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**CONTINUING COVENANT AGREEMENT**

**dated as of December 1, 2018,**

**between**

**WESTMINSTER PRESBYTERIAN HOMES, INC.**

**and**

**STI INSTITUTIONAL & GOVERNMENT, INC.**

**Relating to**

**OCONEE COUNTY INDUSTRIAL DEVELOPMENT AUTHORITY  
REVENUE BOND  
(PRESBYTERIAN VILLAGE ATHENS PROJECT)  
BANK BOUGHT ENTRANCE FEE SERIES 2018A-5**

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EXHIBITS

A – REDEMPTION SCHEDULE

## **CONTINUING COVENANT AGREEMENT**

**THIS CONTINUING COVENANT AGREEMENT** (as the same may be amended, restated, supplemented or otherwise modified from time to time, this “Continuing Covenant Agreement”), dated as of December 1, 2018, between **WESTMINSTER PRESBYTERIAN HOMES, INC.**, a Georgia nonprofit corporation, and **STI INSTITUTIONAL & GOVERNMENT, INC.**, a Delaware corporation.

### **RECITALS**

WHEREAS, the Corporation has entered into the Master Trust Indenture dated as of December 1, 2018, between the Corporation and Branch Banking and Trust Company, a North Carolina banking corporation, as master trustee (the “Master Trustee”), which provides for its issuance of its obligations thereunder, upon entering into an indenture supplemental to such Master Trust Indenture to issue such obligations, as amended by the Supplemental Indenture for Obligations No. 1 Through No. 6, dated as of December 1, 2018 (the “Supplemental Indenture”), between the Corporation and the Master Trustee (as the same may be further amended, restated, supplemented or otherwise modified from time to time, the “Master Trust Indenture”);

WHEREAS, the Oconee County Industrial Development Authority (the “Authority”), is issuing its Revenue Bond (Presbyterian Village Athens Project) Bank Bought Entrance Fee Series 2018A-5 (and any bonds issued in exchange therefor, the “Bonds”) in an aggregate principal amount not to exceed \$35,000,000, pursuant to an Indenture of Trust dated as of December 1, 2018, by and between the Authority and Branch Banking and Trust Company, a North Carolina banking corporation, as bond trustee (the “Bond Trustee”) (as the same may be further amended, restated, supplemented or otherwise modified from time to time, the “Bond Indenture”); and

WHEREAS, the Authority will lend the proceeds of the Bonds to the Corporation pursuant to a Loan Agreement dated as of December 1, 2018 (as the same may be amended, restated, supplemented or otherwise modified from time to time, the “Loan Agreement”), between the Authority and the Corporation; and

WHEREAS, the Lender has agreed to purchase the Bonds at the request of the Corporation;

WHEREAS, the obligations of the Corporation to repay the loans and advances to the Lender will be evidenced by the Obligation No. 5 in the principal amount not to exceed \$35,000,000, designated “Westminster Presbyterian Homes, Inc. Series 2018A-5 Note” (the “Note”), which Note is a Master Obligation under the Master Trust Indenture, and which Note has or will be assigned to the Bond Trustee; and

WHEREAS, as a condition to the foregoing, the Lender has required the Corporation to enter into this Continuing Covenant Agreement.

NOW, THEREFORE, to induce the Lender to purchase the Bonds, and for other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, the Corporation and the Lender hereby agree as follows:

## ARTICLE I

### DEFINITIONS

**Section 1.01. Certain Defined Terms.** In addition to the terms defined in the recitals and elsewhere in this Continuing Covenant Agreement, the Bond Indenture and the Master Trust Indenture, the following terms shall have the following meanings:

“Advances” means advances of the proceeds of the Bonds made by the Lender in accordance with the terms of this Continuing Covenant Agreement and the Construction Disbursement Agreement.

“Affiliate” has the meaning assigned to such term in the Bond Indenture.

“Agency Lender” means the Federal Housing Administration, the United States Department of Housing and Urban Development, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Home Loan Bank System, or any other agency or instrumentality of the federal government.

“Anti-Corruption Law” means the United States Foreign Corrupt Practices Act of 1977, the UK Bribery Act 2010, and other similar anti-corruption legislation in other jurisdictions, in each case as such law may be amended from time to time.

“Bankruptcy Code” means Title 11 of the United States Code, as amended, and any successor statute or statutes having substantially the same function.

“Base Rate” means the fluctuating per annum rate of interest which is equal to the highest of (i) the Prime Rate; and (ii) the Fed Funds Rate plus 0.50% (fifty basis points).

“Beneficial Owner” means the Person in whose name a Bond is recorded as beneficial owner of such Bond by the Securities Depository on the records of such Securities Depository or such Person’s subrogee.

“Bond Documents” means this Continuing Covenant Agreement, the other Closing Documents and every other agreement, document or instrument governing, evidencing, securing or otherwise relating to the Obligations.

“Bond” or “Bonds” has the meaning assigned to such term in the recitals to this Continuing Covenant Agreement.

“Business Day” has the meaning assigned to such term in the Bond Indenture.

“CCRC Law” means, collectively, (i) Title 31, Chapter 6 of the Georgia Code (governing issuance of certificates of need by the Georgia Department of Community Health), Title 33, Chapter 45 of the Georgia Code (governing the operation of CCRCs and oversight by the Office of Insurance and Safety Fire Commissioner), the provisions of any and all other Georgia statutes incorporated therein by reference, and the rules and regulations promulgated under any of the foregoing, and (ii) any other statute, regulation or rule now or hereafter enacted or promulgated

pertaining to the development, construction, marketing, licensing and/or operation of continuing care retirement communities in the State of Georgia or a material portion thereof, in the case of each of the foregoing, as the same may be amended, supplemented and replaced from time to time.

“Closing Date” means December 19, 2018.

“Closing Documents” means, collectively, this Continuing Covenant Agreement, the Construction Disbursement Agreement, the Bond Indenture, the Master Trust Indenture, the Supplemental Indenture, the other supplemental indentures issued under the Master Trust Indenture, the Security Deed, the Loan Agreement, the Note, the Tax Certificate, the Collateral Assignments (as defined in the Master Trust Indenture), the Management Fee Subordination Agreement, the Guaranty Agreement from the Guarantor in favor of the Master Trustee (for the benefit of the Lender and the Authority) and the Liquidity Support Agreement by and among the Corporation, the Master Trustee and the Guarantor.

“Code” means the Internal Revenue Code of 1986, as amended, or any successor federal tax code. Any reference to any provision of the Code shall also include the income tax regulations promulgated thereunder, whether final, temporary or proposed.

“Commonly Controlled Entity” has the meaning assigned in the definition of “Plan.”

“Consistent Basis” means, in reference to the application of Generally Accepted Accounting Principles, that the accounting principles observed in the period referred to are comparable in all material respects to those applied in the preceding period, except as to any changes consented to by the Lender.

“Construction Disbursement Agreement” means the Construction Disbursement and Monitoring Agreement, of even date herewith, between the Corporation, Newbanks & Company, Inc. (as the Construction Consultant), the Lender and SunTrust Bank (as administrative agent for the Lender), as the same may be amended, modified or supplemented from time to time.

“Consultant” means a Person or firm (other than the Manager) selected by the Corporation, (i) that is not, and no member, stockholder, director, officer or employee of which is, an officer or employee of the Corporation or any Affiliate or the Manager, and (ii) that is a professional, nationally recognized consulting, accounting, investment banking or financial advisory firm having the skill and experience necessary to render the particular report required by the provision hereof in which such requirement appears and that is reasonably acceptable to the Lender.

“Corporation” means Westminster Presbyterian Homes, Inc., a Georgia nonprofit corporation, and any permitted successor or assign thereof hereunder.

“Days’ Cash on Hand” has the meaning assigned to such term in the Master Trust Indenture.

“Default” means any event that, with the passage of time or giving of notice, or both, would constitute an Event of Default.



“Default Rate” means the fluctuating per annum rate at all times equal to the Base Rate plus 3.0%.

“Department” means, collectively, the Office of Insurance and Safety Fire Commissioner, the Georgia Department of Community Health and/or any other departments of the State of Georgia, and their successors, as administrator of any portion of the CCRC Law.

“Derivative Agreement” has the meaning assigned to such term in the Master Trust Indenture.

“Designated Jurisdiction” means any country or territory to the extent that such country or territory itself is the subject of any Sanction.

“Entrance Fees” has the meaning assigned to such term in the Master Trust Indenture, but, as used herein, shall apply only to the Independent Living Units.

“Environmental Law” means any federal, state or local law, statute, ordinance, rule, regulation, permit, license, approval, interpretation, order, guidance or other legal requirement (including any subsequent enactment, amendment or modification) relating to the protection of human health or the environment, including, but not limited to, any requirement pertaining to the manufacture, processing, distribution, use, treatment, storage, disposal, transportation, handling, reporting, licensing, permitting, investigation or remediation of materials that are or may constitute a threat to human health or the environment.

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended from time to time, and all rules and regulations from time to time promulgated thereunder.

“Event of Default” with respect to this Continuing Covenant Agreement has the meaning assigned to that term in Section 6.01 of this Continuing Covenant Agreement and, with respect to any other Bond Document, has the meaning assigned therein.

“Excess Interest Amount” has the meaning assigned to such term in Section 2.02(d) of this Continuing Covenant Agreement.

“Expenses” means all fees, charges, costs and expenses of any nature whatsoever, whether in the form of a direct, reimbursement, or indemnity payment obligation, incurred at any time and from time to time (whether before or after an Event of Default) by the Lender or other Owner in purchasing or funding the purchase of the Bonds, in administering or modifying the Bond Documents, in negotiating, documenting or entering into any “workout” of the Transactions, or in exercising or enforcing any rights, powers and remedies provided in any of the Bond Documents, including reasonable attorneys’ fees, charges and disbursements, court costs, receiver’s fees, management fees and costs incurred in the repair, maintenance and operation of, or taking possession of, or selling any portion of the Trust Estate.

“Facilities” has the meaning assigned to such term in the Master Trust Indenture.

“Fed Funds Rate” means for any day, a fluctuating interest rate per annum equal to the weighted average of the rates on overnight Federal funds transactions with members of the

Federal Reserve System, as published for such day (or, if such day is not a Business Day, for the next preceding Business Day) by the Federal Reserve Bank of New York, or, if such rate is not published for any day which is a Business Day, the average of the quotations for such day on such transactions received by the Lender or its commercial banking Affiliate from three Federal funds brokers of recognized standing selected by it.

“Fiscal Year” means the Corporation’s annual accounting period, initially the twelve (12) month period ending December 31.

“Generally Accepted Accounting Principles” or “GAAP” means those principles of accounting set forth in pronouncements of the Financial Accounting Standards Board and its predecessors or pronouncements of the American Institute of Certified Public Accountants or those principles of accounting which have other substantial authoritative support and are applicable in the circumstances as of the date of their application, as such principles are from time to time supplemented or amended.

“Governmental Authority” means the government of the United States or any other nation, or of any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government (including any supra-national bodies such as the European Union or the European Central Bank).

“Guarantor” means Presbyterian Homes of Georgia, Inc., a Georgia nonprofit corporation.

“Guaranty” means, as applied to any Indebtedness for borrowed money, (a) a guarantee (other than by endorsement of negotiable instruments for collection in the ordinary course of business), direct or indirect, in any manner, of any part or all of such Indebtedness or (b) an agreement, direct or indirect, contingent or otherwise, providing assurance of the payment or performance (or payment of damages in the event of non-performance) of any part or all of such Indebtedness, including, without limiting the foregoing, the payment of amounts drawn down by letters of credit. Notwithstanding anything herein to the contrary, a guarantee shall not include any agreement solely because such agreement creates a Lien on the assets of any Person or any agreement providing for indemnification. The amount of a guarantee shall be deemed to be the maximum amount of the Indebtedness guaranteed for which the guarantor could be held liable under such guarantee.

“Hazardous Material” means any substance or material meeting any one or more of the following criteria: (i) it is or contains a substance designated as a hazardous waste, hazardous substance, pollutant, contaminant or toxic substance under any Environmental Law; (ii) it is toxic, explosive, corrosive, ignitable, infectious, radioactive, mutagenic or otherwise hazardous, (iii) its presence requires investigation or remediation under an Environmental Law or common law; (iv) it constitutes a danger, nuisance, trespass or health or safety hazard to persons or property; and/or (v) it is or contains, without limiting the foregoing, petroleum hydrocarbons.

“Holder” means the Person who shall be the registered owner of any Bond, initially, the Lender.

“Improvements” means all fixtures, personal property, structures, buildings and other improvements situated, placed, constructed or located on or affixed to the Land together with all additions and accessions thereto and replacements and proceeds thereof.

“Indebtedness” means any indebtedness or liability for borrowed money, any installment sale obligation or any obligation under any Derivative Agreement or under any lease that is capitalized under Generally Accepted Accounting Principles and any Guaranty of any of the foregoing.

“Independent Living Unit” means one of the independent living units in the Project.

“Interest Payment Date” has the meaning assigned to such term in the Bond Indenture.

“Land” means the parcel of land containing approximately 70.4 acres at 8021 Macon Highway in Oconee County, Georgia, and more particularly described in Exhibit A to the Security Deed.

“Lender” means, initially, STI Institutional & Government, Inc, a Delaware corporation, and its successors and assigns, and upon the receipt from time to time by the Bond Trustee and the Corporation of a notice described in Section 8.16(a) from time to time means the Person designated in such notice as the Lender, as more fully provided in Section 8.16(a) hereof.

“Liabilities” has the meaning assigned to such term in Section 7.01.

“Lien” has the meaning assigned to such term in the Master Trust Indenture.

“Liquidity Testing Date” has the meaning assigned to such term in the Master Trust Indenture.

“Loan” means the loan of the proceeds of the Bonds by the Authority to the Corporation pursuant to the Loan Agreement.

“Management Agreement” means the Management Agreement, dated as of December 1, 2018, between the Corporation and the Manager, together with any amendments and supplements thereto, and any similar contract between the Corporation and Manager.

“Management Fee Subordination Agreement” means the Management Fee Subordination Agreement, of even date herewith, among the Corporation, the Master Trustee, the Lenders party thereto and the Manager.

“Manager” means initially, Presbyterian Homes of Georgia, Inc., in its capacity as manager of the Facilities, and thereafter any successor manager engaged by the Corporation to manage the Facilities and approved in writing by the Lender.

“Mandatory Purchase Date” has the meaning assigned to such term in the Bond Indenture.

“Margin Stock” has the meaning assigned to such term in Regulation U promulgated by the Board of Directors of the Federal Reserve System, as now and hereafter from time to time in effect.

“Obligations” means all amounts payable by the Corporation, and all other obligations to be performed by the Corporation, pursuant to the Bond Documents (including any amounts to reimburse the Lender for any advances or expenditures by it under any of such documents).

“OFAC” means the Office of Foreign Assets Control of the United States Department of the Treasury.

“Officer’s Certificate” means the certificate of the chief executive officer or chief financial officer (or persons having comparable titles and responsibilities) of the Corporation.

“Owners” shall mean, collectively, the Holders or Beneficial Owners of the Bonds and “Owner” means any Holder or Beneficial Owner of the Bonds.

“Patriot Act” means the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Title III of Pub. L. 107-56 (signed into law October 26, 2001).

“PBGC” means the Pension Benefit Guaranty Company as created under ERISA or any successor thereto.

“Permitted Liens” has the meaning assigned to such term in the Master Trust Indenture.

