

LOAN AGREEMENT

by and among

AUSTIN HOUSING FINANCE CORPORATION
as Issuer

JPMORGAN CHASE BANK, N.A.
as Bondholder Representative

and

AUSTIN DMA HOUSING II, LLC
as Borrower

Dated as of November 1, 2015

Relating to

\$ _____
Austin Housing Finance Corporation
Multifamily Housing Mortgage Revenue Bonds
(Aldrich 51 Apartments) Series 2015

The interests of the Issuer in this Loan Agreement, excluding any unassigned rights specifically retained by Issuer, have been assigned to BOKF, NA dba Bank of Texas a national banking association, doing business as Bank of Texas, as Trustee (the "Trustee") pursuant to a Trust Indenture dated as of November 1, 2015, between the Issuer and the Trustee.

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LOAN AGREEMENT

THIS LOAN AGREEMENT (this “*Agreement*”) is made as of November 1, 2015, to be effective as of the date of delivery of the Loan Agreement, by and among AUSTIN HOUSING FINANCE CORPORATION, a housing finance corporation organized and under the laws of the State of Texas (the “*Issuer*”), JPMORGAN CHASE BANK, N.A., a national banking association (the initial “*Bondholder Representative*”), and AUSTIN DMA HOUSING II, LLC, a Texas limited liability company (the “*Borrower*”).

WITNESSETH:

WHEREAS, the Issuer has been created and organized pursuant to and in accordance with the provisions of the Texas Housing Finance Corporations Act, Chapter 394, Texas Local Government Code, as amended (the “*Act*”), for the purpose, among others, of financing the costs of residential developments that will provide decent, safe and sanitary housing for persons or families of low or moderate income at prices or rentals they can afford; and

WHEREAS, pursuant to a Trust Indenture (the “*Indenture*”) executed as of even date herewith, by and between the Issuer and BOKF, NA, dba Bank of Texas, as trustee (“*Trustee*”), the Issuer has, among other things, issued its Multifamily Housing Mortgage Revenue Bonds (Aldrich 51 Apartments) Series 2015, in the original principal amount of \$_____ (the “*Bonds*”) for the purposes of making a loan (the “*Loan*”) to finance the acquisition, constructing, and equipping of Aldrich 51 Apartments, a 240 unit low-income multifamily residential rental apartment complex (the “*Project*”) to be located on an 3.5 acre (more or less) tract of property located on the west side of Aldrich Street, between Barbara Jordan Blvd., and 51st Street in Austin, Texas, and more particularly described in **Schedule A** hereto (the “*Land*”), which tract of land is to be leased by the Borrower from the Issuer, as ground lessor (“*Ground Lessor*”) pursuant to a long-term ground lease; and

WHEREAS, the Issuer has found and determined, and does hereby find and determine, that the acquisition, construction, and equipping of the Project by the Borrower will provide a residential development within the meaning of the Act, and that the Issuer, by assisting with the financing of the acquisition, construction, and equipping of the Project, will be acting in a manner consistent with and in furtherance of the provisions of the Act; and

WHEREAS, to evidence the Loan, the Borrower is making to the order of Issuer a Promissory Note in the principal sum of \$_____ (the “*Note*”) substantially in the form attached hereto as **Schedule B**, which Note provides for the repayment of the Loan in payments sufficient to pay, when due, the principal of, premium, if any, and interest on the Bonds, and to secure, among other things, the payments due under the Note and the other obligations of the Borrower under this Agreement; and

WHEREAS, to secure its obligations under the Note, the Borrower is executing a Construction and Permanent Leasehold Deed of Trust, Security Agreement, Assignment of Leases and Rents and Fixture Filing (the “*Mortgage*”) naming the Issuer as beneficiary (the beneficial interest in which is being assigned by the Issuer to the Trustee) with respect to the Project; and

WHEREAS, the Loan consists of a construction loan in the principal amount not to exceed \$_____ (the “*Construction Loan*”) and which will convert on the Conversion Date to a permanent loan in an amount as may be reset as provided for in the Forward Bond Purchase Agreement but in no event shall exceed \$_____ (the “*Permanent Loan*”), and from and after the Conversion Date, all references herein and in the other Loan Documents to Bondholder Representative shall be deemed to refer to Permanent Lender; and

WHEREAS, _____ LLC, a Texas limited liability company (the “*Managing Member*”), RBC Tax Credit Equity, LLC (“*Investor Member*”) and DMA Aldrich 51, LLC (“*Special Member*”) entered into that Operating Agreement dated as of November 1, 2015 (the “*Operating Agreement*”), pursuant to which the Special Member and the Investor Member have been admitted as limited partners and have agreed to make capital contributions to the Borrower upon the satisfaction of certain conditions set forth therein.

NOW, THEREFORE, the Bondholder Representative, the Issuer, and the Borrower, each in consideration of the representations, covenants, and agreements of the other as set forth herein, mutually represent, covenant, and agree as follows:

ARTICLE 1

DEFINITIONS, EXHIBITS AND RULES OF INTERPRETATION

Section 1.1. *Definitions.* In this Agreement, all capitalized terms used herein without definition shall have the meanings ascribed thereto in **Section 1.1** of the Indenture.

Section 1.2. *Additional Definitions.* In addition to the other terms defined elsewhere in this Agreement, the following terms shall have the meanings assigned to them:

“*Act of Bankruptcy*” means any of the following events (with respect to the Guarantor and the Investor Member, any such events that occur prior to the Conversion Date):

(a) the Borrower, the Guarantor, or the Investor Member shall (i) apply for or consent to the appointment of, or the taking of possession by, a receiver, custodian, trustee, or liquidator of the Borrower, the Guarantor, or the Investor Member or of all or a substantial part of the property of the Borrower, the Guarantor, or the Investor Member, which appointment is not terminated or vacated within 90 days, (ii) commence a voluntary case under the Bankruptcy Code (as now or hereafter in effect), or (iii) file a petition with respect to itself seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding up, or composition or adjustment of debts; or

(b) a proceeding or case shall be commenced without the application or consent of the Borrower, the Guarantor, or the Investor Member, as the case may be, in any court of competent jurisdiction, seeking (i) the liquidation, reorganization, dissolution, winding up, or the composition or adjustment of debts of the Borrower, the Guarantor, or the Investor Member, (ii) the appointment of a trustee, receiver, custodian, or liquidator of the Borrower, the Guarantor, or the Investor Member or of all or any substantial part of the assets of the Borrower, the Guarantor, or the Investor Member, or (iii) similar relief in respect of the Borrower, the Guarantor, or the Investor Member under any law relating to

bankruptcy, insolvency, reorganization, winding up, or composition or adjustment of debts and such proceeding or case shall not be dismissed within sixty (60) days of such filing.

For purposes of this Agreement, an Act of Bankruptcy shall be deemed dismissed only if (i) the petition is dismissed by order of a court of competent jurisdiction and no further rights exist from such order and (ii) the Borrower or the Issuer notifies the Trustee that such a dismissal has occurred.

“ADA” has the meaning assigned to that term in **Section 12.32** hereof.

“*Additional Charges*” has the meaning assigned to that term in **Section 4.3** hereof.

“*Advances*” means all sums, amounts or expenses advanced or paid and all costs incurred by the Permanent Lender, as provided in this Agreement or in any other Permanent Loan Document, upon failure of the Borrower to pay or perform any obligation or covenant contained herein or in such other Permanent Loan Document.

“*Affiliate*” means, with respect to a specified Person, another Person that directly, or indirectly through one or more intermediaries, Controls, or is Controlled by, or is under common Control with the Person specified.

“*Ancillary Permanent Loan Documents*” means, collectively, the Interest Rate Lock Letter, the Recourse Guaranty Agreement, the Limited Permanent Loan Guaranty Agreement, the Environmental Indemnity Agreement, the Subordinate Mortgage and the UCC Financing Statements.

“*Anti-Corruption Laws*” means all laws, rules, and regulations of any jurisdiction applicable to the Borrower and its affiliated companies from time to time concerning or relating to bribery or corruption.

“*Anti-Money Laundering Laws*” means the USA Patriot Act of 2001, as amended, the Bank Secrecy Act, as amended, Executive Order 13324 – Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism, as amended, and other federal laws and regulations and executive orders administered by OFAC which prohibit, among other things, the engagement in transactions with, and the provision of services to, certain foreign countries, territories, entities and individuals (such individuals include specially designated nationals, specially designated narcotics traffickers and other parties subject to OFAC sanction and embargo programs), and such additional laws and programs administered by OFAC which prohibit dealing with individuals or entities in certain countries regardless of whether such individuals or entities appear on any of the OFAC lists.

“*Appraisal*” or “*appraisal*” means a written statement setting forth an opinion of the Appraisal Value of the Project that (i) has been independently and impartially prepared by a qualified appraiser directly engaged by the Bondholder Representative or its agent, (ii) complies with all applicable federal and State laws and regulations dealing with appraisals or valuations of real property, and (iii) has been reviewed as to form and content and approved by the Bondholder Representative, in its reasonable judgment. Once an Appraisal has been reviewed and accepted

by the Bondholder Representative, the Borrower shall be entitled to receive a copy of such Appraisal if such Appraisal was paid for by the Borrower.

“*Appraisal Value*” means the restricted, stabilized, as built value of the Project, as reflected in the most current Appraisal (after taking into account the value of the Low Income Housing Tax Credit allocated).

“*Architect*” has the meaning assigned to that term in **Section 5.6(b)** hereof.

“*Architecture Contract*” has the meaning assigned to that term in **Section 5.10(c)** hereof.

“*Assignment of Accounts*” means the Assignment of Accounts of even date herewith from Borrower to the Bondholder Representative.

“*Assignment of Management Agreement*” means the Assignment of Management Agreement of even date herewith from Borrower to Issuer.

“*Bad Costs*” means budgeted project items which are not Good Costs.

“*Bank*” means JPMorgan Chase Bank, N.A., a national banking association, in its capacity as Lender of the Taxable Tail Loan.

“*Basic Payments*” has the meaning assigned to that term in **Section 4.2(b)** hereof.

“*Bond Closing*” has the meaning assigned to that term in the Indenture.

“*Bond Counsel*” has the meaning assigned to that term in the Indenture.

“*Bond Documents*” has the meaning assigned to that term in the Indenture.

“*Bondholder Representative*” has the meaning assigned to that term in the introductory paragraph of this Agreement until the Conversion Date when Permanent Lender shall be the Bondholder Representative for purposes of this Agreement and each of the other Loan Documents which remain in effect after the Conversion Date or as otherwise provided in the definition of this term in the Indenture.

“*Bondholder Representative’s Required Completion Date*” means the earlier to occur of (a) twenty (20) calendar months from the date of this Agreement (as may be extended for up to an aggregate combined amount of sixty (60) days as a result of Excusable Delays), (b) the date the Investor Member shall require that the Improvements are placed in service as provided in the Operating Agreement or (c) the date required by the Credit Agency for placing the Project in service in order to maintain its Low Income Housing Tax Credit.

“*Bonds*” has the meaning provided in the Recitals of this Agreement.

“*Bond Year*” has the meaning assigned to that term in the Indenture.

“*Borrower’s Funds Account*” has the meaning assigned to that term in **Section 4.6(a)** hereof.

“*Borrower’s Organizational Documents*” means the Operating Agreement, its certificate of formation and any amendments and supplements thereto.

“*Borrower’s Sources*” has the meaning assigned to that term in **Section 4.6(a)** hereof.

“*Budget*” means the budget prepared by the Borrower, and approved by the Bondholder Representative, setting forth in detail all known direct and indirect costs for the acquisition and construction of the Improvements, as provided for in **Schedule C-1** attached hereto. The Budget shall have a hard cost contingency of 5% of the Construction Contract.

“*Business Day*” shall have the meaning set forth in the Indenture.

“*Capital Contribution Account*” means that certain interest bearing account of the Borrower, located at Bondholder Representative to be used for disbursements by Bondholder Representative of certain of the Capital Contributions.

“*Capital Contributions*” means the Capital Contributions to be made by the Investor Member in accordance with and subject to the terms and provisions of the Operating Agreement, a schedule of such payments is set forth in **Schedule H** attached hereto, with respect to the purchase of the Low Income Housing Tax Credit. References to specific Capital Contributions shall be to the associated installment of the Capital Contribution in **Schedule H** attached hereto.

“*Cash Collateral Account*” means a blocked control interest bearing collateral account of Borrower located at the Bondholder Representative, which will have a cumulative balance (after all required deposits) of \$_____.

“*City*” means the City of Austin, Texas.

“*Closed Period Prepayment Fee*” has the meaning assigned to that term in **Section 10.1(d)** hereof.

“*Closed Prepayment Date*” has the meaning assigned to that term in **Section 10.1(c)** hereof.

“*Code*” shall have the meaning set forth in the Indenture..

“*Collateral Assignment*” means the Collateral Assignment of Rights to Tax Credits and Membership Interests of even date herewith from the Borrower and the Managing Member.

“*Completion Certificate*” has the meaning assigned to that term in **Section 5.6(b)** hereof.

“*Computation Date*” has the meaning set forth in Section 1.148-1(b) of the Regulations and includes each Installment Computation Date and the Final Computation Date.

“*Condemnation*” shall have the meaning assigned to that term in the Indenture.

“*Conditions to Conversion*” means the conditions listed in **Exhibit "E"** to the Forward Bond Purchase Agreement.

“*Construction Capital Contributions*” has the meaning assigned to that term in **Section 4.7(e)**.

“*Construction Commitment*” means any written or oral commitment, offer, or statement made by the Bondholder Representative to the Borrower before the Bond Closing with respect to the terms and manner upon which the Bondholder Representative will purchase the Bonds.

“*Construction Contract*” has the meaning assigned to that term in **Section 5.10(c)** hereof.

“*Construction Inspection Fee*” has the meaning assigned to that term in **Section 5.18** hereof.

“*Construction of the Project*” has the meaning assigned to that term in **Section 5.6(b)** hereof.

“*Construction Term*” means the period beginning on the date of the Bond Closing and ending on (a) if the Conditions to Conversion have been satisfied or waived by the Permanent Lender, the date of the Conversion Certificate, and (b) if the Conditions to Conversion have not been satisfied or waived in writing by the Permanent Lender, the Construction Term Maturity Date (as may be extended pursuant to **Section 4.2(f)** hereof). In no event may the Construction Term end earlier than thirty (30) calendar months after the Bond Closing.

“*Construction Term Maturity Date*” means thirty (30) calendar months from the date of the Note, as the same may be extended pursuant to **Section 4.2(f)** hereof.

“*Contractor*” means _____, and each other general contractor, whether one or more, engaged by the Borrower, and approved in writing by the Bondholder Representative, to construct the Improvements (it being agreed that Ryan Companies US, Inc. will be the primary subcontractor for the construction of the Improvements and in such role, will be treated as the Contractor for purposes of this Agreement (if Ryan Companies US, Inc. is not the primary subcontractor, the Bondholder Representative shall approve any other primary subcontractor)).

“*Control*” means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person whether through the ability to exercise voting power, by contract or otherwise. “*Controlling*” and “*Controlled*” shall have meanings correlative thereto.

“*Conversion*” has the meaning assigned to that term in the Forward Bond Purchase Agreement.

“*Conversion Certificate*” means the Conversion Certificate from the Bondholder Representative and acknowledged by the Permanent Lender, as the successor Bondholder Representative, certifying as to the satisfaction of the Conditions to Conversion in the form attached hereto as **Schedule N**.

“*Conversion Date*” means the date of the Conversion Certificate.

“*Costs of Issuance*” has the meaning assigned to that term in **Section 2.3(r)** hereof.

“*Credit Agency*” means the Texas Department of Housing and Community Affairs, together with its successors and assigns in such capacity.

“*Credit Agency Tax Regulatory Agreement*” means that certain land use restriction agreement to be executed by and between Borrower and Credit Agency in the first year in which the Low Income Housing Tax Credits are claimed with respect to the Project.

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

“*Default Rate*” has the meaning assigned to that term in **Section 4.2(h)(iii)** hereof.

“*Deferred Developer Fee*” means the deferral of the payment of Developer Fee due to the Developer by the Borrower, as provided for in the Operating Agreement.

“*Deficiency Amount*” has the meaning assigned to that term in **Section 9.2(d)(ii)** hereof.

“*Determination of Taxability*” has the meaning assigned to that term in the Indenture.

“*Developer*” means DMA Development Company, LLC.

“*Developer Fee*” means that fee in the approximate amount of \$4,588,000 for development services payable to the Developer in the amount and upon such terms and conditions provided for in that certain Development Agreement and Operating Agreement.

“*Development Agreement*” means that certain Development Agreement dated as of even date with the Operating Agreement.

“*Disbursement Checking Account*” has the meaning assigned to that term in **Section 4.7(b)** hereof.

“*Disbursement Schedule*” has the meaning assigned to that term in **Section 3.3(d)** hereof.

“*Disbursements*” has the meaning assigned to that term in **Section 3.3(d)** hereof.

“*Disqualified Person*” means any Person that is (a) the subject of any current or prior debarment by the United States Department of Housing and Urban Development or any state housing agency (unless such transferee shall have been fully reinstated), (b) is listed on the Specially Designated Nationals and Blocked Persons List maintained by the Office of Foreign Assets Control, Department of the Treasury and/or any other similar list maintained by the Office of Foreign Assets Control pursuant to any authorizing statute, Executive Order or regulation, (c) a “*Designated National*” as defined in the Cuban Assets Control Regulations, 31 C.F.R. Part 515, or (d) a Person designated under Section 1(b), (c) or (d) of Executive Order No. 13224 (September

23, 2001) issued by the President of the United States, or any related enabling legislation or other similar Executive Order.

“*Draw Request*” has the meaning assigned to that term in **Section 4.7(b)** hereof.

“*Easements*” shall mean any easements created under the easement agreements listed on **Schedule O** to this Agreement (collectively the “*Easement Agreements*”).

“*Eligible Costs*” has the meaning assigned to that term in **Section 4.9** hereof.

“*Entity Guarantor*” means collectively, Austin DMA Housing II, LLC, a Texas limited liability company, and DMA Development Company, LLC, a Texas limited liability company.

“*Environmental Indemnity Agreement*” means Environmental Indemnity Agreement of even date herewith by the Borrower and the Guarantor in favor of the Bondholder Representative, the Issuer and the Trustee.

“*Equipment*” is defined in the Uniform Commercial Code.

“*ERISA*” means the Employee Retirement Income Security Act of 1974, as the same may be amended from time to time.

“*ERISA Affiliate*” means any corporation or trade or business that is a member of any group of organizations (a) described in Section 414(b) or (c) of the Code, of which the Borrower is a member, and (b) solely for purposes of potential liability or any lien arising under Section 302 of ERISA and Section 412 of the Code, described in Section 414(m) or (o) of the Code, of which the Borrower is a member.

“*Event of Default*” has the meaning given to that term in **Section 11.1** hereof.

“*Excusable Delays*” means unusually adverse weather conditions which have not been taken into account in the construction schedule, fire, hurricane, tropical storm, tornado, flooding, wind damage, earthquake or other acts of God, State or Federal ordered evacuation of the Land, shortages of materials, strike, lockout, acts of public enemy, riot, or insurrection or any unforeseen circumstances or events (except financial circumstances or events or matter which may be resolved by Borrower's payment of money on commercially reasonable terms) beyond the control of the Borrower, provided the Borrower shall notify the Bondholder Representative in writing within five (5) days after such occurrence, but no Excusable Delay shall suspend or abate any obligation of the Borrower or any other Person to pay any money under this Agreement and the other Loan Documents.

“*Facility*” shall have the meaning assigned to that term in the Indenture.

“*Federal Funds Rate*” means the rate published in The Wall Street Journal as the average federal funds rate in the “*Money Rates*” section as of the applicable date. If The Wall Street Journal is not in publication on the applicable date, or ceases to publish such average rates, then any other publication acceptable to the Permanent Lender quoting daily market average federal funds rates will be used.

“*Federal Laws*” has the meaning assigned to that term in **Section 7.15(f)** hereof.

“*Final Computation Date*” means the date on which the final payment in full of all outstanding Bonds is made.

“*Financial Information*” has the meaning assigned to that term in **Section 9.5(a)** hereof.

“*Financial Institution*” means (a) any national bank, banking corporation, national banking association or other banking institution, whether acting in its individual or fiduciary capacity, organized under the laws of the United States, any state, any territory or the District of Columbia, the business of which is substantially confined to banking and is supervised by the Comptroller of the Currency or a comparable state or territorial official or agency; (b) an insurance company whose primary and predominant business activity is the writing of insurance or the reinsuring of risks underwritten by insurance companies and which is subject to supervision by the insurance commissioner or a similar official or agency of a state, a territory or the District of Columbia; (c) an investment company registered under the Investment Company Act of 1940 or a business development company as described in Section 2(a)(48) of that Act; (d) an employee benefit plan, including an individual retirement account, which is subject to the provisions of the Employee Retirement Income Security Act of 1974, if the investment decision is made by a plan fiduciary, as defined in Section 3(21) of such Act, which is either a bank, insurance company or registered investment company; or (e) institutional investors or other entities who customarily purchase commercial paper or tax exempt securities in large denominations.

“*Fiscal Year*” has the meaning assigned to that term in the Indenture.

“*Forward Bond Purchase Agreement*” means the Bond Purchase Agreement dated as of November 1, 2015, among JPMorgan Chase Bank, N.A., as the original purchaser, Permanent Lender, and Borrower.

“*GAAP*” means the generally accepted accounting principles established by the Financial Accounting Standards Board or the American Institute of Certified Public Accountants and in effect in the United States from time to time, applied on a basis consistent with that of the preceding fiscal year of the Borrower, reflecting only such changes in accounting principles or practice with which the independent public accountants of the Borrower concur.

“*GIC*” means a Guaranteed Investment Contract which Borrower may enter into with Bondholder Representative (or its Affiliate, as the case may be) with respect to the proceeds of the Bonds to be deposited into the Project Fund. If entered into, the GIC shall be secured and/or guaranteed in a manner required by the Bondholder Representative.

“*Good Costs*” means the Qualified Project Costs under and as used in the Indenture which may be paid with proceeds of the Bonds on deposit in the Project Fund.

“*Governmental Authority*” means any federal, state, or local government or quasi-governmental subdivision, authority, or other instrumentality thereof and any entity asserting or exercising executive, legislative, judicial, regulatory, or administrative functions of or pertaining to government and having jurisdiction over the Borrower and/or the Project.

“*Gross Proceeds*” means any proceeds, as defined in Section 1.148-1(b) of the Regulations, and any replacement proceeds, as defined in Section 1.148-1(c) of the Regulations of the Bonds.

“*Ground Lease*” means that certain Ground Lease, dated on or about even date herewith, by and between the Issuer, as lessor, and the Borrower, as lessee (and is the same as the long-term ground lease referred to in the Recitals).

“*Ground Lessor*” has the meaning assigned to that term in the Recitals.

“*Guarantor Entity*” shall mean (X) the Guarantor; or (Y) any entity which acquires an interest in the Borrower or any Upstream Owner as a result of the death or incapacity of any member or partner of the Borrower or any Upstream Owner, provided that (i) the Bondholder Representative and the Permanent Lender are promptly notified of such death or incapacity in writing, and (ii) the Bondholder Representative and the Permanent Lender (if not then the Bondholder Representative) consent to such change of ownership interest or change in Control of such entity, which consent shall not be unreasonably withheld so long as such replacement entity is in the business of owning and operating housing projects similar to the Land and the Improvements, has been in such business for a period of time no shorter than ten (10) years and provides the Bondholder Representative and the Permanent Lender (if not then the Bondholder Representative) with one or more references to such effect.

