII - MISCELLANEOUS

### Section 8.1 - Notices:

All notices, certificates or other communications shall be deemed sufficiently given on the second day following the day on which the same have been mailed by certified mail, postage prepaid, addressed to the Lender and the Borrower as follows:

AHFC# \_\_\_\_\_

To the Lender:

To the Borrower:

The Lender and the Borrower may, by notice given hereunder, designate any different addresses to which subsequent notices, certificates or other communications shall be sent.

Section 8.2 - Severability:

If any provision of this Agreement shall be held or deemed to be, or shall in fact be, illegal, inoperative or unenforceable, the same shall not affect any other provision or provisions herein contained or render the same invalid, inoperative, or unenforceable to any extent whatever.

Section 8.3 - Amendments, Changes and Modifications:

This Agreement may not be amended without the written consent of the Lender, the Borrower and their respective successors and assigns.

Section 8.4 - Governing Law:

This Agreement shall be governed exclusively by and construed in accordance with the applicable laws of the State of Alaska.

Section 8.5 - Term of This Agreement:

This Agreement shall be in full force and effect from the date hereof and shall continue in effect so long as Loan payments or other amounts due under this Agreement or the Mortgage Note, remain outstanding or unpaid.

Section 8.6 - Binding Effect:

This Agreement shall inure to the benefit of and shall be binding upon the Lender, the Borrower, and their respective successors and assigns, subject, however, to the limitations contained in Section 4.2 hereof.

AHFC# \_\_\_\_\_

IN WITNESS WHEREOF, the Borrower and the Lender have executed this Agreement in their name, all as of the date first above written.

LENDER: \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

BORROWER: \_\_\_\_\_

\_\_\_\_\_

By: \_\_\_\_\_

By: \_\_\_\_\_

By: \_\_\_\_\_

AHFC# \_\_\_\_\_

ACKNOWLEDGMENTS

STATE OF ALASKA )  
 ) ss  
\_\_\_\_ JUDICIAL DISTRICT )

THIS CERTIFIES that on \_\_\_\_\_, 20\_\_\_\_\_,  
before me, the undersigned Notary Public in and for the State of  
\_\_\_\_\_, duly commissioned and sworn as such, personally appeared  
\_\_\_\_\_,  
known to me and to me known to be the individual(s) named in and who executed  
the foregoing instrument, and acknowledged to me (s)(t)he(y) signed the same  
freely and voluntarily for the uses and purposes therein set forth.

SUBSCRIBED AND SWORN to or affirmed before me at \_\_\_\_\_.

\_\_\_\_\_  
Notary Public in and for \_\_\_\_\_  
My commission expires: \_\_\_\_\_

STATE OF ALASKA )  
 ) ss  
\_\_\_\_ JUDICIAL DISTRICT )

THIS CERTIFIES that on \_\_\_\_\_, 20\_\_\_\_\_,  
before me, the undersigned Notary Public in and for the State of  
\_\_\_\_\_, duly commissioned and sworn as such, personally appeared  
\_\_\_\_\_,  
known to me and to me known to be the individual(s) named in and who executed  
the foregoing instrument, and acknowledged to me (s)(t)he(y) signed the same  
freely and voluntarily for the uses and purposes therein set forth.

SUBSCRIBED AND SWORN to or affirmed before me at \_\_\_\_\_.

\_\_\_\_\_  
Notary Public in and for \_\_\_\_\_  
My commission expires: \_\_\_\_\_

AHFC# \_\_\_\_\_

STATE OF ALASKA )  
 ) ss  
\_\_\_\_ JUDICIAL DISTRICT )

THIS CERTIFIES that on \_\_\_\_\_, 20\_\_\_\_\_,  
before me, the undersigned Notary Public in and for the State of  
\_\_\_\_\_, duly commissioned and sworn as such, personally appeared  
\_\_\_\_\_,  
known to me and to me known to be the individual(s) named in and who executed  
the foregoing instrument, and acknowledged to me (s)(t)he(y) signed the same  
freely and voluntarily for the uses and purposes therein set forth.

SUBSCRIBED AND SWORN to or affirmed before me at \_\_\_\_\_.

\_\_\_\_\_  
Notary Public in and for \_\_\_\_\_  
My commission expires: \_\_\_\_\_

STATE OF ALASKA )  
 ) ss  
\_\_\_\_ JUDICIAL DISTRICT )

THIS CERTIFIES that on \_\_\_\_\_, 20\_\_\_\_\_,  
before me, the undersigned Notary Public in and for the State of  
\_\_\_\_\_, duly commissioned and sworn as such, personally appeared  
\_\_\_\_\_,  
known to me and to me known to be the individual(s) named in and who executed  
the foregoing instrument, and acknowledged to me (s)(t)he(y) signed the same  
freely and voluntarily for the uses and purposes therein set forth.