“Person” means an individual, partnership, corporation, limited liability company, business trust, unincorporated organization, association, joint venture or a government or agency or political subdivision or instrumentality thereof, or any other entity.

“Plan” means any pension, profit sharing, deferred compensation, severance pay, bonus, stock option or stock purchase plan, or any other form of retirement or deferred benefit, or any health, accident or other welfare plan, or any other employee or retired employee benefit plan, program, contract, understanding or arrangement in which any employee, former employee, retired employee, or beneficiary of any of them, of the Corporation, and any member of a group of trades or businesses that includes the Corporation and that is under common control, within the meaning of Section 414(b), (c) or (m) of the Code (a “Commonly Controlled Entity”), is entitled to participate.

“Plan Termination Event” means (i) a Reportable Event described in Section 4043 of ERISA and the regulations issued thereunder (other than a Reportable Event not subject to the provision for 30-day notice to the PBGC under such regulations), or (ii) the withdrawal of the Corporation or any of its Affiliates from a Plan during a plan year in which it was a “substantial employer” as defined in Section 4001(a)(2) of ERISA, or (iii) the filing of a notice of intent to terminate a Plan or the treatment of a Plan amendment as a termination under Section 4041 of

ERISA, or (iv) the institution of proceedings to terminate a Plan by the PBGC, or (v) any other event or condition which would constitute grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Plan.

“Pre-Sale” means with regard to any Independent Living Unit the receipt by the Corporation of a signed Residency Agreement and a 10% deposit with regard to such Independent Living Unit.

“Pre-Sales Ratio (Independent Living Units)” means the ratio determined by dividing the number of Pre-Sales by the number of Independent Living Units.

“Prime Rate” means on any day, the rate of interest per annum then most recently established by the Lender’s commercial banking affiliate as its “prime rate.” Any such rate is a general reference rate of interest, may not be related to any other rate, and may not be the lowest or best rate actually charged by the Lender or its commercial banking affiliate to any customer or a favored rate and may not correspond with future increases or decreases in interest rates charged by other lenders or market rates in general, and that the Lender or its commercial banking affiliate may make various business or other loans at rates of interest having no relationship to such rate. If at any time (a) the Lender’s commercial banking affiliate ceases to exist, (b) the Lender’s commercial banking affiliate ceases to establish or publish a prime rate from which the Prime Rate is then determined, or (c) a Person other than STI Institutional & Government, Inc., its successors or assigns, is designated as the Lender pursuant to Section 8.16(a) hereof, the applicable variable rate from which the Prime Rate is determined thereafter shall be instead the prime rate reported in The Wall Street Journal (or the average prime rate if a high and a low prime rate are therein reported), and the Prime Rate shall change without notice with each change in such prime rate as of the date such change is reported.

“Project” has the meaning assigned to such term in the Master Trust Indenture.

“Property” means any and all rights, titles and interests of the Corporation in and to the Facilities and any and all other property, whether real or personal, tangible or intangible and wherever situated, whether now owned or hereafter acquired.

“Purchase Price” has the meaning assigned to such term in the Bond Indenture.

“Rating Agencies” means has the meaning assigned to such term in the Master Trust Indenture.

“Residency Agreement” has the meaning assigned to such term in the Master Trust Indenture.

“Risk-Based Capital Guidelines” means (i) the risk-based capital or liquidity guidelines in effect in the United States on the Closing Date, including transition rules, and (ii) the corresponding capital or liquidity regulations promulgated by regulatory authorities outside the United States including transition rules, and any amendments to such regulations adopted prior to the Closing Date.

“Sanctioned Country” shall mean, at any time, a country, region or territory that is, or whose government is, the subject or target of any Sanctions.

“Sanctioned Person” shall mean, at any time, (a) any Person that is the subject or target of any Sanctions, (b) any Person located, organized, operating or resident in a Sanctioned Country or (c) any Person owned or controlled by any such Person.

“Sanctions” shall mean economic or financial sanctions or trade embargoes imposed, administered or enforced from time to time by (a) the U.S. government, including those administered by OFAC or the U.S. Department of State, (b) the United Nations Security Council, the European Union or Her Majesty’s Treasury of the United Kingdom or (c) any other relevant sanctions authority.

“Security Deed” has the meaning assigned to such term in the Master Trust Indenture.

“Solvent” means as to any Person on any particular date, that such Person (i) does not have unreasonably small capital to carry on its business as then conducted and as then proposed to be conducted, (ii) is able to pay its debts as they become due in the ordinary course of business, and (iii) has assets with a present fair saleable value greater than its total stated liabilities and identified contingent liabilities.

“Swap Contract” means any agreement, whether or not in writing, relating to any Swap Transaction, including, unless the context otherwise clearly requires, any form of master agreement (the “Master Agreement”) published by the International Swap Dealers Association, Inc., or any other master agreement, entered into between a Swap Counterparty and the Corporation in connection with the Bonds, together with any related schedule and confirmation, as amended, supplemented, superseded or replaced from time to time, relating to or governing any Swap Transaction.

“Swap Counterparty” means the counterparty under any Swap Contract.

“Swap Transaction” means any transaction that is a rate swap, basis swap, forward rate transaction, commodity swap, commodity option, equity or equity index swap or option, bond, note or bill option, interest rate option, forward foreign exchange transaction, cap, collar or floor transaction, currency swap, cross-currency rate swap, swap option, currency option or any other similar transaction (including any option to enter into the foregoing) or any combination of the foregoing, entered into between a Swap Counterparty and the Corporation in connection with the Bonds.

“Tax Certificate” means the Tax Regulatory Agreement and No-Arbitrage Certificate, dated December 1, 2018, among the Authority, the Master Trustee and the Corporation.

“Taxable Period” has the meaning assigned to such term in the Bond Indenture.

“Taxable Rate” has the meaning assigned to such term in the Bond Indenture.

“Title Policy” means that certain policy of mortgagee title insurance issued by a title insurance company acceptable to the Lender insuring the Lien of the Security Deed, and as otherwise required by the Master Trust Indenture.

“Transactions” means the purchase of the Bonds by the Lender, the execution and delivery by the Corporation of this Continuing Covenant Agreement and the other Bond Documents, the performance by the Corporation of the Obligations (including payment obligations) hereunder and thereunder, and the use of the proceeds of the Bonds.

“Trust Estate” has the meaning assigned to such term in the Bond Indenture.

“UCC” means the Uniform Commercial Code.

“Work” means the construction and equipping of the Project, any and all work undertaken by Corporation, or otherwise needed, to complete such construction and equipping, and includes labor and materials incorporated or to be incorporated into the Project.

**Section 1.02. Computation of Time Periods.** In this Continuing Covenant Agreement, in the computation of a period of time from a specified date to a later specified date, the word “from” means “from and including” and the words “to” and “until” each mean “to but excluding.”

**Section 1.03. Construction.** Unless the context of this Continuing Covenant Agreement otherwise clearly requires, references to the plural include the singular, to the singular include the plural and to the part include the whole. The word “including” shall be deemed to mean “including but not limited to,” and “or” has the inclusive meaning represented by the phrase “and/or.” The words “hereof,” “herein,” “hereunder” and similar terms in this Continuing Covenant Agreement refer to this Continuing Covenant Agreement as a whole and not to any particular provision of this Continuing Covenant Agreement. The Section headings contained in this Continuing Covenant Agreement and the table of contents preceding this Continuing Covenant Agreement are for reference purposes only and shall not control or affect the construction of this Continuing Covenant Agreement or the interpretation thereof in any respect. Section, subsection and exhibit references are to this Continuing Covenant Agreement unless otherwise specified. Each exhibit, schedule and annex attached hereto is incorporated by reference herein and is a constituent part of this Continuing Covenant Agreement.

**Section 1.04. Incorporation of Certain Definitions by Reference.** Any capitalized term used herein and not otherwise defined herein shall have the meaning provided therefor in the Bond Indenture or the Master Trust Indenture.

**Section 1.05. Accounting Terms and Determinations.** Unless otherwise specified herein, all accounting terms used herein shall be interpreted, all accounting determinations hereunder shall be made, and all financial statements required to be delivered hereunder shall be prepared, in accordance with GAAP. In the event of changes to GAAP which become effective after the Closing Date, the Corporation and the Lender agree to negotiate in good faith appropriate revisions of this Continuing Covenant Agreement so as to perpetuate the meaning and effect of such provisions as originally negotiated and agreed upon.

**Section 1.06. Relation to Other Documents; Acknowledgment of Different Provisions of Other Bond Documents; Incorporation by Reference.**

(a) Nothing in this Continuing Covenant Agreement shall be deemed to amend, or relieve the Corporation of its obligations under, any Bond Document to which it is a party. Conversely, to the extent that the provisions of any Bond Document allow the Corporation to take certain actions, or not to take certain actions, with regard for example to Permitted Liens, incurrence of Indebtedness, transfers of assets, maintenance of financial ratios and similar matters, the Corporation nevertheless shall be fully bound by the provisions of this Continuing Covenant Agreement.

(b) Except as provided in subsection (c) of this Section 1.06, all references to other documents, including the Bond Documents, shall be deemed to include all amendments, restatements, modifications and supplements thereto to the extent such amendment, restatement, modification or supplement is made in accordance with the provisions of such document and this Continuing Covenant Agreement.

(c) All provisions of this Continuing Covenant Agreement making reference to specific Sections of any Bond Document shall be deemed to incorporate such Sections into this Continuing Covenant Agreement by reference as though specifically set forth herein (with such changes and modifications as may be herein provided) and shall continue in full force and effect with respect to this Continuing Covenant Agreement notwithstanding payment of all amounts due under or secured by the Bond Documents, the termination or defeasance thereof or any amendment thereto or any waiver given in connection therewith, so long as this Continuing Covenant Agreement is in effect and until all Obligations to the Lender are paid in full. No amendment, modification, consent, waiver or termination with respect to any of such Sections shall be effective as to this Continuing Covenant Agreement until specifically agreed to in writing by the parties hereto with specific reference to this Continuing Covenant Agreement.

**ARTICLE II**

**THE CORPORATION'S OBLIGATIONS**

**Section 2.01. Payment Obligations.**

(a) The Corporation hereby unconditionally, irrevocably and absolutely agrees to make prompt and full payment of all payment obligations owed to the Lender under the Bond Documents and to pay any other Obligations owing to the Lender whether now existing or hereafter arising, irrespective of their nature, whether direct or indirect, absolute or contingent, with interest thereon at the rate or rates provided in such Bond Documents and under such Obligations.

(b) The Corporation shall pay all of its obligations under the Loan Agreement and in connection with the Bonds at the times specified therein and in the Bond Indenture and, in particular but not in limitation of the foregoing:

(i) The Corporation shall pay the amounts sufficient to pay interest due and owing on the Bonds on each Interest Payment Date.



(ii) The Corporation may exercise its option under Section 7.2 of the Loan Agreement to prepay the Loan and contemporaneously therewith to cause the redemption of the Bonds under Article III of the Bond Indenture. The Corporation shall give the notice to the Bond Trustee required pursuant to Section 3.07 of the Bond Indenture without further action on the part of the Lender.

(iii) Subject to the earlier remarketing, repayment, acceleration, prepayment or redemption of the Bonds in accordance with the provisions of the Bond Indenture, the Corporation shall pay the amounts under Section 7.4 of the Loan Agreement sufficient to optionally redeem the Outstanding principal amount of the Bonds, together with all accrued and unpaid interest, in accordance with the redemption schedule set forth in Exhibit A attached hereto and made a part hereof; provided that the remaining aggregate Outstanding principal amount of the Bonds together with all accrued interest thereon shall be subject to mandatory purchase on the Mandatory Purchase Date as provided in the Bond Indenture. The Corporation shall pay in accordance with Section 7.4 of the Loan Agreement the amount necessary to pay in full the Purchase Price of the Bonds on any such Mandatory Purchase Date. If the Corporation and the Lender shall agree to amend the principal amortization schedule for the Bonds set forth in Exhibit A, a copy of such schedule as amended shall be provided promptly thereafter to the Bond Trustee. Each optional prepayment of the Loan and corresponding optional redemption of the Bonds pursuant to this Section 2.01(b)(iii) shall be credited against the prepayments of the Loan and corresponding redemptions of the Bonds required by this Section 2.01(b)(iii) in inverse chronological order.

(iv) Other than as provided in Section 2.02(c), the Corporation agrees that the Bonds may be prepaid in whole or in part, without penalty, provided that if prepaid prior to the Mandatory Purchase Date with financing provided by an Agency Lender or entity acting on behalf of an Agency Lender (and the Lender has offered commercially reasonable terms for financing to be provided by the Lender), the Corporation will pay an exit fee equal to 2% of the amount of the Bonds prepaid.

(c) Upon the occurrence of an Event of Default, interest shall accrue daily on the Obligations at the Default Rate and shall be payable by the Corporation to the Lender upon demand therefor. All computations of interest hereunder shall be made on the basis of a year of 365 days (366 days in leap years) for the actual days elapsed.

(d) The Corporation shall pay within thirty (30) days after demand:

(i) if an Event of Default shall have occurred, all reasonable costs and expenses of the Lender in connection with the enforcement (whether by means of legal proceedings or otherwise) of any of its rights under this Continuing Covenant Agreement, the other Bond Documents and such other documents which may be delivered in connection therewith;

(ii) the reasonable fees, disbursements and charges of counsel or other reasonably required consultants to the Lender in connection with advising the Lender as to its rights and responsibilities under this Continuing Covenant Agreement and the other Bond

Documents or in connection with responding to requests from the Corporation for approvals, consents, amendments and waivers;

(iii) any amounts advanced by or on behalf of the Lender to the extent required to cure any Default, Event of Default or event of nonperformance hereunder or any other Bond Document, together with interest at the Default Rate;

(iv) any other fees charged by the Lender for any activity with respect to this Continuing Covenant Agreement or the other Bond Documents requested by the Corporation or required under the terms of this Continuing Covenant Agreement or the other Bond Documents determined in accordance with the Lender's then-current fee schedule; and

(v) all reasonable fees, costs and expenses of any consultants providing services to the Corporation or the Lender in accordance with this Continuing Covenant Agreement or the other Bond Documents.

In addition, the Corporation shall pay all reasonable legal fees, disbursements and charges of counsel to the Authority, the Corporation, the Master Trustee, the Bond Trustee and the Manager, all costs and expenses of title insurers, surveyors, appraisers and Governmental Authorities incurred in connection with the Bonds and any and all recordation, stamp and other taxes and fees payable or determined to be payable in connection with the execution, delivery, filing and recording of this Continuing Covenant Agreement and the other Bond Documents, and agrees to save the Lender harmless from and against any and all liabilities with respect to or resulting from any delay in paying or omission to pay such costs, expenses, taxes and fees. It is the intention of the parties hereto that the Corporation shall pay amounts referred to in this paragraph directly to the parties to whom such amounts are due.