“*Guarantor*” means collectively, the Individual Guarantor and the Entity Guarantors (as to payment and completion).

“*Guaranty*” shall mean the Payment and Performance Guaranty of even date herewith by the Guarantor in favor of the Bondholder Representative, the Issuer and the Trustee.

“*Hazardous Substances*” shall have the meaning assigned to that term in the Environmental Indemnity Agreement.

“*Holder*” has the meaning assigned to that term in the Indenture (including the Bondholder Representative and each other owner of the Bonds).

“*Housing Act*” means the United States Housing Act of 1937, as amended from time to time, and any successor legislation.

“*HUD*” means the United States Department of Housing and Urban Development.

“*Impositions*” means all taxes or payments in lieu of taxes of every kind and nature that appear on the Borrower’s property tax bill, including, sewer rents, charges for water, for setting or repairing meters and for all other utilities serving the Land, and assessments, levies, inspection and license fees and all other charges imposed upon or assessed against the Mortgaged Property or any portion thereof (including the Property Revenues), and any stamp or other taxes which might be required to be paid, or with respect to any of the Permanent Loan Documents, any of which might, if unpaid, affect the enforceability of any of the remedies provided in this Agreement or any other Permanent Loan Documents or result in a lien on the Mortgaged Property or any portion thereof, regardless of to whom assessed.

“Improvements” means the 240 unit multi-generational residential rental community, consisting of one (1) free standing buildings to be known as Aldrich 51 Apartments, which will be located on the Land, and which will be developed with the proceeds of the Loan and the Capital Contributions and in accordance with the Plans and Specifications. Forty percent (40%) of the units will be restricted to families earning less than sixty percent (60%) of the area median income.

“Indebtedness” means the aggregate of all principal and interest payments that accrue or are due and payable in connection with the Loan, together with all other obligations and liabilities and all amounts, sums and expenses due to the Bondholder Representative hereunder, under a Loan Document or under any other Permanent Loan Document.

“Indemnified Parties” has the meaning assigned to that term in **Section 7.3(a)** hereof.

“Indenture” has the meaning provided in the Recitals of this Agreement.

“Individual Guarantor” means Diana McIver.

“Installment Computation Date” means the last day of the fifth Bond Year and each succeeding fifth Bond Year.

“Interest” or *“interest”* has the meaning assigned to that term in **Section 12.30** hereof.

“Interest Rate Lock Letter” means that certain Interest Rate Lock Letter dated _____, 2015 from the Permanent Lender to the Borrower, locking the interest rate for the Permanent Loan.

“Investor Member” has the meaning given to that term in the Recitals hereof.

“Issuer Administration Fee” has the meaning assigned to that term in the Indenture.

“Issuer Compliance Fee” has the meaning assigned to that term in the Indenture.

“Key Principal” means DMA Development Company, LLC (and its replacements, as the case may be pursuant to **Section 5.30**).

“Land” has the meaning assigned thereto in the Recitals.

“Late Charges” has the meaning assigned to that term in **Section 4.2(h)(ii)** hereof.

“Lease” or *“Leases”* means a residential lease of an apartment unit in the Project.

“Liabilities” has the meaning assigned to that term in **Section 7.3(a)** hereof.

“Lien” means any interest in the Project securing an obligation owed to, or a claim by, a Person other than an owner of the Project, whether such interest is based on common law, statute, or contract, and including, but not limited to, the security interest, security title or lien arising from a security agreement, deed of trust, deed to secure debt, encumbrance, pledge, conditional sale, trust receipt, lease, or a consignment or bailment for security purposes. The term *“Lien”* shall

include reservations, exceptions, encroachments, easements, rights-of-way, covenants, conditions, restrictions, leases, and other title exceptions and encumbrances affecting the Project.

“*Limited Permanent Loan Guaranty Agreement*” means that certain Limited Permanent Loan Guaranty Agreement between the Guarantor and the Permanent Lender, dated as of the date hereof, as the same may be amended from time to time.

“*Loan*” has the meaning provided in the Recitals of this Agreement.

“*Loan Documents*” has the meaning given to that term in the Indenture (which in any event shall include, without limitation, this Agreement, the Note, the Mortgage, the Guaranty, the Environmental Indemnity Agreement, the Assignment of Management Agreement, and the Assignment of Accounts).

“*Loan to Value Ratio*” means the ratio expressed as a percentage, of (a) the sum of the principal amount of the Bonds (as then committed and outstanding) and the then committed and outstanding amount of the Taxable Tail Loan, to (b) the Appraisal Value.

“*Low Income Housing Tax Credit*” means the 4% Low Income Housing Credit as that term is used in Section 42 of the Code available to the Project in the anticipated amount of \$478,428, annually for ten (10) years.

“*Management Agent*” means, initially, the Property Manager and any successor manager of the Mortgaged Property as approved by the Permanent Lender in accordance with the terms of this Agreement.

“*Management Agreement*” means that certain management agreement between the Management Agent and the Borrower relating to the management of the Project.

“*Managing Member*” has the meaning assigned to that term in the Recitals hereof.

“*Material Adverse Change*” means any condition or event that the Bondholder Representative reasonably and in good faith determines will have a material adverse effect on (a) the applicable entity’s ability to fulfill its obligations under the Loan Documents, or (b) the validity or enforceability of this Agreement or any of the other Loan Documents or the rights and remedies of the Bondholder Representative under this Agreement or any of the other Loan Documents.

“*Maximum Household Income Limit*” shall have the meaning assigned to that term in **Section 2.1(k)** hereof.

“*Mortgage*” has the meaning provided in the Recitals of this Agreement.

“*Mortgaged Property*” means the Property under and defined in the Mortgage.

“*Net Cash Flow*” shall have the meaning assigned to that term in the Indenture.

“Nonpurpose Investment” shall mean any investment property (as defined in Section 148(b) of the Code) that is acquired with the Gross Proceeds of the Bonds and which is not acquired to carry out the governmental purpose of the Bonds.

“Note” has the meaning provided in the Recitals of this Agreement.

“OFAC” means the United States Department of the Treasury, Office of Foreign Assets Control, or any successor or replacement agency.

“OFAC Prohibited Person” means, a country, territory, individual or Person (i) listed on, included within or associated with any of the countries, territories, individuals or entities referred to on The Office of Foreign Assets Control’s List of Specially Designated Nationals and Blocked Persons or any other prohibited person lists maintained by governmental authorities, or otherwise included within or associated with any of the countries, territories, individuals or entities referred to in or prohibited by OFAC or any other Anti-Money Laundering Laws, or (ii) which is obligated or has any interest to pay, donate, transfer or otherwise assign any property, money, goods, services, or other benefits from any of the Mortgaged Property directly or indirectly, to any countries, territories, individuals or entities on or associated with anyone on such list or in such laws.

“Operating Agreement” has the meaning assigned to that term in the Recitals to this Agreement.

“Operating Reserve” has the meaning assigned to that term in **Schedule F** to this Agreement.

“Ordinary Fees and Expenses” has the meaning assigned to that term in the Indenture

“Payment Date” has the meaning assigned to that term in **Section 4.2** hereof.

“Payment and Performance Bond” means a payment and performance bond providing that the subcontractors are bonded for payment and performance, in an aggregate amount of at least equal to the Construction Contract, by a surety, having an AM Best rating of at least “A- /VIII” or where an AM Best rating is unavailable, a rating of at least “AA” by Standard & Poor’s Ratings Services, a Standard & Poor’s Financial Services LLC business (this bond shall contain a dual oblige clause in favor of the Contractor and the Bondholder Representative).

“Permanent Lender” means Cornerstone Permanent Mortgage Fund III, LLC or its affiliate.

“Permanent Lender Parties” means the Permanent Lender, Cornerstone Real Estate Advisers LLC, any present and future Permanent Loan participants, Permanent Loan servicers, custodians and trustees, and each of their respective directors, officers, employees, shareholders, agents, affiliates, heirs, legal representatives, successors and assigns.

“Permanent Loan” has the meaning assigned to that term in the Recitals to this Agreement.

“*Permanent Loan Contract Rate*” means the rate of interest, as then applicable, provided for in the Bonds.

“*Permanent Loan Documents*” means collectively, this Agreement, the Note, the Ancillary Permanent Loan Documents, the Purchased Documents, and all other documents now or hereafter executed by Borrower or any other Person to evidence or secure the payment of the Indebtedness or the performance of Borrower or otherwise now or hereafter executed in connection with this Agreement, the Note or the Mortgage and all amendments, modifications, restatements, extensions, renewals and replacements of the foregoing.

“*Permanent Term*” means the term commencing on the Conversion Date and ending on the Permanent Term Maturity Date.

“*Permanent Term Maturity Date*” means the date that is fifteen (15) years from the Conversion Date.

“*Permitted Encumbrance*” means the items listed in **Schedule A-1**.

“*Permitted Transfer*” shall have the meaning ascribed to such term in **Section 5.2(b)** of this Agreement. Provided, however, under no circumstances shall a Permitted Transfer be interpreted to mean, include or permit a sale, assignment or other Transfer to a Disqualified Person or to a Person which is Controlled by or in common Control with a Disqualified Person.

“*Person*” means any natural person, firm, partnership, association, limited liability company, corporation, company, governmental or public body.

“*Placed in Service*” means, except as otherwise provided in this Agreement, with respect to the Project, the date that (a) it has received all temporary certificates of occupancy and use permits required for legal occupancy of all of its dwelling units and is ready and available for occupancy by tenants under Approved Leases (if such certificates or permits are of a temporary nature, the Project shall not be deemed to have been Placed in Service unless: (i) any work remaining to be done is of a nature that would not impair the permanent occupancy of any of the units on a full paying basis; and (ii) the Borrower has made adequate provision for the payment and completion of all outstanding punch list items and any other work that needs to be completed); (b) it is free of any mechanics or other liens, except for the mortgages securing the Loan, the subordinate liens securing the Taxable Tail Loan, and liens bonded against in such a manner as to preclude the holder thereof from having any recourse to the Project or the Borrower for payment of any debt, or obligations secured thereby or affirmatively insured against by the Trustee’s loan title policy (in such manner as precludes recourse to the Borrower for any loss incurred by the insurer) or by another policy of title insurance issued to the Borrower by a reputable title insurance company, in an amount complying with the requirements of this Agreement (or by an endorsement of either such policy); (c) the Architect has issued an Architect’s Certificate in the form of AIA document G704 stipulating that construction or rehabilitation is substantially complete; (d) the Managing Member has issued a certification that the construction or rehabilitation is substantially complete and that all temporary certificates of occupancy and use permits have been issued for 100% of the units; (e) the Contractor has issued a General Contractor’s Certificate comparable to AIA Form G706 and G706A certifying that it has been paid in full under the Construction

Contract, that it has paid all subcontractors and materialmen in full, and that it has received waivers of mechanic's lien from all subcontractors, materialmen and anyone else that could lien the property in connection with the work under the Construction Contract, and (f) there is no Event of Default that has occurred and is continuing.

"Plan Assets Regulation" has the meaning assigned to that term in **Section 2.7** hereof.

"Plans and Specifications" has the meaning assigned to that term in **Section 5.6(b)** hereof.

"Prepayment Date" has the meaning assigned to that term in **Section 10.1(d)** hereof.

"Prepayment Fee" has the meaning assigned to that term in **Section 10.1(c)** hereof.

"Principal" means (a) the Borrower, (b) the Guarantor, (c) each person or entity that directly or indirectly owns ten percent (10%) or more of the equity interests in the Borrower or any of the Guarantor (a "10% Interest"), and (d) any person or entity that does not own a 10% Interest but directly or indirectly Controls the Borrower or any of the Guarantor.

"Processing Fee" has the meaning assigned to that term in **Section 9.10** hereof.

"Proforma Schedule" means the schedule set forth at **Schedule E** attached hereto.

"Project" has the meaning assigned to that term in the Recitals (but in any event, shall include the Improvements and the Borrower's leasehold interest in the Land).

"Project Certificate" has the meaning assigned to that term in the Indenture.

"Project Fund" has the meaning assigned to that term in the Indenture.

"Project Revenues" means, for any period, all cash operating and non-operating revenues of the Project, less (a) any extraordinary and nonrecurring items, (b) income derived from the sale of assets not in the ordinary course of business which is permitted under the Loan Documents, (c) security deposits of tenants (other than those forfeited), and (d) Recovery Proceeds or Condemnation Awards, but including as Project Revenues any Recovery Proceeds resulting from business interruption insurance or other insurance or condemnation proceeds retained by the Borrower.

"Property Manager" means DMA Development Company, LLC.

"Publicly Held Corporation" means a corporation the outstanding voting stock of which is registered under Section 12(b) or 12(g) of the Securities and Exchange Act of 1934, as amended.

"Purchased Documents" is defined in the Forward Bond Purchase Agreement.

"QAP" means Qualified Allocation Plan for the 2015 Housing Tax Credit Program adopted by the Credit Agency (as may be amended, replaced, or superseded).

"Qualified Project Costs" has the meaning assigned to that term in the Indenture.

“*Qualified Project Period*” has the meaning assigned to that term in the Tax Regulatory Agreement.

“*Rebate Amount*” has the meaning set forth in Section 1.148-1(b) of the Regulations and includes for any given period, the amount determined by the Rebate Analyst as required to be rebated or paid as a yield reduction payment to the United States of America with respect to the Bonds.

“*Rebate Analyst*” shall have the meaning assigned to that term in the Indenture.

“*Rebate Fund*” shall have the meaning assigned to that term in the Indenture.

“*Recourse Guaranty Agreement*” means that certain Recourse Guaranty Agreement, dated as of the date hereof, from the Guarantor for the benefit of the Permanent Lender, as the same may be amended from time to time.

“*Regulations*” means any proposed, temporary, or final Income Tax Regulations issued pursuant to sections 103 and 141 through 150 of the Code. Any reference to any specific Regulation shall also mean, as appropriate, any proposed, temporary or final Income Tax Regulations designed to supplement, amended or replace the specific Regulations referenced, that are available to the general public.

“*Regulatory and Restrictive Use Agreements*” means, collectively: (i) the Tax Regulatory Agreement and (ii) the Credit Agency Tax Regulatory Agreement entered into with the Credit Agency to maintain the Low Income Housing Tax Credit.

“*Requirements*” shall have the meaning set forth in **Section 5.1(a)** hereof.

“*Requirements of Law*” means as to any Person the certificate or articles of incorporation or organization or formation and by laws, operating agreement, or other organizational or governing documents of such Person; all requirements of the Indenture to the Credit Agency, the City, the Regulatory and Restrictive Use Agreements, the QAP and any other restrictions or covenants applicable to and affecting the use and development of the Project. Requirements of Law shall also include, without limitation, any and all applicable (a) federal, State, and municipal laws, codes, ordinances, rules and regulations actually applicable to the Project, whether currently existing or hereafter promulgated, including without limitation environmental laws, building codes, land use, and zoning codes to the extent actually applicable to the Project, (b) all requirements and terms of the Qualified Allocation Plan as adopted by the Credit Agency and applicable to the Low Income Housing Tax Credit for the Project, and (c) federal regulations and policies issued pursuant to these regulations, including without limitation (i) the Architectural Barriers Act of 1968 (42 U.S.C. §§4151-4157); (ii) the Uniform Federal Accessibility Standards, as set forth in 24 CFR Part 570.614; (iii) the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973; (iv) the requirements of the Secretary of Labor in accordance with the Davis Bacon Act (40 U.S.C. §276(a) to (a) 7) 24 CFR Part 570.603) and supporting Department of Labor regulations; (v) the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended (49 CFR Part 24) and Section 104(d) of the Housing and Community Project Act of 1974 as amended, and 24 CFR Part 570.606; and (vi) for existing

properties built prior to 1978, the Lead Based Paint Poisoning Protection Act (42 U.S.C. §4831(b)) and the Residential Lead Based Paint Hazard Reduction Act of 1992 (42 U.S.C. §§4851 4856) and implementing regulations at 24 CFR Part 35.

“*Requisition*” means a request for the disbursement of funds in the Project Fund (or if applicable, the Costs of Issuance Fund, as the case may be) in accordance with **Section 5.2** of the Indenture, as otherwise required by the Trustee, on the form attached as **Exhibit A** to the Indenture (and in any event shall be the same as the requisitions used in the Indenture).

“*Reserve Account*” has the meaning assigned to that term in **Schedule F** attached hereto.

“*Retainage*” means (a) 10% of the aggregate amount actually incurred by the Borrower for work in place as part of the construction of the first 50% of the Improvements, as verified from time to time by the Bondholder Representative’s construction consultant pursuant to the provisions of this Agreement and (b) 5% of the aggregate amount actually incurred by the Borrower for work in place in completing the last 50% of the Improvements, as verified from time to time by the Bondholder Representative’s construction consultant pursuant to the provisions of this Agreement, it being the intent that the total Retainage held by Bondholder Representative upon completion of construction of the Improvements in accordance with the Plans and Specifications shall be equal to 7.5% of the aggregate direct construction costs actually incurred by the Borrower for work in place as a part of such construction, as verified by the Bondholder Representative’s construction consultant pursuant to this Agreement. The Retainage shall in no event be less than the amount actually held back by the Borrower from the Contractor and all subcontractors and materialmen engaged in the construction of the Improvements.

“*Review Fee*” means \$3,000 (unless the Transfer has been approved by Bondholder Representative on or before the Bond Closing, then in that case, the Review Fee shall be zero).

“*Sanctions*” means all economic or financial sanctions or trade embargoes imposed, administered or enforced from time to time by the U.S. government, including those administered by the Office of Foreign Assets Control of the U.S. Department of the Treasury or the U.S. Department of State.

“*Sanctioned Country*” means, at any time, a country, region or territory which itself is the subject or target of any Sanctions (at the time of this Agreement, Crimea, Cuba, Iran, North Korea, Sudan and Syria).

“*Sanctioned Person*” means, at any time, (a) any Person listed in any Sanctions related list of designated Persons maintained by the Office of Foreign Assets Control of the U.S. Department of the Treasury, the U.S. Department of State, (b) any Person operating, organized or resident in a Sanctioned Country or (c) any Person controlled by any such Person.

“*Sponsor*” has the meaning assigned to that term in the Indenture.

“*State*” means State of Texas.

“*State Laws*” has the meaning assigned to that term in **Section 7.15(f)** hereof.

“*Stored Materials*” has the meaning assigned to that term in **Section 5.25(a)** hereof.

“*Subordinate Loans*” means to Austin Housing Finance Corporation loans in the amounts of \$2,000,000.

“*Subordinate Mortgage*” means that certain Leasehold Deed of Trust, Security Agreement, Assignment of Leases and Rents, Financing Statement and Fixture Filing (Breakage Fees), dated of even date herewith, executed by Borrower for the benefit of Permanent Lender.

“*Substantial Completion*” means the completion of the construction and equipping of the Improvements free and clear of all liens other than Permitted Encumbrances and liens bonded against in such a manner satisfactory to the Bondholder Representative so as to preclude the holder thereof from having any recourse to the Project or the Borrower for payment of any debt, in material accordance with the Plans and Specifications to the satisfaction of the Bondholder Representative and its construction consultant, except for such defects or departures which do not, in the reasonable opinion of the Bondholder Representative and its construction consultant, materially adversely affect either the value of the work in place or the full utilization of the applicable portion of the Improvements for which it is intended, receipt of (a) copies of all permits and approvals of Governmental Authorities for the occupancy of all apartment units comprised of the Improvements including, and not by way of limitation, a conditional, temporary or permanent certificate of occupancy, and (b) the Certificate of Substantial Completion issued by the Architect.

“*Tax Certificate*” has the meaning assigned to that term in the Indenture.

“*Tax Credit Allocation*” means together, the letters (or other form of notice) issued by the Credit Agency regarding the availability of a Low Income Housing Tax Credit for the Project which is attached hereto as **Schedule K** subject to the terms and provisions thereof.

“*Tax Regulatory Agreement*” means that certain Regulatory Agreement and Declaration of Restrictive Covenants, dated of even date herewith, by and among the Borrower, the Issuer and the Trustee (and referred to as the Regulatory Agreement in the Indenture).

“*Taxable Tail Loan*” means the Loan in the principal amount of [\$6,518,850] made by the Bank to the Borrower pursuant to the Taxable Tail Loan Agreement which shall be paid in full on or before the Construction Term Maturity Date.

“*Taxable Tail Loan Agreement*” means the Taxable Tail Loan Agreement of even date herewith, between the Bank and the Borrower, as may be modified, amended or restated.

“*Taxable Tail Loan Documents*” means the Taxable Tail Loan Agreement and all documents, agreements and instruments evidencing, securing and/or guaranteeing the Taxable Tail Loan.

“*Termination Date*” has the meaning assigned to that term in the Forward Bond Purchase Agreement.

“*Title Policy*” has the meaning provided in **Schedule I** attached hereto.

“*Total Project Expenses*” has the meaning assigned to that term in **Section 4.6(a)** hereof.

“*Transfer*” means (a) a sale, assignment, transfer or other disposition (whether voluntary, involuntary, or by operation of law), (b) except pursuant to a Regulatory and Restrictive Use Agreement, the grant, creation, or attachment of a lien, encumbrance or security interest (whether voluntary, involuntary, or by operation of law), (c) the issuance or other creation of a direct or indirect ownership interest, (d) the withdrawal, retirement, removal or involuntary resignation of any owner or manager of a legal entity, or (e) the merger, dissolution, liquidation or consolidation of a legal entity. The term “*Transfer*” shall not mean or include (i) the conveyance of the Project at a judicial or non judicial foreclosure sale under the Mortgage or (ii) the Project becoming part of a bankruptcy estate by operation of law under United States Bankruptcy Code.

“*Transfer Fee*” means an amount equal to one percent (1%) of the outstanding principal balance of the Loan at the time of determination.

“*Treasury Issue*” has the meaning assigned to that term in the Indenture.

“*UCC Financing Statements*” means the Uniform Commercial Code Financing Statements naming the Borrower as debtor and the Permanent Lender as secured party to be recorded or filed, as applicable, on or after the date of this Agreement.

“*Unassigned Issuer’s Rights*” has the meaning assigned to that term in the Indenture.

“*Upstream Owner*” means any Person other than the Investor Member and Administrative Limited Partner having a direct or indirect legal, beneficial or other ownership interest in the Borrower (e.g., if the Borrower is a limited liability company, and one of the Borrower’s members is a limited partnership, whose partner is a corporation, then such limited partnership, corporation and the shareholders of such corporation would each be an Upstream Owner).

“*Work*” has the meaning assigned to that term in **Section 9.2(a)** hereof.

“*Yield*” of (a) the Bonds has the meaning set forth in Section 1.148-4 of the Regulations and generally, is the discount rate that when used in computing the present value of all payment of principal and interest to be paid on the obligation produces an amount equal to the Issue Price of such Bond and (b) any investment has the meaning set forth in Section 1.148-5 of the Regulations and generally, is the discount rate that when used in computing the present value of all payment of principal and interest to be paid on the investment produces an amount equal to all payments for the investment.

Section 1.3. *Schedules and Exhibits.* The following Schedules and Exhibits are attached to and by reference made a part of this Agreement:

- (a) **Schedule A:** Legal Description of Project;
- (b) **Schedule A-1:** Permitted Encumbrances;
- (c) **Schedule B:** Promissory Note;

- (d) **Schedule C**: Project Expenses;
- (e) **Schedule C-1**: Budget;
- (f) **Schedule D**: Disbursement Schedule;
- (g) **Schedule D-1**: Authorized Signers;
- (h) **Schedule E**: Pro Forma Schedule;
- (i) **Schedule F**: Conditions Relating to Reserve Accounts;
- (j) **Schedule G**: List of Plans and Specifications;
- (k) **Schedule H**: Equity Funding;
- (l) **Schedule I**: Title Insurance Requirements;
- (m) **Schedule J**: Survey Requirements;
- (n) **Schedule K**: Tax Credit Allocation;
- (o) **Schedule L**: Affidavit of Commencement;
- (p) **Schedule M**: Affidavit and Certificate of Completion
- (q) **Schedule N**: Conversion Certificate; and
- (r) **Schedule O**: Easements.