SUBSCRIBED AND SWORN to or affirmed before me at \_\_\_\_\_.

\_\_\_\_\_  
Notary Public in and for \_\_\_\_\_  
My commission expires: \_\_\_\_\_

AHFC# \_\_\_\_\_

EXHIBIT A  
DESCRIPTION OF PROPERTY

AHFC# \_\_\_\_\_

EXHIBIT B  
FORM OF DEED OF TRUST

(Deed of Trust securing the amount of \$ \_\_\_\_\_)

AHFC# \_\_\_\_\_

EXHIBIT C  
ENVIRONMENTAL INDEMNITY AGREEMENT

(See attached Exhibit)

AHFC# \_\_\_\_\_



EXHIBIT C  
ENVIRONMENTAL INDEMNITY AGREEMENT

The environmental indemnity agreement shall inure to the benefit of the Lender, \_\_\_\_\_, its successors and assigns. To the best of the Borrower's knowledge, after diligent inquiry, the Property that is the subject of the Loan Agreement or the Deed of Trust does not contain, nor will the Property produce, any hazardous wastes, hazardous substances, hazardous materials, toxic substances, or toxic pollutants as those terms are used in the Resource Conservation and Recovery Act, the Comprehensive Environmental Response Compensation and Liability Act, the Hazardous Materials Transportation Act, the Toxic Substance Control Act, the Clean Air Act, the Clean Water Act, and any regulation promulgated pursuant thereto, or in any other applicable local, state, or federal environmental law, rule, or regulation governing environmental contamination of any kind (including the same or similar terms defining environmental contamination).

Borrower shall comply with all local, state, or federal environmental laws, rules, or regulations and orders of governmental agencies and courts with authority over the ownership, use, generation, storage, handling, treatment, transport, disposal, existence, removal or cleanup of hazardous substances or wastes, petroleum products, asbestos, or any substance that may cause environmental contamination of this Property. In the event environmental contamination is confirmed to exist on the Property and after Borrower is given a reasonable opportunity to complete remediation and, if Borrower fails to correct the contamination, the Lender may, at its sole option, enter the Property to remedy any incident of environmental contamination that affects its security interest in the Property as a beneficiary under the Deed of Trust. If the Lender exercises this right, Borrower shall reimburse the Lender in full for any and all costs incurred by such actions prior to the Lender acquiring title to the Property through foreclosure or deed in lieu of foreclosure. This and the following paragraphs are in addition to any other agreements or rights of recovery by law between the Borrower and the Lender involving environmental contamination.

Borrower additionally represents that it has complied with all laws governing the installation of any improvements including local, state, or federal laws, rules, regulations, or standards governing the construction and installation of all such improvements. Borrower further represents that it has complied with all applicable zoning requirements and that any construction activities have not caused any environmental contamination or aggravated any contamination problem known or unknown to exist on the Property or adjacent property. Additionally, Borrower shall forever defend, indemnify, and hold harmless the Lender from and against any and all suits, claims, actions, losses, costs, penalties, and damages (of whatever kind or nature, including reasonable attorneys' fees and litigation costs) arising in

AHFC# \_\_\_\_\_

favor of governmental agencies or third parties (including employees of the parties) on account of any claims or causes of actions (including, but not limited to, personal injuries, death, environmental contamination, nuisance, or property damage) arising out of or in connection with, or incidental to the ownership, operation, installation, use of, contact with, clean-up or removal of any environmental contamination involving the purchased property. Any such claims or cause of action, whether in the form of a lawsuit, demand, or other proceeding brought against Lender shall be immediately tendered to and accepted by the Borrower. Any attorneys' fees or costs incurred by Lender prior to such tender and acceptance of defense shall be the complete and sole responsibility, without limitation, of Borrower.

This indemnification obligation specifically includes all losses, liabilities, damages, injuries, costs, expenses, penalties, and claims of any and every kind whatsoever (including, without limitation, any death, environmental liability, construction liability, products liability, and employee liability) paid, incurred, or suffered by or asserted against Lender for, with respect to, or as a direct or indirect result of the presence on or under, or the escape, seepage, leakage, spillage, discharge, emission, discharging or release from the property of fuel or other hazardous wastes, toxic substances, asbestos, or pollutants or liabilities arising out of any activities by the Borrower prior to or after the closing. The obligations of the Borrower under this agreement shall survive beyond the date of closing.

BORROWER (s): \_\_\_\_\_

\_\_\_\_\_

By: \_\_\_\_\_

By: \_\_\_\_\_

By: \_\_\_\_\_

AHFC# \_\_\_\_\_

EXHIBIT D  
FORM OF MORTGAGE NOTE

Omitted as exhibit - see corresponding transcript items.

AHFC# \_\_\_\_\_