Freddie Mac Loan Number:

Property Name:

**Assignment of Equity Interests, Pledge and Security Agreement – TEL**

(Revised 10-10-2023)

THIS ASSIGNMENT OF EQUITY INTERESTS, PLEDGE AND SECURITY AGREEMENT (“**Assignment**”) is entered into to be effective as of [CLOSING DATE] (the “**Effective Date**”), by [BORROWER GP/MM], a \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ [and [BORROWER GP/MM], a \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_] (“**Assignor**”, collectively if more than one), to and for the benefit of [SELLER/SERVICER], a \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (together with its successors and assigns, “**Funding Lender**”).

**RECITALS**

A. Pursuant to the terms of the Continuing Covenant Agreement dated as of the Effective Date (as amended, modified or supplemented from time to time, “**Continuing Covenant Agreement**”), [BORROWER], a \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“**Borrower**”), has requested that Funding Lender make the Funding Loan to [GOVERNMENTAL LENDER] (“**Governmental Lender**”), the proceeds of which will be used by Governmental Lender to make the Project Loan in the Project Loan Amount to Borrower (the “**Project Loan**”). The Project Loan will be evidenced by the Project Note from Borrower to Governmental Lender dated the Effective Date (as amended, modified or supplemented from time to time, the “**Project** **Note**”). The Project Note and the Continuing Covenant Agreement will be secured by a Multifamily Mortgage, Deed of Trust, or Deed to Secure Debt dated as of the Effective Date (as amended, modified or supplemented from time to time, the “**Security Instrument**”) encumbering the Mortgaged Property described in the Continuing Covenant Agreement.

B. Assignor, as the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ of Borrower, [EQUITY INVESTOR] a \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, as the investor \_\_\_\_\_\_\_\_\_\_\_\_ of Borrower (“**Equity Investor**”), [[SPECIAL LIMITED PARTNER], a \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, as the special \_\_\_\_\_\_\_\_\_\_\_\_ of Borrower,] and [WITHDRAWING LIMITED PARTNER], a \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, as withdrawing \_\_\_\_\_\_\_\_\_\_\_\_ of Borrower, have entered into a[n] [OPERATING AGREEMENT] dated as of \_\_\_\_\_\_\_\_\_\_\_, 20\_\_ (“**Operating Agreement**”).

C. As a condition to the making of the Funding Loan to Governmental Lender, Funding Lender requires that Assignor enter into this Assignment and assign and pledge to Funding Lender all of Assignor’s rights, title and interests in, to and under the Equity Collateral (as defined in this Assignment) for the purpose of providing additional security for the Obligations (as defined in this Assignment).

**AGREEMENT**

NOW THEREFORE, in consideration of the foregoing and the mutual representations, warranties, covenants and conditions contained in this Assignment, the parties hereto hereby agree as follows:

**1. Definitions.**Capitalized terms which appear and are not otherwise defined in this Assignment will have the meanings ascribed to such terms in the Continuing Covenant Agreement or the Project Loan Agreement. Except as otherwise specified or as the context may otherwise require, the following terms have the respective meanings set forth below for all purposes of this Assignment, and the definitions of such terms are applicable to the singular as well as to the plural forms of such terms and to the masculine as well as to the feminine and neuter genders of such terms:

“**Equity Collateral**” means, collectively, (i) all of the partnership interests, membership interests and/or equity interests of Assignor in Borrower and all dividends, distributions, payments, investments, interest, income and other gain and sums due to Assignor from such interests or otherwise under the Organizational Documents (“**Distributions**”), (ii) all of Assignor’s rights, title and interests in, to and under the partnership interests, membership interests and/or equity interests of Assignor in Borrower, and all other property or collateral pledged by Borrower to Assignor under the Organizational Documents, if any, (iii) all of Assignor’s rights to enforce the obligations of Borrower and its partners, members and/or owners under any of the Organizational Documents, (iv) all rights and powers of Assignor arising under the Organizational Documents or under law, including all rights of Assignor to vote on any matter specified in the Organizational Documents or under law; all rights of Assignor to cause an assignee to be substituted as a partner, member or owner in Borrower in the place and stead of Assignor; all rights, remedies, powers, privileges, security interests, liens, and claims of Assignor for damages arising out of or for breach of or default under the Organizational Documents; all present and future claims, if any, of Assignor against Borrower under or arising out of the Organizational Documents for monies loaned or advanced, for services rendered, or otherwise; all rights of Assignor to access the books and records of Borrower and other information concerning or affecting Borrower; all rights of Assignor to terminate the Organizational Documents, to perform thereunder, to compel performance and otherwise to exercise all remedies thereunder; and all rights of Assignor to acquire the rights or interests of any partner, member or owner in Borrower, and (v) all proceeds of the conversion, voluntary or involuntary, of any of the foregoing into cash or other property, in any form whatsoever including general intangibles, chattel paper, accounts, instruments, documents, money, and goods (whether equipment or inventory).

