Freddie Mac Loan Number:

Property Name:

**Continuing Covenant Agreement – TEL (Forward)**

(Revised 3-26-2024)

|  |  |
| --- | --- |
| **Borrower**: |  |
| **Funding Lender**: | [SELLER/SERVICER] |
| **Effective Date**: | [CONVERSION DATE] |
| **Project Loan Amount**: | $ |

THIS CONTINUING COVENANT AGREEMENT (“**Continuing Covenant Agreement**”) is made by and between Borrower and Funding Lender, in its capacity as Funding Lender under the Funding Loan Agreement referenced below (together with its successors and assigns in such capacity, the “**Funding Lender**”), and is dated as of the Effective Date.

**RECITALS**

A. Pursuant to the Act and the Project Loan Agreement, dated as of [DATE] (“**Project Loan Agreement**”), among [GOVERNMENTAL LENDER] (“**Governmental Lender**”), [FISCAL AGENT], as fiscal agent (“**Fiscal Agent**”), and Borrower, Governmental Lender made a mortgage loan to Borrower in the original principal amount of $[AMOUNT] (of which the Project Loan Amount remains outstanding as of the Effective Date) (the “**Project Loan**”) to provide for the financing of the Mortgaged Property.

B. Governmental Lender made the Project Loan with the proceeds received from the separate loan incurred by Governmental Lender pursuant to the Funding Loan Agreement, dated as of [DATE] (“**Funding Loan Agreement**”), among [CONSTRUCTION LENDER], as Initial Funding Lender (“**Initial Funding Lender**”), Governmental Lender, and Fiscal Agent, in the original principal amount of $[AMOUNT] (of which $[AMOUNT] remains outstanding as of the Effective Date) (the “**Funding Loan**” and together with the Project Loan, the “**Loans**”). The Funding Loan was originated and funded by Initial Funding Lender under the Funding Loan Agreement and is evidenced by the [ISSUE DESIGNATION] dated [DATE] (together with all addenda thereto, the “**Governmental Note**”), delivered by Governmental Lender to Initial Funding Lender.

C. Borrower’s repayment obligations in respect of the Project Loan were evidenced by an [ORIGINAL PROJECT NOTE] dated [DATE] (together with all riders and addenda thereto, the “**Original** **Project Note**”) delivered to Governmental Lender, which Original Project Note was endorsed by the Governmental Lender to Fiscal Agent as security for the Funding Loan.

D. To secure Borrower’s obligations under the Original Project Note, Borrower executed and delivered to Governmental Lender an [ORIGINAL MORTGAGE] dated as of [DATE] (the “**Original Security Instrument**”) which Original Security Instrument was assigned by Governmental Lender to Fiscal Agent as security for the Funding Loan.

E. Pursuant to the terms of the Construction Phase Financing Agreement, dated as of [DATE] (the “**Construction Phase Financing Agreement**”), among Freddie Mac, Initial Funding Lender, and Funding Lender, upon the satisfaction of the Conditions to Conversion (as defined in the Construction Phase Financing Agreement), Initial Funding Lender will deliver, and Funding Lender will purchase, the Funding Loan as evidenced by the Governmental Note.

F. As Conditions to Conversion, on the Effective Date, concurrently with the purchase of the Funding Loan by Funding Lender, (i) each of the Original Project Note and Original Security Instrument are being amended and restated and (ii) Borrower is entering into this Continuing Covenant Agreement with Funding Lender to set forth various other requirements with respect to Borrower, the Mortgaged Property, and the Project Loan.

G. Freddie Mac entered into a commitment with Funding Lender dated [DATE] (the “**Freddie Mac Commitment**”) whereby Freddie Mac agreed to purchase the Funding Loan from Funding Lender on the date of satisfaction of the conditions set forth in the Freddie Mac Commitment (the “**Freddie Mac Purchase Date**”). On the Freddie Mac Purchase Date, Funding Lender will assign all of its rights and interest in the Governmental Note, the Funding Loan Agreement, this Continuing Covenant Agreement and the other Financing Documents to Freddie Mac.

H. On and after the Freddie Mac Purchase Date, Freddie Mac will act as Funding Lender Representative with respect to the Loans (in such capacity and any successor in such capacity, the “**Funding Lender Representative**”). [SELLER/SERVICER] (the “**Loan Servicer**”) will act as initial servicer for the Loans on behalf of Funding Lender Representative.

I. Unless otherwise defined in this Continuing Covenant Agreement, capitalized terms will have the meaning ascribed to them in Article XII. Terms not otherwise defined in this Continuing Covenant Agreement will have the meaning ascribed to them in the Funding Loan Agreement or the Project Loan Agreement, as applicable.

|  |
| --- |
| **Table of Contents** *(For a list of all Continuing Covenant Agreement sections, see Schedule VI.)* |
| Article I Key Project Loan Terms |
| Article II Security and Guaranty |
| Article III Borrower’s Obligations |
| Article IV Reserve Funds and Requirements |
| Article V Representations and Warranties |
| Article VI Borrower Covenants |
| Article VII Transfers of the Mortgaged Property or Interests in Borrower |
| Article VIII Actions or Events Relating to Guarantor |
| Article IX Events of Default and Remedies |
| Article X Release; Indemnity |
| Article XI Miscellaneous Provisions |
| Article XII Definitions |
| Article XIII Incorporation of Attached Riders |
| Article XIV Incorporation of Attached Schedules and Exhibits |
| Article XV Reserved |

**ARTICLE I KEY PROJECT LOAN TERMS**.

**1.01 Reserved**

**1.02 Persons and Conditionally Permitted Transfers**

|  |  |  |
| --- | --- | --- |
| **Guarantor(s)** | | |
|  | Not required | |
|  | Required *(list each required Guarantor below)* | |
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| *(See Article VIII)* | | |

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| **Designated Entities for Transfers (DETs)** | | |
|  | Not applicable | |
|  | Required *(list each required DET below)* | |
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|  |  |  |
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|  |  |  |
| *(See Article VII)* | | |

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| --- | --- |
| **Conditionally Permitted Transfers and Required Equity Owner** *(mark and complete as applicable)* | |
|  | Not applicable |
|  | Transfer to Previously Underwritten Person |
|  | Prior Borrower Principal: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| Previously Underwritten Person: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
|  | Non-Profit Managing General Partner Transfer *(see applicable Rider)* |
|  | Non-Profit Managing General Partner: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| X | Removal by Equity Investor of Borrower/GP Manager, Equity Investor Substitution Transfer |
|  | Equity Investor: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ [NOTE: ALWAYS LIST THE LIHTC EQUITY INVESTOR WITHIN THE BORROWER STRUCTURE HERE. IF THERE IS NO LIHTC EQUITY INVESTOR, CONSULT TAH LEGAL.] |
|  | Other Conditionally Permitted Transfers are listed in Exhibit B and/or other Rider(s) |
|  | Required Equity Owner: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ [NOTE: THE LIHTC EQUITY INVESTOR IS AUTOMATICALLY CONSIDERED A REQUIRED EQUITY OWNER AND DOES NOT NEED TO BE LISTED HERE] |
|  | Required Equity Ownership Interest of \_\_\_% |
| *(See Section 7.03)* | |

|  |  |
| --- | --- |
| **SPE Equity Owner** | |
|  | Not applicable |
|  | Required |
|  | Name of SPE Equity Owner: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| *(See Section 6.13. An SPE Equity Owner is required if: (1) the Project Loan Amount is $25,000,000 or greater or the Project Loan is part of a crossed pool that in the aggregate is $25,000,000 or greater, and (2) Borrower is a limited partnership or limited liability company with more than one equity member. A required SPE Equity Owner must be a corporation or a single member Delaware limited liability company.)* | |

|  |  |
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| **Property Manager** | |
|  | \_\_\_\_\_\_\_\_\_\_\_\_\_,  or another residential rental property manager approved by Funding Lender in writing |
|  | Mortgaged Property is self-managed by Borrower, and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ must continue to be involved in the management of the Mortgaged Property (“**Key Property Management Personnel**”) |
| *(See Section 6.09(d), and if applicable, the Self-Management Rider)* | |

**1.03 Reserve Funds, Capital Replacements and Repairs**

|  |  |  |  |
| --- | --- | --- | --- |
| **Imposition Reserves** | | |  |
| ***Collect*** | ***Deferred*** | ***N/A*** |  |
|  |  |  | Property Insurance or other Insurance premiums |
|  |  | Taxes and payments in lieu of taxes (PILOT) |
|  |  | Water and sewer charges that could become a Lien on the Mortgaged Property |
|  |  | Assessments or other charges that couldbecome a Lien on the Mortgaged Property, including homeowner association dues |
|  |  |  | Ground Rents (If Collect, $\_\_\_\_\_\_\_\_ initial deposit is due on the Effective Date) |
| *(See Article III and Section 4.02)* | | | |

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| **Repair Reserve Deposits** | | | | |
| Each of the following Reserve Deposits must be deposited with Funding Lender into the Repair Reserve Fund on the Effective Date in accordance with Section 4.03(a) through 4.03(e), as applicable. | | | | |
|  |  |  | **Remaining Reserve Funds** | |
|  | **Deposit Type** | **Amount** | Deposited into Replacement Reserve Fund | Returned to Borrower |
|  | Repair Reserve Deposit | $\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |  |  |
|  | Other: *[describe]* | $\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |  |  |
| *Disbursement requests under Section 4.03(g) are limited to once every \_\_ days and a minimum aggregate amount of $\_\_\_\_\_\_\_\_\_ during such period (“****Repair Disbursement Timing and Amount Limitations****”).* | | | | |
| *(See Sections 4.03 and 6.14 and the Repair Schedule of Work)* | | | | |

|  |  |  |
| --- | --- | --- |
| **Repair Schedule of Work** | | |
| **Description of Repair** | **Cost** | **Completion Date**  *(\_\_\_ after Effective Date)* |
|  | $ | 90 days or  365 days |
|  | $ | 90 days or  365 days |
|  | $ | 90 days or  365 days |
|  | $ | 90 days or  365 days |
|  | $ | 90 days or  365 days |
|  | $ | 90 days or  365 days |
|  | $ | 90 days or  365 days |
|  | $ | 90 days or  365 days |
|  | $ | 90 days or  365 days |
|  | $ | 90 days or  365 days |
|  | $ | 90 days or  365 days |
|  | $ | \_\_\_ days |
| *(See Sections 4.03 and 6.14)* | | |

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| **Replacement Reserve Deposits** | |
| Monthly Replacement Reserve Deposit of $\_\_\_\_\_\_\_\_.\_\_\_ is  Collected or  Deferred | |
|  | *Mark and complete each additional Replacement Reserve Fund condition below* |
|  | Initial Replacement Reserve Deposit of $\_\_\_\_\_\_\_\_\_\_ is required |
|  | Replacement Reserve Fund is capped at $\_\_\_\_\_\_\_\_\_\_\_\_ (“**Replacement Reserve Cap**”) *(see Rider)* |
|  |  |
|  | Additional Deposit of $\_\_\_\_\_\_\_\_\_ is required *(see Additional Deposit to Replacement Reserve Fund Rider)* |
|  | Additional Deposit Date is  the Effective Date or  \_\_\_ months after the Effective Date |
|  | Additional Replacements Completion Date is  \_\_\_ months after the Effective Date or  not applicable  Any Additional Deposit remaining after the Additional Replacements Completion Date will be: *(choose one)*  returned to Borrower  made available to reimburse Borrower for the cost of any permissible Capital Replacement |
|  | Additional Deposit Final Drawdown Date is  \_\_ months after the Effective Date or  not applicable |
|  | Additional Replacements are as described in the Additional Deposit to Replacement Reserve Fund Rider |
| Disbursement requests under Section 4.04(f) are limited to once every  month or  quarter, and a minimum aggregate amount of $\_\_\_\_\_\_\_\_\_ during such period *(“***Replacement Reserve Disbursement Timing and Amount Limitations**”)*.* | |
| *(See Section 4.04 and the applicable Rider(s))* | |

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| --- | --- | --- | --- | --- |
| **Other Reserve Funds – Monthly Deposits** | | | | |
| Each of the following Reserve Deposit amounts must be deposited with Funding Lender on successive Project Loan Payment Dates in accordance with Article IV. These Reserve Deposits must be made in cash. | | | | |
|  | **Deposit Type** | | **Amount** | **Deferred** |
|  | Monthly Debt Service Reserve Deposit | | $\_\_\_\_\_\_\_ | N/A |
|  | Monthly HAP Deposit | | $\_\_\_\_\_\_\_ | N/A |
|  |  | HAP Reserve Cap | $\_\_\_\_\_\_\_ | N/A |
|  | Rate Cap Reserve Deposit | | see Rider |  |
|  | Other: *[describe]* | | see Rider |  |
| *(See Article IV and the applicable Rider(s) for these Reserve Funds)* | | | | |

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| **Other Reserve Funds – Effective Date Deposits** | | | | | | |
| Each of the following Reserve Deposit amounts must be deposited with Funding Lender on the Effective Date in accordance with Article IV. Unless Letter of Credit is marked below, these Reserve Deposits must be made in cash. | | | | | | |
|  |  |  |  |  | **Remaining Reserve Funds** | |
|  | **Deposit Type** | **Amount** | **Cash** | **Letter of Credit** | Deposited into Replacement Reserve Fund | Returned to Borrower |
|  | Initial Debt Service Reserve Deposit | $\_\_\_\_\_\_\_ |  |  | N/A | X |
|  | Initial HAP Deposit | $\_\_\_\_\_\_\_ | X | N/A | N/A | X |
|  | Initial Rate Cap Reserve Deposit | $\_\_\_\_\_\_\_ | X | N/A | N/A | X |
|  | Rental Achievement Reserve Deposit | $\_\_\_\_\_\_\_ |  |  |  |  |
|  | Tax Abatement Reserve Deposit | $\_\_\_\_\_\_\_ | X | N/A | N/A | X |
|  | Other: *[describe]* | $\_\_\_\_\_\_\_ |  |  |  |  |
| *(See Article IV and the applicable Rider(s) for these Reserve Funds)* | | | | | | |

**1.04 Other Mortgaged Property Features**

|  |  |
| --- | --- |
| **Work Commenced at Mortgaged Property** | |
|  | Not applicable |
|  | Describe work: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| *(See Section 5.06)* | |

|  |  |
| --- | --- |
| **Required O&M Programs and Moisture Management Plan (MMP)** | |
|  | Not applicable |
|  | O&M Program(s) and/or Moisture Management Plan required:  *[list]* |
| *(See Sections 6.09 and 6.12)* | |

**1.05 Other Project Loan Features**

|  |  |
| --- | --- |
| **Project Loan Purpose** *(select one)* | |
|  | Refinance |
| X | Acquisition of Mortgaged Property from \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“**Property Seller**”) [NOTE: CONSULT FREDDIE MAC TAH LEGAL IF THIS IS A REFI OR ACQUISITION OF MEMBERSHIP INTERESTS] |
|  | Acquisition of Membership Interests from \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“**Membership Interests Seller**”) |
| *And, if applicable:* | |
|  | Cross-Collateralized and Cross-Defaulted Loan Pool |
| *(See Section 5.24)* | |

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| --- |
| **Servicing Fee Percentage** |
| 0.\_\_\_% |

|  |  |
| --- | --- |
| **Minimum DSCR and Maximum Combined LTV** *(for Supplemental Loan requests) (select one)* | |
|  | “**Minimum DSCR**” means, with respect to a Supplemental Loan:  (a) 1.15:1, if the Supplemental Loan is made in the first 3 years of the Compliance Period,  (b) 1.25:1, if the Supplemental Loan is made in years 4 through 9 of the Compliance Period,  (c) 1.30:1, if the Supplemental Loan is made in years 10 or 11 of the Compliance Period, and  (d) 1.35:1, if the Supplemental Loan is made at any other time  “**Maximum Combined LTV**” means:  (a) the lesser of 90% or the LTV at Origination, if the Supplemental Loan is made in the first 3 years of the Compliance Period,  (b) the lesser of 80% or the LTV at Origination, if the Supplemental Loan is made in years 4 through 8 of the Compliance Period, and  (c) the lesser of 75% or the LTV at Origination, if the Supplemental Loan is made at any other time  “**LTV at Origination**” means \_\_\_\_\_\_% *[Complete with the LTV at Origination stated in the Freddie Mac Commitment, rounded up to the nearest 5%]* |
|  | [NOTE: SELECT THIS OPTION ONLY IF THERE ARE FEWER THAN 7 YEARS REMAINING IN THE 15-YEAR LIHTC COMPLIANCE PERIOD]  “**Minimum DSCR**” means, with respect to a Supplemental Loan:  (a) if the Indebtedness bears interest at a fixed rate, 1.25:1 or  (b) if the Indebtedness bears interest at a floating rate, 1.10:1  “**Maximum Combined LTV**” means \_\_\_% |
| *(See Sections 6.09 and 11.11)* | |

|  |  |  |
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| **Insurance – Borrower Proof of Loss** | | |
| $\_\_\_\_\_\_\_ | Borrower Proof of Loss Threshold | *Complete with the greater of (i) $50,000 or (ii) 0.5% of the Project Loan Amount, rounded to the nearest $1,000, not to exceed $200,000* |
| $\_\_\_\_\_\_\_ | Borrower Proof of Loss Maximum | *Complete with 4 times the Borrower Proof of Loss Threshold, not to exceed $800,000* |
| *(See Section 6.10)* | | |

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **Regulatory Agreements** | | | | | |
| **Regulatory Agreement Agency** | **Date of Agreement** | **Recording Date** | **Termination Date** | **Termination Upon Foreclosure** | **“TEL Regulatory Agreement”** |
|  | \_\_ / \_\_ / \_\_\_\_ | \_\_ / \_\_ / \_\_\_\_ | \_\_ / \_\_ / \_\_\_\_ | yes  no |  |
|  | \_\_ / \_\_ / \_\_\_\_ | \_\_ / \_\_ / \_\_\_\_ | \_\_ / \_\_ / \_\_\_\_ | yes  no |  |
|  | \_\_ / \_\_ / \_\_\_\_ | \_\_ / \_\_ / \_\_\_\_ | \_\_ / \_\_ / \_\_\_\_ | yes  no |  |
|  | \_\_ / \_\_ / \_\_\_\_ | \_\_ / \_\_ / \_\_\_\_ | \_\_ / \_\_ / \_\_\_\_ | yes  no |  |
| *(See Sections 5.46, 6.38, and 9.01)* | | | | |  |

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| --- | --- | --- |
| **Tax Credit Property** | | |
|  | **Status of Tax Credit Regulatory Agreement** *(choose one)*: | |
|  |  | Tax Credit Regulatory Agreement will not be recorded until the Mortgaged Property has been placed in service (“**Not Yet Placed in Service**”) |
|  |  | Tax Credit Regulatory Agreement has been recorded or will be recorded on or prior to the Effective Date (“**Recorded Regulatory Agreement**”) |
|  |  | Tax Credit Regulatory Agreement has been recorded prior to the Effective Date and a replacement Tax Credit Regulatory Agreement will be recorded after the Effective Date (“**Recorded but to be Replaced Regulatory Agreement**”) |
|  | **Soft Unsecured Debt** *(choose one)*: | |
|  |  | Permitted |
|  |  | Not applicable |
| *(See Sections 5.44, 6.13, and Article VII)* | | |

|  |  |  |
| --- | --- | --- |
| **Notice Addresses and Payment Address** | | |
| **If to Funding Lender (from the Effective Date to the Freddie Mac Purchase Date) or Loan Servicer (as of the Freddie Mac Purchase Date):** | Attention: \_\_\_\_\_\_\_\_\_\_\_\_ |  |
| **If to Funding Lender (as of the Freddie Mac Purchase Date):** | Federal Home Loan Mortgage Corporation  8100 Jones Branch Drive  McLean, Virginia 22102  Attention: Multifamily Operations - Loan Accounting  Email: mfla@freddiemac.com  Telephone: (703) 714-4177  *With a copy to (which copy shall not constitute notice to Funding Lender Representative):*  Federal Home Loan Mortgage Corporation  8200 Jones Branch Drive  McLean, Virginia 22102  Attention: Managing Associate General Counsel - Multifamily Legal Division  Email: guy\_nelson@freddiemac.com  Telephone: (703) 903-2000 | *With a copy to Loan Servicer:*  Attention: \_\_\_\_\_\_\_\_\_\_\_\_ |
| **If to Fiscal Agent:** | Attention: \_\_\_\_\_\_\_\_\_\_\_\_ |  |
| **If to Borrower:** | Attention: \_\_\_\_\_\_\_\_\_\_\_\_ | *If applicable, courtesy copy to:*  Attention: \_\_\_\_\_\_\_\_\_\_\_\_ |
| **If to Guarantor:** | Attention: \_\_\_\_\_\_\_\_\_\_\_\_ | |
| *(See Section 11.03)* | | |

**1.06 Reserved.**

**1.07 Reserved.**

**1.08 Schedules, Exhibits and Riders**

|  |  |  |
| --- | --- | --- |
| **Schedules and Exhibits** | | |
|  | **Schedule I** | Reserved |
| X | **Schedule II** | State Specific Provisions by Property Jurisdiction (required) |
| X | **Schedule III** | Repair Disbursement Request (required) |
|  | **Schedule IV** | Reserved |
|  | **Schedule V** | Reserved |
| X | **Schedule VI** | List of Continuing Covenant Agreement Sections |
| X | **Exhibit A** | Organizational Chart of Borrower and Guarantor as of the Effective Date (required) |
|  | **Exhibit B** | Modifications to Continuing Covenant Agreement |
|  | **Exhibit C** | Reserved |
|  | **Exhibit D** | Reserved |
|  | **Exhibit E** | Reserved |
|  | **Exhibit F** | Reserved |
|  | **Exhibit G** | Reserved |

|  |  |
| --- | --- |
| **Attached Rider(s)** | **Date Revised** |
|  | \_\_/\_\_/20\_\_ |
|  | \_\_/\_\_/20\_\_ |
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ARTICLE II SECURITY AND GUARANTy.

**2.01 Security Instrument**. Borrower will execute the Security Instrument dated as of the Effective Date in favor of the Fiscal Agent as security for the Funding Loan. The Security Instrument will be recorded in the applicable land records in the Property Jurisdiction.

**2.02 Reserve Funds**.

(a) Security Interest. To secure Borrower’s obligations under this Continuing Covenant Agreement, Borrower conveys, pledges, transfers, and grants to Funding Lender a security interest pursuant to the Uniform Commercial Code of the Property Jurisdiction or any other applicable law in and to all money in the Reserve Funds, as such amounts may increase or decrease from time to time, all interest and dividends on and all proceeds of such Reserve Funds.

(b) Supplemental Loan. If Borrower enters into a Supplemental Loan and if the same Person is or becomes both Funding Lender and Supplemental Lender, then Borrower assigns and grants to Funding Lender a security interest in the Reserve Funds established in connection with the Supplemental Loan, if any, as additional security for all of Borrower’s obligations under this Continuing Covenant Agreement.

**2.03 Uniform Commercial Code Security Agreement**. This Continuing Covenant Agreement is also a security agreement under the Uniform Commercial Code with respect to each of the following (“**UCC Collateral**”), and by this Continuing Covenant Agreement, Borrower grants to Funding Lender a security interest in the UCC Collateral to secure Borrower’s obligations under this Continuing Covenant Agreement and the other Financing Documents:

(a) Any of the Mortgaged Property which, under applicable law, may be subjected to a security interest under the Uniform Commercial Code, whether such Mortgaged Property is owned now or acquired in the future.

(b) All products and cash and non-cash proceeds of the Mortgaged Property.

(c) Reserved.

**2.04 Reserved.**

**2.05 Guaranty**. Borrower will cause each Guarantor (if any) to execute a Guaranty of all or a portion of Borrower’s obligations under this Continuing Covenant Agreement and the other Financing Documents, effective as of the Effective Date.

**2.06 through 2.14 are reserved**.

ARTICLE III Borrower’s obligations.

**3.01 through 3.08 are reserved.**

**3.09 Payment and Performance Obligations.** Borrower hereby unconditionally, irrevocably and absolutely agrees to make prompt and full payment of all payment obligations owed under this Continuing Covenant Agreement and the other Financing Documents (including Project Loan Payments corresponding to payments due on the Governmental Note, as well as all additional payments of fees, expenses and other amounts owed thereunder), whether now existing or hereafter arising in respect of the Indebtedness, irrespective of their nature, whether direct or indirect, absolute or contingent, with interest thereon at the rate or rates provided in such Financing Documents, and to duly perform all other obligations hereunder and thereunder. Borrower’s personal liability under this Section 3.09 will be limited as set forth in Section 9 of the Project Note. No partner or member of Borrower will have any liability under this Section 3.09 except as set forth in Section 9 of the Project Note.

**3.10 Servicing Fee.** Borrower will remit the accrued but unpaid Servicing Fee to Loan Servicer on each Project Loan Payment Date while the Project Loan is outstanding, as well as any Extraordinary Servicer’s Fees and Expenses upon written demand therefor.

**3.11 Defeasance Fee.** Borrower will pay to Freddie Mac the non-refundable Defeasance Fee in connection with the giving of any Defeasance Notice pursuant to Section 4.04(c) of the Project Loan Agreement.

ARTICLE IV RESERVE FUNDS AND REQUIREMENTS.

**4.01 Reserves Generally**. All Reserve Funds will be established and maintained in accordance with this Article IV and will constitute additional security for the Indebtedness, as provided in Section 2.02.

(a) Investment of Reserve Deposits. Unless otherwise provided for in this Article IV, each Reserve Fund will be established on the Effective Date and held in an Eligible Account at an Eligible Institution. Funding Lender will not be obligated to open additional accounts or deposit Reserve Funds in additional institutions when the amount of any Reserve Fund exceeds the maximum amount of the federal deposit insurance or guaranty. Borrower acknowledges and agrees that it will not have the right to direct Funding Lender as to any specific investment of monies in any Reserve Fund. Funding Lender will not be responsible for any losses resulting from investment of monies in any Reserve Fund or for obtaining any specific level or percentage of earnings on such investment.

(b) Interest on Reserve Funds; Trust Funds. Unless applicable law requires, Funding Lender will not be required to pay Borrower any interest, earnings, or profits on the Reserve Funds. Any amounts deposited with Funding Lender under this Article IV will not constitute trust funds nor will they operate to reduce the Indebtedness, unless applied by Funding Lender for that purpose pursuant to the terms of this Continuing Covenant Agreement.

(c) Use of Reserve Funds. Each Reserve Fund will, except as otherwise provided in this Continuing Covenant Agreement, be used for the sole purpose of paying, or reimbursing Borrower for payment of, the item(s) for which the applicable Reserve Fund was established. Borrower acknowledges and agrees that, except as specified in this Continuing Covenant Agreement, monies in one Reserve Fund will not be used to pay, or reimburse Borrower for, matters for which another Reserve Fund has been established. Borrower will be liable to Funding Lender for all fees, charges, costs, and expenses in connection with the Reserve Funds, including any fees or charges as may be assessed by the applicable Eligible Institution in connection with the administration of the Reserve Funds (“**Reserve Fund Fees**”). If Borrower fails to pay when due any Reserve Fund Fees, Funding Lender may deduct such Reserve Fund Fees from available Reserve Funds.

(d) Termination of Reserve Funds. Except as otherwise provided in this Continuing Covenant Agreement, upon the payment in full of the Indebtedness, Funding Lender will pay to Borrower all funds remaining in any Reserve Funds.

(e) Reserved.

**4.02 Reserves for Taxes, Insurance and Other Charges**.

(a) Imposition Reserve Deposits.

(i) Borrower will deposit with Funding Lender on each Project Loan Payment Date (or on another day designated in writing by Funding Lender), until the Indebtedness is paid in full, an additional amount sufficient to accumulate with Funding Lender the entire sum required to pay, when due, the Imposition Reserves marked “Collect” in Section 1.03. Except as provided in this Section 4.02, Funding Lender will not require Borrower to make Imposition Reserve Deposits with respect to the Imposition Reserves marked “Deferred” in Section 1.03.

(ii) The amounts deposited pursuant to this Section 4.02(a) are collectively referred to in this Continuing Covenant Agreement as the “**Imposition Reserve Deposits**.” The amount of the Imposition Reserve Deposits must be sufficient to enable Funding Lender to pay each Imposition before the last date upon which such payment may be made without any penalty or interest charge being added. Funding Lender will maintain records indicating how much of the monthly Imposition Reserve Deposits and how much of the aggregate Imposition Reserve Deposits held by Funding Lender are held for the purpose of paying Taxes, Insurance premiums, Ground Rent (if applicable), and each other Imposition.

(b) Disbursement of Imposition Reserve Deposits.

(i) Funding Lender will apply the Imposition Reserve Deposits to pay Impositions so long as no Event of Default has occurred and is continuing. Funding Lender will pay all Impositions from the Imposition Reserve Deposits held by Funding Lender upon Funding Lender’s receipt of a bill or invoice for an Imposition.

(ii) If Borrower holds a ground lessee interest in the Mortgaged Property and Imposition Reserve Deposits are collected for Ground Rent, then Funding Lender will pay the monthly or other periodic installments of Ground Rent from the Imposition Reserve Deposits, whether or not Funding Lender receives a bill or invoice for such installments.

(iii) Funding Lender will have no obligation to pay any Imposition to the extent it exceeds the amount of the Imposition Reserve Deposits then held by Funding Lender. Funding Lender may pay an Imposition according to any bill, statement or estimate from the appropriate public office, Ground Lessor (if applicable) or insurance company without inquiring into the accuracy of the bill, statement or estimate or into the validity of the Imposition.

(c) Excess or Deficiency of Imposition Reserve Deposits. If at any time the amount of the Imposition Reserve Deposits held by Funding Lender for payment of a specific Imposition exceeds the amount reasonably deemed necessary by Funding Lender, the excess will be credited against future installments of Imposition Reserve Deposits. If at any time the amount of the Imposition Reserve Deposits held by Funding Lender for payment of a specific Imposition is less than the amount reasonably estimated by Funding Lender to be necessary, Borrower will pay to Funding Lender the amount of the deficiency within 15 days after Notice from Funding Lender.

(d) Delivery of Invoices. Borrower will promptly deliver to Funding Lender a copy of all notices of, and invoices for, Impositions.

(e) Deferral of Imposition Reserve Deposits; Delivery of Receipts.

(i) If Funding Lender does not collect an Imposition Reserve Deposit with respect to an Imposition either marked “Deferred” in Section 1.03 or pursuant to a separate written deferral by Funding Lender, then on or before the earlier of the date each such Imposition is due, or the date this Continuing Covenant Agreement requires each such Imposition to be paid, Borrower will provide Funding Lender with proof of payment of each such Imposition.

(ii) Funding Lender may revoke its deferral of any of the Imposition Reserve Deposits by Notice to Borrower upon the occurrence of any of the following:

(A) Borrower does not timely pay any of the Impositions.

(B) Borrower fails to provide timely proof to Funding Lender of such payment.

(C) At any time during the existence of an Event of Default.

(D) Upon Borrower entering into a Supplemental Loan in accordance with Section 11.11.

(f) through (j) are reserved.

**4.03 Repair Reserve Fund**.

(a) Repairs. Borrower must commence and complete the Repairs identified in the Repair Schedule of Work (located in Section 1.03) pursuant to this Section 4.03 and Section 6.14.

(b) Repair Reserve Deposit. If one or more Repair Reserve Deposits is marked required in Section 1.03, then on the Effective Date, Borrower will deposit the amount or amounts set forth in Section 1.03 into the Repair Reserve Fund to be used for the completion of the applicable Repairs as identified on the Repair Schedule of Work in Section 1.03.

(c) through (e) are reserved.

(f) Insufficient Amount in Repair Reserve Fund. If Funding Lender determines in Funding Lender’s Discretion that the money in the Repair Reserve Fund is insufficient to pay for the Repairs, then Funding Lender will provide Borrower with Notice of such insufficiency. As soon as possible (but in no event later than 20 days after such Notice) Borrower will pay to Funding Lender an amount, in cash, equal to such deficiency, which Funding Lender will deposit into the Repair Reserve Fund.

(g) Disbursements from Repair Reserve Fund. Funding Lender will make disbursements from the Repair Reserve Fund for payment or reimbursement of the actual costs of Repairs if all the conditions in this Section 4.03(g) have been satisfied, as determined by Funding Lender in Funding Lender’s Discretion.

(i) Reserved.

(ii) Borrower must submit to Funding Lender a fully executed Repair Disbursement Request in the form attached to this Continuing Covenant Agreement as Schedule III, together with each of the following:

(A) A report setting out the progress of the Repairs and any other reports or information relating to the construction of the Repairs that may be reasonably requested by Funding Lender.

(B) Copies of any applicable invoices, bills, and appropriate lien waivers for the prior period for which disbursement was made, executed by all contractors and suppliers supplying labor or materials for the Repairs.

(C) A report prepared by the professional engineer employed by Funding Lender as to the status of the Repairs, unless Funding Lender has waived this requirement in writing.

(D) Reserved.

(iii) Without the prior written consent of Funding Lender, Borrower has not requested any disbursement from the Repair Reserve Fund other than the costs of those Repairs specified in the Repair Schedule of Work.

(iv) The requested amount does not exceed the amount remaining in the Repair Reserve Fund that is allocated for such Repair(s) pursuant to Sections 4.03(a) through 4.03(e) and Section 4.03(j), as applicable.

(v) Except for the final Repair Disbursement Request, each Repair Disbursement Request must adhere to the Repair Disbursement Timing and Amount Limitations set forth in Section 1.03.

(vi) No Event of Default has occurred and is continuing, and there exists no condition, event, or act that would constitute a default (with or without Notice and/or lapse of time) under this Continuing Covenant Agreement or any other Financing Document.

(vii) Borrower is in full compliance with the provisions of this Continuing Covenant Agreement (including Sections 6.06 and 6.14), the other Financing Documents, and any request or demand by Funding Lender permitted by this Continuing Covenant Agreement.

(viii) No lien or claim based on furnishing labor or materials has been recorded, filed, or asserted against the Mortgaged Property, unless Borrower has properly provided bond or other security against loss in accordance with applicable law.

(ix) All licenses, permits, and approvals of any Governmental Authority required for the Repairs as completed to the applicable stage have been obtained by Borrower, and if requested by Funding Lender, have been submitted to Funding Lender.

(x) In connection with the final Repair Disbursement Request, or as otherwise required by Funding Lender in Funding Lender’s Discretion, Funding Lender may inspect or cause the Repairs to be inspected in accordance with the terms of Section 6.06 and 6.14 to determine whether all such Repairs have been completed in a manner acceptable to Funding Lender.

(xi) Reserved.

(xii) Reserved.

(h) Funding Lender’s Use of Repair Reserve Fund. Funding Lender, in its sole and absolute discretion, is authorized to hold, use, and disburse funds from the Repair Reserve Fund to pay any costs or expenses incurred or required in connection with the construction and completion of the Repairs, or, if an Event of Default has occurred and is continuing, in the payment or performance of any obligation of Borrower to Funding Lender. If Funding Lender, for purposes specified in this Section 4.03(h), elects to pay any portion of the money in the Repair Reserve Fund to parties other than Borrower, then Funding Lender may do so, at any time and from time to time, and the dollar amount of advances from the Repair Reserve Fund to which Borrower will be entitled under this Continuing Covenant Agreement will be correspondingly reduced.

(i) Remaining Funds After Repair Completion. So long as no Event of Default has occurred and is continuing and there exists no condition, event, or act that would constitute a default (with or without Notice and/or the passage of time), any funds remaining from each of the Repair Reserve Deposits described in Sections 4.03(a) through 4.03(e) after the Repairs associated with such Section have been completed in accordance with this Continuing Covenant Agreement will either be (i) refunded by Funding Lender to Borrower or (ii) deposited by Funding Lender into the Replacement Reserve Fund, as specified in Section 1.03.

(j) through (l) are reserved.