## **Section 2.02. Increased Payments.**

(a) If the Lender (for purposes of this Section 2.02, the term "Lender" shall include the Lender's parent companies) or any other Owner shall determine that any law, policy, supervisory standard, directive or governmental guideline or governmental interpretation or the application thereof, including any Risk-Based Capital Guidelines or any such law, policy, standard, directive, guideline, interpretation or application implementing, invoking or in any way related to any provision (as now existing or hereafter amended) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (or any other statute referred to therein or amended thereby) or any provision of the International Regulatory Framework for Lenders (Basel III) developed by the Basel Committee on Banking Supervision or by the Lender for International Settlements (BIS) (or any similar or successor organization), by any Governmental Authority charged with the interpretation or administration thereof or compliance with any request, standard or directive whether now existing or hereafter adopted (whether or not having the force of law) of any Governmental Authority:

(i) subjects the Lender or any other Owner to taxation (except for taxes on the overall net income or share capital of the Lender or such other Owner) with respect to this Continuing Covenant Agreement or the other Bond Documents or payment by the Corporation

of principal, interest, fees or other amounts due from the Corporation hereunder and under the other Bond Documents,

(ii) imposes, modifies or deems applicable, in a material way, any reserve, capital adequacy, liquidity, special deposit, insurance premium or similar requirement, fee, charge or monetary burden against credits or commitments to extend credit extended by, assets (funded or contingent) of, deposits with or for the account of, or other acquisitions of funds or assets by the Lender or such other Owner,

(iii) imposes, modifies or deems applicable, in a material way, any capital adequacy (core, contingent or other), reserve, liquidity, insurance premium, fee, charge, monetary burden or similar requirement (1) against assets (funded or contingent) of, or credits or commitments to extend credit extended by, the Lender or such other Owner, or (2) otherwise applicable to the obligations or assets of the Lender or such other Owner under this Continuing Covenant Agreement or the other Bond Documents, or

(iv) imposes upon the Lender or such other Owner any other material condition or expense with respect to this Continuing Covenant Agreement or the other Bond Documents or its making, maintenance or funding of any loan or any security therefor or the assets or liabilities of the Lender or such other Owner; and the result of any of the foregoing is to increase the cost to, reduce the income receivable by, or impose any expense (including loss of margin) upon the Lender or such other Owner with respect to this Continuing Covenant Agreement, the other Bond Documents, or the making, maintenance or funding of any loan or any security therefor or the assets or liabilities of the Lender or such other Owner (or, in the case of any capital adequacy, reserve, liquidity, insurance premium, fee, charge, monetary burden or similar requirement, to have the effect of reducing the rate of return on the Lender's or such other Owner's capital or asset base, taking into consideration the Lender's or such other Owner's policies with respect to capital adequacy and provision for liquidity) by an amount which the Lender or such other Owner deems to be material to it (except for taxes on the overall net income or share capital of the Lender or such other Owner),

then the Lender or such other Owner, as applicable, shall from time to time notify, or cause to be notified, the Corporation of the amount determined in good faith by the Lender or such other Owner, as applicable, to be necessary to compensate the Lender or such other Owner, as applicable, for such increase, reduction or imposition. Such amount shall be due and payable by the Corporation to the Lender or such other Owner, as applicable, on the thirtieth (30th) day after demand. A certificate by the Lender or such other Owner, as applicable, as to the amount due and payable under this Section 2.02 from time to time and the method of calculating such amount shall be conclusive absent manifest error and shall be provided to the Corporation with the notice described above. In determining any such amount, the Lender or such other Owner, as applicable, may use any reasonable averaging and attribution methods.

(b) (i) During a Taxable Period, in addition to the amounts required to be paid pursuant to the Bond Documents, the Corporation hereby agrees to pay to the Lender and any other Owner, as applicable, on demand therefor (1) an amount equal to the difference between (A) the amount of interest paid to the Lender and such other Owner on the Bonds during the

Taxable Period and (B) the amount of interest that would have been paid to the Lender and such other Owner during such Taxable Period had the Bonds borne the Taxable Rate, and (2) an amount equal to any interest, penalties or charges owed by the Lender and such other Owner as a result of interest of the Bonds becoming includable in the gross income of the Lender or such other Owner, together with any and all attorneys' fees, charges and disbursements, court costs, or other out of pocket costs incurred by the Lender or such other Owner in connection therewith.

(ii) Subject to the provisions of clauses (iii) and (iv) below, the Lender or such other Owner, as applicable, shall afford the Corporation the opportunity, at the Corporation's sole cost and expense, to contest (1) the validity of any amendment to the Code which causes the interest on the Bonds to be includable in the gross income of the Lender or such other Owner or (2) any challenge to the validity of the tax exemption with respect to the interest on the Bonds, including the right to direct the necessary litigation contesting such challenge (including administrative audit appeals).

(iii) The following shall constitute conditions precedent to the exercise by the Corporation of its right to contest set forth in clause (ii) above: the Corporation shall, on demand, immediately reimburse the Lender and such other Owner, as applicable, for any and all expenses (including attorneys' fees, charges and disbursements, as determined by the Lender and such other Owner, as applicable, in their sole discretion) that may be incurred by the Lender and such other Owner, as applicable, in connection with any such contest, and shall, on demand, immediately reimburse the Lender and such other Owner, as applicable, for any and all penalties or other charges payable by the Lender and such other Owner, as applicable, for failure to include such interest in its gross income.

(iv) The obligations of the Corporation under this Section 2.02(b) shall survive the termination of this Continuing Covenant Agreement, the payment of the Loan, the termination of the Loan Agreement and the redemption or other payment in full of the Bonds.

(c) In addition to other amounts payable by the Corporation to the Lender or any other Owner under the Bond Documents, the Corporation also shall indemnify the Lender and each other Owner against its loss or expense as a consequence of any prepayment of all or any part of the Bonds on a day other than an Interest Payment Date ("Breakage Expense"). The amount of such Breakage Expense shall be determined by the Lender and each other Owner, as applicable, and absent manifest error shall be conclusive and binding upon the Corporation.

(d) (i) If the amount of interest payable for any period in accordance with the terms hereof or the Bonds exceeds the amount of interest that would be payable for such period had interest for such period been calculated at the maximum interest rate permitted by applicable law, then interest for such period shall be payable in an amount calculated at the maximum interest rate permitted by applicable law.

(ii) Any interest that would have been due and payable for any period but for the operation of the immediately preceding subclause (i) shall accrue and be payable as provided in this subclause (ii) and shall, less interest actually paid to the Lender or any other Owner, as applicable, for such period, constitute the "Excess Interest Amount." If there is any accrued and unpaid Excess Interest Amount as of any date, then the principal amount with respect to which

interest is payable shall bear interest at the maximum interest rate permitted by applicable law until payment to the Lender and each other Owner, as applicable, of the entire Excess Interest Amount.

(iii) Notwithstanding the foregoing, on the date on which no principal amount hereunder remains unpaid, to the extent possible without violating applicable laws, the Corporation shall pay to the Lender and each other Owner, as applicable, a fee equal to any accrued and unpaid Excess Interest Amount.

(iv) If the amount of interest that would have accrued on any series of the Bonds at a floating rate applicable thereto is greater than the amount of interest accrued at the maximum rate permitted by the terms of the Master Trust Indenture, the Corporation shall pay to the Lender, on each date on which interest payments are due under such Bonds, the amount of such excess interest, on an after-tax basis.

**Section 2.03. Obligations Absolute.** The payment obligations of the Corporation under this Continuing Covenant Agreement shall be unconditional and irrevocable general obligations of the Corporation and shall be paid strictly in accordance with the terms of this Continuing Covenant Agreement under all circumstances, including the following:

(a) any lack of validity or enforceability of this Continuing Covenant Agreement or any provision hereof, the Bonds or any of the other Bond Documents;

(b) any amendment or waiver of or any consent to departure from all or any of the Bond Documents;

(c) the existence of any claim, setoff, defense or other right which the Corporation may have at any time against the Lender, any other Owner or any other Person, whether in connection with this Continuing Covenant Agreement, the other Bond Documents, the transactions contemplated herein or therein or any unrelated transaction; or

(d) any other circumstance or happening whatsoever, whether or not similar to any of the foregoing.

All fees payable pursuant to this Continuing Covenant Agreement shall be deemed to be fully earned when due and non-refundable when paid.

**Section 2.04. No Deductions.** Except as otherwise required by law, each payment by the Corporation to the Lender or any other Owner under this Continuing Covenant Agreement or any other Bond Document shall be made without setoff or counterclaim and without withholding for or on account of any present or future taxes (other than any tax measured by or based upon the overall net income of the Lender or such other Owner imposed by any jurisdiction having control over the Lender or such other Owner) imposed by or within the jurisdiction in which the Corporation is domiciled, any jurisdiction from which the Corporation makes any payment hereunder or (in each case) any political subdivision or taxing authority thereof or therein. If any such withholding is so required, the Corporation shall make the withholding, pay the amount withheld to the appropriate Governmental Authority before penalties attach thereto or interest accrues thereon and forthwith pay such additional amount as may be necessary to ensure that the

net amount actually received by the Lender or such other Owner, as applicable, free and clear of such taxes (including such taxes on such additional amount) is equal to the amount which the Lender or such other Owner would have received had such withholding not been made. If the Lender or such other Owner pays any amount in respect of any such taxes, penalties or interest, the Corporation shall reimburse the Lender or such other Owner, as applicable, for that payment on demand in the currency in which such payment was made. If the Corporation pays any such taxes, penalties or interest, it shall deliver official tax receipts evidencing that payment or certified copies thereof to the Lender or such other Owner, as applicable, on or before the thirtieth day after payment.

### ARTICLE III

#### CONDITIONS PRECEDENT TO PURCHASE OF BONDS

**Section 3.01. Documentary Requirements.** The obligation of the Lender to make the first Advance of the purchase price of the Bonds is subject to the conditions precedent that the Lender shall have received, on or before the Closing Date, the items listed below in this Section, each dated (as applicable) and in form and substance as is reasonably satisfactory to the Lender. However, should the Lender make such initial Advance prior to its receipt and approval of any of the following items, such purchase shall not be deemed to be a waiver of any documentary requirement.

(a) The following Corporation documents:

(i) A certificate, dated the Closing Date, signed by the Secretary of the Corporation, certifying: (i) that attached thereto is a copy of the articles of incorporation of the Corporation and all amendments thereto certified as of a recent date by the Georgia Secretary of State, and that such organizational documents have not been amended since such date; (ii) that attached thereto is a true and correct copy of the bylaws of the Corporation as in effect on the Closing Date; (iii) that attached thereto is a true and correct copy of resolutions adopted by the Board of Directors of the Corporation authorizing the execution, delivery and performance of this Continuing Covenant Agreement and the other Closing Documents, as applicable; and (iv) as to the incumbency and genuineness of the signature of each officer of the Corporation executing this Continuing Covenant Agreement or any of the other Closing Documents.

(ii) A Certificate of good standing for the Corporation from the Georgia Secretary of State.

(iii) A certificate, dated the Closing Date, signed by an authorized officer of the Corporation, certifying that there is no action, suit, proceeding, inquiry or investigation at law or in equity or before or by any court, public board or body pending, or, to the best knowledge of the Corporation, threatened against or affecting the Corporation wherein an unfavorable decision, ruling or finding would have a material adverse effect on the business, operations or financial condition of the Corporation or would adversely affect (i) the transactions contemplated by, or the validity or enforceability of, this Continuing Covenant Agreement or any of the other Bond Documents, or (ii) the tax-exempt status of interest on the Bonds.

(iv) A certificate, dated the Closing Date, signed by an authorized officer of the Corporation, certifying that (1) the representations and warranties of the Corporation contained in this Continuing Covenant Agreement are true and correct in all material respects (or, if qualified by materiality, in all respects) on and as of the Closing Date, (2) that the Corporation is not in violation of any of the covenants contained in this Continuing Covenant Agreement as of the Closing Date, (3) no Default or Event of Default has occurred and is continuing or would result from the execution and delivery of the Closing Documents, and (4) the Corporation has complied or is presently in compliance with all agreements and has satisfied all conditions on its part to be observed or satisfied under the Bond Documents at or prior to the Closing Date.

(v) Certified copies of all governmental and regulatory approvals necessary for the Corporation with respect to this Continuing Covenant Agreement, the other Bond Documents and the transactions contemplated hereby and thereby.

(vi) A letter from the Internal Revenue Service to the effect that the Corporation is an organization described in Section 501(c)(3) of the Code, and is exempt from federal income taxation under Section 501(a) of the Code.

(vii) Copies of all Derivative Agreements to which the Corporation is a party.

(b) The following financing documents:

(i) An executed original of each of the Closing Documents and certified copies of each of the Bond Documents.

(ii) A specimen Bond.

(iii) Such financing statements as may be required by the Lender.

(c) The following opinions, addressed to the Lender or on which the Lender is otherwise expressly authorized to rely:

(i) From counsel to the Corporation, as to the due authorization, execution and delivery of the Closing Documents, the validity, binding effect and enforceability of the Bond Documents, and such other customary matters as the Lender may reasonably request.

(ii) From Bond Counsel to the Authority, in customary form, the opinions required by the Bond Indenture, to include, but to not be limited to, those which address the validity of and tax treatment of interest on the Bonds.

(iii) Each other opinion delivered by any Person pursuant to the Bond Documents.

(d) The Title Policy in form and content satisfactory to the Lender, to be obtained at the Corporation's expense, insuring the first priority and validity of the Security Deed, free and clear of all defects and encumbrances except such as the Lender shall approve, with no

exceptions or exclusions other than as may be approved by the Lender, and as otherwise required by the Master Trust Indenture.

- (e) A closing fee of 0.25% of the principal amount of the Bonds.
- (f) Certified copies of the resolutions of the Authority approving the issuance of the Bonds, the execution and delivery of each of the Closing Documents to which it is a party and other matters contemplated hereby and thereby.
- (g) An incumbency certificate of the Authority in respect of each of the officers authorized to execute the Closing Documents to which it is a party and otherwise to act for and bind the Authority in connection with the transactions contemplated hereby and thereby.
- (h) Certificates or policies evidencing that all insurance required by Section 5.11 of this Continuing Covenant Agreement and by the other Bond Documents to be in effect upon delivery of the Bonds is in full force and effect and that the amounts and types of insurance evidenced thereby comply with and satisfy all the requirements of Section 5.11 of this Continuing Covenant Agreement and of the other Bond Documents.
- (i) An appraisal and environmental site assessment conforming to the requirements of the Lender and the Bond Documents.
- (j) Evidence satisfactory to the Lender that the Pre-Sales Ratio (Independent Living Units) for the fiscal quarter of the Corporation most recently ended shall not be less than 70%.
- (k) Such other instruments, documents and opinions as the Lender shall reasonably require to evidence and secure the Obligations and to comply with the provisions of this Continuing Covenant Agreement and the other Bond Documents and the requirements of any Governmental Authority to which the Lender or the Corporation is subject.

**Section 3.02. Credit Requirements.** Prior to the Closing Date, the Lender shall have determined, in its sole discretion, based in part upon the information and reports submitted by the Corporation, that the Corporation has met the Lender's credit requirements.

**Section 3.03. Additional Conditions Precedent.** On or prior to the Closing Date, the Corporation shall have paid to the Lender (i) the fees and expenses of the Lender payable pursuant to this Continuing Covenant Agreement and (ii) the reasonable fees and expenses of counsel to the Lender incurred in connection with the transactions contemplated by the Bond Documents. The Authority shall execute and deliver the Bonds to the Bond Trustee who shall authenticate and deliver the Bonds to the Lender.

