

DEED IN LIEU OF FORECLOSURE AGREEMENT

This Deed in Lieu of Foreclosure Agreement (the or this "Agreement") is entered into effective August __, 2013, by and between (1) Sunset Diversified Property Investments, LLC ("Sunset"), successor in interest to the Federal National Mortgage Association ("Fannie Mae"); and (2) Southtowne Management Group, LLC ("Southtowne"); (3) Williamsburg Townhomes, LLC ("Williamsburg") (Williamsburg and Southtowne are herein referred to collectively as the "Obligors" and, as applicable, either of them individually, is herein referred to as an Obligor"); and (4) Mark E. Edwards ("Edwards" or "Guarantor").

RECITALS

WHEREAS, each Obligor entered into a separate loan transaction with the Royal Bank of Canada ("RBC"), which loans were then assigned to Fannie Mae. Such loans were later assigned to Sunset;

WHEREAS, specifically, on March 4, 2008, Southtowne executed and delivered a Multifamily Note in favor of RBC for the principal amount of \$2,858,500.00;

WHEREAS, in order to secure the loan, Southtowne executed a Multifamily Mortgage, Assignment of Rents and Security Agreement (the "Southtowne Mortgage") in favor of RBC, which on March 20, 2008, was assigned to Fannie Mae. A legal description of the real property is attached to the Mortgage. The real property is a 112-unit apartment complex located at 305 West Air Depot Road, Gadsden, Alabama;

WHEREAS, contemporaneously with the mortgage assignment, on March 20, 2008, RBC executed an "Assignment of Collateral Agreements and other Loan Documents" in favor of Fannie Mae, assigning to Fannie Mae any and all interest in the Southtowne Note, the Southtowne Mortgage and any other loan documents (the "Southtowne Loan Documents") associated with the Southtowne Loan;

WHEREAS, specifically, on March 4, 2008, Williamsburg executed and delivered a Multifamily Note in favor of RBC for the principal amount of \$2,283,900.00;

WHEREAS, in order to secure the loan, Williamsburg executed a Multifamily Mortgage, Assignment of Rents and Security Agreement ("Williamsburg Mortgage" and together with the Southtowne Mortgage, the "Mortgages") in favor of RBC, which on March 19, 2008, was assigned to Fannie Mae. A legal description of the real property is attached to the Mortgage. The real property is a 60 unit apartment complex located at 1001 Newton Street, Gadsden, Alabama;

WHEREAS, contemporaneously with the mortgage assignment, on March 19, 2008, RBC executed an "Assignment of Collateral Agreements and other Loan Documents" in favor of Fannie Mae, assigning to Fannie Mae any and all interest in the Note, Mortgage and any other loan documents (the Williamsburg Loan Documents" and collectively with the Southtowne Loan Documents, the "Loan Documents") associated with the loan made to Williamsburg;

WHEREAS, to further secure payment of the Loans, the Guarantor executed and delivered to RBC those certain unconditional and unlimited Guaranty Agreements of even date with the loans referenced hereinabove, and these were likewise assigned to Fannie Mae;

WHEREAS, as set forth in the default letters (one dated December 20, 2011, to Southtowne and the Guarantor; and the other dated December 20, 2011, to Williamsburg, and the Guarantor), the Obligors and Guarantor have defaulted under the Loans;

WHEREAS, on June 3, 2013, both of the Loans were assigned to Sunset by Fannie Mae;

WHEREAS, Southtowne is a debtor in the United States Bankruptcy Court for the Northern District of Alabama, Case No. 12-40482, and Williamsburg is a debtor in the Northern District of Alabama, Case No. 12-40484 (the "Bankruptcy Cases");

WHEREAS, Fannie Mae, Abaco's predecessor in interest, filed Proofs of Claim in Obligors' Bankruptcy Cases in the amount of \$2,936,380.12 for the Southtowne Loan (Loan No. 8043706640) for which Southtowne and Guarantor are liable, and \$2,366,004.98 for the Williamsburg Loan (Loan No. 8045140228) for which Williamsburg and Guarantor are liable, and the parties agree that those loan amounts are the correct outstanding balance of the loans.