**4.04 Replacement Reserve Fund**.

(a) Replacement Reserve Deposits. On the Effective Date, the parties will establish the Replacement Reserve Fund and Borrower will pay the Initial Replacement Reserve Deposit, if applicable, to Funding Lender for deposit into the Replacement Reserve Fund. Subject to Section 4.04(b), on each Project Loan Payment Date until the Project Loan is paid in full, Borrower will pay the Monthly Replacement Reserve Deposit to Funding Lender for deposit into the Replacement Reserve Fund. A transfer of funds into the Replacement Reserve Fund from any other Reserve Fund in accordance with the terms of this Continuing Covenant Agreement will not alter or reduce the amount of any required Monthly Replacement Reserve Deposit.

(b) Deferral of Monthly Replacement Reserve Deposits.

(i) Notwithstanding Section 4.04(a), but subject to Sections 4.04(b)(ii), 4.04(b)(iii), and 4.04(e), Borrower will not be required to pay the Monthly Replacement Reserve Deposit to Funding Lender on each Project Loan Payment Date if the Monthly Replacement Reserve Deposit is marked “Deferred” in Section 1.03.

(ii) Commencing on the date that a Supplemental Loan is originated and continuing until all Supplemental Loans are paid in full, Borrower must pay the Monthly Replacement Reserve Deposit or the Revised Monthly Replacement Reserve Deposit, as applicable, to Funding Lender for deposit into the Replacement Reserve Fund, together with its regular monthly payments of principal and interest as required by the Project Note.

(iii) Upon the occurrence of a default under this Continuing Covenant Agreement or any other Financing Document, Funding Lender in Funding Lender’s Discretion may reinstate collection of the Monthly Replacement Reserve Deposit, or the Revised Monthly Replacement Reserve Deposit, as applicable, by Notice to Borrower.

(c) and (d) are reserved.

(e) Adjustments to Replacement Reserve Fund. If the initial term of the Project Loan is greater than 120 months, then the following provisions will apply:

(i) Funding Lender reserves the right to do each of the following, based on Funding Lender’s assessment of the physical condition of the Mortgaged Property:

(A) Adjust the amount of the Monthly Replacement Reserve Deposit (“**Revised Monthly Replacement Reserve Deposit**”).

(B) Reinstate collection of Borrower’s Monthly Replacement Reserve Deposit or the Revised Monthly Replacement Reserve Deposit, as applicable, if a deferral was granted under Section 4.04(b).

(C) Reserved.

(ii) Notwithstanding the foregoing, Funding Lender will not make the changes described in Section 4.04(e)(i) prior to the date that is 120 months after the First Project Loan Payment Date, nor more frequently than every 10 years thereafter during the term of the Project Loan.

(iii) Borrower will pay Funding Lender the cost of any assessment required pursuant to Section 4.04(e)(i) immediately after Notice from Funding Lender to Borrower of such charge.

(iv) Upon Notice from Funding Lender, Borrower will begin paying the Monthly Replacement Reserve Deposit or Revised Monthly Replacement Reserve Deposit, as applicable, on the first Project Loan Payment Date that is at least 30 days after the date of such Notice. If Funding Lender does not provide Borrower with such Notice, Borrower will continue to pay the Monthly Replacement Reserve Deposit or the Revised Monthly Replacement Reserve Deposit then in effect, if applicable.

(f) Disbursements from Replacement Reserve Fund.

(i) Funding Lender will make disbursements from the Replacement Reserve Fund for reimbursement of the actual cost of Capital Replacements performed by Borrower, provided that all the conditions in this Section 4.04(f) have been satisfied, as determined by Funding Lender in Funding Lender’s Discretion.

(ii) Borrower must submit to Funding Lender a request for reimbursement that includes each of the following:

(A) A detailed description of the Capital Replacement performed.

(B) Evidence, satisfactory to Funding Lender, that the cost of such Capital Replacement has been paid.

(C) Borrower’s written representation and warranty that each Capital Replacement has been performed and/or installed on the Mortgaged Property in a good and workmanlike manner with suitable materials (or in the case of a partial disbursement, performed and/or installed on the Mortgaged Property to an acceptable stage), in accordance with good building practices and does not violate any laws, ordinances, rules, regulations, restrictions, or building setback lines applicable to the Mortgaged Property.

(iii) If required by Funding Lender, Borrower must also submit lien waivers from each contractor and material supplier supplying labor or materials for such Capital Replacement.

(iv) Except for the final disbursement from the Replacement Reserve Fund, each disbursement request must adhere to the Replacement Reserve Disbursement Timing and Amount Limitations set forth in Section 1.03.

(v) No Event of Default has occurred and is continuing and there exists no condition, event, or act that would constitute a default (with or without Notice and/or lapse of time) under this Continuing Covenant Agreement or any other Financing Document.

(vi) No Lien or claim based on furnishing labor or materials has been recorded, filed or asserted against the Mortgaged Property, unless Borrower has properly provided a bond or other security against loss in accordance with applicable law.

(vii) Borrower has obtained all licenses, permits, and approvals of any Governmental Authority required for the Capital Replacements, and if requested by Funding Lender, has submitted such items to Funding Lender.

(g) Insufficient Amount in Replacement Reserve Fund. If Borrower requests disbursement from the Replacement Reserve Fund for a Capital Replacement in accordance with this Continuing Covenant Agreement in an amount which exceeds the amount on deposit in the Replacement Reserve Fund, Funding Lender will disburse to Borrower only the amount on deposit in the Replacement Reserve Fund. Borrower will pay all additional amounts required in connection with any such Capital Replacement from Borrower’s own funds.

(h) Reserved.

**4.05 through 4.19 are reserved**.

ARTICLE V REPRESENTATIONS AND WARRANTIES.

Borrower represents and warrants to Funding Lender as follows as of the Effective Date:

**5.01 Review of Documents**. Borrower has reviewed the Commitment Letter and each of the Financing Documents, including the Project Note and this Continuing Covenant Agreement.

**5.02 Condition of Mortgaged Property**. Except as Borrower may have disclosed to Funding Lender in writing prior to the issuance of the Commitment Letter, the Mortgaged Property has not been damaged by fire, water, wind or other cause of loss, or any previous damage to the Mortgaged Property has been fully restored.

**5.03 No Condemnation**. No part of the Mortgaged Property has been taken in Condemnation or other like proceeding, and, to the best of Borrower’s knowledge after due inquiry and investigation, no such proceeding is pending or threatened for the partial or total Condemnation or other taking of the Mortgaged Property.

**5.04 Actions; Suits; Proceedings**.

(a) There are no judicial, administrative, mediation or arbitration actions, suits or proceedings pending or, to the best of Borrower’s knowledge, threatened in writing against or affecting Borrower (and, if Borrower is a limited partnership, any of its general partners, or if Borrower is a limited liability company, any member of Borrower) or the Mortgaged Property which, if adversely determined, would have a Material Adverse Effect.

(b) Reserved.

**5.05 Environmental**. Except as previously disclosed by Borrower to Funding Lender in writing (which written disclosure may be contained in certain environmental assessments and other written reports accepted by Funding Lender in connection with the funding of the Indebtedness and dated prior to the Effective Date), each of the following is true:

(a) Borrower has not at any time engaged in, caused, or permitted any Prohibited Activities or Conditions on the Mortgaged Property.

(b) To the best of Borrower’s knowledge after due inquiry and investigation, no Prohibited Activities or Conditions exist or have existed on the Mortgaged Property.

(c) The Mortgaged Property does not now contain any underground storage tanks, and, to the best of Borrower’s knowledge after due inquiry and investigation, the Mortgaged Property has not contained any underground storage tanks in the past. If there is an underground storage tank located on the Mortgaged Property that has been previously disclosed by Borrower to Funding Lender in writing, that tank complies with all requirements of Hazardous Materials Laws.

(d) To the best of Borrower’s knowledge after due inquiry and investigation, Borrower has complied with all Hazardous Materials Laws, including all requirements for notification regarding releases of Hazardous Materials. All Environmental Permits required for the operation of the Mortgaged Property in accordance with Hazardous Materials Laws now in effect have been obtained and all such Environmental Permits are in full force and effect.

(e) To the best of Borrower’s knowledge after due inquiry and investigation, no event has occurred with respect to the Mortgaged Property that constitutes, or with the passage of time or the giving of notice, or both, would constitute noncompliance with the terms of any Environmental Permit.

(f) There are no actions, suits, claims or proceedings pending or, to the best of Borrower’s knowledge after due inquiry and investigation, threatened in writing that involve the Mortgaged Property and allege, arise out of, or relate to any Prohibited Activity or Condition.

(g) Borrower has received no actual or constructive notice of any written complaint, order, notice of violation or other communication from any Governmental Authority with regard to air emissions, water discharges, noise emissions or Hazardous Materials, or any other environmental, health or safety matters affecting the Mortgaged Property or any property, whether or not owned by Borrower or any Affiliate of Borrower, that is adjacent to the Mortgaged Property.

**5.06 Commencement of Work; No Labor or Materialmen’s Claims**. Except as set forth in Section 1.04, prior to the recordation of the Security Instrument, no work of any kind has been or will be commenced or performed upon the Mortgaged Property, and no materials or equipment have been or will be delivered to or upon the Mortgaged Property, for which the contractor, subcontractor or vendor continues to have any rights including the existence of or right to assert or file a mechanic’s or materialmen’s Lien. If any such work of any kind has been commenced or performed upon the Mortgaged Property, or if any such materials or equipment have been ordered or delivered to or upon the Mortgaged Property, then prior to the Effective Date, Borrower has satisfied each of the following conditions:

(a)Borrower has fully disclosed in writing to both Funding Lender and the title company issuing the Title Policy that work has been commenced or performed on the Mortgaged Property, or materials or equipment have been ordered or delivered to or upon the Mortgaged Property.

(b)Borrower has obtained and delivered to Funding Lender and the title company issuing the Title Policy Lien waivers from all contractors, subcontractors, suppliers or any other applicable party, pertaining to all work commenced or performed on the Mortgaged Property, or materials or equipment ordered or delivered to or upon the Mortgaged Property.

Borrower represents and warrants that all parties furnishing labor and materials for which a Lien or claim of Lien may be filed against the Mortgaged Property have been paid in full and, except for such Liens or claims insured against by the Title Policy (which Borrower has disclosed pursuant to Section 5.06(a) and which are identified in Section 1.04), there are no mechanics’, laborers’ or materialmen’s Liens or claims outstanding for work, labor or materials affecting the Mortgaged Property, whether prior to, equal with or subordinate to the Lien of the Security Instrument.

**5.07 Compliance with Applicable Laws and Regulations**.

(a) To the best of Borrower’s knowledge after due inquiry and investigation, each of the following is true:

(i) All Improvements and the use of the Mortgaged Property comply with all applicable statutes, rules, and regulations, including all applicable statutes, rules and regulations pertaining to requirements for equal opportunity, anti-discrimination, fair housing, tenant protection, environmental protection, zoning and land use (“legal, non-conforming” status with respect to uses or structures will be considered to comply with zoning and land use requirements for the purposes of this representation).

(ii) The Improvements comply with applicable health, fire, and building codes.

(iii) There is no evidence of any illegal activities on the Mortgaged Property.

(iv) Reserved.

(b) through (d) are reserved.

**5.08 Access; Utilities; Tax Parcels**. The Mortgaged Property (a) has ingress and egress via a publicly dedicated right of way or via an irrevocable easement permitting ingress and egress, (b) is served by public utilities and services generally available in the surrounding community or otherwise appropriate for the use in which the Mortgaged Property is currently being utilized, and (c) constitutes one or more separate tax parcels.

**5.09 Licenses and Permits**.

(a) Borrower and any operator of the Mortgaged Property, if applicable, and to the best of Borrower’s knowledge, any commercial tenant of the Mortgaged Property is in possession of all material licenses, permits and authorizations required for use of the Mortgaged Property, which are valid and in full force and effect as of the Effective Date.

(b) through (i) are reserved.

**5.10 No Other Interests**. To the best of Borrower’s knowledge after due inquiry and investigation, no Person has (a) any possessory interest in the Mortgaged Property or right to occupy the Mortgaged Property except under and pursuant to the provisions of existing Leases by and between tenants and Borrower (a form of residential lease having been previously provided to Funding Lender together with the material terms of any and all Non-Residential Leases at the Mortgaged Property), or (b) an option to purchase the Mortgaged Property or an interest in the Mortgaged Property, except as has been disclosed to and approved in writing by Funding Lender.

**5.11 Term of Leases**. All Leases for residential units with respect to the Mortgaged Property satisfy each of the following conditions:

(a) They are on forms that are customary for similar multifamily properties in the Property Jurisdiction.

(b) They are for initial terms of at least 6 months and not more than 2 years (unless otherwise approved in writing by Funding Lender).

(c) Reserved.

(d) They do not include options to purchase.

**5.12 No Prior Assignment; Prepayment of Rents**. Borrower has (a) not executed any assignment of Rents (other than an assignment of Rents securing any prior indebtedness that is being assigned to Funding Lender, or that is being paid off and discharged with the proceeds of the Project Loan), and (b) not performed any acts and has not executed, and will not execute, any instrument which would prevent Funding Lender (or Fiscal Agent on its behalf) from exercising its rights under any Financing Document. At the time of execution of this Continuing Covenant Agreement, unless otherwise approved by Funding Lender in writing, there has been no prepayment of any Rents for more than 2 months prior to the due dates of such Rents other than the last month’s rent, if collected at the time a tenant enters into a Lease.

**5.13 Illegal Activity**. No portion of the Mortgaged Property has been or will be purchased with the proceeds of any illegal activity.

**5.14 Taxes Paid**. Borrower has filed all federal, state, county and municipal tax returns required to have been filed by Borrower and has paid all Taxes which have become due pursuant to such returns or to any notice of assessment received by Borrower; Borrower has no knowledge of any basis for additional assessment with respect to such Taxes. To the best of Borrower’s knowledge after due inquiry and investigation, there are not presently pending any special assessments against the Mortgaged Property or any part of the Mortgaged Property.

**5.15 Title Exceptions**. To the best of Borrower’s knowledge after due inquiry and investigation, none of the items shown in the schedule of exceptions to coverage in the Title Policy will have a Material Adverse Effect on the (a) ability of Borrower to pay the Project Loan in full, (b) ability of Borrower to use all or any part of the Mortgaged Property in the manner in which the Mortgaged Property is being used on the Effective Date, except as set forth in Section 6.03, (c) operation of the Mortgaged Property, or (d) value of the Mortgaged Property.

**5.16 No Change in Facts or Circumstances**.

(a) All information submitted to Funding Lender or Loan Servicer by or on behalf of Borrower, including all financial statements for the Mortgaged Property, Borrower, and any Borrower Principal, and all Rent Schedules, reports, certificates, and any other documents submitted thereto in connection with the Project Loan and the Mortgaged Property is complete and accurate in all material respects as of the date such information was submitted to Funding Lender or Loan Servicer.

(b) There has been no change in any fact or circumstance since the submission of the information described in Section 5.16(a) hereof to Funding Lender or Loan Servicer that would make any such information submitted materially incomplete or inaccurate.

(c) The organizational structures of Borrower and Guarantor are as set forth in Exhibit A.

**5.17 Financial Statements**. The financial statements of Borrower and each Borrower Principal furnished to Funding Lender reflect in each case a positive net worth as of the date of the applicable financial statement.

**5.18 ERISA – Borrower Status**. Borrower represents as follows:

(a) Borrower is not an “investment company,” or a company under the Control of an “investment company,” as such terms are defined in the Investment Company Act of 1940, as amended.

(b) Borrower is not an “employee benefit plan,” as defined in Section 3(3) of ERISA, which is subject to Title I of ERISA or a “plan” to which Section 4975 of the Tax Code applies, and the assets of Borrower do not constitute “plan assets” of one or more such plans within the meaning of 29 C.F.R. Section 2510.3-101, as modified by Section 3(42) of ERISA.

(c) Borrower is not a “governmental plan” within the meaning of Section 3(32) of ERISA, and is not subject to state statutes regulating investments or fiduciary obligations with respect to governmental plans.

**5.19 No Fraudulent Transfer or Preference**.

(a) No Borrower or Borrower Principal has made or is making in connection with and as security for the Funding Loan, a transfer of an interest in the property of Borrower or Borrower Principal to or for the benefit of Funding Lender, Fiscal Agent or Governmental Lender or otherwise as security for any of the obligations under the Financing Documents which is or could constitute a voidable preference under federal bankruptcy, state insolvency or similar applicable creditors’ rights laws.

(b) No Borrower or Borrower Principal has made or is making in connection with the Project Loan, a transfer of an interest of Borrower or any Borrower Principal in property (including any transfer to or for the benefit of an insider under an employment contract) which is or could constitute a voidable preference under federal bankruptcy, state insolvency or similar applicable creditors’ rights laws.

(c) No Borrower or Borrower Principal has incurred or is incurring in connection with the Project Loan, any obligation (including any obligation to or for the benefit of an insider under an employment contract) which is or could constitute a fraudulent transfer under federal bankruptcy, state insolvency, or similar applicable creditors’ rights laws.

**5.20 No Insolvency or Judgment**.

(a) No Pending Proceedings or Judgments. No Borrower or Borrower Principal is (i) the subject of or a party to (other than as a creditor) any completed or pending Bankruptcy, or (ii) the subject of any judgment unsatisfied of record or docketed in any court located in the United States.

(b) Insolvency. Borrower is not presently Insolvent, and the Project Loan will not render Borrower Insolvent.

**5.21 Working Capital**. After the Project Loan is made, Borrower intends to have sufficient working capital, including cash flow from the Mortgaged Property or other sources, not only to adequately maintain the Mortgaged Property, but also to pay all of Borrower’s outstanding debts as they come due (other than any balloon payment due upon the maturity of the Project Note). Funding Lender acknowledges that no members or partners of Borrower or any Borrower Principal will be obligated to contribute equity to Borrower for purposes of providing working capital to maintain the Mortgaged Property or to pay Borrower’s outstanding debts except as may otherwise be required under the Organizational Documents or Borrower Principal’s organizational documents.

**5.22 and 5.23 are reserved**.

**5.24 Purpose of Project Loan**. Borrower is incurring the Indebtedness solely for the purpose of carrying on a business or commercial enterprise, and not for consumer, personal, family, household, or agricultural purposes.

(a) Refinance Loan. If “Refinance Loan” is checked in Section 1.05, then Borrower has fully disclosed to Funding Lender the use of any cash received by Borrower from Funding Lender in connection with the refinancing, funded on the Delivery Date, if applicable.

(b) Acquisition of Mortgaged Property. If “Acquisition of Mortgaged Property” is checked in Section 1.05, then Borrower has fully disclosed to Funding Lender all the consideration given or received in connection with the acquisition of the Mortgaged Property. The Mortgaged Property was purchased on or prior to the Delivery Date from the Property Seller set forth in Section 1.05. To the best of Borrower’s knowledge after due inquiry and investigation, Property Seller was not Insolvent immediately prior or subsequent to the sale of the Mortgaged Property.

(c) Acquisition of Membership Interests. If “Acquisition of Membership Interests” is checked in Section 1.05, then Borrower has fully disclosed to Funding Lender all the consideration given or received in connection with the acquisition of 100% of the Membership Interests. The Membership Interests were purchased on or prior to the Effective Date from Membership Interests Seller set forth in Section 1.05. To the best of Borrower’s knowledge after due inquiry and investigation, Membership Interests Seller was not Insolvent subsequent to the sale of the Membership Interests.

(d) Reserved.

(e) Cross-Collateralized and Cross-Defaulted Loan Pool: If “Cross-Collateralized and Cross‑Defaulted Loan Pool” is checked in Section 1.05, then the Project Loan is part of a cross‑collateralized and cross-defaulted pool of loans and Borrower has fully disclosed to Funding Lender the use of any cash received by Borrower from Funding Lender in connection with the Project Loan and the other loans comprising the cross-collateralized and cross-defaulted loan pool, if applicable.

**5.25 through 5.43 are reserved**.

**5.44 Tax Credit Regulatory Agreement**.

(a) If “**Not Yet Placed in Service**” is selected in Section 1.05, then Borrower has been awarded Tax Credits, but the Tax Credit Regulatory Agreement will not be recorded until the Mortgaged Property has been placed in service. Borrower represents and warrants that all the following are correct:

(i) Borrower is in compliance with all requirements of the application to receive an allocation of Tax Credits (“**Tax Credit** **Application**”). Borrower has not received any notice from the Tax Credit Agency that Borrower is in default under the Tax Credit Application or that the Tax Credit Agency will not issue and record a Tax Credit Regulatory Agreement when the Mortgaged Property is placed in service.

(ii) The copy of the Tax Credit Application Borrower has provided to Funding Lender includes all amendments, schedules, and exhibits and is complete and accurate in all respects.

(b) If “**Recorded Regulatory Agreement**” is selected in Section 1.05, then Borrower has been awarded Tax Credits and the Tax Credit Regulatory Agreement has been recorded or will be recorded on or prior to the Effective Date. Borrower represents and warrants that all the following are correct:

(i) Borrower is in compliance with all requirements of the Tax Credit Regulatory Agreement. Borrower has not received any notice from the Tax Credit Agency that Borrower is in default under the Tax Credit Regulatory Agreement.

(ii) The copy of the Tax Credit Regulatory Agreement that Borrower has provided to Funding Lender includes all amendments, schedules, and exhibits and is complete and accurate in all respects.

(c) If “**Recorded but to be Replaced Regulatory Agreement**” is selected in Section 1.05, then Borrower has been awarded Tax Credits and the Tax Credit Regulatory Agreement has been recorded prior to the Effective Date and Borrower has been awarded new Tax Credits under a new Tax Credit Regulatory Agreement that will replace the existing Tax Credit Regulatory Agreement when the new Tax Credit Regulatory Agreement is recorded. Borrower represents and warrants that all of the following are correct:

(i) Borrower is in compliance with all requirements of the application to receive an allocation of Tax Credits (“**Tax Credit Application**”) and the existing Tax Credit Regulatory Agreement. Borrower has not received any notice from the Tax Credit Agency that (A) Borrower is in default under the Tax Credit Application, (B) the Tax Credit Agency will not issue and record a new Tax Credit Regulatory Agreement when the Mortgaged Property is placed in service, or (C) Borrower is in default under the existing Tax Credit Regulatory Agreement.

(ii) The copy of the Tax Credit Application and the existing Tax Credit Regulatory Agreement that Borrower has provided to Funding Lender includes all amendments, schedules and exhibits and is complete and accurate in all respects.

**5.45 Reserved.**

**5.46 Regulatory Agreement**. The Mortgaged Property is subject to one or more Regulatory Agreements, each of which is listed in Section 1.05. Borrower represents and warrants that all the following are correct as to each Regulatory Agreement listed in Section 1.05, whether one or more:

(a) Borrower is in compliance with all requirements of the Regulatory Agreement. Borrower has not received any notice from the Regulatory Agreement Agency or the party or parties responsible for monitoring or enforcing the Regulatory Agreement that Borrower is in default under the Regulatory Agreement.

(b) The copy of the Regulatory Agreement Borrower has provided to Funding Lender includes all amendments, schedules and exhibits and is complete and accurate in all respects.

(c) The Regulatory Agreement terminates on the Termination Date specified in Section 1.05.

(d) Unless “no” is checked in the “**Termination Upon Foreclosure**” field in the Regulatory Agreements table in Section 1.05, then by its terms, the Regulatory Agreement terminates upon foreclosure under the Security Instrument or upon a transfer of the Mortgaged Property by instrument in lieu of foreclosure.

**5.47 through 5.57 are reserved**.

**5.58 Prohibited Parties Lists**.

(a)Borrower is not identified and to the best of Borrower’s knowledge after due inquiry and investigation, no Borrower Principal nor any Non-U.S. Equity Holder is identified on the OFAC Lists.

(b) Borrower is not listed and to the best of Borrower’s knowledge after due inquiry and investigation, no Borrower Principal is listed on the FHFA SCP List.

Notwithstanding the foregoing, Funding Lender acknowledges and agrees that if any entity which owns a direct or indirect interest in Borrower is a Public Company, then unless such Public Company exercises control over the purchase and sale of its publicly traded equity securities to a particular investor (other than as a placement agent), the representations set forth in this Section 5.58 will not be deemed to apply to the direct or indirect ownership in such Public Company.

**5.59 AML Laws**.

(a) Borrower has not been convicted of a violation of the AML Laws or been the subject of a final enforcement action relating to the AML Laws.

(b) To the best of Borrower’s knowledge after due inquiry and investigation, no Borrower Principal nor Non-U.S. Equity Holder has been convicted of a violation of the AML Laws or been the subject of a final enforcement action relating to the AML Laws.

(c) Borrower has not received any notice that it is the subject of any pending proceedings for any violation of the AML Laws and to the best of Borrower’s knowledge it is not the subject of any pending proceedings for any violation of the AML Laws.

(d) To the best of Borrower’s knowledge after due inquiry and investigation no Borrower Principal nor Non-U.S. Equity Holder is the subject of any pending proceedings for any violation of the AML Laws.

Notwithstanding the foregoing, Funding Lender acknowledges and agrees that if any entity which owns a direct or indirect interest in Borrower is a Public Company, then unless such Public Company exercises control over the purchase and sale of its publicly traded equity securities to a particular investor (other than as a placement agent), the representations set forth in Sections 5.59(b) and 5.59(d) will not be deemed to apply to the direct or indirect ownership in such Public Company.

**5.60 Internal Controls**. Borrower has in place and to the best of Borrower’s knowledge after due inquiry and investigation, Borrower has determined that each Borrower Principal has in place practices and procedures for the admission of investors which are designed to prevent the admission of:

(a) Any Non-U.S. Equity Holder, or any investor with a 25% or more ownership interest in the aggregate in Borrower (whether directly or indirectly), that is in violation of any criminal or civil law or regulation intended to prevent money laundering or the funding of terrorist or illegal drug trafficking activities. Notwithstanding the foregoing, Funding Lender acknowledges and agrees that if Borrower or any Borrower Principal is a Public Company, unless such Borrower or Borrower Principal exercises control over the purchase and sale of its publicly traded equity securities to a particular investor (other than as a placement agent), Borrower or such Borrower Principal will not be deemed to make this representation with respect to direct or indirect ownership in such Public Company.

(b) Any Person that will have a 25% or more ownership interest in the aggregate in Borrower (whether directly or indirectly) that is on the Prohibited Parties Lists.

(c) Any Non-U.S. Equity Holder that is on the OFAC Lists.

**5.61 Crowdfunding**. Except as has been disclosed in writing to and approved in writing by Funding Lender, there has been no direct or indirect interest in Borrower marketed or sold to investors through any form of Crowdfunding which constitutes either of the following:

(a) A Controlling Interest.

(b) An interest which may assume Control of Borrower under any terms of either the Organizational Documents, or the organizational documents of any entity in Borrower’s ownership structure, regardless of whether the change in Control is the subject of a Permitted Transfer or a Conditionally Permitted Transfer.

**5.62 Reserved.**

**5.63 Federal Income Tax Matters**. Borrower has not taken any action, or permitted to be taken any action, that would impair the exclusion from gross income for federal income tax purposes of the interest payable on the Governmental Note. Borrower is in compliance with all material requirements of the TEL Regulatory Agreement and any tax certificate relating to the Governmental Note.

**5.64 Incorporation of Other Representations and Warranties**. The representations and warranties contained in the other Financing Documents are hereby incorporated by reference as if fully set forth in this Continuing Covenant Agreement.

ARTICLE VI BORROWER COVENANTS.

**6.01 Compliance with Laws**. Borrower will comply with all laws, ordinances, rules, regulations and requirements of any Governmental Authority having jurisdiction over the Mortgaged Property and all licenses and permits and all recorded covenants and agreements relating to or affecting the Mortgaged Property, including all laws, ordinances, regulations, requirements and covenants pertaining to health and safety, construction of improvements on the Mortgaged Property, Repairs, Capital Replacements, fair housing, disability accommodation, zoning and land use, applicable building codes, special use permits and environmental regulations, Leases, the maintenance and disposition of tenant security deposits, and the *Coronavirus Aid, Relief, and Economic Security Act*. Borrower will take appropriate measures to prevent, and will not engage in or knowingly permit, any illegal activities at the Mortgaged Property, including those that could endanger tenants or visitors, result in damage to the Mortgaged Property, result in forfeiture of the Mortgaged Property, or otherwise materially impair the Lien created by the Security Instrument or Funding Lender’s interest in the Mortgaged Property. Borrower will at all times maintain records sufficient to demonstrate compliance with the provisions of this Section 6.01 and will certify such compliance as provided for in Section 6.17.

**6.02 Compliance with Organizational Documents**. Borrower will at all times comply with all laws, regulations and requirements of any Governmental Authority relating to Borrower’s formation, continued existence and good standing in its state of formation and, if different, in the Property Jurisdiction. Borrower will at all times comply with its Organizational Documents.

**6.03 Use of Mortgaged Property**.

(a) Unless required by applicable law, without the prior consent of Funding Lender and, if requested by Funding Lender, delivery of a No Adverse Effect Opinion addressed to Funding Lender and Fiscal Agent, Borrower will not take any of the following actions:

(i) Allow changes in the use for which all or any part of the Mortgaged Property is being used at the time this Continuing Covenant Agreement is executed.

(ii) Convert any individual dwelling units or common areas to commercial use.

(iii) Initiate a change in the zoning classification of the Mortgaged Property or acquiesce to a change in the zoning classification of the Mortgaged Property.

(iv) Establish any condominium or cooperative regime with respect to the Mortgaged Property beyond any which may be in existence on the Effective Date.

(v) Combine all or any part of the Mortgaged Property with all or any part of a tax parcel which is not part of the Mortgaged Property.

(vi) Subdivide or otherwise split any tax parcel constituting all or any part of the Mortgaged Property.

(vii) Add to or change any location at which any of the Mortgaged Property is stored, held, or located unless Borrower (A) gives Notice to Funding Lender within 30 days after the occurrence of such addition or change, (B) executes and delivers to Funding Lender any modifications of or supplements to this Continuing Covenant Agreement that Funding Lender may require, and (C) authorizes the filing of any financing statement which may be filed in connection with this Continuing Covenant Agreement, as Funding Lender may require.

(viii) Convert, in whole or in part, any non-residential income producing units to non-income producing units.

(b) through (d) reserved.

**6.04 Non-Residential Leases**.

(a) Prohibited New Non-Residential Leases or Modified Non-Residential Leases. Except as set forth in Section 6.04(b), Borrower will not enter into any New Non-Residential Lease, enter into any Modified Non-Residential Lease or terminate any Non-Residential Lease (including any Non-Residential Lease in existence on the Effective Date) without the prior consent of Funding Lender.

(b) New Non-Residential Leases or Modified Non-Residential Leases for which Funding Lender’s Consent is Not Required. Funding Lender’s consent will not be required for Borrower to enter into a Modified Non-Residential Lease or a New Non-Residential Lease if the Modified Non-Residential Lease or New Non-Residential Lease satisfies each of the following requirements:

(i) The tenant under the New Non-Residential Lease or Modified Non-Residential Lease is not an Affiliate of Borrower or any Guarantor.

(ii) The terms of the New Non-Residential Lease or Modified Non-Residential Lease are at least as favorable to Borrower as those customary in the applicable market at the time Borrower enters into the New Non-Residential Lease or Modified Non-Residential Lease.

(iii) The Rents paid to Borrower pursuant to the New Non-Residential Lease or Modified Non-Residential Lease are not less than 90% of the rents paid to Borrower pursuant to the Non-Residential Lease, if any, for that portion of the Mortgaged Property that was in effect prior to the New Non-Residential Lease or Modified Non-Residential Lease.

(iv) The term of the New Non-Residential Lease or Modified Non-Residential Lease, including any option to extend, is 10 years or less.

(v) Any New Non-Residential Lease may not allow the leased premises to be used or operated, in whole or in part, for any illegal activity or any Restricted Non-Residential Use.

(vi) The aggregate of the income derived from the space leased pursuant to the New Non-Residential Lease accounts for less than 20% of the gross income of the Mortgaged Property on the date that Borrower enters into the New Non-Residential Lease.

(vii) Such New Non-Residential Lease is not an oil or gas lease, pipeline agreement or other instrument related to the production or sale of oil or natural gas.

(viii) Any New Non-Residential Lease must satisfy the condition of Section 6.04(d).

(c) Executed Copies of Non-Residential Leases. Borrower will, without request by Funding Lender, deliver a fully executed copy of each Non-Residential Lease to Funding Lender promptly after such Non-Residential Lease is signed.

(d) Subordination and Attornment Requirements. All Non-Residential Leases entered into after the Effective Date will specifically include the following provisions:

(i) The tenant will attorn to Funding Lender and any purchaser at a foreclosure sale, such attornment to be self-executing and effective upon acquisition of title to the Mortgaged Property by any purchaser at a foreclosure sale or by Funding Lender in any manner.

(ii) The tenant agrees to execute such further evidence of attornment as Funding Lender or any purchaser at a foreclosure sale may from time to time request.

(iii) The tenant will, upon receipt of a written request from Funding Lender following the occurrence of and during the continuance of an Event of Default, pay all Rents payable under the Lease to Funding Lender.

(iv) and (v) are reserved.

(e) No Adverse Effect Opinion. In connection with any new or modified Non-Residential Lease, Borrower will cause to be delivered to Fiscal Agent and Funding Lender a No Adverse Effect Opinion.

**6.05 Prepayment of Rents**. Borrower will not receive or accept Rent under any Lease (whether a residential Lease or a Non-Residential Lease) for more than 2 months in advance.

**6.06 Inspection**.

(a) Right of Entry. Subject to the rights of tenants under Leases, Borrower will permit Funding Lender, Loan Servicer, their respective agents, representatives and designees and any interested Governmental Authority to make or cause to be made entries upon and inspections of the Mortgaged Property to inspect, among other things: (i) Repairs, (ii) Capital Replacements, (iii) Restorations, and (iv) any other Improvements, both in process and upon completion (including environmental inspections and tests performed by professional inspection engineers) during normal business hours, or at any other reasonable time, upon reasonable Notice to Borrower if the inspection is to include occupied residential units (which Notice need not be in writing). During normal business hours, or at any other reasonable time, Borrower will also permit Funding Lender to examine all books and records and contracts and bills pertaining to the foregoing. Notice to Borrower will not be required in the case of an emergency, as determined in Funding Lender’s Discretion, or when an Event of Default has occurred and is continuing.

(b) Inspection of Mold. If Funding Lender determines that Mold has or may have developed as a result of a water intrusion event or leak, Funding Lender in Funding Lender’s Discretion may require that a professional inspector inspect the Mortgaged Property to confirm whether Mold has developed and, if so, thereafter as frequently as Funding Lender determines is necessary until any issue with Mold and its cause(s) are resolved to Funding Lender’s satisfaction. Such inspection will be limited to a visual and olfactory inspection of the area that has experienced the Mold, water intrusion event or leak. Borrower will be responsible for the cost of each such professional inspection and any remediation deemed to be necessary as a result of the professional inspection. After any issue with Mold is remedied to Funding Lender’s satisfaction, Funding Lender will not require a professional inspection any more frequently than once every 3 years unless Funding Lender otherwise becomes aware of Mold as a result of a subsequent water intrusion event or leak.

(c) Certification in Lieu of Inspection. If Funding Lender determines not to conduct an annual inspection of the Mortgaged Property, and in lieu of such annual inspection, Funding Lender requests a certification, Borrower will provide to Funding Lender a factually correct certification, each year that the annual inspection is waived, to the following effect:

Borrower has not received any written complaint, notice, letter or other written communication from any tenant, Property Manager or governmental authority regarding mold, fungus, microbial contamination or pathogenic organisms (“**Mold**”) or any activity, condition, event or omission that causes or facilitates the growth of Mold on or in any part of the Mortgaged Property or, if Borrower has received any such written complaint, notice, letter or other written communication, that Borrower has investigated and determined that no Mold activity, condition or event exists or alternatively has fully and properly remediated such activity, condition, event or omission in compliance with the Moisture Management Plan for the Mortgaged Property.

If Borrower is unwilling or unable to provide such certification, Funding Lender may require a professional inspection of the Mortgaged Property at Borrower’s expense.