Section 1.4. *Rules of Interpretation.* (a) This Agreement shall be governed by and construed in accordance with the laws and judicial decisions of the State (exclusive of its choice and conflict of law principles), except as they may be preempted by federal rules, regulations, and laws. References in this Agreement and the other Loan Documents to particular sections of the Internal Revenue Code, the Uniform Commercial Code, or any other legislation, rule or regulation shall be deemed to refer also to any successor sections thereto or other re-designation for codification purposes. The Issuer and the Borrower expressly acknowledge and agree that any judicial action to enforce any rights of the Issuer under this Agreement and the other Loan Documents shall be brought and maintained in the District Court for Travis County, Texas, or in the United States District Court for the Western District of Texas or in any United States Bankruptcy Court in any case involving or having jurisdiction over the Borrower or over the Project.

(b) The words “herein,” “hereof,” and “hereunder” and words of similar import, without reference to any particular section or subdivision, refer to this Agreement as a whole rather than to any particular section, or subdivision of this Agreement.

(c) References in this Agreement to any particular article, section, or subdivision hereof are to the designated article, section or subdivision of this Agreement as originally executed.

(d) All accounting terms not specifically defined herein shall be construed in accordance with GAAP consistent with such principles. In the event that changes in GAAP shall be mandated by the Financial Accounting Standards Board and/or the American Institute of Certified Public Accountants or any similar accounting body of comparable standing, or shall be recommended by the Borrower's certified public accountants, to the extent that such changes would modify such accounting terms or the interpretation or computation thereof as contemplated by this Agreement at the time of execution hereof, then in such event, such changes shall be followed in defining such accounting terms only after the Bondholder Representative and the Borrower amend this Agreement to reflect the original intent of such terms in light of such changes, and such terms shall continue to be applied and interpreted without such change until such agreement.

(e) The Table of Contents and titles of articles and sections herein are for convenience of reference only and are not a part of this Agreement, and shall not define or limit the provisions hereof.

(f) Unless the context hereof clearly requires otherwise, the singular shall include the plural and vice versa and the masculine shall include the feminine gender and the neuter state and vice versa.

(g) Articles, sections, subsections, and clauses mentioned by number only are those so numbered which are contained in this Agreement.

(h) Any opinion of counsel required hereunder shall be a written opinion of such counsel.

(i) References to the Bonds as "tax exempt" or to the "tax exempt status of the Bonds" are to the exclusion of interest on the Bonds from gross income for federal income tax purposes pursuant to Section 103(a) of the Code (other than Bonds held by a "substantial user" of the Project or a "related person" within the meaning of Section 147(a) of the Code).

(j) Every "request," "order," "demand," "direction," "application," "appointment," "notice," "statement," "certificate," "consent," or similar action under this Agreement by any party shall, unless the form of such instrument is specifically provided, be in writing signed by a duly authorized representative of such party with a duly authorized signature.

(k) The parties hereto acknowledge that each such party and its respective counsel have participated in the drafting and revisions of this Loan Agreement and the Indenture. Accordingly, the parties agree that any rule of construction which disfavors the drafting party shall not apply to the interpretation of this Loan Agreement and the Indenture.

(l) References in this Agreement and the other Loan Documents to particular sections of the Code, the Act, ADA, the Uniform Commercial Code, or any other legislation, rule, or regulation shall be deemed to refer also to any successor sections thereto or other re designation for codification purposes.

ARTICLE 2

REPRESENTATIONS OF ISSUER, BORROWER AND BONDHOLDER REPRESENTATIVE

Section 2.1. *Representations of the Issuer.* The Issuer makes the following representations and warranties as the basis for its covenants herein:

(a) The Issuer is organized and existing as a housing finance corporation duly organized and existing under the laws of the State, and is authorized to issue the Bonds to finance the acquisition, construction and equipping of the Project pursuant to the Act.

(b) The Issuer has lawful power and authority under the Act to enter into this Agreement, the Tax Regulatory Agreement, and the Indenture and to carry out its obligations hereunder and under the Tax Regulatory Agreement and the Indenture. By proper action of its governing body, the Issuer has been duly authorized to execute and deliver this Agreement, acting by and through its duly authorized officers. The Indenture, the Tax Regulatory Agreement, and this Agreement have been duly executed by the Issuer and each constitutes a valid, legal, binding and enforceable obligation of the Issuer (subject to bankruptcy, insolvency, or other laws affecting creditors' rights generally and to the application of principles of equity generally) without offset, defense, or counterclaim. The execution, delivery, and performance of the Indenture, the Tax Regulatory Agreement, and this Agreement by the Issuer will not violate any law, regulation, order, or decree of any Governmental Authority regulating the Issuer and all consents, approvals, authorizations, orders, or filings of or with any court or governmental agency or body, if any, required for the execution, delivery, and performance of such documents by the Issuer have been obtained or made.

(c) The Issuer has no knowledge of any pending action, suit, or proceeding, arbitration, or governmental investigation against the Issuer, an adverse outcome of which will materially affect performance under the Indenture and this Agreement by the Issuer.

(d) To finance the costs of the Project, the Issuer proposes to issue the Bonds in the aggregate principal amount of \$_____. The Bonds will bear interest and be scheduled to mature and will be subject to redemption prior to maturity in accordance with the provisions of the Indenture. The Bonds are to be issued under and secured by the Indenture, pursuant to which the payments, revenues, and receipts derived by the Issuer pursuant to this Agreement, other than the Unassigned Issuer's Rights, will be pledged and assigned to the Trustee as security for payment of the principal of, premium, if any, and interest on the Bonds.

(e) Under the provisions of the Indenture, the Issuer's interest in this Agreement and certain payments due hereunder (other than the Unassigned Issuer's Rights) is pledged and assigned to the Trustee as security for the payment of the principal of,

interest on, and premium, if any, on the Bonds and the Issuer will not otherwise or further assign such interest in this Agreement.

(f) To the extent within its reasonable control, the Issuer will not engage in any activity which might affect the exclusion for federal income tax purposes of the interest on the Bonds from the gross income of any Holder of the Bonds thereof (other than “substantial users” or “related persons” within the meaning of Section 147(a) of the Code).

(g) The execution, delivery, and performance of the Indenture and this Agreement by the Issuer will not cause or constitute a default under or conflict with its organizational documents or other agreements to which it is a party or otherwise materially adversely affect performance of the duties of the Issuer under such organizational documents or other agreements.

(h) The Issuer makes no representation as to the financial position or business condition of the Borrower and does not represent or warrant as to any of the statements, materials (financial or otherwise), representations, or certifications furnished or to be made and furnished by the Borrower in connection with the sale of the Bonds, or as to the correctness, completeness, or accuracy of such statements.

(i) THE ISSUER MAKES NO WARRANTY, EXPRESS, OR IMPLIED, WITH RESPECT TO THE PROJECT OR ANY PORTION THEREOF, INCLUDING WITHOUT LIMITATION, THE HABITABILITY THEREOF, THE MERCHANTABILITY OR FITNESS THEREOF FOR ANY PARTICULAR PURPOSES, THE DESIGN OR CONDITION THEREOF, THE WORKMANSHIP, QUALITY, OR CAPACITY THEREOF, LATENT DEFECTS THEREIN, THE VALUE THEREOF, FUTURE PERFORMANCE OR THE COMPLIANCE THEREOF WITH ANY REQUIREMENTS OF LAW.

(j) THE ISSUER DOES NOT MAKE ANY WARRANTY, EITHER EXPRESS OR IMPLIED, THAT MONEYS, IF ANY, WHICH WILL BE PAID INTO THE PROJECT FUND OR OTHERWISE MADE AVAILABLE TO THE BORROWER WILL BE SUFFICIENT TO COMPLETE THE PROJECT, AND THE ISSUER SHALL NOT BE LIABLE TO THE BORROWER, THE BONDHOLDER REPRESENTATIVE, THE HOLDERS OR ANY OTHER PERSON IF FOR ANY REASON THE PROJECT IS NOT COMPLETED.

Section 2.2. *Representations and Covenants of the Borrower.* The Borrower makes the following representations and warranties as the basis for its covenants herein:

(a) The Borrower is a limited liability company duly formed and existing under the laws of the State, and is duly authorized to conduct its business in the State and all other states where its activities require such authorization, has power to enter into this Agreement and the other Loan Documents to which the Borrower is a party and to use the Project for the purposes set forth in this Agreement, and by proper limited partnership action has authorized the execution and delivery of this Agreement and the other Loan Documents to which the Borrower is a party, and has approved the Indenture.

(b) This Agreement and the other Loan Documents to which the Borrower is a party have been duly executed and delivered by the Borrower; such documents constitute valid, legal, binding, and enforceable obligations of the Borrower (subject to bankruptcy,

insolvency, or other laws affecting creditors' rights generally and to application of principles of equity generally), without offset, defense, or counterclaim; the execution, delivery, and performance of such documents by the Borrower will not violate any law, regulation, order, or decree of any Governmental Authority; and all consents, approvals, authorizations, orders, or filings of or with any court or governmental agency or body, if any, required for the execution, delivery, and performance of such documents by the Borrower have been obtained or made.

(c) The execution and delivery of this Agreement and the other Loan Documents to which the Borrower is a party, the consummation of the transactions contemplated thereby, and the fulfillment of the terms and conditions thereof do not and will not conflict with or result in a breach of any of the terms or conditions of the Operating Agreement, or any restriction, any agreement or any instrument to which the Borrower is now a party or by which it is bound or to which any property of the Borrower is subject, and do not and will not constitute a default under any of the foregoing, or, to the best of the Borrower's knowledge, cause the Borrower to be in violation of any order, decree, statute, rule, or regulation of any court or any state or federal regulatory body having jurisdiction over the Borrower or the Project and do not and will not result in the creation or imposition of any lien, charge, or encumbrance of any nature upon any of the property or assets of the Borrower contrary to the terms of any instrument or agreement to which the Borrower is a party or by which it is bound. To their knowledge, the Borrower and Managing Member have complied with any and all laws and regulations concerning their organization, existence, and the transaction of their business, and each is in good standing in each state in which it conducts its business. The Borrower has the right and power to lease the Project and to develop the Project and Facility as contemplated in the Loan Documents.

(d) The Borrower is familiar with, and has complied in all material respects with, all of the Requirements (as defined in **Section 5.1** herein), as well as all other applicable laws, regulations, and ordinances. The Project and the actual use and intended use thereof by the Borrower comply in all material respects with the Requirements. The Borrower has received no notices of violations of any Requirement, except violations that have been corrected. There are no claims, actions, proceedings, or investigations pending, or to the Borrower's knowledge, threatened against the Borrower or affecting the Project except for those previously disclosed by the Borrower to the Bondholder Representative and the Issuer, in writing. The Borrower is familiar, and to the Borrower's knowledge, has complied in all material respects with all of the Requirements, as well as all other applicable laws, regulations and ordinances relating to the Project. The Borrower has properly obtained, or will when necessary for purposes of this Agreement obtain, all permits, licenses and approvals necessary to construct, occupy, operate, market, and lease or sell the Project in accordance with all Requirements, including those pertaining to zoning, and, upon request, the Borrower will deliver true and correct copies of them to Bondholder Representative. To the Borrower's knowledge, no provision or obligation of the Borrower contained in any of the Loan Documents violates any of the Requirements, any other applicable law, regulation, or ordinance or any order or ruling of any court or governmental

entity. To the Borrower's knowledge, no such provision or obligation conflicts with, or constitutes a breach or default under, any agreement binding or regulating the Project.

(e) No obligations have been or are expected to be issued under the Indenture or otherwise for purposes of Section 103 of the Code, for sale at substantially the same time as the Bonds, pursuant to the same plan of financing as the Bonds and payable from the same source of funds as the Bonds, or which are otherwise treated as the same "issue of obligations" as the Bonds under the Regulations.

(f) The Borrower is not in the trade or business of selling properties such as the Project and has acquired the Project for investment purposes only or otherwise for use by the Borrower in its trade or business, and therefore the Borrower has no present intention to voluntarily sell, surrender, or otherwise transfer, in whole or part, its interest in the Project.

(g) To the Borrower's knowledge, there are no actions, suits, proceedings, or inquiries or investigations at law or in equity pending or, to the actual knowledge of the Borrower, threatened against the Borrower or to Borrower's knowledge, against the Guarantor or any property of the Borrower in any court or before any federal, state, municipal, or other governmental agency, which, (i) if decided adversely to the Borrower or to the Borrower's knowledge, the Guarantor, would cause a Material Adverse Change to occur with respect to the Borrower or upon the business or properties of the Borrower or upon its power, authority and right to enter into this Agreement and the other Loan Documents to which the Borrower is a party, (ii) affects or seeks to prohibit, restrain, or enjoin the issuance, sale, or delivery of the Bonds or the loaning of the proceeds of the Bonds to the Borrower or the execution and delivery of the Loan Documents, (iii) affects or questions the validity or enforceability of the Loan Documents, (iv) questions the exclusion from gross income for federal income tax purposes of interest on the Bonds, or (v) questions the power or authority or otherwise affects the Borrower's ability to carry out the transactions contemplated by, or to perform its obligations under, the Loan Documents. The Borrower is not in default with respect to any order of any court or governmental agency.

(h) The Borrower has filed all federal and state income tax returns, if any, which, to the knowledge of the Borrower, are required to be filed and has paid all taxes shown on said returns and all assessments and governmental charges received by it to the extent that they have become due. The Borrower knows of no basis for any additional assessment of federal or state income taxes against it.

(i) The Borrower has reviewed the provisions of the Indenture and by execution of this Agreement hereby approves the same.

(j) To the best of the Borrower's knowledge, no member of the governing body of the Issuer or any other officer of the Issuer has any significant or conflicting interest, financial, employment, or otherwise, in the Borrower, the Project, or the transactions contemplated hereby.

(k) The covenants, representations, and warranties of the Borrower in the Tax Regulatory Agreement and the Project Certificate executed by Borrower as of the date of the Bond Closing are true and correct in all material respects and are incorporated herein by reference and made a part of this Agreement.

(l) The Borrower has not entered into the transaction evidenced hereby with the actual intent to hinder, delay, or defraud any creditor and the Borrower has received reasonably equivalent value in exchange for its obligations hereunder and under the Mortgage and the Regulatory and Restrictive Use Agreements.

(m) The Borrower has no contingent liabilities.

(n) The Borrower has no material financial obligation under any indenture, mortgage, deed of trust, loan agreement or other agreement or instrument to which the Borrower is a party or by which the Borrower or the Project are otherwise bound, other than (a) obligations under this Agreement and the other Loan Documents to which the Borrower is a party; (b) obligations permitted by and specifically described in the Operating Agreement as it exists as of the date of this Agreement or as it may be amended from time to time, with the consent of the Bondholder Representative to the extent such consent is required under the Loan Documents; (c) the Taxable Tail Loan, and (d) obligations incurred by Borrower from time to time in the ordinary course of business.

(o) Except for the Loan, the Subordinate Loan and the Taxable Tail Loans, the Borrower has not borrowed or received other debt financing that has not been heretofore repaid in full.

(p) The Borrower is not (a) an “investment company” or a company “controlled by an investment company” within the meaning of the Investment Company Act of 1940, as amended; or (b) a “holding company” or a “subsidiary company” of a “holding company” or an “affiliate” of either a “holding company” or a “subsidiary company” within the meaning of the Public Utility Holding Company Act of 1935, as amended; or (c) subject to any other federal or state law or regulation which purports to restrict its ability to borrow money.

(q) Except as disclosed in the Title Policy, there are no pending or, to the knowledge of the Borrower, proposed special or other assessments for public improvements affecting the Project, nor, to the knowledge of the Borrower, are there any contemplated improvements to the Project that may result in such special or other assessments.

(r) No statement of fact made herein or in the Loan Documents to which the Borrower is a party made by the Borrower contains any untrue statement of a material fact or omits to state any material fact necessary to make statements made herein or therein by the Borrower not misleading. There is no fact presently known to the Borrower which has not been disclosed to the Issuer and the Bondholder Representative which materially and adversely affects nor as far as the Borrower can foresee is likely to materially and adversely affect the business, operations or conditions (financial or otherwise) of the Borrower.

(s) All financial information which has been and will be prepared and delivered by or on behalf of the Borrower to the Issuer or the Bondholder Representative, including all information relating to the financial condition of the Borrower or the Managing Member and the Project, does and will fairly and accurately represent (or, in the case of materials prepared by Persons other than the Borrower or the Managing Member or their respective agents or employees, to the best of the Borrower's knowledge does and will fairly and accurately represent) the financial condition or results of operations being reported on. All such information prepared by or on behalf of the Borrower was and will be prepared in accordance with generally accepted accounting principles, consistently applied, unless otherwise noted. As of the date hereof, there has been no Material Adverse Change in any financial condition reported at any time to the Issuer or the Bondholder Representative.

(t) All reports, documents, instruments, information, and forms of evidence delivered by or on behalf of the Borrower to the Bondholder Representative or the Issuer concerning the Loan or required by the Loan Documents are (or, in the case of materials prepared by Persons other than the Borrower or the Managing Member or their respective agents or employees, are to the best of the Borrower's knowledge) accurate, correct, and sufficiently complete in all material respects to give the Issuer and the Bondholder Representative true and accurate knowledge of their subject matter.

(u) All utility services, including gas (if any), water, sewage, electrical, and telephone, necessary to develop and occupy the Project are available at or within the boundaries of the Project. In the alternative, the Borrower has taken all steps necessary to assure that all utility services will be available upon completion of the Improvements.

(v) The Borrower is not a "foreign person" within the meaning of Section 1445(f)(3) of the Code.

(w) The Borrower will hold and dispose of all tenant security deposits relating to the Project in accordance with State law.

(x) The Borrower shall not discriminate on the basis of race, creed, color, sex, age, or national origin in the lease, use, or occupancy of the Project or in connection with the employment or application for employment of Persons for the operation and management of the Project and shall not deny admission to any person exclusively on the basis of rent assistance payments under a local, state, federal, or other housing assistance program, including, but not limited to, Section 8 of the Housing Act.

(y) The Borrower shall comply with all requirements of the Act and any and all lawful rules, policies, and applicable regulations of the Issuer (or its sponsoring entity) adopted pursuant to the Act with respect to multifamily rental housing and the Project. The Project is located wholly within the boundaries of the Issuer's jurisdiction.

(z) All tenant lists, applications, and waiting lists relating to the Project shall at all times be kept separate and identifiable from any other business of the Borrower that is unrelated to the Project, and shall be maintained in a reasonable condition for proper audit and be subject to examination during business hours by representatives of the Issuer or the

Trustee (upon two (2) Business Days' prior notice, but no such prior notice will be required during the continuance of an Event of Default).

(aa) The Borrower agrees to maintain and operate the Project in a manner that provides decent, safe, and sanitary housing.

(bb) From time to time the Issuer may direct the Borrower to file such additional reports as the Issuer reasonably determines to be necessary to comply with State or federal laws or regulations in connection with administration of the Loan and operation of the Project hereunder and the Borrower agrees to file such reports promptly.

(cc) The Borrower covenants and agrees to execute such additional instruments as may be reasonably requested by the Trustee or the Issuer in order to carry out the provisions of this Agreement and the other Loan Documents and to perfect or give further assurances of any of the rights granted or provided for in the Loan Documents.

(dd) As of the Bond Closing, the Borrower is in compliance, in all material respects, with all requirements of the Regulatory and Restrictive Use Agreements and the Project Certificate, and the representations set forth in the Project Certificate pertaining to the Borrower and the Project are true and accurate, in all material respects, and Borrower hereby incorporates the same as if set forth herein.

(ee) The Borrower acknowledges that (a) it understands the nature and structure of the transactions relating to the financing of the Project, (b) it is familiar with the provisions of all of the documents and instruments relating to such financing to which it is a party, (c) it understands the risks inherent in such transactions, including without limitation the risk of loss of the Project, and (d) it has not relied on the Issuer, for any guidance or expertise in analyzing the financial or other consequences of the transactions contemplated by this Agreement and the other Bond Documents or the Loan Documents or otherwise relied on the Issuer in any manner (except as to the accuracy of the representations made by the Issuer and the performance by the Issuer of its agreements, covenants and undertakings).

(ff) The Forward Bond Purchase Agreement is in full force and effect and no party is in default thereunder and all representations and warranties made by the Borrower in the Forward Bond Purchase Agreement are true and correct in all material respects.

Section 2.3. *Additional Representations, Warranties, and Covenants of the Borrower.*
The Borrower further represents, warrants, and covenants as follows:

(a) to take such action to assure that the Bonds are "exempt facility bonds", as defined in Section 142(a) of the Code, at least 95 percent of the proceeds of which are used to provide "qualified residential rental projects" (within the meaning of said Section 142(a)(7) of the Code) or property functionally related and subordinate to such facilities;

(b) to comply with the terms and conditions of the Tax Regulatory Agreement including, without limiting the generality of any other covenant contained herein,

(c) assuring that at all times within the Qualified Project Period that 40 percent of the residential units in the Project will be occupied by persons whose income is 60 percent or less of area median gross income,

(d) obtaining annually from each tenant of a residential unit described in subsection (1) above, a certification of income to currently determine income compliance with the foregoing, and

(e) assuring that none of the residential units in the Project will be used for a purpose other than residential rental or that none of the units will be used as owner-occupied residences within the meaning of Section 143 of the Code;

(f) to refrain from taking any action that would result in the Bonds being "federally guaranteed" within the meaning of Section 149(b) of the Code;

(g) to refrain from using any portion of the proceeds of the Bonds, directly or indirectly, to acquire or to replace funds which were used, directly or indirectly, to acquire investment property (as defined in Section 148(b)(2) of the Code) which produces a materially higher yield than the yield on the Bonds over the term of the Bonds, other than investment property acquired with -- proceeds of the Bonds invested for a reasonable temporary period equal to 3 years or less until such proceeds are needed for the purpose for which the Bonds are issued,

(1) amounts invested in a bona fide debt service fund, within the meaning of Section 1.148-1(b) of the Regulations, and

(2) amounts deposited in any reasonably required reserve or replacement fund to the extent such amounts do not exceed 10 percent of the stated principal amount (or, in the case of Bonds issued at a discount), the issue price of the Bonds;

(h) to otherwise restrict the use of the proceeds of the Bonds or amounts treated as proceeds of the Bonds, as may be necessary, to satisfy the requirements of Section 148 of the Code (relating to arbitrage);

(i) to use no more than two percent of the gross proceeds of the Bonds for the payment of costs of issuance;

(j) to use no portion of the proceeds of the Bonds to provide any airplane, sky-box or other private luxury box, health club facility, facility primarily used for gambling, or store the principal business of which is the sale of alcoholic beverages for consumption off premises;

(k) to comply with the limitations imposed by Section 147(c) of the Code (relating to the limitation on the use of proceeds to acquire land) and Section 147(d) of the Code (relating to restrictions on the use of Bond proceeds to acquire existing buildings, structures or other property);

(l) to immediately remit to the Trustee for deposit in the Rebate Fund any deficiency with respect to the Rebate Amount as required by the Indenture;

(m) to provide to the Trustee, at such time as required by the Trustee, all information required by the Trustee with respect to Nonpurpose Investments not held in any fund under the Indenture; and

(n) to take such action to assure, the Project to be as described in the "Applications of Private Activity Bonds" submitted by the Issuer on behalf of the Borrower to the Texas Bond Review Board in order to receive an allocation of state volume cap as required by Section 146 of the Code.