WHEREAS, due to the defaults under the Loans, Fannie Mae instituted a collection action against Edwards in the Circuit Court of Etowah County bearing case number 12-900335;

WHEREAS, Obligors and Guarantor have requested that Sunset resolve the defaults by the Obligors and Guarantor under the Loans by agreeing to accept a conveyance of title to all real property and other property serving as collateral for the Loans in return for releases; and

WHEREAS, Sunset has agreed to release the Obligors and Guarantor on the terms and conditions set forth in this Agreement.

IT IS THEREFORE AGREED AS FOLLOWS:

1. **Accuracy of Recitals.** The Obligors and Guarantor each acknowledge, represent, and warrant that the foregoing recitals are true and correct and further acknowledge that the accuracy of the recitals is a necessary and material inducement to Sunset's entering into the Agreement.

2. **Acknowledgement of Indebtedness.** The Obligors and Guarantor agree and acknowledge: (a) that they owe the sums set forth in the Recitals to Sunset, absolutely and unconditionally, without any defenses, set-offs, rights of recoupment, or deductions whether existing in law or in equity; and (b) that the outstanding balance of each loan is greater than the value of the collateral that secures that loan.

3. **Conveyances to Sunset.** On the Closing Date (as hereinafter defined), the Obligors agree to convey, or cause to be conveyed, to Sunset absolutely free from any right of redemption or other right or interest of the Obligors, Guarantor, or any party claiming by or through the Obligors or Guarantor, the following real and personal property comprising a portion of the collateral for the Loans (hereinafter collectively the "Property"):

3.1 **Real Estate.** Fee simple title to the real property described in the warranty deeds on Schedule 4.2.1 attached hereto, together with all buildings, improvements, fixtures, privileges, rights, easements, hereditaments and appurtenances thereunto belonging (the "Real Estate").

3.2 **Personal Property (Tangible and Intangible).** Title to all tangible personal property described on the Bills of Sale on Schedule 4.2.2 attached hereto and any intangible property that Sunset may elect to take, including without limitation, the names "Southtowne Apartments" and "Williamsburg Apartments."

3.3 **Leases.** All tenant leases in effect on the Closing Date as described in the Assignment and Assumption Agreement attached hereto as Schedule 4.2.3.

3.4 **Service Contracts.** All service, employment and maintenance contracts ("Service Contracts") to which Obligors are a party that Sunset elects to accept and evidence of the termination of the Service Contracts that Sunset elects not to accept.

3.5 **Warranties.** All warranties, guaranties and bonds relating to the Property or the improvements thereon.

4. **Closing.** The Obligors, Guarantor, and Sunset agree that the transfer of the Property and other matters will be consummated as follows:

4.1 **Closing Date.** The transfer of all the Property will occur on the earlier to occur of three days after the date of a final order of the bankruptcy court dismissing the cases or approving this transaction or October 10, 2013 (the "Closing Date"). If for any reason Sunset's conditions to closing have not been performed and the transactions contemplated by this Agreement have not been consummated on or before the Closing Date, Sunset, at its sole option, may by written notice to the Obligors and Guarantor: (a) extend the Closing Date; or (b) terminate all of the obligations of Sunset under this Agreement and proceed to exercise or renew the exercise of all the rights and remedies held by the Sunset under the Loan Documents, at law or in equity.

4.2 **Obligors' Deliveries.**

4.2.1 **Deed.** Obligors will deliver to Sunset the General Warranty Deeds (the "Deeds") in substantially the form attached hereto as Schedule 4.2.1 on or before the Closing Date. As set forth on Schedule 4.2.1, each Deed will contain a "non-merger clause" so that the mortgages and related security documents remain of record. Sunset retains all rights and remedies under the mortgages and security documents as set forth in Paragraph 7 below. The property described in the Deeds shall be free of all liens and encumbrances except the Permitted Exceptions, as defined hereinbelow.