**Section 3.04. Advances for the Work.** Advances for the Work shall be made in accordance with the provisions of the Construction Disbursement Agreement until the date that is 22 months after the Closing Date (the "Availability Date"). So long as no Event of Default shall have occurred and be continuing and upon compliance with the terms and conditions herein, in the Bond Indenture and in the Construction Disbursement Agreement, the Corporation may direct that the remaining undrawn balance of principal of the Bond be drawn down on or prior to the Availability Date, and shall be deposited into an account with SunTrust Bank, assigned as



security for the Obligations, investing solely in tax-exempt obligations or in such other investments as will not adversely affect the tax exempt status of interest on the Bond, as determined by an opinion of Bond Counsel. Disbursements from such account shall be made to pay for the Work, subject to the same terms and conditions as are applicable to Advances for the Work set forth in the Construction Disbursement Agreement. On the Completion Date, as defined in the Construction Disbursement Agreement, any remaining funds on deposit in such account shall be applied to the redemption of the Bonds and such redemption shall reduce the principal installments set forth on Exhibit A in inverse order of its maturity. The Bond Trustee shall not be required to provide notice to the Lender of any redemption effected in accordance with this Section 3.04. The Lender shall promptly (i) advise the Bond Trustee in writing of any redemption effected in accordance with this Section 3.04, including the date of redemption, amount of principal redeemed and scheduled principal installments affected, and (ii) provide the Bond Trustee with a revised Exhibit A reflecting the corresponding modifications to the amortization schedule for the Bonds.

## ARTICLE IV

### REPRESENTATIONS AND WARRANTIES

All representations and warranties made herein to the Lender or incorporated hereby for the benefit of the Lender are made with the understanding that the Lender is relying upon the accuracy of such representations and warranties, and each such representation and warranty shall be deemed made to the Lender and relied upon by the Lender as of the date of each Advance. Notwithstanding that the Lender may conduct its own investigation as to some or all of the matters covered by the representations and warranties in the Bond Documents, and any certificates, information, opinions or documents delivered in connection therewith, the Lender is entitled to rely on all representations and warranties as a material inducement to the Lender's extension of the credit evidenced by the Bond Documents as of the date of this Continuing Covenant Agreement and as of the date of each Advance.

**Section 4.01. Loan Agreement.** All representations and warranties made by the Corporation in the Loan Agreement and the Master Trust Indenture are incorporated herein by reference and shall be deemed to have been made and reaffirmed by the Corporation for the benefit of the Lender as if they were fully set forth herein, in each case, as of the date of this Agreement and as of the date of each Advance.

**Section 4.02. Existence and Tax Status.** The Corporation is a nonprofit corporation duly organized, validly existing and in good standing under the laws of the State of Georgia and is authorized to transact business in the State of Georgia, has the power to own its properties and to carry on its business as now being conducted and is duly qualified as a foreign entity to do business in every jurisdiction in which the nature of its business makes such qualification necessary and is in good standing in each such jurisdiction. The Corporation is exempt from federal income taxes under Section 501(a) of the Code by virtue of being an organization described in Section 501(c)(3) of the Code, has received a letter or other notification from the Internal Revenue Service to that effect, which letter or other notification has not been modified, limited or revoked, is in compliance with all terms, conditions and limitations, if any, contained in such letter or other notification, and has determined the facts and circumstances which form

the basis of such letter or other notification as represented to the Internal Revenue Service continue to exist.

**Section 4.03. Power and Authority.** The Corporation has full corporate power and authority to enter into and execute and deliver each of the Closing Documents to which it is a party and to incur and perform the obligations provided for therein and in the Bond Documents, all of which have been duly authorized by all proper and necessary corporate action. No consent or approval of any Person or Governmental Authority (other than the Authority) is required as a condition to the validity or enforceability of any of such Bond Documents, or, if required, the same has been duly obtained.

**Section 4.04. Compliance with Laws.** The existing and contemplated use of the Facilities is and will be in conformity in all material respects with all applicable governmental laws, ordinances, rules and regulations (including the Americans with Disabilities Act and all other Environmental Laws and health, safety and zoning laws, ordinances, rules and regulations), and all variances and exceptions granted with respect thereto; and there is no action, suit, proceeding, inquiry or investigation existing, or, to the best of the Corporation's knowledge, after due inquiry, threatened or pending, wherein an unfavorable decision, ruling or finding would in any way have a material adverse effect on the Facilities, or its existing or intended use, or the repayment of the Bonds.

**Section 4.05. Operations.** The Corporation is in compliance with all applicable governmental laws and regulations applicable to the conduct of the Corporation's business and the operation of the Facilities, the noncompliance with which would have a material adverse effect on the Corporation's financial condition or operations or the operation of the Facilities.

**Section 4.06. Enforceability.** All of the Closing Documents to which the Corporation is a party have been duly authorized, executed and delivered by the Corporation. Each of the Bond Documents to which the Corporation is a party constitutes valid and legally binding obligations of the Corporation, and is fully enforceable against the Corporation in accordance with its respective terms, except as may be limited by applicable bankruptcy or insolvency proceedings, general principles of equity and similar provisions of law.

**Section 4.07. No Conflict.** The execution and delivery of the Closing Documents and performance by the Corporation of the Bond Documents will not (i) conflict with or result in a breach of any of the terms, conditions or provisions of the corporate governance documents of the Corporation; (ii) conflict with or result in a breach of any governmental requirement applicable to the Corporation; (iii) conflict with, result in a breach of or require consent under any agreement, instrument or indenture to which the Corporation is a party, or by which it or any of its Property is bound, or conflict with, result in a breach of, or constitute (with notice, lapse of time, or both) a default thereunder; (iv) result in the creation or imposition of any Lien (other than the Lien of the Bond Documents) upon any of the Property or assets of the Corporation; or (v) result in or require the acceleration of any Indebtedness of the Corporation.

**Section 4.08. No Litigation.** There are no actions, claims, suits or proceedings pending, or, to the best of the Corporation's knowledge, after due inquiry, threatened or reasonably anticipated against or directly involving the Corporation at law or in equity or before or by any

Governmental Authority which would have a material adverse effect on, or which may reasonably be expected to result in any material and adverse change in, the business, operations, prospects, Property, assets or condition (financial or otherwise) of the Corporation. The Corporation has received no notice that it is in default with respect to any governmental requirement or any judgment, order, writ, injunction, decree, rule, award or regulation of any Governmental Authority.

**Section 4.09. Contracts.** The Corporation is not in default under any contract, agreement, commitment or other instrument which default would have a material adverse effect on the business, the Property or condition (financial or otherwise) of the Corporation, or in the performance of any covenants or conditions respecting any of its Indebtedness. No holder of any Indebtedness of the Corporation has given notice of any asserted default thereunder. No liquidation or dissolution of the Corporation and no receivership, insolvency, bankruptcy, reorganization or other similar proceeding relative to the Corporation or its properties (including, but not limited to, the Facilities) is pending or threatened against it.

**Section 4.10. Financial Information.** All financial information furnished to the Lender concerning the Corporation in connection with the financing contemplated hereby is complete and correct in all material respects and fairly presents the financial position of the Corporation. There are no material liabilities, direct or indirect, fixed or contingent, of the Corporation except as reflected therein. There has been no material adverse change in the financial condition or operations of the Corporation since the most recent date as of which such financial information has been furnished to the Lender. The Corporation has not guaranteed the obligations of, or made any investment in or advances to, any Person except as disclosed in such financial information. The Corporation has good and marketable title to all of the Property and assets, and all of such Property and assets are free and clear of encumbrances, except as reflected in such financial information, in any UCC financing statements delivered to the Lender on or before the Closing Date or in the Title Policy delivered pursuant to Section 3.01(d), and except for other Permitted Liens.

**Section 4.11. Indebtedness.** The Corporation is not in default in the payment of the principal of or interest on any of its Indebtedness, nor is the Corporation in default under any provision of any instrument under or subject to which any Indebtedness has been incurred, and no event has occurred and is continuing under the provisions of any such instrument that with the lapse of time or the giving of notice, or both, would constitute an event of default thereunder.

**Section 4.12. Accuracy of Information.** No information (financial or otherwise) furnished by or on behalf of the Corporation in connection with the negotiation of the Transactions contains any untrue statement of a material fact or omits a material fact necessary to make such information not misleading. There is no fact that the Corporation has not disclosed to the Lender that materially adversely affects or will materially adversely affect the properties, business, prospects, profits or condition (financial or otherwise) of the Corporation, or the ability of the Corporation to perform its obligations under the Bond Documents.

**Section 4.13. Tax Returns.** The Corporation has filed all tax returns required to be filed by it and all taxes due with respect thereto have been paid, and no controversy in respect of additional taxes, state, federal or foreign, of the Corporation is pending or threatened.

#### **Section 4.14. Hazardous Materials.**

(a) (i) No Hazardous Material is or has been generated, used, released, treated, disposed of or stored, or otherwise located, in, on or under the Facilities or the Land or any portion thereof (except for the generation, use and storage, in compliance with all applicable Environmental Laws, of such Hazardous Materials as are necessary or appropriate for the conduct of the Corporation's business as it exists on the date of this Continuing Covenant Agreement), and no part of the Facilities or the Land (now or in the past), including the soil and groundwater located thereon and thereunder, has been contaminated by any Hazardous Material; (ii) no Improvements constituting a part of the Facilities contain any asbestos or substances containing asbestos; (iii) neither the Facilities nor the Land has been the subject of an environmental audit or remedial action; and (iv) to the best of the Corporation's knowledge, the foregoing statements are true and correct with respect to all of the real property adjoining the Facilities, or, if the foregoing statements are untrue in any respect, any liability of the Corporation which may arise from such untruth is not reasonably likely to have a material adverse effect on the operations or financial condition of the Corporation;

(b) No portion of the Facilities or the Land (now or in the past) has, pursuant to any Environmental Law, been placed on the "National Priorities List" or "CERCLIS List" (or any similar federal, state or local list) of sites subject to possible environmental problems;

(c) There are no underground storage tanks situated on the Facilities or the Land and, to the best of the knowledge of the Corporation, no underground storage tanks have ever been situated on the Facilities or the Land;

(d) All activities and operations of the Corporation meet all material requirements of all applicable Environmental Laws, the Corporation has not violated any Environmental Law in any material respect in the past, and the Facilities have never been the site of a violation of any Environmental Law which could have a material adverse effect on the operations or financial condition of the Corporation;

(e) The Corporation has never sent a Hazardous Material to a site which, pursuant to any Environmental Law, (i) has been placed on the "National Priorities List" or "CERCLIS List" (or any similar federal, state or local list) of sites subject to possible environmental problems, or (ii) is subject to, or the source of, a claim, an administrative order or other request to take "response," "removal," "corrective" or "remedial" action, as defined in any Environmental Law, or to pay for or contribute to the costs of cleaning up the site;

(f) The Corporation is not involved in any suit or proceeding and has not received any notice from any Governmental Authority or other third party with respect to a release or threat of release of any Hazardous Material, or violation or alleged violation of any Environmental Law, and has not received notice of any claim from any person or entity relating to property damage or to personal injuries from exposure to any Hazardous Material; and

(g) The Corporation has timely filed all reports required to be filed, has acquired all necessary certificates, approvals and permits, and has generated and maintained all required data, documentation and records required under all Environmental Laws, in each case where failure to do so would have a material adverse effect on the operations or financial condition of the Corporation.

**Section 4.15. ERISA.** (i) Each of the Plans is in full force and effect and at all times has been operated, in all material respects, in accordance with its terms and in accordance with all applicable laws including ERISA and the Code; (ii) there are no pending investigations, proceedings or other matters concerning the Plans before the Internal Revenue Service (“IRS”), the United States Department of Labor, the PBGC or any other forum, other than determination letter applications filed with the IRS in the normal course of operating the Plans; (iii) neither the Corporation, any Commonly Controlled Entities, nor any director, officer, employee, agent or representative of the Corporation or any Commonly Controlled Entity nor any fiduciary of any Plan has engaged in a transaction in connection with any of the Plans that would be a prohibited transaction subject to a material civil penalty assessed pursuant to Section 502(i) of ERISA, or a tax imposed by Section 4975 of the Code, with respect to any Plan; (iv) with respect to each Plan that is a defined benefit pension plan, no accumulated funding deficiency (as defined in Section 412 of the Code or Section 302 of ERISA) has occurred, whether or not that accumulated funding deficiency has been waived; (v) with respect to each Plan which is a defined benefit pension plan, no reportable event (as defined in Section 4043(b) of ERISA) which is required to be reported to the PBGC within 30 days of its occurrence has occurred; (vi) with respect to each Plan that is a multiemployer plan (as defined in Section 3(37) of ERISA) neither the Corporation nor any Commonly Controlled Entity has any material current, contingent or potential liability of any kind, including withdrawal liability, except for contributions due in the ordinary course that are due but not yet payable; (vii) there are no pending or, to the best of Corporation’s knowledge, threatened claims by or disputes with any participants or beneficiaries of the Plans, except Plan benefit claims arising in the normal course of the operations of the Plans and as to which no dispute exists; (viii) the Corporation has no knowledge of any facts that could give rise to any material claims against any Plan or the fiduciaries of any Plan, except for Plan benefit claims arising in the normal course of the operations of the Plans; (ix) neither the Corporation nor any Commonly Controlled Entity, nor any fiduciary of any Plan has given notice to any fiduciary liability insurer of any claims or potential claims in connection with any of the Plans; and (x) no Liens exist with respect to any of the Plans.

**Section 4.16. OFAC; Anti-Corruption Laws.**

(a) OFAC. Neither the Corporation, nor any of its Subsidiaries, nor, to the knowledge of the Corporation and its Subsidiaries, any director, officer, employee, agent, affiliate or representative thereof, is an individual or entity that is, or is owned or controlled by any individual or entity that is (i) currently the subject or target of any Sanctions, (ii) a Sanctioned Person nor included on OFAC’s List of Specially Designated Nationals, HMT’s Consolidated List of Financial Sanctions Targets and the Investment Ban List, or any similar list enforced by any other relevant sanctions authority or (iii) located, organized or resident in a Designated Jurisdiction.

(b) **Anti-Corruption Laws.** The Corporation and its Subsidiaries have conducted their businesses in compliance with the Anti-Corruption Laws and have instituted and maintained policies and procedures designed to promote and achieve compliance with such laws.

**Section 4.17. No Default.** No Default or Event of Default under this Continuing Covenant Agreement has occurred and is continuing.

**Section 4.18. No Affiliates.** As of the Closing Date, the Corporation has no Affiliates other than the Guarantor.

**Section 4.19. Adequate Assets; Title to Property; Insurance.**

(a) The Corporation possesses adequate assets and licenses as may be required to continue to conduct its business as heretofore conducted by it, and the Corporation has good and marketable title to the Property. None of the Property is subject to any Lien, except Permitted Liens.

(b) The Corporation currently maintains insurance of such type and in such amounts or in excess of such amounts as are customarily carried by, and insures against such risks as are customarily insured against by, businesses of like type, size and character to the Corporation.

**Section 4.20. Investment Company; Non Controlled Person.** Neither the Corporation nor any of its Affiliates is an “investment company” or a company “controlled” by an “investment company,” as such terms are defined in the Investment Corporation Act of 1940, as amended.

**Section 4.21. Condemnation.** No notice of taking by eminent domain or condemnation of any part of the Property has been received, and the Corporation has no knowledge that any such proceeding is contemplated.

**Section 4.22. No Damage.** No part of the Property has been damaged as a result of any fire, explosion, accident, flood or other casualty which is not now fully restored.

**Section 4.23. Federal Reserve Board Regulations.** The Corporation shall not use any portion of the proceeds of the Bonds for the purpose of carrying or purchasing any Margin Stock and has not incurred any Indebtedness to be reduced, retired or purchased by the Corporation out of such proceeds of the Bonds, and the Corporation does not own and has no intention of acquiring any Margin Stock.