“**Grant**” means to grant, bargain, sell, warrant, alienate, remise, release, convey, assign, transfer, mortgage, pledge, create and grant a security interest in and right of set-off against, deposit, set-over, and confirm. A Grant of any agreement or instrument will include all rights, powers, and options of the Granting party thereunder, including the immediate and continuing right to claim for, collect, receive, and give receipts for principal and interest payments thereunder, and all other moneys payable thereunder and all proceeds thereof, to receive and hold all instruments evidencing the same, to give and receive notices and other communications, to make waivers or other agreements, to exercise all rights and options, to bring proceedings in the name of the Granting party or otherwise, and generally to do and receive anything which the Granting party is or may be entitled to do or receive thereunder or with respect thereto.

“**Indemnitees**” is defined in Section 13(b).

“**Organizational Documents**” means, collectively, the Operating Agreement, and all other documents evidencing, governing, securing or otherwise relating to the Operating Agreement, and all amendments, modifications, extensions and renewals of any of the foregoing.

**2. Purpose.**This Assignment is made to secure Borrower’s obligations under the Project Note and the Continuing Covenant Agreement and for the purpose of facilitating payment and performance of all other obligations of Borrower and Assignor with respect to the Project Loan and the Financing Documents (collectively, “**Obligations**”), including the following:

(a) Payment, performance, observance and satisfaction of all representations, warranties, covenants and conditions contained in the Financing Documents, including this Assignment.

(b) The repayment of all monies expended by Funding Lender pursuant to the provisions of the Financing Documents, together with interest thereon from the date of expenditure at the rate specified in the Project Note.

(c) Payment and performance of any and all other liabilities or obligations of Borrower and/or Assignor to Funding Lender, direct or indirect, absolute or contingent, due or to become due, whether now or hereafter existing which arise under or are evidenced by a document constituting part of the Obligations.

**3. Grant of Equity Collateral**.

(a) Grant. Assignor hereby Grants to Funding Lender, as security for the performance of the Obligations, all of Assignor’s rights, title and interests in, to and under, whether now owned or hereafter acquired, the Equity Collateral. Such Grants are made to secure the payment and performance of the Obligations. If Borrower or Assignor defaults in the performance of any of their respective obligations under this Assignment, the Continuing Covenant Agreement or any other Financing Document (past any applicable notice or cure period), the Equity Collateral may be used by Funding Lender and applied from time to time to pay the outstanding principal balance, accrued interest and other amounts due under the Project Loan and all other Obligations. Concurrently herewith, Assignor will cause Borrower to execute and deliver to Funding Lender an “Agreement and Acknowledgment of Assignment” substantially in the form of Exhibit A hereto.

(b) Voting Power, Etc. Notwithstanding anything to the contrary contained in this Assignment, provided that no Event of Default has occurred and is continuing under the Financing Documents, but subject in all respects to the terms, conditions, prohibitions or limitations on the following actions of Assignor as partner, member or owner of Borrower as provided in the Organizational Documents or the Financing Documents, Assignor will be entitled to (i) exercise all voting, consensual and other powers of ownership pertaining to the Equity Collateral (including to make determinations, to exercise any election (including election of remedies) or option), (ii) to give or receive any notice, consent, amendment, waiver, approval or other rights and (iii) receive all benefits, credits and Distributions under the Organizational Documents; provided that no ratification will be given, nor any power pertaining to the Equity Collateral exercised, nor any benefits, credits or Distributions received, nor any other action taken, which would violate or be inconsistent with the terms of this Assignment or any of the other Financing Documents, or which would have the effect of impairing the position or interests of Funding Lender, or, in each case, in such a manner as would reasonably be expected to have an adverse effect on the ability of Assignor to perform its obligations hereunder. Upon the occurrence of any Event of Default under the Financing Documents and for so long as such Event of Default is continuing, Funding Lender will have the sole and exclusive right to exercise all voting, consensual and other powers of ownership pertaining to the Equity Collateral, including receiving all benefits, credits and Distributions under the Organizational Documents.

(c) No Assumption. Notwithstanding anything contained in this Assignment to the contrary, whether or not a default or Event of Default may have occurred, and whether or not Funding Lender elects to foreclose or otherwise realize on its security interest in the Equity Collateral as set forth in this Assignment or exercise any of its rights under this Assignment or any of the other Financing Documents or otherwise, neither this Assignment, receipt by Funding Lender of any proceeds of the Equity Collateral, the foreclosure or other realization by Funding Lender of the security interest in the Equity Collateral nor any exercise by Funding Lender of any of its rights under this Assignment or the other Financing Documents or otherwise, will in any way be deemed to obligate Funding Lender to assume any of Assignor’s obligations, duties, expenses or liabilities with respect to the Equity Collateral or any agreement relating thereto, and in the event of any such foreclosure, realization or other exercise of rights, Assignor will remain bound and obligated to perform such obligations and Funding Lender will not be deemed to have assumed any of such obligations.