4.2.2 Bill of Sale. Obligors will deliver to Sunset the Bills of Sale (the "Bills of Sale") in substantially the form attached hereto on Schedule 4.2.2 on or before the Closing Date.

4.2.3. Lien/Non-foreign Affidavit. Obligors will deliver to Sunset the Owner's Lien Affidavits in substantially the form attached hereto as Schedule 4.2.3 on or before the Closing Date.

4.2.4. Assignment and Assumption Agreement. Obligors will deliver to Sunset the Assignment and Assumption Agreement in substantially the form attached hereto as Schedule 4.2.4.

4.2.5. Rent Roll. Obligors will deliver the then-current certified rent roll in such form and content and in such detail as Sunset may reasonably require.

4.2.6. Leases. Obligors will deliver the original of all tenant leases relating to the Property.

4.2.8. Title Policy. The Title Policy or a marked commitment satisfactory to Abaco must be received by Abaco, as provided in Section 6, below.

4.2.9. Service Contracts. Obligors will deliver the original Service Contracts that Sunset elects to accept and evidence of termination of the Service Contracts that Sunset has elected not to accept.

4.2.10. Affidavits/Certificates of Status, Authority, Incumbency. Obligors will deliver to the Sunset the Certificates of Status, Authority and Incumbency and any other corporate documentation, including but not limited to certificates of consent of the members, affidavits or consents of any trustees, beneficiaries, or creditors, in substantially the form as found on Schedule 4.2.10 attached hereto.

4.2.11. Additional Documents. Obligors will deliver to Sunset such additional documents as might be reasonably requested by Sunset or the Title Company to consummate the transfer of title to the real property to Sunset.

4.2.11 Cancellation of Liens. As a material condition of this Agreement, Obligors will see that all liens against the Property, other than those held by Sunset and the Permitted Exceptions, are cancelled and effectively released from the Property.

4.2.12 Possession. On the Closing Date, Obligors will deliver possession to Sunset of the Real Estate and Personal Property, all keys and master keys and controls to all locks located on the Property, and if available, a schedule of security deposits paid by tenants in such form, content, and detail as may be reasonably required by Sunset. The parties will cooperate to have the utilities switched over to Sunset. Any utility deposits heretofore paid to one or more utility companies will not be refunded to Obligors; rather, they will continue to be held by the utility as deposits for utility services provided to Sunset.

4.2.13 Tenant Notices. Obligors will send letters in form approved by Sunset addressed to all tenants, informing the tenants that Obligors have purchased the Property and that all future rent and other payments are to be made to Obligors.

4.3 Closing Costs. Sunset will pay the premium for the Title Policy, as defined in Section 6 below, and the cost of the preparation and recordation of any curative title instruments. Sunset will pay the costs of recording the deeds and the mortgage recording tax. Each party agrees to pay the fees and expenses of its attorney. Rent, taxes, utility charges and other income and expenses will be handled as provided in Paragraph 4.4.3. The parties will cooperate to transfer to Sunset all utility services to the Property effective as of the Closing Date.

4.4 Other Matters.

4.4.1 Property Management. Until closing, Edwards Rental & Leasing, Inc. will continue to manage the Property and will continue to be compensated at the same rates and on the same terms as those in effect during Obligors' Bankruptcy Cases. Obligors will cause the Property to be managed in a reasonably prudent manner and will turn over leasing and management of the Property to Sunset or its designee on the Closing Date. Obligors will not enter into new leases or other agreements relating to the Property without Sunset's written consent; *provided, however*, that Obligors may enter into new tenant leases with tenants whose credit-worthiness is within the general range of existing tenants' credit-worthiness on terms (including rent provisions) that are substantially similar to existing tenant leases.

4.4.2 Bankruptcy. Due to the pendency of the Bankruptcy Cases, the transactions provided for herein cannot be consummated unless:

- a) the Bankruptcy Cases are dismissed;
- b) Sunset obtains relief from the automatic stay; or
- c) the transactions are approved by the Bankruptcy Court.