(o) The Issuer agrees to submit such closing documents for the Bonds, in accordance with the rules of the Texas Bond Review Board, as may be necessary, or to take such other action as reasonably required, to cause the Texas Bond Review Board to provide the certificate of allocation for the Bonds under Section 146 of the Code.

(p) The Issuer and Borrower understand that the term "proceeds" includes "disposition proceeds" as defined in the Regulations and, in the case of refunding Bonds, Transferred Proceeds (if any) and proceeds of the refunded Bonds expended prior to the date of issuance of the Bonds. It is the understanding of the Issuer and the Borrower that the covenants contained in this Agreement are intended to assure compliance with the Code and Regulations. In the event that the Code is changed or regulations or rulings are hereafter promulgated, which modify or expand provisions of the Code, as applicable to the Bonds, the Issuer and the Borrower will not be required to comply with any covenant contained herein to the extent that such failure to comply, in the opinion of nationally-recognized Bond Counsel, will not adversely affect the exemption from federal income taxation of interest on the Bonds under Section 103 of the Code. In the event that the Code is changed or regulations or rulings are hereafter promulgated, which impose additional requirements which are applicable to the Bonds, the Issuer and the Borrower each agrees to comply with the additional requirements to the extent necessary, in the opinion of nationally-recognized Bond Counsel, to preserve the exemption from federal income taxation of interest on the Bonds under Section 103 of the Code. In furtherance of such intention, the Issuer hereby authorizes and directs the authorized Issuer representative to execute any documents, certificates or reports required by the Code and to make such elections, on behalf of the Issuer, which may be permitted by the Code as are consistent with the purpose for the issuance of the Bonds.

(q) The Issuer and the Borrower covenant that the property constituting the Project will not be sold or otherwise disposed in a transaction resulting in the receipt by the Issuer and the Borrower of cash or other compensation, unless (i) the Bonds are retired or (ii) the Issuer and the Borrower obtain an opinion of nationally-recognized Bond Counsel that such sale or other disposition will not adversely affect the tax-exempt status of the Bonds.

(r) The Borrower has implemented and maintains in effect policies and procedures designed to ensure compliance by the Borrower, its subsidiaries, and their respective directors, officers, employees and agents with Anti-Corruption Laws and applicable Sanctions, and the Borrower, its subsidiaries, and their respective officers and employees and to the knowledge of the Borrower its directors and agents, are in compliance with Anti-Corruption Laws and applicable Sanctions in all material respects. None of (a) the Borrower, any subsidiary, or to the knowledge of the Borrower or such subsidiary, any of their respective directors, officers or employees, or (b) to the knowledge of the Borrower, any agent of the Borrower or any subsidiary that will act in any

capacity in connection with or benefit from the credit facility established hereby, is a Sanctioned Person. No borrowing of the Loan or use of proceeds, or other transaction contemplated by this Agreement will violate Anti-Corruption Laws or applicable Sanctions.

Section 2.4. *Tax Exemption; Tax Regulatory Agreement.* The Borrower hereby covenants, represents, and agrees as follows:

(a) to file of record such documents and take such other reasonable steps as are necessary in order to ensure that the requirements and restrictions, if any, of the Tax Regulatory Agreement then executed by the Borrower will be binding upon all owners of the Project, including, but not limited to, the recordation, if required, of the Tax Regulatory Agreement, in the real property records of Travis County, Texas; and

(b) to reference the requirements and restrictions, if any, contained in the Tax Regulatory Agreement, once executed, in any deed or other document transferring any of its interest in the Project to another Person to the end that such transferee has notice of, and is bound by, such restrictions, and to obtain the agreement from any transferee to so abide.

Section 2.5. *Representations and Covenants of the Borrower as Single Purpose Entity.* Without limiting any of the foregoing, but in addition thereto, Borrower covenants and agrees that it shall not, nor shall it permit its Managing Member to, take any of the following actions without the prior written consent of the Bondholder Representative:

(a) engage in any business or activity other than the acquisition, construction, ownership, operation and maintenance of the Project, and activities incidental thereto;

(b) acquire or own any material asset other than (i) the Mortgaged Property, and (ii) such incidental personal property as may be necessary for the operation of the Project;

(c) except for Permitted Transfers, (i) merge into or consolidate with any Person or entity (ii) or dissolve, terminate or liquidate in whole or in part, (iii) transfer or otherwise dispose of all or substantially all of its assets, or (iv) change its legal structure, without in each case described in clauses (i) (iv), the Bondholder Representative's consent;

(d) fail to preserve its existence as an entity duly organized, validly existing and in good standing (if applicable) under the laws of the jurisdiction of its organization or formation, or without the prior written consent of the Bondholder Representative, amend or modify (to the extent prohibited in this Agreement), or terminate any of the Borrower's Organizational Documents;

(e) except as specifically permitted by any Loan Document, own any subsidiary or make any investment in or acquire the obligations or securities of any other Person or entity without the consent of Bondholder Representative;

(f) commingle its assets with the assets of any of its partner(s), partners, shareholders, affiliates, or of any other Person or entity or transfer any assets to any such

Person or entity other than distributions on account of equity interests in the Borrower permitted hereunder;

(g) incur any debt, secured or unsecured, direct or contingent (including guaranteeing any obligation), other than (i) the Taxable Tail Loan or a loan provided in replacement of the Taxable Tail Loan on terms satisfactory to the Bank, and (ii) unsecured trade and operational debt incurred with trade creditors in the ordinary course of its business of owning and operating the Project in such amounts as are normal and reasonable under the circumstances;

(h) allow any Person to pay its debts and liabilities (except the Guarantor or any of the Borrower's partners) or fail to pay its debts and liabilities solely from its own assets (or the assets of Guarantor or any of the Borrower's partners);

(i) fail to maintain its records, books of account and bank accounts separate and apart from those of the partners, principals and affiliates of the Borrower, or partner of the Borrower, or fail to prepare and maintain its own financial statements in accordance with GAAP and susceptible to audit, or if such financial statements are consolidated, fail to cause such financial statements to contain footnotes disclosing that the Project is actually owned by the Borrower;

(j) enter into any contract or agreement with any partner, principal or affiliate of the Borrower, the Guarantor or any partner, principal or affiliate thereof, except upon terms and conditions that are intrinsically fair and substantially similar to those that would be available on an arm's length basis with third parties other than any partner, principal or affiliate of the Borrower or the Guarantor, or any partner, principal or affiliate thereof, and Borrower's entry into a Development Agreement with the Developer and entry into a Construction Contract with the Contractor are hereby approved as being intrinsically fair and on terms substantially similar to those available to third parties;

(k) seek dissolution or winding up, in whole or in part;

(l) fail to correct any known misunderstandings regarding the separate identity of the Borrower, which could adversely impair the tax exempt nature of the Bonds or the Borrower's status as a single asset entity;

(m) hold itself out to be responsible or pledge its assets or credit worthiness for the debts of another Person or allow any Person to hold itself out to be responsible or pledge its assets or credit worthiness for the debts of the Borrower (except for Guarantor);

(n) make any loans or advances to any third party, including any partner, principal or affiliate of the Borrower, or any shareholder, partner, principal or affiliate thereof, except as expressly provided in the Operating Agreement;

(o) fail to file its own tax returns or to use separate contracts, purchase orders, stationery, invoices and checks and such failure shall have a material impact on Borrower's status as a single asset entity;

(p) fail either to hold itself out to the public as a legal entity separate and distinct from any other entity or person or to conduct its business solely in its own name in order not (i) to mislead others as to the entity with which such other party is transacting business, or (ii) to suggest that the Borrower is responsible for the debts of any third party (including any shareholder, partner, partner, principal or affiliate of the Borrower, or any shareholder, partner, partner, principal or affiliate thereof);

(q) reserved;

(r) fail to maintain adequate capital for the normal obligations reasonably foreseeable in a business of its size and character and in light of its contemplated business operations;

(s) file a voluntary petition or otherwise initiate proceedings to have the Borrower or any manager or the Managing Member of the Borrower adjudicated bankrupt or insolvent, or consent to the institution of bankruptcy or insolvency proceedings against the Borrower or any manager or the Managing Member of the Borrower, or file a petition seeking or consenting to reorganization or relief of the Borrower or any manager or the Managing Member of the Borrower as debtor under any applicable federal or state law relating to bankruptcy, insolvency, or other relief for debtors with respect to the Borrower or any manager or the Managing Member of the Borrower; or seek or consent to the appointment of any trustee, receiver, conservator, assignee, sequester, custodian, liquidator (or other similar official) of the Borrower or any manager or the Managing Member of the Borrower or of all or any substantial part of the properties and assets of the Borrower or any manager or the Managing Member of the Borrower, or make any general assignment for the benefit of creditors of the Borrower or any manager or the Managing Member of the Borrower, or admit in writing the inability to the Borrower or any manager or the Managing Member of the Borrower to pay its debts generally as they become due or declare or effect a moratorium on the Borrower or any manager or the Managing Member of the Borrower debt or take any action in furtherance of any such action;

(t) conceal assets from any creditor, or enter into any transaction with the intent to hinder, delay or defraud creditors of the Borrower or the creditors of any other Person;

(u) fail to maintain adequate capital for the normal obligations reasonably foreseeable in a business of its size and character and in light of its contemplated business operations, provided that there is sufficient cash flow from the Project at such time to do so and the Borrower's constituent owners shall not be required to fund or advance any additional capital to satisfy this obligation; or

(v) fail to use separate contracts, purchase orders, invoices and checks (other than such documents that bear the name of its manager or managing agent with reference to the Project).

Except as otherwise provided in the Loan Documents, the Borrower shall not amend or modify any Borrower's Organizational Documents in any manner that would result in a breach of any of the representations, warranties or covenants set forth in this **Section 2.7** or that would

otherwise adversely affect the Borrower's special purpose entity status without the prior written consent of the Bondholder Representative (and the Permanent Lender if prior to the Conversion Date), which consent shall not be unreasonably withheld, delayed or conditioned. Promptly after the Permanent Lender's written request from time to time, but not more frequently than once in any calendar year, the Borrower shall deliver to the Permanent Lender a signed sworn statement that the Borrower is in compliance with the provisions of this **Section 2.7**.

Section 2.6. *[Further] Additional Representations and Agreements of Borrower.* The Borrower represents, warrants, covenants and agrees as set forth below to and with the Trustee, and the Borrower agrees that the Trustee may rely on such representations, warranties covenants and agreements and the other representation, warranties, covenants and agreements contained in this Agreement as if the Trustee were a party to this Agreement.

(a) The Title Policy delivered at the Bond Closing satisfies the requirements of **Schedule D** and **Schedule I** of this Agreement.

(b) The Trustee may assume without investigation that the amounts of money transferred to it by the Borrower as "Basic Payments" in accordance with **Section 4.2(b)** of this Agreement are sufficient to satisfy the requirements of **Section 4.2(b)** of this Agreement.

(c) The Trustee may assume without investigation that the amounts of money transferred to it by the Borrower in accordance with **Schedule F** of this Agreement are sufficient to satisfy the requirements of **Schedule F** of this Agreement.

Section 2.7. *Representations and Warranties of the Bondholder Representative.* The Bondholder Representative makes the following representations and warranties:

(a) The Bondholder Representative has all power and authority necessary (i) to execute and deliver this Agreement, (ii) to perform its obligations under this Agreement and (iii) to consummate the transactions contemplated by this Agreement.

(b) The Bondholder Representative has taken all actions necessary to authorize (i) the execution and delivery of this Agreement, (ii) the performance of its obligations under this Agreement, and (iii) the consummation of the transactions contemplated by this Agreement.

(c) This Agreement has been duly executed and delivered by the Bondholder Representative and constitutes, assuming due execution and delivery by the other parties hereto, the valid and binding obligation of the Bondholder Representative, enforceable against the Bondholder Representative in accordance with its terms, except as limited by bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting the rights of creditors generally and the exercise of judicial discretion in accordance with principles of general equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

(d) To the best knowledge of the Bondholder Representative, neither the execution and delivery by the Bondholder Representative of this Agreement, nor the performance by the Bondholder Representative of its obligations under any of the Loan Documents to which it is a party, nor the consummation of the transactions contemplated by such Loan Documents will violate any law, rule, regulation or ordinance, or any order, judgment or decree of any Federal, state or local court or will conflict with, or constitute a breach of, or a default under, the charter or by-laws of the Bondholder Representative or under any agreement, instrument or commitment to which the Bondholder Representative is a party or by which the Bondholder Representative or any of its property is bound.

(e) To the best knowledge of the Bondholder Representative, there is no action, suit, proceeding, inquiry or investigation by or before any court, governmental agency or public board or body pending or, to the knowledge of the Bondholder Representative, threatened against the Bondholder Representative (nor, to the knowledge of the Bondholder Representative, is there any basis therefor), which (i) affects or seeks to prohibit, restrain or enjoin the execution and delivery by the Bondholder Representative of any of the Loan Documents to which it is a party; the performance by the Bondholder Representative of its obligations under such Loan Documents, or the consummation of the transactions contemplated by such Loan Documents, or (ii) affects or questions the validity or enforceability of such Loan Documents.

(f) No approval, permit, consent, authorization or order of any court, governmental agency or public board or body not already obtained is required to be obtained by the Bondholder Representative as a prerequisite to the execution and delivery by the Bondholder Representative of the Loan Documents, the performance by the Bondholder Representative of its obligations under such Loan Documents or the consummation of the transactions contemplated by such Loan Documents.

(g) To the best knowledge of the Bondholder Representative, no information, statement or report furnished to the Issuer or Bond Counsel by the Bondholder Representative in connection with the negotiation of or performance under any of the Loan Documents or the consummation of the transactions contemplated hereby contains any material misstatement of fact or omits to state a material fact necessary to make the statements contained therein, in light of the circumstances under which they were made, not misleading. It is specifically understood by the Bondholder Representative that all such statements, representations and warranties shall be deemed to have been relied upon by the Issuer as an inducement to effectuate the Loan, and that if any such statements, representations and warranties were materially incorrect at the time they were made or as of Bond Closing, the Issuer may consider any such misrepresentation or breach a Default.

(h) To the best knowledge of the Bondholder Representative, it is not in default with respect to any order or decree of any court or any order, regulation or demand of any Federal, state, municipal or governmental agency, which default might have consequences that would affect its performance hereunder.

(i) To the best knowledge of the Bondholder Representative, it is not a party to or bound by any agreement or instrument or subject to any charter or any other corporate

restriction or any judgment, order, writ, injunction, decree, law, or regulation which now or in the future may materially and adversely affect the ability of the Bondholder Representative to perform its obligations under any Loan Document to which it is a party, or which requires the consent of any third person to the execution of such Loan Document, or the consummation of the transaction contemplated hereby.

(j) All fees charged by the Bondholder Representative in connection with the origination of the Loan are no more than those which are reasonable and customary for lenders to charge in connection with similar loans not financed through the issuance of tax-exempt Bond.

(k) Any certificate signed by a representative of the Bondholder Representative and delivered pursuant to and concurrently with this Agreement shall be deemed a representation of the Bondholder Representative as to the statements made therein.

(l) The Bondholder Representative hereby agrees to purchase from the Issuer the Bonds in the principal amount of up to \$25,000,000 as provided in the Indenture and in the Loan Agreement for the purpose of financing the acquisition, construction and equipping of the Project.

(m) All funds held by the Bondholder Representative or any other party which are used to secure payment of the obligations of the Borrower under the Note are identified in the Tax Certificate.

(n) The Bondholder Representative represents that it is purchasing the Bonds for its own account and not for reoffering to the public. In connection with its purchase of the Bonds, the Bondholder Representative agrees to deliver to the Issuer an investor letter substantially in the form of Exhibit C to the Indenture. In the event the Bondholder Representative transfers the Bonds, such transfer shall be subject to the terms of the Indenture. In the event of a transfer of the Bonds (or any beneficial interest therein), by the Bondholder Representative other than in accordance with the provisions of the Indenture and the securities laws of the United States, the Bondholder Representative agrees to indemnify the Issuer against any liability, cost and expense (including attorney's fees) that may result therefrom.

Section 2.8. *ERISA.* (a) The Borrower shall not engage in any transaction which would cause any obligation, or action taken or to be taken hereunder (or the exercise by the Permanent Lender of any of its rights under the Note, this Agreement or any of the other Permanent Loan Documents) to be a non-exempt (under a statutory or administrative class exemption) prohibited transaction under ERISA and/or Section 4975 of the Code.

(b) The Borrower further covenants and agrees to deliver to the Permanent Lender such certifications and other evidence from time to time throughout the term of the Permanent Loan as are reasonably requested by the Permanent Lender that (i) the Borrower is not (and is not deemed to include the assets of) an "employee benefit plan" that is subject to Title I of ERISA and/or a "plan" that is subject to Section 4975 of the Code; (ii) the Borrower is not a "governmental plan" within the meaning of Section 3(32) of ERISA and

is not subject to state statutes regulating investments and fiduciary obligations with respect to governmental plans; and (iii) one or more of the following statements is and remains true:

(i) Equity interests in the Borrower are “publicly offered securities” within the meaning of 29 C.F.R. § 2510.3-101 (as modified by Section 3(42) of ERISA, the “*Plan Assets Regulation*”); or

(ii) Less than 25% of each outstanding class of equity interests in the Borrower are held by “benefit plan investors” (determined in accordance with the Plan Assets Regulation).

(c) The Borrower shall not agree to, enter into or consummate any transaction which would render the Borrower unable to furnish the certification or other evidence referred to in **Section 2.10(b)**, to the extent applicable.

(d) The Borrower represents, warrants and covenants to the Bondholder Representative and to each Permanent Lender Party that neither the Borrower nor any ERISA Affiliate maintains, contributes to, or has any obligation to contribute to, or has any direct or indirect liability with respect to any “employee benefit plan” as defined in Section 3(3) of ERISA (including any “multiemployer plan” as defined in Section 3(37) of ERISA) that is subject to Title IV or Section 302 of ERISA or Section 412 of the Code. The Borrower shall take or refrain from taking, as the case may be, such actions as may be necessary to cause the representation and warranty in this **Section 2.10** to remain true and accurate until full repayment of the Indebtedness.

(e) The Bondholder Representative (and after the Conversion Date, the Permanent Lender Parties) shall have the right to consult with the Borrower on significant business issues relating to the operation of the Mortgaged Property and the management of the Borrower. Representatives of the Borrower shall make themselves available quarterly, either personally or by telephone at mutually agreeable times for such consultations. Such consultations need not result in any changes in the Borrower’s decisions or actions. The Bondholder Representative (and after the Conversion Date, the Permanent Lender Parties) intends to use such rights to satisfy the management rights requirements under the Plan Assets Regulation.

Section 2.9. *Terrorism and Anti-Money Laundering*

(a) As of the date hereof and until full repayment of the Indebtedness: (i) the Borrower; (ii) any Person Controlling or Controlled by the Borrower; (iii) if the Borrower is a privately held entity, any Person having a ten percent (10%) or more direct or indirect beneficial interest in the Borrower; or (iv) any Person for whom the Borrower is acting as agent or nominee in connection with this transaction, is not an OFAC Prohibited Person.

(b) To comply with applicable Anti-Money Laundering Laws, all payments by the Borrower to the Bondholder Representative (or if prior to the Conversion Date, the Permanent Lender) or from the Bondholder Representative or the Permanent Lender to the

Borrower will only be made and received in the Borrower's name and to and from a bank account of a bank based or incorporated in or formed under the laws of the United States or a bank that is not a "foreign shell bank" within the meaning of the U.S. Bank Secrecy Act (31 U.S.C. § 5311 et seq.), as amended, and the regulations promulgated thereunder by the U.S. Department of the Treasury, as such regulations may be amended from time to time.

(c) The Borrower shall provide the Bondholder Representative and if prior to the Conversion Date, the Permanent Lender, at any time and from time to time until repayment in full of the Indebtedness with such information as the Bondholder Representative and if prior to the Conversion Date, the Permanent Lender, determines to be necessary or appropriate to comply with the Anti-Money Laundering Laws of any applicable jurisdiction, or to respond to requests for information concerning the identity of the Borrower, any Person Controlling or Controlled by the Borrower or any Person having a beneficial interest in the Borrower, from any Governmental Authority, self-regulatory organization or financial institution in connection with its anti-money laundering compliance procedures, or to update such information.

(d) The representations and warranties set forth in this **Section 2.11** shall be deemed repeated and reaffirmed by the Borrower as of each date that the Borrower makes a payment to the Permanent Lender under the Permanent Loan Documents or receives any disbursement of Permanent Loan proceeds, reserve funds or other funds from the Permanent Lender. The Borrower agrees promptly to notify the Permanent Lender in writing should the Borrower become aware of any change in the information set forth in these representations.

Section 2.10. *Representations Regarding the Mortgaged Property.*

(a) No part of the Mortgaged Property has been designated as wetlands under any federal, state or local law or regulation or by any governmental agency, and no portion of the Mortgaged Property is located within a 100-year flood plain, except as may be disclosed as such on the survey of the Mortgaged Property delivered to the Bondholder Representative in connection with the Bondholder Representative's purchase of the Bonds on the date of the Bond Closing and to the Permanent Lender in connection with the Permanent Lender's purchase of the Bonds on the Conversion Date.

(b) Reserved.

(c) Public water supply, storm and sanitary sewers and sanitary sewer capacity, and electrical, gas, cable and telephone facilities are available or upon completion of construction as evidenced by delivery of the Completion Certificate will be available to the Mortgaged Property within the boundary lines thereof, and the Improvements will connect to all storm and sanitary sewer lines serving the Mortgaged Property, and to the best of the Borrower's knowledge such lines are sufficient to meet the reasonable needs of the Mortgaged Property as currently contemplated. To the best of the Borrower's knowledge surface and storm water do not accumulate on the Mortgaged Property and do not drain

from the Mortgaged Property across land of adjacent property owners, except as permitted by an easement or other agreement with such adjacent property owners.

(d) The Mortgaged Property will be managed for the Borrower by the Management Agent pursuant to the Management Agreement, which Management Agreement is in full force and effect. To the best of the Borrower's knowledge, no event of default has occurred under the Management Agreement, and no event has occurred thereunder which with notice or the passage of time would constitute an event of default thereunder. The Borrower has delivered to the Bondholder Representative and the Permanent Lender a true and complete copy of the Management Agreement.

(e) The Borrower reports, for accounting purposes, on a fiscal year basis commencing on January 1 and terminating on December 31.

(f) There are no actions, suits or proceedings, pending or, to the Borrower's actual knowledge, threatened in writing, affecting the Borrower, or the Mortgaged Property at law or in equity, on, before or by any federal, state, municipal or other governmental department, commission, board, bureau, agency or other governmental instrumentality. There are no outstanding judgments, arbitration awards, decrees or awards of any kind pending against the Borrower, the Guarantor or any of the Mortgaged Property. To the Borrower's knowledge, there are no actions, suits or proceedings pending or threatened in writing against the Guarantor which it determined adversely to such Guarantor would have a material adverse impact on the ability of such Guarantor to perform its obligations under the Guaranty, the Recourse Guaranty Agreement and the Environmental Indemnity Agreement.

Section 2.11. *Business Purpose of the Permanent Loan.* The Borrower stipulates and warrants that the purpose of the Permanent Loan is for the sole purpose of carrying on or acquiring a business, professional or commercial enterprise. The Borrower further stipulates and warrants that all proceeds of the Permanent Loan will be used for said business, professional or commercial enterprise.