## ARTICLE V

### AFFIRMATIVE AND NEGATIVE COVENANTS OF THE CORPORATION

**Section 5.01. Repayment of Obligations.** The Corporation shall promptly repay the payment obligations of the Corporation hereunder and under the other Bond Documents when due, according to the terms of this Continuing Covenant Agreement and the other Bond Documents.

**Section 5.02. Performance under Continuing Covenant Agreement and Other Bond Documents.** The Corporation shall perform all obligations required to be performed by it under

the terms of this Continuing Covenant Agreement and the other Bond Documents and any other agreements now or hereafter existing or entered into between the Corporation and the Lender related to the Bonds, subject to any applicable notice and cure provisions contained herein or therein.

**Section 5.03. Financial and Business Information About the Corporation.** The Corporation shall deliver to the Lender:

(a) As soon as practicable and in any event within forty-five (45) days after the close of each fiscal quarter of the Corporation, beginning with the close of the fiscal quarter of the Corporation ending September 30, 2018, (i) a consolidated statement of financial position as of the close of such fiscal quarter and consolidated statements of operations and changes in net assets and statements of cash flows for the fiscal quarter then ended, and (ii) statements which shall detail the number of Independent Living Units (A) occupied and reserved for the Facilities and (B) as to which there are Pre-Sales, in each case, for the fiscal quarter of the Corporation then ended, in each case certified by the chief financial officer (or person having a comparable title and responsibilities) of the Corporation;

(b) As soon as practicable and in any event within one hundred fifty (150) days after the close of each Fiscal Year of the Corporation, beginning with the close of the Fiscal Year ending December 31, 2018, an audited consolidated statement of financial position of the Corporation as of the close of such Fiscal Year and audited consolidated statements of operations and changes in net assets and statements of cash flows for the Fiscal Year then ended, audited by an independent certified public accountant reasonably acceptable to the Lender in accordance with Generally Accepted Accounting Principles, applied on a Consistent Basis, and accompanied by a report thereon by such certified public accountant and, with respect to such audited financial statements, containing an opinion that is not qualified with respect to scope limitations imposed by the Corporation or with respect to accounting principles followed by the Corporation not in accordance with Generally Accepted Accounting Principles;

(c) Concurrently with the delivery of the financial statements described in subsections (a) and (b) above, an Officer's Certificate which shall (i) certify to the Lender that to the best of such officer's knowledge after review of this Continuing Covenant Agreement, and appropriate inquiry, the Corporation has kept, observed, performed and fulfilled each and every covenant, obligation and agreement binding upon the Corporation contained in this Continuing Covenant Agreement or the other Bond Documents, and that no Default or Event of Default has occurred or specifying any such Default or Event of Default and (ii) set forth computations in detail satisfactory to the Lender in the exercise of its sole and absolute discretion demonstrating compliance with the covenants contained in Section 5.17;

(d) Immediately upon the Corporation's receipt thereof, copies of notices of an audit or of any action (other than routine inspections) to be taken or proposed to be taken from any agency or entity having jurisdiction over the conduct of the Corporation's business or the operation of the Facilities or of any matters which may have a material adverse effect on the Facilities, and, upon request of the Lender, the Corporation shall make available for the Lender's inspection copies of any management letter or other written communications of a material nature from certified public accountants, and, with respect to the Facilities, any consulting report,

marketing report or any other report the Corporation may request of any Person from time to time, other than routine reports received in the ordinary course of business or deemed by the Corporation to be not material to the operations or plans of the business of the Corporation;

(e) As soon as available and in any event within forty-five (45) days prior to the beginning of each Fiscal Year of the Corporation, the annual operating budget of the Corporation for such Fiscal Year;

(f) As soon as practicable and in any event within thirty (30) days after the close of each fiscal month of the Corporation, a report of sales information with respect to the Independent Living Units, to include supporting detail identifying units sold, purchase price, timing as to when deposit is received, amount of deposit and timing as to when the purchase price was paid in full;

(g) Concurrently when the same are provided to the Master Trustee or Bond Trustee, as applicable, all financial information, statements and reports required to be provided by the Corporation pursuant to the terms of the Master Trust Indenture or the Bond Indenture, as applicable; and

(h) Upon the Lender's request, such other information about the Facilities and the financial condition and operations of the Corporation as the Lender may from time to time reasonably request; provided, however, that the Corporation shall not be required to disclose to the Lender any confidential information concerning the medical condition or personal financial affairs, including personal financial statements, of any residents or proposed residents of the Facilities.

**Section 5.04. Notice of Certain Events.** The Corporation shall promptly, after any officer of the Corporation learns or obtains knowledge of the occurrence thereof, give written notice to the Lender of:

(a) any litigation or proceeding brought against the Corporation which may have a material and adverse effect on the Corporation, whether or not the claim is considered by the Corporation to be covered by insurance, and the Corporation shall, if requested by the Lender, set up such reserves as the Lender reasonably determines are necessary to protect the Lender against loss;

(b) any written notice of a violation received by the Corporation from any Governmental Authority which, if such violations were established, might have a material and adverse effect on the business of the Corporation;

(c) the commencement of any action, suit or proceeding before any court or governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign, affecting the Corporation or the Facilities, which claim is of at least \$50,000;

(d) any attachment, judgment, Lien, levy or order that may be placed on or assessed against or threatened against the Corporation or the Facilities that (i) relates to a claim or claims of at least \$50,000 and (ii) is not bonded over to the reasonable satisfaction of the Lender or successfully removed by the Corporation within sixty (60) days, except for Permitted Liens;



(e) any other matter that has resulted, or could reasonably be expected to result, in a material adverse effect on the business, the Property or condition (financial or otherwise) of the Corporation;

(f) any Default or Event of Default;

(g) any amendment of the Corporation's corporate governance documents, together with a copy of such amendment;

(h) any material damage to all or any part of the Facilities;

(i) any change in the Manager; and

(j) any upgrade, downgrade, suspension or withdrawal of the rating on the Bonds by any of the Rating Agencies.

**Section 5.05. Payment of Indebtedness; Performance of Obligations.** Except as would not cause an Event of Default under Section 6.01(j), the Corporation shall pay promptly or otherwise satisfy and discharge all of its Indebtedness and all demands and claims against it as and when the same become due and payable. The Corporation shall also observe and remain in compliance with all laws, ordinances, governmental rules and regulations to which it is subject and obtain all licenses, permits, franchises or other governmental authorizations necessary to the ownership of the Property or the conduct of its business, and all covenants and conditions of all agreements and instruments to which the Corporation is a party, which failure to comply or failure to obtain would materially and adversely affect the business, prospects, profits, Property or condition (financial or otherwise) of the Corporation.

**Section 5.06. Maintenance of Books and Records; Inspection; Accounting Principles.** The Corporation shall maintain adequate books, accounts and records, and prepare all financial statements required under this Continuing Covenant Agreement in accordance with Generally Accepted Accounting Principles (subject, in the case of unaudited interim statements, to normal year-end adjustments, absence of notes, treatment of accruals and certain other variations consistent with past practices, none of which shall be in the aggregate material) and in compliance with the regulations of any Governmental Authority having jurisdiction over it; and permit employees or agents of the Lender at any reasonable time to inspect the properties of the Corporation and to examine or audit its books, accounts and records and make copies and memoranda of them, and the Corporation shall reimburse the Lender for the costs and expenses of any such inspection, audit and examination. The Corporation shall permit any representative of the Lender to visit and inspect any Property of the Corporation, to examine all books of accounts, records, reports and other papers, to make copies and extracts therefrom, and to discuss the affairs, finances and accounts of the Corporation with the Manager and the Corporation's management, employees and independent public accountants and attorneys (and by this provision the Corporation authorizes the Manager and said accountants to discuss the finances and affairs of the Corporation with representatives of the Lender), all at such reasonable times and as often as may be reasonably requested, but in any event at least twice during each Fiscal Year of the Corporation, and the Corporation shall reimburse the Lender for the costs and expenses of any such inspection and examination.

**Section 5.07. Maintenance of Properties; Conduct of Business.** The Corporation shall conduct its business in an orderly, efficient and customary manner, keep its Property used in the operation of its business in good working order and condition (normal wear and tear excepted), and from time to time make all needed repairs to, renewals of or replacements of its Property (except to the extent that any of such Property is obsolete or is being replaced) so that the efficiency of such Property shall be fully maintained and preserved. The Corporation shall file or cause to be filed in a timely manner all reports, applications, estimates and licenses that shall be required by any Governmental Authority and which, if not timely filed, would have a material and adverse effect on the Corporation or the Facilities.

**Section 5.08. Performance and Compliance with Other Covenants.** The Corporation shall perform and comply with each of its covenants set forth in any of the Bond Documents. The Corporation agrees that the covenants set forth in Sections 3.15, 3.16 and 3.17 of the Master Trust Indenture are incorporated herein by reference to the same extent and with the same force and effect as if fully set forth herein, and are deemed made by the Corporation to the Lender as well as the holders of all other parity notes issued thereunder.

**Section 5.09. Corporate Existence; Tax-Exempt Status.** The Corporation shall maintain and preserve in full force and effect its corporate existence, rights and franchises and its tax-exempt status.

**Section 5.10. Payment of Taxes.** The Corporation shall pay and discharge all taxes, assessments and other governmental charges or levies imposed upon it or any of its Property prior to the date on which interest or penalties would attach thereto; provided, however, that the Corporation shall not be required to pay any such tax, assessment or governmental charge or levy, the payment of which is being contested in good faith by appropriate proceedings, if the Corporation has established and maintained adequate reserves with respect thereto reasonably satisfactory to the Lender.

**Section 5.11. Maintenance of Insurance.** The Corporation shall maintain and pay for insurance upon the Corporation and its Property, wherever located, covering casualty, hazard, public liability, product liability, business interruption, boiler, fidelity and such other risks, casualties and contingencies as is customary in the business in which the Corporation is engaged, all in such amounts and with such insurance companies as shall be reasonably satisfactory to the Lender.

**Section 5.12. ERISA Covenants.** The Corporation shall comply in all material respects with all requirements of ERISA applicable to it (including the payment of all obligations and liabilities arising under ERISA) and furnish to the Lender as soon as possible and in any event within 30 days after it or any duly appointed administrator of any employee pension benefit plan (as defined in ERISA) knows or has reason to know that any Reportable Event (as defined in ERISA) with respect to any such plan has occurred, a statement of the chief financial officer of the Corporation describing in reasonable detail such Reportable Event and any action which the Corporation proposes to take with respect thereto, together with a copy of the notice of such Reportable Event given to the PBGC or a statement that said notice will be filed with the annual report to the United States Department of Labor with respect to such plan if such filing has been authorized.

**Section 5.13. Consents Under Bond Documents.** The Corporation shall obtain the consent of the Lender whenever the Corporation is required to obtain the consent of the Master Trustee and the Bond Trustee under the Loan Agreement, the Master Trust Indenture, the Bond Indenture or any of the other Bond Documents.

**Section 5.14. Maintenance of Management Agreement.** The Corporation shall maintain the Management Agreement in full force and effect, enforce its rights and remedies thereunder and perform its duties and obligations thereunder in a timely manner. Subject to the provisions of the Management Fee Subordination Agreement, the Corporation may modify, amend or, prior to its contractual expiration date, terminate the Management Agreement (but may not change the Manager) without the Lender's prior written consent so long as such actions, separately and together, do not materially and adversely affect the financial condition, operations or Property of the Corporation.

**Section 5.15. Intentionally Deleted.**

**Section 5.16. Intentionally Deleted.**

**Section 5.17. Financial Covenants.**

(a) Days' Cash on Hand. The Corporation shall have not less than 120 Days' Cash on Hand on each Liquidity Testing Date, commencing with the first such date to occur after the date of this Continuing Covenant Agreement. The Corporation's failure to be in compliance with this Section 5.17(a) as of any Liquidity Testing Date shall constitute an immediate Event of Default hereunder.

(b) Pre-Sales Ratio (Independent Living Units). Commencing with the first full quarter end after the Closing Date, the Pre-Sales Ratio (Independent Living Units) shall not be less than 70% for each fiscal quarter of the Corporation. The Corporation's failure to be in compliance with this Section 5.17(b) shall constitute an immediate Event of Default hereunder.

**Section 5.18. Deposit Relationship.**

(a) The Corporation shall maintain its primary banking relationship with SunTrust Bank, and, notwithstanding any provisions of the Bond Indenture or the other Bond Documents to the contrary, shall maintain the account(s) for deposit of Entrance Fees with SunTrust Bank until all Indebtedness in respect of the Bonds is repaid in full. The financial services that SunTrust Bank offers to the Corporation shall be offered on a basis competitive with the commercial banking marketplace.

(b) The Corporation irrevocably authorizes SunTrust Bank to debit from time to time any deposit account of the Corporation at SunTrust Bank the for (i) amount of principal and interest (or Purchase Price) due on any Bond held by the Lender, and pay such amounts to the Lender, to the extent the same has not been paid by the Corporation in accordance with the terms of the Bond Indenture and the Loan Agreement, it being agreed that principal and interest payments on the Bonds are made to the Bond Trustee, and (ii) for the net amount due under any Swap Contract between the Corporation and SunTrust Bank.

**Section 5.19. Intentionally Deleted.**

**Section 5.20. Merger and Dissolution.** The Corporation shall not enter into any transaction of merger or consolidation or any transaction of dissolution or liquidation, except that any Person may consolidate with or merge into the Corporation, provided that the Corporation shall be the surviving entity and after giving effect to such consolidation or merger no Default or Event of Default shall exist hereunder.

**Section 5.21. Indebtedness.** The Corporation shall not create, incur, assume or suffer to exist any Indebtedness except for:

(a) The Loan, the Corporation's obligations to the Lender under this Continuing Covenant Agreement and Indebtedness heretofore incurred and described in the financial statements submitted to the Lender prior to the Closing Date or to which the Lender has consented, which Indebtedness shall not be renewed, extended or refinanced, except in compliance with this Continuing Covenant Agreement and the Bond Indenture;

(b) Indebtedness under the Bond Indenture and the other Bond Documents; and

(c) Indebtedness permitted to be incurred pursuant to the Bond Indenture (as provided as of the date of this Continuing Covenant Agreement);

provided that no Indebtedness shall be incurred by the Corporation if such incurrence would result in a violation of any of its covenants in Section 5.17 or any other provision of this Continuing Covenant Agreement or any provision of the other Bond Documents.

**Section 5.22. Liens and Encumbrances.** The Corporation shall not create, assume or suffer to exist any deed of trust, deed to secure debt, mortgage, encumbrance or security interest (including the interest of a conditional seller of goods) securing a charge or obligation, on all or any portion of the Facilities, or any of the other assets pledged pursuant to the Bond Indenture, the Security Deed or other Bond Documents, whether now owned or hereafter acquired, except for utility easements to serve the Facilities and other Permitted Liens. Any mechanics' Liens which may be filed shall promptly be satisfied or secured by posting with the Lender, a title insurance company or an appropriate court a bond in form and amount satisfactory to the Lender.

**Section 5.23. Disposition of Assets.** The Corporation shall not sell, lease, transfer, convey or otherwise dispose of any of its Property, including the Facilities, except as otherwise permitted by this Continuing Covenant Agreement.