**6.07 Books and Records; Financial Reporting; TEL Regulatory Agreement Reporting**.

(a) Delivery of Books and Records.

(i) Borrower will keep and maintain at all times at the Mortgaged Property, Borrower’s main business office, or the Property Manager’s office, and upon Funding Lender’s request will make available at the Mortgaged Property (or, at Borrower’s option, at the Property Manager’s office), complete and accurate books of account and records (including copies of supporting bills and invoices) adequate to reflect correctly the operation of the Mortgaged Property and copies of all written contracts, Leases, and other instruments which affect the Mortgaged Property. The books, records, contracts, Leases, and other instruments will be subject to examination and inspection by Funding Lender at any reasonable time (“**Books and Records**”).

(ii) Borrower will keep the Books and Records in accordance with one of the following accounting methods, consistently applied, and Borrower will promptly provide Funding Lender Notice of any change in Borrower’s accounting methods:

(A) Generally accepted accounting principles (GAAP).

(B) Tax method of accounting, if under the tax method of accounting, the accrual basis is used for interest expense, real estate taxes and insurance expense, and the cash basis is used for all other items, including income, prepaid rent, utilities and payroll expense. Financial statements may exclude depreciation and amortization.

(C) Such other method that is acceptable to Funding Lender.

(b) Delivery of Statement of Income and Expenses; Rent Schedule and Other Statements. Borrower will furnish to Funding Lender each of the following:

(i) Within 25 days after the end of each calendar quarter prior to Securitization and within 35 days after each calendar quarter after Securitization, each of the following:

(A) A Rent Schedule dated no earlier than the date that is 5 days prior to the end of such quarter.

(B) A statement of income and expenses for Borrower that is either of the following:

(1) For the 12-month period ending on the last day of such quarter.

(2) If at the end of such quarter Borrower or any Affiliate of Borrower has owned the Mortgaged Property for less than 12 months, for the period commencing with the acquisition of the Mortgaged Property by Borrower or its Affiliate and ending on the last day of such quarter.

(C) When requested by Funding Lender, a balance sheet showing all assets and liabilities of Borrower as of the end of that fiscal quarter.

(ii) Within 90 days after the end of each fiscal year of Borrower, all the following:

(A) An annual statement of income and expenses for Borrower for that fiscal year.

(B) A balance sheet showing all assets and liabilities of Borrower as of the end of that fiscal year.

(C) An accounting of all security deposits held pursuant to all Leases, including the name of the institution (if any) and the names and identification numbers of the accounts (if any) in which such security deposits are held and the name of the person to contact at such financial institution, along with any authority or release necessary for Funding Lender to access information regarding such accounts.

(iii) Within 30 days after the date of filing, copies of all tax returns filed by Borrower.

(c) Additional Reporting Requirements Upon Request. Borrower will furnish to Funding Lender each of the following:

(i) Upon Funding Lender’s request, in Funding Lender’s sole and absolute discretion prior to a Securitization, and thereafter upon Funding Lender’s request in Funding Lender’s Discretion, a monthly Rent Schedule and a monthly statement of income and expenses for Borrower, in each case within 25 days after the end of each month.

(ii) Upon Funding Lender’s request in Funding Lender’s sole and absolute discretion prior to a Securitization, and thereafter upon Funding Lender’s request in Funding Lender’s Discretion, within 10 days after such a request from Funding Lender, an organizational chart that identifies all the following:

(A) Persons that directly or indirectly Control Borrower and any Designated Entity for Transfers and the interest held by each.

(B) Persons with a collective equity interest (whether direct or indirect) of 25% or more in Borrower if not already identified pursuant to Section 6.07(c)(ii)(A).

(C) All Non-U.S. Equity Holders.

If any Designated Entity for Transfers is a Public Company, the organizational chart will not be required to show the ownership of such Public Company, unless such Public Company exercises control over the purchase and sale of its publicly traded equity securities to a particular Person or shareholder.

(iii) Upon Funding Lender’s request in Funding Lender’s Discretion, such other financial information or property management information (including information on tenants under Leases to the extent such information is available to Borrower, copies of bank account statements from financial institutions where funds owned or controlled by Borrower are maintained, and an accounting of security deposits) as may be required by Funding Lender from time to time, in each case within 30 days after such request.

(iv) Upon Funding Lender’s request in Funding Lender’s Discretion, a monthly property management report for the Mortgaged Property, showing the number of inquiries made and rental applications received from tenants or prospective tenants and deposits received from tenants and any other information requested by Funding Lender within 30 days after such request. However, Funding Lender will not require the foregoing more frequently than quarterly except when there has been an Event of Default and such Event of Default is continuing, in which case Funding Lender may require Borrower to furnish the foregoing more frequently.

(v) Upon Funding Lender’s request in Funding Lender’s Discretion, the results of any assessment or inspection of the property condition of the Mortgaged Property that has been conducted by, on behalf of, or at the direction of, any Governmental Authority, including copies of any related report, assessment, or other written information that has been either (A) prepared by, on behalf of, or at the direction of any Governmental Authority, to the extent Borrower has received a copy or has the right to request a copy, or (B) furnished by or on behalf of Borrower to any Governmental Authority.

(d) Form of Statements; Audited Financials. A natural person having authority to bind Borrower (or SPE Equity Owner or Guarantor, as applicable), acting in his or her capacity as a manager, general partner or an officer of Borrower, SPE Equity Owner, or Guarantor and not in his or her individual capacity, will certify each of the statements, schedules and reports required by Sections 6.07(b), 6.07(c) and 6.07(f) to be complete and accurate. Each of the statements, schedules and reports required by Sections 6.07(b), 6.07(c) and 6.07(f) will be in such form and contain such detail as Funding Lender may reasonably require. Funding Lender also may require that any of the statements, schedules or reports listed in Sections 6.07(b), 6.07(c) and 6.07(f) be audited at Borrower’s expense by independent certified public accountants acceptable to Funding Lender, at any time when an Event of Default has occurred and is continuing or at any time that Funding Lender, in its reasonable judgment, determines that audited financial statements are required for an accurate assessment of the financial condition of Borrower or of the Mortgaged Property.

(e) Failure to Timely Provide Financial Statements or Additional Reporting. If Borrower fails to provide in a timely manner the statements, schedules and reports required by Sections 6.07(b), 6.07(c) and 6.07(f), Funding Lender will give Notice to Borrower specifying the statements, schedules and reports required by Sections 6.07(b), 6.07(c) and 6.07(f) that Borrower has failed to provide. If Borrower has not provided the required statements, schedules and reports within 10 Business Days following such Notice, then (i) Borrower will pay a late fee of $500 for each late statement, schedule or report, plus an additional $500 per month that any such statement, schedule or report continues to be late, and (ii) Funding Lender will have the right to have Borrower’s books and records audited, at Borrower’s expense, by independent certified public accountants selected by Funding Lender in order to obtain such statements, schedules and reports, and all related costs and expenses of Funding Lender will become immediately due and payable and will become an additional part of the Indebtedness as provided in Section 9.02. Notice to Borrower of Funding Lender’s exercise of its rights to require an audit will not be required in the case of an emergency, as determined in Funding Lender’s Discretion, or when an Event of Default has occurred and is continuing.

(f) Delivery of Guarantor and SPE Equity Owner Financial Statements. Borrower will cause Guarantor and/or SPE Equity Owner to deliver each of the following to Funding Lender within 10 Business Days following Funding Lender’s request:

(i) Guarantor’s or SPE Equity Owner’s (as applicable) balance sheet and profit and loss statement (or if such party is a natural person, such party’s personal financial statements) as of the end of (A) the quarter that ended at least 30 days prior to the due date of the requested items, and/or (B) the fiscal year that ended at least 90 days prior to the due date of the requested items.

(ii) Other Guarantor or SPE Equity Owner (as applicable) financial statements as Funding Lender may reasonably require.

(iii) Written updates on the status of all litigation proceedings that Guarantor or SPE Equity Owner (as applicable) disclosed or should have disclosed to Funding Lender as of the Effective Date.

(iv) If an Event of Default has occurred and is continuing, copies of Guarantor’s or SPE Equity Owner’s (as applicable) most recent filed state and federal tax returns, including any current tax return extensions.

(g) Reporting Upon Event of Default. If an Event of Default has occurred and is continuing, Borrower will deliver to Funding Lender upon written demand all books and records relating to the Mortgaged Property or its operation.

(h) Credit Reports. Borrower authorizes Funding Lender to obtain a credit report on Borrower at any time.

(i) through (k) are reserved.

(l) TEL Regulatory Agreement Reporting. Within 120 days after the end of each calendar year, and at any other time upon Funding Lender’s request, Borrower will furnish to Funding Lender a certificate from Borrower that the Mortgaged Property is in compliance with the TEL Regulatory Agreement, together with the most current certificates of compliance or other evidence of current compliance issued by the applicable Governmental Authority.

**6.08 Taxes; Operating Expenses; Ground Rents**.

(a) Payment of Taxes and Ground Rent. Subject to the provisions of Sections 6.08(c) and (d), Borrower will pay or cause to be paid (i) all Taxes when due and before the addition of any interest, fine, penalty or cost for nonpayment, and (ii) if Borrower’s interest in the Mortgaged Property is as a Ground Lessee, then the monthly or other periodic installments of Ground Rent before the last date upon which each such installment may be made without penalty or interest charges being added.

(b) Payment of Operating Expenses. Subject to the provisions of Section 6.08(c), Borrower will (i) pay the expenses of operating, managing, maintaining and repairing the Mortgaged Property (including utilities, Repairs and Capital Replacements) before the last date upon which each such payment may be made without any penalty or interest charge being added, and (ii) pay Insurance premiums prior to the expiration date of each policy of Insurance, unless applicable law specifies some lesser period.

(c) Payment of Impositions and Reserve Funds. If Funding Lender is collecting Imposition Reserve Deposits pursuant to Article IV, then so long as no Event of Default exists, Borrower will not be obligated to pay any Imposition for which Imposition Reserve Deposits are being collected, whether Taxes, Insurance premiums, Ground Rent (if applicable) or any other individual Impositions, but only if sufficient Imposition Reserve Deposits are held by Funding Lender for the purpose of paying that specific Imposition and Borrower has timely delivered to Funding Lender any bills or premium notices that it has received with respect to that specific Imposition (other than Ground Rent). Funding Lender will have no liability to Borrower for failing to pay any Impositions to the extent that: (i) any Event of Default has occurred and is continuing, (ii) insufficient Imposition Reserve Deposits are held by Funding Lender at the time an Imposition becomes due and payable, or (iii) Borrower has failed to provide Funding Lender with bills and premium notices as provided in this Section 6.08(c).

(d) Right to Contest. Borrower, at its own expense, may contest by appropriate legal proceedings, conducted diligently and in good faith, the amount or validity of any Imposition other than Insurance premiums and Ground Rent (if applicable), if: (i) Borrower notifies Funding Lender of the commencement or expected commencement of such proceedings, (ii) the Mortgaged Property is not in danger of being sold or forfeited, (iii) if Borrower has not already paid the Imposition, Borrower deposits with Funding Lender reserves sufficient to pay the contested Imposition, if requested by Funding Lender, and (iv) Borrower furnishes whatever additional security is required in the proceedings or is reasonably requested by Funding Lender, which may include the delivery to Funding Lender of reserves established by Borrower to pay the contested Imposition.

**6.09 Preservation, Management and Maintenance of Mortgaged Property**.

(a) Maintenance of Mortgaged Property; No Waste. Borrower will keep the Mortgaged Property in good repair, including the replacement of Personalty and Fixtures with items of equal or better function and quality. Borrower will not commit waste or permit impairment or deterioration of the Mortgaged Property.

(b) Abandonment of Mortgaged Property. Borrower will not abandon the Mortgaged Property.

(c) Preservation of Mortgaged Property.

(i) Borrower will restore or repair promptly, in a good and workmanlike manner, any damaged part of the Mortgaged Property to the equivalent of its original condition, or such other condition as Funding Lender may approve in writing, whether or not Insurance proceeds or Condemnation awards are available to cover any costs of such Restoration or repair; provided, however, that Borrower will not be obligated to perform such Restoration or repair if (A) no Event of Default has occurred and is continuing, and (B) Funding Lender has elected to apply any available Insurance proceeds and/or Condemnation awards to the payment of Indebtedness pursuant to Sections 6.10(l), 6.11(b), or 6.11(d).

(ii) Borrower will give Notice to Funding Lender of and, unless otherwise directed in writing by Funding Lender, will appear in and defend any action or proceeding purporting to affect the Mortgaged Property, Funding Lender’s security or Funding Lender’s rights under this Continuing Covenant Agreement.

(iii) through (v) are reserved.

(d) Property Management. Borrower will provide for professional management of the Mortgaged Property by the Property Manager at all times under a property management agreement approved by Funding Lender in writing. Without the consent of Funding Lender in Funding Lender’s Discretion Borrower will not surrender, terminate, cancel, modify, renew or extend its property management agreement, or enter into any other agreement relating to the management or operation of the Mortgaged Property with Property Manager or any other Person, or consent to (i) the assignment by the Property Manager of its interest under such property management agreement or (ii) the transfer of a Controlling Interest in the Property Manager if the Property Manager is an Affiliate of Borrower.

(i) If at any time Funding Lender consents to the appointment of a new Property Manager, such new Property Manager and Borrower will, as a condition of Funding Lender’s consent, execute an Assignment of Management Agreement in a form acceptable to Funding Lender.

(ii) Reserved.

(iii) Reserved.

(e) Alteration of Mortgaged Property. Borrower will not (and will not permit any tenant or other Person to) remove, demolish or alter the Mortgaged Property or any part of the Mortgaged Property, including any removal, demolition or alteration occurring in connection with a rehabilitation of all or part of the Mortgaged Property, except that each of the following is permitted:

(i) Repairs or Capital Replacements in accordance with the terms and conditions of this Continuing Covenant Agreement.

(ii) Any repairs or replacements made in connection with the replacement of tangible Personalty.

(iii) Reserved.

(iv)  Any repairs or replacements in connection with making an individual unit ready for a new occupant or pursuant to Sections 6.09(a) and (c).

(v) Reserved.

(vi) through (viii) are reserved.

(f) Establishment of MMP. If indicated in Section 1.04, Borrower will have or establish and adhere to a written moisture management plan to control water intrusion and prevent the development of Mold or moisture at the Mortgaged Property (“**MMP”)**. If Borrower is required to have an MMP, Borrower will keep copies of all MMP documentation at the Mortgaged Property or at the Property Manager’s office and make such documentation available for review by Funding Lender or Loan Servicer during any annual assessment or other inspection of the Mortgaged Property that is required by Funding Lender. At a minimum, the MMP must contain a provision for: (i) staff training, (ii) information to be provided to tenants, (iii) documentation of the plan, (iv) the appropriate protocol for incident response and remediation, and (v) routine, scheduled inspections of common space and unit interiors.

(g) through (j) are reserved.

(k) Mechanic’s, Materialmen’s and Judgment Liens. If a mechanic’s, materialmen’s or judgment Lien is filed against the Mortgaged Property, Borrower must cause the Lien to be released of record, bonded off, or otherwise remedied to Funding Lender’s satisfaction within 60 days after the date of creation of the Lien. However, if Borrower is diligently prosecuting such release or other remedy and advises Funding Lender that such release or remedy cannot be consummated within such 60-day period, Borrower will have an additional period (not exceeding 120 days from the date of creation of the Lien or such earlier time as may be required by applicable law in which the lienor must act to enforce the Lien) within which to obtain such release of record or consummate such other remedy.

(l) and (m) are reserved.

**6.10 Insurance**. At all times during the term of this Continuing Covenant Agreement, Borrower will maintain at its sole cost and expense, for the mutual benefit of Borrower, Fiscal Agent and Funding Lender, all of the Insurance specified in this Section 6.10, as required by Funding Lender and applicable law, and in such amounts and with such maximum deductibles as Funding Lender may require, as those requirements may change:

(a) Property Insurance. Borrower will keep the Improvements insured at all times against relevant physical hazards that may cause damage to the Mortgaged Property as Funding Lender may require (“**Property Insurance**”). Required Property Insurance coverage may include any or all of the following:

(i) All Risks of Physical Loss. Insurance against loss or damage from fire, wind, hail, and other related perils within the scope of a “Causes of Loss – Special Form” or “All Risk” policy, in an amount not less than the Replacement Cost of the Mortgaged Property.

(ii) Ordinance and Law. If any part of the Mortgaged Property is legal non-conforming under current building, zoning or land use laws or ordinances, then “Ordinance and Law Coverage” in the amount required by Funding Lender.

(iii) Flood. If any of the Improvements are located in an area identified by the Federal Emergency Management Agency (or any successor to that agency) as a “Special Flood Hazard Area,” then flood Insurance in the amount required by Funding Lender.

(iv) Windstorm. If windstorm and/or windstorm related perils and/or “named storm” (collectively, “**Windstorm Coverage**”), are excluded from the “Causes of Loss – Special Form” policy required under Section 6.10(a)(i), then separate coverage for such risks, either through an endorsement or a separate policy. Windstorm Coverage will be written in an amount not less than the Replacement Cost of the Mortgaged Property.

(v) Boiler and Machinery/Equipment Breakdown. If the Mortgaged Property contains a central heating, ventilation and cooling system (“**HVAC System**”) where steam boilers and/or other pressurized systems are in operation and are regulated by the Property Jurisdiction, Insurance providing coverage in the amount required by Funding Lender.

(vi) Builder’s Risk. During any period of construction or Restoration, builder’s risk Insurance (including fire and other perils within the scope of a policy known as “Causes of Loss – Special Form” or “All Risk” policy) in an amount not less than the sum of the related contractual arrangements.

(vii) Other. Insurance for other physical perils applicable to the Mortgaged Property as may be required by Funding Lender including earthquake, sinkhole, mine subsidence, avalanche, mudslides, and volcanic eruption. If Funding Lender reasonably requires any updated reports or other documentation to determine whether additional Insurance is necessary or prudent, Borrower will pay for the updated reports or other documentation at its sole cost and expense.

(viii) through (x) are reserved.

(b) Business Income/Rental Value. Business income/rental value Insurance for all relevant perils to be covered in the amount required by Funding Lender, but in no case less than the effective gross income attributable to the Mortgaged Property for the preceding 12 months, as determined by Funding Lender in Funding Lender’s Discretion.

(c) Commercial General Liability Insurance. Commercial general liability Insurance against legal liability claims for personal and bodily injury, property damage and contractual liability in such amounts and with such maximum deductibles as Funding Lender may require, but not less than $1,000,000 per occurrence and $2,000,000 in the general aggregate on a per-location basis, plus excess and/or umbrella liability coverage in such amounts as Funding Lender may require.

(d) Terrorism Insurance. Insurance required under Section 6.10(a), Section 6.10(b), and Section 6.10(c) will provide coverage for acts of terrorism. Terrorism coverage may be provided through one or more separate policies, which will be on terms (including amounts) consistent with those required under Section 6.10(a)(i) and (ii) and Section 6.10(b). If Insurance against acts of terrorism is not available at commercially reasonable rates and if the related hazards are not at the time commonly insured against for properties similar to the Mortgaged Property and located in or around the region in which the Mortgaged Property is located, then Funding Lender may opt to temporarily suspend, cap or otherwise limit the requirement to have such terrorism insurance for a period not to exceed one year, unless such suspension or cap is renewed by Funding Lender for additional one year increments.

(e) Payment of Premiums. All Property Insurance premiums and premiums for other Insurance required under this Section 6.10 will be paid in the manner provided in Article IV, unless Funding Lender has designated in writing another method of payment.

(f) Policy Requirements. The following requirements apply with respect to all Insurance required by this Section 6.10:

(i) All Insurance policies will be in a form approved by Funding Lender.

(ii) All Insurance policies will be issued by Insurance companies authorized to do business in the Property Jurisdiction and/or acting as eligible surplus insurers in the Property Jurisdiction, which have a general policyholder’s rating satisfactory to Funding Lender.

(iii) All Property Insurance policies will contain a standard mortgagee or mortgage holder’s clause and a loss payable clause, in favor of, and in a form approved by, Funding Lender and Fiscal Agent.

(iv) If any Insurance policy contains a coinsurance clause, the coinsurance clause will be offset by an agreed amount endorsement in an amount not less than the Replacement Cost.

(v) All commercial general liability and excess/umbrella liability policies will name Funding Lender and Fiscal Agent, together with their respective successors and/or assigns, as additional insureds.

(vi) Professional liability policies will not include Funding Lender or Fiscal Agent, or their respective successors and/or assigns, as additional insureds.

(vii) All Insurance policies (with the exception of commercial general liability Insurance policies) will provide that the insurer will notify Funding Lender and Fiscal Agent in writing of cancelation of policies at least 10 days before the cancelation of the policy by the insurer for nonpayment of the premium or nonrenewal and at least 30 days before cancelation by the insurer for any other reason.

(g) Evidence of Insurance; Insurance Policy Renewals. Borrower will deliver to Funding Lender a legible copy of each Insurance policy, and Borrower will promptly deliver to Funding Lender a copy of all renewal and other notices received by Borrower with respect to the policies. Borrower will ensure that the Mortgaged Property is continuously covered by the required Insurance. Prior to the expiration date of each Insurance policy, Borrower will deliver to Funding Lender evidence acceptable to Funding Lender in Funding Lender’s Discretion that each policy has been renewed. If the evidence of a renewal does not include a legible copy of the renewal policy, Borrower will deliver a legible copy of such renewal policy no later than the earlier of the following:

(i)  60 days after the expiration date of the original policy.

(ii) The date of any Notice of an insured loss given to Funding Lender under Section 6.10(i).

(h) Compliance With Insurance Requirements. Borrower will comply with all Insurance requirements and will not permit any condition to exist on the Mortgaged Property that would invalidate any part of any Insurance coverage required under this Continuing Covenant Agreement.

(i) Obligations Upon Casualty; Proof of Loss.

(i) If an insured loss occurs, then Borrower will give immediate written notice to the Insurance carrier and to Funding Lender.

(ii) Borrower authorizes and appoints Funding Lender as attorney-in-fact for Borrower to make proof of loss, to adjust and compromise any claims under policies of Property Insurance, to appear in and prosecute any action arising from such Property Insurance policies, to collect and receive the proceeds of Property Insurance, to hold the proceeds of Property Insurance, and to deduct from such proceeds Funding Lender’s expenses incurred in the collection of such proceeds. This power of attorney is coupled with an interest and therefore is irrevocable. However, nothing contained in this Section 6.10 will require Funding Lender to incur any expense or take any action.

(j) Funding Lender’s Options Following a Casualty. Subject to Sections 6.10(k) and (l), Funding Lender may, at Funding Lender’s option, take one of the following actions:

(i) Require a “repair or replacement” settlement, in which case the proceeds will be used to reimburse Borrower for the cost of restoring and repairing the Mortgaged Property to the equivalent of its original condition or to a condition approved by Funding Lender (“**Restoration**”). If Funding Lender determines to require a repair or replacement settlement and to apply Insurance proceeds to Restoration, Funding Lender will apply the proceeds in accordance with Funding Lender’s then-current policies relating to the Restoration of casualty damage on similar multifamily properties. If Funding Lender in Funding Lender’s Discretion retains a professional inspection engineer or other qualified third-party to inspect any Restoration items, Funding Lender may charge Borrower an amount sufficient to pay all reasonable costs and expenses charged by such third-party inspector.

(ii) Require an “actual cash value” settlement in which case the proceeds may be applied to the payment of the Indebtedness, whether or not then due.

(k) Borrower’s Options Following a Casualty. Subject to Section 6.10(l), Borrower may take the following actions:

(i) If a casualty results in damage to the Mortgaged Property for which the cost of Restoration will be less than the Borrower Proof of Loss Threshold, Borrower will have the sole right to make proof of loss, adjust and compromise the claim and collect and receive any proceeds directly without the approval or prior consent of Funding Lender so long as the Insurance proceeds are used solely for the Restoration of the Mortgaged Property.

(ii) If a casualty results in damage to the Mortgaged Property for which the cost of Restoration will be more than the Borrower Proof of Loss Threshold, but less than the Borrower Proof of Loss Maximum, Borrower is authorized to make proof of loss and adjust and compromise the claim without the prior consent of Funding Lender, and Funding Lender will hold the applicable Insurance proceeds to be used to reimburse Borrower for the cost of Restoration of the Mortgaged Property and will not apply such proceeds to the payment of the Indebtedness.

(iii) If a casualty results in damage to the Mortgaged Property for which the cost of Restoration will be more than the Borrower Proof of Loss Maximum, Borrower must obtain the consent of Funding Lender prior to making any proof of loss or adjusting or compromising the claim, and Funding Lender will hold the applicable Insurance proceeds to be used to reimburse Borrower for the cost of Restoration of the Mortgaged Property and will not apply such proceeds to the payment of the Indebtedness.

(l) Funding Lender’s Right to Apply Insurance Proceeds to Indebtedness. Funding Lender will have the right to direct Fiscal Agent to apply Insurance proceeds to the payment of the Indebtedness if Funding Lender in Funding Lender’s Discretion determines that any of the following conditions exist:

(i) An Event of Default (or any event, which, with the giving of Notice or the passage of time, or both, would constitute an Event of Default) has occurred and is continuing.

(ii) There will not be sufficient funds from Insurance proceeds, anticipated contributions of Borrower of its own funds or other sources acceptable to Funding Lender to complete the Restoration.

(iii) The rental income from the Mortgaged Property after completion of the Restoration will not be sufficient to meet all operating costs and other expenses, deposits to Reserve Funds and Project Loan repayment obligations relating to the Mortgaged Property.

(iv) The Restoration will be completed less than (A) 6 months prior to the Maturity Date if re-leasing will be completed prior to the Maturity Date, or (B) 12 months prior to the Maturity Date if re-leasing will not be completed prior to the Maturity Date.

(v) The Restoration will not be completed within one year after the date of the loss or casualty.

(vi) The casualty involved an actual or constructive loss of more than 30% of the fair market value of the Mortgaged Property and rendered untenantable more than 30% of the residential units of the Mortgaged Property.

(vii) After completion of the Restoration the fair market value of the Mortgaged Property is expected to be less than the fair market value of the Mortgaged Property immediately prior to such casualty (assuming the affected portion of the Mortgaged Property is re-let within a reasonable period after the date of such casualty).

(viii) Leases covering less than 35% of the residential units of the Mortgaged Property will remain in full force and effect during and after the completion of Restoration.

(m) Funding Lender’s Succession to Insurance Policies. If the Mortgaged Property is sold at a foreclosure sale or Funding Lender (directly or through an affiliate of Funding Lender) or Fiscal Agent acquires title to the Mortgaged Property, Funding Lender or such party will automatically succeed to all rights of Borrower in and to any Insurance policies and unearned Insurance premiums and in and to the proceeds resulting from any damage to the Mortgaged Property prior to such sale or acquisition.

(n) Payments After Application of Insurance Proceeds. Unless Funding Lender otherwise agrees in writing, any application of any Insurance proceeds to the Indebtedness will not extend or postpone the due date of any monthly payments or installments referred to in the Project Note or Article IV of this Continuing Covenant Agreement or change the amount of such payments or installments.

(o) Assignment of Insurance Proceeds. Borrower agrees to execute such further evidence of assignment of any Insurance proceeds as Funding Lender may require.

(p) Borrower Acknowledgment of Funding Lender’s Right to Change Insurance Requirements. Borrower acknowledges and agrees that Funding Lender’s Insurance requirements may change from time to time throughout the term of the Indebtedness to include coverage for the kind of risks customarily insured against and in such minimum coverage amounts and maximum deductibles as are generally required by institutional lenders for properties comparable to the Mortgaged Property.

**6.11 Condemnation**.

(a) Rights Generally. Borrower will promptly notify Funding Lender in writing of any action or proceeding or notice relating to any proposed or actual condemnation or other taking, or conveyance in lieu of such a condemnation or taking, of all or any part of the Mortgaged Property, whether direct or indirect (“**Condemnation**”). Borrower will appear in and prosecute or defend any action or proceeding relating to any Condemnation unless otherwise directed by Funding Lender in writing. Borrower authorizes and appoints Funding Lender as attorney-in-fact for Borrower to commence, appear in and prosecute, in Funding Lender’s or Borrower’s name, any action or proceeding relating to any Condemnation and to settle or compromise any claim in connection with any Condemnation, after consultation with Borrower and consistent with commercially reasonable standards of a prudent lender. This power of attorney is coupled with an interest and therefore is irrevocable. However, nothing contained in this Section 6.11(a) will require Funding Lender to incur any expense or take any action. Borrower transfers and assigns to Funding Lender all right, title and interest of Borrower in and to any award or payment with respect to (i) any Condemnation, or any conveyance in lieu of Condemnation, and (ii) any damage to the Mortgaged Property caused by governmental action that does not result in a Condemnation.

(b) Application of Award. Funding Lender may hold such awards or proceeds andapply such awards or proceeds, after the deduction of Funding Lender’s expenses incurred in the collection of such amounts (including Attorneys’ Fees and Costs) at Funding Lender’s option, to the Restoration or repair of the Mortgaged Property or direct that they be applied by Fiscal Agent to the payment of the Indebtedness, with the balance, if any, to Borrower. Unless Funding Lender otherwise agrees in writing, any application of any awards or proceeds to the Indebtedness will not extend or postpone the due date of any monthly payments or installments referred to in the Project Note or Article IV of this Continuing Covenant Agreement or change the amount of such payments or installments. Borrower agrees to execute such further evidence of assignment of any Condemnation awards or proceeds as Funding Lender may require.

(c) Borrower’s Right to Condemnation Proceeds. Notwithstanding any provision to the contrary in this Section 6.11, in the event of a partial Condemnation of the Mortgaged Property, as long as no Event of Default, or any event which, with the giving of Notice or the passage of time, or both, would constitute an Event of Default, has occurred and is continuing, in the event of a partial Condemnation resulting in proceeds or awards in the amount of less than $100,000, Borrower will have the sole right to make proof of loss, adjust and compromise the claim and collect and receive any proceeds directly without the approval or prior consent of Funding Lender so long as the proceeds or awards are used solely for the Restoration of the Mortgaged Property.

(d) Right to Apply Condemnation Proceeds to Indebtedness. In the event of a partial Condemnation of the Mortgaged Property resulting in proceeds or awards in the amount of $100,000 or more, Funding Lender will have the right to apply Condemnation proceeds to the payment of the Indebtedness if Funding Lender in Funding Lender’s Discretion determines that any of the following conditions exist:

(i) An Event of Default (or any event, which, with the giving of Notice or the passage of time, or both, would constitute an Event of Default) has occurred and is continuing.

(ii) There will not be sufficient funds from Condemnation proceeds, anticipated contributions of Borrower of its own funds or other sources acceptable to Funding Lender to complete the Restoration.

(iii) The rental income from the Mortgaged Property after completion of the Restoration will not be sufficient to meet all operating costs and other expenses, deposits to Reserve Funds and Project Loan repayment obligations relating to the Mortgaged Property.

(iv) The Restoration will not be completed at least one year before the Maturity Date (or 6 months before the Maturity Date if re-leasing of the Mortgaged Property will be completed within such 6-month period).

(v) The Restoration will not be completed within one year after the date of the Condemnation.

(vi) The Condemnation involved an actual or constructive loss of more than 15% of the fair market value of the Mortgaged Property and rendered untenantable more than 25% of the residential units of the Mortgaged Property.

(vii) After Restoration the fair market value of the Mortgaged Property is expected to be less than the fair market value of the Mortgaged Property immediately prior to the Condemnation (assuming the affected portion of the Mortgaged Property is re-let within a reasonable period after the date of the Condemnation).

(viii) Leases covering less than 35% of residential units of the Mortgaged Property will remain in full force and effect during and after the completion of Restoration.

(e) Reserved.

(f) Succession to Condemnation Proceeds. If the Mortgaged Property is sold at a foreclosure sale or Funding Lender acquires title to the Mortgaged Property, Funding Lender will automatically succeed to all rights of Borrower in and to any Condemnation proceeds and awards prior to such sale or acquisition.

**6.12 Environmental Hazards**.

(a) Prohibited Activities and Conditions. Except for matters expressly permitted in this Section 6.12, Borrower will not cause or permit Prohibited Activities or Conditions. Borrower will comply with all Hazardous Materials Laws applicable to the Mortgaged Property. Borrower will: (i) obtain and maintain all Environmental Permits required by Hazardous Materials Laws and comply with all conditions of such Environmental Permits, (ii) cooperate with any inquiry by any Governmental Authority, and (iii) subject to Section 6.12(g), comply with any governmental or judicial order that arises from any alleged Prohibited Activity or Condition.

(b) Employees, Tenants and Contractors. Borrower will take all commercially reasonable actions (including the inclusion of appropriate provisions in any Leases executed after the Effective Date) to prevent its employees, agents and contractors, and all tenants and other occupants from causing or permitting any Prohibited Activities or Conditions. Borrower will not lease or allow the sublease or use of all or any portion of the Mortgaged Property to any tenant or subtenant for nonresidential use by any user that, in the ordinary course of its business, would cause or permit any Prohibited Activity or Condition.

(c) O&M Programs. If indicated in Section 1.04 or as otherwise required by Funding Lender, Borrower will have or establish and adhere to one or more written operations and maintenance programs for the Mortgaged Property with respect to certain Hazardous Materials. Each such operations and maintenance program and any additional or revised operations and maintenance programs established for the Mortgaged Property pursuant to this Section 6.12 must be approved by Funding Lender and will be referred to in this Continuing Covenant Agreement as an “**O&M Program**.” If Borrower is required to have an O&M Program, Borrower will (i) keep copies of all O&M Program documentation at the Mortgaged Property or at the Property Manager’s office, (ii) make such materials available for review by Funding Lender or Loan Servicer during any annual assessment or other inspection of the Mortgaged Property that is required by Funding Lender, and (iii) deliver copies of any O&M Program to Funding Lender within 10 days after Funding Lender’s request. Borrower will comply in a timely manner with, and cause all employees, agents, and contractors of Borrower and any other Persons present on the Mortgaged Property to comply with each O&M Program. Borrower will pay all costs of performance of Borrower’s obligations under any O&M Program. Borrower will pay Funding Lender’s out of pocket costs incurred in connection with the monitoring and review of each O&M Program promptly upon demand by Funding Lender. Any such out-of-pocket costs of Funding Lender that Borrower fails to pay promptly will become an additional part of the Indebtedness as provided in Section 9.02.

(d) Notice to Funding Lender. Borrower will promptly give Notice to Funding Lender upon the occurrence of any of the following events:

(i) Borrower’s discovery of any Prohibited Activity or Condition.

(ii) Borrower’s receipt of or knowledge of any written complaint, order, notice of violation or other communication from any tenant, Property Manager, Governmental Authority, or other Person with regard to present or future alleged Prohibited Activities or Conditions, or any other environmental, health or safety matters affecting the Mortgaged Property.

(iii) Borrower’s breach of any of its obligations under this Section 6.12.

Any such Notice given by Borrower will not relieve Borrower of, or result in a waiver of, any obligation under this Continuing Covenant Agreement, the Project Note or any other Financing Document.

(e) Environmental Inspections, Tests and Audits.

(i) Borrower will pay promptly the costs of any environmental inspections, tests or audits, a purpose of which is to identify the extent or cause of or potential for a Prohibited Activity or Condition (“**Environmental Inspections**”), required by Funding Lender in connection with any foreclosure or deed in lieu of foreclosure, or as a condition of Funding Lender’s consent to any Transfer under Article VII, or required by Funding Lender following a reasonable determination by Funding Lender that Prohibited Activities or Conditions may exist. Any such costs incurred by Funding Lender (including Attorneys’ Fees and Costs and the costs of technical consultants whether incurred in connection with any judicial or administrative process or otherwise) that Borrower fails to pay promptly will become an additional part of the Indebtedness as provided in Section 9.02.

(ii) Funding Lender will make available to Borrower, without representation of any kind, copies of Environmental Inspections prepared by third parties and delivered to Funding Lender, provided each of the following is true:

(A) No Event of Default has occurred and is continuing.