Section 2.12. *Solvency.* (1) Neither the Borrower nor the Guarantor has entered into the transaction contemplated by this Agreement, the Loan or any Permanent Loan Document with the actual intent to hinder, delay, or defraud any creditor, and (2) the Borrower and the Guarantor have each received reasonably equivalent value in exchange for its obligations under the Loan and the Permanent Loan Documents. Giving effect to the Loan and the Permanent Loan Documents, the fair saleable value of the Borrower's assets exceeds and will, immediately following the making of the Permanent Loan and the Permanent Lender's purchase of the Bonds, exceed the Borrower's total liabilities, including subordinated, unliquidated, disputed and contingent liabilities. The fair saleable value of the Borrower's assets is and will, immediately following the making of the Permanent Loan and the Permanent Lender's purchase of the Bonds, be greater than the Borrower's probable liabilities, including the maximum amount of its contingent liabilities on its debts as such debts become absolute and matured. The Borrower's assets do not and, immediately following the making of the Permanent Loan and the Permanent Lender's purchase of the Bonds will not, constitute unreasonably small capital for such entity to carry out its business as conducted or as proposed to be conducted. The Borrower does not intend to, and does not believe that it will,

incur debt and other liabilities (including contingent liabilities and other commitments) beyond its ability to pay such debt and liabilities as they mature (taking into account the timing and amounts of cash to be received by it and the amounts to be payable on or in respect of obligations of such party). No petition in bankruptcy has been filed against the Borrower or the Guarantor and neither the Borrower nor the Guarantor has ever made an assignment for the benefit of creditors or taken advantage of any insolvency act for the benefit of debtors. Neither the Borrower nor the Guarantor is currently involved in a foreclosure or in a default on any indebtedness owing to the Permanent Lender or to any affiliate of the Permanent Lender or on any other indebtedness obtained for commercial purposes with respect to the Mortgaged Property. All financial and other information submitted by or on behalf of the Borrower and the Guarantor to the Permanent Lender in connection with the Permanent Loan was true, complete and correct in all material respects as of the date delivered to Permanent Lender. All of the Borrower's obligations to creditors, including, but not limited to, all payments and accounts relating to the Mortgaged Property, are current.

Section 2.13. *Ground Lease.* With respect to the Ground Lease, the Borrower warrants, represents, agrees, and covenants as follows:

(a) The Ground Lease is in full force and effect, and there have been no amendments, supplements, extensions or other modifications of any nature to the Ground Lease, written or oral.

(b) To the Borrower's knowledge, there are no existing uncured defaults by the Borrower under the Ground Lease, and to the Borrower's knowledge, no event has occurred which, with the passage of time or the giving of notice or both, would constitute a default by the Borrower under the Ground Lease, and no default will occur as a result of the execution and delivery by the Borrower to the Trustee (or the Issuer as the case may be) of the Mortgage.

(c) The Borrower agrees to cause the lessor under the Ground Lease to grant permission to the Bondholder Representative, and its agents and representatives, to, after two (2) Business Days' prior notice (provided no such prior notice is required during the continuance of an Event of Default) enter at any reasonable time during normal business hours upon the Project to inspect the Project.

(d) The Borrower has not received written notice of any pending condemnation or eminent domain proceeding affecting the Project.

(e) The Borrower agrees to perform and fully comply with all agreements, covenants, terms, and conditions imposed on or assumed by the Borrower as lessee under the Ground Lease; and if the Borrower fails so to do, the Bondholder Representative may, but shall not be obligated to, take any action the Bondholder Representative deems necessary or desirable, in Bondholder Representative's sole and reasonable determination, to prevent or to cure any default by the Borrower in the performance of or compliance with any of the Borrower's covenants or obligations under the Ground Lease. On receipt by the Bondholder Representative from the lessor under the Ground Lease, of notice of any default by the Borrower thereunder pursuant to the terms of the Ground Lease or otherwise, the Bondholder Representative may rely thereon and take any action as aforesaid to cure

such default even though the existence of such default or the nature thereof is questioned or denied by the Borrower or by any party on behalf of the Borrower. The Borrower hereby expressly grants to the Bondholder Representative, and agrees that the Bondholder Representative shall have, the absolute and immediate right to enter in and on the Project to such extent and as often as the Bondholder Representative, in its sole discretion, deems necessary or desirable in order to cure any Event of Default by the Borrower, provided that prior to the occurrence of such Event of Default, the Bondholder Representative shall have a right of entry during ordinary business hours upon two Business Days' prior notice to the Borrower (provided no such prior notice is required during the continuance of an Event of Default). The Bondholder Representative may pay such sums of money as the Bondholder Representative in its reasonable discretion deems necessary to cure any such Event of Default, and the Borrower hereby agrees to pay to the Bondholder Representative, immediately and without demand, all such sums so paid and expended by the Bondholder Representative, together with interest thereon from the date of each such payment at the Default Rate. If Bondholder Representative takes any action necessary to cure any default by Borrower, Bondholder Representative shall be subrogated to any and all of the rights of the Person or Persons to whom any payment is made by the Bondholder Representative and all of the rights of the Borrower under the terms and provisions of the Ground Lease.

The Borrower agrees to deliver to the Bondholder Representative and the Issuer copies of all notices of default or foreclosure received by the Borrower from the lessor under the Ground Lease.

ARTICLE 3

ISSUANCE AND PURCHASE OF BONDS; PAYMENT OF COSTS

Section 3.1. *Issuance and Purchase of Bonds.* The Issuer has determined to issue the Bonds pursuant to the Indenture, and the Borrower has reviewed and does hereby approve the terms of the Indenture. Upon execution of this Agreement, the other Loan Documents, and the Indenture and the occurrence or waiver of all conditions precedent to issuance (including the conditions to closing listed in **Schedule D** attached hereto), or as soon thereafter as practicable, the Bondholder Representative agrees to purchase and the Issuer will execute the Bonds and deliver the Bonds to the Bondholder Representative as the initial purchaser thereof or to its order upon payment of the purchase price and the delivery to the Trustee of all documents required to be delivered as a condition to such delivery pursuant to the Indenture. The proceeds of the Bonds will be deposited with the Trustee and disbursed in accordance with the Indenture.

Section 3.2. *No Warranty by Issuer.* The Borrower agrees that, because the components of the Project have been and are to be designated and selected by it, THE ISSUER HAS NOT MADE AN INSPECTION OF THE PROJECT OR OF ANY FIXTURE OR OTHER ITEM CONSTITUTING A PORTION THEREOF, AND THE ISSUER MAKES NO WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED OR OTHERWISE, WITH RESPECT TO THE SAME OR THE LOCATION, USE, DESCRIPTION, DESIGN, MERCHANTABILITY, FITNESS FOR USE FOR ANY PARTICULAR PURPOSE, CONDITION, OR DURABILITY THEREOF OR AS TO THE QUALITY OF THE MATERIAL OR WORKMANSHIP THEREIN, IT BEING AGREED THAT ALL RISKS INCIDENT THERETO ARE TO BE BORNE BY THE BORROWER IN THE EVENT OF ANY DEFECT OR DEFICIENCY OF ANY NATURE IN THE PROJECT OR ANY FIXTURE OR OTHER ITEM CONSTITUTING A PORTION THEREOF, WHETHER PATENT OR LATENT, THE ISSUER SHALL HAVE NO

RESPONSIBILITY OR LIABILITY WITH RESPECT THERETO. THE PROVISIONS OF THIS **SECTION 3.2** HAVE BEEN NEGOTIATED AND ARE INTENDED TO BE A COMPLETE EXCLUSION AND NEGATION OF ANY WARRANTIES OR REPRESENTATIONS BY THE ISSUER, EXPRESS OR IMPLIED, WITH RESPECT TO THE PROJECT OR ANY FIXTURE OR OTHER ITEM CONSTITUTING A PORTION THEREOF, WHETHER ARISING PURSUANT TO THE UNIFORM COMMERCIAL CODE OR ANY OTHER LAW NOW OR HEREAFTER IN EFFECT.

Section 3.3. *Disbursements From the Project Fund and the Costs of Issuance Fund.*

(a) The Issuer has authorized and directed the Trustee to make payments from the Costs of Issuance Fund in accordance with the Budget to pay the costs of issuing the Bonds (subject to the limitations of **Section 2.3(r)** hereof in order that such representation is correct and the terms of **Section 3.4** hereof), and to reimburse the Borrower for any of the foregoing paid or incurred by the Borrower before or after the execution and delivery of this Agreement and the issuance and delivery of the Bonds in accordance with the requirements of **Section 5.9** of the Indenture, and the Bondholder Representative has consented to the Trustee's making of such payments by acknowledging a written Requisition upon the satisfaction of the applicable conditions listed in **Schedule D** attached hereto and **Section 4.7** of this Agreement and the limitations relating to the 95% rule as represented in **Section 2.3(r)** hereof.

(b) The balance of the Bond proceeds shall be disbursed by the Trustee only in accordance with the Indenture, including delivery of a written Requisition by the Borrower satisfying the requirements of **Section 5.2** of the Indenture and approved in writing by the Bondholder Representative, which approval of the Bondholder Representative will be granted upon satisfaction of the conditions and performance of the covenants and conditions set forth in this Agreement.

(c) The Bondholder Representative shall consent to Requisitions of amounts in the Project Fund for costs of the Project based on the Budget and the further terms and conditions of this Agreement (including **Schedule D** attached hereto and **Section 4.7** hereof). If the Borrower cannot complete the Project in strict conformity with the most recently approved Budget, the Borrower shall promptly submit to the Bondholder Representative for its approval a revised Budget in the same format as the Budget. The Bondholder Representative need not make further disbursements unless and until it approves the revised Budget, which approval shall not be unreasonably withheld, conditioned, or delayed.

(d) In addition to the items required in the attached **Schedule D** (the "*Disbursement Schedule*"), the Borrower shall have provided to the Bondholder Representative all items in **Section 4.7(b)** hereof for a disbursement of the applicable Borrower's Sources to be funded (each a "*Disbursement*" and collectively, "*Disbursements*").

(e) In no event shall the Bondholder Representative be required to approve disbursements from Borrower's Sources (as defined in **Section 4.6(a)** below) in an aggregate total amount in excess of the Total Project Expenses (as defined in **Section 4.6(a)**

below) (including contingency reserve and interest reserve) as set forth in the most recently approved Budget.

Section 3.4. *Payment of Costs of Issuance by the Borrower.* The Borrower agrees that it will provide any and all funds required for the prompt and full payment of Costs of Issuance for the Bonds, including, but not limited to, to pay the following items:

(a) all reasonable legal fees (including Bond Counsel and the respective counsel to the Borrower, the Issuer, the Bondholder Representative, the Guarantor, and the Trustee), abstractors', title insurance, financial, engineering, environmental, construction services, appraisal and accounting fees and expenses, administrative fees, printing and engraving costs, and other expenses incurred and to be incurred by the Borrower, the Issuer (including the Issuance Fee), the Bondholder Representative and the Trustee in connection with issuance of the Bonds;

(b) all recording fees and other taxes, charges, assessments, license, or registration fees of every nature whatsoever incurred and to be incurred in connection with the issuances of the Bonds;

(c) all initial fees and expenses of the Trustee, the Paying Agent, and the Issuer;

(d) all reasonable fees and expenses for title insurance, survey, and related matters;

(e) a non-refundable origination fee due to the initial Bondholder Representative for the Construction Loan upon execution of this Agreement, in the amount of \$_____ (i.e., 0.75% of total Bonds);

(f) a one-time administrative fee of \$300 due to the Bondholder Representative that will offset the monthly account maintenance charges;

(g) reserved;

(h) all fees due to the Permanent Lender upon the execution of the Forward Bond Purchase Agreement; and

(i) all other reasonable Costs of Issuance actually incurred.

Section 3.5. *Title Insurance.* The Borrower agrees to furnish to the Trustee at the closing of the transaction contemplated hereby the Title Policy with respect to the Project as required by **Schedule D** and **Schedule I** attached hereto.

(a) At such time or times as reasonably required by the Bondholder Representative as an advance is made on the Loan, the Borrower agrees to furnish to the Issuer and the Trustee, at the Borrower's expense, an endorsement to the Title Policy extending the effective date of the Title Policy (with no new exceptions to coverage other than as permitted by the Loan Documents) and increasing the amount of coverage under the Title Policy to include the advance.

(b) The Borrower hereby represents that the Permitted Encumbrances do not and will not materially adversely affect (i) the ability of the Borrower to pay in full the principal of and interest on the Note in a timely manner or (ii) the use of the Project for the use contemplated or (iii) the value of the Project.

(c) The Borrower has good and insurable title to its leasehold interest in the Land, subject to no liens, charges, or encumbrances other than the Permitted Encumbrances, including those liens granted in the Loan Documents and liens securing the Taxable Tail Loan.

(d) Upon the execution by the Borrower and the proper recording of the Mortgage, and upon the execution and appropriate filing of UCC 1 financing statements, the Trustee will have a valid first lien in and to the leasehold interest in the Land and in and to the Improvements and a valid security interest in the personal property encumbered by the Mortgage (to the extent a security interest may be granted in said personal property) subject to no liens, charges or encumbrances other than the Permitted Encumbrances.

ARTICLE 4

THE LOAN, LOAN REPAYMENT AND ADDITIONAL CHARGES

Section 4.1. *The Loan.* The Issuer agrees, upon the terms and conditions herein specified, to lend to the Borrower the proceeds received by the Issuer from the sale of the Bonds, excluding any interest earned thereon by causing such proceeds to be deposited with the Trustee for disposition as provided herein and in the Indenture. The obligation of the Issuer to make the Loan shall be deemed fully discharged upon the deposit of the proceeds of the Bonds with the Trustee. The Loan shall be evidenced by the Note, in the form attached as **Schedule B** hereto, and contemporaneously with the issuance of the Bonds, the Issuer will endorse the Note without recourse to the order of and will assign the Note to the Trustee, as the assignee of the Issuer. The obligation of the Bondholder Representative to approve any Requisition (or to purchase the Bonds) is subject to satisfaction of the conditions listed in **Schedule D** attached hereto.

Section 4.2. *Loan Repayment.*

(a) The Borrower will repay the Loan in accordance with the provisions of the Note and this Agreement. Notwithstanding anything to the contrary contained herein, the Borrower covenants that it shall make payments, at such times and in such amount to assure that payment of the principal of and premium, if any, and interest on the Bonds shall be made when due, whether at maturity, by call for redemption, by acceleration or otherwise (including, without limitation, any prepayment premium due with respect to the Bonds).

(b) Subject to the Borrower's right of prepayment granted in **Section 10.1** (or in connection with the corresponding redemption under the terms of the Indenture), the Borrower hereby acknowledges its indebtedness to the Issuer and agrees to make monthly payments, by 9:00 am Central time on the tenth (10th) day of each month (or, if such tenth (10th) day is not a Business Day, on the first (1st) Business Day which next follows such tenth (10th) day and which will be the Payment Date for purposes hereof) (each a "*Payment Date*"), commencing December 10, 2015, which monthly payments shall be in an amount

which will equal the sum of each of the following which will be due (whether at maturity or by redemption or acceleration or otherwise pursuant to the Indenture) on the next Payment Date or other date upon which any of the following items are payable) (“*Basic Payments*”):

- (i) Amounts then due under the Note as provided in subsection (d) and (g) below;
- (ii) Ordinary Fees and Expenses of the Trustee and the Rebate Analyst’s Fee;
- (iii) To the extent sufficient amounts have not been deposited in the Revenue Fund, other reasonable expenses of the Issuer actually incurred;
- (iv) Amounts required to be deposited in the Real Estate Taxes and Insurance Reserve Account of the Servicing Fund under the **Section 5.23** hereof and **Schedule F** attached hereto, or under the Mortgage for Real Estate Taxes and Insurance; and
- (v) Amounts required to be deposited in the Replacement Reserve Account of the Servicing Fund pursuant to **Section 5.23** hereof and **Schedule F**.
- (vi) Amounts required to be deposited in the Operating Reserve Account of the Servicing Fund pursuant to **Section 5.23** hereof and **Schedule F**.
- (c) The Borrower shall pay to the Trustee, within ten (10) days after written demand therefor together with a reasonable accounting of such amounts, any reasonable extraordinary fees and expenses actually incurred by the Trustee and the amounts required to be deposited in the Rebate Fund pursuant to **Section 7.16** hereof.
- (d) Interest as it accrues on the Note (as provided in the **Section 4.2(a)**) during the Construction Term shall be payable monthly on each Payment Date during the Construction Term (for interest unpaid and accruing to the first day of that calendar month). The Construction Loan shall be due and payable in full on the Construction Term Maturity Date (or such later date as may be extended under subsection (f) below) unless the Conversion Certificate has been provided prior to the Conversion Date, in which case the Construction Loan shall convert to the Permanent Loan and shall be payable as set forth in subsection (h) below.
- (e) On or within thirty (30) days before the Construction Term Maturity Date, the Borrower agrees to fully and finally pay the outstanding principal balance of the Taxable Tail Loan.
- (f) The Construction Term Maturity Date and the maturity of the Taxable Tail Loan may each automatically renewed and extended at the request of the Borrower, on a one time basis, for up to six (6) calendar months from _____, 2018, to _____, 2018, provided that each of the following conditions shall either have been waived in writing by

the Bondholder Representative or shall have been fully, completely, and timely satisfied (otherwise, the Bondholder Representative and the Trustee shall have no commitment to renew and extend the Construction Term Maturity Date and maturity date of the Taxable Tail Loan and any agreement to extend and renew the Construction Term Maturity Date and the maturity of the Taxable Tail Loan will be at the sole discretion of Bondholder Representative);

(i) At least thirty (30) days but not more than ninety (90) days prior to January 1, 2018, Borrower shall have notified the Bondholder Representative and the Permanent Lender in writing that it requests an extension of the Construction Term Maturity Date until _____;

(ii) Substantial Completion of the Improvements shall have occurred as evidenced by a temporary certificate of occupancy and certificate of Substantial Completion from the Architect and concurred to by the Bondholder Representative's construction consultant;

(iii) No event which materially limits, reduces, or impairs the Low Income Housing Tax Credit for the Project shall have occurred, and the Borrower shall otherwise be in strict compliance with all guidelines relating to the Low Income Housing Tax Credit for the Project;

(iv) The Borrower shall have delivered, at its sole cost and expense, all extension and other agreements, instruments, amendments, title insurance endorsements, and modifications of the Loan and the Taxable Tail Loan required by the Bondholder Representative in its reasonable discretion to effect such renewal and extension (which extension agreement of the Note will extend the Construction Term Maturity Date and the maturity of the Taxable Tail Loan for up to six (6) calendar months and will provide for, among other things, that interest shall continue to accrue on the Loan and the Taxable Tail Loan at the applicable rates (as extended, with respect to the Loan and with respect to the Taxable Tail Loan), and the Loan and the Taxable Tail Loan shall each continue to be payable prior to the Construction Term Maturity Date (as extended) in monthly payments of interest only and will modify as needed amortization of the Loan during the Permanent Loan, as provided for in the Note and Indenture before it begins amortizing for the requested extension of the Construction Term Maturity Date (but without extending the Permanent Term Maturity Date));

(v) Lease up has commenced with at least one (1) unit occupied;

(vi) The Borrower shall have reimbursed the Bondholder Representative and Trustee for all of their reasonable costs and expenses (including reasonable attorneys' fees) actually incurred and relating to the extension;

(vii) The Borrower shall have delivered to the Bondholder Representative evidence of compliance of the Project with all placed in service

requirements under Section 42 of the Code required by the Bondholder Representative to effect such renewal and extension;

(viii) Each of the conditions listed in **Section 1(c)** of the Disbursement Schedule in **Schedule D** attached hereto shall have been fully and completely satisfied or waived in writing;

(ix) No Material Adverse Change shall exist;

(x) No Default or Event of Default shall be then existing;

(xi) The Forward Bond Purchase Agreement shall be in full force and effect and any deadline in the Forward Bond Purchase Agreement for the occurrence of the Conversion Date shall have been extended as needed;

(xii) During the renewal term, sources for the payment of interest and fees due under this Agreement and the other Loan Documents and the Taxable Tail Loan are not less than Estimated Debt Service. Sources of the payment of such interest and fees can be any combination of (i) remaining balances in the Budget for interest and, if applicable, letter of credit fees; (ii) cash deposited with the Bank on or before commencement of the extension period from a source other than the Construction Loan and the Taxable Tail Loan and/or the scheduled Capital Contributions in the amounts set forth in **Schedule H** attached hereto to pay such interest and fees, or (iii) Net Cash Flow for the extension period (calculated using Net Cash Flow in the most recent three months). “*Estimated Debt Service*” is the sum of (1) interest (deemed to be the then current interest rate applicable to Note and the Taxable Tail Loan plus .25% (with respect to the Loan and the Taxable Tail Loan), and (2) if applicable, letter of credit fees, each calculated for the entire extension period;

(xiii) The Borrower shall have paid an extension fee to the Bondholder Representative equal to .25% of the sum of the principal amount of the Bonds Outstanding plus the outstanding balance of the Taxable Tail Loan;

(xiv) If and to the extent required by the Bondholder Representative or Trustee, the Trustee has received an opinion of Bond Counsel that such extension will not in and of itself adversely affect that tax exempt status of the Bonds;

(xv) The Borrower has received all required Capital Contributions then scheduled to be funded, shall have been fully funded and used to pay budgeted items satisfactory to the Bondholder Representative, and the Loan shall otherwise be in balance as required by this Agreement.

(g) The Borrower agrees to cause the purchase on or within thirty (30) days before the Construction Term Maturity Date of a sufficient principal amount of Bonds in order to satisfy the requirements of the Forward Bond Purchase Agreement. In any event,

all Conditions to Conversion shall occur or be waived prior to the Construction Term Maturity Date.

(h) The Borrower hereby agrees to the following Permanent Loan payment terms:

(i) Except for any time when the Default Rate is applicable pursuant to the terms of this Agreement, the outstanding principal balance of the Permanent Loan (including any amounts added to principal under the Permanent Loan Documents) shall bear interest at a rate equal to the Permanent Loan Contract Rate. All interest accruing on the Permanent Loan shall be calculated on the basis of a three hundred sixty (360) day year consisting of twelve (12) months of thirty (30) days each, except that any interest due at any time for a period of less than a full calendar month shall be calculated by multiplying the Permanent Loan Contract Rate by a fraction, the numerator of which is the actual number of days elapsed in such partial month and the denominator of which is three hundred sixty (360).

(ii) If any regular monthly installment of principal or interest due under this Agreement, or any monthly deposit for taxes, ground rent, insurance, replacements and other sums if required under any Permanent Loan Document, shall not be paid as required under this Agreement or any other Permanent Loan Document within five (5) days following the date the same is due, the Borrower shall pay to Permanent Lender a late charge (the "*Late Charge*") of four cents (\$0.04) for each dollar so overdue in order to compensate Permanent Lender for its loss of the timely use of the money and frustration of the Permanent Lender in the meeting of its financial commitments and to defray part of the Permanent Lender's incurred cost of collection occasioned by such late payment. Any Late Charge incurred shall be immediately due and payable. Nothing herein contained shall be deemed to constitute a waiver or modification of the due date for such installments or deposits or the requirement that the Borrower make all payment of installments and deposits as and when the same are due and payable.