**4. Representations and Warranties.** Assignor hereby represents and warrants, as to itself and its Equity Collateral, to Funding Lender as follows:

(a) Assignor is the sole and absolute owner of and has good and marketable title to the Equity Collateral, the Equity Collateral is in full force and effect, and, except for any subordinate pledge made pursuant to the Operating Agreement [INSERT THE FOLLOWING IF/AS APPLICABLE: or the Subordinate Loan Documents or Equity Bridge Loan Documents], if any, and as otherwise provided in this Assignment, no other Person has any right, title, claim or interest (whether a security interest, lien, charge, encumbrance or otherwise) in, against, to or under any part of the Equity Collateral. Assignor has full power and lawful authority to Grant the security interest in the Equity Collateral to Funding Lender.

(b) All information supplied previously, or in this Assignment, to Funding Lender by or on behalf of Borrower or Assignor with respect to the Equity Collateral and their respective rights thereto is true and correct in all material respects as of the date hereof.

(c) The Grant of the Equity Collateral hereby creates a valid security interest in the Equity Collateral in favor of Funding Lender.

(d) Assignor’s principal place of business is the address of Borrower set forth in the Continuing Covenant Agreement. As of the date hereof, each of the Organizational Documents is in full force and effect and has not been amended or modified since its respective execution date.

(e) No part of the Equity Collateral is “chattel paper,” as such term is defined in the Uniform Commercial Code.

**5. Covenants**.

(a) Assignor authorizes Funding Lender to file financing statements to further evidence, secure and perfect the Grant under this Assignment. Assignor may from time to time execute and deliver any and all supplements and amendments hereto and all financing statements, continuation statements, assignments of mortgages, deeds of trust, or other security instruments, instruments of further assurance, and other instruments, and may take such other action as may be necessary, desirable or advisable to:

(i) Grant more effectively all or any portion of the Equity Collateral.

(ii) Maintain or preserve the lien of this Assignment or the Grants and security interests provided for in this Assignment or carry out more effectively the purposes hereof.

(iii) Perfect, publish notice of, or protect the validity of any Grant made or to be made by this Assignment.

(iv) Enforce each of the Organizational Documents.

(v) Preserve and defend title to the Equity Collateral and the rights of Funding Lender in the Equity Collateral against the claims of all Persons and parties.

Notwithstanding the foregoing, in no event will Assignor be required to execute and deliver any document or perform any act otherwise required pursuant to the foregoing to the extent such document or act imposes a material additional obligation or liability on Assignor.

(b) Except as expressly provided in this Assignment or in the other Financing Documents, Assignor will not:

(i) Sell, assign, transfer, pledge, mortgage, exchange, or otherwise dispose of all of, any portion of or any interest in the Equity Collateral, except for any subordinate pledge made pursuant to the Operating Agreement [INSERT THE FOLLOWING IF/AS APPLICABLE: or the Subordinate Loan Documents or Equity Bridge Loan Documents], if any and as expressly permitted under the terms of the Continuing Covenant Agreement.

(ii) Amend, modify, terminate or waive, or permit the amendment, modification or termination of any of the provisions of the Organizational Documents, except as expressly permitted under the terms of the Continuing Covenant Agreement, or transfer, pledge or assign, or permit the transfer, pledge or assignment of any of the Equity Collateral or other ownership interests in Borrower, except for any subordinate pledge made pursuant to the Operating Agreement [INSERT THE FOLLOWING IF/AS APPLICABLE: or the Subordinate Loan Documents or Equity Bridge Loan Documents], if any and as expressly permitted under the terms of the Continuing Covenant Agreement or amendments necessary to effectuate transfers permitted under the Continuing Covenant Agreement.

(iii) Claim any credit on, make any deduction from the principal of, or interest and premium, if any, on the Obligations by reason of the payment of any taxes levied or assessed upon any part of the Equity Collateral.

(iv) Permit any lien, charge, security interest, mortgage, or other encumbrance (other than the Grants and security interests provided for in this Assignment) to be created on or extend to or otherwise exist or arise upon or burden the Equity Collateral or any part thereof or any interest in the Equity Collateral or the proceeds thereof, except for a subordinate pledge made pursuant to the Operating Agreement [INSERT THE FOLLOWING IF/AS APPLICABLE: or the Subordinate Loan Documents or Equity Bridge Loan Documents], if any.

(v) Permit the lien of this Assignment and the Grants and security interests provided for in this Assignment not to constitute a valid perfected first priority security interest in the Equity Collateral.

(c) Assignor will give to Funding Lender prompt Notice of any default, event of default or event which with the giving of notice or the passage of time or both would become an event of default (however “default” or “event of default” may be defined) under any of the Organizational Documents, whether by Borrower, Assignor or any other partner, member or owner of Assignor, of which Assignor has knowledge or has received notice.

(d) Assignor will not take any action or permit any action to be taken by others which would release any Person from any of such Person’s covenants or obligations under any instrument included in the Equity Collateral, or which would result in the amendment, hypothecation, subordination, termination, or discharge of, or impair the validity or effectiveness of, any such instrument, except as expressly provided in this Assignment.

(e) Assignor will, so long as any of the Obligations remains outstanding, warrant and defend title to the Equity Collateral against the claims and demands of all Persons and will at its own cost and expense promptly take such action as may be necessary to discharge any liens in the Equity Collateral (other than the Grants and security interests provided in this Assignment).

