**SELLER/SERVICER REPRESENTATIONS AND WARRANTIES**

**SMALL BALANCE LOANS**

**(Revised 4-1-2016)**

For purposes of these representations and warranties, the phrase “**to the knowledge of Seller**” or “**to Seller’s knowledge**” will mean, except where otherwise expressly set forth below, the actual state of knowledge of Seller or any servicer acting on its behalf regarding the matters referred to, after Seller’s having conducted such inquiry and due diligence into such matters as would be customarily required by Freddie Mac’s underwriting standards represented in the Multifamily Seller/Servicer Guide as modified by the SBL Addendum (collectively, the “**Guide**”). Capitalized terms not otherwise defined will have the meaning set forth in the Guide.

Seller represents and warrants, subject to the exceptions set forth in Exhibit \_\_ to the Commitment or Early Rate Lock Application, with respect to each Loan, that as of the Freddie Mac Funding Date, unless Freddie Mac specifies a different date, the following representations and warranties are true and correct in all material respects:

(1) Crossed Loan.

Except with respect to any subordinate mortgage identified in Paragraph 2, the Loan is not cross-collateralized or cross-defaulted with any other mortgage loan (“**Crossed Loan**”) not being transferred to Freddie Mac.

(2) Subordinate Loan.

There are no subordinate loans encumbering the Property and Seller has no knowledge of any mezzanine debt related to the Property.

(3) Licenses, Permits and Authorization.

(a) As of the Origination Date, to Seller’s knowledge, based on Borrower’s representations and warranties in the Loan Documents, Borrower, commercial lessee and/or operator of the Property were in possession of all material licenses, permits, and authorizations required for use of the Property as it was then operated.

(b) Seller has not modified the provisions of the Loan Documents in which Borrower covenants that it will remain in material compliance with all material licenses, permits and other legal requirements necessary and required to conduct its business.

 (4) Condition of Property.

To Seller’s knowledge, based solely upon due diligence customarily performed in connection with the origination of comparable loans, one of the following is applicable:

(a) the Property is free of any material damage that would materially and adversely affect the use or value of the Property as security for the Loan (other than normal wear and tear), or

(b) to the extent a prudent multifamily mortgage lender would so require, Seller has required a reserve, letter of credit, guaranty, insurance coverage or other mitigant with respect to the condition of the Property.

(5) Ground Leases.

The Loan is not secured in whole or in part by Borrower’s interest as lessee under a ground lease of the Property without also being secured by the fee interest in the Property.

(6) Valid Lien.

(a) (i) Seller has not modified the Loan Documents in any manner that would negate or impair the validity or enforceability of the Mortgage or the creation of a valid and enforceable lien on the Property, subject to Permitted Encumbrances (defined below) and except as enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium or other laws affecting the enforcement of creditors’ rights or by general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law) and (ii) Seller has no actual knowledge of any provision in the Loan Documents that would negate or impair the validity or enforceability of the Mortgage or the creation of a valid and enforceable lien on the Property, subject to Permitted Encumbrances and except as enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium or other laws affecting the enforcement of creditors’ rights or by general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

(b) If the Loan is a Crossed Loan, the Mortgage encumbering the Property also secures one or more other Crossed Loans.

(c) Based on the Title Policy (defined below), the Property is free and clear of any mechanics’ and materialmen’s liens which are prior to or equal with the lien of the Mortgage, except those which are bonded over or for which an escrow has been established.

(d) A UCC financing statement has been filed and/or recorded (or sent for filing or recording) (or, in the case of fixtures, the Mortgage constitutes a fixture filing) in all places (if any) necessary at the time of origination of the Loan to perfect a valid security interest in the personal property owned by Borrower and reasonably necessary to operate the Property in its current use other than for any of the following:

(i) non-material personal property,

(ii) personal property subject to purchase money security interests, and

(iii) personal property that is leased equipment, to the extent a security interest may be created by filing or recording.