(iii) Upon a continuing Event of Default or on the Permanent Term Maturity Date, the unpaid principal balance of the Permanent Loan shall thereafter bear interest at the per annum interest rate (the "*Default Rate*") until the day that Event of Default is fully cured, equal to the lesser of:

(A) the highest rate permitted by law to be charged on a promissory note secured by a commercial mortgage, or

(B) the sum of three percent (3%) plus the greater of:

(x) the Permanent Loan Contract Rate; or

(y) the Federal Funds Rate.

Interest at the Default Rate as provided in this **Section 4.2** shall be immediately due and payable to the Permanent Lender and shall constitute additional Indebtedness evidenced by the Note and secured by the Permanent Loan Documents.

(iv) On the Conversion Date, a payment of interest only (as provided in **Section 4.2(a)**) shall be due and payable for the period from such date to the tenth (10th) day of the next calendar month.

- After the Conversion Date, successive monthly installments of principal and interest (in arrears), in the constant amount of \$_____, shall be made on the tenth (10th) day of the month following the Conversion Date and on the tenth (10th) day of each calendar month thereafter up to and including the tenth (10th) day of the month immediately prior to the Permanent Term Maturity Date. The monthly payments of combined principal and interest required under this Agreement are based upon a thirty-five (35) year amortization period. The foregoing monthly payments shall be sufficient to pay the corresponding sinking fund installment due under the Bonds.

(i) During the Construction Term, the Borrower shall make each payment required to be made by it hereunder (whether principal, interest or fees or otherwise) prior to 11:00 a.m. Central time, on the date when due, in immediately available funds, without set off or counterclaim. Any amounts received after such time on any date may, in the discretion of the Trustee (with the consent of Bondholder Representative), be deemed to have been received on the next succeeding Business Day for purposes of calculating interest thereon. If any payment hereunder shall be due on a day that is not a Business Day, the date for payment shall be extended to the next succeeding Business Day, and, in the case of any payment accruing interest thereon shall be payable for the period of such extension. All payments made hereunder shall be made in U.S. dollars. Notwithstanding anything herein to the contrary, all payments required to be made hereunder on the Permanent Loan shall be payable in accordance with subsections (i) through and including (vi) of **Section 4.2(l)** below.

(j) All payments of principal, interest and other amounts to be made by the Borrower on and with respect to the Permanent Loan, shall be made in United States dollars, in immediately available funds, without deduction, set-off or counterclaim, to the Permanent Lender. All such payments that are regularly scheduled monthly payments of principal, interest or reserves shall be made by the Borrower (with notice to Trustee) by automatic clearing house (“ACH”) debit of a bank account of the Borrower of which the Permanent Lender has received at least thirty (30) days’ prior written notice. All other payments from the Borrower to the Permanent Lender shall be made by wire transfer of immediately available funds to an account designated by the Permanent Lender in writing to the Borrower.

(k) If the due date of any payment under the Permanent Loan Documents would otherwise fall on a day that is not a Business Day, such date shall be extended to the next succeeding Business Day, and interest shall accrue and be payable for any principal so extended for the period of such extension.

(l) Each payment received by the Permanent Lender under the Permanent Loan Documents shall be applied in the following order:

(i) First, to the interest due on any Advances made by the Permanent Lender under the Permanent Loan Documents;

(ii) Next, to the principal amount of any Advances made by Permanent Lender under the Permanent Loan Documents;

(iii) Next, to Late Charges, attorneys' fees or any other amount due under any Permanent Loan Document save for the amounts described in clauses (D), (E) and (F) immediately below;

(iv) Next, to any Prepayment Fee or Closed Period Prepayment Fee, as applicable then due and payable under this Agreement;

(v) Next, to accrued interest due to the Permanent Lender under the Permanent Loan Documents; and

(vi) Finally, to the principal balance of the Permanent Loan.

Notwithstanding the foregoing, during the continuance of an Event of Default or in the event that the Borrower does not pay the outstanding principal balance and accrued interest due under this Agreement, when due, whether on the Permanent Loan Maturity Date or on any earlier date as a result of any Acceleration Event, the Permanent Lender, at its option, shall apply any payments it then receives in such order as the Permanent Lender deems appropriate in its sole discretion.

Section 4.3. *Additional Charges.* The Borrower agrees to pay, when due, subject to the payment of amounts due under **Section 4.2** hereof, all reasonable costs and expenses incurred in connection with the issuance of the Bonds (but only to the extent the same are not included in Ordinary Fees and Expenses and are not paid from the Cost of Issuance Fund established under the Indenture) and are not paid pursuant to **Section 4.2** hereof (in the aggregate, the “*Additional Charges*”), including without limitation, the expenses listed in **Section 3.4** hereof and each and all of the following:

(a) all reasonable fees of the Trustee, the Issuer (including the Issuer Administration Fee), and any Holder for services rendered pursuant to the terms of the Indenture, any amounts due under **Section 7.3** hereof (but only to the extent the same are not included in Ordinary Fees and Expenses and are not paid pursuant to **Section 4.2** hereof) and all reasonable fees and reasonable charges of any registrars, legal counsel, accountants, engineers, public agencies, and others actually and reasonably incurred in the performance of services reasonably required pursuant to the terms and conditions of the Indenture for which such Persons are actually entitled to payment or reimbursement, any reasonable fees or charges of public agencies, and any reasonable fees or expenses actually incurred and resulting directly from the occurrence and continuance of an Event of Default by the Borrower hereunder;

(b) (i) all indemnity payments required to be made to the Issuer and any Holder under **Section 7.3** hereof; (ii) all reasonable expenses (including reasonable legal fees) incurred by the Issuer or the Trustee to exercise their rights under this Agreement following an Event of Default; and (iii) all other reasonable expenses incurred by the Issuer in relation to the Project which are not otherwise required to be paid by the Borrower under the terms of this Agreement or any separate fee agreement, including costs incurred as a result of a request by the Borrower;

(c) amounts advanced by the Trustee pursuant to the Indenture;

(d) interest, at the Default Rate, on all payments not made by the Borrower under **Section 4.2** hereof and under this **Section 4.3** when due, to the parties entitled thereto; and

(e) If any payment required under this Agreement is not paid within ten (10) Business Days after such payment is due, then, at the option of the Bondholder Representative, the Borrower shall pay a late charge equal to three percent (3.0%) of the amount of such payment to compensate the Bondholder Representative for administrative expenses and other costs of delinquent payments. This late charge may be assessed without notice, shall be immediately due and payable and shall be in addition to all other rights and remedies available to the Bondholder Representative including any interest due as a result of interest then accruing on the Bonds Outstanding at the Default Rate, if applicable.

Section 4.4. *The Borrower's Obligations Unconditional.* The obligations of the Borrower to perform and observe the agreements on its part contained herein shall be absolute and unconditional and payment of the Loan and Additional Charges and all other payments required of the Borrower hereunder or under the Note shall be paid without set off, counterclaim, or defense for any reason and without abatement or deduction or defense. The Borrower will not suspend or discontinue any such payments, and will perform and observe all of its other agreements in this Agreement, and, except as expressly permitted in **Section 10.3** hereof, will not terminate this Agreement for any cause, including but not limited to any acts or circumstances that may constitute failure of consideration, destruction or damage to the Project or the Borrower's business, the taking of the Project or the Borrower's business by Condemnation or otherwise, the lawful prohibition of the Borrower's use of the Project or the Borrower's business, the interference with such use by any private person or corporation, the invalidity or unenforceability or lack of due authorization or other infirmity of this Agreement, the lack of right, power or authority of the Issuer to enter into this Agreement, eviction by paramount title, commercial frustration of purpose, bankruptcy, or insolvency of the Issuer or the Trustee, change in the tax or other laws or administrative rulings or actions of the United States of America or of the State or any political subdivision thereof, or failure of the Issuer to perform and observe any agreement, whether express or implied, or any duty, liability, or obligation arising out of or connected with this Agreement, or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the payment of the Loan and other amounts payable by the Borrower hereunder or under the Note shall be paid in full when due without any delay or diminution whatever.

Section 4.5. *Assignment of Issuer's Rights.* As security for the payment of the Bonds, the Issuer will pledge the amounts payable hereunder and assign, without recourse or liability, to the Trustee, the Issuer's rights under this Agreement and the Note, including the right to receive payments hereunder (but excluding the Unassigned Issuer's Rights), and hereby directs the Borrower to make said payments directly to the Trustee, or otherwise upon the order of the Trustee. The Borrower herewith assents to such assignment and will make payments under this Agreement directly to the Trustee, or otherwise upon the order of the Trustee, without defense or set off by reason of any dispute between the Borrower and the Issuer, the Holders, or the Trustee and Trustee shall have the rights and remedies of the Issuer under this Agreement and each Loan Document and shall have the right to exercise such rights and remedies without the joinder or consent of the Issuer, in the same manner and under the limitations and conditions that the Trustee is entitled to exercise rights and remedies under the Indenture.

Section 4.6. *Loan in Balance; the Borrower's Sources.*

(a) The Loan is "in balance" whenever the undisbursed funds available to the Borrower for the Project (taking into account, among other things, the timing of anticipated receipts and disbursements of funds) under the Loan, plus any sums on deposit in the Capital Contribution Account and other amounts to be deposited therein for budgeted items and to pay the Note, plus the undisbursed Taxable Tail Loan, to pay budgeted amounts, plus any sums on deposit in the Borrower's Funds Account (as defined below), plus any undisbursed Loan funds in the Project Fund (with respect to budgeted construction items) and the Interest Account of the Bond Fund (with respect to budgeted interest) or otherwise made available to the Bondholder Representative in the form of a letter of credit, pledged bank account, or other form of cash collateral, approved by the Bondholder Representative in its sole and absolute discretion ("Cash Collateral"), are sufficient in the reasonable judgment of the Bondholder Representative to pay, through Substantial Completion of all of the Project and on a timely basis all of the following sums ("Total Project Expenses"): (i) all costs of acquisition, equipment, ownership and maintenance of the Project and Facility and all costs and expenses of construction and equipment of the Facility in accordance with the Plans and Specifications and the Budget approved by the Bondholder Representative; (ii) all costs of leasing or renting of the apartment units in the Project; and (iii) all interest and all other sums and costs which may accrue or be payable under the Loan Documents prior to or in connection with the Conversion Date. Developer Fee shall not be deemed a Total Project Expense. The Capital Contribution Account, the Borrower's Funds Account, the unfunded portion of the Taxable Tail Loan, and any Cash Collateral, together with undisbursed Loan funds in the Project Fund (with respect to budgeted construction items) and the Interest Account of the Bond Fund (with respect to budgeted interest), are collectively referred to herein as "*Borrower's Sources.*" Prior to and in connection with the occurrence of the Bond Closing, the Borrower shall (i) cause the Investor Member to deposit the first installment of the Capital Contribution, less any portion thereof used to pay Costs of Issuance through the escrow for the closing of the Loan or any reimbursements permitted under the Operating Agreement, into the Capital Contribution Account on the date of issuance of the Bonds; (ii) prior to the Conversion Date, cause the Investor Member to deposit subsequent Capital Contributions in the Capital Contribution Account as set forth in Schedule H attached hereto at the time such equity

installments become due and payable as provided for in the Operating Agreement, subject to the terms and conditions therein; and (iii) deposit amounts demanded by the Bondholder Representative as set forth below when the Loan is “out of balance” into a restricted non-interest bearing account to be maintained with the Bondholder Representative in the Borrower’s name (the “Borrower’s Funds Account”) to be disbursed to complete the Construction of the Project, unless the Bondholder Representative has agreed otherwise in writing in each instance, which agreement may be withheld by the Bondholder Representative in its sole discretion.

(b) The Loan is “out of balance” if and when the Bondholder Representative determines that there are insufficient funds (taking into account the amount and timing of all of the Borrower’s Sources) in the reasonable judgment of the Bondholder Representative to pay, through completion of the Project and the Conversion Date, all Total Project Expenses. The Borrower acknowledges that the Loan may become “out of balance” in numerous ways, not all of which may now be foreseen. Except as permitted in **Schedule D** attached hereto, or Section 5.10(c) of this Agreement, undisbursed funds in one category or line item may not be applied to another category or line item unless the Bondholder Representative consents in writing to such use in each instance, such consent not to be unreasonably withheld, conditioned or delayed. All Requisitions of amounts in the Project Fund must comply with the requirements of the applicable Regulatory and Restrictive Use Agreements and the Indenture.

(c) Whenever the Loan becomes “out of balance,” the Bondholder Representative may, at its option, make written demand on the Borrower to deposit the Borrower’s own funds into the Borrower’s Funds Account and/or draw upon, demand, or otherwise obtain payment to the Bondholder Representative of any Cash Collateral, in any such instance in an amount sufficient in the Bondholder Representative’s reasonable estimation to cause the Loan to be “in balance.” Within thirty (30) Business Days following the Bondholder Representative’s written demand, the Borrower must deposit into the Borrower’s Funds Account all funds required by the Bondholder Representative’s demand that are in excess of any Cash Collateral actually delivered to the Bondholder Representative. The Borrower must also submit, for the Bondholder Representative’s approval, a revised Budget (with a copy to the Issuer) within ten (10) Business Days after any such demand. Notwithstanding anything herein to the contrary, amounts to be funded from any Requisition shall be first paid with amounts in Borrower’s Funds Account. On the Conversion Date, (1) subject to the terms of this Agreement, if there are undisbursed proceeds of the Loan which may be used to pay Total Project Expenses, Borrower shall be entitled to request an advance of the Loan to reimburse Borrower for any deposits made under this Section into the Borrower’s Funds Account, and (2) Borrower shall be entitled to withdraw all amounts in the Borrower’s Funds Account without restriction to pay those Total Project Expenses.

Section 4.7. *Disbursement Procedures.*

(a) Subject to and upon the satisfaction of the terms and conditions of this Agreement and **Schedule D** attached hereto, the Bondholder Representative shall consent to Requisitions of Bond proceeds and to Draw Requests for disbursements of

amounts in the Project Fund and in the Capital Contribution Account (and any deposits of the Taxable Tail Loan). Without limiting the foregoing, notwithstanding recording of the Mortgage or anything contained in this Agreement, the Bondholder Representative shall not be required to approve any Requisitions of amounts in the Project Fund and amounts on deposit in the Capital Contribution Account and deposits of Taxable Tail Loan (except for reasonable fees, costs and reimbursements payable to the Bondholder Representative pursuant to the terms and conditions of this Agreement and **Schedule D** attached hereto), unless and until the Bondholder Representative has determined that: (i) the amount and timing of the Borrower's Sources are sufficient to pay the Total Project Expenses and to pay the Loan down to the Permanent Loan (or such lesser amount required for satisfying the requirement of the Forward Bond Purchase Agreement), (ii) the Mortgage and all disbursements of the Loan funds will be and shall remain a first priority lien on the Project; and (iii) the applicable conditions in **Schedule D** attached hereto have been satisfied or waived in writing by the Bondholder Representative. Notwithstanding anything herein or in the Indenture to the contrary, Trustee shall not authorize any disbursement of the Bond proceeds from the Project Fund unless and until the Bondholder Representative has approved that Requisition, such approval not to be unreasonably withheld.

(b) Disbursements of the Borrower's Sources to the Borrower shall be made by the Trustee from the Project Fund and by the Bondholder Representative from all other of the Borrower's Sources by deposit into a non interest bearing checking account to be maintained with the Bondholder Representative in the name of the Borrower (the "*Disbursement Checking Account*") unless otherwise requested by the Borrower and consented to by the Bondholder Representative, such consent to be delivered in writing to the Trustee. Before the Bondholder Representative becomes obligated to consent to a Requisition of amounts in the Project Fund or to disburse any amounts in the Capital Contribution Account to the extent on deposit with the Bondholder Representative, or to disbursed deposits of the Taxable Tail Loan (if any) must receive a written request signed by the Borrower or the Borrower's agent designated in **Section 7** of the Disbursement Schedule attached hereto as **Schedule D**, using a form acceptable to the Bondholder Representative (referred to and defined in **Schedule D** attached hereto the "*Draw Request*"), accompanied by such documentation and information as required by **Schedule D** attached hereto and as the Bondholder Representative may reasonably require (for funding's from the Project Fund, such required documentation shall include a signed Requisition). In each Draw Request, the Borrower shall request disbursement for one or more specified line item(s) of the Budget. Without limiting the foregoing, each Draw Request shall be accompanied by lien waivers, on forms reasonably acceptable to the Bondholder Representative or the title insurer, from each subcontractor or material supplier paid with the proceeds of the immediately preceding Draw Request. The Bondholder Representative shall not be obligated to consent to a Requisition or to disburse amounts in the Capital Contribution Account as requested in any Draw Request, earlier than ten (10) days after receipt of a complete supporting package and satisfaction of the items listed in **Schedule D** attached hereto. If the Bondholder Representative approves a Requisition, the Bondholder Representative will then submit the Requisition to the Trustee. In the event the Draw Request is approved and the funds from Borrower's Sources are disbursed into the Disbursement Checking Account, the Borrower shall promptly then pay the appropriate

parties with the proceeds of the amounts in the Disbursement Checking Account unless otherwise requested by the Borrower and consented to by the Bondholder Representative which consent shall not be unreasonably withheld, conditioned or delayed. The Borrower may submit Requisitions and Draw Requests to the Bondholder Representative no more frequently than once each calendar month, unless the Bondholder Representative has given its prior written consent and delivered such consent to the Trustee in each instance. Notwithstanding the foregoing, for purposes of accruing interest thereon, the Loan shall be deemed disbursed and made available to the Borrower (subject to the terms of this Agreement) upon deposit of the proceeds of the Loan with the Trustee.

(c) The Bondholder Representative, at any time, subject to the terms and conditions of this Agreement, may use any of the Borrower's Sources which are on deposit with the Bondholder Representative to pay outstanding Loan fees owed to the Bondholder Representative, interest on the Loan, reasonable fees and expenses of the Bondholder Representative's attorneys, title insurance and miscellaneous costs actually incurred which are specifically payable by the Borrower hereunder, and such other sums as are actually outstanding and owing from time to time by the Borrower to the Bondholder Representative with respect to the Loan, all without further notice to or authorization by the Borrower (subject to the requirements of Section 4.7(e) below). These payments may be made, at the Bondholder Representative's option, by: (i) debiting the applicable account containing any of the Borrower's Sources (excluding the Project Fund and Interest Account of the Bond Fund) in the amount of the payments without first depositing that amount into the Disbursement Checking Account; (ii) disbursing all or any part of the amount of the payments into the Disbursement Checking Account and then debiting the Disbursement Checking Account or (iii) invoicing the Borrower in the amount of the payments; provided, however, that the Bondholder Representative shall provide the Borrower with notice of any such debit by the Bondholder Representative no later than ten (10) Business Days after the debiting has occurred, together with a reasonable accounting of such debited amount as such is reasonably practical after a written request therefor by Borrower. For these purposes, the Bondholder Representative is not restricted to the line items and cost categories of the Budget. The Borrower acknowledges that such a use of the Borrower's Sources by the Bondholder Representative may cause the Loan to become "out of balance," requiring deposits by the Borrower into the Borrower's Funds Account or payment to the Bondholder Representative of Cash Collateral.

(d) If the Budget provides for an undisbursed balance remaining in the interest reserve line item of the Budget and all other disbursement conditions have been met, then the Bondholder Representative from time to time shall disburse Borrower's Sources to pay interest on the Loan from the interest reserve line item.

(e) Subject to the further terms of this Section and this Agreement (including Schedule D), disbursements made or authorized under this Agreement to pay Good Costs shall be paid first from proceeds of the first installment of the Capital Contribution set forth in Schedule H (sometimes referred to herein as the "Construction Capital Contributions," whether one or more) deposited in the Capital Contribution Account maintained by the Bondholder Representative (to the extent deposited with the

Bondholder Representative under the terms of the Operating Agreement and to the extent available to pay Good Costs as provided in the most recently revised Budget and as set forth in subsection (f) below), and then from Requisitions made on the Project Fund and then from advances of the Taxable Tail Loan. Without limiting the foregoing, no consent to a Requisition by the Bondholder Representative will be provided unless and until all of the Construction Capital Contributions then payable under the Partnership Agreement have been fully funded in accordance with the terms of the Partnership Agreement and used first to pay Bad Costs and other Costs of Issuance (by payment to the Trustee in accordance with the terms of the Indenture) and then to pay Good Costs (by deposit in the Capital Contribution Account for disbursement therefrom in accordance with the terms of this Agreement). Without limiting the foregoing, it is agreed the proceeds of the Bonds shall only be used to pay Good Costs, and the proceeds of the Capital Contributions and Taxable Tail Loan shall be used first to pay Bad Costs and then any remaining amounts shall be used to pay Good Costs (in the order provided for in this subsection). Notwithstanding the foregoing, if the Bondholder Representative determines it is necessary that certain Draw Requests be instead funded from the Project Fund to satisfy the 95% rule as represented in Section 2.3(r), those Draw Requests will be first funded from the Project Fund (in any event, it is the intent of the parties that all proceeds of the Bond will be used for the development of the Project).

(f) In addition to the foregoing, without limiting the requirements of Schedule D attached hereto, prior to and as a condition to the Bondholder Representative's agreement to buy the Bonds, the Borrower shall have caused the portion of the Construction Capital Contribution set forth in Schedule H attached hereto which will be used to pay Costs of Issuance to be deposited in the Cost of Issuance Fund in accordance with the terms of the Indenture, and then any remainder of the Construction Capital Contribution shall have been deposited in the Capital Contribution Account for disbursement in accordance with the terms of this Agreement to first pay budgeted Bad Costs which are not Costs of Issuance in accordance with the Budget and then to pay budgeted Good Costs as provided in subsection (e) above.

(g) The second and third installments of the Capital Contributions set forth in Schedule H shall each be funded into the Capital Contribution Account to first pay any budgeted construction items and then, as provided in **Schedule H** shall be applied the Taxable Tail Loan (the second installment shall thereafter be paid as provided in Schedule H), and otherwise shall, until the Conditions to Conversion are satisfied or waived in writing by the Bondholder Representative, be held as security for the Note by remaining in the Capital Contribution Account and for any resizing or other requirements and conditions to the occurrence of the Conversion Date for purposes of satisfying the Conditions to Conversion (and issuance of the Conversion Certificate evidencing conversion to the Permanent Loan).

Section 4.8. *Additional Disbursement Conditions.* The Bondholder Representative need not approve the disbursement of the Borrower's Sources (including approving a Requisition) until the Borrower fulfills all conditions of the Loan Documents relating to such disbursement set forth in **Schedule D** attached hereto to the Bondholder Representative's satisfaction, in its reasonable

judgment, or such conditions are otherwise waived by Bondholder Representative. The Bondholder Representative's Loan closing conditions and conditions for subsequent disbursements include the matters described in the Disbursement Schedule. Further, fundings will be based upon the percentage of completion for actual work in place as approved by the Bondholder Representative and its construction consultant, such approval not to be unreasonably delayed, withheld or conditioned. Further, no proceeds of the Taxable Tail Loan shall be made available to Borrower if any amounts are then available from any other of Borrower's Sources.

Section 4.9. *No Waiver of Conditions.* Any waiver by the Bondholder Representative of a condition of disbursement must be expressly made by the Bondholder Representative in writing. If the Bondholder Representative makes a disbursement before fulfillment of one or more required conditions, such disbursement shall not be a waiver of such condition with respect to subsequent disbursements, and the Bondholder Representative reserves the right to require their fulfillment before making any subsequent disbursements. If all disbursement conditions are not satisfied or waived in writing by the Bondholder Representative, the Bondholder Representative, without waiving any rights or conditions as to any other or further disbursements, may disburse selectively as to certain items or categories of costs and not others.