(B) Borrower has actually paid for or reimbursed Funding Lender for all costs of any such Environmental Inspections performed or required by Funding Lender.

(C) Funding Lender is not prohibited by law, contract, or otherwise from doing so.

(iii) Funding Lender reserves the right, and Borrower expressly authorizes Funding Lender, to make available to any party, including any prospective bidder at a foreclosure sale of the Mortgaged Property, the results of any Environmental Inspections made by or for Funding Lender with respect to the Mortgaged Property.

(iv) Borrower consents to Funding Lender notifying any party (either as part of a notice of sale or otherwise) of the results of any Environmental Inspections made by or for Funding Lender. Borrower acknowledges that Funding Lender cannot control or otherwise ensure the truthfulness or accuracy of the results of any Environmental Inspections and that the release of such results to prospective bidders at a foreclosure sale of the Mortgaged Property may have a material and adverse effect upon the amount that a party may bid at such sale. Borrower agrees that Funding Lender will have no liability whatsoever as a result of delivering the results of any Environmental Inspections made by or for Funding Lender to any third party, and Borrower releases and forever discharges Funding Lender from any and all claims, damages or causes of action arising out of, connected with, or incidental to the results of the delivery of any Environmental Inspections made by or for Funding Lender.

(f) Remedial Work. If any investigation, site monitoring, containment, clean-up, Restoration or other remedial work (“**Remedial Work**”) is necessary to comply with any Hazardous Materials Law or order of any Governmental Authority that has or acquires jurisdiction over the Mortgaged Property or the use, operation or improvement of the Mortgaged Property, or is otherwise required by Funding Lender as a consequence of any Prohibited Activity or Condition or to prevent the occurrence of a Prohibited Activity or Condition, Borrower will, by the earlier of (i) the applicable deadline required by Hazardous Materials Law, or (ii) 30 days after Notice from Funding Lender demanding such action, begin performing the Remedial Work, and thereafter diligently prosecute it to completion, and must in any event complete the work by the time required by applicable Hazardous Materials Law. If Borrower fails to begin on a timely basis or diligently prosecute any required Remedial Work, Funding Lender may, at its option, cause the Remedial Work to be completed, in which case Borrower will reimburse Funding Lender on demand for the cost of doing so. Any reimbursement due from Borrower to Funding Lender will become part of the Indebtedness as provided in Section 9.02.

(g) Borrower Contest of Order. Notwithstanding Section 6.12(f), Borrower may contest the order of any Governmental Authority in good faith through appropriate proceedings, provided that (i) Borrower has demonstrated to Funding Lender’s satisfaction that any delay in completing Remedial Work pending the outcome of such proceedings would not result in damage to the Mortgaged Property or to persons who use or occupy the Improvements, or otherwise impair Funding Lender’s interest under this Continuing Covenant Agreement, and (ii) if any delay in completing the Remedial Work results or may result in a Lien against the Mortgaged Property, Borrower must promptly furnish to Funding Lender a bond or other security satisfactory to Funding Lender in an amount not less than 150% of the applicable claim.

**6.13 Single Purpose Entity Requirements**.

(a) Single Purpose Entity Requirements. Until the Indebtedness is paid in full, each Borrower and any SPE Equity Owner will remain a “**Single Purpose Entity**,” which means at all times since its formation it has satisfied, and after the Effective Date it will continue to satisfy, each of the following conditions:

(i) It will not engage in any business or activity, other than the ownership, operation and maintenance of the Mortgaged Property and activities incidental thereto.

(ii) It will not acquire, own, hold, lease, operate, manage, maintain, develop or improve any assets other than the Mortgaged Property and such Personalty as may be necessary for the operation of the Mortgaged Property and will conduct and operate its business as presently conducted and operated.

(iii) It will preserve its existence as an entity duly organized, validly existing and in good standing (if applicable) under the laws of the jurisdiction of its formation or organization and will do all things necessary to observe organizational formalities.

(iv) It will not merge or consolidate with any other Person.

(v) It will not take any action to dissolve, divide or create divisions, wind-up, terminate or liquidate in whole or in part; to sell, transfer or otherwise dispose of all or substantially all of its assets; to change its legal structure; transfer or permit the direct or indirect transfer of any partnership, membership or other equity interests, as applicable, other than Transfers permitted under this Continuing Covenant Agreement; issue additional partnership, membership or other equity interests, as applicable, or seek to accomplish any of the foregoing.

(vi) It will not, without the prior unanimous written consent of all of Borrower’s partners, members, or shareholders, as applicable, and, if applicable, the prior unanimous written consent of 100% of the members of the board of directors or of the board of Managers of Borrower or SPE Equity Owner, take any of the following actions:

(A) File any insolvency, or reorganization case or proceeding, to institute proceedings to have Borrower or any SPE Equity Owner be adjudicated bankrupt or Insolvent.

(B) Institute proceedings under any applicable insolvency law.

(C) Seek any relief under any law relating to relief from debts or the protection of debtors.

(D) Consent to the filing or institution of a Bankruptcy against Borrower or any SPE Equity Owner.

(E) File a petition seeking, or consent to, reorganization or relief with respect to Borrower or any SPE Equity Owner under any applicable federal or state law relating to bankruptcy or insolvency.

(F) Seek or consent to the appointment of a receiver, liquidator, assignee, trustee, sequestrator, custodian, or any similar official for Borrower or a substantial part of its property or for any SPE Equity Owner or a substantial part of its property.

(G) Make any assignment for the benefit of creditors of Borrower or any SPE Equity Owner.

(H) Admit in writing Borrower’s or any SPE Equity Owner’s inability to pay its debts generally as they become due.

(I) Take action in furtherance of any of the foregoing.

(vii) It will not amend or restate its organizational documents if such change would cause the provisions set forth in those organizational documents not to comply with the requirements set forth in this Section 6.13.

(viii) It will not own any subsidiary or make any investment in, any other Person.

(ix) It will not commingle its assets with the assets of any other Person and will hold all of its assets in its own name.

(x) It will not incur any debt, secured or unsecured, direct or contingent (including guaranteeing any obligation), other than the following:

(A) The Indebtedness and any Supplemental Loans.

(B) Customary unsecured trade payables incurred in the ordinary course of owning and operating the Mortgaged Property, provided such trade payables meet the following conditions:

(1) They are not evidenced by a promissory note.

(2) They are paid within 60 days of the date incurred.

(3) In the aggregate, they do not exceed at any time the Trade Payables Maximum.

(C) through (E) are reserved.

(F) Soft unsecured debt characterized as deferred developer fees and soft unsecured partner loans required for the purpose of avoiding a default on the Indebtedness and, in each case, payable from excess cash flow only; provided, however, that if Soft Unsecured Debt is not applicable according to Section 1.05, the provisions of this Section 6.13(a)(x)(F) will be inapplicable.

(G) through (J) are reserved.

(xi) It will maintain its records, books of account, bank accounts, financial statements, accounting records and other entity documents separate and apart from those of any other Person and will not list its assets as assets on the financial statement of any other Person; provided, however, that Borrower’s assets may be included in a consolidated financial statement of its Affiliate provided that (A) appropriate notation will be made on such consolidated financial statements to indicate the separateness of Borrower from such Affiliate and to indicate that Borrower’s assets and credit are not available to satisfy the debts and other obligations of such Affiliate or any other Person, and (B) such assets will also be listed on Borrower’s own separate balance sheet.

(xii) Except for capital contributions or capital distributions permitted under the terms and conditions of its organizational documents, it will only enter into any contract or agreement with any general partner, member, shareholder, principal or Affiliate of Borrower or any Guarantor, or any general partner, member, principal or Affiliate thereof, upon terms and conditions that are commercially reasonable and substantially similar to those that would be available on an arm’s-length basis with third parties.

(xiii) It will not maintain its assets in such a manner that will be costly or difficult to segregate, ascertain or identify its individual assets from those of any other Person.

(xiv) Except for each of the following, it will not assume or guaranty the debts or obligations of any other Person, hold itself out to be responsible for the debts of another Person, pledge its assets to secure the obligations of any other Person or otherwise pledge its assets for the benefit of any other Person, or hold out its credit as being available to satisfy the obligations of any other Person:

(A) Any guaranty that has been executed and delivered in connection with the Project Note.

(B) and (C) are reserved.

(xv) It will not make or permit to remain outstanding any loans or advances to any other Person except for those investments permitted under the Financing Documents and will not buy or hold evidence of indebtedness issued by any other Person (other than cash or investment-grade securities).

(xvi) It will file its own tax returns separate from those of any other Person, unless Borrower (A) is treated as a “disregarded entity” for tax purposes and is not required to file tax returns under applicable law or (B) is required by applicable law to file consolidated tax returns, and will pay any taxes required to be paid under applicable law.

(xvii) It will hold itself out to the public as a legal entity separate and distinct from any other Person and conduct its business solely in its own name, will correct any known misunderstanding regarding its separate identity and will not identify itself or any of its Affiliates as a division or department of any other Person.

(xviii) It will maintain adequate capital for the normal obligations reasonably foreseeable in a business of its size and character and in light of its contemplated business operations and will pay its debts and liabilities from its own assets as such debts and liabilities become due; provided, however, that nothing in this Section 6.13(a)(xviii) will require any member or partner of Borrower or any Borrower Principal to make any equity contribution to Borrower.

(xix) It will allocate fairly and reasonably shared expenses with Affiliates (including shared office space) and use separate stationery, invoices and checks bearing its own name.

(xx) It will pay (or cause the Property Manager to pay on behalf of Borrower from Borrower’s funds) its own liabilities (including salaries of its own employees) from its own funds; provided, however, that nothing in this Section 6.13(a)(xx) will require any member or partner of Borrower or any Borrower Principal to make any equity contribution to Borrower.

(xxi) It will not acquire obligations or securities of its partners, members, shareholders, or Affiliates, as applicable.

(xxii) Except as contemplated or permitted by the property management agreement with respect to the Property Manager, it will not permit any Affiliate or constituent party independent access to its bank accounts.

(xxiii) It will maintain a sufficient number of employees (if any) in light of its contemplated business operations and pay the salaries of its own employees, if any, only from its own funds; provided, however, that nothing in this Section 6.13(a)(xxiii) will require any member or partner of Borrower or any Borrower Principal to make any equity contribution to Borrower.

(xxiv) If such entity is a single member limited liability company, such entity will satisfy each of the following conditions:

(A) Be formed and organized under Delaware law.

(B) Have either one springing member that is a corporation or two springing members who are natural persons. If there is more than one springing member, only one springing member will be the sole member of Borrower or SPE Equity Owner (as applicable) at any one time, and the second springing member will become the sole member only upon the first springing member ceasing to be a member.

(C) Reserved.

(D) Otherwise comply with all Rating Agencies’ criteria for single member limited liability companies (including the delivery of Delaware single member limited liability company opinions acceptable in all respects to Funding Lender).

(E) At all times Borrower or SPE Equity Owner (as applicable) will have one and only one member.

(xxv) If such entity is a single member limited liability company that is board-managed, such entity will have a board of Managers separate from that of Guarantor and any other Person and will cause its board of Managers to keep minutes of board meetings and actions and observe all other Delaware limited liability company required formalities.

(xxvi) If an SPE Equity Owner is required pursuant to this Continuing Covenant Agreement, if Borrower is (A) a limited liability company with more than one member, then Borrower has and will have at least one member that is an SPE Equity Owner that has satisfied and will satisfy the requirements of Section 6.13(b) and such member is its managing member, or (B) a limited partnership, then all of its general partners are SPE Equity Owners that have satisfied and will satisfy the requirements set forth in Section 6.13(b).

(xxvii) and (xxviii) are reserved.

(b) SPE Equity Owner Requirements.

(i) If “Required” is selected in the **SPE Equity Owner** table in Section 1.02, then Borrower will be required to maintain an SPE Equity Owner in its organizational structure during the term of the Project Loan and this Section 6.13(b) will apply.

If, however, “Not applicable” is selected in the **SPE Equity Owner** table in Section 1.02, then Borrower will not be required to maintain an SPE Equity Owner in its organizational structure during the term of the Project Loan and all references to SPE Equity Owner in this Continuing Covenant Agreement are not applicable.

(ii) SPE Equity Owner, if applicable, will at all times since its formation and thereafter comply in its own right (subject to the modifications set forth below), and will cause Borrower to comply, with each of the requirements of a Single Purpose Entity set forth in Section 6.13(a). Upon the withdrawal or the disassociation of an SPE Equity Owner from Borrower, Borrower will immediately appoint a new SPE Equity Owner, whose organizational documents are substantially similar to those of the withdrawn or disassociated SPE Equity Owner.

(iii) With respect to Section 6.13(a)(i), SPE Equity Owner will not engage in any business or activity other than being the managing member or general partner, as the case may be, of Borrower and owning at least (A) 0.5% equity interest in Borrower if SPE Equity Owner is a managing member of Borrower, and (B) 0.1% equity interest in Borrower if SPE Equity Owner is a general partner of Borrower.

(iv) With respect to Section 6.13(a)(ii), SPE Equity Owner has not and will not acquire or own any assets other than its equity interest in Borrower and personal property related to its interest in Borrower.

(v) With respect to Section 6.13(a)(viii), SPE Equity Owner will not own any subsidiary or make any investment in any other Person, except for Borrower.

(vi) With respect to Section 6.13(a)(x), SPE Equity Owner has not and will not incur any debt, secured or unsecured, direct or contingent (including guaranteeing any obligation), other than (A) customary unsecured trade payables incurred in the ordinary course of owning Borrower provided such unsecured trade payables are not evidenced by a promissory note, do not exceed, in the aggregate, at any time a maximum amount of $10,000 and are paid within 60 days of the date incurred, and (B) in its capacity as general partner of Borrower (if applicable).

(vii) With respect to Section 6.13(a)(xiv), SPE Equity Owner will not assume or guaranty the debts or obligations of any other Person, hold itself out to be responsible for the debts of another Person, pledge its assets to secure the obligations of any other Person or otherwise pledge its assets for the benefit of any other Person, or hold out its credit as being available to satisfy the obligations of any other Person, except for in its capacity as general partner of Borrower (if applicable).

(c) Effect of Transfer on Single Purpose Entity Requirements. Notwithstanding anything to the contrary in this Continuing Covenant Agreement, no Transfer will be permitted under Article VII unless the provisions of this Section 6.13 are satisfied at all times.

(d) and (e) are reserved.

**6.14 Repairs and Capital Replacements**.

(a) Completion. Borrower will commence any Repairs as soon as practicable after the Effective Date or after Notice from Funding Lender, as applicable, and will diligently proceed with and complete such Repairs on or before the Completion Date. All Repairs and Capital Replacements will be completed in a good and workmanlike manner, with suitable materials, and in accordance with good building practices and all applicable laws, ordinances, rules, regulations, building setback lines and restrictions applicable to the Mortgaged Property. Borrower agrees to cause the replacement of any material or work that is defective, unworkmanlike or that does not comply with the requirements of this Continuing Covenant Agreement, as determined by Funding Lender.

(b) Purchases. Without the prior consent of Funding Lender, no materials, machinery, equipment, fixtures or any other part of the Repairs or Capital Replacements will be purchased or installed under conditional sale contracts or lease agreements, or any other arrangement wherein title to such Repairs or Capital Replacements is retained or subjected to a purchase money security interest, or the right is reserved or accrues to anyone to remove or repossess any such Repairs or Capital Replacements, or to consider them as personal property.

(c) Lien Protection. Subject to the provisions of Section 6.09(k), Borrower will promptly pay or cause to be paid, when due, all costs, charges and expenses incurred in connection with the construction and completion of the Repairs or Capital Replacements and will keep the Mortgaged Property free and clear of any and all Liens other than the Lien of the Security Instrument and any other Lien to which Funding Lender has consented.

(d) Adverse Claims. Borrower will promptly advise Funding Lender in writing of any litigation, Liens or claims affecting the Mortgaged Property and of all complaints and charges made by any Governmental Authority that may delay or adversely affect the Repairs or Capital Replacements.

(e) Repair Certificates. Prior to the applicable Completion Date for any Repairs, Borrower will deliver to Funding Lender all the following:

(i) Contractor’s Certificate. If required by Funding Lender, a certificate signed by each major contractor and supplier of materials, as reasonably determined by Funding Lender, engaged to provide labor or materials for the Repairs to the effect that such contractor or supplier has been paid in full for all work completed and that the portion of the Repairs provided by such contractor or supplier has been fully completed in accordance with the plans and specifications (if any) provided to it by Borrower and that such portion of the Repairs is in compliance with all applicable building codes and other rules and regulations promulgated by any applicable regulatory authority or Governmental Authority.

(ii) Borrower’s Certificate. A certificate signed by Borrower to the effect that the Repairs have been fully paid for and that all money disbursed from the Repair Reserve Fund has been used for the Repairs and no claim exists against Borrower or against the Mortgaged Property out of which a lien based on furnishing labor or material exists or might ripen. Borrower may except from the certificate described in the preceding sentence any claim(s) that Borrower intends to contest, provided that any such claim is described in Borrower’s certificate and Borrower certifies to Funding Lender that the money in the Repair Reserve Fund from the applicable Repair Reserve Deposit is sufficient to make payment of the full amount which might in any event be payable in order to satisfy such claim(s). If required by Funding Lender, Borrower also must certify to Funding Lender that the Repairs are in compliance with all applicable building codes and zoning ordinances.

(iii) Engineer’s Certificate. If required by Funding Lender, a certificate signed by the professional engineer employed by Funding Lender to the effect that the Repairs have been completed in a good and workmanlike manner in compliance with the Repair Schedule of Work and all applicable building codes, zoning ordinances and other rules and regulations promulgated by applicable regulatory or Governmental Authorities.

(iv) Other Certificates. Any other certificates of approval, acceptance or compliance required by Funding Lender from any Governmental Authority having jurisdiction over the Mortgaged Property and the Repairs.

(f) Third-Party Inspection Engineer Expenses. Funding Lender in Funding Lender’s Discretion may retain a professional inspection engineer or other qualified third party to inspect any Capital Replacement or Repair, as described in Section 6.06. In such cases, Funding Lender may charge Borrower an amount sufficient to pay all reasonable costs and expenses charged by such third-party inspector and may either invoice Borrower directly or deduct such costs from the Replacement Reserve Fund or Repair Reserve Fund, as applicable. If Funding Lender does not deduct the cost from the applicable Reserve Fund, then Borrower will pay the amount of the invoice to Funding Lender immediately after Notice from Funding Lender.

(g) Capital Replacements Required by Funding Lender. If Funding Lender in Funding Lender’s Discretion determines that a Capital Replacement is necessary for the proper maintenance of the Mortgaged Property, then Funding Lender will give Notice to Borrower requesting that Borrower obtain and submit to Funding Lender bids for all labor and materials required in connection with such Capital Replacement. In response, Borrower will submit such bids and a time schedule for completing the Capital Replacement to Funding Lender within 30 days after Borrower’s receipt of Funding Lender’s Notice. Borrower will perform such Capital Replacement in conformity with the requirements of this Section 6.14 and then may request reimbursement for such Capital Replacement from the Replacement Reserve Fund in accordance with Section 4.04(f).

(h) Funding Lender’s Right to Complete Repairs and Capital Replacements.

(i) If Borrower abandons or fails to proceed diligently with any Repairs or there otherwise exists an Event of Default under this Continuing Covenant Agreement, Funding Lender will have the right (but not the obligation) to enter upon the Mortgaged Property and take over and cause the completion of the Repairs.

(ii) If either (1) Borrower abandons or fails to proceed diligently with any Capital Replacements in a timely fashion, or (2) an Event of Default occurs and continues under this Continuing Covenant Agreement, then 30 days after Funding Lender provides Notice of such abandonment, failure, or Event of Default to Borrower, Funding Lender will have the right (but not the obligation) to enter upon the Mortgaged Property and take over and cause the completion of such Capital Replacements. However, no such Notice or cure period will apply in the case of such failure which could, in Funding Lender’s sole and absolute discretion, absent immediate exercise by Funding Lender of a right or remedy under this Continuing Covenant Agreement, result in harm to Funding Lender, tenants or third parties or impairment of the security given under this Continuing Covenant Agreement, the Security Instrument or any other Financing Document.

(iii) Any contracts entered into or indebtedness incurred upon the exercise of the rights described in Section 6.14(h)(i) and 6.14(h)(ii) may be in the name of Borrower, and Funding Lender is irrevocably appointed the attorney-in-fact for Borrower, such appointment being coupled with an interest, to do all of the following:

(A) Enter into such contracts.

(B) Incur such obligations.

(C) Enforce any contracts or agreements made by or on behalf of Borrower (including the prosecution and defense of all actions and proceedings in connection with any Repairs or Capital Replacements and the payment, settlement or compromise of all bills and claims for materials and work performed in connection with any Repairs or Capital Replacements, as applicable).

(D) Do any and all things necessary or proper to complete the Repairs or Capital Replacements, as applicable, including signing Borrower’s name to any contracts and documents as may be deemed necessary by Funding Lender.

(iv) In no event will Funding Lender be required to expend its own funds to complete any Repairs or Capital Replacements, but Funding Lender in Funding Lender’s Discretion may advance such funds. Any funds advanced will be added to the Indebtedness, secured by the Security Instrument and payable to Funding Lender by Borrower in accordance with the provisions of the Project Note, this Continuing Covenant Agreement, the Security Instrument and any other Financing Document pertaining to the protection of Funding Lender’s security and advances made by Funding Lender. Borrower waives all claims it may have against Funding Lender for materials used, work performed or resultant damage to the Mortgaged Property.

(i) Completion of Repairs or Capital Replacements Not a Certification by Funding Lender. Funding Lender’s disbursement of monies from any Reserve Fund or other acknowledgment of completion of any Repairs or Capital Replacements in a manner satisfactory to Funding Lender will not be deemed a certification by Funding Lender that the applicable Repairs or Capital Replacements have been completed in accordance with applicable building, zoning or other codes, ordinances, statutes, laws, regulations, or requirements of any Governmental Authority. Borrower will have the sole responsibility for ensuring that all Repairs and Capital Replacements are completed in accordance with all such requirements of any Governmental Authority.

(j) through (n) are reserved.

**6.15 Residential Leases Affecting the Mortgaged Property**.

(a) Borrower will, promptly upon Funding Lender’s request, deliver to Funding Lender an executed copy of each residential Lease then in effect.

(b) All Leases for residential units will satisfy the following conditions:

(i) They will be on forms that are customary for similar multifamily properties in the Property Jurisdiction.

(ii) They will be for initial terms of at least 6 months and not more than 2 years (unless otherwise approved in writing by Funding Lender).

(iii) Reserved.

(iv) They will not include options to purchase.

(v) They will comply with the requirements for residential leases contained in the TEL Regulatory Agreement.

(c) through (f) are reserved.

**6.16 Litigation; Government Proceedings**.

(a) Borrower will give prompt Notice to Funding Lender of any litigation or governmental proceedings pending or, to the best of Borrower’s knowledge, threatened in writing against Borrower or any Borrower Principal which might have a Material Adverse Effect. As and when requested by Funding Lender, Borrower will provide Funding Lender with written updates on the status of all litigation or governmental proceedings affecting Borrower or any Borrower Principal which might have a Material Adverse Effect.

(b) Reserved.

**6.17 Further Assurances and Estoppel Certificates; Payment of Funding Lender’s Costs and Expenses**.

(a) Within 10 days after a request from Funding Lender in Funding Lender’s Discretion Borrower will take each of the following actions:

(i) Deliver to Funding Lender a written statement, signed and acknowledged by Borrower, certifying to Funding Lender or any Person designated by Funding Lender, as of the date of such statement: (A) that the Financing Documents are unmodified and in full force and effect (or, if there have been modifications, that the Financing Documents are in full force and effect as modified and setting forth such modifications), (B) the unpaid principal balance of the Project Note, (C) the date to which interest under the Project Note has been paid, (D) that Borrower is not in default in paying the Indebtedness or in performing or observing any of the covenants or agreements contained in this Continuing Covenant Agreement or any of the other Financing Documents (or, if Borrower is in default, describing such default in reasonable detail), (E) whether there are any then-existing setoffs or defenses known to Borrower against the enforcement of any right or remedy under the Financing Documents, (F) Borrower has complied with and will continue to comply with all laws, ordinances, rules, regulations, and requirements of any Governmental Authority, and (G) any additional facts requested by Funding Lender.

(ii) Execute, acknowledge and/or deliver, at its sole cost and expense, all further acts, deeds, conveyances, assignments, estoppel certificates, financing statements or amendments, transfers and assurances as Funding Lender may require from time to time in order to better assure, grant and convey to Funding Lender the rights intended to be granted, now or in the future, to Funding Lender under this Continuing Covenant Agreement and the Financing Documents or in connection with Funding Lender’s consent rights under Article VII.

(b) Borrower acknowledges and agrees that, in connection with each request by Borrower under this Continuing Covenant Agreement or any Financing Document, Borrower will pay all reasonable Attorneys’ Fees and Costs and expenses incurred by Funding Lender and Loan Servicer, including any fees charged by the Rating Agencies, if applicable, regardless of whether the matter is approved, denied or withdrawn.

(c) Borrower further acknowledges and agrees that to the fullest extent allowed by applicable law, Funding Lender will have the right to be repaid by Borrower for Funding Lender’s entire costs and expenses, including Attorneys’ Fees and Costs, resulting from any default under the Project Note or this Continuing Covenant Agreement or in connection with efforts to collect any amount due under the Project Note or this Continuing Covenant Agreement, or to enforce the provisions of any of the other Financing Documents, including those costs and expenses incurred in post-judgment collection efforts and in any bankruptcy proceeding (including any action for relief from the automatic stay) or judicial or nonjudicial foreclosure proceeding.

(d) Any amounts payable by Borrower under this Continuing Covenant Agreement will be deemed a part of the Indebtedness, will be secured by the Security Instrument and will bear interest at the Default Rate if not fully paid within 10 days of written demand for payment.

**6.18 and 6.19 are reserved**.

**6.20 ERISA Requirements**.

(a) Borrower will not engage in any transaction which would cause an obligation, or action taken or to be taken under this Continuing Covenant Agreement (or the exercise by Funding Lender of any of its rights under the Project Note, this Continuing Covenant Agreement or any of the other Financing Documents) to be a non-exempt prohibited transaction under ERISA or Section 4975 of the Tax Code.

(b) Borrower will deliver to Funding Lender such certifications or other evidence from time to time throughout the term of this Continuing Covenant Agreement, as requested by Funding Lender in Funding Lender’s Discretion, that confirm each of the following:

(i) Borrower is not an “employee benefit plan” as defined in Section 3(3) of ERISA, which is subject to Title I of ERISA, a “plan” to which Section 4975 of the Tax Code applies, or an entity whose underlying assets constitute “plan assets” of one or more of such plans.

(ii) Borrower is not a “governmental plan” within the meaning of Section 3(32) of ERISA.

(iii) Borrower is not subject to state statutes regulating investments or fiduciary obligations with respect to governmental plans.

(iv) One or more of the following circumstances is true:

(A) Equity interests in Borrower are publicly offered securities within the meaning of 29 C.F.R. Section 2510.3-101(b)(2), as amended from time to time or any successor provision.

(B) Less than 25% of each outstanding class of equity interests in Borrower are held by “benefit plan investors” within the meaning of Section 3(42) of ERISA, as amended from time to time or any successor provision.

(C) Borrower qualifies as either an “operating company” or a “real estate operating company” within the meaning of 29 C.F.R. Section 2510.3-101(c) or (e), as either may be amended from time to time or any successor provisions, or is an investment company registered under the Investment Company Act of 1940.

(v) Reserved.

**6.21 Economic Sanctions Laws; AML Laws**.

(a) Borrower will comply with the Economic Sanctions Laws and AML Laws, as applicable, and Borrower will take reasonable measures to ensure that each Borrower Principal will comply with the Economic Sanctions Laws and AML Laws, as applicable.

(b) Borrower and each Borrower Principal will have in place practices and procedures for the admission of investors which are designed to prevent the admission of:

(i) Any Non-U.S. Equity Holder, or any investor that would have a 25% or more ownership interest in Borrower (whether directly or indirectly), and that has been convicted of a violation of the AML Laws, or been the subject of a final enforcement action relating to the AML Laws.

(ii) Any Person with a 25% or more ownership interest in Borrower (whether directly or indirectly) that is on the Prohibited Parties Lists.

(iii) Any Non-U.S. Equity Holder that is on the OFAC Lists.

**6.22 Crowdfunding**. Borrower will not permit any direct or indirect ownership interests in Borrower to be marketed or sold to investors through any form of Crowdfunding which constitutes either of the following:

(a) A Controlling Interest.

(b) An interest which may assume Control of Borrower under any terms of either the Organizational Documents, or the organizational documents of any entity in Borrower’s ownership structure, regardless of whether the change in Control is the subject of a Permitted Transfer or a Conditionally Permitted Transfer.

**6.23 through 6.37 are reserved**.

**6.38 Regulatory Agreements.** Borrower covenants to do each of the following with respect to each Regulatory Agreement listed in Section 1.05, whether one or more:

(a) Submit to Funding Lender on an annual basis evidence that the Mortgaged Property is in ongoing compliance with all income, occupancy and rent restrictions under the Regulatory Agreement. Such submissions to Funding Lender will be made contemporaneously with the submission of reports to the Regulatory Agreement Agency as required under the Regulatory Agreement, if applicable.

(b) Promptly provide Funding Lender with a copy of (i) any compliance report submitted to the Regulatory Agreement Agency concurrently with such submission, and (ii) any notice Borrower receives alleging that Borrower is in breach of the Regulatory Agreement.

(c) Obtain Funding Lender’s prior approval for any amendment to or modification of the Regulatory Agreement.

(d) Provide Funding Lender with Notice upon termination of the Regulatory Agreement.

(e) Except for the Regulatory Agreement and the Tax Credit Regulatory Agreement, Borrower will not accept any deed or other restriction or enter into any regulatory or other similar agreement regulating or restricting the use or operation of the Mortgaged Property or restricting the tenant income and/or rent levels for the Mortgaged Property.

**6.39 Low-Income Housing Tax Credits**. Funding Lender acknowledges that Tax Credits have been allocated with respect to the Mortgaged Property and that the Mortgaged Property is, or will be, subject to a Tax Credit Regulatory Agreement executed, or to be executed, in connection with the allocation of the Tax Credits.

(a) Annual Tax Credit Reporting Requirements. Borrower will submit to Funding Lender, each year at the time of annual submission of Borrower’s financial analysis of operations, a copy of the following sections of Borrower’s federal tax return, as applicable: Internal Revenue Forms 1065, 8586, 8609 and Form 8609-A, which must reflect the total Tax Credits allocated to the Mortgaged Property and the Tax Credits claimed for the Mortgaged Property in the preceding year.

(b) Cross-Default.Borrower acknowledges and agrees that any default, event of default, or breach (however such terms may be defined) after the expiration of any applicable notice and/or cure periods under the Tax Credit Regulatory Agreement will be an Event of Default under this Continuing Covenant Agreement and that any costs, damages or other amounts, including reasonable Attorneys’ Fees and Costs incurred by Funding Lender as a result of such an Event of Default by Borrower, including amounts paid to cure any default or event of default under the Tax Credit Regulatory Agreement, will be an obligation of Borrower and become a part of the Indebtedness.

(c) Annual Compliance.Borrower will submit annually (or such other shorter period required under the Tax Credit Regulatory Agreement) to Funding Lender evidence that the Mortgaged Property is in ongoing compliance with all income, occupancy, and rent restrictions under the Tax Credit Regulatory Agreement relating to the Mortgaged Property. Such submissions to Funding Lender will be made contemporaneously with the submission of reports to Tax Credit Agency as required under the Tax Credit Regulatory Agreement.

(d) Tax Credit Regulatory Agreement. Funding Lender agrees that if the Tax Credit Regulatory Agreement recorded, or to be recorded, against the Mortgaged Property, by its terms, terminates upon foreclosure under the Security Instrument or upon a transfer of the Mortgaged Property by instrument in lieu of foreclosure, in accordance with Tax Code Section 42(h)(6)(E), the lien of the Security Instrument and this Continuing Covenant Agreement will be subordinate to such Tax Credit Regulatory Agreement, regardless of the order of recording of the Security Instrument and the Tax Credit Regulatory Agreement document; provided, however, Funding Lender reserves the right not to subordinate the lien of the Security Instrument to the Tax Credit Regulatory Agreement if remedies reserved to Tax Credit Agency under the Tax Credit Regulatory Agreement exceed those of specific performance or injunctive relief. In such event, Borrower acknowledges that Funding Lender may require the Tax Credit Agency to enter into a subordination agreement in form and substance satisfactory to Funding Lender. To the extent a Tax Credit Regulatory Agreement is not recorded as of the date of this Continuing Covenant Agreement, Borrower will first obtain Funding Lender’s consent prior to recording the Tax Credit Regulatory Agreement.

(e) Reserved.

**6.40 through 6.64 are reserved**.

**6.65 No Hedging Arrangements.** Without the prior written consent of Funding Lender or unless otherwise required by this Continuing Covenant Agreement, Borrower will not enter into or guarantee, provide security for or otherwise undertake any form of contractual obligation with respect to any interest rate swap, interest rate cap or other arrangement that has the effect of an interest rate swap or interest rate cap or that otherwise (directly, indirectly, derivatively or synthetically) hedges interest rate risk associated with being a debtor of variable rate debt or any agreement or other arrangement to enter into any of the above on a future date or after the occurrence of one or more events in the future.

**6.66 Status of Governmental Note.** Borrower will not take, permit to be taken, or omit to take, any action that, if taken or omitted, would impair the exclusion from gross income for federal income tax purposes of the interest payable on the Governmental Note.

ARTICLE VII TRANSFERS OF THE MORTGAGED PROPERTY OR INTERESTS IN BORROWER.

**7.01 Prohibited Transfers**. Subject to Sections 7.02 and 7.03, as applicable, the occurrence of any of the following Transfers will constitute a Prohibited Transfer:

(a) A Transfer of all or any part of the Mortgaged Property or any interest in the Mortgaged Property, whether voluntary, involuntary or by operation of law, including (i) the grant, creation, or existence of any Lien on the Mortgaged Property (other than the Lien of the Security Instrument), even if such Lien does not have priority over the Lien of the Security Instrument, and (ii) the partial release of income producing or non-income producing property.

(b) A Transfer or series of Transfers of any legal or equitable interest of any Guarantor which owns a direct or indirect interest in Borrower that result(s) in such Guarantor no longer owning any direct or indirect interest in Borrower.

(c) The Transfer of any Controlling Interest in Borrower or any Designated Entity for Transfers.

(d) A Transfer or series of Transfers of any legal or equitable interest that result(s) in a Required Equity Owner no longer owning the Required Equity Ownership Interest.

(e) The grant, creation, or existence of any Lien on Ownership Interest, whether voluntary, involuntary, or by operation of law, and whether or not such Lien on Ownership Interest has priority over the Lien of the Security Instrument, if the foreclosure of such Lien or the exercise of other remedies would result in a Prohibited Transfer.

(f) The termination or revocation of a Trust if the Trust is Borrower, Guarantor, or a Designated Entity for Transfers.

(g) through (j) are reserved.

(k) A Transfer of any Controlling Interest in Equity Investor, Equity Investor GP/Manager and any entity that Controls Equity Investor GP/Manager if Equity Investor is a Required Equity Owner under Section 7.02(c).

(l) A Transfer that requires Funding Lender’s prior consent under this Continuing Covenant Agreement or a Conditionally Permitted Transfer that requires that certain conditions be satisfied, if such prior consent was not obtained or such conditions were not satisfied, as applicable.

**7.02 Permitted Transfers**. Notwithstanding any provision of Section 7.01 to the contrary, the following Transfers are Permitted Transfers:

(a) Permitted Transfers of the Mortgaged Property.

(i) A Prohibited Transfer of the Mortgaged Property for which Borrower has obtained Funding Lender’s written consent.

(ii) The grant of a leasehold interest in an individual dwelling unit for a term of 2 years or less (or longer if approved by Funding Lender in writing) not containing an option to purchase.