Notwithstanding the foregoing, no representation is made as to the perfection of any security interest in rents or other personal property to the extent that possession or control of such items or actions other than the filing of UCC financing statements are required in order to effect such perfection.

(e) Any security agreement or equivalent document related to and delivered in connection with the Loan establishes and creates a valid and enforceable lien on the physical personal property of Borrower reasonably necessary to the operation of the Property (other than on healthcare licenses or on payments to be made under Medicare, Medicaid or similar federal, state or local third party payor programs that are not assignable without governmental approval), subject to Permitted Encumbrances and except as enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium or other laws affecting the enforcement of creditors’ rights or by general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

(7) Title Insurance.

(a) The Property is covered by an ALTA lender’s title insurance policy (or its equivalent as set forth in the applicable jurisdiction) that evidences such title insurance policy (“Title Policy”), in the original principal amount of the Loan (or, in the case of a Crossed Loan, the allocated loan amount of the portions of the Property that are covered by the Title Policy).

(b) The Title Policy insures that the Mortgage is a valid first priority lien on the Property, subject only to Permitted Encumbrances.

(c) The Title Policy is in full force and effect and all premiums have been paid.

(d) No material claims have been made or paid under the Title Policy.

(e) Seller has not done, by act or omission, anything that would materially impair or diminish the coverage under the Title Policy, and has no knowledge of any such action or omission.

(f) Immediately following the transfer and assignment of the Loan to Freddie Mac, the Title Policy will inure to the benefit of Freddie Mac without the consent of or notice to the insurer of the Title Policy.

(g) Seller and its successors and assigns are the sole named insureds under the Title Policy.

(h) To Seller’s knowledge, the insurer of the Title Policy is qualified to do business in the jurisdiction in which the Property is located.

“**Permitted Encumbrances**” means:

(i) the lien of current real property taxes, ground rents, water charges, sewer rents and assessments not yet delinquent,

(ii) covenants, conditions and restrictions, rights of way, easements and other matters of public record specifically identified in the Title Policy, none of which, individually or in the aggregate, materially interferes with any of the following:

(A) the current use of the Property,

(B) the security in the collateral intended to be provided by the lien of the Mortgage,

(C) Borrower’s ability to pay its obligations when they become due, or

(D) the value of the Property,

(iii) exceptions (general and specific) and exclusions set forth in the Title Policy, none of which, individually or in the aggregate, materially interferes with any of the following:

(A) the current use of the Property,

(B) the security in the collateral intended to be provided by the lien of the Mortgage,

(C) Borrower’s ability to pay its obligations when they become due, or

(D) the value of the Property,

(iv) the rights of tenants, as tenants only, under leases, including subleases, pertaining to the Property,

(v) other matters to which similar properties are commonly subject, none of which, individually or in the aggregate, materially interferes with any of the following:

(A) the current use of the Property,

(B) the security in the collateral intended to be provided by the lien of the Mortgage,

(C) Borrower’s ability to pay its obligations when they become due, or

(D) the value of the Property.

(8) Zoning.

 Based upon the “**Zoning Due Diligence**” (defined below) one of the following is applicable to the Property:

(a) the improvements located on or forming part of the Property materially comply with applicable zoning laws and ordinances, or

(b) the improvements located on or forming part of the Property constitute a legal non-conforming use or structure; and one of the following is true:

(i) the non-compliance does not materially and adversely affect the value of the Property, or

(ii) ordinance and law coverage is provided in amounts required by the Guide.

The foregoing may be based upon one or more of the following (“**Zoning Due Diligence**”):

(a) a statement of full restoration by a zoning authority,

(b) copies of legislation or variance permitting full restoration of the Property,

(c)  zoning information and/or a damage restoration statement in the appraisal for the Property,

(d)  an opinion of counsel,

(e)  other due diligence considered reasonable by prudent multifamily lenders in the lending area where the Property is located,

(f) ordinance and law coverage as required by the Guide.