There are motions for relief from the automatic stay pending. Obligors hereby consent to the Court's granting Sunset relief from the automatic stay in either or both Bankruptcy Cases pursuant to the pending motions or any motions for relief that Sunset may hereafter file. If requested by Sunset, Obligors will file an appropriate pleading in one or both Bankruptcy Cases evidencing its consent to relief from the stay in favor of Sunset. At Sunset's request the Obligors shall seek dismissal of the Bankruptcy Cases within seven (7) days of the execution of this agreement; *provided, however*, that, if dismissal or stay relief is denied, the Obligors shall seek to have the transactions approved by the Court. Sunset agrees that the adequate protection payment due Sunset for September, 2013 will be used to pay attorneys' fees of the debtors.

4.4.3. Treatment of Income and Expenses for the Month of October. Income and operating expenses will not be prorated for the month of October. Instead, prior to the Closing Date, each Obligor will open a new DIP account and deposit therein all rent checks received in October ("October Rent"). At closing, all of the funds from the new DIP account will be paid to Sunset. From such funds and from the other October rent checks received by Sunset, Sunset will pay customary and usual operating expenses of the Property incurred in the usual course of

Obligors' business during the month of September, 2013; *provided, however*, neither any capital expenditures, expenses incurred outside the usual course of business, nor expenses incurred before September 1, 2013 will be paid from October rent without the prior written approval of Sunset; and *provided, further*, that the maximum amount of operating expenses paid out of Southtowne rents received in October will in no event exceed \$31,000.00 and the maximum amount of operating expenses paid out of Williamsburg rents received in October will in no event exceed \$16,000.00. Obligors will be responsible to pay all operating expenses incurred prior to October 1, 2013 that are not paid out of October rents pursuant to the procedure set out in this paragraph. If, for any reason, the Closing Date does not occur in October, then this paragraph will automatically be amended as follows: the month in which the Closing Date occurs will be substituted for "October" and the month preceding the month in which the Closing Date occurs will be substituted for "September."

5. **Obligors' Representation and Warranties.**

5.1 **Status.** Each Obligor is an Alabama limited liability company, is properly organized, validly existing, and in good standing under the laws of the State of Alabama. Each Obligor is qualified to own the Property and conduct business as now being conducted by such Obligor. The persons executing this Agreement on behalf of such Obligor are fully authorized to execute, deliver and perform the terms of this Agreement on behalf of such Obligor.

5.2 **Authority.** The execution of this Agreement by the Obligors and Guarantor, the performance by the Obligors and Guarantor of their respective obligations hereunder, and the transfer of the Property does not require the consent or approval of any third party; neither this Agreement nor anything provided to be done hereunder (including, without implied limitation, the transfer of the Property to Sunset) violates or will violate any contract, document, understanding, agreement or instrument to which the Obligors or Guarantor are a party or by which the Obligors, Guarantor or the Property might be bound or affected.

5.3 **Effective Dates of Representations, Warranties, and Condition to Closing.** All representations and warranties are true and correct on the date of this Agreement and shall be true and correct on the Closing Date. It is a condition of Sunset's obligation to close that all representations and warranties are true and correct and that Obligors have performed all of their obligations under this Agreement.

5.4 **No Brokers.** Obligors represent and warrant that they have not engaged a broker or agent to which a commission or fee would be owed in connection with the conveyance of the Property as provided in the Agreement. Obligors agrees to indemnify, defend and hold harmless Sunset for any amounts owed or claimed to be owed by any broker or agent acting on behalf of Obligors.