(iii) The creation of any New Non-Residential Lease, or the modification or termination of any Non-Residential Lease, in each case, for which Borrower satisfies the requirements of Section 6.04.

(iv) A Condemnation with respect to which Borrower satisfies the requirements of Section 6.11.

(v) A Transfer of obsolete or worn out Personalty or Fixtures that are contemporaneously replaced by items of equal or better function and quality, which are free of Liens (other than those Liens created by the Financing Documents or consented to by Funding Lender in writing).

(vi) The creation of a mechanic’s, materialmen’s, or judgment Lien with respect to which Borrower satisfies the requirements of Section 6.09(k).

(vii) An easement, restrictive covenant or other encumbrance with respect to which Borrower satisfies the requirements of Section 7.11.

(viii) A Lien of a Supplemental Instrument with respect to which Borrower satisfies the requirements of Section 11.11.

(ix) A Defeasance with respect to which Borrower satisfies the requirements of Section 4.04 of the Project Loan Agreement.

(x) Reserved.

(b) Permitted Transfers of Ownership Interests.

(i) A Transfer of any legal or equitable interests in an entity that is not Borrower or a Designated Entity for Transfers so long as such Transfer does not result in a Prohibited Transfer under Section 7.01(b), 7.01(d) or 7.01(k).

(ii) A Transfer of any legal or equitable Non-Controlling Interest in Borrower or any Designated Entity for Transfers so long as such Transfer does not result in a Prohibited Transfer under Section 7.01(b) or 7.01(d).

(iii) A Prohibited Transfer of any legal or equitable interests in Borrower or a Designated Entity for Transfers for which Borrower has obtained Funding Lender’s written consent.

(iv) A Conditionally Permitted Transfer pursuant to Section 7.03, upon the satisfaction of all applicable conditions.

(v) The Transfer by a Person of all or part of the Controlling Interest in Borrower or a Designated Entity for Transfers if such interests are first converted to a Non-Controlling Interest and the transferor retains Control of Borrower or Designated Entity for Transfers, as applicable, so long as such Transfer does not result in a Prohibited Transfer under Section 7.01(b) or 7.01(d).

(vi) Reserved.

(c) Even if the name of the Equity Investor is not set forth in Article I, Equity Investor will be considered a Required Equity Owner with a Required Equity Ownership Interest equal to the percentage of ownership in Borrower on the Effective Date. However, if the following conditions are met, Equity Investor will no longer be considered a Required Equity Owner and the Transfer of its interests in Borrower will be a Permitted Transfer under Section 7.02(b)(ii).

(i) Equity Investor has made all low-income housing tax credit capital contributions payable to Borrower under its Organizational Documents.

(ii) The initial compliance period with respect to the Tax Credits allocated with respect to the Mortgaged Property (“**Compliance Period**”) has ended.

(d) Reserved.

**7.03 Conditionally Permitted Transfers**. Notwithstanding any provision of Section 7.01 to the contrary, the occurrence of any of the following Transfers will not constitute a Prohibited Transfer if Borrower has complied with all applicable conditions specified in this Section 7.03 and in Section 7.04 (each a “**Conditionally Permitted Transfer**”):

(a) Conditionally Permitted Transfers - Category I (Transfer Processing Fee transactions).

(i) Affiliate Transfer. An “**Affiliate Transfer**” is a Transfer of any Controlling Interest in Borrower or a Designated Entity for Transfers to an Affiliate of the transferor.

(ii) Intrafamily Transfer. An “**Intrafamily Transfer**” is a Transfer of any Controlling Interest in Borrower or a Designated Entity for Transfers to an entity or revocable Trust that is Controlled by the transferor for the benefit of Immediate Family Members.

(iii) Transfer to Previously Underwritten Person.

(A) A “**Transfer to Previously Underwritten Person**” is a Transfer of a Controlling Interest in Borrower or a Designated Entity for Transfers to Previously Underwritten Person due to the retirement, death, or legal incapacity of a Prior Borrower Principal. If the name of Previously Underwritten Person is not specified in Section 1.02, then this Section 7.03(a)(iii) is not applicable.

(B) In place of the Notice required in Section 7.04(a), Borrower provides Funding Lender with Notice of such Transfer together with copies of all documents effecting such Transfer not more than 60 days after the retirement, death, or legal incapacity of Prior Borrower Principal.

(C) If Prior Borrower Principal or its Affiliate was a Guarantor, one of the following must occur:

(1) Funding Lender determines that at the time of the Transfer any or all the remaining Guarantors will meet the requirements for a Replacement Guarantor, including the Replacement Guarantor Net Worth and Liquidity Requirements, or

(2) Previously Underwritten Person or an Affiliate of the Previously Underwritten Person becomes a Replacement Guarantor and executes and delivers a Replacement Guaranty within 60 days after the retirement, death, or legal incapacity of Prior Borrower Principal.

(D) Previously Underwritten Person certifies in writing to Funding Lender that, since the Effective Date, except as disclosed to and approved by Funding Lender in writing, Previously Underwritten Person has not been:

(1) Subject to a claim in any litigation or other proceeding (even if settled) relating to fraud, breach of fiduciary duty, breach of trust or other similar claim, or money laundering, terrorist financing, terrorism, or similar claim.

(2) To the best of Previously Underwritten Person’s knowledge, investigated by any Governmental Authority in connection with any matter set forth in Section 7.03(a)(iii)(D)(1).

(3) The subject of a complaint or indictment charging a felony.

(4) Involved in any pending or current criminal litigation.

(5) The subject of a Bankruptcy.

(6) Suspended, barred, or otherwise restricted by any department or agency of the federal government.

(E) Previously Underwritten Person certifies in writing to Funding Lender that its net worth and liquidity are substantially the same as or better than the net worth and liquidity of Previously Underwritten Person as of the Effective Date.

(F) Section 7.04(i) will not be applicable (solely with respect to the Prior Borrower Principal).

(iv) through (vi) are reserved.

(vii) Removal by Equity Investor of Borrower GP/Manager.

(A) A “**Removal by Equity Investor of Borrower/GP Manager**” is a Transfer of any ownership interests of Borrower GP/Manager in Borrower or any direct or indirect ownership interests of Borrower GP/Manager Principal in Borrower GP/Manager as the result of (1) the removal of a Borrower GP/Manager as the managing general partner/member of Borrower upon the occurrence of an event of default by Borrower GP/Manager under the Organizational Documents and (2) its replacement as managing general partner/member with Equity Investor, Equity Investor GP/Manager or an entity Controlled by Equity Investor in accordance with the terms of the Organizational Documents.

(B) The Borrower set forth in Article I, as of the Effective Date, owns the Mortgaged Property at the time of the Transfer and remains the Borrower under the Project Note after the Transfer.

(C) After such Transfer, Equity Investor GP/Manager will Control the entity that replaces the Borrower GP/Manager.

(D) Equity Investor identifies an individual or entity satisfying Funding Lender’s then current underwriting standards to be the Replacement Guarantor and the Replacement Guarantor executes and delivers a Replacement Guaranty.

(E) If, at any time, the initial owners of the Equity Investor GP/Manager do not retain Control of the Equity Investor GP/Manager, the provisions of this Section 7.03(a)(vii) will be of no further force and effect.

(F) Reserved

(viii) Related Entity Investor Transfer. While Equity Investor is a Required Equity Owner, a Transfer by Equity Investor of its direct or indirect interests in Borrower to an entity that is directly or indirectly owned and Controlled by Equity Investor GP/Manager (“**Related Entity Investor Transferee**”), and such a Transfer will not constitute a Required Equity Owner Transfer under Section 7.03(c)(ii).

(ix) Reserved.

(b) Conditionally Permitted Transfers - Category II (Special Transfer Processing Fee transactions).

(i) Transfer of a Controlling Interest Due to Death.

(A) “**Transfer of a Controlling Interest Due to Death**” is (1) a Transfer to a Beneficiary of a Controlling Interest in Borrower or a Designated Entity for Transfers by devise, descent, or operation of law, due to the death of a natural person, and if applicable, (2) the subsequent Transfer by such Beneficiary to another Beneficiary of the deceased natural person (“**Second Beneficiary**”).

(B) In place of the Notice required in Section 7.04(a), Borrower provides Funding Lender with Notice of the death not more than 60 days after the death (“**Notice of Death**”).

(C) Within 30 days after the Notice of Death, Borrower notifies Funding Lender (1) of the proposed Transfer date, (2) of the identity of the Beneficiary, and (3) whether the Beneficiary will subsequently Transfer the Controlling Interest to a Second Beneficiary and the identity of the Second Beneficiary, if applicable (“**Settlement Notice**”).

(D) In place of the Transfer Processing Fee due under Section 7.04(b), Borrower pays Funding Lender the Special Transfer Processing Fee when Borrower delivers the Settlement Notice.

(E) Contemporaneously with providing the Settlement Notice to Funding Lender, Borrower provides evidence reasonably satisfactory to Funding Lender that the eligibility, organization, credit and experience in the management of similar properties of Beneficiary or Second Beneficiary, as applicable, are appropriate to the overall structure and documentation of the Loans.

(F) If the Transfer of a Controlling Interest Due to Death results from the death of any Guarantor, each surviving Guarantor executes such documents and agreements as Funding Lender reasonably requires to ratify its Guaranty within 30 days after the Notice of Death.

(G) If the Transfer of a Controlling Interest Due to Death results from the death of any Guarantor, unless Funding Lender determines that any or all the surviving Guarantors meet the requirements for a Replacement Guarantor, including the Replacement Guarantor Net Worth and Liquidity Requirements, one of the following occurs:

(1) Within 30 days after the Settlement Notice, Borrower causes a Replacement Guarantor to execute and deliver to Funding Lender a Replacement Guaranty.

(2) The estate of the deceased Guarantor ratifies the Guaranty in writing within 30 days after the Settlement Notice, and within 6 months after the death of the deceased Guarantor, Borrower causes a Replacement Guarantor to execute and deliver to Funding Lender a Replacement Guaranty.

(H) Section 7.04(i) and (j) will not be applicable (solely with respect to any deceased Guarantor).

(ii) through (viii) are reserved.

(c) Conditionally Permitted Transfers - Category III (Transfer Processing Fee plus Conditional Transfer Fee transactions).

If the Funding Loan is in a Securitization, for purposes of this Section 7.03(c) only, the term “Funding Lender in Funding Lender’s Discretion” may include the determination of the approved directing certificateholder, if any, in such Securitization.

(i) Manager Transfer.

(A) A “**Manager Transfer**” is a voluntary or involuntary Transfer by a Manager (“**Departing Manager**”) to one or more Existing Owners.

(B) Funding Lender in Funding Lender’s Discretion has determined that the eligibility, organization, credit, and experience in the management of similar properties of the Existing Owner are appropriate to the overall structure and documentation of the Loans.

(C) If the Departing Manager or its Affiliate is a Guarantor, Existing Owner or an Affiliate of Existing Owner becomes a Replacement Guarantor and executes and delivers a Replacement Guaranty.

(D) Section 7.04(i) will not be applicable.

(E) Notwithstanding Section 7.04(q), Borrower pays to Funding Lender the Conditional Transfer Fee at the time of the Manager Transfer.

(ii) Required Equity Owner Transfer.

(A) A “**Required Equity Owner Transfer**” is a Transfer by a Required Equity Owner (“**Departing Equity Owner**”) of part or all of the Required Equity Ownership Interest.

(B) Funding Lender in Funding Lender’s Discretion has determined that it is not necessary for the Departing Equity Owner to maintain the Required Equity Ownership Interest.

(C) If the Required Equity Owner Transfer takes place in connection with another Transfer, then notwithstanding Section 7.04(b), Funding Lender will not collect a Transfer Processing Fee if a Transfer Processing Fee or Special Transfer Processing Fee was collected by Funding Lender in connection with the other Transfer.

(D) Section 7.04(r) will not be applicable.

(E) Notwithstanding Section 7.04(q), Borrower pays to Funding Lender the Conditional Transfer Fee at the time of the Required Equity Owner Transfer.

(iii) Release of Guarantor Transfer.

(A) A “**Release of Guarantor Transfer**” is a Transfer that occurs when Funding Lender in Funding Lender’s Discretion agrees in writing to release a Guarantor (“**Released Guarantor**”) of a portion of Released Guarantor’s liability under the Guaranty.

(B) After the Release of Guarantor Transfer, there must be one or more remaining Guarantor(s), which individually or together meet the Replacement Guarantor Net Worth and Liquidity Requirements and are otherwise acceptable to Funding Lender.

(C) If Funding Lender consents to a Release of Guarantor Transfer, then one of the following will apply:

(1) If Borrower delivers to Funding Lender a Clean Site Assessment, then Funding Lender will release Released Guarantor from all of Released Guarantor’s obligations except Released Guarantor’s obligation to guaranty Borrower’s liability under Section 6.12 or Section 10.02(b) with respect to any loss, liability, damage, claim, cost or expense which directly or indirectly arises from or relates to any Prohibited Activities or Conditions existing prior to the date of the Transfer.

(2) If Borrower does not deliver a Clean Site Assessment, then Funding Lender will release Released Guarantor from all of Released Guarantor’s obligations except for Released Guarantor’s obligation to guaranty Borrower’s liability under Section 6.12 or Section 10.02(b).

(D) If the Release of Guarantor Transfer takes place in connection with another Transfer, notwithstanding Section 7.04(b), Funding Lender will not collect a Transfer Processing Fee if a Transfer Processing Fee or Special Transfer Processing Fee was collected by Funding Lender in connection with the other Transfer.

(E) Notwithstanding Section 7.04(q), Borrower pays to Funding Lender the Conditional Transfer Fee at the time of the Release of Guarantor Transfer unless the Release of Guarantor Transfer takes place in connection with another Conditionally Permitted Transfer or a Transfer to which Funding Lender has consented pursuant to Section 7.05.

(iv) Equity Investor Substitution Transfer.

(A) “**Equity Investor Substitution Transfer**” is a Transfer by Equity Investor or Equity Investor GP/Manager of part or all its direct or indirect interest in Borrower to an Approved Substitute Equity Investor. An Equity Investor Substitution Transfer is not a Required Equity Owner Transfer under Section 7.03(c)(ii).

(B) Notwithstanding Section 7.04(a), Borrower provides Funding Lender with Notice, together with the Equity Investor Substitution Transfer Review Package, at least 45 days prior to the proposed Conditionally Permitted Transfer. The Equity Investor Substitution Transfer Review Package must include:

1. The documentation described in Section 7.04.
2. The most recent financial statements for the Financial Organization Transferee or LIHTC Syndicator Transferee, as applicable, audited by an independent certified public accountant acceptable to Funding Lender, provided, that, the most recent long-term credit report from one or more Rating Agencies may be provided for a Financial Organization Transferee in lieu of the most recent financial statements.
3. Written certification by the Financial Organization Transferee or LIHTC Syndicator Transferee, as applicable, in a form acceptable to Funding Lender, that it meets the applicable requirements of a Financial Organization Transferee or LIHTC Syndicator Transferee.
4. Any additional information requested by Funding Lender to determine that the conditions of Section 7.04 and the requirements of a Financial Organization Transferee or LIHTC Syndicator Transferee have been met.
5. Written evidence acceptable to Funding Lender that the Financial Organization Transferee or LIHTC Syndicator Transferee, as applicable, has agreed to be bound by the terms and provisions of the Organizational Documents.

(C) Notwithstanding Section 7.04(q), Borrower pays to Funding Lender the Conditional Transfer Fee at the time of the Equity Investor Substitution Transfer.

(v) through (viii) are reserved.

(d) Reserved.

**7.04 Conditions for Conditionally Permitted Transfers**. The following conditions will apply to all Conditionally Permitted Transfers unless otherwise noted in Section 7.03.

(a) Borrower provides Funding Lender with Notice at least 30 days prior to the proposed Conditionally Permitted Transfer.

(b) Borrower pays a Transfer Processing Fee to Funding Lender at the time Borrower provides Funding Lender with the Notice of such Transfer.

(c) At the time of the Conditionally Permitted Transfer, no Event of Default has occurred and is continuing, and no event or condition has occurred and is continuing that, with the giving of Notice or the passage of time, or both, would become an Event of Default.

(d) Borrower delivers to Funding Lender organizational charts, in form and detail acceptable to Funding Lender, reflecting the structure of Borrower prior to and after the Conditionally Permitted Transfer. If required by Funding Lender, this Continuing Covenant Agreement is amended to revise Exhibit A to reflect the post-Conditionally Permitted Transfer organizational chart.

(e) Borrower delivers to Funding Lender either (i) copies of the then-current Organizational Documents of Borrower and any other entity in which interests will be transferred, including any proposed amendments to be made in connection with the Conditionally Permitted Transfer or (ii) a certification that the Organizational Documents have not been modified since the Effective Date.

(f) Borrower certifies in writing to Funding Lender that as of the date of the Conditionally Permitted Transfer no Borrower Principal:

(i) Is on any Prohibited Parties Lists.

(ii) Has been convicted of a violation of the AML Laws.

(iii) Has been the subject of a final enforcement action relating to the AML Laws.

(g) Borrower certifies in writing to Funding Lender that as of the date of the Conditionally Permitted Transfer either there will not be any Non-U.S. Equity Holders, or if there is a Non-U.S. Equity Holder, no such Non-U.S. Equity Holder:

(i) Is on the OFAC Lists.

(ii) Has been convicted of a violation of the AML Laws.

(iii) Has been the subject of a final enforcement action relating to the AML Laws.

(h) Following the Conditionally Permitted Transfer, one of the following is true:

(i) The Property Manager, if applicable, continues to be responsible for the management of the Mortgaged Property, and such Conditionally Permitted Transfer will not result in a change in the day-to-day operations of the Mortgaged Property.

(ii) The requirements of Section 6.09(d) regarding the appointment of a new Property Manager have been or will be satisfied.

(i) Following the Conditionally Permitted Transfer, Control and management of the operations of Borrower continue to be held solely and in the same capacity by the Person exercising such Control and management immediately prior to the Conditionally Permitted Transfer.

(j) Unless a Replacement Guarantor is applicable, Guarantor continues to own a direct or indirect interest in Borrower if Guarantor owned a direct or indirect interest in Borrower prior to the Conditionally Permitted Transfer.

(k) Reserved.

(l) If any transferee or any Replacement Guarantor is an entity, Borrower provides to Funding Lender satisfactory evidence that the term of existence of such entity (exclusive of any unexercised extension options or rights) does not expire prior to the Maturity Date.

(m) If there is a Replacement Guaranty or a modification of any Financing Document, Borrower delivers to Funding Lender customary legal opinions, as Funding Lender reasonably deems necessary, in form and substance satisfactory to Funding Lender.

(n) Borrower and Guarantor execute such documents and agreements as Funding Lender reasonably requires to evidence the Transfer and to ratify their obligations under the Financing Documents.

(o) Reserved.

(p) Borrower pays or reimburses Funding Lender, upon demand, for all costs and expenses, including all Attorneys’ Fees and Costs incurred by Funding Lender in connection with such Conditionally Permitted Transfer.

(q) Funding Lender will not be entitled to collect a Transfer Fee or Conditional Transfer Fee.

(r) Upon completion of any Conditionally Permitted Transfer, Required Equity Owner must own the Required Equity Ownership Interest.

(s) Upon completion of any Conditionally Permitted Transfer, Borrower must be in compliance with Section 7.06 and 7.07 of this Continuing Covenant Agreement, if applicable.

(t) through (v) are reserved.

**7.05 Funding Lender’s Consent to Prohibited Transfers**.

(a) Conditions for Funding Lender’s Consent. With respect to a Transfer that would otherwise constitute an Event of Default under this Article VII, Funding Lender will consent, without any adjustment to the rate at which the Indebtedness bears interest or to any other economic terms of the Indebtedness set forth in the Project Note, if, prior to such Transfer, each of the following requirements is satisfied:

(i) Borrower has provided Funding Lender with Notice at least 45 days prior to the proposed Transfer and has paid the Transfer Processing Fee at the time of such Notice.

(ii) At least 30 days prior to the proposed Transfer, Borrower has submitted to Funding Lender all information required by Funding Lender to make the determinations required by this Section 7.05.

(iii) As of the date of the Transfer, no Event of Default has occurred and is continuing and no event or condition has occurred and is continuing that, with the giving of Notice or the passage of time, or both, would become an Event of Default unless such Transfer would cure the Event of Default.

(iv) Funding Lender in Funding Lender’s Discretion has determined that the transferee’s organization, credit and experience in the management of similar properties meet Funding Lender’s standards and are appropriate to the overall structure and documentation of the Loans.

(v) Funding Lender in Funding Lender’s Discretion has determined that any proposed Replacement Guarantor’s credit meets Funding Lender’s standards.

(vi) Funding Lender in Funding Lender’s Discretion has determined that the Mortgaged Property at the time of the proposed Transfer will be managed by a Property Manager meeting the requirements of Section 6.09(d).

(vii) Funding Lender in Funding Lender’s Discretion has determined that the Mortgaged Property, at the time of the proposed Transfer, will meet all of Funding Lender’s standards as to its physical condition, occupancy, net operating income, and the accumulation of reserves (or appropriate reserves acceptable to Funding Lender are established).

(viii) Reserved.

(ix) Funding Lender has determined that none of the transferee, any proposed Borrower Principal of the transferee or any Non-U.S. Equity Holder of the transferee is presently listed on the OFAC Lists and neither the transferee nor any proposed Borrower Principal of the transferee is listed on the FHFA SCP List.

(x) Funding Lender has determined that neither the transferee nor any proposed Borrower Principal has been convicted of a violation of the AML Laws or has been the subject of a final enforcement action relating to the AML Laws.

(xi) If any Supplemental Instrument is outstanding, Borrower has obtained the consent of each Supplemental Lender, if different from Funding Lender.

(xii) Borrower and Guarantor execute such additional documents as Funding Lender may require to evidence the Transfer.

(xiii) In the case of a Transfer of all or any part of the Mortgaged Property by deed, each of the following conditions is satisfied:

(A) The transferee executes the Assumption Agreement.

(B) Funding Lender may, in Funding Lender’s Discretion, by Notice to Borrower and the proposed transferee(s), (1) modify or render void any or all the negotiated modifications to the Financing Documents and/or (2) reinstate Imposition Reserve Deposits that were waived or deferred for the transferor as a condition to Funding Lender’s consent to the proposed Transfer.

(C) If required by Funding Lender, one or more Replacement Guarantor(s) satisfying the Replacement Guarantor Net Worth and Liquidity Requirements, executes and delivers to Funding Lender a Replacement Guaranty.

(D) The transferee executes such additional documentation (including financing statements, as applicable) as Funding Lender may require.

(E) The transferee delivers either (1) an endorsement to the Title Policy along with a title update or (2) a new title insurance policy, in either case with an effective date no earlier than the date of recordation of the deed transferring the interest in the Mortgaged Property. An endorsement to the Title Policy that evidences the recordation of the deed transferring the interest in the Mortgaged Property to the transferee but which does not change the effective date of the Title Policy will not be sufficient.

(xiv) In the case of a Transfer of any Controlling Interest in Borrower or Designated Entity for Transfers, each of the following conditions is satisfied:

(A) Borrower and Guarantor execute such documents and agreements as Funding Lender requires to evidence the Transfer and to ratify their obligations under the Financing Documents.

(B) Funding Lender may, in Funding Lender’s Discretion, by Notice to Borrower and the proposed transferee(s) (1) modify or render void any or all the negotiated modifications to the Financing Documents and/or (2) reinstate Imposition Reserve Deposits that were waived or deferred for the transferor as a condition to Funding Lender’s consent to the proposed Transfer.

(C) If required by Funding Lender, one or more Replacement Guarantor(s) satisfying the Replacement Guarantor Net Worth and Liquidity Requirements, executes and delivers to Funding Lender a Replacement Guaranty.

(D) The transferee executes such additional documentation (including financing statements, as applicable) as Funding Lender may require.

(xv) Funding Lender has received such legal opinions as Funding Lender deems necessary, including a No Adverse Effect Opinion, an opinion that the assignment and assumption of the Financing Documents has been duly authorized, executed, and delivered, and that the assumption documents and the Financing Documents are enforceable as the obligations of Borrower, transferee, and Guarantor, as applicable.

(xvi) Borrower pays to Funding Lender all costs, including the cost of all title searches, title insurance and recording costs, and all Attorneys’ Fees and Costs incurred in reviewing the Transfer request and any fees charged by the Rating Agencies, if applicable.

(xvii) At the time of the Transfer, Borrower pays the Transfer Fee to Funding Lender.

(xviii) Upon completion of any Transfer pursuant to this Section 7.05, Borrower must be in compliance with Section 7.06 and Section 7.07 of this Continuing Covenant Agreement, if applicable.

(xix) through (xxvii) are reserved.

(b) Continuing Liability of Borrower. If Borrower requests a release of its liability under the Financing Documents in connection with a Transfer of all of Borrower’s interest in the Mortgaged Property, and Funding Lender approves the Transfer pursuant to Section 7.05(a), then one of the following will apply:

(i) If Borrower delivers to Funding Lender a Clean Site Assessment, then Funding Lender will release Borrower from all of Borrower’s obligations under the Financing Documents except for any liability under Section 6.12 or Section 10.02(b) with respect to any loss, liability, damage, claim, cost or expense which directly or indirectly arises from or relates to any Prohibited Activities or Conditions existing prior to the date of the Transfer.

(ii) If Borrower does not deliver a Clean Site Assessment as described in Section 7.05(b)(i), then Funding Lender will release Borrower from all of Borrower’s obligations under the Financing Documents except for liability under Section 6.12 or Section 10.02(b).

(c) Continuing Liability of Guarantor. If Guarantor requests a release of its liability under the Guaranty in connection with a Transfer which is permitted, conditionally permitted, or approved by Funding Lender pursuant to this Article VII, and Borrower has provided a Replacement Guarantor in compliance with the terms of this Continuing Covenant Agreement, then one of the following will apply:

(i) If Borrower delivers to Funding Lender a Clean Site Assessment, then Funding Lender will release Guarantor from all of Guarantor’s obligations except Guarantor’s guaranty of Borrower’s liability under Section 6.12 or Section 10.02(b) with respect to any loss, liability, damage, claim, cost or expense which directly or indirectly arises from or relates to any Prohibited Activities or Conditions existing prior to the date of the Transfer.

(ii) If Borrower does not deliver a Clean Site Assessment as described in Section 7.05(c)(i), then Funding Lender will release Guarantor from all of Guarantor’s obligations except for Guarantor’s guaranty of Borrower’s liability under Section 6.12 or Section 10.02(b).

**7.06 SPE Equity Owner Requirement Following Transfer**. Following any Transfer, Borrower must satisfy any applicable conditions regarding an SPE Equity Owner set forth in Section 6.13(a)(xxvi).

**7.07 Additional Transfer Requirements - Rate Cap Agreement**.

(a) Continuation of Rate Cap Agreement. If a Transfer of all or part of the Mortgaged Property permitted by this Continuing Covenant Agreement occurs, Borrower will ensure that any Rate Cap Agreement is transferred to the applicable transferee or, if the Rate Cap Agreement is not transferable, Borrower will replace the Rate Cap Agreement in accordance with Funding Lender’s then-current requirements.

(b) Establishment or Modification of Rate Cap Agreement Reserve Fund

(i) If the Rate Cap Agreement which will be in place immediately following the Transfer is scheduled to expire prior to the Maturity Date, then Funding Lender may require Borrower to establish a Rate Cap Agreement Reserve Fund.

(ii) If Borrower has previously established a Rate Cap Agreement Reserve Fund, then Funding Lender will determine whether the balance of any existing Rate Cap Agreement Reserve Fund is sufficient under then-current market conditions to purchase a Replacement Rate Cap Agreement and may then take any of the following actions:

(A) Funding Lender may require Borrower to make an additional deposit into the Rate Cap Agreement Reserve Fund.

(B) If funding of the Rate Cap Agreement Reserve Fund has been deferred, Funding Lender may require Borrower to begin making monthly deposits into the Rate Cap Agreement Reserve Fund.

(C) Funding Lender may require Borrower to increase the amount of the monthly deposits to the Rate Cap Agreement Reserve Fund.

**7.08 through 7.10 are reserved**.

**7.11 Easement, Restrictive Covenant or Other Encumbrance**. The grant of an easement, restrictive covenant or other encumbrance (other than a mechanic’s, materialman’s or judgment Lien, or any Lien securing indebtedness) will be a Permitted Transfer if each of the following conditions is satisfied:

(a) Borrower provides Funding Lender with at least 30 days prior Notice of the proposed Transfer.

(b) Prior to the Transfer, Funding Lender determines, in Funding Lender’s Discretion, that the easement, restrictive covenant or other encumbrance will not materially affect the operation or value of the Mortgaged Property or Funding Lender’s interest in the Mortgaged Property.

(c) Borrower pays or reimburses Funding Lender, upon demand, for all costs and expenses, including all Attorneys’ Fees and Costs, incurred by Funding Lender in connection with reviewing Borrower’s request for Funding Lender’s review of such grant of easement, restrictive covenant, or other encumbrance; provided, however, that Funding Lender will not be entitled to collect a Transfer Processing Fee, a Special Transfer Processing Fee, a Transfer Fee, or a Conditional Transfer Fee.

(d) Reserved.

ARTICLE VIII ACTIONS or events RELATING TO GUARANTOR.

8.01 Guarantor Bankruptcy. If there is a Bankruptcy with respect to a Guarantor, then the following requirements must be satisfied:

(a) Borrower or Guarantor must provide Notice of such Bankruptcy to Funding Lender at least 30 days prior to the filing of a voluntary Bankruptcy or within 30 days after the commencement of an involuntary Bankruptcy.

(b) Within 90 days after filing a voluntary Bankruptcy or commencement of an involuntary Bankruptcy, if such action is not dismissed, then Borrower must cause a Replacement Guarantor to execute and deliver to Funding Lender a Replacement Guaranty, together with such customary legal opinions as Funding Lender deems necessary.

(c) Borrower must pay or reimburse Funding Lender, upon demand, for all costs and expenses, including all Attorneys’ Fees and Costs, incurred by Funding Lender in connection with the replacement of Guarantor.

(d) Borrower must pay the Special Transfer Processing Fee to Funding Lender in connection with the replacement of Guarantor at the time of the delivery of the Replacement Guaranty.

**8.02 Guarantor Status Event**. If there is a Status Event with respect to a Guarantor, the following requirements must be satisfied:

(a) Borrower or Guarantor must provide Notice of such Status Event and pay the Special Transfer Processing Fee to Funding Lender within 30 days after a Status Event.

(b) Within 30 days after a Status Event, Borrower must cause a Replacement Guarantor to execute and deliver to Funding Lender a Replacement Guaranty, together with such customary legal opinions as Funding Lender deems necessary.

(c) Borrower must pay or reimburse Funding Lender, upon demand, for all costs and expenses including all Attorneys’ Fees and Costs, incurred by Funding Lender in connection with the Status Event.

(d) In connection with a Status Event that would result from the expiration of an entity Guarantor’s term of existence:

(i) In lieu of Section 8.02(b), Guarantor must satisfy one of the Guarantor Expiration Alternatives set forth in Section 22 of the Guaranty and provide such customary legal opinions as Funding Lender deems necessary.

(ii) In lieu of Section 8.02(a), Borrower or Guarantor must provide Notice to Funding Lender of the Guarantor Expiration Alternative it has selected at least 30 days prior to its satisfaction along with payment of the Special Transfer Processing Fee, provided that if the Guarantor Expiration Alternative is an Extension (as defined in Section 22(b)(i) of the Guaranty), then no Special Transfer Processing Fee will be due to Funding Lender.

**8.03 Death of a Guarantor Not in Control of Borrower**. If there is a death of a Guarantor Not in Control of Borrower, the following requirements must be satisfied:

(a) Borrower must provide Notice to Funding Lender within 60 days after the death of any Guarantor Not in Control of Borrower along with the Special Transfer Processing Fee.

(b) Each surviving Guarantor must execute such documents and agreements as Funding Lender requires in Funding Lender’s Discretion to ratify its Guaranty within 30 days after the Notice required under Section 8.03(a).

(c) Unless Funding Lender determines that any or all the surviving Guarantors meet the requirements for a Replacement Guarantor, including the Replacement Guarantor Net Worth and Liquidity Requirements, one of the following must occur:

(i) Within 30 days after the Notice required under Section 8.03(a), Borrower causes a Replacement Guarantor to execute and deliver to Funding Lender a Replacement Guaranty.

(ii) The estate of the deceased Guarantor ratifies the Guaranty in writing within 30 days after the Notice required under Section 8.03(a), and within 6 months after the death of the applicable Guarantor, Borrower causes a Replacement Guarantor to execute and deliver to Funding Lender a Replacement Guaranty.

(d) Borrower must pay or reimburse Funding Lender, upon demand, for all costs and expenses including all Attorneys’ Fees and Costs, incurred by Funding Lender in connection with the replacement of Guarantor.

ARTICLE IX EVENTS OF DEFAULT AND REMEDIES.

**9.01 Events of Default**. The occurrence of any one or more of the following will constitute an Event of Default under this Continuing Covenant Agreement:

(a) Borrower fails to pay or deposit when due any amount required by the Project Note, this Continuing Covenant Agreement or any other Financing Document.

(b) Borrower fails to maintain the Insurance coverage required by Section 6.10.

(c) Borrower or any SPE Equity Owner fails to comply with the provisions of Section 6.13.

(d) Borrower, SPE Equity Owner, any of Borrower or SPE Equity Owner’s officers, directors, trustees, general partners or managers, or any Guarantor commits fraud or a material misrepresentation or material omission in connection with: (i) the application for or creation of the Indebtedness, (ii) any financial statement, Rent Schedule, or other report or information provided to Funding Lender during the term of the Indebtedness, or (iii) any request for Funding Lender’s consent to any proposed action, including a request for disbursement of funds under this Continuing Covenant Agreement.

(e) Borrower fails to comply with the Condemnation provisions of Section 6.11.

(f) Any of the following occurs, whether or not any actual impairment of Funding Lender’s security results from such action:

(i) A Transfer occurs that violates the provisions of Article VII.

(ii) A Status Event occurs with respect to Borrower.

(iii) A Status Event occurs with respect to any Guarantor that is an entity, unless the conditions set forth in Section 8.02 are satisfied.

(g) A forfeiture action or proceeding, whether civil or criminal, is commenced which could result in a forfeiture of the Mortgaged Property or otherwise materially impair the Lien created by the Security Instrument or Funding Lender’s interest in the Mortgaged Property.

(h) Borrower fails to perform any of its obligations under this Continuing Covenant Agreement (other than those specified in this Section 9.01), as and when required, which failure continues for a period of 30 days after Notice of such failure by Funding Lender (i) to Borrower, and (ii) to Equity Investor. However, if Borrower’s failure to perform its obligations as described in this Section 9.01(h) is of the nature that it cannot be cured within the 30 day cure period after such Notice from Funding Lender but reasonably could be cured within 90 days, then Borrower and/or Equity Investor will have additional time as determined by Funding Lender in Funding Lender’s Discretion, not to exceed an additional 60 days, in which to cure such default, provided that Borrower and/or Equity Investor has diligently commenced to cure such default during the initial 30 day cure period and diligently pursues the cure of such default. However, no such Notice or cure periods will apply in the case of any such failure that could, in Funding Lender’s judgment, absent immediate exercise by Funding Lender of a right or remedy under this Continuing Covenant Agreement, result in harm to Funding Lender, danger to tenants or third parties, or impairment of the Project Note, the Security Instrument or this Continuing Covenant Agreement or any other security given under any other Financing Document.

(i) Borrower fails to perform any of its obligations as and when required under any Financing Document other than this Continuing Covenant Agreement which failure continues beyond the applicable cure period, if any, specified in that Financing Document.

(j) The holder of any other debt instrument secured by a mortgage, deed of trust or deed to secure debt on the Mortgaged Property exercises any right to declare all amounts due under that debt instrument immediately due and payable.

(k) Any of the following occurs:

(i) Borrower or any SPE Equity Owner commences a Bankruptcy.