(9) Environmental Conditions.

(a) As of the Origination Date, Borrower represented and warranted in all material respects that to its knowledge Borrower has not used, caused or permitted to exist (and will not use, cause or permit to exist) on the Property any “**Hazardous Materials”** (defined below) in any manner which violates federal, state or local laws, ordinances, regulations, orders, directives or policies governing the use, storage, treatment, transportation, manufacture, refinement, handling, production or disposal of hazardous materials or other environmental laws. The foregoing Borrower representation and warranty is subject to each of the following:

(i) exceptions set forth in certain “**Physical Risk Report(s)**” (defined below),

(ii) Hazardous Materials that are commonly used in the operation and maintenance of properties of similar kind and nature to the Property,

(iii) Hazardous Materials that are commonly used in accordance with prudent management practices and applicable law, and

(iv) Hazardous Materials that are commonly used in a manner that does not result in any contamination of the Property that is not permitted by law.

(b) Seller has not modified the provisions of the Loan Documents which require Borrower to comply, and to cause the Property to be in compliance, with all “**Hazardous Materials Laws**” (defined below) applicable to the Property.

(c) Seller has not modified the provisions of the Loan Documents which require Borrower (or an affiliate of Borrower) to indemnify, defend and hold lender and its successors and assigns harmless from and against losses, liabilities, damages, injuries, penalties, fines, expenses, and claims of any kind whatsoever (including attorneys’ fees and costs) paid, incurred or suffered by, or asserted against, any such party resulting from a breach of the foregoing representations or warranties given by Borrower in connection with the Loan.

(d) To the best of Seller’s knowledge, in reliance on the Physical Risk Reports prepared in connection with the origination of the Loan and except as set forth in such Physical Risk Reports, the Property is in material compliance with all applicable Hazardous Materials Laws, and to the best of Seller’s knowledge, no notice of violation of such laws has been issued by any governmental agency or authority, except, in all cases, as indicated in such Physical Risk Reports.

(e) Seller has not taken any action which would cause the Property not to be in compliance with all Hazardous Materials Laws.

“**Hazardous Materials**” means

(i) petroleum and petroleum products and compounds containing them, including gasoline, diesel fuel and oil; explosives; flammable materials; radioactive materials; polychlorinated biphenyls (“PCBs”) and compounds containing them,

(ii) lead and lead-based paint,

(iii) asbestos or asbestos-containing materials in any form that is or could become friable,

(iv) underground or above-ground storage tanks that are not subject to a “no further action” letter from the regulatory authority in the related property jurisdiction, whether empty or containing any substance,

(v) any substance the presence of which on the Property is prohibited by any federal, state or local authority,

(vi) any substance that requires special handling and any other “hazardous material,” “hazardous waste,” “toxic substance,” “toxic pollutant,” “contaminant,” or “pollutant” by or within the meaning of any Hazardous Materials Law, or

(vii) any substance that is regulated in any way by or within the meaning of any Hazardous Materials Law.

“**Hazardous Materials Law**” means:

(i) any federal, state, and local law, ordinance and regulation and standard, rule, policy and other governmental requirement, administrative ruling and court judgment and decree in effect now or in the future and including all amendments, that relate to Hazardous Materials or the protection of human health or the environment and apply to Borrower or to the Property, and

(ii) Hazardous Materials Laws include, but are not limited to, the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601, et seq., the Resource Conservation and Recovery Act of 1976, 42 U.S.C. Section 6901, et seq., the Toxic Substance Control Act, 15 U.S.C. Section 2601, et seq., the Clean Water Act, 33 U.S.C. Section 1251, et seq., and the Hazardous Materials Transportation Act, 49 U.S.C. Section 5101, et. seq., and their state analogs.