**Section 5.24. Guarantee.** The Corporation shall not guarantee, assume, endorse or otherwise become or remain liable in connection with the obligations of any other Person (including obligations of such Persons arising from working capital maintenance agreements), other than (i) the endorsement of negotiable instruments in the ordinary course of business for deposit or collection, and (ii) such guaranties and other contingent liabilities currently existing as disclosed in the financial statements and notes thereto delivered to the Lender prior to the Closing Date and as otherwise approved by the Lender in writing.

**Section 5.25. New Business.** The Corporation shall not engage in any business other than the business in which the Corporation is currently engaged or a business reasonably related thereto or make any material change thereto, unless such action is determined by the Board of Directors of the Corporation to be in the Corporation's best economic interests or would not otherwise adversely affect the financial condition of the Corporation in any material respect.

**Section 5.26. Affiliates or Partnerships.** The Corporation shall not create any new Affiliate or become a partner or joint venturer in any partnership or joint venture unless such action is determined by the Board of Directors of the Corporation to be in the Corporation's best economic interests or would not otherwise adversely affect the financial condition of the Corporation in any material respect.

**Section 5.27. Transactions Affecting the Collateral.** The Corporation shall not enter into any transaction that materially and adversely affects the Facilities, the Corporation's ability to repay any Indebtedness or the Obligations.

**Section 5.28. Tax-Exempt Status of Bonds.** The Corporation shall not take, fail to take or, to the extent it exercises any control, permit to be taken, any action if such action or failure to act would adversely affect the exclusion from gross income for federal income tax purposes of interest on the Bonds.

**Section 5.29. Amendment of Any Other Bond Document.** The Corporation shall not enter into or consent to an amendment or supplement to or modification of the Master Trust Indenture, the Bond Indenture, the Loan Agreement or any other Bond Document that would adversely affect any rights or remedies of the Lender hereunder or thereunder. The execution of amendments or supplements to the Bond Documents to permit the incurrence of additional Indebtedness as permitted by Section 5.21 on a parity basis with the Bonds and the Obligations shall not be deemed to adversely affect the rights and remedies of the Lender.

**Section 5.30. Amendment of Corporate Documents.** The Corporation shall not amend its corporate governance documents in any respect that, directly or indirectly, would affect the priority of payment of the Bonds and the Obligations and matters related thereto.

**Section 5.31. Payment of Other Indebtedness After an Event of Default.** The Corporation shall not, except as provided in the Bond Indenture, pay any principal or interest on other Indebtedness if any Event of Default under this Continuing Covenant Agreement shall have occurred and be continuing.

**Section 5.32. Hazardous Material.** The Corporation shall not (a) violate any Environmental Law in any respect that would have a material adverse effect on the Corporation or (b) permit any Hazardous Material to be brought onto any of its Property (unless such Hazardous Material is necessary or appropriate for the conduct of the Corporation's business and as would not violate any Environmental Law). If any Hazardous Material is brought or found thereon or therein, except as may be permitted above (and then only in compliance with all applicable Environmental Laws), the Corporation, at its expense, shall immediately remove it, with proper off-site disposal, and perform, as required by any Governmental Authority or the Lender, all environmental response, investigation, removal, corrective and remedial actions in a diligent

manner and in accordance with all Environmental Laws. The Corporation shall promptly, after any officer of the Corporation learns or obtains knowledge of the occurrence thereof, give written notice to the Lender of receipt of any written notice of personal injury, property damage, violation, claim or noncompliance, or order or request for information, from any Governmental Authority or other third party with respect to any Environmental Law or Hazardous Material, and shall promptly remedy any breach of any Environmental Law by the Corporation. The Lender shall have the right to enter upon the Property, or any part thereof (through its employees and/or agents), to verify compliance by the Corporation with the terms of this Continuing Covenant Agreement and to conduct such environmental assessments and audits as the Lender shall deem advisable to facilitate such verification; provided, however, THE CORPORATION HEREBY ACKNOWLEDGES THAT ALL HAZARDOUS MATERIAL HANDLING PRACTICES AND ENVIRONMENTAL PRACTICES AND PROCEDURES ARE THE SOLE RESPONSIBILITY OF THE CORPORATION, AND THE CORPORATION HAS FULL DECISION-MAKING POWER WITH RESPECT THERETO. THE CORPORATION FURTHER ACKNOWLEDGES THAT THE LENDER IS NOT AN ENVIRONMENTAL CONSULTANT, ENGINEER, INVESTIGATOR OR INSPECTOR OF ANY TYPE WHATSOEVER. NO ACT (OR DECISION NOT TO ACT) OF THE LENDER RELATED TO THIS CONTINUING COVENANT AGREEMENT OR ANY OTHER BOND DOCUMENT SHALL GIVE RISE TO ANY OBLIGATION OR LIABILITY ON THE PART OF THE LENDER WITH RESPECT TO ENVIRONMENTAL MATTERS. IN NO EVENT SHALL ANY INFORMATION OBTAINED FROM THE LENDER OR ITS AGENTS PURSUANT TO THIS CONTINUING COVENANT AGREEMENT OR ANY OTHER BOND DOCUMENT CONCERNING THE ENVIRONMENTAL CONDITION OF THE PROPERTY OF THE CORPORATION BE CONSIDERED BY THE CORPORATION (OR ANY OTHER RECIPIENT OF SAID INFORMATION) AS CONSTITUTING LEGAL OR ENVIRONMENTAL CONSULTING, ENGINEERING, INVESTIGATING OR INSPECTING ADVICE, AND THE CORPORATION (OR ANY OTHER RECIPIENT OF SAID INFORMATION) SHALL NOT RELY ON SAID INFORMATION. THE RESPONSIBILITY FOR COMPLIANCE WITH ENVIRONMENTAL LAWS RESTS SOLELY WITH THE CORPORATION.

**Section 5.33. Anti-Corruption Laws; Sanctions.** The Corporation shall, and shall cause each of its Subsidiaries to, conduct its businesses in compliance with the Anti-Corruption Laws and any Sanctions, and maintain policies and procedures designed to promote and achieve compliance with such laws and Sanctions.

**Section 5.34. Indenture Trustee.** The Corporation shall not remove the Person then serving as Master Trustee under the Master Trust Indenture or appoint a successor Master Trustee under the Master Trust Indenture, nor not remove the Person then serving as Bond Trustee under the Bond Indenture or appoint a successor Bond Trustee under the Bond Indenture. If the Person then serving as Master Trustee under the Master Trust Indenture or as the Bond Trustee under the Bond Indenture resigns or is removed, the Corporation shall promptly cause the appointment of a successor with the prior consent of the Lender which consent shall not be unreasonably withheld or delayed.

**Section 5.35. Use of Proceeds; Sanctions; Anti-Corruption Laws.** The Corporation will not, and will not permit any Subsidiary to, request any Advance or, directly or indirectly, use the proceeds of the Bonds nor of the Advances, or lend, contribute or otherwise make available such

proceeds to any subsidiary, joint venture partner or other Person (i) to fund any activities or business of or with any Sanctioned Person, or in any Sanctioned Country, that, at the time of such funding, is, or whose government is, the subject of Sanctions, (ii) in any other manner that would result in a violation of Sanctions by any Person (including any Person participating in the Obligations, whether as an Arranger, the Administrative Agent, any Lender, underwriter, advisor, investor or otherwise), or (iii) in furtherance of an offer, payment, promise to pay or authorization of the payment or giving of money or anything else of value to any Person in violation of applicable Anti-Corruption Laws.

#### **Section 5.36. Intentionally Deleted.**

**Section 5.37. Most Favored Nations Covenant.** In the event that the Corporation or any Affiliate thereof shall, directly or indirectly, enter into or otherwise consent to any agreement or other instrument (or any amendment, supplement or modification thereto) under which, directly or indirectly, any Person or Persons undertakes to make or provide credit or loans to the Corporation or any such Affiliate or under which the Corporation or any Affiliate issues or incurs or could issue or incur Indebtedness, which agreement or instrument (or amendment, supplement or modification) provides such Person or Persons with additional or more restrictive covenants, additional or different events of default and/or greater rights or remedies related thereto than are provided to the Lender in this Continuing Covenant Agreement, the Corporation shall provide the Lender with a copy of each such agreement or instrument (or amendment, supplement or modification) within five (5) Business Days of any such agreements or instruments and, in any event, such additional or more restrictive covenants, such additional or different events of default and/or greater rights and remedies shall, unless otherwise stipulated by the Lender, automatically be deemed to be incorporated into this Continuing Covenant Agreement, and the Lender shall have the benefits of such additional more restrictive covenants, additional or more restrictive events of default and/or such greater rights and remedies as if specifically set forth herein for so long as any such agreement or instrument that provides for such additional or more restrictive covenants, such additional or different events of default and/or such greater rights and remedies remain in effect. Upon the request of the Lender, the Corporation shall promptly enter into an amendment to this Continuing Covenant Agreement to incorporate herein and make a part hereof such additional or more restrictive covenants, additional or different events of default and/or greater rights or remedies. Notwithstanding anything to the contrary contained in this Section 5.37, each party hereto agrees that no provision described in this Section 5.37 shall be deemed incorporated into this Continuing Covenant Agreement if such incorporation would cause the interest on any of the Bonds to be includable in the gross income of the Owners thereof for federal tax purposes.

## **ARTICLE VI**

### **EVENTS OF DEFAULT**

**Section 6.01. Events of Default.** The occurrence of any of the following events (whatever the reason for such event and whether voluntary, involuntary, or effected by operation of law) shall be an “Event of Default” hereunder, unless waived in writing by the Lender:

(a) The Corporation shall fail to make any payment due on the Bonds or due to the Lender under Article II of this Continuing Covenant Agreement when the payment thereof becomes due and payable;

(b) The Corporation shall fail to make any other payment to the Lender under this Continuing Covenant Agreement or the other Bond Documents or Closing Documents within 10 days of the date when it is due;

(c) The Corporation shall fail to observe or perform any covenant contained in Sections 5.03, 5.06 (with respect to the Lender's rights of inspection, examination and audit), 5.08 (subject to any applicable notice and cure provisions incorporated by reference), 5.09, 5.11, 5.13, 5.17, 5.18, 5.20, 5.21, 5.22, 5.23, 5.24, 5.25, 5.26, 5.27, 5.28, 5.29, 5.30, 5.31, 5.32, 5.33, 5.34 or 5.35.

(d) The Corporation shall fail to observe or perform any covenant, condition or agreement of the Corporation (other than those specified in clauses (a), (b) and (c) above) under this Continuing Covenant Agreement or any of the other Bond Documents and such failure shall continue for a period of thirty (30) days after written notice thereof to the Corporation by the Lender;

(e) Default or an event of default shall have occurred and be continuing under and as described in any of the Bond Documents or Closing Documents, which is not cured within the applicable cure period, if any;

(f) The Facilities shall be abandoned or otherwise "go dark" for a period of thirty (30) consecutive days;

(g) Any material provision of this Continuing Covenant Agreement or any of the other Bond Documents to which the Corporation is a party at any time for any reason shall cease to be valid and binding on the Corporation or shall be declared to be null and void, the validity or enforceability of any such material provision shall be contested by the Corporation or the Corporation shall deny that it has further liability or obligation under any such material provision;

(h) The Corporation shall (i) commence a voluntary case or other proceeding seeking liquidation, reorganization or other relief with respect to itself or its debts under any bankruptcy, insolvency or other similar law now or in the future in effect, or file a petition seeking to take advantage of any other laws relating to bankruptcy, insolvency, reorganization, winding up or composition or adjustment of debts, (ii) apply for or consent to the appointment of a trustee, receiver, liquidator, custodian or other similar official for it or any substantial part of its property, (iii) make a general assignment for the benefit of creditors, (iv) admit in writing its inability, or be generally unable, to pay its debts as they become due, (v) acquiesce in writing to, or fail to controvert in a timely and appropriate manner, any petition filed against it in an involuntary case filed under said federal bankruptcy laws or (vi) take any corporate or other action to authorize any of the foregoing;

(i) An involuntary case or other proceeding shall be commenced against the Corporation seeking liquidation, reorganization or other similar relief with respect to it or its



debts under any applicable bankruptcy, insolvency or other similar law now or in the future in effect or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official for it or any substantial part of its property, and such involuntary case or other proceeding shall remain undismissed and unstayed for a period of ninety (90) days or an order for relief shall be entered against the Corporation under the federal bankruptcy laws (as now or hereafter in effect);

(j) Default by the Corporation in the payment of any amount when due in respect of any Indebtedness owed to the Lender or any affiliate of the Lender; or default by the Corporation in the payment when due of any amount due in respect of any Indebtedness of the Corporation to any other creditor of \$250,000 or more; or default by the Corporation under any agreement or instrument under or pursuant to which such Indebtedness is incurred or issued, and continuance of such default beyond the period of grace, if any, allowed with respect thereto; or the occurrence of any act or omission by the Corporation under any such agreement or instrument which results in such Indebtedness becoming, or being capable of becoming, immediately due and payable (or, with respect to any Derivative Agreement, which results in such Derivative Agreement being terminated early or being subject to early termination);

(k) Any material representation or warranty in, pursuant to or in connection with this Continuing Covenant Agreement or any of the other Bond Documents shall prove to have been untrue in any materially adverse respect when made;

(l) Any judgment against the Corporation or any attachment or other levy against the Property of the Corporation (including the Facilities or any portion thereof) with respect to a claim for an amount in excess of \$250,000 not adequately insured or indemnified against, shall remain unpaid, unstayed on appeal, undischarged, unbonded or undismissed for a period of thirty (30) days;

(m) Any Plan Termination Event with respect to a Plan which the Lender determines in good faith might constitute grounds for the termination of any Plan or for the appointment of a trustee to administer any Plan shall have occurred, and, after the expiration of no less than 30 days after notice thereof shall have been given to the Corporation by the Lender, (i) such Plan Termination Event (if correctable) shall not have been corrected, and (ii) the then-present value of such Plan's vested benefits exceeds the then current value of assets accumulated in such Plan by more than \$250,000 and the Corporation shall not have remedied any such deficiency; or

(n) (i) The Corporation ceases to be Solvent or is enjoined, restrained or in any way prevented by court order from conducting its business affairs in their entirety or (ii) the Department (A) suspends, annuls or revokes any material approval, registration or license in connection with the Facilities, (B) files a petition for the appointment of a receiver or an administrator for the Facilities, or (C) issues a cease and desist order or takes any other action or imposes any other requirement as a sanction for failure to meet any requirement of the CCRC Law or other applicable laws, which in all such cases is reasonably likely to have a material adverse effect on the business, operations or financial condition of the Corporation (including, but not limited to, the ownership and/or operation of the Facilities).

**Section 6.02. Rights Upon an Event of Default.** Upon the occurrence of an Event of Default, and at any time thereafter unless and until such Event of Default has been waived by the Lender or cured to the satisfaction of the Lender, the Lender shall be entitled to take any of the following actions without prejudice to the rights of the Lender to enforce its claims against the Corporation, except as otherwise specifically provided for herein:

(a) Notify the Bond Trustee that such Event of Default has occurred and direct the Bond Trustee to call the Bonds for mandatory tender pursuant to Section 4.01 of the Bond Indenture;

(b) Direct the Bond Trustee to exercise remedies in accordance with the provisions of the Bond Indenture, the Loan Agreement, the Security Deed and the other Bond Documents (in each case treating the Lender as the Owner of all Bonds);

(c) By injunction or other writ, order, decree or decision of a court of competent jurisdiction in an action, suit or other proceeding at law or in equity, enjoin any acts or things which may be unlawful or in violation of the Lender's rights under this Continuing Covenant Agreement, the other Bond Documents or any other agreement or instrument;

(d) Subject to Section 8.06, set off any or all of the obligations of the Corporation to the Lender, direct or indirect, now existing or hereafter created, including any and all Obligations hereunder, against any or all of the property of the Corporation in the Lender's possession at or subsequent to the occurrence of the Event of Default regardless of the capacity in which the Lender possesses such property; and

(e) Exercise, or cause to be exercised, and enforce any and all such rights and remedies as it may have under this Continuing Covenant Agreement, the other Bond Documents or any other document or at law or in equity.

