**COMPLIANCE AGREEMENT FOR RADON
Operations and Maintenance Plan**

This **COMPLIANCE AGREEMENT FOR RADON OPERATIONS AND MAINTENANCE PLAN** (this “**Agreement**”) dated as of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, is executed by and between \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“**Borrower**”), and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“**Lender**”).

**RECITALS:**

A. Pursuant to that certain Multifamily Loan and Security Agreement dated as of the date hereof, executed by and between Borrower and Lender (as amended, restated, replaced, supplemented or otherwise modified from time to time, the “**Loan Agreement**”), Lender has agreed to make a loan to Borrower in the original principal amount of $\_\_\_\_\_\_\_\_\_ (the “**Mortgage** **Loan**”), as evidenced by, among other things, that certain Multifamily Note dated as of the date hereof, executed by Borrower and made payable to Lender in the amount of the MortgageLoan (as amended, restated, replaced, supplemented or otherwise modified from time to time, the “**Note**”). The proceeds of the MortgageLoan will be used for the financing of the Multifamily Project located at the Multifamily Project Address (the “**Mortgaged Property**”).

B. In addition to the Loan Agreement, the MortgageLoan and the Note are also secured by, among other things, a certain Multifamily Mortgage, Deed of Trust, or Deed to Secure Debt dated as of the date hereof (as amended, restated, replaced, supplemented or otherwise modified from time to time, the “**Security Instrument**”).

C. **[DRAFTING NOTE: INSERT THE FOLLOWING IF RADON TESTING WAS COMPLETED PRIOR TO CLOSING AND LENDER HAS DETERMINED THAT A RADON O&M PLAN IS REQUIRED:** Lender requires as a condition to the making of the MortgageLoan that Borrower implement and carry out an operations and maintenance plan prepared by a qualified radon mitigation professional for the minimization and containment or removal of radon (“**Radon**”) on the Mortgaged Property (“**O&M Plan**”). The O&M Plan is attached as Exhibit A.]

OR

**[DRAFTING NOTE: INSERT THE FOLLOWING IF RADON TESTING WAS NOT COMPLETE PRIOR TO THE EFFECTIVE DATE**: Lender requires as a condition to the making of the MortgageLoan (i) that the Mortgaged Property undergo Initial Radon Testing, and possibly Additional Radon Testing (together, the “**Radon Testing**”), as further described in the Loan Agreement, and (ii) that, if Radon Remediation is required as a result of the Radon Testing, Borrower shall implement and carry out any operations and maintenance plan prepared by a qualified radon mitigation professional for the minimization and containment or removal of radon (“**Radon**”) on the Mortgaged Property.]

**AGREEMENTS:**

NOW THEREFORE, in consideration of the mutual covenants in this Agreement and for other valuable consideration, the receipt and sufficiency of which are acknowledged, Borrower and Lender agree as follows:

1. **Recitals.**

The recitals set forth above are incorporated herein by reference.

1. **Defined Terms**.

Capitalized terms used and not specifically defined herein shall have the meanings given to such terms in the Loan Agreement. In addition to the terms defined in the Recitals to this Agreement, for purposes of this Agreement the following term has the meaning set forth below:

“**Rules and Regulations**” means all current and future rules, regulations, laws or ordinances governing the existence, assessment, testing, removal, and/or abatement of Radon in, on or around the Mortgaged Property.

1. **Borrower’s Responsibility to Know All Rules and Regulations; No Duty of Lender**.

Borrower acknowledges that the Mortgaged Property is currently, or may be in the future, subject to Rules and Regulations. Borrower acknowledges its responsibility to be aware of, and fully versed in and compliant with, all Rules and Regulations in effect during the term of the Security Instrument. Borrower further acknowledges and agrees that Lender has no duty to provide Borrower with any information regarding the Rules and Regulations or any interpretation thereof. Borrower acknowledges that Lender makes no representations or warranties regarding the adequacy of the O&M Plan and releases Lender from any and all liability related to or arising out of the O&M Plan.

1. **Borrower’s Responsibility to Maintain the Mortgaged Property in Compliance**.