6. **Owner's Title Policy; Due Diligence; Termination.**

6.1 **Title Policy.** Sunset will obtain title insurance commitments for the Real Estate. As a condition of Sunset's obligation to close, Sunset, or its designee, must obtain from First American Title Insurance Company ("Title Company"), at Closing, ALTA Form Owner's Title Insurance Policies for each property or equivalent acceptable to Sunset (collectively the "Title

Policy”), dated as of the Closing Date naming Sunset, or its designee, as the insured, which Title Policy shall show fee simple title to the Real Estate vested in Sunset, or its designee, subject only to the Permitted Exceptions (those exceptions that are identified on Schedule B-II of the title commitment that are satisfactory to Sunset). The Title Policy must (a) insure as separate parcels any easements appurtenant to the Real Property, (b) be in the amount of the indebtedness under the Loans which is outstanding on the Closing Date (or such lesser amount as Sunset shall accept), and (c) contain full extended coverage insurance over all general exceptions set forth in such policy [(other than matters which would be deleted by delivery of a current plat or survey to the Title Company)]. Obligor shall cooperate with Sunset to permit Sunset, or its designee, to obtain the Title Policy. Obligor will cause to be removed all exceptions that may be removed by the payment of money.

6.2. Due Diligence. Within two days after the execution of this Agreement, Obligor will deliver to Sunset those items listed on Schedule 6.2 attached hereto to the extent in Obligor’s possession or its property manager’s possession, control or custody. Sunset, at its expense, may conduct such feasibility studies of the Property as Sunset may determine to be necessary or desirable. The feasibility studies may include survey, structural and environmental factors relating to the Property. Obligor will give Sunset and its agents and representatives reasonable access to the Property, subject to the rights of tenants, for purposes of inspecting the Property and conducting such studies, inspections or tests. Sunset will not permit any liens to attach to the Property in connection with such inspections or tests. Sunset will indemnify and hold harmless Obligor of and from any and all loss, damage or harm to the Property caused by any inspections, studies or tests conducted by or on behalf of Sunset. Sunset may elect to continue some or all of the Service Contracts. Sunset will notify Obligor of any Service Contracts that it elects not to continue, and Obligor will cause those Service Contracts to be terminated and pay any cost incurred in connection with the termination of them.

6.3. Sunset’s Right to Terminate. Sunset may terminate this Agreement and elect not to purchase the Property for any reason or for no reason by giving notice to Obligor of its intention to terminate at any time before the Closing Date. Termination of this Agreement by Sunset will not affect any of its rights and remedies under the Loan Documents and under applicable law, including without limitation, its right to foreclose the Mortgages.

7. Continuing Effect of Loan Documents; No Merger. The parties acknowledge and agree that, notwithstanding the changes to the Loans contemplated by this Agreement, all of the Loan Documents will remain in full force and effect after the transactions contemplated by this Agreement have been consummated or this Agreement has been terminated. The parties further acknowledge and agree that the conveyances provided for herein will not merge with the interests of Sunset in the real property created by the Loan Documents. It is the express intention of each of the parties that such interests of Sunset in the Property will not merge, but be and remain at all times separate and distinct, notwithstanding any union of said interests in Sunset at any time by purchase, termination or otherwise and that the liens held by the Sunset against the Real Estate created by certain of the Loan Documents will remain at all times valid and continuous liens against the Real Estate unless and until Sunset satisfies such liens as a matter of public record. Sunset specifically reserves the right to assert all claims held by Sunset against the Obligor, against the Guarantor and/or against the collateral described in the Loan

Documents subject, however, to the terms of this Agreement.

8. **Indemnification and Hold Harmless.** To the maximum extent permitted by applicable law, Obligors and Guarantor shall forever, jointly and severally, indemnify and hold harmless Sunset from and against any and all liabilities, losses, damages or expenses suffered or incurred by Sunset as the result of (i) the failure of Obligors, Guarantor, or any other person or entity related to Obligors or Guarantor to comply with any Environmental Law or regulation affecting the Property or as a result of the presence, storage, disposal or treatment on the Property of any hazardous substance; (ii) the filing of any lien on the Property arising from Obligors' ownership thereof or the Owners' operations on or about the Property, except the Permitted Exceptions; and (iii) any matters relating to or arising from the ownership, use, leasing, or development of the Property by the Obligors or Guarantors or any other person or entity related to them. The provisions of this paragraph will survive closing or termination of this Agreement and remain in full force and effect as long as the possibility exists that the Sunset may suffer or incur any such liabilities, losses, damages or expenses.