(ii) Any party other than Funding Lender or Fiscal Agent commences a Bankruptcy against Borrower or any SPE Equity Owner which (A) results in the entry of an order for relief or any such adjudication or appointment, or (B) has not been dismissed, discharged, or bonded for a period of 90 days.

(iii) Any action or legal proceeding is commenced against Borrower or any SPE Equity Owner seeking issuance of a warrant of attachment, execution, distraint or similar process against all or any substantial part of its assets which results in the entry of any order by a court of competent jurisdiction for any such relief which is not vacated, dismissed, stayed, or bonded pending appeal within 90 days from the entry of such order.

(iv) Borrower or any SPE Equity Owner takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the acts set forth in Section 9.01(k)(i), (ii) or (iii).

(l) Borrower or any SPE Equity Owner has made any representation or warranty in Article V or any other Section of this Continuing Covenant Agreement that is false or misleading in any material respect.

(m) If the Project Loan is secured by an interest under a Ground Lease, Borrower fails to comply with the provisions of Section 6.19.

(n) An event of default occurs under any Supplemental Loan Document.

(o) If the Mortgaged Property is subject to any covenants, conditions and/or restrictions, land use restriction agreements or similar agreements, Borrower fails to perform any of its obligations under any such agreement as and when required, and such failure continues beyond any applicable cure period.

(p) Any of the following occurs with respect to a Guarantor:

(i) A Bankruptcy or other similar action is commenced by or against any Guarantor, unless the conditions set forth in Section 8.01 are satisfied.

(ii) A natural person who is a Guarantor dies, unless the conditions set forth in Section 7.03(b) or Section 8.03, as applicable, are satisfied.

(iii) A Guarantor that is an entity whose term of existence expires prior to the Maturity Date fails to comply with each of the requirements set forth in Section 22 of the Guaranty.

(iv) Guarantor fails to comply with the provisions of the Sections of the Guaranty entitled “Material Adverse Change” or “Minimum Net Worth/Liquidity Requirements” as applicable.

(q) If the Financing Documents require a Rate Cap Agreement, Borrower fails to provide Funding Lender with a Replacement Rate Cap Agreement prior to the expiration of the then-existing Rate Cap Agreement.

(r) through (ii) are reserved.

(jj) Any default, event of default, or breach (however such terms may be defined in the Regulatory Agreement) under a Regulatory Agreement which continues beyond the applicable cure period, if any.

(kk) through (fff) are reserved.

**9.02 Protection of Funding Lender’s Security; Security Instrument Secures Future Advances**.

(a) If Borrower fails to perform any of its obligations under this Continuing Covenant Agreement or any other Financing Document, or if any action or proceeding is commenced which purports to affect the Mortgaged Property, Funding Lender’s security or Funding Lender’s rights under this Continuing Covenant Agreement, including eminent domain, insolvency, code enforcement, civil or criminal forfeiture, enforcement of Hazardous Materials Laws, fraudulent conveyance or reorganizations or proceedings involving a bankrupt or decedent, then Funding Lender, in Funding Lender’s Discretion, may make such appearances, file such documents, disburse such sums and take such actions as Funding Lender reasonably deems necessary to perform such obligations of Borrower and to protect Funding Lender’s interest, including: (i) payment of Attorneys’ Fees and Costs, (ii) payment of fees and out-of-pocket expenses of accountants, inspectors and consultants, (iii) entry upon the Mortgaged Property to make repairs or secure the Mortgaged Property, (iv) procurement of the Insurance required by Section 6.10, (v) payment of amounts which Borrower has failed to pay under Section 6.08, (vi) performance of Borrower’s obligations under Section 6.09, and (vii) advances made by Funding Lender to pay, satisfy or discharge any obligation of Borrower for the payment of money that is secured by a Prior Lien.

(b) Any amounts disbursed by Funding Lender under this Section 9.02, or under any other provision of this Continuing Covenant Agreement that treats such disbursement as being made under this Section 9.02, will be secured by the Security Instrument, will be added to, and become part of, the principal component of the Indebtedness, will be immediately due and payable and will bear interest from the date of disbursement until paid at the Default Rate.

(c) Nothing in this Section 9.02 will require Funding Lender to incur any expense or take any action.

**9.03 Remedies**.

(a) Upon an Event of Default, Funding Lender may exercise any or all of its rights and remedies provided under this Continuing Covenant Agreement or the other Financing Documents and otherwise provided at law or in equity, and Borrower will pay all costs associated with such exercise, including Attorneys’ Fees and Costs.

(b) Each right and remedy provided in this Continuing Covenant Agreement is distinct from all other rights or remedies under this Continuing Covenant Agreement 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.

(c) Funding Lender will have all remedies available to Funding Lender under Revised Article 9 of the Uniform Commercial Code of the Property Jurisdiction, the Financing Documents and under applicable law.

(d) Funding Lender may also retain (i) all money in the Reserve Funds, including interest, and (ii) any Rate Cap Payment, and in Funding Lender’s sole and absolute discretion, may apply or direct Fiscal Agent to apply such amounts, without restriction and without any specific order of priority, to the payment of any and all Indebtedness.

(e) If a claim or adjudication is made that Funding Lender has acted unreasonably or unreasonably delayed acting in any case where, by law or under this Continuing Covenant Agreement or the other Financing Documents, Funding Lender has an obligation to act reasonably or promptly, then Funding Lender will not be liable for any monetary damages, and Borrower’s sole remedy will be limited to commencing an action seeking injunctive relief or declaratory judgment. Any action or proceeding to determine whether Funding Lender has acted reasonably will be determined by an action seeking declaratory judgment.

(f) Reserved.

**9.04 Forbearance**.

(a) Reserved.

(b) Any forbearance by Funding Lender in exercising or directing Fiscal Agent to exercise any right or remedy under this Continuing Covenant Agreement or any other Financing Document or otherwise afforded by applicable law, will not be a waiver of or preclude the exercise of any other right or remedy, or the subsequent exercise of any right or remedy. Enforcement by Funding Lender of any security for the Indebtedness will not constitute an election by Funding Lender of remedies that preclude the exercise of any other right available to Funding Lender. Funding Lender’s receipt of any partial payment or awards or proceeds under Sections 6.10 and 6.11 will not operate to cure or waive any Event of Default.

**9.05 Reserved**.

ARTICLE X RELEASE; INDEMNITY.

**10.01 Release**. Borrower covenants and agrees that, in performing any of its duties under this Continuing Covenant Agreement, none of Funding Lender, Loan Servicer or any of their respective 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 that no party will be released from liability for any losses, claims, damages, liabilities or expenses arising out of the willful misconduct or gross negligence of such party.

**10.02 Indemnity**.

(a) General Indemnity. Borrower agrees to indemnify, hold harmless and defend Funding Lender and any custodian, fiscal agent and other fiduciaries who hold or have held a full or partial interest in the Governmental Note for the benefit of third parties, 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, or as a result of: (i) any failure of the Mortgaged Property to comply with the laws, regulations, ordinance, code or decree of any Governmental Authority, including those pertaining to the Americans with Disabilities Act, zoning, occupancy and subdivision of real property, (ii) any obligation of Borrower under any Lease, and (iii) any accident, injury or death to any natural person on the Mortgaged Property or any damage to personal property located on the Mortgaged Property, except that no such party will be indemnified from liability for any losses, claims, damages, liabilities or expenses arising out of the willful misconduct or gross negligence of such party.

(b) Environmental Indemnity. Borrower agrees to indemnify, hold harmless and defend Indemnitees from and against all proceedings, claims, damages, penalties and costs (whether initiated or sought by Governmental Authorities or private parties), including Attorneys’ Fees and Costs and remediation costs, whether incurred in connection with any judicial or administrative process or otherwise, arising directly or indirectly from any of the following:

(i) Any breach of any representation or warranty of Borrower in Section 5.05.

(ii) Any failure by Borrower to perform any of its obligations under Section 6.12.

(iii) The existence or alleged existence of any Prohibited Activity or Condition.

(iv) The presence or alleged presence of Hazardous Materials on or under the Mortgaged Property or in any of the Improvements.

(v) The actual or alleged violation of any Hazardous Materials Law.

(c) Indemnification Regarding ERISA Covenants. **BORROWER WILL INDEMNIFY FUNDING LENDER AND DEFEND AND HOLD FUNDING LENDER HARMLESS FROM AND AGAINST ALL CIVIL PENALTIES, EXCISE TAXES, OR OTHER LOSS, COST, DAMAGE AND EXPENSE (INCLUDING REASONABLE ATTORNEYS’ FEES AND COSTS INCURRED IN THE INVESTIGATION, DEFENSE AND SETTLEMENT OF CLAIMS AND LOSSES INCURRED IN CORRECTING ANY PROHIBITED TRANSACTION OR IN THE SALE OF A PROHIBITED LOAN, AND IN OBTAINING ANY INDIVIDUAL PROHIBITED TRANSACTION EXEMPTION UNDER ERISA THAT MAY BE REQUIRED, IN FUNDING LENDER’S SOLE AND ABSOLUTE DISCRETION) THAT FUNDING LENDER MAY INCUR, DIRECTLY OR INDIRECTLY, AS A RESULT OF DEFAULT UNDER SECTION 6.20**. **THIS INDEMNITY WILL SURVIVE ANY TERMINATION, SATISFACTION OR FORECLOSURE OF THE SECURITY INSTRUMENT.**

(d) Securitization Indemnification.

(i) Borrower agrees to indemnify, hold harmless and defend the Indemnified Parties from and against any and all proceedings, losses, claims, damages, liabilities, penalties, costs and expenses (whether initiated or sought by Governmental Authorities or private parties), including Attorneys’ Fees and Costs, which may be incurred by any Indemnified Party (either directly or indirectly), which arise out of, are in any way related to, or are as a result of a claim that the Borrower Information contains an untrue statement of any material fact or the Borrower Information omits to state a material fact necessary in order to make the statements therein, in light of the circumstances under which they are made, not misleading (collectively, the “Securitization Indemnification”).

(ii) Borrower will not be liable under the Securitization Indemnification if the claim is based on Borrower Information that Funding Lender has materially misstated or materially misrepresented in the Disclosure Document.

(iii) For purposes of this Section 10.02(d):

(A) “Borrower Information” includes any information provided at any time to Funding Lender or Loan Servicer by Borrower, any SPE Equity Owner, any Guarantor, any Property Manager or any Indemnification Affiliate of the foregoing with respect to any of the following:

(1) Any Person listed in Section 10.02(d)(iii)(A).

(2) The Loans.

(3) The Mortgaged Property.

Borrower Information includes: (I) representations and warranties made in the Financing Documents, (II) financial statements of Borrower, any SPE Equity Owner, any Designated Entity for Transfers or any Guarantor, and (III) operating statements and rent rolls with respect to the Mortgaged Property. Borrower Information does not include any information provided directly to Funding Lender or Loan Servicer by a third-party such as an appraiser or an environmental consultant.

(B)“**Indemnification Affiliate**” of any Person means:

(1) Any other individual or entity that is, directly or indirectly, one of the following:

(I) In Control of the applicable Person.

(II) Under the Control of the applicable Person.

(III) Under common Control with the applicable Person.

(2) Any individual that is a director or officer of the applicable Person.

(3) Any individual that is a director or officer of any entity described in clause (1) of this definition.

(C) An “Issuer Person” includes all the following:

(1) Any Person that has filed the registration statement, if any, relating to the Securitization, and any Affiliate of such Person.

(2) Any Person acting as issuer, depositor, sponsor and/or in a similar capacity with respect to the Securitization, and any Affiliate of such Person.

(D) The “Issuer Group” includes all the following:

(1) Each director and officer of any Issuer Person.

(2) Each entity that Controls any Issuer Person within the meaning of Section 15 of the Securities Act or Section 20 of the Securities Exchange Act.

(E) The “Underwriter Group” includes all the following:

(1) Each entity which is acting as an underwriter, manager, placement agent, initial purchaser or in a similar capacity with respect to the Securitization.

(2) Each entity that Controls any such entity described in Section 10.02(d)(iii)(E)(1) within the meaning of Section 15 of the Securities Act or Section 20 of the Securities Exchange Act and is acting as an underwriter, manager, placement agent, initial purchaser or in a similar capacity with respect to the Securitization.

(3) The directors and officers of the entities described in Section 10.02(d)(iii)(E)(1) and Section 10.02(d)(iii)(E)(2).

(F) “Indemnified Party” or “Indemnified Parties” means one or more of Funding Lender, Issuer Person, Issuer Group, and Underwriter Group.

(G) The term “Funding Lender” includes its officers and directors.

(e) Economic Sanctions and AML Laws Indemnity. Borrower agrees to indemnify, hold harmless and defend Indemnitees from and against all proceedings, claims, damages, penalties and costs (whether initiated or sought by Governmental Authorities or private parties), including Attorneys’ Fees and Costs and remediation costs, whether incurred in connection with any judicial or administrative process or otherwise, arising directly or indirectly from any failure of Borrower or any Borrower Principal to comply with the Economic Sanctions Laws or AML Laws (“**Economic Sanctions and AML Laws Indemnity**”).

(f) Selection and Direction of Counsel. Counsel selected by Borrower to defend Indemnitees will be subject to the approval of those Indemnitees. In any circumstances in which the indemnity under this Article X applies, Funding Lender may employ its own legal counsel and consultants to prosecute, defend or negotiate any claim or legal or administrative proceeding and Funding Lender, with the prior written consent of Borrower (which will not be unreasonably withheld, delayed or conditioned) may settle or compromise any action or legal or administrative proceeding. However, unless an Event of Default has occurred and is continuing, or the interests of Borrower and Funding Lender are in conflict, as determined by Funding Lender in Funding Lender’s Discretion, Funding Lender will permit Borrower to undertake the actions referenced in this Article X so long as Funding Lender approves such action, which approval will not be unreasonably withheld or delayed. Borrower will reimburse Funding Lender upon demand for all costs and expenses incurred by Funding Lender, including all costs of settlements entered into in good faith, consultants’ fees and Attorneys’ Fees and Costs.

(g) Settlement or Compromise of Claims. Borrower will not, without the prior written consent of those Indemnitees who are named as parties to a claim or legal or administrative proceeding (“**Claim**”), settle or compromise the Claim if the settlement (i) results in the entry of any judgment that does not include as an unconditional term the delivery by the claimant or plaintiff to Funding Lender of a written release of those Indemnitees, satisfactory in form and substance to Funding Lender or (ii) may materially and adversely affect Funding Lender, as determined by Funding Lender in Funding Lender’s Discretion.

(h) Effect of Changes to Project Loan on Indemnification Obligations. Borrower’s obligation to indemnify the Indemnitees will not be limited or impaired by any of the following, or by any failure of Borrower or any Guarantor to receive notice of or consideration for any of the following:

(i) Any amendment or modification of any Financing Document.

(ii) Any extensions of time for performance required by any Financing Document.

(iii) Any provision in any of the Financing Documents limiting Funding Lender’s recourse to property securing the Indebtedness or limiting the personal liability of Borrower or any other party for payment of all or any part of the Indebtedness.

(iv) The accuracy or inaccuracy of any representations and warranties made by Borrower under this Continuing Covenant Agreement or any other Financing Document.

(v) The release of Borrower or any other Person, by Funding Lender or by operation of law, from performance of any obligation under any Financing Document.

(vi) The release or substitution in whole or in part of any security for the Indebtedness.

(vii) Funding Lender’s failure to properly perfect any Lien or security interest given as security for the Indebtedness.

(i) Payments by Borrower. Borrower will, at its own cost and expense, do all of the following:

(i) Pay or satisfy any judgment or decree that may be entered against any Indemnitee or Indemnitees in any legal or administrative proceeding incident to any matters against which Indemnitees are entitled to be indemnified under this Article X.

(ii) Reimburse Indemnitees for any expenses paid or incurred in connection with any matters against which Indemnitees are entitled to be indemnified under this Article X.

(iii) Reimburse Indemnitees for any and all expenses, including Attorneys’ Fees and Costs, paid or incurred in connection with the enforcement by Indemnitees of their rights under this Article X, or in monitoring and participating in any legal or administrative proceeding.

(j) Other Obligations. The provisions of this Article X will be in addition to any and all other obligations and liabilities that Borrower may have under applicable law or under other of the Financing Documents, and each Indemnitee will be entitled to indemnification under this Article X without regard to whether Funding Lender or that Indemnitee has exercised any rights against the Mortgaged Property or any other security, pursued any rights against any Guarantor, or pursued any other rights available under the Financing Documents or applicable law. If Borrower consists of more than one Person, the obligation of those Persons to indemnify the Indemnitees under this Article X will be joint and several. The obligation of Borrower to indemnify the Indemnitees under this Article X will survive any repayment or discharge of the Indebtedness, any foreclosure proceeding, any foreclosure sale, any delivery of any deed in lieu of foreclosure, and any release of record of the Lien of the Security Instrument. Notwithstanding the foregoing, if Funding Lender has never been a mortgagee-in-possession of, or held title to, the Mortgaged Property, Borrower will have no obligation to indemnify the Indemnitees under this Article X after the date of the release of record of the Lien of the Security Instrument by payment in full at the Maturity Date or by voluntary prepayment in full.

(k) and (l) are reserved.

ARTICLE XI MISCELLANEOUS PROVISIONS.

**11.01 Waiver of Statute of Limitations, Offsets and Counterclaims**. Borrower waives the right to assert any statute of limitations as a bar to the enforcement of this Continuing Covenant Agreement or the Lien of the Security Instrument or to any action brought to enforce any Financing Document. Borrower waives the right to assert a counterclaim, other than a compulsory counterclaim, in any action or proceeding brought against it by Funding Lender or otherwise to offset any obligations to make the payments required by the Financing Documents. No failure by Funding Lender to perform any of its obligations under the Financing Documents will be a valid defense to, or result in any offset against, any payments that Borrower is obligated to make under any of the Financing Documents.

**11.02 Governing Law; Consent to Jurisdiction and Venue**.

(a) This Continuing Covenant Agreement, and any Financing Document which does not itself expressly identify the law which is to apply to it, will be governed by the laws of the Property Jurisdiction.

(b) Borrower agrees that any controversy arising under or in relation to the Project Note, the Security Instrument, this Continuing Covenant Agreement, or any other Financing Document may be litigated in the Property Jurisdiction. The state and federal courts and authorities with jurisdiction in the Property Jurisdiction will have jurisdiction over all controversies that may arise under or in relation to the Project Note, any security for the Indebtedness or any other Financing Document. Borrower 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 11.02 is intended to limit Funding Lender’s right to bring any suit, action or proceeding relating to matters under this Continuing Covenant Agreement in any court of any other jurisdiction.

**11.03 Notice**.

(a) All Notices under or concerning this Continuing Covenant Agreement 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 set forth in Section 1.05.

Funding Lender will endeavor to provide a courtesy copy of any Notice given to Borrower by Funding Lender to the Person specified at the address set forth in Section 1.05. However, the failure to provide such courtesy copy will not affect the validity or sufficiency of any Notice to Borrower, will not affect Funding Lender’s rights and remedies under this Continuing Covenant Agreement or any other Financing Document, and will not subject Funding Lender to any claims by or liability to Borrower or any other Person. No Person listed as a courtesy copy Notice recipient will be a third-party beneficiary of any of the Financing Documents.

(b) Any party to this Continuing Covenant Agreement may change the address to which Notices intended for it are to be directed by means of Notice given to the other party in accordance with this Section 11.03. Each party agrees that it will not refuse or reject delivery of any Notice given in accordance with this Section 11.03, 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 11.03 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.

(c) Any Notice under the Project Note and any other Financing Document that does not specify how Notices are to be given will be given in accordance with this Section 11.03.

(d) Funding Lender agrees that, if Equity Investor is a Borrower Principal, Funding Lender will endeavor as a courtesy to Equity Investor to deliver a copy of such Notice to Equity Investor, provided however that any failure to provide such courtesy copy Notice will not affect the validity or sufficiency of any Notice to Borrower, will not affect Funding Lender’s rights and remedies under this Continuing Covenant Agreement or under any other Financing Document, nor subject Funding Lender to any claims by or liability to Equity Investor. Such Notice will be given in the manner provided in this Section, at Equity Investor’s address set forth in Article I. Equity Investor may change the address to which Notices intended for it are to be directed by means of Notice given to Funding Lender in accordance with this Section 11.03.

(e) Reserved.

**11.04 Successors and Assigns Bound**. This Continuing Covenant Agreement will bind the respective successors and assigns of Borrower and Funding Lender, and the rights granted by this Continuing Covenant Agreement will inure to Funding Lender’s successors and assigns.

**11.05 Joint and Several (and Solidary) Liability**. If more than one Person signs this Continuing Covenant Agreement as Borrower, the obligations of such Persons will be joint and several. For a Mortgaged Property located in Louisiana, if more than one Person signs this Continuing Covenant Agreement as Borrower, the obligations of such Persons will be joint and several and solidary, and wherever the phrase “joint and several” appears in this Continuing Covenant Agreement, the phrase is amended to read “joint, several, and solidary.”

**11.06 Relationship of Parties; No Third-Party Beneficiary**.

(a) The relationship between Funding Lender and Borrower will be solely that of creditor and debtor, respectively, and nothing contained in this Continuing Covenant Agreement will create any other relationship between Funding Lender and Borrower. Nothing contained in this Continuing Covenant Agreement will constitute Funding Lender as a joint venturer, partner, or agent of Borrower, or render Funding Lender liable for any debts, obligations, acts, omissions, representations or contracts of Borrower.

(b) No creditor of any party to this Continuing Covenant Agreement and no other Person will be a third-party beneficiary of this Continuing Covenant Agreement or any other Financing Document. Any arrangement (“**Servicing Arrangement**”) between Funding Lender and any Loan Servicer for loss sharing or interim advancement of funds will constitute a contractual obligation of such Loan Servicer that is independent of the obligation of Borrower for the payment of the Indebtedness. Borrower will not be a third-party beneficiary of any Servicing Arrangement. No payment by Loan Servicer under any Servicing Arrangement will reduce the amount of the Indebtedness.

**11.07 Severability; Amendments**.

(a) The invalidity or unenforceability of any provision of this Continuing Covenant Agreement will not affect the validity or enforceability of any other provision, and all other provisions will remain in full force and effect. This Continuing Covenant Agreement contains the entire agreement among the parties as to the rights granted and the obligations assumed in this Continuing Covenant Agreement.

(b) This Continuing Covenant Agreement may not be amended or modified except by a writing signed by the party against whom enforcement is sought.

**11.08 Disclosure of Information**.

(a) Borrower acknowledges that Funding Lender and Freddie Mac may provide third parties with an existing or prospective interest in the servicing, enforcement, evaluation, performance, ownership, purchase, participation or Securitization of the Funding Loan, including any of the Rating Agencies, any entity maintaining databases on the underwriting and performance of commercial mortgage loans, as well as governmental regulatory agencies having regulatory authority over Funding Lender or Freddie Mac, any and all information which Funding Lender or Freddie Mac now has or may hereafter acquire relating to the Funding Loan, the Project Loan, the Mortgaged Property, Borrower, any SPE Equity Owner or any Guarantor, as Funding Lender or Freddie Mac determines necessary or desirable and that such information may be included in disclosure documents in connection with a Securitization or syndication of participation interests, including a prospectus, prospectus supplement, offering memorandum, private placement memorandum or similar document (each, a “**Disclosure Document**”) and also may be included in any filing with the Securities and Exchange Commission pursuant to the Securities Act or the Securities Exchange Act. To the fullest extent permitted under applicable law, Borrower irrevocably waives all rights, if any, to prohibit such disclosure, including any right of privacy.

(b) Borrower agrees that Funding Lender and Freddie Mac may publicly use, at their discretion, the name of the Mortgaged Property, photographs of the Mortgaged Property, and basic transaction information (for example, the number of units in the Mortgaged Property and the Project Loan Amount) relating to the Project Loan.

**11.09 Determinations by Funding Lender**. Unless otherwise provided in this Continuing Covenant Agreement, 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 Continuing Covenant Agreement, 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 (or its designated representative) at its sole and exclusive option and in its sole and absolute discretion.

**11.10 Change in Loan Servicer; Servicing of the Loans**. 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. Borrower hereby acknowledges that the Loans, the Security Instrument and this 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. Borrower agrees that it will direct all deposits, questions, requests or other communications regarding this Continuing Covenant Agreement directly to Loan Servicer.

**11.11 Supplemental Financing**.

(a) This Section 11.11 will apply only if at the time of any application referred to in Section 11.11(b), Freddie Mac has in effect a product described in the *Guide* under which it purchases supplemental mortgages on multifamily properties that meet specified criteria (“**Supplemental Mortgage Product**”). For purposes of this Section 11.11 only, the term “Freddie Mac” will include any affiliate or subsidiary of Freddie Mac.

(b) After the first anniversary of the Effective Date, or, if there are any Supplemental Loans affecting the Mortgaged Property, after the first anniversary of the date of the Supplemental Note for the most recently-incurred Supplemental Loan, provided that there is at least 3 years remaining on the term of the Project Loan, Freddie Mac will consider an application from an originating lender that is generally approved by Freddie Mac to sell mortgages to Freddie Mac (“**Approved Seller/Servicer**”) under the Supplemental Mortgage Product for the purchase by Freddie Mac of a proposed indebtedness of Borrower to the Approved Seller/Servicer in an amount not less than $1,000,000 to be secured by one or more Supplemental Instruments on the Mortgaged Property. Freddie Mac will purchase each Supplemental Loan secured by the Mortgaged Property if each of the following conditions is satisfied:

(i) At the time of the proposed Supplemental Loan, no Event of Default may have occurred and be continuing and no event or condition may have occurred and be continuing that, with the giving of Notice or the passage of time, or both, would become an Event of Default.

(ii) Borrower and the Mortgaged Property must be acceptable to Freddie Mac under its Supplemental Mortgage Product.

(iii) New loan documents must be entered into to reflect each Supplemental Loan, such documents to be acceptable to Freddie Mac in its discretion.

(iv) No Supplemental Loan may cause the combined debt service coverage ratio of the Mortgaged Property after the making of that Supplemental Loan to be less than the Minimum DSCR. As used in this Section 11.11, the term “combined debt service coverage ratio” means, with respect to the Mortgaged Property, the ratio of:

(A) the annual net operating income from the operations of the Mortgaged Property at the time of the proposed Supplemental Loan,

to

(B) the aggregate of the annual principal and interest payable on all of the following:

(1) the Indebtedness under this Continuing Covenant Agreement (using the Project Loan Amortization Schedule attached to the Project Note),

(2) any “Indebtedness” as defined in any security instruments recorded against the Mortgaged Property (using the actual amortization schedule for any Supplemental Loans),

(3) the proposed “Indebtedness” for any Supplemental Loan (using the actual amortization schedule for the proposed “Indebtedness”), and

(4) any other indebtedness determined by Freddie Mac in accordance with its then-current credit policy.

As used in this Section 11.11, “annual principal and interest” with respect to a floating rate loan will be calculated by Freddie Mac using an interest rate equal to one of the following:

(X) If the loan has an internal interest rate cap, the capped interest rate.

(Y) If the loan has an external interest rate cap, the Amortizing Strike Rate plus the Margin.

(Z) If the loan has no interest rate cap, the greater of (I) 7%, or (II) the then-current Index Rate plus the Margin plus 300 basis points.

The annual net operating income of the Mortgaged Property will be as determined by Freddie Mac in its discretion considering factors such as income in place at the time of the proposed Supplemental Loan and income during the preceding 12 months, and actual, historical and anticipated operating expenses. Freddie Mac will determine the combined debt service coverage ratio of the Mortgaged Property based on its underwriting. Borrower will provide Freddie Mac such financial statements and other information as Freddie Mac may require to make these determinations.

(v) No Supplemental Loan may cause the combined loan to value ratio of the Mortgaged Property after the making of that Supplemental Loan to exceed the Maximum Combined LTV, as determined by Freddie Mac. As used in this Section 11.11, “combined loan to value ratio” means, with respect to the Mortgaged Property, the ratio, expressed as a percentage, of:

(A) the aggregate outstanding principal balances of all of the following:

(1) the Indebtedness under this Continuing Covenant Agreement,

(2) any “Indebtedness” as defined in any security instruments recorded against the Mortgaged Property,

(3) the proposed “Indebtedness” for any Supplemental Loan, and

(4) any other indebtedness determined by Freddie Mac in accordance with its then-current credit policy.

to

(B) the value of the Mortgaged Property.

Freddie Mac will determine the combined loan to value ratio of the Mortgaged Property based on its underwriting. Borrower will provide Freddie Mac such financial statements and other information Freddie Mac may require to make these determinations. In addition, Freddie Mac, at Borrower’s expense, may obtain MAI appraisals of the Mortgaged Property in order to assist Freddie Mac in making the determinations under this Section 11.11. If Freddie Mac requires an appraisal, then the value of the Mortgaged Property that will be used to determine whether the Maximum Combined LTV has been met will be the lesser of the appraised value set forth in such appraisal or the value of the Mortgaged Property as determined by Freddie Mac.

(vi) The Organizational Documents are amended to permit Borrower to incur additional debt in the form of Supplemental Loans (Funding Lender will consent to such amendment(s)).

(vii) One or more Persons acceptable to Freddie Mac executes and delivers to the Approved Seller/Servicer a Guaranty in a form acceptable to Freddie Mac with respect to the exceptions to non-recourse liability described in Freddie Mac’s form loan agreement, unless Freddie Mac has elected to waive its requirement for a Guaranty.

(viii) The loan term of each Supplemental Loan will be coterminous with the Indebtedness or longer than the Indebtedness, in Freddie Mac’s discretion.

(ix) The Lockout Period, Yield Maintenance Period, and period during which a prepayment charge is due for each Supplemental Loan will be, respectively, coterminous with each of the Lockout Period, Yield Maintenance Period and Prepayment Premium Period of the Indebtedness.

(x) The interest rate of each Supplemental Loan will be determined by Freddie Mac in its discretion.

(xi) Funding Lender enters into an intercreditor agreement (“**Intercreditor Agreement**”) acceptable to Freddie Mac and to Funding Lender for each Supplemental Loan.

(xii) Borrower pays all fees and other expenses charged by Funding Lender, Freddie Mac, the Approved Seller/Servicer, and the Rating Agencies (including reasonable Attorneys’ Fees and Costs) in connection with reviewing and originating each Supplemental Loan.

(xiii) Commencing on the date that the first Supplemental Loan is originated and continuing for so long as any Supplemental Loan is outstanding, Funding Lender will begin collection of any deferred Monthly Replacement Reserve Deposit or Revised Monthly Replacement Reserve Deposit for Capital Replacements in accordance with Section 4.04(b) (if applicable) as well as Imposition Reserve Deposits for any of the following Impositions marked ‘Deferred’ in Section 1.03:

(A) Property Insurance premiums or premiums for other Insurance required by Funding Lender under Section 6.10; provided, however, Funding Lender will not begin collection of any deferred Property Insurance premiums payable with respect to insurance coverage requirements under Section 6.10 that are otherwise satisfied by a blanket or master policy of insurance covering the Mortgaged Property.

(B) Taxes and payments in lieu of taxes (PILOT).

(C) Ground Rents.

Such deposits will be credited to the payment of any such required Imposition Reserve Deposits under any Supplemental Loan.

(xiv) If any covenants, conditions, and restrictions affecting the Mortgaged Property provide for a lien for any assessments or other unpaid amounts, Borrower will provide satisfactory evidence that such lien will be subordinate to the lien of the Supplemental Instrument.

(xv) All other requirements of the Supplemental Mortgage Product must be met unless Freddie Mac has elected to waive one or more of its requirements.

(xvi) through (xviii) are reserved.

(xix) Unless otherwise provided for in the Project Loan Agreement, Borrower provides Governmental Lender’s consent to the proposed Supplemental Loan and the recording of the related Supplemental Instrument on the Mortgaged Property (or confirmation in writing that such consent is not required under any of the Financing Documents).

(c) No later than 5 Business Days after Funding Lender’s receipt of a written request from Borrower, Funding Lender will provide the following information to an Approved Seller/Servicer:

(i) The then-current outstanding principal balance of the Indebtedness.

(ii) Payment history of the Indebtedness.

(iii) Whether any Reserve Funds are being collected under this Continuing Covenant Agreement and the amount of each such Reserve Deposit as of the date of the request.

(iv) Whether any Repairs, Capital Replacements or improvements or rental achievement or burn-off guaranty requirements are existing or outstanding under the terms of this Continuing Covenant Agreement.

(v) A copy of the most recent inspection report for the Mortgaged Property.

(vi) Whether any modifications or amendments have been made to the Financing Documents for the Indebtedness since origination of the Indebtedness and, if applicable, a copy of such modifications and amendments.

(vii) Whether to Funding Lender’s knowledge any Event of Default exists under the Indebtedness.

Funding Lender will only be obligated to provide this information in connection with Borrower’s request for a Supplemental Loan from an Approved Seller/Servicer. Notwithstanding anything in this Section 11.11 to the contrary, if Freddie Mac is the owner of the Governmental Note, this Section 11.11(c) is not applicable.

(d) Funding Lender will have no obligation to consent to any mortgage or Lien on the Mortgaged Property that secures any indebtedness other than the Indebtedness, except as set forth in this Continuing Covenant Agreement.

(e) If a Supplemental Loan is made to Borrower, Borrower agrees that the terms of the Intercreditor Agreement will govern with respect to any distributions of excess proceeds by Funding Lender to the Supplemental Lender, and Borrower agrees that Funding Lender may distribute any excess proceeds received by Funding Lender pursuant to the Financing Documents to Supplemental Lender pursuant to the Intercreditor Agreement.

**11.12 Reserved**.

**11.13 Reserved.**

**11.14 Funding Lender’s Rights to Sell or Securitize**. Borrower acknowledges that Funding Lender, and each successor to Funding Lender’s interest, may (without prior Notice to Borrower or Borrower’s prior consent), sell or grant participations in the Funding Loan (or any part of the Funding Loan), sell or subcontract the servicing related to the Project Loan, securitize the Funding Loan or include the Funding Loan as part of a trust. Borrower, at its expense, agrees to cooperate with all reasonable requests of Funding Lender in connection with any of the foregoing including taking the following actions:

(a) Executing any financing statements or other documents deemed necessary by Funding Lender or its transferee to create, perfect or preserve the rights and interest to be acquired by such transferee.

(b) Delivering revised organizational documents, counsel opinions, and executed amendments to the Financing Documents satisfactory to the Rating Agencies.

(c) Providing updated financial information with appropriate verification through auditors’ letters, if required by Funding Lender. (If Funding Lender requires that Borrower’s updated financial information be accompanied by appropriate verification through auditors’ letters, then Funding Lender will reimburse Borrower for the costs which Borrower reasonably incurs in connection with obtaining such auditors’ letters.)

(d) Providing updated information on all litigation proceedings affecting Borrower or any Borrower Principal as required in Section 6.16.

(e) Reviewing information contained in any Disclosure Document and providing: (i) a mortgagor estoppel certificate, (ii) written confirmation of Borrower’s indemnification obligations under this Continuing Covenant Agreement, (iii) if requested by Funding Lender, a letter from Borrower’s counsel addressed to Funding Lender with respect to Borrower Information contained in any Disclosure Document, stating that no facts have come to the attention of Borrower’s counsel in the course of its review of any Disclosure Document which causes it to believe that the Borrower Information contains an untrue statement of any material fact or the Borrower Information omits to state a material fact necessary in order to make the statements therein, in light of the circumstances under which they are made, not misleading and (iv) such other information about Borrower, any SPE Equity Owner, any Guarantor, any Property Manager or the Mortgaged Property as Funding Lender may require for Funding Lender’s offering materials.

Notwithstanding anything set forth above in this Section 11.14, Borrower will not be required to execute any document that changes the interest rate, the stated maturity date or the amortization of principal set forth in the Project Note, or that modifies or amends any essential economic terms of the Project Loan.

**11.15 Cooperation with Rating Agencies and Investors**. Borrower covenants and agrees that if Funding Lender decides to include the Funding Loan as an asset of a Secondary Market Transaction, Borrower will do all the following:

(a) At Funding Lender’s request, meet with representatives of the Rating Agencies and/or investors to discuss the business and operations of the Mortgaged Property.