Notwithstanding the foregoing, if a default under Section 6.01(h) or (i) shall occur, then all obligations, all accrued interest in respect thereof, all accrued and unpaid fees and other indebtedness or obligations owing to the Lender hereunder shall immediately become due and payable without the giving of any notice or other action by the Lender.

**Section 6.03. No Remedy Exclusive.** No remedy herein conferred upon or reserved to the Lender is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder, under the Bond Indenture, the Loan Agreement or the other Bond Documents, or now or hereafter existing at law or in equity or by statute.

**Section 6.04. Waivers; Consents.** No waiver of, or consent with respect to, any provision of this Continuing Covenant Agreement or the Bond Documents by the Lender shall in any event be effective unless the same shall be in writing and signed by the Lender, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which it was given.

**Section 6.05. No Waiver; Remedies Cumulative.** No failure on the part of the Lender to exercise, and no delay in exercising, any right hereunder or under the Bond Documents shall

operate as a waiver thereof; and no single or partial exercise of any right hereunder or under the Bond Documents shall preclude any other or further exercise thereof or the exercise of any other right. The remedies herein and in the Bond Documents provided are cumulative and not exclusive of any remedies available under any other document or at law or in equity.

## ARTICLE VII

### INDEMNIFICATION

**Section 7.01. Indemnification.** In addition to any and all other rights of reimbursement, indemnification, subrogation and other similar rights pursuant to this Continuing Covenant Agreement, the other Bond Documents or under law or equity, the Corporation hereby covenants and agrees to defend, indemnify and hold harmless the Lender and each other Owner, the Bond Trustee, the Master Trustee and their respective affiliates and the officers, directors, employees and agents of the Lender, each other Owner and their respective affiliates (each, an “Indemnatee”) from and against any and all claims, causes of action, judgments, fines, penalties, damages, losses, liabilities, and Expenses whatsoever (including reasonable attorneys’ fees, charges and disbursements) which may be incurred by an Indemnatee or which may be claimed against an Indemnatee by any Person whatsoever (collectively, the “Liabilities”) by reason of or directly or indirectly in connection with any of the Transactions including (a) the execution and delivery or transfer of, or payment or failure to pay under, this Continuing Covenant Agreement or any other Bond Document; (b) the issuance, offering, purchase, sale, remarketing or resale of the Bonds; (c) the use of the proceeds of the Bonds; (d) the use or occupancy of the Property (including, without limitation, the Facilities) by the Corporation or any other Person, including liabilities resulting from or relating to any accident, injury or death of any individual or any Environmental Laws or Hazardous Materials; or (e) the untruth or material inaccuracy of any warranty or representation undertaken or given by the Corporation in this Continuing Covenant Agreement or any other Bond Document or in any certificate furnished hereunder or thereunder or the breach or nonperformance by the Corporation of any covenant of this Continuing Covenant Agreement or any other Bond Document or any other Default or Event of Default hereunder or under any of the other Bond Documents; provided that the Corporation shall not be required to indemnify an Indemnatee for any claims, damages, losses, liabilities, costs or expenses to the extent, but only to the extent, caused by the willful misconduct or gross negligence of such Indemnatee as determined in a final, non-appealable determination by a court of competent jurisdiction. If any proceeding shall be brought or threatened against an Indemnatee by reason of or in connection with the events described in clause (a), (b), (c), (d) or (e) as a condition of indemnity hereunder each Indemnatee shall promptly notify the Corporation in writing and the Corporation shall assume the defense thereof, including the employment of counsel satisfactory to such Indemnatee and the payment of all reasonable costs of litigation. Notwithstanding the preceding sentence, each Indemnatee shall have the right to employ its own counsel and to determine its own defense of such action in any such case, but the fees, disbursements and charges of such counsel shall be at the expense of such Indemnatee unless (i) the employment of such counsel shall have been authorized in writing by the Corporation, or (ii) the Corporation, after due notice of the action, shall not have employed counsel satisfactory to such Indemnatee to have charge of such defense, in either of which events the fees, disbursements and charges of counsel for such Indemnatee shall be borne by the Corporation.

Nothing under this Section 7.01 limits, nor is intended to limit, the Corporation's payment of the Obligations.

**Section 7.02. Reimbursement; Interest.** If the Lender or any other Owner or the Bond Trustee or the Master Trustee shall incur any Expenses or pay any Liabilities in connection with the Bonds or the Bond Documents or the rights and remedies provided under the Bond Documents (regardless of whether or not any of the Bond Documents expressly provide for an indemnification by Corporation against such Expenses or Liabilities), the Lender's and such other Owner's payment of such Expenses and Liabilities shall constitute advances to the Corporation which shall be paid by the Corporation to the Lender and such other Owner, as applicable, on demand, together with interest thereon from the date incurred until paid in full at the Default Rate. Each advance shall be secured by the Trust Estate as fully as if made to the Corporation, regardless of the disposition thereof by the party or parties to whom such advance is made. Notwithstanding the foregoing, however, in any action or proceeding to foreclose under any Bond Document or to recover or collect the Obligations, mandatory provisions of law governing the recovery of costs, disbursements and allowances shall prevail unaffected by this Section. It is the intention of the parties hereto that the Corporation shall pay amounts referred to in this paragraph directly to the parties to whom such amounts are due.

**Section 7.03. Survival.** The obligations of the Corporation under this Article VII shall survive the payment of the Bonds and the termination of this Continuing Covenant Agreement.

## ARTICLE VIII

### MISCELLANEOUS

**Section 8.01. Patriot Act Notice.** The Lender hereby notifies the Corporation that pursuant to the requirements of the Patriot Act it is required to obtain, verify and record information that identifies the Corporation, which information includes the name and address of the Corporation and other information that will allow the Lender to identify the Corporation in accordance with the Patriot Act. The Corporation hereby agrees that it shall promptly provide such information upon request by the Lender.

**Section 8.02. Further Assurances.** From time to time upon the request of either party hereto, the other shall promptly and duly execute, acknowledge and deliver any and all such further instruments and documents as the requesting party may in its reasonable discretion deem necessary or desirable to confirm this Continuing Covenant Agreement and the other Bond Documents, to carry out the purpose and intent hereof and thereof or to enable the requesting party to enforce any of its rights hereunder or thereunder. At any time, and from time to time, upon request by the Lender, the Corporation will, at the Corporation's expense, (a) correct any defect, error or omission which may be discovered in the form or content of any of the Bond Documents, and (b) make, execute, deliver and record, or cause to be made, executed, delivered and recorded, any and all further instruments, certificates and other documents as may, in the opinion of the Lender, be necessary or desirable in order to complete, perfect or continue and preserve the Lien of the Trust Estate. Upon any failure by the Corporation to do so, the Lender or the Bond Trustee may make, execute and record any and all such instruments, certificates and other documents for and in the name of the Corporation, all at the sole expense of the

Corporation, and the Corporation hereby appoints the Lender and the Bond Trustee the agent and attorney in fact of the Corporation to do so, this appointment being coupled with an interest and being irrevocable. Without limitation of the foregoing, the Corporation irrevocably authorizes the Lender and the Bond Trustee at any time and from time to time to file any initial financing statements, amendments thereto and continuation statements deemed necessary or desirable by the Lender or the Bond Trustee to establish or maintain the validity, perfection and priority of the security interests granted in the Trust Estate, and the Corporation ratifies any such filings made by the Lender prior to the date hereof. In addition, at any time, and from time to time, upon request by the Lender or the Bond Trustee, the Corporation will, at the Corporation's expense, provide any and all further instruments, certificates and other documents as may, in the opinion of the Lender or the Bond Trustee, be necessary or desirable in order to verify the Corporation's identity and background in a manner satisfactory to the Lender or the Bond Trustee.

**Section 8.03. Amendments and Waivers; Enforcement.** The Lender and the Corporation may from time to time enter into agreements amending, modifying or supplementing this Continuing Covenant Agreement or the other Bond Documents or changing the rights of the Lender or the Corporation hereunder or thereunder, and the Lender may from time to time grant waivers or consents to a departure from the due performance of the obligations of the Corporation hereunder or thereunder. Any such agreement, waiver or consent must be in writing and shall be effective only to the extent specifically set forth in such writing. In the case of any such waiver or consent relating to any provision hereof, any Default or Event of Default so waived or consented to shall be deemed to be cured and not continuing, but no such waiver or consent shall extend to any other or subsequent Default or Event of Default or impair any right consequent thereto.

**Section 8.04. No Implied Waiver; Cumulative Remedies.** No course of dealing and no delay or failure of the Lender in exercising any right, power or privilege under this Continuing Covenant Agreement or the other Bond Documents shall affect any other or future exercise thereof or exercise of any right, power or privilege; nor shall any single or partial exercise of any such right, power or privilege or any abandonment or discontinuance of steps to enforce such a right, power or privilege preclude any further exercise thereof or of any other right, power or privilege. The rights and remedies of the Lender under this Continuing Covenant Agreement are cumulative and not exclusive of any rights or remedies which the Lender would otherwise have under any Bond Document, at law or in equity.

**Section 8.05. Notices.** All notices, requests, demands, directions and other communications (collectively "notices") under the provisions of this Continuing Covenant Agreement shall be in writing (including telexed and facsimile communication), unless otherwise expressly permitted hereunder, and shall be properly addressed and sent by registered or certified mail or by express courier for next Business Day delivery and shall be deemed received as follows: (a) if by registered or certified mail, five (5) days after mailing; (b) if by express courier, on the next Business Day; and (c) if by facsimile, when confirmation of transmission is obtained if prior to 5:00 p.m. local time on a Business Day, and otherwise, on the next Business Day; provided that service of a notice prescribed by any applicable statute shall be considered complete when the requirements of that statute are met. Notices by electronic mail (e-mail) shall not constitute notice under this Continuing Covenant Agreement and are only to be used in addition to notice given as prescribed under (a), (b) or (c) of this Section 8.05. All notices shall be sent to the

applicable party at the following address or in accordance with the last unrevoked written direction from such party to the other parties hereto:

If to the Corporation: Westminster Presbyterian Homes, Inc.  
c/o Presbyterian Homes of Georgia, Inc.  
301 East Screven Street  
Quitman, Georgia 31643  
Attention: Chief Financial Officer  
Telephone: (229) 263-6193  
Facsimile: (229) 263-6195  
E-Mail: darrendale@phgainc.org

If to the Lender: STI Institutional & Government, Inc.  
1155 Peachtree St.  
8th Floor  
Atlanta, GA 30309  
Attention: Randall Loggins  
Telephone: (404) 813-0400  
Facsimile: (404) [ ]  
E-Mail: randall.loggins@suntrust.com

If to the Bond Trustee: Branch Banking and Trust Company  
223 West Nash Street  
Wilson, North Carolina 27893  
Attention: Corporate Trust Services  
Telephone: (704) 838-8915  
Facsimile: (252) 246-4303  
E-Mail: crhodebeck@bbandt.com

The Lender may in its sole discretion rely on any notice (including telephone communication or e-mail communication) purportedly made by or on behalf of the Corporation, but it shall have no duty to accept any notice not given as prescribed in this Section and shall have no duty to verify the identity or authority of the Person giving such notice, unless such actions or omissions would amount to gross negligence or intentional misconduct.

**Section 8.06. Right of Setoff.**

(a) Upon the occurrence and during the continuance of any Event of Default, in addition to any rights now or hereafter granted under applicable law and not by way of limitation of any such rights, the Lender is hereby authorized at any time and from time to time, without notice to the Corporation or to any other Person, any such notice being hereby expressly waived, to set off and to appropriate and apply any and all deposits (general or special) and any other indebtedness at any time held or owing by the Lender or SunTrust Bank to or for the credit or the account of the Corporation against and on account of the Obligations and liabilities of the Corporation to the

Lender under this Continuing Covenant Agreement, irrespective of whether or not the Lender shall have made any demand hereunder and although said obligations, liabilities or claims, or any of them, shall be contingent or unmatured.

(b) The rights of the Lender under this Section 8.06 are in addition to other rights and remedies (including, without limitation, other rights of set-off) which the Lender may have. The Lender agrees that any amounts it sets off will be applied first to the Obligations.

(c) The Lender agrees promptly to notify the Bond Trustee and the Corporation after any such set-off or application; provided, however, that the failure to give such notice shall not affect the validity of such set-off and application.

**Section 8.07. No Third Party Rights.** Nothing in this Continuing Covenant Agreement, whether express or implied, shall be construed to give to any Person other than the Corporation and the Lender any legal or equitable right, remedy or claim under or in respect of this Continuing Covenant Agreement, which is intended for the sole and exclusive benefit of the parties hereto. Notwithstanding the foregoing, it is understood and agreed that each Owner is an express and intended third party beneficiary of this Continuing Covenant Agreement, that the benefits of this Continuing Covenant Agreement are conferred upon each Owner, and that the Lender shall exercise and enforce each right, covenant, remedy or other provision hereof on behalf of the Owners.

**Section 8.08. Severability.** The provisions of this Continuing Covenant Agreement are intended to be severable. If any provision of this Continuing Covenant Agreement shall be held invalid or unenforceable in whole or in part in any jurisdiction, such provision shall, as to such jurisdiction, be ineffective to the extent of such invalidity or unenforceability without in any manner affecting the validity or enforceability thereof in any other jurisdiction or the remaining provisions hereof in any jurisdiction.

**Section 8.09. Intentionally Deleted.**

**Section 8.10. Waiver of Jury Trial; Jurisdiction and Venue.**

(a) ***Consent to Jurisdiction.*** EACH PARTY HERETO CONSENTS TO AND SUBMITS TO EXCLUSIVE IN PERSONAM JURISDICTION AND VENUE IN THE STATE COURTS OF THE STATE OF GEORGIA AND IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF GEORGIA. EACH PARTY ASSERTS THAT IT HAS PURPOSEFULLY AVAILED ITSELF OF THE BENEFITS OF THE LAWS OF THE STATE OF GEORGIA AND WAIVES ANY OBJECTION TO IN PERSONAM JURISDICTION ON THE GROUNDS OF MINIMUM CONTACTS, WAIVES ANY OBJECTION TO VENUE, AND WAIVES ANY PLEA OF FORUM NON CONVENIENS. THIS CONSENT TO AND SUBMISSION TO JURISDICTION IS WITH REGARD TO ANY ACTION RELATED TO THIS CONTINUING COVENANT AGREEMENT.