“**Physical Risk Report**” means a report by a physical risk consultant which includes information (i) regarding any environmental sampling results, (ii) from environmental data base searches, (iii) regarding Hazardous Materials evidenced by a physical inspection, and (iv) on any recognized environmental conditions noted on the Physical Risk Report – Form 1104 or similar form of report used in connection with the origination of the Loan, if available for the Property.

(10) Grace Period.

Seller has not modified the Loan Documents to provide for a grace period with respect to delinquent monthly payments due under the Note or if Seller has modified the Loan Documents to provide for a grace period, such grace period is no longer than 10 days from the applicable payment date.

(11) Due on Encumbrance.

Seller has not modified the provisions of the Loan Documents which prohibit Borrower from doing either of the following:

(a) mortgaging or otherwise encumbering the Property without the prior written consent of lender or the satisfaction of debt service coverage and other criteria specified in the Loan Documents, or

(b) carrying any additional indebtedness, except as set forth in the Loan Documents or in connection with trade debt and equipment financings incurred in the ordinary course of Borrower’s business.

(12) Carveouts to Non-Recourse.

(a) Seller has not modified the provisions of the Loan Documents which provide that:

(i) Borrower will be liable to lender for any losses incurred by lender due to any of the following:

(A)  the misapplication or misappropriation of rents (after a demand is made after an event of default), insurance proceeds or condemnation awards,

(B)  any breach of the environmental covenants contained in the Loan Documents, or

(C)  fraud by Borrower in connection with the application for or creation of the Loan or in connection with any request for any action or consent by lender.

(ii) The Loan will become full recourse in the event of a voluntary bankruptcy filing by Borrower.

(13) Financial Statements.

Seller has not modified the provisions of the Loan Documents which require that Borrower provide the owner or holder of the Loan with annual operating statements, rent rolls and related information and annual financial statements.

(14) Due on Sale.

(a) Seller has not modified the provisions of the Loan Documents which provide for the acceleration of the payment of the unpaid principal balance of the Loan if, without the consent of the holder of the Loan and/or in compliance with the requirements of the Loan Documents, the Property or a controlling interest in Borrower is directly or indirectly transferred or sold, except with respect to any of the following transfers:

(i) transfers of certain interests in Borrower to any person or entity already holding direct or indirect interests in Borrower, their family members, affiliated companies and other estate planning related transfers that satisfy certain criteria specified in the Loan Documents,

(ii) transfers of less than a controlling interest in Borrower,

(iii) transfers of common stock in publicly traded companies, or

(iv)  if the Property is a residential cooperative property, transfers of stock of Borrower in connection with the assignment of a proprietary lease for a unit in the Property by a tenant-shareholder of Borrower to another person or entity which by virtue of such transfer becomes a tenant-shareholder in Borrower.

(b) Seller has not modified any provision of the Loan Documents which requires Borrower to pay all fees and expenses associated with securing the consent or approval of the holder of the Mortgage for all actions requiring such consent or approval under the Mortgage including the cost of counsel opinions relating to a real estate mortgage investment conduit (“**REMIC**”) or other securitization and tax issues.

(15) Assignment of Leases.

(a) Seller has not modified the provisions of the Mortgage which contain an Assignment of Leases that is part of the Mortgage.

(b) Based upon the Title Policy, the Assignment of Leases creates a valid present assignment of, or a valid first priority lien or security interest in, certain rights under the related lease or leases, subject only to a license granted to Borrower to exercise certain rights and to perform certain obligations of the lessor under such lease or leases, including the right to operate the leased Property, except as enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium or other laws affecting the enforcement of creditors’ rights or by general principles of equity (regardless of whether enforceability is considered in a proceeding in equity or at law).

(c) Based upon the Title Policy, no person or entity other than Borrower owns any interest in any payments due under any lease that is superior to or of equal priority with lender’s interest.

(d) Seller has not modified the provisions of the Mortgage which provide for the appointment of a receiver for rents or allows the holder of the Mortgage to enter into possession to collect rents or provides for rents to be paid directly to the lender in the event of a default under the Loan or Mortgage.