(b) Permit Funding Lender or its representatives to provide related information to the Rating Agencies and/or investors.

(c) Cooperate with the reasonable requests of the Rating Agencies and/or investors in connection with all the foregoing.

**11.16 Letter of Credit Requirements**.

(a) Any Letter of Credit required under this Continuing Covenant Agreement must satisfy the following conditions:

(i) It must be a clean, irrevocable, unconditional standby letter of credit.

(ii) It must name Funding Lender as the sole beneficiary and permit Funding Lender to assign the Letter of Credit without further consent from Issuer.

(iii) It must have an initial term of not less than 12 months.

(iv) It must be in the form required by Funding Lender.

(v) It must provide that it may be drawn on by Funding Lender, in whole or in part, by presentation to Issuer of a sight draft without any other restrictions on the right to draw.

(vi) It must be issued by an Issuer meeting Funding Lender’s requirements, which Issuer (i) must be an Eligible Institution, and (ii) may not, unless Funding Lender agrees in writing, be an affiliate of Borrower or Funding Lender.

(vii) It must be obtained on behalf of Borrower by a Person other than Borrower’s general partners or managing members if Borrower is a general or limited partnership or limited liability company. Neither Borrower nor the general partners or managing members, if applicable, may have any liability or other obligations under any reimbursement agreement with respect to the Letter of Credit.

(viii) It may not be secured by a lien on all or any part of the Mortgaged Property or related Personalty.

(ix) When delivered to Funding Lender, it must be accompanied by an opinion acceptable to Funding Lender in Funding Lender’s Discretion issued by counsel to the Issuer that includes opinions as to Issuer’s power and authority to issue the Letter of Credit and the enforceability of the Letter of Credit against Issuer.

(b) If at any time the Issuer of a Letter of Credit held by Funding Lender ceases to be an Eligible Institution, Funding Lender will have the right to immediately draw down the Letter of Credit in full and hold the Proceeds in an escrow account in accordance with the terms of this Continuing Covenant Agreement.

(c) Each Letter of Credit held by Funding Lender pursuant to this Continuing Covenant Agreement provides additional collateral for the Indebtedness in addition to the lien of the Security Instrument.

**11.17 through 11.20 are reserved**.

**11.21 Time is of the Essence**. Time is of the essence with respect to each covenant of the Financing Documents.

**11.22 Electronic Signatures**. With respect to any E-Signed Document, the following provisions apply:

(a) Borrower represents and warrants that the intention of the natural Person signing on behalf of Borrower or Borrower Principal on each E-Signed Document was to attribute its respective signature to such E-Signed Document, and that the E-Signature represents the signer’s signature to the E-Signed Document.

(b) Borrower understands and agrees that the E-Signatures on all E-Signed Documents are legally binding.

(c) Borrower waives all rights to repudiate the authenticity or validity of any E-Signature on any E-Signed Document to the extent such repudiation is based in whole or in part on the fact that such signature is not in an original handwritten form.

(d) Borrower agrees that the law governing E-Signatures will be the federal Electronic Signatures in Global and National Commerce Act of 2000 (15 U.S. Code, Chapter 96) (E-SIGN) and/or the Uniform Electronic Transactions Act of 1999 as promulgated by the U.S. Uniform Law Commission for consideration and enactment by the states (UETA), and that under no circumstances will E-Signatures be governed by the Uniform Computer Information Transactions Act (UCITA).

**11.23 Reserved.**

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

**11.25 Construction**.

(a) The captions and headings of the Articles and Sections of this Continuing Covenant Agreement are for convenience only and will be disregarded in construing this Continuing Covenant Agreement.

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

(c) All Schedules, Exhibits, and Riders attached to or referred to in this Continuing Covenant Agreement or the Project Note, as applicable, are incorporated by reference in this Continuing Covenant Agreement or the Project Note, as applicable.

(d) Any reference in this Continuing Covenant Agreement or the Project Note to a statute or regulation will be construed as referring to that statute or regulation as amended from time to time.

(e) Use of the singular in this Continuing Covenant Agreement and the Project Note includes the plural and use of the plural includes the singular.

(f) As used in this Continuing Covenant Agreement and the Project Note, the term “including” means “including, but not limited to” and the term “includes” means “includes without limitation.”

(g) As used in this Continuing Covenant Agreement and the Project Note, the use of one gender includes the other gender, as the context may require.

(h) Unless the context requires otherwise, (i) except as provided in subsection (i) of this Section 11.25, any definition of or reference to any agreement, instrument or other document (including, without limitation, the other Financing Documents) in this Continuing Covenant Agreement or the Project Note will be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth in the provisions of such agreement, instrument or other document, this Continuing Covenant Agreement and the Project Note), and (ii) any reference in this Continuing Covenant Agreement or the Project Note to any Person will be construed to include such Person’s successors and assigns.

(i) Any reference in this Continuing Covenant Agreement or the Project Note to “Funding Lender’s requirements,” “as required by Funding Lender,” or similar references will be construed, after Securitization, to mean Funding Lender’s requirements or standards as determined in accordance with Funding Lender’s and Loan Servicer’s obligations under the terms of the Securitization documents.

(j) Any reference in this Continuing Covenant Agreement or the Project Note to “Funding Lender’s consent,” will be construed to mean Funding Lender’s written consent.

(k) Nothing in this Continuing Covenant Agreement will be deemed to amend, or relieve Borrower of its obligations under, any other Financing Document to which it is a party. Conversely, to the extent that the provisions of any other Financing Document allow Borrower to take certain actions, or not to take certain actions, with regard for example to the encumbrances listed on the Schedule of Title Exceptions, incurrence of indebtedness, transfers of assets, maintenance of financial ratios and similar matters, Borrower nevertheless will be fully bound by the provisions of this Continuing Covenant Agreement.

(l) If any provision of this Continuing Covenant Agreement makes reference to specific provisions of any other Financing Document, such other provision will be deemed to be incorporated into this Continuing Covenant Agreement by reference as though specifically set forth in this Continuing Covenant Agreement (with such changes and modifications as may be provided). Such incorporation will continue in full force and effect until all of Borrower’s obligations pursuant to Article III above are paid in full. No amendment, modification, consent, waiver or termination with respect to any such provisions will be effective as to this Continuing Covenant Agreement until specifically agreed to in writing by the parties hereto.

**11.26 Survival of Representations and Warranties**. The representations and warranties set forth in this Continuing Covenant Agreement will survive until the Indebtedness is paid in full; however, the representations and warranties set forth in Section 5.05 will survive beyond repayment of the entire Indebtedness, to the extent provided in Section 10.02(j).

**11.27 Reserved**.

**11.28 Reserved**.

**11.29 Funding Lender Representative**. Borrower acknowledges that Funding Lender Representative may exercise all rights of Funding Lender under and pursuant to this Continuing Covenant Agreement and each of the other Financing Documents, as provided in Section 11.05 of the Funding Loan Agreement.

**11.30 WAIVER OF TRIAL BY JURY.**

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

**(b) BORROWER 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.**

ARTICLE XII DEFINITIONS.

The following terms, when used in this Continuing Covenant Agreement (including when used in the recitals), will have the following meanings:

“**Affiliate**” of any Person means any other individual or entity that is, directly or indirectly, one of the following:

(i) In Control of the applicable Person.

(ii) Under the Control of the applicable Person.

(iii) Under common Control with the applicable Person.

“**Affiliate Transfer**” is defined in Section 7.03(a)(i).

“**AML Laws**” means applicable federal anti-money laundering laws and regulations including 18 U.S.C. §§ 1956 and 1957, as amended.

"**Amortizing Strike Rate**” is defined in the Project Note, if applicable.

“**Approved Seller/Servicer**” is defined in Section 11.11(b).

“**Approved Substitute Equity Investor**” means a Permissible Substitute Equity Investor that meets the Equity Investor Substitution Transfer Requirements.

“**Assignment of Management Agreement**” means the Assignment of Management Agreement and Subordination of Management Fees, dated as of the Effective Date, among Borrower, Funding Lender and Property Manager, including all schedules, riders, allonges and addenda, as such Assignment of Management Agreement may be amended from time to time, and any future Assignment of Management Agreement and Subordination of Management Fees executed in accordance with Section 6.09(d).

“**Assumption Agreement**” means Funding Lender’s then-standard assumption agreement that, among other things, requires the transferee to perform all obligations of Borrower set forth in the Project Note, the Security Instrument, this Continuing Covenant Agreement and any other Financing Document.

“**Attorneys’ Fees and Costs**” means all of the following:

(i) Fees and out of pocket costs of Funding Lender’s and Loan Servicer’s attorneys, as applicable, including costs of Funding Lender’s and Loan Servicer’s in-house counsel, support staff costs, costs of preparing for litigation, computerized research, telephone and facsimile transmission expenses, mileage, deposition costs, postage, duplicating, process service, videotaping and similar costs and expenses.

(ii) Costs and fees of expert witnesses, including appraisers.

(iii) Investigatory fees.

(iv) Costs for any opinion required by Funding Lender pursuant to the terms of the Financing Documents.

“**Bankruptcy**” means any of the following whether voluntary or involuntary, other than a case or proceeding initiated by Funding Lender:

(i) Any case under the Bankruptcy Code or any similar federal or state law for the relief of debtors.

(ii) Any proceeding for the reorganization, recapitalization or adjustment or marshalling of a debtor’s assets or liabilities.

(iii) Any receivership or assignment for the benefit of creditors.

(iv) Any liquidation, dissolution, winding up, or similar proceeding, whether or not involving bankruptcy or insolvency.

(v) Any case or proceeding similar to those set forth in (i) through (iv) of this definition.

(vi) Any other proceeding of any type or nature in which substantially all claims of creditors are determined and any payment or distribution is or may be made on account of such claims.

“**Bankruptcy Code**” means the United States Bankruptcy Code, 11 U.S.C. Section 101 et seq., as amended from time to time.

“**Beneficiary**” means an Immediate Family Member (or an entity Controlled by an Immediate Family Member) who acquires an interest by devise, descent or operation of law due to the death of a natural person.

“**Books and Records**” is defined in Section 6.07(a).

“**Borrower**” means all Persons identified as “Borrower” on Page 1 of this Continuing Covenant Agreement, together with their successors and assigns.

“**Borrower GP/Manager**” means individually and collectively the managing general partner(s), managing member(s) or controlling shareholder(s) of Borrower, but if the Mortgaged Property is located in California, does not include the non-profit managing general partner of Borrower required to meet the requirements of the California Revenue and Taxation Code for the welfare exemption.

“**Borrower GP/Manager Principal**”means individually and collectively the individuals and entities that Control the Borrower GP/Manager.

“**Borrower Information**” is defined in Section 10.02(d).

“**Borrower Principal**” means any of the following:

(i) Any general partner of Borrower (if Borrower is a partnership).

(ii) Any manager, managing member, non-member manager, or member of the board of managers of Borrower (if Borrower is a limited liability company).

(iii) Any settlor (grantor) of a living or revocable Trust (if Borrower is a living or revocable Trust).

(iv) Any trustee of a Trust (if Borrower is a Trust).

(v) Any Person (limited partner, member or shareholder) with a collective direct or indirect equity interest in Borrower equal to or greater than 25%, including any equitable ownership interest or any beneficial interest in an Illinois land trust, an irrevocable trust, or a Delaware Statutory Trust.

(vi) Any master tenant operating all or a substantial portion of the Mortgaged Property pursuant to a master lease structure, such as a Delaware Statutory Trust structure.

(vii) Any Guarantor of all or any portion of the Project Loan or of any obligations of Borrower under the Financing Documents.

(viii) Any person or entity that Funding Lender (A) determined as of the Effective Date or (B) determines as of the date of any Transfer is a Borrower Principal, including any person or entity that may take Control of Borrower in accordance with the terms of this Continuing Covenant Agreement.

“**Borrower Proof of Loss Maximum**” is the amount set forth in Section 1.05.

“**Borrower Proof of Loss Threshold**” is the amount set forth in Section 1.05.

“**Business Day**” means any day other than a Saturday, a Sunday, or any other day on which Fiscal Agent, Funding Lender or the national banking associations are not open for business.

“**Capital Replacement**” means the replacement of (i) those items recommended by the engineer and listed in Section VI of the Form 1105 or Form 1108 in the property condition report or physical risk report delivered in connection with the Loans, and (ii) any other items Funding Lender may approve subject to any conditions that Funding Lender may require, all in Funding Lender’s sole and absolute discretion.

“**Claim**” is defined in Section 10.02(g).

“**Clean Site Assessment**” means a current Site Assessment which (i) is dated within 90 days prior to the date of the proposed Transfer, and (ii) evidences no presence of Hazardous Materials on the Mortgaged Property and no other Prohibited Activities or Conditions with respect to the Mortgaged Property.

“**Closing Date**” means the Effective Date.

“**Commitment Letter**” means the fully executed commitment letter between Loan Servicer and Borrower issued in connection with the Funding Loan, as such document may have been modified, amended, or extended.

“**Completion Date**” means, with respect to any Repair, the date specified for that Repair in the Repair Schedule of Work, as such date may be extended by Funding Lender in writing.

“**Compliance Period**”is defined in Section 7.02(c)(ii).

“**Condemnation**” is defined in Section 6.11(a).

“**Conditional Transfer Fee**” means a fee of $25,000 that is paid (i) in addition to and not in lieu of the Transfer Processing Fee or Special Transfer Processing Fee, as applicable, and (ii) when certain Conditionally Permitted Transfers – Category III are completed.

“**Conditionally Permitted Transfer**” means a Transfer that will not cause an Event of Default under this Continuing Covenant Agreement if certain conditions in this Continuing Covenant Agreement are satisfied. The Conditionally Permitted Transfers are set forth in Section 7.03.

“**Conditionally Permitted Transfer - Category I**” includes the Transfers set forth in Section 7.03(a) for which Borrower must pay the Transfer Processing Fee.

“**Conditionally Permitted Transfer - Category II**” includes the Transfers set forth in Section 7.03(b) for which Borrower must pay the Special Transfer Processing Fee.

“**Conditionally Permitted Transfer - Category III**” includes the Transfers set forth in Section 7.03(c) for which Borrower must pay the Transfer Processing Fee and the Conditional Transfer Fee.

“**Construction Phase Financing Agreement**” is defined in the Recitals of this Continuing Covenant Agreement.

“**Continuing Covenant Agreement**” means this Continuing Covenant Agreement by and between Borrower and Initial Funding Lender, dated as of the Effective Date, as set forth on Page 1 of this Continuing Covenant Agreement.

“**Control**” means to possess, directly or indirectly, the power to manage an entity, including the authority to legally bind the entity.

“**Controlling Interest**” means an interest held by a Person that gives such person the legal right to Control an entity, including the interest held by any of the following:

(i) Any general partner in a partnership.

(ii) Any manager (whether a member manager, nonmember manager, or a manager on a board of managers) in a limited liability company.

(iii) Any director on a board of directors for a corporation or other entity that is not a Public Company.

(iv) Any trustee of a Trust.

(v) The settlor of a revocable Trust.

(vi) Any Person with a position and/or decision rights that are similar to those listed in (i) through (v).

Neither of the following alone will be deemed sufficient to constitute a Controlling Interest: (i) the ownership of the majority of the equitable or legal interests in such entity or (ii) the right to vote on “major decisions” for such entity.

“**Crowdfunding**” means raising capital from marketing directed to the public at large (via the internet or otherwise) for investment in one specific property under the exemptions provided under Title III or Title IV of the Jumpstart Our Business Startups (JOBS) Act.

“**Default Rate**” is defined in the Project Note.

“**Defeasance Fee**” means a non-refundable fee in the amount of $10,000.

“**Defeasance Notice**” is defined in Section 4.04(c) of the Project Loan Agreement.

“**Departing Equity Owner**” is defined in Section 7.03(c)(ii).

“**Departing** **Manager**” is defined in Section 7.03(c)(i).

“**Designated Entity for Transfers**” means each entity so identified in Section 1.02, and that entity’s successors and permitted assigns.

“**Disclosure Document**” is defined in Section 11.08.

“**E-Signature**”means any form of signature provided on behalf of Borrower or a Borrower Principal other than an original handwritten signature, including any type of image created in any manner (whether electronically or otherwise) which image could reasonably be interpreted as an indication of the signer’s intent to sign the document.

“**E-Signed Document**” means any document received by Loan Servicer or Funding Lender in connection with the underwriting, origination, transfer, Securitization, or servicing of the Project Loan or Funding Loan, or the correction or amendment of any such document, to which an E-Signature is affixed, attached, or otherwise logically associated.

“**Economic Sanctions and AML Laws Indemnity**”is defined in Section 10.02(e).

“**Economic Sanctions Laws**” means the foreign assets control regulations, 31 C.F.R. Chapter V, as amended, and any amending federal legislation or executive order relating thereto, as administered by OFAC.

“**Effective Date**” is defined on Page 1 of this Continuing Covenant Agreement.

“**Eligible Account**” means an identifiable account which is separate from all other funds held by the holding institution that is either (i) an account or accounts maintained with the corporate trust department of a federal or state-chartered depository institution or trust company which complies with the definition of Eligible Institution, or (ii) a segregated trust account or accounts maintained with the corporate trust department of a federal or state chartered depository institution or trust company acting in its fiduciary capacity which, in the case of a state chartered depository institution or trust company is subject to regulations substantially similar to 12 C.F.R. §9.10(b), having in either case a combined capital and surplus of at least $50,000,000 and subject to supervision or examination by federal and state authority. An Eligible Account will not be evidenced by a certificate of deposit, passbook or other instrument.

“**Eligible Institution**” means a federal or state chartered depository institution or trust company insured by the Federal Deposit Insurance Corporation, the short term unsecured debt obligations or commercial paper of which are rated at least A-1 by S&P Global Ratings, P-1 by Moody’s Investors Service, Inc. and F-3 by Fitch, Inc. in the case of accounts in which funds are held for 30 days or less or, in the case of letters of credit or accounts in which funds are held for more than 30 days, the long-term unsecured debt obligations of which are rated at least “A” by Fitch, Inc. and S&P Global Ratings, and “A2” by Moody’s Investors Service, Inc. If at any time an Eligible Institution does not meet the required rating, Loan Servicer must move the Eligible Account within 30 days of such event to an appropriately rated Eligible Institution.

“**Environmental Inspections**” is defined in Section 6.12(e).

“**Environmental Permit**” means any permit, license, or other authorization issued under any Hazardous Materials Law with respect to any activities or businesses conducted on or in relation to the Mortgaged Property.

“**Equity Investor**” means the entity specified in Article I, together with its permitted successors and assigns, including any Related Entity Investor Transferee and/or any Approved Substitute Equity Investor.

“**Equity Investor GP/Manager**” means individually and collectively the managing general partner(s), managing member(s) or controlling shareholder(s) of Equity Investor.

“**Equity Investor Substitution Transfer**” is defined in Section 7.03(c)(iv)(A).

“**Equity Investor Substitution Transfer Requirements**” means the requirements set forth in the definition of Financial Organization Transferee or LIHTC Syndicator Transferee, as applicable.

“**Equity Investor Substitution Transfer Review Package**” means the items required to be submitted to Funding Lender pursuant to Section 7.03(c)(iv)(B).

“**ERISA**” means the Employee Retirement Income Security Act of 1974, as amended.

“**Event of Default**” means the occurrence of any event listed in Section 9.01.

“**Existing Owner**” means any Person that owned a direct or indirect interest in Borrower or had a Controlling Interest in Borrower on the Effective Date and whose name appears in the Borrower organizational chart attached as Exhibit A to this Continuing Covenant Agreement.

“**Extraordinary Servicer’s Fees and Expenses**” means all those fees, expenses and disbursements incurred by Loan Servicer for extraordinary services from time to time over and above the Servicing Fee, as set forth in a detailed invoice to Borrower.

“**FHFA**” means the Federal Housing Finance Agency.

“**FHFA SCP List**” means the Suspended Counterparty List maintained by the FHFA which is currently published at https://www.fhfa.gov/SupervisionRegulation/LegalDocuments/Pages/SuspendedCounterpartyProgram.aspx

“**Financial Organization Transferee**” means a financial institution, financial service firm or insurance company, or a wholly-owned subsidiary of any of the foregoing, that is regulated and supervised by a federal or state regulatory agency and that meets the following requirements:

(i) it has a long-term credit rating of BBB- or better by S&P Global Ratings and Baa3 or better by Moody’s Investors Service, Inc. or a minimum net worth of no less than $500,000,000;

(ii) it has at least 7 years’ experience in investing in low-income housing tax credits; and

(iii) it has asset management resources and expertise with the systems and facilities necessary for support or has engaged an external asset management firm to provide those services at the time of the Equity Investor Substitution Transfer.

“**Financing Documents**” means, collectively, the Funding Loan Agreement, the Governmental Note, the TEL Regulatory Agreement, the Tax Certificate, the Project Note, the Project Loan Agreement, the Security Instrument, this Continuing Covenant Agreement, any Subordination Agreement(s), all guaranties, all indemnity agreements, all collateral agreements, Uniform Commercial Code filings, O&M Programs, the MMP and any other documents now or in the future executed by Borrower, any Guarantor or any other Person in connection with the Funding Loan or the Project Loan evidenced by the Project Note, as such documents may be amended, supplemented or otherwise modified from time to time.

“**First Project Loan Payment Date**” is defined in the Project Note.

“**Fiscal Agent**” is defined in the Recitals of this Continuing Covenant Agreement.

“**Fixtures**” means all property owned by Borrower which is attached to the Land or the Improvements so as to constitute a fixture under applicable law, including: machinery, equipment, engines, boilers, incinerators and installed building materials; systems and equipment for the purpose of supplying or distributing heating, cooling, electricity, gas, water, air or light; antennas, cable, wiring and conduits used in connection with radio, television, security, fire prevention or fire detection or otherwise used to carry electronic signals; telephone systems and equipment; elevators and related machinery and equipment; fire detection, prevention and extinguishing systems and apparatus; security and access control systems and apparatus; plumbing systems; water heaters, ranges, stoves, microwave ovens, refrigerators, dishwashers, garbage disposers, washers, dryers and other appliances; light fixtures, awnings, storm windows and storm doors; pictures, screens, blinds, shades, curtains and curtain rods; mirrors; cabinets, paneling, rugs and floor and wall coverings; fences, trees and plants; swimming pools; and exercise equipment.

“**Freddie Mac**” means the Federal Home Loan Mortgage Corporation.

“**Freddie Mac Commitment**” is defined in the Recitals of this Continuing Covenant Agreement.

“**Freddie Mac Purchase Date**” is defined in the Recitals of this Continuing Covenant Agreement.

“**Funding Lender**” is defined in the Recitals of this Continuing Covenant Agreement.

“**Funding Lender’s Discretion**” means Funding Lender’s reasonable discretion unless otherwise set forth in this Continuing Covenant Agreement.

“**Funding Loan**” is defined in the Recitals of this Continuing Covenant Agreement.

“**Funding Loan Agreement**” is defined in the Recitals of this Continuing Covenant Agreement.

“**GAAP**” means generally accepted accounting principles.

“**Governmental Authority**” means any board, commission, department, agency or body of any municipal, county, state or federal governmental unit, or any subdivision of any of them, that has or acquires jurisdiction over the Mortgaged Property, or the use, operation or improvement of the Mortgaged Property, or over Borrower.

“**Governmental Lender**” is defined in the Recitals of this Continuing Covenant Agreement.

“**Governmental Note**” is defined in the Recitals of this Continuing Covenant Agreement.

“**Guarantor**” means the Person(s) required by Funding Lender to guaranty all or a portion of Borrower’s obligations under the Financing Documents, as set forth in the Guaranty, the Guaranty of Completion, and the Guaranty of Operating Deficits. The required Guarantors as of the Effective Date are set forth in Section 1.02.

“**Guarantor Not in Control of Borrower**” means a Guarantor who does not Control Borrower or a Designated Entity for Transfers.

“**Guaranty**” means the Guaranty executed by Guarantor and/or any Replacement Guaranty or supplemental guaranty executed pursuant to the terms of this Continuing Covenant Agreement.

“**Hazardous Materials**” means 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; lead and lead-based paint; asbestos or asbestos containing materials in any form that is or could become friable; underground or above-ground storage tanks, whether empty or containing any substance; any substance the presence of which on the Mortgaged Property is prohibited by any Governmental Authority; any substance that requires special handling and any other material or substance now or in the future that (i) is defined as a “hazardous substance,” “hazardous material,” “hazardous waste,” “toxic substance,” “toxic pollutant,” “contaminant,” or “pollutant” by or within the meaning of any Hazardous Materials Law, or (ii) is regulated in any way by or within the meaning of any Hazardous Materials Law.

“**Hazardous Materials Law**” and “**Hazardous Materials Laws**” means all federal, state and local laws, ordinances, regulations and standards, rules, policies and other governmental requirements, administrative rulings and court judgments and decrees in effect now or in the future, including all amendments, that relate to Hazardous Materials or the protection of human health or the environment and apply to Borrower or to the Mortgaged Property. Hazardous Materials Laws include 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.

“**HVAC System**” is defined in Section 6.10(a)(v).

“**Immediate Family Members**” means a Person’s spouse, parent, child (including stepchild), grandchild (including step-grandchild), sibling, or domestic partner.

“**Imposition Reserve Deposits**” is defined in Section 4.02(a).

“**Impositions**” means all Taxes, Insurance premiums, Ground Rents, and any Other Impositions.

“**Improvements**” means the buildings, structures and improvements now constructed or at any time in the future constructed or placed upon the Land, including any future alterations, replacements, and additions.

“**Indebtedness**” means the principal of, interest at the applicable rate(s) set forth in the Project Note on, and all other amounts due at any time under, the Project Note, the Project Loan Agreement, this Continuing Covenant Agreement or any other Financing Document, including Prepayment Premium (as defined in the Project Note), default interest, and advances as provided in Section 9.02 to protect the security of the Security Instrument.

“**Indemnification** **Affiliate**” is defined in Section 10.02(d).

“**Indemnified Party/ies**” is defined in Section 10.02(d).

“**Indemnitees**” is defined in Section 10.02(a).

“**Index Rate**” is defined in the Project Note, if applicable.

“**Initial Funding Lender**” is defined in the Recitals of this Continuing Covenant Agreement.

“**Initial Replacement Reserve Deposit**” means the amount set forth in the Replacement Reserve Deposits table in Section 1.03 for Initial Replacement Reserve Deposit.

“**Insolvent**” means the total of all of a Person’s liabilities (whether secured or unsecured, contingent or fixed, or liquidated or unliquidated) is in excess of the value of all of the assets of the Person that are available to satisfy claims of creditors.

“**Insurance**” means Property Insurance, liability insurance and all other insurance that Funding Lender requires Borrower to maintain pursuant to this Continuing Covenant Agreement.

“**Intercreditor Agreement**” is defined in Section 11.11(b).

“**Intrafamily Transfer**” is defined in Section 7.03(a)(ii).

“**Issuer**” means the issuer of any Letter of Credit.

“**Issuer Group**” is defined in Section 10.02(d).

“**Issuer Person**” is defined in Section 10.02(d).

“**Land**” means the land described in Exhibit A of the Security Instrument.

“**Leases**” means all present and future leases, subleases, licenses, concessions or grants or other possessory interests now or hereafter in force, whether oral or written, covering, or affecting the Mortgaged Property, or any portion of the Mortgaged Property and all modifications, extensions or renewals.

“**Lender**” means the entity identified as “Funding Lender” in this Continuing Covenant Agreement.

“**Letter of Credit**” means any letter of credit required under the terms of this Continuing Covenant Agreement or any other Financing Document.

“**Lien**” means any mortgage, deed of trust, deed to secure debt, security interest or other lien or encumbrance on the Mortgaged Property.

“**Lien on Ownership Interest**” means any security interest or other lien or encumbrance on any direct or indirect ownership interest in Borrower.

“**LIHTC Syndicator Transferee**” means a syndicated tax credit fund or such fund’s manager (or the parent company of such fund’s manager) that meets the following requirements:

1. it has a minimum net worth of at least 2 times the Project Loan Amount and a minimum liquidity of at least the greater of (A) 200% of the annual debt service on the Project Loan or (B) 20% of the Project Loan Amount;
2. it has at least 7 years’ experience in syndicating low-income housing tax credits;
3. it has the financial capacity to meet its current obligations, together with any remaining capital contributions payable to Borrower under its Organizational Documents; and
4. it has syndicated at least $1,400,000,000 of allocated low-income housing tax credits over the past 7 years (in the aggregate), and at least $200,000,000 in each of the last 3 years.

“**Loan Agreement**” means, individually or collectively as the context may require, the Project Loan Agreement and/or this Continuing Covenant Agreement, as such agreements may be amended from time to time.

“**Loan Documents**” means the Financing Documents.

“**Loan Servicer**” means the entity that from time to time is designated by Funding Lender to collect payments and deposits and receive Notices under the Project Note, the Security Instrument, this Continuing Covenant Agreement, and any other Financing Document, and otherwise to service the Loans for the benefit of Funding Lender. Unless Borrower receives Notice to the contrary, Loan Servicer is the entity identified in the Recitals of this Continuing Covenant Agreement.

“**Lockout Period**” is defined in Section 1 of the Project Note.

“**LTV at Origination**” is defined in Section 1.05.

“**Manager**”or“**Managers**” means a Person who is named or designated as (i) a non-member manager, manager, managing member, or manager on a board of managers or otherwise acts in the capacity of a manager or managing member pursuant to the limited liability company agreement or similar instrument under which the limited liability company is formed or operated, or (ii) a general partner of a general or limited partnership pursuant to a partnership agreement or similar agreement under which the partnership is formed or operated.

“**Manager Transfer**” is defined in Section 7.03(c)(i).

“**Margin**” is defined in the Project Note, if applicable.

“**Material Adverse Effect**” means a significant detrimental effect on any of the following:

(i) The Mortgaged Property.

(ii) The business, prospects, profits, operations, or condition (financial or otherwise) of Borrower.

(iii) The enforceability, validity, perfection or priority of the Lien of any Financing Document.

(iv) The ability of Borrower to perform any obligations under any Financing Document.

“**Maturity Date**” means the “**Scheduled Maturity Date**” as defined in the Project Note.

“**Maximum Combined LTV**”means the loan to value percentage set forth in Section 1.05.

“**Membership Interests**” are all the ownership interests in Borrower owned by Membership Interests Seller.

“**Membership Interests Seller**” is defined in Section 1.05.

“**Minimum DSCR**” means the debt service coverage ratio set forth in Section 1.05.

“**MMP**” is defined in Section 6.09(f).

“**Modified Non-Residential Lease**” means an extension or modification of any Non-Residential Lease, which Non-Residential Lease was in existence as of the Effective Date.

“**Mold**” means mold, fungus, microbial contamination, or pathogenic organisms.

“**Monthly Replacement Reserve Deposit**” means the amount set forth in the Replacement Reserve Deposits table in Section 1.03 for Monthly Replacement Reserve Deposits.

“**Mortgaged Property**” means all of Borrower’s present and future right, title and interest in and to all of the following:

(i) The Land, or, if Borrower’s interest in the Land is pursuant to a Ground Lease, the Ground Lease and the Leasehold Estate.

(ii) The Improvements.

(iii) The Fixtures.

(iv) The Personalty.

(v) All current and future rights, including air rights, development rights, zoning rights and other similar rights or interests, easements, tenements, rights of way, strips and gores of land, streets, alleys, roads, sewer rights, waters, watercourses and appurtenances related to or benefiting the Land or the Improvements, or both, and all rights-of-way, streets, alleys and roads which may have been or may in the future be vacated.

(vi) All proceeds paid or to be paid by any insurer of the Land, the Improvements, the Fixtures, the Personalty, or any other part of the Mortgaged Property, whether or not Borrower obtained the Insurance pursuant to Funding Lender’s requirement.

(vii) All awards, payments and other compensation made or to be made by any municipal, state or federal authority with respect to the Land or the Leasehold Estate, as applicable, the Improvements, the Fixtures, the Personalty or any other part of the Mortgaged Property, including any awards or settlements resulting from Condemnation proceedings or the total or partial taking of the Land, the Improvements, the Fixtures, the Personalty or any other part of the Mortgaged Property under the power of eminent domain or otherwise and including any conveyance in lieu of Condemnation.

(viii) All contracts, options, and other agreements for the sale of the Land, or the Leasehold Estate, as applicable, the Improvements, the Fixtures, the Personalty or any other part of the Mortgaged Property entered into by Borrower now or in the future, including cash or securities deposited to secure performance by parties of their obligations.

(ix) All proceeds from the conversion, voluntary or involuntary, of any of the items described in items (i) through (viii) of this definition, into cash or liquidated claims, and the right to collect such proceeds.

(x) All Rents and Leases.

(xi) All earnings, royalties, accounts receivable, issues and profits from the Land, the Improvements or any other part of the Mortgaged Property, and all undisbursed proceeds of the Project Loan.

(xii) All Imposition Reserve Deposits.

(xiii) All refunds or rebates of Impositions by any Governmental Authority or insurance company (other than refunds applicable to periods before the real property tax year in which this Continuing Covenant Agreement is dated).

(xiv) All tenant security deposits which have not been forfeited by any tenant under any Lease and any bond or other security in lieu of such deposits.

(xv) All names under or by which any of the Mortgaged Property may be operated or known, and all trademarks, trade names and goodwill relating to any of the Mortgaged Property.

(xvi) If required by the terms of this Continuing Covenant Agreement, all rights under any Letter of Credit and the Proceeds, as such Proceeds may increase or decrease from time to time.

(xvii) If the Project Note provides for interest to accrue at a floating or variable rate and there is a Rate Cap Agreement, the Rate Cap Collateral.

(xviii) through (xxv) are reserved.

(xxvi) All other assets of Borrower, whether now owned or acquired after the Effective Date.

(xxvii) Reserved.

(xxviii) Reserved.

“**New Non-Residential Lease**” is any Non-Residential Lease not in existence as of the Effective Date.

“**No Adverse Effect Opinion**” means an opinion of Bond Counsel addressed to Fiscal Agent and Funding Lender that a proposed action or amendment will not adversely affect the exclusion of the interest on the Governmental Note from gross income for federal income tax purposes.

“**Non-Controlling Interest**” is an ownership interest in Borrower or in a Designated Entity for Transfers that is not a Controlling Interest, including (i) any limited partnership interest in a partnership, (ii) any non-managing interest in a limited liability company, or (iii) beneficial interests in a Trust that is not a revocable Trust.

“**Non-Residential Lease**” is a Lease of a portion of the Mortgaged Property to be used for non-residential purposes.

“**Non-U.S. Equity Holder**” means any Person with a collective equity interest (whether direct or indirect) of 10% or more in Borrower, and which is either (a) an individual who is not a citizen of the United States, or (b) an entity formed outside the United States.

“**Note**” means the Project Note.

“**Notice**” or “**Notices**” means all notices, demands and other communication required under the Financing Documents, provided in accordance with the requirements of Section 11.03.

“**Notice of Death**” is defined in Section 7.03(b)(i).

“**O&M Program**” is defined in Section 6.12(c).

“**OFAC**” means the U.S. Department of the Treasury’s Office of Foreign Assets Control.

“**OFAC Lists**” means either one of the following:

(i) The OFAC Specially Designated Nationals and Blocked Persons List.

(ii) The OFAC Consolidated Sanctions List.

“**Operating Agreement**” means the Borrower’s limited partnership agreement (if Borrower is a limited partnership) or the Borrower’s operating agreement (if Borrower is a limited liability company) that has been amended and restated with the admission of the Equity Investor as the Borrower’s limited partner or investor member, as such amended and restated limited partnership or operating agreement may be amended.

“**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.

"**Original Project Note**” is defined in the Recitals of this Continuing Covenant Agreement.

“**Original Security Instrument**” is defined in the Recitals of this Continuing Covenant Agreement.

“**Original Strike Rate**” is defined in the Project Note, if applicable.

“**Other Impositions**” means, collectively, (i) water and sewer charges that could become a Lien on the Mortgaged Property and (ii) assessments or other charges that could become a Lien on the Mortgaged Property, including homeowner association dues.

