ARTICLE VIII

MAINTENANCE AND TAXES

Section 8.01. Borrower’s Obligations to Maintain and Repair. The Borrower agrees that during the term of this Agreement it will keep and maintain all of its material properties and equipment (including the Collateral Property) necessary to the operation of its business in good condition, repair and working order, ordinary wear and tear excepted, at its own cost, and will make or cause to be made from time to time all repairs thereto (including external and structural repairs) and renewals and replacements thereto necessary for the operation thereof.

Section 8.02. Taxes and Other Charges. The Borrower will promptly pay and discharge or cause to be promptly paid and discharged, as the same become due, all taxes, assessments, governmental charges or levies incurred in the operation, maintenance, use, occupancy and upkeep of the Collateral Property imposed upon it or in respect of the Collateral Property before the same shall become in default, as well as all lawful claims which, if unpaid, might become a lien or charge upon such property and assets or any part thereof, except such that are contested in good faith by the Borrower for which the Borrower has maintained adequate reserves satisfactory to the Purchaser.
ARTICLE X

SPECIAL COVENANTS

Section 10.01. Access to the Collateral Property and Inspection. The Issuer and the Purchaser, and their respective agents and employees, shall have the right, at all reasonable times during normal business hours of the Borrower upon the furnishing of reasonable notice to the Borrower under the circumstances, to enter upon and examine and inspect the Collateral Property and to examine and copy the books and records of the Borrower insofar as such books and records relate to Costs of the Project or the Bond Documents, subject, however to such limitations as reasonably determined by the Borrower based on Borrower’s policies concerning privacy and confidentiality.

Section 10.02. Further Assurances and Corrective Instruments. Subject to the provisions of this Agreement, the Issuer and the Borrower agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements and amendments hereto and such further instruments as may reasonably be required for carrying out the intention or facilitating the performance of this Agreement or the transactions contemplated hereby.

Section 10.03. Recording and Filing; Other Instruments. The Borrower shall cause the Deeds of Trust (and any subsequent filings and recordings in connection therewith as may be necessary) to be recorded and filed in such manner and in such places as may be required by law to fully preserve and protect the security of the Owners and the rights of the Purchaser and to perfect any security interest created thereby. The Borrower and the Issuer upon request shall execute and deliver all instruments and shall furnish all information and evidence deemed necessary or advisable by Purchaser in order to enable the Purchaser to perfect its security interests in connection with the Bonds. The Purchaser shall file and re-file and record and re-record or shall cause to be filed and re-filed and recorded and re-recorded all instruments required to be filed and re-filed and recorded and re-recorded and shall continue or cause to be continued the liens of such instruments for so long as any of the Bonds shall be Outstanding and any other amounts remain due and payable under the Continuing Covenant Agreement.

Section 10.04. Outstanding Loan Balance. The Purchaser shall provide a statement to the Issuer on January 1 and July 1 of each year reporting the outstanding balance of the Loan on each December 31 and June 30, respectively.

Section 10.05. Indemnity Against Taxes. The Borrower will pay and discharge and will indemnify and hold harmless the Issuer and the Purchaser, and their respective directors, members, officers, employees and agents, from any taxes, assessments, impositions and other charges in respect of the Project, except to the extent resulting from the indemnitee’s negligence or willful misconduct. If any such taxes, assessments, impositions or other charges, are sought to be imposed, the Issuer or the Purchaser, as the case may be, will give prompt written notice to the Borrower; provided, however, that the failure to provide such notice will not relieve the Borrower of the Borrower’s obligations and liability under this Section and will not give rise to any claim against or liability of the Issuer or the Purchaser. The Borrower shall have the sole right and duty to assume, and shall assume, the defense thereof, with counsel reasonably
acceptable to the Person on behalf of whom the Borrower undertakes a defense, with full power to litigate, compromise or settle the same in its sole discretion.

Section 10.06. Release and Indemnification.