9. **Ratification.** Each Obligor and Guarantor hereby ratifies and confirms all terms and conditions of the Loan Documents. Each Obligor and Guarantor acknowledges that: (i) all of the Loan Documents are in full force and effect, and (ii) the Loan Documents constitute the legal, valid and binding obligations of the Obligors, enforceable against the Obligors in accordance with their respective terms. Obligors and Guarantors represent and warrant to Sunset that, as of the date hereof, Obligors and Guarantors have no defenses, setoffs, rights of recoupment, counterclaims or claims of any nature whatsoever in respect to the Loan Documents, and to the extent any such defenses, setoffs, rights of recoupment, counterclaims or claims may exist, whether known or unknown, the same are hereby expressly waived, released and discharged. Obligors and Guarantors represent and warrant to Sunset that, until canceled by Sunset, the Loans continue to be evidenced and secured by the Loan Documents, subject to the release of Obligors and Guarantors pursuant to paragraph 12 hereinbelow.

10. **Attorneys' Fees.** If any party to this Agreement seeks enforcement of this Agreement against the other party, the prevailing party will be entitled to recover from the losing party reasonable attorneys' fees and costs.

11. **Advice of Counsel.** No representations have been made by either party regarding the taxability of all or any portion of this settlement. The parties have had the opportunity to seek independent advice regarding the tax consequences of this settlement, and accept responsibility for satisfaction of any tax obligations that may result from this settlement.

Each party has carefully read this Agreement in its entirety and knows its contents, and has had the benefit of the advice of independent counsel of its own choosing, and signed this Agreement on behalf of itself and its successors and assigns, agents, servants and employees, and for every one of them, as its own free act.

12. **Release of Sunset.** In consideration for Sunset entering into this Agreement, effective upon recordation of the executed Deeds, Obligors and Guarantor hereby release and discharge Sunset and its representatives, agents, employees, attorneys, successors, directors, officers, parents, affiliates, assigns and subsidiaries (collectively, the "Sunset Releasees") from

any and all claims, defenses, set-offs, rights of recoupment, counterclaims, actions, causes of action, suits, controversies, agreements, provisions, liabilities and demands in law or in equity (collectively the "Claims"), whether known or unknown which Obligor and Guarantor, individually, jointly, or severally, ever had, now have or may hereafter have against the Sunset Releasees arising from any event in the past through the date on which the executed Deeds are recorded. Obligor and Guarantor agree to assume the risk of any and all unknown, unanticipated or misunderstood Claims which are released hereby.

13. **Release of Obligor and Guarantor.** In consideration for the Obligor and Guarantor entering into this Agreement, effective upon the recordation of the executed Deeds, Sunset hereby releases and discharges the Obligor and Guarantor and their representatives, agents, employees, attorneys, successors, directors, officers, parents, affiliates, assigns and subsidiaries (collectively, the "Borrower Releasees") from any and all claims, defenses, set-offs, rights of recoupment, counterclaims, actions, causes of action, suits, controversies, agreements, provisions, liabilities and demands in law or in equity (collectively the "Claims"), whether known or unknown which Sunset ever had, now has, or may hereafter have against the Borrower Releasees arising from any event in the past through the date of this Agreement, except that: 1) Sunset does not release the Borrower Releasees from any of their obligations under Paragraph 8 of this Agreement; and 2) this release of the Obligor and Guarantor does not affect the rights of Sunset to exercise its rights and remedies arising under the Loan Documents as to its collateral thereunder including, but not limited to, the right to foreclose either Mortgage against the Real Estate or security interests in the Personal Property.