(f) Assignor will notify Funding Lender at least 30 days prior to relocating its respective principal place of business or chief executive office.

**6. Power of Attorney.** Any provision of any of the Organizational Documents regarding third-party beneficiaries to the contrary notwithstanding, Assignor hereby appoints Funding Lender as Assignor’s agent and attorney-in-fact, which appointment is irrevocable and coupled with an interest, with full authority in its place and stead and in its name or otherwise, from time to time, in Funding Lender’s discretion to take any action and to execute any instrument which Assignor has failed to promptly take or execute and which Funding Lender has reasonably requested of Assignor and which Funding Lender reasonably deems necessary, desirable or advisable to accomplish the purposes of this Assignment, including without limitation any of the following actions:

(a) To execute any instrument of further assurance or other instrument.

(b) To transfer the Equity Collateral to its own or its nominee’s name.

(c) To collect by any proceeding or otherwise and endorse, receive and receipt for any cash or property comprising the Equity Collateral or payable on or on account thereof and to make any compromise or settlement with respect to the Equity Collateral or such proceedings.

(d) To cure any defaults by any party under the Organizational Documents.

Notwithstanding the foregoing, Funding Lender agrees that it will not exercise the power of attorney granted to it under this Section 6 unless an Event of Default hereunder or under any of the Financing Documents has occurred and is continuing.

**7. Right to Perform.** If Assignor fails to perform any agreement contained in this Assignment, after Notice to Assignor, Funding Lender may itself perform, or cause performance of, such agreement, and Assignor will reimburse Funding Lender under Section 18 for the expenses incurred by Funding Lender in connection therewith.

**8. Duty of Care.**Funding Lender will not have any duty or obligation to care for the Equity Collateral and Funding Lender will be deemed to have exercised reasonable care in the custody and preservation of the Equity Collateral in its possession if the Equity Collateral is accorded treatment substantially equal to that which Funding Lender accords other property in which it has a security interest, it being understood that Funding Lender will not have any responsibility for (a) ascertaining or taking action with respect to exchanges, maturities or other matters relating to the Equity Collateral, whether or not Funding Lender has knowledge of such matters, (b) protecting the value of the Equity Collateral or any rights or privileges Assignor may have with respect thereto, or (c) taking steps to preserve rights against any Persons with respect to any of the Equity Collateral.

**9. Default; Waivers; Remedies.**

(a) An Event of Default will be deemed to have occurred and be continuing if: (i) any “Event of Default” under (and as defined in) the Financing Documents continues beyond any applicable notice and/or cure periods, (ii) the security interest in the Equity Collateral is impaired in any material respect, (iii) any representation or warranty of Assignor hereunder proves to have been incorrect or misleading in any material respect when made, or (iv) any default under this Assignment which continues unremedied (1) for a period of 7 Business Days after Notice of such default to Assignor in the case of a default which can be cured with the payment of money, or (2) for a period of 45 days after Notice to Assignor in the case of any other default, whatever the reason for such default and whether it will be voluntary or involuntary or be effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any Governmental Authority. In case of an Event of Default hereunder, the remedies given Funding Lender by this Assignment and by applicable law are in addition to all rights, powers and remedies granted by any other statute or rule of law.

(b) To the extent permitted by law, Assignor hereby waives all right to require Funding Lender (i) to proceed against Borrower or any other Person; (ii) to apply any of the Equity Collateral it may hold at any time; (iii) to pursue any other remedy whatsoever which it may possess; or (iv) to apply any of the Equity Collateral in any order. Assignor further waives, to the full extent permitted by law, all rights to notice or a judicial hearing prior to the time Funding Lender takes possession or disposes of the Equity Collateral upon an Event of Default hereunder. Assignor further waives any and all rights it may have to presentment, demand, protest, notice of dishonor, and notice of nonpayment in connection with the Obligations or notice of any action or inaction on the part of Funding Lender in connection with the Obligations. Assignor hereby authorizes and empowers Funding Lender to exercise its rights and remedies under this Assignment without taking any action against any other Person, and without proceeding against or applying any of the Equity Collateral held by it or for its benefit, in Funding Lender’s sole discretion.