Notwithstanding anything to the contrary set forth in this Agreement, all of the Bond proceeds shall, for federal income tax purposes, be (1) allocated to the Improvements in the Project and Borrower's leasehold interest in the Land on which it is located and (2) used exclusively to pay costs of the construction and equipment of the Project which are includable in aggregate basis of the Improvements and Borrower's leasehold interest in the Land on which the Improvements are located ("*Eligible Costs*") in a manner such that the Improvements satisfies the requirements of Section 42(h)(4)(B) of the Internal Revenue Code. Accordingly, no Bond proceeds will be deemed to have been used to pay any of the Costs of Issuance of the Bonds, or to fund any reserve account other than the Project Fund to be used to pay Eligible Costs.

Section 4.10. *Cash Collateral Account.* Beginning on _____, 2017, and continuing on the first day of each succeeding calendar month thereafter through and including _____, Borrower shall cause monthly deposits to be made into the Cash Collateral Account in the amount of \$80,000.00 each (whether from Net Cash Flow or other sources). Beginning on _____, and continuing on the first day of each succeeding calendar month thereafter through and including _____, Borrower shall cause monthly deposits to be made into the Cash Collateral Account in the amount of \$112,000.000 each (whether from Net Cash Flow or other sources). Amounts on deposit in the Cash Collateral Account may be used as needed to pay the Note down to the amount of the Permanent Loan or to otherwise satisfy the Conditions to Conversion. On the Conversion Date, any amount then on deposit in the Cash Collateral Account shall be released to the Borrower and applied by Borrower to the payment of Deferred Developer Fee (if and to the extent permitted by the Operating Agreement).

ARTICLE 5 PROJECT COVENANTS

Section 5.1. *Project Title, Operation, and Maintenance.*

(a) The Issuer, the Bondholder Representative, and the Trustee shall not be under any obligation to operate, maintain, or repair the Project. The Borrower agrees that until this Agreement is terminated pursuant to **Section 10.3** hereof, it will, at its own expense (to the extent the expenses will not be paid from a Reserve Account or from insurance proceeds actually available for that purpose), and consistent with similarly sized and situated projects in the metro Austin area, (a) keep the Project in safe repair and in such operating condition as is needed for its operations; (b) except as otherwise provided in this Agreement, make all necessary repairs and replacements to the Project (whether ordinary or extraordinary, structural or nonstructural); (c) operate the Project in a sound and economic manner in accordance with usual business practice, subject to the restrictions imposed on the Project pursuant to each Tax Regulatory Agreement, once executed, and any “extended use agreement” entered into with respect to the Project in order to secure the availability of Low Income Housing Tax Credit for the Project; (d) operate the Project in compliance with all applicable laws, codes, environmental laws, zoning laws, the Americans with Disabilities Act of 1990 applicable to the Project, laws regulating construction, occupancy, or maintenance of property of a character included in the Project; and (e) comply with all applicable existing and future laws, regulations, orders, building codes and restrictions, and requirements of, and all permits and approvals from, and agreements with and commitments to, all governmental, judicial, or legal authorities having actual jurisdiction over the Project and other Requirements of Law applicable to the Project (including all conditions or requirements imposed upon Borrower or the Project in connection with the allocation of Low Income Housing Tax Credit to the Project) or the Borrower’s business conducted thereon or therefrom, and with all restrictive covenants and other title encumbrances encumbering the Project, including without limitation those contained in each Tax Regulatory Agreement, and any additional regulatory agreements to which the Project may now or hereafter be subject in connection with the allocation of low income housing tax credits to the Project (all collectively, the “Requirements”).

(b) The Borrower shall pay all expenses of the operation and maintenance of the Project including, but without limitation, the policies of insurance required pursuant to **Section 5.5** hereof, and all taxes and special assessments levied upon or with respect to the Project and payable during the term of this Agreement, all in conformance with and subject to any good faith contest provisions provided in the Mortgage or this Agreement.

(c) In the event that the Borrower shall fail to maintain, or cause to be maintained, the full insurance coverage required by this Agreement or shall fail to keep the Project in as reasonably safe condition as its operating conditions will permit, or shall fail to keep the Project in good repair and good operating condition and make all necessary repairs and replacements to the Project (except as otherwise expressly provided for in this Agreement), the Trustee (on direction from the Bondholder Representative) or the Bondholder Representative may (but shall be under no duty or obligation to) after giving the Borrower notice of its intention to do so, contract for the required policies of insurance

and pay the premiums on the same or contract for any required repairs, renewals and replacements; and the Borrower agrees to reimburse the Trustee or the Bondholder Representative, as the case may be, to the extent of the amounts so advanced, and in addition shall pay interest on any such amount (but not including amounts in the Replacement Reserve Account to be used for that purpose) at the Default Rate from the date of demand for such amount until the date such amount is paid or reimbursed by the Borrower.

(d) The Borrower shall obtain or cause to be obtained all required permits and approvals for the operation and maintenance of the Project and shall comply with all lawful requirements of any governmental body with jurisdiction concerning the use or condition of the Project, whether existing or later enacted or whether involving any change in governmental policy or requiring structural or other changes to part or all of the Project and irrespective of the cost of making the same.

(e) Notwithstanding the provisions of this **Section 5.1**, the Borrower may in good faith contest the actual validity or the applicability of any law, ordinance, rule or regulation provided that during the period of such contest and any appeal therefrom, (i) such failure to comply with such requirement or requirements will not adversely affect the lien of the Mortgage or endanger the Project or any part thereof and (ii) will not subject the Project or any part thereof to loss or forfeiture.

(f) The Borrower agrees not to permit to continue or allow others to permit to continue a nuisance in connection with their use or occupancy of the Project.

Section 5.2. *Transfer of the Project or Interest in the Borrower.*

(a) Except as hereinafter provided in this **Section 5.2**, the following Transfers shall be prohibited: (i) Transfer of all or any part of the Project or any interest in the Project; (ii) Transfer of Control in the Borrower; (iii) Transfer of Control in any entity which Controls the Borrower; (iv) if applicable to the Key Principal, a Transfer of all or any part of a Key Principal ownership interest in any other entity which owns, directly or indirectly through one or more intermediate entities, an ownership interest in the Borrower (other than a Transfer of an aggregate beneficial ownership interest in the Borrower of forty nine percent (49%) or less of such Key Principal's original ownership interest in the Borrower and which does not otherwise result in a Transfer of the Key Principal's Control in such intermediate entities or in the Borrower); (v) if the Key Principal is an entity (x) Transfer of Control in the Key Principal or (y) Transfer of Control in any entity which owns, directly or indirectly through one or more intermediate entities, a Controlling interest in the Key Principal; (vi) if the Borrower or a Key Principal is a trust, the termination or revocation of such trust (unless the trust is terminated as a result of a death of an individual trustor, in which event the Bondholder Representative must be notified and such Borrower or Key Principal must be replaced with an individual or entity acceptable to the Bondholder Representative, in accordance with the provisions of subsection (c) below, within ninety (90) days of such death) provided, however, that a one percent (1.0%) transfer fee will not be charged; (vii) the merger, dissolution, liquidation or consolidation of (x) the Borrower, (y) any Key Principal that is a legal entity, or (z) any legal entity that Controls the Borrower

or any Key Principal that is an entity; (viii) a conversion of the Borrower from one type of legal entity into another type of legal entity (including the conversion of a Managing Membership interest into a limited partnership interest and the conversion of a limited partnership into a limited liability company), whether or not there is a Transfer, if such conversion results in a change in the assets, liabilities, legal rights or obligations of the Borrower (or of a Key Principal or Managing Member of the Borrower, as applicable) by operation of law or otherwise; and (ix) Transfer of the economic benefits or right to cash flows attributable to the ownership interest in the Borrower and/or, if a Key Principal is an entity, a Key Principal, separate from the Transfer or the underlying ownership interest, unless the Transfer of the underlying ownership interest would otherwise not be prohibited by this Agreement.

(b) Notwithstanding the provisions of **Section 5.2(a)** above to the contrary, the following Transfers will be permitted (each a “*Permitted Transfer*”): (i) a Transfer to which the Bondholder Representative has consented, such consent not to be unreasonably withheld, (ii) a Transfer by the Investor Member of all or a portion of its partnership interest in the Borrower either directly or indirectly to another limited partnership or limited liability company which has, as its general partner or managing member, an Affiliate of the Investor Member, or to the Managing Member, (iii) provided the Bondholder Representative has received notice with respect to the Transfer in advance and has been paid its Review Fee, the removal of the Managing Member for cause as set forth under the Operating Agreement so long as any substitute general partner is a single purpose Affiliate of the Investor Member or the Special Member, (iv) except as provided in **Section 5.2(a)(vi)** above, a Transfer that occurs by devise, descent or by operation of law upon the death of a natural person, (v) the grant of leasehold interest in an individual dwelling unit for a term of two years or less not containing an option to purchase, (vi) a Transfer of obsolete or worn out personal property or fixtures that are contemporaneously replaced by items of equal or better function and quality, which are free of liens, encumbrances and security interests other than those created by the Loan Documents otherwise expressly permitted by the Loan Documents or consented to by the Bondholder Representative, (vii) except in connection with a Regulatory and Restrictive Use Agreement, the grant of an easement, servitude or restrictive covenant provided that, before the grant, the Bondholder Representative has determined that the easement, servitude or restrictive covenant will not materially affect the operation or value of the Project or the Bondholder Representative’s interest in the Project and the Borrower pays to the Bondholder Representative, within ten (10) days of demand, all reasonable costs and expenses actually incurred by the Bondholder Representative in connection with reviewing the Borrower’s request, (viii) the creation of a tax lien or mechanic’s lien or judgment lien against the Project which is bonded off, released of record or otherwise remediated to the Bondholder Representative’s satisfaction within thirty (30) days of the date of creation, (ix) the execution, delivery and recordation of a purchase option and/or right of first refusal by and between the Borrower and the Managing Member or its Affiliate, provided that the same is subject, subordinate and inferior to the liens and security interests of the Loan Documents and that the exercise of any rights thereunder shall be subject to the Loan Documents, (x) after it has funded all of its Capital Contributions, a Transfer by the Investor Member of its ownership interest in the Borrower, and (xi) a pledge of the Investor Member’s interest in Borrower to a financial

institution for the purpose of making its Capital Contributions (to the extent the pledge is disclosed in writing to the Bondholder Representative).

(c) The Bondholder Representative will consent to a Transfer that would otherwise violate **Section 5.2(a)** conditioned on the satisfaction of each of the following requirements prior to Transfer: (i) the submission to the Bondholder Representative of all information required by the Bondholder Representative to make the determination required by this **Section 5.2(c)**, (ii) no Event of Default shall have occurred and be continuing, (iii) the request is made more than three (3) years prior to the Permanent Term Maturity Date, (iv) the Transfer is due to the removal of the Managing Member as permitted by and in accordance with the terms of the Operating Agreement, (v) the transferee meets all of the eligibility, credit, management and other standards (including any standards with respect to previous relationships between the Bondholder Representative and the transferee and the organization of the transferee) customarily applied by the Bondholder Representative at the time of the proposed Transfer to the approval of the borrowers in connection with the origination or purchase of similar mortgage financed structures on similar multifamily properties, unless partially waived by the Bondholder Representative in exchange for such additional conditions as the Bondholder Representative may require and in the case of a proposed Transfer by the Investor Member of 49% or more of its original ownership interest in the Borrower, all of its Capital Contributions have been made and the transferee or the investor partner or member of the transferee is a Financial Institution or Publicly Held Corporation with a rating of at least “*BBB*” by Standard & Poor’s Ratings Services, a Standard & Poor’s Financial Services LLC business or “*Baa1*” by Moody’s Investors Service, Inc., (vi) the Project at the time of the proposed Transfer, meets all standards as to its physical condition that are customarily applied by the Bondholder Representative at the time of the proposed Transfer to the approval of properties in connection with the origination or purchase of similar mortgage finance structures on similar multifamily properties, unless partially waived by the Bondholder Representative in exchange for such additional conditions as the Bondholder Representative may require, (vii) if the transferor or any other Person has obligations under any Loan Document, the execution by the transferee or one or more individuals or entities acceptable to the Bondholder Representative of an assumption agreement (including, if applicable, the acknowledgment of the Key Principal with respect to any exceptions to non-recourse guaranty) acceptable to the Bondholder Representative and that, among other things, requires the transferee to perform all of the obligations of the transferor or such Person set forth in the Loan Document, and may require that the transferee comply with any provisions of the Mortgage or any other Loan Document which previously may have been waived by the Bondholder Representative, (viii) if a guaranty has been executed and delivered in connection with the Note, or any of the other Loan Documents, and such guaranty is still then in effect, the Borrower causes one or more individuals or entities acceptable to the Bondholder Representative to execute and deliver to the Bondholder Representative a substitute guaranty in form and substance acceptable to the Bondholder Representative, (ix) the Bondholder Representative has received all of the following: (x) a nonrefundable Review Fee and Transfer Fee, provided, however, no Transfer Fee will be charged if the Managing Member has been removed for cause or for Transfers by the Investor Member and (y) the Borrower’s reimbursement of all the Bondholder Representative’s reasonable out of pocket

costs (including reasonable attorney's fees) actually incurred in reviewing the Transfer request, and (x) the Borrower has agreed to the Bondholder Representative's conditions to approve such Transfer, which may include, but are not limited to (A) providing additional collateral, guarantees or other credit support to mitigate any risk concerning the proposed transferee or the performance or condition of the Project and (B) amending the Loan Documents to delete any specifically negotiated terms or provisions previously granted for the exclusive benefit of the transferor and/or modify (or require if not in place) any reserves required by this Agreement and the other covenants contained in the Loan Documents which may be personal to the transferor or otherwise not capable of being complied with by the transferee.

Section 5.3. *Advances.* The Borrower acknowledges and agrees that under this Agreement and certain of the other Loan Documents, the Bondholder Representative may, but shall be under no obligation to, take certain action and approve certain advances relating to the Project from certain funds held under the Indenture or otherwise, and the Borrower shall be obligated to repay all such advances (except for funds disbursed from a Reserve Account for the purposes of that Reserve Account) on demand with interest from the date such advance was made until paid, at the Default Rate.

Section 5.4. *Alterations to the Project and Removal of Equipment.*

(a) Without the prior written consent of the Bondholder Representative, the Borrower shall not remodel or make any material additions, modifications, alterations, improvements, or changes that would be a Material Adverse Change in or to the Project after Substantial Completion of construction as evidenced by delivery of the Completion Certificate or remove any equipment therefrom other than in connection with the replacement of worn, damaged, non-functioning or obsolete property. Notwithstanding the provisions of the Mortgage, no such alteration or removal will be made if to do so would impair the character of the Project as a "public facility" within the meaning of the Act, or impair the exclusion of interest on the Bonds from gross income for federal income tax purposes.

(b) The Borrower shall be entitled to use funds held by the Trustee in each Reserve Account to pay for alterations, improvements, replacements, and maintenance of the Project ("*Reserve Uses*") to the extent and as provided in **Schedule F** attached hereto, including, but not limited to, appliances, air conditioners, furnaces, hot water heaters, roofs, carpeting, floor vinyl, decks, pool equipment replacement, concrete replacement, tie walls, gutters, downspouts, window replacement, blinds, and similar items (as may be amended from time to time upon the written agreement of the Borrower and Bondholder Representative), and for the costs of alterations or replacements, provided that the written consent of the Bondholder Representative is obtained for each such disbursement (not to be unreasonably delayed, withheld or conditioned; provided further that Bondholder Representative's prior consent shall not be required for Reserve Uses less than \$5,000). The Bondholder Representative shall consent to disbursements from each Reserve Account which are required in order to maintain the Project in the condition and state of repair required pursuant to this Agreement and the Mortgage, subject to the terms and conditions of **Schedule F** attached hereto.

Section 5.5. *Insurance.* Unless waived by the Bondholder Representative in writing, Borrower, at its expense, shall obtain and deliver to the Bondholder Representative and maintain (and cause to be maintained) at all times prior to the Conversion Date, policies of insurance which satisfy the following:

(a) The Borrower and the Contractor shall maintain Commercial General Liability Insurance with limits of not less than \$1,000,000 per occurrence in the case of the Borrower and \$1,000,000 in the case of the Contractor combined single limit and in the aggregate for the policy period, \$2,000,000, or in whatever higher amounts as may be reasonably required by the Bondholder Representative from time to time by notice to the Borrower, and in each case, extended to cover: (i) Contractual Liability assumed by the Borrower with defense provided in addition to policy limits for indemnities of the named (or additional named, as the case may be) insured, (ii) if any of the work is subcontracted, Independent Contractors Liability providing coverage in connection with such portion of the work which may be subcontracted, (iii) Broad Form Property Damage Liability, (iv) Products & Completed Operations for coverage, such coverage to apply for two years following completion of construction, (v) waiver of subrogation against all parties named additional insured, (vi) severability of interest provision, and (vii) Personal Injury & Advertisers Liability.

(b) The Contractor will maintain Automobile Liability including coverage on owned, hired, and non-owned automobiles and other vehicles, if used in connection with the performance of the work, with Bodily Injury and Property Damage limits of not less than \$1,000,000 per occurrence combined single limit, with a waiver of subrogation against all parties named as additional insured.

(c) Windstorm insurance will be maintained in the amount of the insurable value replacement cost of the Improvements to the extent that such coverage is available on a commercially reasonable basis, as is mutually determined by the Bondholder Representative and the Borrower.

(d) The Borrower and the Contractor will each maintain Umbrella/Excess Liability in excess of Commercial General Liability and Employers' Liability coverages which is at least as broad as these underlying policies with an aggregate, combined limit of liability of \$10,000,000.

(e) Borrower will maintain All Risk Property (Special Cause of Loss) Insurance on the Improvements in an amount not less than the full insurable value on a replacement cost basis of the insured Improvements and personal property related thereto. During the construction period, such policy shall be written in the so called "Builder's Risk Completed Value Non Reporting Form" with no coinsurance requirement and shall contain a provision granting the insured permission to occupy prior to completion. This policy must also list the Bondholder Representative as mortgagee and loss payee.

(f) If any of the Buildings located on the Land lie within a "special flood hazard area" as designated on maps prepared by HUD, a National Flood Insurance Association standard flood insurance policy for the duration prior to the Conversion Date shall be an

amount equal to the lesser of the amount of the Loan (as then applicable) or the replacement cost value.

(g) Following completion of construction and prior to commencement of operations, business interruption and/or loss of rental income insurance must be obtained and maintained in an amount sufficient to provide proceeds that will cover the “actual loss” sustained during the restoration. No coinsurance is permitted. The “actual loss” coverage amount may be capped based on projected gross revenues (less non-recurring expenses) for a twelve (12) month period. The policy must (unless waived by the Bondholder Representative) provide an “Extended Period of Indemnity” endorsement for at least an additional six (6) months. The perils covered by this insurance shall be the same as those required to be covered on the real property including flood, terrorism and earthquake, as necessary.

(h) Such other insurance as the Bondholder Representative may require, which may include, without limitation, errors and omissions insurance with respect to the contractors, architects and engineers.

All insurance policies shall (i) be issued by an insurance company licensed to do business in the State having a rating of “A /VIII” or better by A.M. Best Co., in Best’s Rating Guide, (ii) name “JPMorgan Chase Bank, N.A. (or Permanent Lender after the Conversion Date), and any and all subsidiaries as their interest may appear and its successors and/or assigns” as additional insureds on all liability insurance and as mortgagee and loss payee on all All Risk Property Insurance, with a loss payable clause naming the Bondholder Representative as loss payee (or a lender’s payable clause), (iii) be endorsed to show that the Borrower’s insurance shall be primary and all insurance carried by the Bondholder Representative is strictly excess and secondary and shall not contribute with Borrower’s insurance, (iv) provide that the Bondholder Representative is to receive thirty (30) days written notice prior to non-renewal or cancellation, (v) be evidenced by a certificate of insurance to be provided to the Bondholder Representative, along with the copy of the policy for All Risk Property coverage, (vi) include either policy or binder numbers on the Accord form, and (vii) be in form and amounts acceptable to the Bondholder Representative. Without limiting the foregoing, the policy shall include the following endorsements: ordinance or change in law endorsement (demolition, contingent liability, and increased cost of construction equal to 25% of property insurance). The liability insurance required by this **Section 5.5** shall also name the Issuer and the Trustee as additional named insureds.

Section 5.6. *Commencement and Substantial Completion of the Project.*

(a) The Borrower must commence Construction of the Project (as defined below) within thirty (30) days after the date of the Bond Closing, and continue Construction of the Project diligently and continually (subject to the other terms of this Section 5.6) to Substantial Completion by the Bondholder Representative’s Required Completion Date. Without limiting the foregoing, Borrower shall cause the Project to be placed in service pursuant to Section 42 of the Code by the deadline required by the Credit Agency. The Borrower shall not permit cessation of work on the Project for a period in excess of twenty (20) consecutive days without the Bondholder Representative’s prior written consent, provided that in no event shall there be a cessation of work on the Project for an aggregate

period in excess of thirty (30) days (in both instances excluding Excusable Delays). Such an extension, however, shall not affect the time for performance of, or otherwise modify, any of the Borrower's other obligations under the Loan Documents or the maturity of the Note.

(b) By the Bondholder Representative's Required Completion Date, the Borrower must have Substantially Completed Construction of the Project, as hereinafter defined. As used in this Agreement, "*Construction of the Project*" includes completing construction of the structural components, operating systems, and all other elements of such improvements to buildings. The Construction of the Project is deemed complete for all purposes of this Agreement when the construction has been completed in substantial accordance with the plans and specifications described in **Schedule G** attached hereto, as those plans and specifications may be amended in accordance with **Section 5.10** (the "*Plans and Specifications*"), as evidenced by the written certification of the architect for the Project (the "*Architect*") and Contractor for the Project in Form AIA G 706 or another form satisfactory to the Bondholder Representative and filed with the Trustee and the Bondholder Representative (the "*Completion Certificate*"), and the Bondholder Representative has received evidence reasonably satisfactory to it that:

(i) All of the buildings constituting the Project have been "placed in service" if required by and within the meaning of Section 42 of the Code; and

(ii) The completed Project has been inspected by and received all approvals of governmental authorities having jurisdiction over the Project, permitting occupancy by residential tenants of all units in the Project.

(c) In addition, the Borrower shall record the Affidavit and Certificate of Completion in the form of **Schedule M** attached hereto in Travis County, Texas, or a certificate or affidavit in such other form that complies with Section 53.106 of the Texas Property Code and is otherwise acceptable to the Bondholder Representative, all appropriate notices of completion, and obtain certificates of occupancy or similar permits regarding completed apartment units and other spaces within the Project as necessary or required to permit the lawful use and occupancy of each of such units and spaces.

Section 5.7. *Construction.* The Borrower must conduct the Construction of the Project in a good and workmanlike manner in accordance with sound building practices, and all governmental and insurance requirements applicable to the Project and the Borrower, in substantial accordance to the Plans and Specifications in all material respects and the recommendations of any geotechnical inspection, environmental report or Engineering Report delivered by the Borrower to, and approved by, the Bondholder Representative.

Section 5.8. *Preservation of Rights.* The Borrower must obtain, preserve, and maintain in good standing, as applicable, all rights, privileges, and franchises necessary or desirable for the operation of the Project and the conduct of the Borrower's business thereon or therefrom.