**[DRAFTING NOTE: INSERT IF RADON TESTING HAS NOT BEEN COMPLETED PRIOR TO THE EFFECTIVE DATE:** If Radon Remediation is required as a result of the Radon Testing, Borrower shall promptly implement and carry out any O&M Plan as prepared by a qualified radon mitigation professional for the minimization and containment or removal of Radon on the Mortgaged Property, in accordance with the Radon Mitigation Contract and the Loan Agreement. If Radon Remediation is required, Borrower shall deliver any O&M Plan prepared by a qualified radon mitigation professional with the Radon Remediation Contract required in accordance with the Loan Agreement.**]** Borrower agrees to maintain the Mortgaged Property in strict compliance with both the O&M Plan and all Rules and Regulations. Compliance includes the proper preparation and maintenance of all records, papers and forms required by the O&M Plan or the Rules and Regulations, especially those necessary to demonstrate or document compliance therewith.

1. **Violation of this Agreement is Default under Loan Documents**.

If Borrower is in default under this Agreement and such default remains uncured after any applicable cure period provided for in the Loan Agreement, Borrower also then will be in default under the Note, the Loan Agreement, the Security Instrument and the other Loan Documents. In that event, the entire unpaid principal balance of the Note, accrued interest and any other sums due Lender under the Note, the Loan Agreement, the Security Instrument and other Loan Documents will become due and payable, at Lender’s option. If Lender exercises this option to accelerate, Lender will do so in accordance with the provisions of the Note, the Loan Agreement and the Security Instrument, and may invoke the remedies permitted by applicable law or provided for in the Note, the Loan Agreement, or the Security Instrument. Any amount disbursed or expended by Lender pursuant to or in connection with this Agreement or the removal or abatement of Radon with interest thereon, shall become additional Indebtedness of Borrower secured by the Security Instrument and the Loan Agreement.

1. **Borrower’s Other Obligations Not Impaired**.

Nothing contained in this Agreement shall alter, impair or affect the obligations of Borrower, or relieve Borrower of any of its obligations, to make payments and to perform all of its other obligations required under the Loan Documents.

1. **Successors and Assigns Bound**.

This Agreement shall be binding upon Borrower and Lender and their respective successors and assigns, and shall inure to the benefit of and may be enforced by Lender and its successors, transferees and assigns. Borrower shall not assign any of its rights and obligations under this Agreement without the prior written consent of Lender.

1. **Amendment and Waiver**.

No amendment to this Agreement will be valid unless it is made in writing and executed by the parties to this Agreement. No specific waiver or forbearance for any breach of any of the terms of this Agreement shall be considered as a general waiver of that or any other term of this Agreement.

1. **No Agency or Partnership**.

Nothing contained in this Agreement shall constitute Lender as a joint venturer or partner with or agent of Borrower, or render Lender liable for any debts, obligations, acts, omissions, representations or contracts of Borrower.

1. **Environmental Obligations**.

Borrower’s obligations under this Agreement are in addition to Borrower’s obligations, indemnifications and liabilities for environmental matters under the Security Instrument, the Loan Agreement and the Environmental Indemnity Agreement.

1. **Severability.**

The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement, all of which shall remain in full force and effect. This Agreement contains the complete and entire agreement among the parties as to the matters covered, rights granted and the obligations assumed in this Agreement. This Agreement may not be amended or modified except by written agreement signed by the parties hereto.

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

Section 15.01 (Governing Law; Consent to Jurisdiction and Venue) of the Loan Agreement is hereby incorporated herein as if fully set forth in the body of this Agreement.

1. **Notice**.

Section 15.02 (Notice) of the Loan Agreement is hereby incorporated herein as if fully set forth in the body of this Agreement.

1. **Construction.**

Section 15.08 (Construction) of the Loan Agreement is hereby incorporated herein as if fully set forth in the body of this Agreement.

**[Remainder of Page Intentionally Blank]**

**IN WITNESS WHEREOF**, Borrower and Lender have signed and delivered this Agreement under seal (where applicable) or have caused this Agreement to be signed and delivered under seal (where applicable) by their respective duly authorized representative. Where applicable law so provides, Borrower and Lender intend that this Agreement shall be deemed to be signed and delivered as a sealed instrument.

**BORROWER**:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

By: (SEAL)

Name:

Title:

**LENDER**:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

By: (SEAL)

Name:

Title:

**[DRAFTING NOTE: DELETE EXHIBIT IF O&M PLAN IS NOT AVAILABLE AS OF THE EFFECTIVE DATE]**

**EXHIBIT A**

**RADON O&M PLAN**

**[DRAFTING NOTE: LENDER TO ATTACH O&M PLAN PREPARED BY A QUALIFIED RADON MITIGATION PROFESSIONAL]**