(c) Upon the occurrence and during the continuance of an Event of Default hereunder, Funding Lender may exercise all the rights and remedies of a secured party under the Uniform Commercial Code (whether or not the same is in effect in the jurisdiction where such rights and remedies are exercised). In addition, Funding Lender may, without being required to give any notice, except as provided in this Assignment or as may be required by mandatory provisions of law: (i) apply the cash, if any, then held by it as Equity Collateral; and (ii) if there will be no such cash or if such cash will be insufficient to pay all the Obligations in full, sell the other Equity Collateral, or any part thereof, at public or private sale, for cash, upon credit or for future delivery, and at such price as Funding Lender may deem satisfactory. Funding Lender may be the purchaser of any or all of the Equity Collateral so sold at any public sale (or, if the Equity Collateral is of a type customarily sold in a recognized market or is of a type which is the subject of widely distributed standard price quotations, at any private sale) and thereafter hold the Equity Collateral so purchased absolutely, free from any right or claim of whatsoever kind. Each purchaser at any such sale will hold the Equity Collateral so sold absolutely, free from any claim or right of whatsoever kind including any equity or right of redemption of Assignor, which (to the full extent permitted by law) Assignor hereby specifically waives. Assignor further waives all rights of redemption, stay or appraisal which each has or may have under any rule or law or statute now existing or hereafter in force. Funding Lender will give Assignor at least 10 days written Notice prior to the conduct of any public or private sale. Such Notice, in the case of a public sale, will state the time and place fixed for such sale. Any such public sale will be held at such time within ordinary business hours and at such place as Funding Lender may fix in the notice of such sale. At any such sale the Equity Collateral may be sold in one lot as an entirety or in separate parcels, as Funding Lender may fix in the notice of such sale. Funding Lender will not be obligated to make any sale pursuant to any notice. Funding Lender may, without notice or publication, adjourn any public or private sale or cause the same to be adjourned from time to time by announcement at the time and place fixed for the sale, and such sale may be made at any time or place to which the same may be so adjourned. In case of any sale of all or any part of the Equity Collateral on credit or for future delivery, the Equity Collateral so sold may be retained by Funding Lender until the selling price is paid by the purchaser thereof, but Funding Lender will not incur any liability in case of the failure of such purchaser to take up and pay for the Equity Collateral so sold and, in case of any such failure, such Equity Collateral may again be sold upon like notice. Funding Lender instead of exercising the power of sale in this Assignment conferred upon it, may proceed by a suit at law or in equity to foreclose the security interests in this Assignment granted and sell the Equity Collateral, or any portion thereof, under a judgment or decree of a court of competent jurisdiction.

(d) No alteration, acceleration, extension of or change in the time or manner for payment of any of the Obligations or any part thereof, nor assignment of the right to receive payment thereof to any other Person, will alter the effectiveness of this Assignment or the respective rights or obligations of the parties hereto.

(e) Upon the occurrence and during the continuance of an Event of Default, all rights of Assignor to receive Distributions and any and all proceeds from the sale or other disposition of the Equity Collateral (or any portion thereof) which Assignor would otherwise be authorized to receive and retain will cease, and all such rights will thereupon become vested in Funding Lender, who will thereupon have the sole right to receive and hold as Equity Collateral such Distributions and proceeds, and all Distributions and proceeds which are received by Assignor contrary to the provisions of this Assignment will be received in trust for the benefit of Funding Lender, will be segregated from other funds of Assignor and will be forthwith paid over to Funding Lender as Equity Collateral in the same form as so received (with any necessary endorsement).

(f) Reserved.

**10. Continuing Effect**. This Assignment will create a continuing security interest in and lien on the Equity Collateral and will remain in full force and effect until terminated pursuant to Section 11 of this Assignment.

**11. Termination**. If not sooner terminated by the written concurrence of the parties, this Assignment will terminate upon the earlier to occur of (a) the completion of the Rehabilitation as set forth in the Continuing Covenant Agreement and the disbursement of all funds in the Rehabilitation Escrow Fund or (b) the payment in full of the Indebtedness. Notwithstanding the foregoing, any and all provisions in this Assignment relating to the indemnification of the Indemnitees will survive such termination.

**12. Determinations by Funding Lender**. Except to the extent expressly set forth in this Assignment to the contrary, in any instance where the consent or approval of Funding Lender may be given or is required, or where any determination, judgment or decision is to be rendered by Funding Lender under this Assignment, the granting, withholding or denial of such consent or approval and the rendering of such determination, judgment or decision will be made or exercised by Funding Lender, as applicable (or its designated representative) at its sole and exclusive option and in its sole and absolute discretion.

**13. Release; Indemnity; Assignment of Rights and Claims**.

(a) Release. Assignor covenants and agrees that, in performing any of their rights or duties under this Assignment, none of Funding Lender, its successors, assigns, agents or employees, will be liable for any losses, claims, damages, liabilities and expenses that may be incurred by any of them as a result of such performance, except to the extent such liability for any losses, claims, damages, liabilities or expenses arises out of the willful misconduct or gross negligence of such party.

(b) Indemnity. Assignor hereby agrees to indemnify, hold harmless and defend Funding Lender and any custodian, trustee and other fiduciaries who hold or have held a full or partial interest in the Governmental Note for the benefit of third parties, any prior owner or holder of the Governmental Note, Loan Servicer, any prior Loan Servicer, the officers, directors, shareholders, partners, employees and trustees of each of the foregoing, and the heirs, legal representatives, successors and assigns of each of the foregoing (collectively, “**Indemnitees**”) against any and all losses, claims, damages, liabilities and expenses including Attorneys’ Fees and Costs, which may be imposed or incurred by any of them directly or indirectly arising out of, or in any way relating to, this Assignment, except that no Indemnitee will be indemnified for any losses, claims, damages, liabilities or expenses arising out of the willful misconduct or gross negligence of such Indemnitee.