(16) Insurance Proceeds and Condemnation Awards.

(a) Seller has not modified the provisions of the Loan Documents which provide that insurance proceeds and condemnation awards will be applied to one of the following:

(i) restoration or repair of the Property,

(ii) restoration or repair of the Property, with any excess insurance proceeds or condemnation awards after restoration or repair being paid to Borrower, or

(iii) reduction of the principal amount of the Loan.

(b) To Seller’s knowledge, there is no proceeding pending for the total or partial condemnation of the Property that would have a material adverse effect on the use or value of the Property.

(17) Customary Provisions.

(a) The Note or Mortgage for the Loan, together with applicable state law, contains customary and enforceable provisions so as to render the rights and remedies of the holder of the Note or Mortgage adequate for the practical realization against the Property of the principal benefits of the security in the collateral intended to be provided by the Note or the lien of the Mortgage, including realization by judicial or, if applicable, non-judicial foreclosure, except as the enforcement of the Mortgage may be limited by bankruptcy, insolvency, reorganization, moratorium, redemption or other laws affecting the enforcement of creditors’ rights or by general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

(b) Borrower is not a debtor in, and the Property is not the subject of, any currently pending state or federal bankruptcy or insolvency proceeding, and, as of the Origination Date, no guarantor was a debtor in any state or federal bankruptcy or insolvency proceeding.

(18) Litigation.

Based solely on the “**Litigation Due Diligence**”, to the knowledge of Seller, as of the Origination Date and taking into consideration any applicable reserve, letter of credit, guaranty, insurance coverage or other mitigant required in connection with the underwriting of the Loan, there are no actions, suits or proceedings before any court, administrative agency or arbitrator concerning the Loan, Borrower or Property, an adverse outcome of which would reasonably be expected to materially and adversely affect any of the following:

(a) title to the Property or the validity or enforceability of the Mortgage,

(b) the value of the Property as security for the Loan,

(c) the use for which the Property was intended,

(d) Borrower’s ability to perform under the Loan.

The foregoing is based on one or both of the following (“**Litigation Due Diligence**”):

(x) information regarding litigation contained in the Borrower and Borrower Principal Certificate (Form 1115) delivered with respect to Borrower as part of the submission of the full underwriting package, or

(y) judgment lien search delivered as a part of the title insurance search.

(19) Escrow Deposits.

(a) Except as previously disbursed pursuant to the Loan Documents, all escrow deposits and payments relating to the Loan that are required to be deposited or paid, have been deposited or paid.

(b) All such escrow deposits that have not been disbursed pursuant to the Loan Documents are being conveyed by Seller to Freddie Mac and identified with appropriate detail.

(c) All escrow deposits and payments required pursuant to the Loan are in the possession, or under the control, of Seller or its servicer.

(20) Valid Assignment.

(a) Each assignment of the Mortgage from Seller to Freddie Mac is in recordable form and constitutes the legal, valid and binding assignment from Seller to Freddie Mac, except as enforcement may be limited by bankruptcy, insolvency, reorganization, liquidation, receivership, moratorium or other laws relating to or affecting the enforcement of creditors’ rights or by general principles of equity (regardless of whether enforceability is considered in a proceeding in equity or at law).

(b) Each Mortgage is freely assignable without the consent of Borrower.

 (21) Qualification To Do Business.

To the extent required under applicable law, Seller is and has at all required times been authorized to transact and do business in the jurisdiction in which the Property is located, or the failure to be so authorized does not materially and adversely affect the enforceability of the Loan.

(22) Ownership.

(a) Immediately prior to the transfer of the Loan to Freddie Mac, Seller had good title to, and was the sole owner of, the Loan.