(b) ***WAIVER OF JURY TRIAL.*** EACH PARTY HERETO WAIVES ITS RIGHT TO A JURY TRIAL OF ANY AND ALL CLAIMS OR CAUSES OF ACTION BASED UPON OR ARISING OUT OF THIS CONTINUING COVENANT AGREEMENT AND THE OTHER BOND DOCUMENTS. IT IS HEREBY ACKNOWLEDGED THAT THE WAIVER OF A

JURY TRIAL IS A MATERIAL INDUCEMENT FOR THE LENDER TO ENTER INTO THIS CONTINUING COVENANT AGREEMENT AND THAT THE EXECUTION AND DELIVERY OF THIS CONTINUING COVENANT AGREEMENT BY THE CORPORATION AND THE BANK IS MADE IN RELIANCE UPON SUCH WAIVER. EACH PARTY HERETO FURTHER WARRANTS AND REPRESENTS THAT SUCH WAIVER HAS BEEN KNOWINGLY AND VOLUNTARILY MADE FOLLOWING CONSULTATION WITH ITS RESPECTIVE LEGAL COUNSEL.

(c) **Irrevocable.** The covenants and waivers made pursuant to this Section 8.10 shall be irrevocable and unmodifiable, whether in writing or orally, and shall be applicable to any subsequent amendments, renewals, supplements or modifications of this Continuing Covenant Agreement. In the event of litigation, this Continuing Covenant Agreement may be filed as a written consent to a trial by the court.

**Section 8.11. Governing Law.** This Continuing Covenant Agreement shall be governed by and construed in accordance with the laws of the State of Georgia (but not including the choice of rules thereof).

**Section 8.12. No Advisory or Fiduciary Responsibility.** In connection with all aspects of the Transactions (including in connection with any amendment, waiver or other modification hereof or of any other Bond Document), the Corporation acknowledges and agrees that: (a) (i) the arranging, structuring and other services regarding this Continuing Covenant Agreement provided by the Lender and any affiliate of the Lender are arm's-length commercial transactions between the Corporation on the one hand, and the Lender and any affiliate of the Lender on the other hand, (ii) the Corporation has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate, and (iii) the Corporation is capable of evaluating, and understands and accepts, the terms, risks and conditions of the Transactions; (b) (i) the Lender and each affiliate of the Lender is and has been acting solely as a principal and has not been, is not, and will not be acting as an advisor, agent or fiduciary for the Corporation, or any other Person and (ii) neither the Lender nor any affiliate of the Lender has any obligation to the Corporation with respect to the Transactions, except those obligations expressly set forth herein; and (c) the Lender and each affiliate of the Lender may be engaged in a broad range of transactions that involve interests that differ from those of the Corporation, and neither the Lender nor any affiliate of the Lender has any obligation to disclose any of such interests to the Corporation. To the fullest extent permitted by applicable laws, the Corporation hereby waives and releases any claims that it may have against the Lender and each affiliate of the Lender with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any Transaction.

**Section 8.13. Entire Agreement.** The Bond Documents constitute the entire understanding and agreement between the Corporation and the Lender with respect to the Transactions and the Bonds, and supersede all prior or contemporaneous written or oral understandings, courses of dealing and agreements between the Corporation and the Lender with respect to the matters addressed in the Bond Documents. In particular, and without limitation, this Continuing Covenant Agreement and the other Bond Documents supersede any commitment by the Lender to extend credit to the Corporation or to purchase the Bonds and all such agreements or commitments are merged into this Continuing Covenant Agreement and the other Bond



Documents. Except as incorporated in writing into the Bond Documents, there are no representations, understandings, stipulations, agreements or promises, oral or written, with respect to the matters addressed in the Bond Documents.

**Section 8.14. Duration.** All representations and warranties of the Corporation contained herein or made in connection herewith shall survive the making of and shall not be waived by the execution and delivery of this Continuing Covenant Agreement or the other Bond Documents, or any investigation by the Corporation. All covenants and agreements of the Corporation contained herein shall continue in full force and effect from and after the date hereof until the Obligations owed to the Lender have been indefeasibly paid in full and fully discharged; provided, however, that the obligations of the Corporation under Sections 2.02, 7.01, 7.02 and 8.16 hereof and under each other provision of any Bond Document granting a right of indemnity or reimbursement in favor of the Lender shall survive any expiration or termination of this Continuing Covenant Agreement.

**Section 8.15. Counterparts.** This Continuing Covenant Agreement may be executed in any number of counterparts and by the different parties hereto on separate counterparts each of which, when so executed, shall be deemed an original, but all such counterparts shall constitute but one and the same instrument.

**Section 8.16. Successors and Assigns.**

(a) (i) This Continuing Covenant Agreement is a continuing obligation and shall be binding upon the Corporation, its permitted successors and assigns and shall inure to the benefit of the Lender and its permitted successors, transferees and assigns. The Corporation may not assign or otherwise transfer or delegate any of its rights or obligations hereunder or under the other Bond Documents without the prior written consent of the Lender. The Lender may, in accordance with applicable law, from time to time and without the consent of the Corporation or any other Person assign, sell or transfer in whole or in part, this Continuing Covenant Agreement and any of its rights or interests hereunder and all or any part of its interest in the Bonds and the Bond Documents.

(ii) Any successor to, or assignee of, STI Institutional & Government, Inc., as the initial Lender shall give written notice to the Corporation and the Bond Trustee identifying the assignee or successor Lender hereunder and under the other Bond Documents. Insofar as the successor Lender is not the sole Owner of the Bonds, the group of Owners then owning a majority of the aggregate principal amount of the Bonds then Outstanding shall give notice to the Corporation and the Bond Trustee that they constitute the Lender as herein defined and, provided any such notice on its face establishes the requisite ownership of a majority of the aggregate principal amount of the Bonds then Outstanding by the Owners identified therein, such Owners shall thereupon constitute the Lender and shall succeed to and become vested with all of the rights, powers, privileges and responsibilities of the Lender in this Continuing Covenant Agreement and each of the other Bond Documents. The predecessor Lender shall be discharged from its duties and obligations hereunder, provided that the predecessor Lender shall continue to be entitled to the benefits of Sections 2.02, 7.01, 7.02, 8.16 and 8.17 hereof and of each other provision of any Bond Document granting a right of indemnity or reimbursement in favor of the Lender.

(iii) The Lender may designate any nominee, designee or agent to act for and in the name of the Lender by written notice to the Corporation and the Bond Trustee and any such duly designated nominee, designee or agent shall thereupon be empowered to act for and on behalf of the Lender and exercise the rights, powers, privileges and responsibilities of the Lender in this Continuing Covenant Agreement and each of the other Bond Documents.

(b) **Certain Pledges.** The Lender may at any time pledge or grant a security interest in all or any portion of its rights under the Bonds, this Continuing Covenant Agreement and the other Bond Documents to secure obligations of the Lender, including any pledge or assignment to secure obligations to a Federal Reserve Lender; provided that no such pledge or assignment shall release the Lender from any of its obligations hereunder or substitute any such pledgee or assignee for the Lender as a party hereto.

(c) **Participations.** The Lender shall have the right to grant participations in all or a portion of the Lender's interest in the Bonds, this Continuing Covenant Agreement and the other Bond Documents to one or more other banking institutions, and such participants shall, except as set forth in the following clause (ii), be entitled to the benefits of this Continuing Covenant Agreement and the Bond Documents to the same extent as if they were a direct party to this Continuing Covenant Agreement; provided, however, that (i) no such participation by any such participant shall in any way affect the obligations of the Lender hereunder and (ii) the Authority, the Bond Trustee and the Corporation be required to deal only with the Lender, with respect to any matters under this Continuing Covenant Agreement, the Bonds and the other Bond Documents and no such participant shall be entitled to enforce against the Corporation any provision hereunder.

**Section 8.17. Reinstatement.** If at any time any payment to the Lender or any Owner by the Corporation is rescinded or otherwise must be restored or returned upon the insolvency, bankruptcy or reorganization of the Corporation or otherwise, the Corporation's obligations with respect to such payment shall be reinstated as though such payment had been due but not made at such time. The Corporation agrees that payment or performance of any of the Obligations under this Continuing Covenant Agreement or other acts that toll any statute of limitations applicable to such Obligations shall also toll the statute of limitations applicable to the Corporation's liability under this Continuing Covenant Agreement. The Corporation further agrees that to the extent the Corporation makes a payment to the Lender or any Owner, which payment or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required to be repaid to a trustee, receiver, or any other party under any bankruptcy, insolvency or other similar state or federal statute, common law or principles of equity, then, to the extent of such repayment by the Lender or such Owner, the Obligations or part thereof intended to be satisfied by such payment shall be revived and continued in full force and effect as if such payment had not been received by the Lender or such Owner.

**Section 8.18. Standard of Conduct by Lender; Liability of Lender or other Owners.**

(a) Nothing contained in this Continuing Covenant Agreement or any other Bond Document shall limit the right of the Lender or any other Owner to exercise its and their business judgment or to act, in the context of the granting or withholding of any consent under this Continuing Covenant Agreement or any other Bond Document, in a subjective manner, whether

or not objectively reasonable under the circumstances, so long as the Lender's or any such other Owner's exercise of its business judgment or action is made or undertaken in good faith. The Corporation and the Lender intend by the foregoing to set forth and affirm their entire understanding with respect to the standard pursuant to which the Lender's or any other Owner's duties and obligations are to be judged and the parameters within which the Lender's or any such other Owner's discretion may be exercised hereunder and under the other Bond Documents. As used herein, "good faith" means honesty in fact in the conduct and transaction concerned.

(b) The Corporation hereby unconditionally and irrevocably releases and discharges the Lender and each other Owner and each of their respective affiliates and the officers, directors, employees and agents of each of them from any liability or responsibility for any of the following: (i) any use that may be made of the proceeds of the Bonds or for any acts or omissions of the Bond Trustee, the Authority, or any other Person in connection with the Loan, the Bonds or the use of its proceeds; (ii) any of the acts, omissions, agreements, circumstances or conditions covered by the indemnification provided in Section 7.01 hereof; (iii) any act or omission of the Lender or any other Owner; and (iv) any other circumstances whatsoever in connection with the Transactions or the exercise by the Lender or any other Owner of any of its or their rights under this Continuing Covenant Agreement or any of the other Bond Documents; provided that, the Corporation shall have a claim against the Lender or such other Owner, and the Lender or such other Owner shall be liable to the Corporation, to the extent, but only to the extent, of any direct, actual damages, but expressly not for any lost profits or any consequential, special, indirect or punitive damages (the right to recover or receive lost profits, consequential, special, indirect or punitive damages being hereby waived), suffered by the Corporation and not required to be mitigated by the Corporation under applicable law, which direct, actual damages are determined by a final and non-appealable judgment of a court of competent jurisdiction to have been directly caused by the Lender's or such other Owner's willful misconduct or gross negligence in connection with the administration of this Continuing Covenant Agreement.

**Section 8.19. Electronic Signatures.** The parties agree that the electronic signature of a party to this Continuing Covenant Agreement shall be as valid as an original signature of such party and shall be effective to bind such party to this Continuing Covenant Agreement. The parties agree that any electronically signed document (including this Continuing Covenant Agreement) shall be deemed (i) to be "written" or "in writing"; (ii) to have been signed; and (iii) to constitute a record established and maintained in the ordinary course of business and an original written record when printed from electronic files. Such paper copies or "printouts," if introduced as evidence in any judicial, arbitral, mediation or administrative proceeding, will be admissible as between the parties to the same extent and under the same conditions as other original business records created and maintained in documentary form. Neither party shall contest the admissibility of true and accurate copies of electronically signed documents on the basis of the best evidence rule or as not satisfying the business records exception to the hearsay rule. For purposes hereof, "electronic signature" means a manually signed original signature that is then transmitted by electronic means; "transmitted by electronic means" means sent in the form of a facsimile or sent via the internet as a "pdf" (portable document format) or other replicating image attached to an e mail message; and, "electronically signed document" means a document transmitted by electronic means and containing, or to which there is affixed, an electronic signature.

**Section 8.20. Purchase of Bonds.** Upon the terms and conditions and based on the representations, warranties and covenants of the Corporation set forth in the Bond Documents and herein, the Lender hereby agrees to purchase from the Authority, and the Corporation hereby agrees to cause the Authority to sell to the Lender, all, but not less than all, of the Bonds at an aggregate purchase price not to exceed \$35,000,000, to be advanced in accordance with the terms of the Bond Indenture, this Continuing Covenant Agreement and the Construction Disbursement Agreement. The Bonds are to be dated the date of delivery thereof, and are to mature, be subject to redemption prior to maturity and bear interest as set forth in the Bond Indenture.

**Section 8.21. Waiver of Automatic or Supplemental Stay.** In the event that a petition for relief under any chapter of the Bankruptcy Code is filed by or against the Corporation, the Corporation promises and covenants that it will not seek a supplemental stay pursuant to Bankruptcy Code §§105 or 362 or any other relief pursuant to Bankruptcy Code §105 or any other provision of the Bankruptcy Code, whether injunctive or otherwise, which would stay, interdict, condition, reduce or inhibit the Lender's ability to enforce any rights it has, at law or in equity, to collect the Obligations from any Person other than the Corporation.

**Section 8.22. Intentionally Deleted.**

**Section 8.23. Taxes.** Any taxes (excluding income taxes) payable by the Lender or ruled payable by federal or state authority in respect of this Continuing Covenant Agreement or the other Bond Documents shall be paid by the Corporation upon demand by the Lender, together with interest and penalties, if any.

**Section 8.24. Indirect Means.** Any act which the Corporation is prohibited from doing shall not be done indirectly through an Affiliate or by any other indirect means.

**Section 8.25. Bond Trustee Reports.** The Lender agrees that it will certify to the Bond Trustee in writing the outstanding principal amount of the Bonds (a) as of December 31 of each year, no later than two (2) Business Days after such date, and (b) within two (2) Business Days of receipt of a written request from the Bond Trustee for such outstanding principal amount from time to time. The Lender shall advise the Bond Trustee of the amount of each Advance made with respect to the Bond promptly after making such Advance.

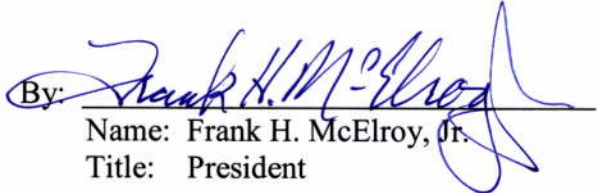
**Section 8.26. Lender Acknowledgments.** The Lender is purchasing the Bonds in evidence of a privately negotiated loan and in that connection, subsequent to the date of this Continuing Covenant Agreement, the Bonds shall not be (i) assigned a separate rating by any municipal securities rating agency, (ii) registered with The Depository Trust Company or any other securities depository, (iii) transferred pursuant to any type of offering document or official statement or (iv) assigned a CUSIP number by Standard & Poor's CUSIP Service.

[Signatures begin on following page]

[Signature page of Continuing Covenant Agreement]

IN WITNESS WHEREOF, the parties hereto have caused this Continuing Covenant Agreement to be duly executed and delivered as of the date first above written.

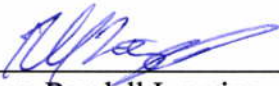
**WESTMINSTER PRESBYTERIAN  
HOMES, INC.,**  
a Georgia nonprofit corporation

By:   
Name: Frank H. McElroy, Jr.  
Title: President

[Signatures continued on next page]

[Signature page of Continuing Covenant Agreement]

**STI INSTITUTIONAL &  
GOVERNMENT, INC., a Delaware  
corporation**

By:   
Name: Randall Loggins  
Title: **Senior Vice President**

**EXHIBIT A**  
**REDEMPTION SCHEDULE**

**See attached Schedule**

**\*If any date above falls on a day that is not a Business Day, payment shall be due on the first Business Day thereafter.**

**Not applicable**