(c) Assignment of Rights and Claims. Assignor assigns to Funding Lender all rights and claims Assignor may have against any other party in connection with the Equity Collateral; provided, however, that Funding Lender may not pursue any such right or claim unless a default exists under this Assignment or an Event of Default has occurred and is continuing under the Continuing Covenant Agreement.

**14. Governing Law**. This Assignment will be governed by and enforced in accordance with the laws of the Property Jurisdiction, without giving effect to the choice of law principles of the Property Jurisdiction that would require the application of the laws of a jurisdiction other than the Property Jurisdiction.

**15. Consent to Jurisdiction and Venue**. Assignor agrees that any controversy arising under or in relation to this Assignment may be litigated in the Property Jurisdiction. The state and federal courts and authorities with jurisdiction in the Property Jurisdiction will have exclusive jurisdiction over all controversies which may arise under or in relation to this Assignment. Assignor irrevocably consents to service, jurisdiction and venue of such courts for any such litigation and waives any other venue to which it might be entitled by virtue of domicile, habitual residence or otherwise. However, nothing in this Section 15 is intended to limit Funding Lender’s right to bring any suit, action or proceeding relating to matters under this Assignment in any court of any other jurisdiction.

**16. Successors and Assigns**. This Assignment will be binding upon the parties hereto and their respective successors and assigns forever; provided, however Assignor may not assign or delegate its rights, interests or obligations under this Assignment without first obtaining Funding Lender’s prior written consent.

**17. Severability**. The invalidity or unenforceability of any provision of this Assignment will not affect the validity of any other provision, and all other provisions will remain in full force and effect.

**18. Expenses**. Assignor will pay to Funding Lender, upon demand, the amount of any and all expenses, including Attorneys’ Fees and Costs, which may be imposed or incurred in connection with (a) the custody, preservation or sale of, collection from, or other realization upon any of the Equity Collateral, (b) the exercise or enforcement of any of their rights hereunder, (c) the failure by Assignor to perform or observe any of the provisions hereof, or (d) the breach by Assignor of any representation or warranty of Assignor set forth in this Assignment. Such expenses, together with interest thereon computed at the Default Rate set forth in the Project Note from the date on which such expenses are incurred to the date of payment thereof, will constitute indebtedness secured by this Assignment.

**19. Remedies Cumulative**. Each right and remedy provided in this Assignment is distinct from all other rights or remedies under this Assignment or any other Financing Document or afforded by applicable law or equity, and each will be cumulative and may be exercised concurrently, independently, or successively, in any order. Funding Lender’s exercise of any particular right or remedy will not in any way prevent Funding Lender from exercising any other right or remedy available to Funding Lender. Funding Lender may exercise any such remedies from time to time and as often as Funding Lender chooses.

**20. No Agency or Partnership**. Nothing contained in this Assignment will constitute Funding Lender as a joint venturer, partner or agent of Assignor, or render Funding Lender liable for any debts, obligations, acts, omissions, representations or contracts of Assignor.

**21. Entire Agreement; Amendment and Waiver**. This Assignment contains the complete and entire understanding of the parties with respect to the matters covered in this Assignment. This Assignment may not be amended, modified or changed, nor will any waiver of any provision hereof be effective, except by a written instrument signed by the party against whom enforcement of the waiver, amendment, change, or modification is sought, and then only to the extent set forth in that instrument. No specific waiver of any of the terms of this Assignment will be considered as a general waiver.

**22. Further Assurances**. Assignor will at any time and from time to time, promptly execute and deliver all further instruments and documents, and take all further action that may be reasonably necessary or desirable, or that Funding Lender may reasonably request, in order to protect any right or interest granted by this Assignment or to enable Funding Lender to exercise and enforce its rights and remedies under this Assignment.

**23. Notices**.

(a) All notices under or concerning this Assignment (“**Notice**”) will be in writing. Each Notice will be deemed given on the earliest to occur of: (i) the date when the Notice is received by the addressee, (ii) the first Business Day after the Notice is delivered to a recognized overnight courier service, with arrangements made for payment of charges for next Business Day delivery, or (iii) the third Business Day after the Notice is deposited in the United States mail with postage prepaid, certified mail, return receipt requested. Addresses for Notice are as follows:

|  |  |
| --- | --- |
| **If to Funding Lender:** |  |
| **If to Assignor:** |  |

(b) Any party to this Assignment may change the address to which Notices intended for it are to be directed by means of Notice given to the other parties in accordance with this Section 23. Each party agrees that it will not refuse or reject delivery of any Notice given in accordance with this Section 23, that it will acknowledge, in writing, the receipt of any Notice upon request by the other party and that any Notice rejected or refused by it will be deemed for purposes of this Section 23 to have been received by the rejecting party on the date so refused or rejected, as conclusively established by the records of the U.S. Postal Service or the courier service.

**24. Counterparts**. This Assignment may be executed in multiple counterparts, each of which will constitute an original document and all of which together will constitute one agreement.

**25. Construction.**

(a) The captions of the sections of this Assignment are for convenience only and will be disregarded in construing this Assignment.