14. **Notices and Requests.** Any notice or request required to be delivered or given hereunder shall be sufficient if mailed by overnight mail or faxed as follows:

Sunset
Attn: Julie Levy
751 Daily Drive Suite 116
Camarillo, CA 93010

with a copy to:
C. Ellis Brazeal III
Jones Walker LLP
1819 5th Avenue North, Suite 1100
Birmingham, Alabama 35203
Fax: (205) 244-5437

Obligor

Southtowne

Williamsburg

with a copy to:

Harry P. Long
10 West 11th Street
Suite 2-A
Anniston, AL 36202

Guarantor

Mark E. Edwards
130 Alpine View
Gadsden, AL 35901

with a copy to:

Salem N. Resha
2015 1st Avenue North
Birmingham, AL 35203

15. **No Waiver.** No course of dealing between Sunset, on the one hand, and Obligors or Guarantor, on the other hand, or failure or delay on the part of Sunset in exercising any rights or remedies hereunder shall operate as a waiver of any rights or remedies of Sunset under this or any other agreement. No single or partial exercise of any rights or remedies hereunder shall operate as a waiver or preclude the exercise of any other rights or remedies hereunder.

16. **No Right of Control.** Nothing contained in this Agreement or in the other documents referred to herein, and no action taken pursuant hereto, shall be construed as permitting or obligating Sunset to act as financial or business advisor or consultant to Obligors and Guarantor, as permitting or obligating Sunset to control or to conduct the operations of Obligors and Guarantor, as creating any fiduciary obligation on the part of Sunset to Obligors and Guarantor, as causing Obligors and Guarantor to be treated as an agent of Sunset, or as causing Sunset or Obligors or Guarantor, or any of them, to constitute a partnership, association, joint venture or other entity.

17. **No Third Party Beneficiaries.** This Agreement is solely for the benefit of the parties hereto and their permitted successors and assigns. No other person or entity shall have any rights under, or because of the existence of, this Agreement.

18. **Further Assurances.** Obligors and Guarantor shall, whenever and as often as it shall be requested to do so by Sunset, cause to be executed, acknowledged or delivered any and all such further instruments and documents as may be necessary or proper, in the reasonable opinion of Sunset, in order to carry out the intent and purpose of this Agreement.

19. **Time.** Time is of the essence with respect to each provision of this Agreement.

20. **Severability.** If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each such term and provision of this Agreement shall be valid and shall be enforced to the fullest extent permitted by law.

21. **WAIVER OF RIGHT TO JURY TRIAL.** OBLIGORS AND GUARANTORS KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT ANY OF THEM MAY HAVE TO A TRIAL BY JURY IN RESPECT TO ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THE NOTES, LOANS, MORTGAGES, SECURITY AGREEMENTS, ASSIGNMENT OF LEASES, RENTS, AND PROFITS, GUARANTIES, OR OTHER LOAN DOCUMENTS, THIS FORBEARANCE AGREEMENT OR ANY DOCUMENT CONTEMPLATED TO BE EXECUTED IN CONJUNCTION HERewith, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENT (WHETHER VERBAL OR WRITTEN) OR ACTION OF OBLIGORS OR GUARANTORS. THE JURY TRIAL WAIVER CONTAINED IN THIS SECTION IS INTENDED TO APPLY, TO THE FULLEST EXTENT PERMITTED BY LAW, TO ANY AND ALL DISPUTES AND CONTROVERSIES THAT ARISE OUT OF OR IN ANY WAY RELATE TO ANY OR ALL OF THE MATTERS DESCRIBED IN THE PRECEDING SENTENCE, INCLUDING CONTRACT CLAIMS, TORT CLAIMS, AND ALL OTHER COMMON LAW, EQUITABLE, AND STATUTORY CLAIMS OF ANY KIND. THIS PROVISION IS A MATERIAL INDUCEMENT FOR SUNSET ENTERING INTO THIS FORBEARANCE AGREEMENT.