(a) The Borrower shall at all times protect, indemnify and hold the Issuer and the Governing Body, and their respective members, directors, officers, employees, and agents, harmless against any and all liability, losses, damages, costs, expenses, taxes, causes of action, suits, claims, demands and judgments of any nature arising from or in connection with the financing or refinancing of the Facility, or use or occupancy of the Facility, including, without limitation, all claims or liability resulting from, arising out of or in connection with the acceptance or administration of the Bond Documents or the trusts thereunder or the performance of duties under the Bond Documents or any loss or damage to property or any injury to or death of any Person that may be occasioned by any cause whatsoever pertaining to the Facility or the use thereof, including without limitation any lease thereof or assignment of any interest in this Agreement, such indemnification to include the reasonable costs and expenses of defending itself or investigating any claim of liability and other reasonable expenses and attorneys’ fees incurred by the Issuer and the Governing Body, and their respective members, directors, officers, employees, and agents, in connection therewith (provided the Issuer, Governing Body or other indemnitee shall have first provided notice to Borrower of the asserted indemnification and the Borrower shall not have timely taken up the defense or investigation thereof), provided that the benefits of this Section shall not inure to any Person other than the Issuer, the Governing Body, and their respective members, directors, officers, employees, and agents, and provided further that such liability, loss, damage, costs, expenses, taxes, cause of action, suit, death, injury, claims, demands or judgments shall not have resulted from the gross negligence or willful misconduct of, the Issuer, the Governing Body or such members, directors, officers, employees, or agents. The obligations of the Borrower under this Section shall survive the termination of this Agreement.

(b) The Borrower hereby acknowledges and agrees that the Issuer shall not be liable to the Borrower, and hereby releases and discharges the Issuer from any liability, for any and all losses, costs, expenses (including attorneys’ fees), damages, judgments, claims and causes of action, paid, incurred or sustained by the Borrower as a result of or relating to any action, or failure or refusal to act, on the part of the Purchaser with respect to this Agreement or the documents and transactions related hereto or contemplated hereby, including, without limitation, the exercise by the Purchaser of any of its rights or remedies pursuant to Article XII, the Bonds, the Deeds of Trust, or any collateral security documents. The Borrower’s release of the Issuer pursuant to the preceding sentence does not extend to the Purchaser following the assignment of the Issuer’s rights to the Purchaser pursuant to this Agreement and the Assignment of Security.

Section 10.07. Reserved.

Section 10.08. Notice of Determination of Taxability. Promptly after the Borrower first becomes aware of the occurrence of a Determination of Taxability or an event that could
trigger the occurrence of a Determination of Taxability, the Borrower shall give written notice thereof to the Issuer and the Purchaser.

Section 10.09. Duties and Obligations. The Borrower covenants and agrees that it will fully and faithfully perform all the duties and obligations that the Issuer has covenanted and agreed in this Agreement to cause the Borrower to perform and any duties and obligations that the Borrower is required to perform. The foregoing shall not apply to any duty or undertaking of the Issuer that by its nature cannot be delegated or assigned.

Section 10.10. Financial Statements. The Borrower shall, upon request, deliver to the Purchaser and the Issuer as soon as practicable and in any event within five months after the end of each Fiscal Year, the audited financial statements of the Borrower for such Fiscal Year. By way of example, for a Fiscal Year ending June 30, such audited financial statements shall be delivered by the next succeeding November 30.

Section 10.11. Compliance with Laws. The Borrower shall comply with all Applicable Laws.

Section 10.12. Maintenance of Existence. The Borrower agrees that it will maintain its organizational existence, will not dissolve or otherwise dispose of all or substantially all of its Property and will not consolidate with or merge into another Person or permit one or more other Persons to consolidate with or merge into it, except in strict compliance with the terms of Applicable Law and the Continuing Covenant Agreement.

Section 10.13. Issuer as Taxpayer. The Borrower stipulates that in any investigation of the Bonds by the Internal Revenue Service, the Issuer shall be deemed the “taxpayer” with respect to the Bonds.