(b) Seller has full right, power and authority to transfer and assign the Loan to Freddie Mac and has validly and effectively conveyed (or caused to be conveyed) to Freddie Mac all of Seller’s legal and beneficial interest in and to the Loan free and clear of any and all liens, pledges, charges, security interests and/or other encumbrances of any kind.

 (23) Deed of Trust.

If the Mortgage is a deed of trust, each of the following is true:

(a) A trustee, duly qualified under applicable law to serve as trustee, currently serves as trustee and is named in the deed of trust (or has been or may be substituted in accordance with applicable law by lender).

(b) Seller has not modified the deed of trust to provide for the payment of fees or expenses to the trustee by Seller, Freddie Mac or any transferee of Seller or Freddie Mac.

 (24) Validity of Loan Documents, No Offset.

(a) Seller has not modified the Loan Documents in any manner that would cause the Note, Mortgage and other agreements that evidence or secure the Loan and were executed by or for the benefit of Borrower or any guarantor to not be enforceable in accordance with their terms, and Seller has no actual knowledge of any such unenforceability, in either case except as enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium or other laws affecting the enforcement of creditors’ rights or by general principles of equity (regardless of whether enforceability is considered in a proceeding in equity or at law).

(b) To Seller’s knowledge, there is no valid offset, defense, counterclaim, or right of rescission, abatement or diminution available to Borrower or any guarantor with respect to the Note, Mortgage or other agreement, except as enforcement thereof may be limited by bankruptcy, insolvency, reorganization, moratorium or other laws affecting the enforcement of creditors’ rights or by general principles of equity (regardless of whether enforceability is considered in a proceeding in equity or at law).

(c) To Seller’s knowledge, no offset, defense, counterclaim or right of rescission, abatement or diminution has been asserted by Borrower or any guarantor.

(25) Compliance with Usury Laws.

As of the Origination Date, the interest rate (exclusive of any default interest, late charges, yield maintenance charge, or prepayment premiums) of the Loan was in compliance with, or was exempt from, applicable state or federal laws, regulations and other requirements pertaining to usury.

(26) No Shared Appreciation.

The Loan has no shared appreciation rights (it being understood that equity holdings, including without limitation, preferred equity holdings, will not be considered shared appreciation rights with respect to the Loan), any other contingent interest feature or a negative amortization feature.

(27) Whole Loan.

 The Loan is a whole loan and is not a participation interest in the Loan.

(28) Reserved.

(29) Full Disbursement.

 The proceeds of the Loan have been fully disbursed and there is no requirement for future advances.

(30) No Advances.

No advance of funds has been made by Seller to Borrower (other than mezzanine debt and the acquisition of preferred equity interests by the preferred equity interest holder, as disclosed to Freddie Mac), and no advance of funds have, to Seller’s knowledge, been received (directly or indirectly) from any person or entity other than Borrower for or on account of payments due on the Loan.

(31) All Collateral Transferred.

All collateral that secures the Loan is being transferred to Freddie Mac as part of the Loan (other than healthcare licenses, Medicare, Medicaid or similar federal, state or local third party payor programs, including housing assistance payments contracts, that are not transferable without governmental approval).

(32) Loan Status; Waivers and Modifications.

All of the following are true and correct:

(a) the material terms of the Mortgage, Note and Loan Documents have not been waived, impaired, modified, altered, satisfied, canceled, subordinated or rescinded in any respect,

(b) neither the Property nor any portion of the Property has been released from the lien of the Mortgage in any manner which materially interferes with the security intended to be provided by the Mortgage or the use, value or operation of the Property, and

(c) neither Borrower nor any guarantor has been released from its obligations under the Loan.

(33) Defaults.

(a) There exists no monetary default (other than payments due but not yet more than 30 days past due) or, to Seller’s knowledge, material non-monetary default, breach, violation or event of acceleration under the Loan.