22. **Integration; Effect.** This Agreement and the Loan Documents constitute the entire agreement of the parties pertaining to the subject matter hereof and all prior negotiations and representations relating thereto are merged herein. This Agreement is not intended to modify and does not modify the rights, remedies and obligations contained in the notes or in any other Loan Document except to the extent expressly set forth herein. This Agreement shall inure to the benefit of, and be binding upon, the representatives, successors and assigns of the parties hereto, respectively.

23 **Captions.** The captions used in connection with the paragraphs of this Agreement are for convenience only and shall not be deemed to construe or limit the meaning of the language contained in this Agreement, or be used as interpreting the meanings and provisions hereof.

24. **Construction.** The parties acknowledge that their attorneys have reviewed and negotiated the provisions of this Agreement; therefore, the rule of construction that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any amendments or exhibits hereto.

25. **Governing Law.** This Agreement shall be construed and interpreted under the laws of the State of Alabama.

26. **Counterparts; Facsimile Signatures.** This Agreement may be executed in any number of counterparts and by the different parties hereto on separate counterparts, with the same effect as if all parties hereto had signed the same document. Each such counterpart, when so executed, shall be an original, and all such counterparts shall constitute but one and the same Agreement. All such counterparts shall be construed together and shall constitute one Agreement, but in making proof hereof it shall only be necessary to produce one such counterpart. A facsimile copy of this Amendment and any signatures thereon shall be considered for all purposes as originals.

SUNSET DIVERSIFIED PROPERTY INVESTMENTS, LLC

By: 

Print Name: James Backner

Title: Director

SOUTHTOWNE MANAGEMENT GROUP, LLC

By: 

Print Name: Mark E. Edwards

Title: Managing Member

WILLIAMSBURG TOWNHOMES, LLC

By: 

Print Name: Mark E. Edwards

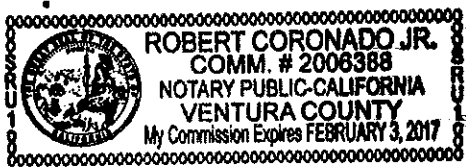
Title: Managing Member


MARK E. EDWARDS

STATE OF CALIFORNIA)
Ventura COUNTY)

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that James Backner, whose name as Director of Sunset Diversified Property Investments, LLC, a limited liability company, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he/she, as such Director and with full authority, executed the same voluntarily for and as the act of said company.

Given under my hand and official seal this the 3 day of September, 2013.



[Signature]
Notary Public

Print Name: Robert Coronado Jr.

AFFIX SEAL
My commission expires: _____

STATE OF ALABAMA)
Etowah COUNTY)

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Mark E. Edwards, whose name as Managing Member of Southtowne Management Group, LLC, a limited liability company, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he/she, as such Managing Member and with full authority, executed the same voluntarily for and as the act of said company.

Given under my hand and official seal this the 3rd day of Sept., 2013.

[Signature]
Notary Public

Print Name: Rockelle Keener

AFFIX SEAL
My commission expires: 8-6-16

STATE OF ALABAMA)
Etowah COUNTY)

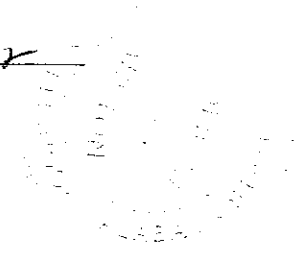
I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Mark E. Edwards, whose name as Managing Member of Williamsburg Townhomes, LLC, a limited liability company, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he/she, as such Managing Member and with full authority, executed the same voluntarily for and as the act of said company.

Given under my hand and official seal this the 3rd day of Sept, 2013.

[Signature]
Notary Public

Print Name: Rockelle Keener

AFFIX SEAL
My commission expires: 8-6-16



STATE OF ALABAMA)
Etowah COUNTY)

I, the undersigned, a Notary Public in and for said county in said state, hereby certify that -----Mark E. Edwards, whose name is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he executed the same voluntarily on the day the same bears date.

Given under my hand and official seal this 3rd day of Sept ----, 2013

[Signature]
Notary Public

Print Name: Rockelle Keener

AFFIX SEAL
My commission expires: 8-6-16