(b) Any reference in this Assignment to an “Exhibit,” an “Article” or a “Section” will, unless otherwise explicitly provided, be construed as referring, respectively, to an Exhibit attached to this Assignment or to an Article or Section of this Assignment.

(c) Use of the singular in this Assignment includes the plural and use of the plural includes the singular.

(d) As used in this Assignment, the term “including” means “including, but not limited to” and the term “includes” means “includes without limitation.”

**26. Loan Servicer**. Assignor hereby acknowledges and agrees that, pursuant to the terms of the Continuing Covenant Agreement, there may be one or more changes of Loan Servicer. If there is a change of Loan Servicer, Borrower will be given Notice of the change. All actions regarding the servicing of the Loans, including the collection of payments, the giving and receipt of Notice, inspections of the Mortgaged Property, inspections of books and records, and the granting of consents and approvals, may be taken by Loan Servicer unless Borrower receives Notice to the contrary. If Borrower receives conflicting Notices regarding the identity of Loan Servicer or any other subject, any such Notice from Funding Lender will govern. Assignor hereby acknowledges that the Loans, the Security Instrument and the Continuing Covenant Agreement, will be serviced by the initial Loan Servicer on behalf of Funding Lender in accordance with the *Guide*, and by any subsequent Loan Servicer in accordance with the *Guide* or with a Servicing Agreement, as applicable. Assignor acknowledges (a) that Borrower should direct all deposits, questions, requests or other communications regarding the Continuing Covenant Agreement directly to Loan Servicer and (b) unless Borrower receives Notice from Funding Lender to the contrary, any action or right which may be taken or exercised by Funding Lender under the Financing Documents may be taken or exercised by Loan Servicer with the same force and effect.

**27. Third-Party Beneficiary**. Neither any creditor of any party to this Assignment, nor any other person, is intended to be a third-party beneficiary of this Assignment.

**28. WAIVER OF TRIAL BY JURY.**

(a) **ASSIGNOR AND FUNDING LENDER EACH COVENANTS AND AGREES NOT TO ELECT A TRIAL BY JURY WITH RESPECT TO ANY ISSUE ARISING OUT OF THIS ASSIGNMENT OR THE RELATIONSHIP BETWEEN THE PARTIES THAT IS TRIABLE OF RIGHT BY A JURY.**

(b) **ASSIGNOR AND FUNDING LENDER EACH WAIVES ANY RIGHT TO TRIAL BY JURY WITH RESPECT TO SUCH ISSUE TO THE EXTENT THAT ANY SUCH RIGHT EXISTS NOW OR IN THE FUTURE. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS SEPARATELY GIVEN BY EACH PARTY, KNOWINGLY AND VOLUNTARILY WITH THE BENEFIT OF COMPETENT LEGAL COUNSEL.**

**29. Time of the Essence**. Time is of the essence with respect to each covenant of this Assignment.

**30. Attached Exhibits**. The following Exhibits are attached to this Assignment and are incorporated by reference in this Assignment as if more fully set forth in the text hereof:

|X| Exhibit A Agreement and Acknowledgment of Assignment

| | Exhibit B Modifications to Assignment

The terms of this Assignment are modified and supplemented as set forth in said Exhibits. To the extent of any conflict or inconsistency between the terms of said Exhibits and the text of this Assignment, the terms of said Exhibits will be controlling in all respects.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]**

IN WITNESS WHEREOF, the undersigned have duly executed and delivered this Assignment of Equity Interests, Pledge and Security Agreement or caused this Assignment of Equity Interests, Pledge and Security Agreement to be duly executed and delivered by their respective authorized representatives as of the date first set forth above.

**ASSIGNOR:**

**[BORROWER GP/MM]**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, a \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

By:
Name:
Title:

**[IF APPLICABLE ADD:] AND**

**[BORROWER GP/MM]**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, a \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

By:
Name:
Title:

**Exhibit A**

**Agreement and Acknowledgment of Assignment**

THIS AGREEMENT AND ACKNOWLEDGMENT OF ASSIGNMENT is entered into to be effective as of [CLOSING DATE] (the “**Effective Date**”) by [BORROWER], a \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ to and for the benefit of [SELLER/SERVICER], a \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (together with its successors and assigns, “**Funding Lender**”).

The undersigned hereby agrees, acknowledges and consents to the execution and delivery to Funding Lender by [BORROWER GP/MM], a \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ [and [BORROWER GP/MM], a \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_] ([collectively, ]”**Assignor**”), of the Assignment of Equity Interests, Pledge and Security Agreement, dated as of the Effective Date (“**Assignment**”), as collateral security for the payment and performance of the Obligations (as defined in the Assignment), and the assignment and pledge under the Assignment to Funding Lender by Assignor of all of Assignor’s right, title and interest to the Equity Collateral (as defined in the Assignment). All capitalized terms used in this Agreement and Acknowledgment of Assignment and not otherwise defined in this Agreement and Acknowledgment of Assignment will have the meanings ascribed to such terms in the Assignment.