(b) To Seller’s knowledge, there exists no event that, with the passage of time or with notice and the expiration of any grace or cure period, would constitute a material default, breach, violation or event of acceleration under the Loan; provided, however, that the representations and warranties set forth in this Paragraph 33(b) do not address or otherwise cover any default, breach, violation or event of acceleration that specifically pertains to any matter otherwise covered by any other representation or warranty made by Seller; and, provided, further, that a breach by Borrower of any representation or warranty contained in any Loan Document (each, a “**Borrower Representation**”) will not constitute a material non**-**monetary default, breach, violation or event of acceleration for purposes of this Paragraph 33(b) if the subject matter of such Borrower Representation is covered by any exception to any representation or warranty made by Seller in Exhibit F attached to the Commitment or Early Rate Lock Application.

(c) Since the Origination Date, except as set forth in the Final Delivery Package, Seller has not waived any material default, breach, violation or event of acceleration under any of the Loan Documents.

(d) Pursuant to the terms of the Loan Documents, no person or party other than the holder of the Note and Mortgage may declare an event of default or accelerate the indebtedness under the Loan Documents.

(34) Payments Current.

No scheduled payment of principal and interest under any Loan was more than 30 days past due as of the date of this Certificate, and no Loan was more than 30 days delinquent in the twelve-month period immediately preceding the date of this Certificate.

(35) Qualified Loan.

The Loan constitutes a “qualified mortgage” within the meaning of Section 860G(a)(3) of the Code (but without regard to the rule in Treasury Regulation Section 1.860G-2(f)(2) that treats a defective obligation as a “qualified mortgage” or any substantially similar successor provision). Any prepayment premiums and yield maintenance charges payable upon a voluntary prepayment under the terms of the Loan constitute “customary prepayment penalties” within the meaning of Treasury Regulation Section 1.860G-1(b)(2).

(36) Prepayment upon Condemnation.

Seller has not modified the provisions of the Loan Documents which require that in the event of a taking of any portion of a Property by a State or any political subdivision or authority thereof, whether by legal proceeding or by agreement, if, immediately after the release of such portion of the Property from the lien of the Mortgage (but taking into account any planned restoration), the ratio of (A) the unpaid principal balance of the Loan to (B) the fair market value of the Property constituting the remaining Property is greater than 125%, Borrower can be required to apply the award with respect to such taking to prepay the Loan in the amount required to prevent the SBL Securitization from failing to meet applicable federal income tax qualification requirements or subject the SBL Securitization to any tax (“**REMIC Provisions**”) and such amount may not, to such extent, be used to restore the Property or be released to Borrower.

(37) Releases of Property.

(a) The Loan does not require the lender to release all or any portion of the Property from the lien of the Mortgage, except as in compliance with the REMIC Provisions and one of the following:

(i) upon payment in full of all amounts due under the Loan,

(ii) in connection with a full or partial defeasance pursuant to provisions in the Loan Documents,

(iii) unless such portion of the Property was not considered material for purposes of underwriting the Loan, was not included in the appraisal for the Property or does not generate income,

(iv) upon the payment of a release price at least equal to the allocated loan amount or, if none, the appraised value of the released parcel and any related prepayment, or

(v) with respect to any Crossed Loans or if the Loan is secured by multiple Properties, in connection with the release of any cross-collateralization pursuant to provisions in the Loan Documents.

(b) With respect to clauses (iii), (iv) and (v) above, the Loan Documents provide that if the fair market value of the real property constituting the remaining Property immediately after the release of such portion of the Property from the lien of the Mortgage is not equal to at least 80% of the remaining principal amount of the Loan, Borrower can be required to prepay the Loan in the amount equal to or greater than the amount required by the REMIC Provisions.

(38) Origination and Servicing.

The origination, servicing and collection practices used by Seller or, to Seller’s knowledge, any prior holder or servicer of the Loan have been in compliance with all applicable laws and regulations, and substantially in accordance with the practices of prudent multifamily mortgage lenders with respect to similar mortgage loans and in compliance with the Guide in all material respects.