“**Permissible Substitute Equity Investor**” means a Financial Organization Transferee or a LIHTC Syndicator Transferee.

“**Permitted Transfer**” means a Transfer that will not cause an Event of Default under this Continuing Covenant Agreement. The Permitted Transfers are set forth in Section 7.02.

“**Person**”means any natural person, sole proprietorship, corporation, general partnership, limited partnership, limited liability company, limited liability partnership, limited liability limited partnership, joint venture, association, joint stock company, bank, trust, estate, unincorporated organization, any federal, state, county or municipal government (or any agency or political subdivision thereof), endowment fund or any other form of entity.

“**Personalty**” means all of the following:

(i) Accounts (including deposit accounts) of Borrower related to the Mortgaged Property.

(ii) Equipment and inventory owned by Borrower, which are used now or in the future in connection with the ownership, management or operation of the Land or Improvements or are located on the Land or Improvements, including furniture, furnishings, machinery, building materials, goods, supplies, tools, books, records (whether in written or electronic form) and computer equipment (hardware and software).

(iii) Other tangible personal property owned by Borrower which is used now or in the future in connection with the ownership, management or operation of the Land or Improvements or is located on the Land or in the Improvements, including ranges, stoves, microwave ovens, refrigerators, dishwashers, garbage disposers, washers, dryers and other appliances (other than Fixtures).

(iv) Any operating agreements relating to the Land or the Improvements.

(v) Any surveys, plans and specifications, and contracts for architectural, engineering and construction services relating to the Land or the Improvements.

(vi) All other intangible property, general intangibles and rights relating to the operation of, or used in connection with, the Land or the Improvements, including all governmental permits relating to any activities on the Land and including subsidy or similar payments received from any sources, including a Governmental Authority.

(vii) Any rights of Borrower in or under any Letter of Credit.

“**Previously Underwritten Person**” is the Person specified as such in Section 1.02.

“**Prior Borrower Principal**” is the Person specified as such in Section 1.02.

“**Prior Lien**” means a pre-existing mortgage, deed of trust or other Lien encumbering the Mortgaged Property.

“**Proceeds**” means the cash obtained by a draw on a Letter of Credit.

“**Prohibited Activity or Condition**” means each of the following:

(i) The presence, use, generation, release, treatment, processing, storage (including storage in above ground and underground storage tanks), handling or disposal of any Hazardous Materials on or under the Mortgaged Property.

(ii) The transportation of any Hazardous Materials to, from or across the Mortgaged Property.

(iii) Any occurrence or condition on the Mortgaged Property, which occurrence or condition is or may be in violation of Hazardous Materials Laws.

(iv) Any violation of or noncompliance with the terms of any Environmental Permit with respect to the Mortgaged Property.

(v) Any violation or noncompliance with the terms of any O&M Program.

However, the term “Prohibited Activity or Condition” expressly excludes lawful conditions permitted by an O&M Program or the safe and lawful use and storage of quantities of any of the following:

(i) Reserved.

(ii) Pre-packaged supplies, cleaning materials and petroleum products customarily used in the operation and maintenance of comparable multifamily properties.

(iii) Cleaning materials, personal grooming items and other items sold in pre-packaged containers for consumer use and used by tenants and occupants of residential units in the Mortgaged Property.

(iv) Petroleum products used in the operation and maintenance of motor vehicles from time to time located on the Mortgaged Property’s parking areas, so long as all of the foregoing are used, stored, handled, transported and disposed of in compliance with Hazardous Materials Laws.

“**Prohibited Parties List**” means any one or more of the (i) OFAC Lists or (ii) FHFA SCP List.

“**Prohibited Substances**” means any drugs or controlled substances whose use, manufacture, distribution or possession are prohibited or restricted by any law, whether federal, state, or local law (other than drugs and controlled substances maintained and sold in accordance with applicable federal, state and local laws).

“**Prohibited Transfer**”means a Transfer that will constitute an Event of Default under this Continuing Covenant Agreement. The Prohibited Transfers are set forth in Section 7.01.

“**Project Loan**” is defined on Page 1 of this Continuing Covenant Agreement.

“**Project Loan Agreement**” is defined in the Recitals of this Continuing Covenant Agreement.

“**Project Loan Amount**” is the principal balance of the Project Loan as of the Effective Date, as set forth on Page 1 of this Continuing Covenant Agreement, which amount is equal to the principal balance of the Funding Loan as of the Effective Date.

“**Project Loan Payment Date**” is defined in the Project Note.

“**Project Note**” means the Amended and Restated Project Note, dated the Effective Date, from Borrower to the Fiscal Agent, including all riders and addenda thereto, evidencing Borrower’s obligation to repay the Project Loan, as the same may be amended, supplemented or restated from time to time.

“**Property Insurance**” is defined in Section 6.10(a).

“**Property Jurisdiction**” means the jurisdiction in which the Land is located.

“**Property Manager**” means the Person identified as such in Section 1.02 or another residential rental property manager approved by Funding Lender in writing.

“**Property Seller**” is defined in Section 1.05.

“**Public Company**” means (i) a company whose shares are traded on a United States public exchange or a United States over-the-counter exchange with no control over who purchases its shares after the initial public offering, or (ii) a pension fund that is controlled by a United States municipal, county, state, or federal governmental unit or any subsidiary thereof.

“**Rate** **Cap Agreement**” or “**Cap Agreement**” means any interest rate cap agreement, interest rate swap agreement or other interest rate-hedging contract or agreement, in a form acceptable to Funding Lender, obtained by Borrower from a Rate Cap Provider as a requirement of any Financing Document or as a condition of Funding Lender’s making the Funding Loan.

“**Rate Cap Agreement Reserve Fund**”means the account established pursuant to Section 4.07, if applicable, to pay for the cost of a Replacement Rate Cap Agreement.

“**Rate** **Cap Collateral**” or “**Cap Collateral**” means all the following:

(i) The Rate Cap Agreement.

(ii) The Rate Cap Payments.

(iii) All rights of Borrower under any Rate Cap Agreement and all rights of Borrower to all Rate Cap Payments, including contract rights and general intangibles, whether existing now or arising after the Effective Date.

(iv) All rights, liens and security interests or guaranties granted by a Rate Cap Provider or any other Person to secure or guaranty payment of any Rate Cap Payments whether existing now or granted after the Effective Date.

(v) All documents, writings, books, files, records and other documents arising from or relating to any of the foregoing, whether existing now or created after the Effective Date.

(vi) All cash and non-cash proceeds and products of (ii) through (v) of this definition.

“**Rate** **Cap Payment(s)**” or “**Cap Payment(s)**” means all monies payable pursuant to any Rate Cap Agreement by a Rate Cap Provider.

“**Rate** **Cap Provider**” or “**Cap Provider**” means the third-party financial institution approved by Funding Lender that is the counterparty under any Rate Cap Agreement or Replacement Rate Cap Agreement.

“**Rating Agencies**” means Fitch, Inc., Moody’s Investors Service, Inc., or S&P Global Ratings, or any successor entity of the foregoing, or any other nationally recognized statistical rating organization.

“**Regulatory Agreement**” means, individually and collectively, as applicable, the Regulatory Agreements described in Section 1.05, which encumber the Mortgaged Property and are recorded in the applicable land records of the Property Jurisdiction.

“**Regulatory Agreement Agency**” means individually and collectively, as applicable, the Governmental Authority listed in Section 1.05, acting through any authorized representative, or any other Governmental Authority or quasi-governmental authority entitled to enforce the provisions of the Regulatory Agreement.

“**Related Entity Investor Transferee**” is defined in Section 7.03(a)(viii).

“**Related Party**” means all the following:

(i) Borrower, any Guarantor, or any SPE Equity Owner.

(ii) Any Person that holds, directly or indirectly, any ownership interest (including any shareholder, member, or partner) in Borrower, any Guarantor, or any SPE Equity Owner or any Person that has a right to manage Borrower, any Guarantor, or any SPE Equity Owner.

(iii) Any Person in which Borrower, any Guarantor, or any SPE Equity Owner has any ownership interest (direct or indirect) or right to manage.

(iv) Any Person in which any partner, shareholder, or member of Borrower, any Guarantor, or any SPE Equity Owner has an ownership interest or right to manage.

(v) Any Person in which any Person holding an interest in Borrower, any Guarantor, or any SPE Equity Owner also has any ownership interest.

(vi) Any creditor (as defined in the Bankruptcy Code) of Borrower that is related by blood, marriage or adoption to Borrower, any Guarantor, or any SPE Equity Owner.

(vii) Any creditor (as defined in the Bankruptcy Code) of Borrower that is related to any partner, shareholder, or member of, or any other Person holding an interest in, Borrower, any Guarantor, or any SPE Equity Owner.

“**Release of Guarantor Transfer**” is defined in Section 7.03(c)(iii).

“**Released Guarantor**” is defined in Section 7.03(c)(iii).

“**Remedial Work**” is defined in Section 6.12(f).

“**Removal by Equity Investor of Borrower/GP Manager**” is defined in Section 7.03(a)(vii).

“**Rent(s)**” means all rents (whether from residential or non-residential space), revenues and other income of the Land or the Improvements, parking fees, laundry and vending machine income and fees and charges for food, health care and other services provided at the Mortgaged Property, whether now due, past due or to become due, and deposits forfeited by tenants, whether now due, past due or to become due.

“**Rent Schedule**” means a written schedule for the Mortgaged Property showing the name of each tenant, and for each tenant, the space occupied, the lease expiration date, the rent payable for the current month, the date through which rent has been paid, and any related information requested by Funding Lender.

“**Repair** **Disbursement Request**” means Borrower’s written request to Funding Lender in the form attached as Schedule III for the disbursement of money from the Repair Reserve Fund pursuant to Article IV.

“**Repair Disbursement Timing and Amount Limitations**” is defined in Section 1.03.

“**Repair Reserve Deposit**” means the amount set forth in Section 1.03, which is deposited into the Repair Reserve Fund to assure completion of Repairs.

“**Repair Reserve Fund**” means the account which may be established by this Continuing Covenant Agreement into which the Repair Reserve Deposit, and if applicable, any other Repair Reserve Deposit are deposited.

“**Repair Schedule of Work**” means the Repair Schedule of Work in Section 1.03.

“**Repairs**” means the repairs to be made to the Mortgaged Property, as described on the Repair Schedule of Work or as otherwise required by Funding Lender in accordance with this Continuing Covenant Agreement.

“**Replacement Cost**” means the estimated replacement cost of the Improvements, Fixtures, and Personalty (or, when used in reference to a property that is not the Mortgaged Property, all improvements, fixtures, and personalty located on such property), excluding any deduction for depreciation, all as determined annually by Borrower using customary methodology and sources of information acceptable to Funding Lender in Funding Lender’s Discretion. Replacement Cost will not include the cost to reconstruct foundations or site improvements, such as driveways, parking lots, sidewalks, and landscaping.

“**Replacement Guarantor**” means a Person acceptable to Funding Lender that executes a Guaranty in connection with (i) a Transfer, (ii) a Guarantor Status Event, (iii) a Guarantor Bankruptcy, or (iv) the death of a Guarantor, and that meets the Replacement Guarantor Net Worth and Liquidity Requirements.

“**Replacement Guarantor Net Worth and Liquidity Requirements**” means the following requirements that all Guarantors (including any Replacement Guarantors) must collectively satisfy:

(a) A net worth of at least:

(i) $5,000,000 for Project Loans with an unpaid principal balance of the Project Loan at the time of the applicable Transfer of less than $15,000,000.

(ii) $10,000,000 for Project Loans with an unpaid principal balance of the Project Loan at the time of the applicable Transfer of at least $15,000,000 and less than $30,000,000.

(iii) $15,000,000 for Project Loans with an unpaid principal balance of the Project Loan at the time of the applicable Transfer of at least $30,000,000 and less than $50,000,000.

(iv) 30% of the unpaid principal balance of the Project Loan at the time of the applicable Transfer for Loans of at least $50,000,000.

(b) Liquidity equal to the greater of 10% of the unpaid principal balance of the Project Loan at the time of the applicable Transfer or one year of debt service unless another amount is set forth in this Continuing Covenant Agreement. If the Project Loan has a floating interest rate, then the liquidity requirement will be 10% of the unpaid principal balance. If the Project Loan is an interest-only or partial interest only loan, then Funding Lender will calculate one year of debt service using the amortizing debt service.

“**Replacement Guaranty**” means a Guaranty executed by a Replacement Guarantor in a form acceptable to Funding Lender and in substantially the same form as the Guaranty executed on the Effective Date. If the Replacement Guarantor is an entity, then the Replacement Guarantor’s Guaranty will be modified to include, at Replacement Guarantor’s option, either Funding Lender’s current form of the Rider to Guaranty – Material Adverse Change, or Funding Lender’s current form of the Rider to Guaranty – Minimum Net Worth/Liquidity.

“**Replacement Rate Cap Agreement**” or “**Replacement Cap Agreement**” means any Rate Cap Agreement satisfying the provisions of this Continuing Covenant Agreement, using documentation approved by Funding Lender, and purchased by Borrower to replace any initial Rate Cap Agreement or subsequent Rate Cap Agreement.

“**Replacement Reserve Cap**” means the amount set forth in Section 1.03.

“**Replacement Reserve Disbursement Timing and Amount Limitations**” is defined in Section 1.03.

“**Replacement Reserve Fund**” means the account established pursuant to this Continuing Covenant Agreement to defray the costs of Capital Replacements.

“**Required Equity Owner**” means a Person that must maintain at least the Required Equity Ownership Interest, as set forth in Section 1.02.

“**Required Equity Owner Transfer**”is defined in Section 7.03(c)(ii).

“**Required Equity Ownership Interest**” means the minimum percentage of direct or indirect interest in Borrower that the Required Equity Owner must maintain, as set forth in Section 1.02.

“**Reserve Deposit**” means each deposit made or required to be made into a Reserve Fund.

“**Reserve Fund**” means each account established for Imposition Reserve Deposits, the Replacement Reserve Fund, the Repair Reserve Fund (if any), the Rate Cap Agreement Reserve Fund (if any), the Rental Achievement Reserve Fund (if any), and any other account established pursuant to Article IV of this Continuing Covenant Agreement.

“**Reserve Fund Fees**” is defined in Section 4.01(c).

“**Restoration**” is defined in Section 6.10(j)(i).

“**Restricted Non-Residential** **Use**” is any use or operation of the leased premises that may adversely impact (i) the health and safety of the tenants or other individuals at the Mortgaged Property, or (ii) the value, occupancy or rents of the Mortgaged Property, all as determined by Funding Lender in Funding Lender’s Discretion. Restricted Non-Residential Uses include the following:

1. The disposition, distribution or sale of Prohibited Substances or any establishment whose primary business is the sale of merchandise normally used or associated with Prohibited Substances.
2. Any establishment whose primary business is the disposition, distribution, sale or viewing of adult or pornographic materials or activities, including strip clubs and adult bookstores.

(iii) Any use involving the disposition or sale of Hazardous Materials.

(iv) Any establishment whose primary business is gambling or off-track betting.

(v) Any establishment whose primary business is the sale of alcoholic beverages for off-site consumption.

“**Revised Monthly Replacement Reserve Deposit**” means the adjusted amount per month that Funding Lender determines Borrower must deposit in the Replacement Reserve Fund following any adjustment by Funding Lender pursuant to Section 4.04(e).

“**Schedule of Title Exceptions**” is defined in the Security Instrument.

“**Schedule of Work**” means the Schedule of Work in Section 1.03.

“**Second Beneficiary**” is defined in Section 7.03(b)(i).

“**Secondary Market Transaction**” means any of the following:

(i) Any sale or assignment of all or a portion of the Funding Loan to one or more investors, or participations therein.

(ii) Reserved.

(iii) Any deposit of the Funding Loan or a portion of the Funding Loan with a special purpose entity, a trust or under the terms of a custodial or similar pooling arrangement (including but not limited to any such arrangement in which Freddie Mac or an Affiliate thereof acts as the issuer or sponsor) which may sell certificates or other instruments to investors evidencing an ownership interest in the assets of such special purpose entity, trust or custodial or similar pooling arrangement.

(iv) Reserved.

“**Securitization**” means when the Funding Loan or any portion of the Funding Loan is assigned or deposited with a special purpose entity, a trust or under the terms of a custodial or similar pooling arrangement (including but not limited to any such arrangement in which Freddie Mac or an Affiliate thereof acts as the issuer or sponsor) from which certificates or other instruments may be sold to investors evidencing an ownership interest in the assets of such special purpose entity, trust or custodial or similar pooling arrangement.

“**Securitization Indemnification**” is defined in Section 10.02(d).

“**Security Instrument**” means the amended and restated mortgage, deed of trust, deed to secure debt or other similar security instrument dated as of the Effective Date (including any Amended and Restated Security Instrument, Consolidation, Modification and Extension Agreement, Extension and Modification Agreement or similar agreement or instrument amending and restating existing security instruments), together with all riders and addenda thereto, granting a first priority mortgage and security interest in the Mortgaged Property to Fiscal Agent to secure the repayment of the Project Loan and related obligations.

“**Servicing Agreement**” means any servicing agreement or master servicing agreement among Loan Servicer, Fiscal Agent, and Funding Lender relating to the servicing of the Loans and any amendments thereto or replacement thereof.

“**Servicing Arrangement**” is defined in Section 11.06(b).

“**Servicing Fee**” means, with regard to the initial Loan Servicer, the monthly fee due to Loan Servicer in an amount equal to one-twelfth (1/12) of the Servicing Fee Percentage per annum times the outstanding principal balance of the Project Loan, computed using the Interest Calculation Method specified in Section 1 of the Project Note, payable on the dates and remitted by Borrower as provided in Section 3.10 of this Continuing Covenant Agreement. The Servicing Fee for any subsequent Loan Servicer will be as set forth in writing to Borrower by Funding Lender at the time such Loan Servicer is appointed, but in no event will such fee exceed the Servicing Fee set forth in this Continuing Covenant Agreement.

“**Servicing Fee Percentage**” is defined in Section 1.05.

“**Single Purpose Entity**” is defined in Section 6.13(a).

“**Site Assessment**” means an environmental assessment report for the Mortgaged Property prepared at Borrower’s expense by a qualified environmental consultant engaged by Borrower, or by Funding Lender on behalf of Borrower, and approved by Funding Lender, and in a manner reasonably satisfactory to Funding Lender, based upon an investigation relating to and making appropriate inquiries to evaluate the risks associated with Mold and any existence of Hazardous Materials on or about the Mortgaged Property, and the past or present discharge, disposal, release or escape of any such substances, all consistent with the most current version of the ASTM E1527 standard (or any successor standard published by ASTM) and good customary and commercial practice.

“**SPE Equity Owner**” if applicable, means the Person identified as such in Section 1.02. If an SPE Equity Owner is not identified in Section 1.02, then Borrower will not be required to maintain an SPE Equity Owner in its organizational structure during the term of the Project Loan and all references to SPE Equity Owner in this Continuing Covenant Agreement and in the Project Note will be of no force or effect.

“**Special Transfer Processing Fee**” means a nonrefundable fee of $25,000 for Funding Lender’s review of (i) a proposed or completed Conditionally Permitted Transfer – Category II or (ii) certain other actions or events relating to Guarantor set forth in Article VIII.

“**Status Event**” means any of the following events have occurred in connection with an entity:

(i) Termination of its existence.

(ii) Merger or consolidation of the entity with another entity (whether or not the entity is the surviving entity).

(iii) Surrender of its charter.

(iv) Dissolution of the entity.

(v) Liquidation of its assets.

(vi) Division of the entity.

(vii) Reconstitution of the entity into another entity.

(viii) The filing of any document with the applicable governmental authority to effect any action listed in (i) through (vii) of this definition.

“**Supplemental Instrument**” means, for each Supplemental Loan (whether one or more), if any, the Security Instrument executed to secure the Supplemental Note for that Supplemental Loan.

“**Supplemental Lender**” means, for each Supplemental Loan (whether one or more), if any, the lender named in the Supplemental Instrument for that Supplemental Loan and its successors and/or assigns.

“**Supplemental Loan**” means any loan that is subordinate to this Indebtedness and which was originated by an Approved Seller/Servicer as a Supplemental Mortgage Product.

“**Supplemental Loan Documents**” means, for each Supplemental Loan (whether one or more), if any, all documents relating to the loan evidenced by the Supplemental Note for that Supplemental Loan.

“**Supplemental Mortgage Product**” is defined in Section 11.11(a).

“**Supplemental Note**” means, for each Supplemental Loan (whether one or more), if any, the Multifamily Note secured by the Supplemental Instrument for that Supplemental Loan.

“**Tax Code**” means the Internal Revenue Code of the United States, 26 U.S.C. Section 1 et seq., as amended from time to time.

“**Tax Credit Agency**” means the designated agency of the Property Jurisdiction to allocate Tax Credits, acting through any authorized representative.

“**Tax Credit Application**” is defined in Section 5.44.

“**Tax Credit Regulatory Agreement**” means the extended low-income housing commitment, regulatory agreement or restrictive covenants executed or to be executed by Borrower and Tax Credit Agency and properly recorded in the appropriate land records for the Property Jurisdiction, setting forth certain terms and conditions under which the Mortgaged Property is to be operated and that must meet the requirements of Tax Code Section 42(h)(6)(B).

“**Tax Credits**” means the low-income housing tax credits allocated by Tax Credit Agency pursuant to Section 42 of the Tax Code.

“**Taxes**” means all taxes, payments in lieu of taxes (PILOT), assessments, vault rentals and other charges, if any, whether general, special, or otherwise, including all assessments for schools, public betterments and general or local improvements, which are levied, assessed or imposed by any public authority or quasi-public authority, and which, if not paid, will become a Lien on the Land or the Improvements.

“**TEL Regulatory Agreement**” means the Regulatory Agreement indicated as such in Section 1.05.

“**Title Policy**” means the title policy issued to Fiscal Agent and accepted by Funding Lender contemporaneously with the execution of this Continuing Covenant Agreement insuring Fiscal Agent’s interest in the Mortgaged Property.

“**Trade Payables Maximum**” means 2% of the Project Loan Amount.

“**Transfer**” means any of the following:

(i) A sale, assignment, transfer, or other disposition or divestment of any legal or equitable direct or indirect interest in Borrower, any Designated Entity for Transfer, or the Mortgaged Property (whether voluntary, involuntary or by operation of law).

(ii) The granting, creating, or attachment of a Lien, encumbrance, or security interest (whether voluntary, involuntary or by operation of law).

(iii) The issuance or other creation of a legal or equitable ownership interest in a legal entity, including a partnership interest, interest in a limited liability company or corporate stock.

(iv) The withdrawal, retirement, removal, or involuntary resignation of a partner in a partnership or a member or Manager in a limited liability company.

(v) The addition, appointment, substitution, or removal of a manager on a board of managers or a director on a board of directors.

(vi) The termination or revocation of a trust, or the addition, removal, appointment, or substitution of a trustee of a trust.

For purposes of defining the term “Transfer,” the term “partnership” means a general partnership, a limited partnership, a joint venture, a limited liability partnership, or a limited liability limited partnership and the term “partner” means a general partner, a limited partner, or a joint venturer.

“Transfer” does not include any of the following:

(i) A conveyance of the Mortgaged Property at a judicial or non-judicial foreclosure sale under the Security Instrument.

(ii) The Mortgaged Property becoming part of a bankruptcy estate by operation of law under the Bankruptcy Code.

(iii) The filing or recording of a Lien against the Mortgaged Property for local taxes and/or assessments not then due and payable.

“**Transfer Fee**” means a fee paid when the Transfer is completed. Unless otherwise specified, the Transfer Fee will be equal to the lesser of the following:

(i) 1% of the outstanding principal balance of the Indebtedness as of the date of the Transfer.

(ii) $250,000.

“**Transfer of a Controlling Interest Due to Death**” is defined in Section 7.03(b)(i).

“**Transfer Processing Fee**” means a nonrefundable fee of $15,000 for Funding Lender’s review of a proposed or completed Transfer.

“**Transfer to Previously Underwritten Person(s)**” is defined in Section 7.03(a)(iii).

“**Trust**” means a legal entity in which a trustee agrees to hold and manage certain assets or property of the trustor for the benefit of the beneficiary(ies). “Trust” includes a revocable trust, irrevocable trust, testamentary trust, and Delaware Statutory Trust.

“**UCC Collateral**” is defined in Section 2.03.

“**Underwriter Group**” is defined in Section 10.02(d).

“**Uniform Commercial Code**” means the Uniform Commercial Code as promulgated in the applicable jurisdiction.

“**Windstorm Coverage**” is defined in Section 6.10(a)(iv).

ARTICLE XIII INCORPORATION OF ATTACHED RIDERS.

The Riders listed in Section 1.08 are attached to and incorporated into this Continuing Covenant Agreement.

ARTICLE XIV INCORPORATION OF ATTACHED SCHEDULES AND EXHIBITS.

The Schedules and Exhibits listed in Section 1.08, if marked with an “X” in the space provided, are attached to and incorporated into this Continuing Covenant Agreement.

**ARTICLE XV RESERVED.**

**BORROWER**:  
  
\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, a \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
  
  
  
By:   
Name:  
Title:

SIGNATURES CONTINUE ON FOLLOWING PAGE

**FUNDING LENDER**:  
\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, a \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
  
  
  
By:   
Name:  
Title:

Schedule II

**State Specific Provisions by Property Jurisdiction**

If the Property Jurisdiction for the Project Loan is not listed below, then unless the list below is modified pursuant to Exhibit B to this Continuing Covenant Agreement, there are no state-specific modifications of this Continuing Covenant Agreement applicable to the Project Loan.

|  |  |
| --- | --- |
| **Property Jurisdiction** | **State-Specific Provision** |
| Indiana | For purposes of Section 6.17(b) and Section 6.17(c) of this Continuing Covenant Agreement, Attorneys’ Fees and Costs means (i) fees and out‑of‑pocket costs of Governmental Lender’s, Fiscal Agent’s, Funding Lender Representative’s and Loan Servicer’s attorneys, as applicable, including costs of Governmental Lender’s, Fiscal Agent’s, Funding Lender Representative’s and Loan Servicer’s in-house counsel, support staff costs, costs of preparing for litigation, computerized research, telephone and facsimile transmission expenses, mileage, deposition costs, postage, duplicating, process service, videotaping, and similar costs and expenses; (ii) costs and fees of expert witnesses, including appraisers; and (iii) investigatory fees. |
| Kansas | No Oral Agreements. The following is included in this Continuing Covenant Agreement pursuant to K.S.A. Section 16-118(b):  This Continuing Covenant Agreement and all the Financing Documents collectively constitute the written credit agreement which is the final expression of the credit agreement between Borrower and Funding Lender.  This Continuing Covenant Agreement and all the Financing Documents may not be contradicted by evidence of any prior oral credit agreement or of a contemporaneous oral credit agreement between Borrower and Funding Lender.  The following space (which Borrower and Funding Lender agree is sufficient space) is provided for the placement of nonstandard terms, if any:  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_[None]\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.  Borrower and Funding Lender affirm that there is no unwritten oral credit agreement between Borrower and Funding Lender with respect to the subject matter of this Continuing Covenant Agreement and the other Financing Documents.  Funding Lender’s Initials: \_\_\_\_\_\_\_ Borrower’s Initials: \_\_\_\_\_\_\_ |
| Missouri | Oral Agreements. Pursuant to Mo. Rev. Stat. § 432.047, Borrower acknowledges receipt of the following notice.  Oral or unexecuted agreements or commitments to loan money, extend credit or to forbear from enforcing repayment of a debt including promises to extend or renew such debt are not enforceable, regardless of the legal theory upon which it is based that is in any way related to the credit agreement. To protect you (borrower(s)) and us (creditor) from misunderstanding or disappointment, any agreements we reach covering such matters are contained in this writing, which is the complete and exclusive statement of the agreement between us, except as we may later agree in writing to modify it. |

**Schedule III**

**Repair Disbursement Request**

(Revised \_\_-\_\_-2023)

Freddie Mac Loan Number:

Property Name:

|  |  |  |  |
| --- | --- | --- | --- |
| **Borrower**: |  | | |
| **Request Date**: |  | **Continuing Covenant Agreement Effective Date**: |  |

Borrower requests a disbursement from the Repair Reserve Fund in the amount specified below to pay for the Repairs described below and certifies as follows:

(1) Borrower has not previously received a disbursement from the Repair Reserve Fund for any of the items described in this request and the requested disbursement will be used solely to pay a cost or costs allowable under the Continuing Covenant Agreement.

(2) All labor and materials for the Repairs described in this request have been incorporated into the Improvements or suitably stored upon the Mortgaged Property in accordance with standard building practices and applicable law.

(3) Either (a) the materials, supplies, and equipment furnished or installed for the Repairs described in this request are not subject to any Lien or security interest or, (b) the funds to be disbursed pursuant to this request will be used to satisfy any such Lien or security interest.

(4) The Repairs as completed to the applicable stage do not violate any laws, ordinances, rules, or regulations, or building setback lines or restrictions, applicable to the Mortgaged Property.

Capitalized terms used in this request have the meanings given to them in the Continuing Covenant Agreement.

|  |  |  |
| --- | --- | --- |
| **Repair(s) for which disbursement is requested**: | | |
| 1. | | |
| 2. | | |
| 3. | | |
| 4. | | |
| 5. | | |
| 6. | | |
|  | Requested disbursement amount: $\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | |
|  | Estimated cost of completing Repairs that are incomplete as of the Request Date: $\_\_\_\_\_\_\_\_\_\_\_\_ | |
|  | Disbursement to be made to the following party: | |
|  |  | Borrower  *(for advances and payments made by Borrower, or for costs incurred for work performed by Borrower)* |
|  |  | Other: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |

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

Name:

Title:

**Schedule VI**

**List of Continuing Covenant Agreement Sections**

**ARTICLE I Key Project Loan Terms**

1.01 Reserved

1.02 Persons and Conditionally Permitted Transfers

1.03 Reserve Funds, Capital Replacements and Repairs

1.04 Other Mortgaged Property Features

1.05 Other Project Loan Features

1.06 Reserved

1.07 Reserved

1.08 Schedules, Exhibits and Riders

**ARTICLE II Security and Guaranty**

2.01 Security Instrument

2.02 Reserve Funds

2.03 Uniform Commercial Code Security Agreement

2.04 Reserved

2.05 Guaranties

2.06 through 2.14 are reserved

**ARTICLE III Borrower’s Obligations**

3.01 through 3.08 are reserved.

3.09 Payment and Performance Obligations

3.10 Servicing Fee

3.11 Defeasance Fee

**ARTICLE IV Reserve Funds and Requirements**

4.01 Reserves Generally

4.02 Reserves for Taxes, Insurance and Other Charges

4.03 Repair Reserve Fund

4.04 Replacement Reserve Fund

4.05 through 4.19 are reserved

**ARTICLE V Representations and Warranties**

5.01 Review of Documents

5.02 Condition of Mortgaged Property

5.03 No Condemnation

5.04 Actions; Suits; Proceedings

5.05 Environmental

5.06 Commencement of Work; No Labor or Materialmen’s Claims

5.07 Compliance with Applicable Laws and Regulations

5.08 Access; Utilities; Tax Parcels

5.09 Licenses and Permits

5.10 No Other Interests

5.11 Term of Leases

5.12 No Prior Assignment; Prepayment of Rents

5.13 Illegal Activity

5.14 Taxes Paid

5.15 Title Exceptions

5.16 No Change in Facts or Circumstances

5.17 Financial Statements

5.18 ERISA – Borrower Status

5.19 No Fraudulent Transfer or Preference

5.20 No Insolvency or Judgment

5.21 Working Capital

5.22 and 5.23 are reserved.

5.24 Purpose of Project Loan

5.25 through 5.43 are reserved

5.44 Tax Credit Regulatory Agreement

5.45 Reserved

5.46 Regulatory Agreement

5.47 through 5.57 are reserved

5.58 Prohibited Parties Lists

5.59 AML Laws

5.60 Internal Controls

5.61 Crowdfunding

5.62 Reserved

5.63 Federal Income Tax Matters

5.64 Incorporation of Other Representations and Warranties

**ARTICLE VI Borrower Covenants**

6.01 Compliance with Laws

6.02 Compliance with Organizational Documents

6.03 Use of Mortgaged Property

6.04 Non-Residential Leases

6.05 Prepayment of Rents

6.06 Inspection

6.07 Books and Records; Financial Reporting; TEL Regulatory Agreement Reporting

6.08 Taxes; Operating Expenses; Ground Rents

6.09 Preservation, Management and Maintenance of Mortgaged Property

6.10 Insurance

6.11 Condemnation

6.12 Environmental Hazards

6.13 Single Purpose Entity Requirements

6.14 Repairs and Capital Replacements

6.15 Residential Leases Affecting the Mortgaged Property

6.16 Litigation; Government Proceedings

6.17 Further Assurances and Estoppel Certificates; Payment of Funding Lender’s Costs and Expenses

6.18 and 6.19 are reserved.

6.20 ERISA Requirements

6.21 Economic Sanctions Laws; AML Laws

6.22 Crowdfunding

6.23 through 6.37 are reserved

6.38 Regulatory Agreements

6.39 Low-Income Housing Tax Credits

6.40 through 6.64 are reserved

6.65 No Hedging Arrangements

6.66 Status of Governmental Note

**ARTICLE VII Transfers of the Mortgaged Property or Interests in Borrower**

7.01 Prohibited Transfers

7.02 Permitted Transfers

7.03 Conditionally Permitted Transfers

7.04 Conditions for Conditionally Permitted Transfers

7.05 Funding Lender’s Consent to Prohibited Transfers

7.06 SPE Equity Owner Requirement Following Transfer

7.07 Additional Transfer Requirements – Rate Cap Agreement

7.08 through 7.10 are reserved

7.11 Easement, Restrictive Covenant or Other Encumbrance

**ARTICLE VIII Actions or Events Relating to Guarantor**

8.01 Guarantor Bankruptcy

8.02 Guarantor Status Event

8.03 Death of a Guarantor Not in Control of Borrower

**ARTICLE IX Events of Default and Remedies**

9.01 Events of Default

9.02 Protection of Funding Lender’s Security; Security Instrument Secures Future Advances

9.03 Remedies

9.04 Forbearance

9.05 Reserved

**ARTICLE X Release; Indemnity**

10.01 Release

10.02 Indemnity

**ARTICLE XI Miscellaneous Provisions**

11.01 Waiver of Statute of Limitations, Offsets and Counterclaims

11.02 Governing Law; Consent to Jurisdiction and Venue

11.03 Notice

11.04 Successors and Assigns Bound

11.05 Joint and Several (and Solidary) Liability

11.06 Relationship of Parties; No Third-Party Beneficiary

11.07 Severability; Amendments

11.08 Disclosure of Information

11.09 Determinations by Funding Lender

11.10 Change in Servicer; Servicing of the Loans

11.11 Supplemental Financing

11.12 through 11.13 are reserved

11.14 Funding Lender’s Rights to Sell or Securitize

11.15 Cooperation with Rating Agencies and Investors

11.16 Letter of Credit Requirements

11.17 through 11.20 are reserved

11.21 Time is of the Essence

11.22 Electronic Signatures

11.23 Reserved

11.24 Counterparts

11.25 Construction

11.26 Survival of Representations and Warranties

11.27 Reserved

11.28 Reserved

11.29 Funding Lender Representative

11.30 Waiver of Trial by Jury

**ARTICLE XII Definitions**

**ARTICLE XIII Incorporation of Attached Riders**

**ARTICLE XIV** **Incorporation of Attached Schedules and Exhibits**

**ARTICLE XV** **Reserved**

Exhibit A

Organizational Chart of Borrower and Guarantor as of the Effective Date

[ATTACH ORGANIZATIONAL CHART FROM THE COMMITMENT -- ALL DETAILS ON THE ORGANIZATIONAL CHART MUST BE LEGIBLE]

Exhibit B

Modifications to Continuing Covenant Agreement

The following modifications are made to the text of the Continuing Covenant Agreement that precedes this Exhibit:

None.