The undersigned will cause all of its books and records to reflect the pledge and assignment of the Equity Collateral to Funding Lender and agrees not to consent to or to permit any transfer of the Equity Collateral or any other action that may be taken by Assignor that might constitute a breach of any term or condition of the Assignment or any Event of Default so long as any Obligations remain outstanding, except in accordance with and subject to the terms and conditions of the Assignment. The undersigned represents and warrants that (i) the execution and delivery of the Assignment does not violate any of the undersigned’s Organizational Documents or any other agreement to which the undersigned is a party or by which any of the property of the undersigned is bound, (ii) any of Assignor’s ownership interests in the undersigned are as set forth in the Assignment and such ownership interests in the undersigned are not subject to any claim, lien or encumbrance whatsoever of any kind or nature except as described in the Assignment; and (iii) the undersigned does not have any claim, right of offset, or counterclaim against Assignor under or with respect to the Equity Collateral or otherwise under the undersigned’s Organizational Documents, and Assignor is not in default to the undersigned or otherwise under or in respect of any of its obligations under any of the undersigned’s Organizational Documents. The undersigned agrees that Funding Lender and/or its representatives may upon reasonable prior Notice during business hours inspect the books, records and properties of the undersigned, and the undersigned will, so long as any Obligations remain outstanding, at least 5 Business Days prior to the time any Distributions are proposed to be made, give written Notice thereof to Funding Lender at its address provided in the Assignment. The undersigned has not and will not, issue a certificate representing Assignor’s ownership interests in the undersigned.

Notwithstanding the security interests of Funding Lender in the Equity Collateral, Funding Lender will have no obligation or liability whatsoever to the undersigned, or any partner, member or owner thereof, or any creditor or other person having any relationship, contractual or otherwise, with the undersigned, nor will Funding Lender be obligated to perform any of the obligations or duties of Assignor under any of the undersigned’s Organizational Documents or otherwise, or to take any action to collect or enforce any claim for payment due Assignor. The undersigned acknowledges that the security interest of Funding Lender in the Equity Collateral and all of Funding Lender’s respective rights and remedies under the Assignment may be freely transferred or assigned by Funding Lender, as permitted by the Financing Documents. In the event of any such transfer or assignment, all of the provisions of this Agreement and Acknowledgment of Assignment will inure to the benefit of the respective transferees, successors and/or assigns of Funding Lender. The provisions of this Agreement and Acknowledgment of Assignment will likewise be binding upon any and all permitted transferees, successors and assigns of the undersigned.

The undersigned hereby agrees that it will comply with all instructions concerning the Equity Collateral originated by Funding Lender without further consent of Assignor and that, upon the occurrence of any Event of Default, (i) all Distributions will be made directly to Funding Lender until the Obligations have been paid in full, (ii) Funding Lender will have the sole and exclusive right to exercise all voting, consensual and other powers of ownership pertaining to the Equity Collateral, and (iii) Funding Lender may take any reasonable action which Funding Lender may deem necessary for the maintenance, preservation and protection of any of the Equity Collateral or Funding Lender’s respective security interests in the Equity Collateral, including, without limitation, the right to declare any or all Obligations to be immediately due and payable without demand or notice and the right to transfer any of the Equity Collateral into Funding Lender’s respective names or the names of any designee or nominee of Funding Lender.

The undersigned will, from time to time, promptly execute and deliver such further instruments, documents and agreements, and perform such further acts as may be necessary or proper to carry out and effect the terms of the Assignment and this Agreement and Acknowledgment of Assignment.

**ASSIGNOR, FUNDING LENDER AND THE UNDERSIGNED EACH COVENANTS AND AGREES NOT TO ELECT A TRIAL BY JURY WITH RESPECT TO ANY ISSUE ARISING OUT OF THIS AGREEMENT AND ACKNOWLEDGMENT OF ASSIGNMENT OR THE RELATIONSHIP BETWEEN THE PARTIES THAT IS TRIABLE OF RIGHT BY A JURY.**

**ASSIGNOR, FUNDING LENDER AND THE UNDERSIGNED EACH WAIVES ANY RIGHT TO TRIAL BY JURY WITH RESPECT TO SUCH ISSUE TO THE EXTENT THAT ANY SUCH RIGHT EXISTS NOW OR IN THE FUTURE. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS SEPARATELY GIVEN BY EACH PARTY, KNOWINGLY AND VOLUNTARILY WITH THE BENEFIT OF COMPETENT LEGAL COUNSEL.**

This Agreement and Acknowledgment of Assignment is being given to induce Funding Lender to accept the Assignment and with the understanding that Funding Lender will rely hereon.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]**

IN WITNESS WHEREOF, the undersigned has duly executed and delivered this Agreement and Acknowledgment of Assignment or caused this Agreement and Acknowledgment of Assignment to be duly executed and delivered by its authorized representative as of the date first set forth above.

**BORROWER**:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, a \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

By:
Name:
Title:

**Exhibit B**

**Modifications to Assignment of Equity Interests, Pledge and Security Agreement**

The following modifications are made to the text of the Assignment that precedes this Exhibit:

None.