Section 5.9. *Maintenance and Repair.* Except as otherwise provided in this Agreement, the Borrower must (i) maintain the Project, including the parking and landscaping portions thereof,

in good condition and repair, (ii) promptly make all necessary structural and non-structural repairs to the Project (or cause tenants under any leases to perform such obligation), and (iii) not demolish, alter, remove, or add to the Project, excepting (x) the repair and restoration of the Project following damage thereto as permitted by this Agreement, (y) the construction or installation of non-structural alterations or improvements, provided the same are in all respects consistent with the character and utility of the existing Project, and (z) the installation or construction of tenant improvements and related demolition in connection with any leases allowed by this Agreement, and (iv) not erect any new buildings, structures, or building additions on the Project, except as described in the Plans and Specifications, without the prior written consent of the Bondholder Representative. Subject to **Section 12.31** hereof, the Borrower must pay when due all claims for labor performed and materials furnished therefor in connection with any improvement or construction activities, unless such claims are being contested in good faith. If a claim of lien is recorded which affects the Project or a stop notice, funds capture notice or similar notice from a potential mechanic's lien claimant is served upon the Borrower, the Borrower shall, within twenty (20) calendar days of such recording or service or within five (5) calendar days of the Bondholder Representative's demand, whichever occurs first (x) effect the release thereof by recording or delivering to the Bondholder Representative a surety bond in sufficient form and amount; or (y) provide the Bondholder Representative with other reasonable assurances which are reasonably satisfactory to the Bondholder Representative for the payment of such claim of lien and for the full and continuous protection of the Trustee and the Bondholder Representative from the effect of such lien (without limiting the terms of **Section 12.31** hereof).

Section 5.10. *Changes.*

(a) The Borrower agrees to provide Bondholder Representative with copies of all change orders pursuant to which changes are proposed to the Plans and Specifications or to the design of the Project, together with all additional documents relating to the proposed change that the Bondholder Representative may reasonably require. These documents may include the following: (i) plans and specifications indicating the proposed change; (ii) a written description of the proposed change and related working drawings; and (iii) a written estimate of the cost of the proposed change and the time necessary to complete it.

(b) The Borrower must obtain the Bondholder Representative's prior written approval of any change order which is a change in the interest line item or which in any single instance involves more than Fifty Thousand and No/100 Dollars (\$50,000) in changes in costs of the Project or which, when aggregated with other change orders not previously approved by the Bondholder Representative, involves more than Two Hundred Fifty Thousand and No/100 Dollars (\$250,000) in changes in costs of the Project. In any event, any changes in cost must also satisfy the requirements of the Taxable Tail Loan Documents.

(c) In addition, the Borrower must obtain the Bondholder Representative's prior written approval of all material changes in the scope or general conditions of the design build agreement with the Contractor for the Construction of the Project (the "*Construction Contract*") or the contract with the Architect for the design of the Project (the "*Architecture Contract*"); provided, however, subject to the other terms of this

Agreement, the terms of the Taxable Tail Loan and the terms of the Operating Agreement, Borrower may make changes to the Plans and Specifications and/or reallocate Loan funds from one Budget line item to another without Bondholder Representative's consent as long as the amount of any single change order does not exceed \$50,000, and the aggregate amount of all such change orders does not exceed \$250,000; provided that a reallocation from the contingency line item may not be in excess of the percentage of completion of the Improvements at the time of the reallocation. Notwithstanding the foregoing, all change orders shall be properly documented in a manner satisfactory to Bondholder Representative on the related G702 and G703 draw requisitions. Finally, the Borrower must obtain from the appropriate persons or entities all approvals of any changes in plans, specifications, work, materials, or contracts required by any of the Requirements, applicable to the Project, or under the terms of any lease, loan commitment, or other agreement relating to the Project.

(d) The Bondholder Representative may take a reasonable time not to exceed ten (10) Business Days to evaluate any requests for proposed changes and may require that all approvals required from other parties (including investment partners of the Borrower) be obtained before it approves any requested change. The Bondholder Representative may approve or disapprove changes in the exercise of its reasonable judgment. The Borrower acknowledges that delays may result but that shall not affect the Borrower's obligation to complete the Project by the Bondholder Representative's Required Completion Date.

Section 5.11. *Construction Information and Verification.*

(a) Within thirty (30) days after receiving a written request from the Bondholder Representative so to do, the Borrower shall deliver to the Bondholder Representative any and all of the following information and documents, all in forms reasonably acceptable to the Bondholder Representative:

(i) Current Plans and Specifications for the Project certified by the Architect as being complete and accurate;

(ii) If required by Bondholder Representative, a current, complete, and correct list showing the name, address, and telephone number of each contractor, subcontractor, and material supplier who is engaged by the Borrower in connection with the Construction of the Project, together with the total dollar amount of each contract and subcontract (including any changes) and the amounts paid through the date of the list;

(iii) A true and correct copy of the most current version of the Construction Contract, including any changes;

(iv) A current construction progress schedule showing the progress of construction and the projected sequencing and completion times for uncompleted work, all as of the date of the schedule;

(v) Any update to any item described above, previously delivered to the Bondholder Representative; and

(vi) At any time after Construction of the Project, as-built plans and specifications for the Project as actually completed to date, certified by the Architect as being complete and accurate (provided, however, if the Architect is not reasonably able to deliver such as built plans and specifications within such thirty (30) day period, the Bondholder Representative consents to extend the Borrower's deadline up to an additional thirty (30) days).

(b) The Borrower expressly authorizes the Bondholder Representative to contact the Architect, the Contractor, or any contractor, subcontractor, material supplier, surety, or any Governmental Authority or agency to verify or discuss any information disclosed in accordance with this **Section 5.11** and any other information that the Bondholder Representative may reasonably require.

(c) The Borrower shall promptly notify the Bondholder Representative of any material default by Architect under the Architecture Contract and Contractor under the Construction Contract which is not cured after the passage of applicable notice and cure periods. If the Architect terminates or materially breaches the Architecture Contract or the Contractor terminates or materially breaches the Construction Contract and the Architect or the Contractor (as applicable) fails to cure such breach during any applicable notice and cure period, the Contractor must be replaced promptly, with a replacement approved by the Bondholder Representative and the Borrower must deliver all required information and documents to the Bondholder Representative regarding any such replacement Architect and/or Contractor. The Bondholder Representative shall not unreasonably withhold, condition or delay its approval of any replacement Architect and/or Contractor reasonably selected by the Borrower.

Section 5.12. *Permits, Licenses, and Approval.* The Borrower must obtain, comply with, and keep in effect all required and necessary permits, licenses and approvals related to the Project and required by governmental bodies in order to construct, occupy, operate, market, and lease the Project. The Borrower must promptly deliver, within ten (10) Business Days after a reasonable written request therefor from Bondholder Representative, copies of all such permits and licenses.

Section 5.13. *Purchase of Materials; Conditional Sales Contracts.* Without the Bondholder Representative's prior written consent, the Borrower may not: (i) purchase or contract for any materials, equipment, furnishings, fixtures, or articles of personal property to be placed or installed on the Project under any security agreement or other agreement where the seller reserves or purports to reserve title or the right of removal or repossession, or the right to consider them personal property after their incorporation in the work of construction; or (ii) remove or permit to be removed from the Project any equipment, machinery, or fixtures used in connection with the management, maintenance, operation, or enjoyment thereof unless replaced by articles of equal suitability and value owned by the Borrower or the Person in whom ownership of the removed article was vested, as applicable, in each case free and clear of any lien or security interest.

Section 5.14. *Site Visits; Right to Stop Work.*

(a) Subject to the rights of the tenants under leases, the Borrower grants to the Bondholder Representative, and its agents and representatives, the right to enter and visit the Project on any Business Day during normal business hours upon prior reasonable notice to Borrower (of at least two (2) Business Days in advance but that no such advance notice will be required if an Event of Default is then continuing) and its Property Manager of the Project for the purposes of performing an appraisal, pursuant to any requirement for same under this Agreement, observing the work of construction, inspecting the property, and examining all materials, plans, specifications, working drawings, and other matters relating to the construction and following the occurrence and continuance of an Event of Default beyond any notice and cure provisions provided for herein the taking soil or groundwater samples, conducting tests to, among other things, investigate for the presence of Hazardous Substances. Prior to Substantial Completion and funding of Retainage, for purposes of these site visits, the Borrower must maintain at all times a full set of working drawings at the construction site. During such site visits, the Bondholder Representative has the right to examine, copy, and audit the books, records, accounting data, and other documents of the Borrower and its contractors relating to the Project or Construction of the Project. The Bondholder Representative is under no duty to visit or observe the Project, or to examine any books or records. Any site visit, observation, or examination by the Bondholder Representative will be solely for the purpose of protecting and preserving the rights of the Trustee and the Bondholder Representative under this Agreement and the Mortgage. No site visit, observation or examination by the Bondholder Representative will impose any liability on Bondholder Representative or result in a waiver of any default of the Borrower or be a representation that the Borrower is or will be in compliance with the Plans and Specifications, that the construction is free from defective materials or workmanship, or that the construction complies with all applicable Requirements. Neither the Borrower nor any other party is entitled to rely on any site visit, observation or testing by Bondholder Representative, its agents, or representatives. The Bondholder Representative owes no duty of care to protect the Borrower or any other party against, or to inform the Borrower or any other party of, any adverse condition affecting the Project, including any defects in the design or construction of any improvements on the Project or the presence of any Hazardous Substances on the Project. In each instance, the Bondholder Representative will give the Borrower reasonable prior notice before entering the Project and make all reasonable efforts to avoid interfering with the Borrower's Construction of the Project, use or operation of the Project, or any tenant's rights under leases of the Project when exercising any of the rights granted in this Section.

(b) Subject to the terms and provisions of **Section 11.2** hereof, if the Bondholder Representative in its reasonable judgment determines that any work or materials fail to conform to the approved Plans and Specifications or sound building practices, or that they otherwise depart from any of the requirements of this Agreement, the Bondholder Representative may require the work to be stopped and withhold its consent to disbursements until the matter is corrected. If this occurs, the Borrower must promptly correct the work to the Bondholder Representative's reasonable satisfaction and halt all other work pending completion of such corrective work. No such action by the Bondholder Representative will affect the Borrower's obligation to complete the Project on or before the Bondholder Representative's Required Completion Date.

Section 5.15. *Protection Against Lien Claims.* The Borrower must pay or otherwise discharge promptly all claims and liens for labor done and materials and services furnished in connection with the Construction of the Project. Notwithstanding the foregoing sentence and subject to the terms and requirements of **Section 5.9** and **Section 12.31** hereof, the Borrower has the right to contest in good faith any claim or lien, provided that it does so diligently and without prejudice to the Bondholder Representative or delay in completing the Project. Promptly upon the Bondholder Representative's request, the Borrower must provide a bond, cash deposit, or other security in accordance with **Section 5.9** hereof.

Section 5.16. *Cooperation.* The Borrower will reasonably cooperate at all times with the Issuer, the Trustee, and the Bondholder Representative in bringing about the timely completion of the Project, and the Borrower must resolve all disputes arising during the Construction of the Project in a manner allowing work to proceed expeditiously. Further, from time to time the Issuer may direct the Borrower to file such reasonable additional reports for compliance with State or federal laws or regulations in connection with administration of the Loan and operation of the Project hereunder and the Borrower agrees to file such reports promptly. Further, the Borrower covenants and agrees to execute such additional instruments as may be reasonably requested by the Trustee or the Issuer in order to carry out the provisions of this Agreement and the other Loan Documents and to perfect or give further assurances of any of the rights granted or provided for in the Bond Documents and the Loan Documents.

Section 5.17. *Income from Project.* The Borrower must first apply all income from leases, and all other income derived from the Project, to pay costs and expenses then due and payable and associated with the ownership, maintenance, development, operation, and marketing of the Project, including all amounts then required to be paid under this Agreement and other Loan Documents, before using or applying such income for any other purpose.

Section 5.18. *Payment of Expenses.* The Borrower must pay the Bondholder Representative's reasonable costs and expenses incurred in connection with the administration of, and approval of disbursement of proceeds of, the Loan. The Borrower must also pay any and all of the Bondholder Representative's reasonable costs and expenses incurred in connection with any revisions, extensions, renewals, modifications, or "workouts" of the Loan, and in the exercise of any of the Bondholder Representative's rights or remedies under this Agreement. Such reasonable costs and expenses include, without limitation, charges for title insurance (including endorsements), filing, recording and escrow charges, reasonable fees for appraisals and appraisal reviews, architectural and engineering review and services, construction services and cost engineering and environmental review and services, zoning and entitlement review and services, mortgage taxes, document review and preparation, reasonable legal fees and expenses of the Bondholder Representative's counsel, survey charges, insurance premiums, and any other reasonable fees and costs for services, regardless of whether such services are furnished by the Bondholder Representative's employees, or agents or independent contractors. The Borrower acknowledges that amounts payable under this **Section 5.18** are not included in any loan or commitment fees for the Loan. Without limiting the generality of the foregoing, as a condition of the approval of a Draw Request or Requisition, the Borrower shall pay to the Bondholder Representative (or such other party which engages the consultant, as applicable) a construction inspection/administrative fee ("*Construction Inspection Fee*") of \$1,000.00 per inspection,

provided that the fee for the initial inspection and review of the Plans and Specifications shall be \$5,550.00. All such sums reasonably and actually incurred by the Bondholder Representative and not reimbursed by the Borrower promptly upon Borrower's receipt of written demand together with a reasonable accounting of all amounts for payment, will be considered an additional loan to the Borrower, secured by the Mortgage and the other collateral held by the Trustee in connection with the Loan, and bearing interest at the Default Rate; provided, however, that interest on any such advances will be included in gross income for federal income tax purposes. In addition, the Borrower must pay to the Issuer all fees and expenses of Issuer described in the Indenture including but not limited to the Issuer Administration Fee.

Section 5.19. *Performance of Acts.* Upon the Bondholder Representative's request, the Borrower must perform all acts necessary or advisable to perfect any lien or security interest provided for in the Loan Documents or to carry out the intent of the Loan Documents.

Section 5.20. *Management Agreement.* Any management company for the Project, and the management agreement with such management company shall be subject to the prior written approval of the Bondholder Representative, which approval shall not be unreasonably delayed, conditioned or withheld. The Property Manager is hereby approved as the initial management agent. The management agreement shall not be materially amended, modified, or supplemented, or terminated, or canceled without the prior written approval of the Bondholder Representative, which approval shall not be unreasonably delayed, conditioned or withheld, and may, in each instance, be conditioned upon delivery of a collateral assignment and subordination of the Management Contract. The Borrower shall obtain the Bondholder Representative's approval of the Borrower's management plan for the Project, which plan shall provide for training of the onsite staff in full compliance with federal, State and local affordable housing requirements applicable to the Project.

Section 5.21. *Continued Perfection.* The Borrower shall take such actions as reasonably requested by the Bondholder Representative (including the filing of UCC financing statements) as may be necessary to maintain the liens of the Trustee pursuant to the Mortgage as continuously perfected first priority liens on the property therein described.

Section 5.22. *Appraisals.* If reasonably required by the Bondholder Representative, or if required by law or regulations, the Bondholder Representative shall have the right to order Appraisals of the Project from time to time (but in no event more often than annually) from an appraiser selected by the Bondholder Representative, which Appraisals shall comply with all federal and State standards for Appraisals and otherwise shall be satisfactory to the Bondholder Representative in all material respects. The Borrower agrees to pay the reasonable cost and expense for all Appraisals and reviews thereof ordered by the Bondholder Representative pursuant to this Section. It shall not be an Event of Default under this Agreement if the Appraisal Value of the Project goes down.

Section 5.23. *Reserve Accounts.* The Borrower shall establish and fund the Reserve Accounts in accordance with **Schedule F** attached hereto.

Section 5.24. *USA Patriot Act.* The Bondholder Representative hereby notifies the Borrower that pursuant to the requirements of the USA Patriot Act (Title III of Pub. L. 107 56

(signed into law October 26, 2001)) (the “*Patriot Act*”), it is required to obtain, verify and record information that identifies the Borrower, which information includes the name and address of the Borrower and other information that will allow Bondholder Representative to identify the Borrower in accordance with the Patriot Act.

Section 5.25. *Stored Materials.*

(a) (b) The Bondholder Representative shall have the right to approve or disapprove in its reasonable discretion disbursements for any materials to be used for the Construction of the Project and not to be immediately incorporated into and made a part of the Improvements (“*Stored Materials*”). The Bondholder Representative will not approve disbursements for Stored Materials until the Borrower complies with the conditions set forth below.

(c) As a condition precedent to the disbursement of Capital Contributions from the Capital Contribution Account or from the Loan from the Project Fund for Stored Materials, the Borrower shall supply the Bondholder Representative, as reasonably requested by the Bondholder Representative (x) evidence reasonably satisfactory to the Bondholder Representative that the Stored Materials are included in the coverage of the insurance policies required by this Agreement; (y) evidence reasonably satisfactory to the Bondholder Representative from the Borrower or the Contractor that, upon payment for such Stored Materials, ownership thereof will vest in the Borrower free of any liens or claims of third parties; (z) (A) evidence reasonably satisfactory to the Bondholder Representative that the Stored Materials are satisfactorily stored at the Project to protect against theft or damage, or (B) if the Stored Materials are not stored at the Project, (1) evidence satisfactory to the Bondholder Representative that the Stored Materials are stored in a bonded warehouse or storage yard approved by the Bondholder Representative, and the warehouse or yard has been notified that the Bondholder Representative has a security interest in the subject Stored Materials, and (2) the Bondholder Representative shall have received from the Borrower or the Contractor the original warehouse receipt. With the Bondholder Representative’s prior written approval, Stored Materials may be stored in the yard or warehouse of the seller or fabricator, subject to satisfaction of conditions (z)(A) and (z)(B) in this subsection (b), and provided further that the Bondholder Representative receives satisfactory evidence that the Stored Materials are protected against theft or damage, have been suitably identified as belonging to the Borrower for use in the Project, and that such seller or fabricator has been notified of the security interest of the Bondholder Representative therein.

Section 5.26. *Environmental Reports.* The Borrower agrees to provide the Bondholder Representative, in a timely manner, with copies of all environmental reports on the Project generated during the term of the Loan.

Section 5.27. *Equity Funding.* Prior to the Bond Closing, Investor Member shall disclose to the Bondholder Representative the upper tier funding source of the Capital Contributions, which source the Bondholder Representative shall approve as a condition to its obligations hereunder. If, after the Bond Closing, but prior to the Applicable Date (as defined below), the Investor Member transfers any of the Investor Member’s interest in the Borrower other than to the Bondholder

Representative or an Affiliate thereof, the Investor Member shall provide Bondholder Representative with the identity of all partners or members of the entity (the “Fund”) to which the Investor Member’s interests were transferred. All information received in connection with the foregoing shall be kept confidential by the Bondholder Representative. If prior to the earlier to occur of (i) the Conversion Date or (ii) the payment in full of the Capital Contribution (subject to any tax credit adjusters) in accordance with the Operating Agreement (such date being the “Applicable Date”), any partner or member in the Fund holding 10% or more of the interests in the Fund is substituted for any one or more other Persons, at least fifteen (15) days prior to the date of that substitution, the Investor Member shall promptly notify Lender in writing of the substitution. Without limiting the requirements of **Section 5.2** hereto prior to the Applicable Date, Investor Member (or a subsidiary or Affiliate of the Investor Member) shall in any event remain the general partner (or manager, if applicable) of the Fund (or of the Investor Member if other than the Fund). In any event, prior to the Conversion Date, the partners or members owning in the aggregate not less than 75% of the ownership interests in the Fund will get investment grade (defined as “BBB ” or better rated by Standard & Poor’s Ratings Services, a Standard & Poor’s Financial Services LLC business or an equivalent rating by another Rating Agency) financial institutions or corporations, or wholly owned subsidiaries of such entities, or otherwise approved by the Bondholder Representative in writing.

Section 5.28. *Developer Fee/Contractor Profit.* The Developer Fee shall be paid pursuant to the terms of **Section 7(c)** of **Schedule D** attached to this Agreement. Contractor profit and overhead may be paid, as budgeted, on a percentage of completion basis.

Section 5.29. *Forward Bond Purchase Agreement.* The Borrower will timely and fully comply with all of its obligations under the Forward Bond Purchase Agreement.

Section 5.30. *Replacement Key Principal.* Upon the expiration of the Operating Deficit Guaranty Period (as defined in the Operating Agreement), Austin Housing Finance Corporation (or an affiliate thereof acceptable to Permanent Lender in its sole discretion) hereby agrees to be bound as Key Principal under this Agreement and the other Permanent Loan Documents, and DMA Development Company, LLC, in its role as Key Principal hereunder and thereunder, shall be released from this Agreement and the other Permanent Loan Documents, and its obligations hereunder and thereunder shall terminate; provided, however, the foregoing shall not release DMA Development Company, LLC from any of its obligations as Key Principal that accrued under this Agreement and/or the other Permanent Loan Documents prior to the expiration of the Operating Deficit Guaranty Period, nor from any obligations arising from its fraud or intentional misconduct.

ARTICLE 6

DAMAGE, DESTRUCTION, AND CONDEMNATION PRIOR TO CONVERSION DATE

Section 6.1. *Damage and Destruction.* Prior to the Conversion Date, if the Bonds are Outstanding when the Project is damaged or destroyed by fire or other casualty, the Borrower shall restore the Project if the conditions contained in **Section 6.4** hereof are satisfied; otherwise, the

Borrower shall use any proceeds received with respect of such casualty to prepay the Loan in whole or in part.

Section 6.2. *Condemnation.* Notwithstanding anything in the Mortgage to the contrary, prior to the Conversion Date, if the Bonds are Outstanding when the Project or any part thereof is taken by Condemnation, the Borrower shall use any proceeds received with respect of such Condemnation to prepay the Loan in whole or in part or take such other action, as is required or permitted by the Mortgage and the other Loan Documents.

Section 6.3. *Parties To Give Notice.* Prior to the Conversion Date, in the case of material damage to or destruction of all or a substantial part of the Project, the Borrower shall give prompt notice thereof to the Issuer, the Trustee, the Investor Member, and the Bondholder Representative in the manner prescribed by **Section 12.2** hereof. In the case of a taking or proposed taking of all or any part of the Project by Condemnation, the party hereto upon which notice of such taking or proposed taking is served shall give prompt notice thereof to the Issuer, the Trustee, and the Bondholder Representative in the manner prescribed by **Section 12.2** hereof. Any such notice shall describe generally the nature and extent of such damage, destruction, taking, or proposed taking.

Section 6.4. *Conditions to Restoration.* Prior to the Conversion Date, notwithstanding anything in the Mortgage to the contrary, the following shall be conditions precedent to the obligation of the Borrower to restore the Project following the occurrence of a casualty:

- (a) No Event of Default shall have occurred and be continuing that would not be cured by restoration in accordance with the terms and requirements of this Agreement;
- (b) The Bondholder Representative shall have received and approved each of the following (which approval shall not be unreasonably withheld, conditioned or delayed):
 - (i) acceptable Plans and Specifications for the reconstruction of the Project;
 - (ii) copies of all contracts and subcontracts for the reconstruction of the Project;
 - (iii) if required by Bondholder Representative, either payment and performance bonds for the reconstruction of the Project provided by a surety acceptable to the Bondholder Representative (with an AM Best rating of “A /VIII”) or a fifteen percent (15%) letter of credit in lieu of bonding issued by a financial institution and on a form acceptable to the Bondholder Representative;
 - (iv) assignments by the Borrower to the Trustee of each of the contracts and subcontracts described in clause (ii), in form and content satisfactory to the Bondholder Representative, and consents to such assignment, in form and content satisfactory to the Bondholder Representative, duly executed by the contractors and subcontractors; and

(v) a line item budget setting forth, in form and level of detail satisfactory to the Bondholder Representative, all costs of reconstruction of the Facility in accordance with the Plans and Specifications described in clause (i), above.

(c) All proceeds of casualty insurance policies awards less the costs of collection, as the case may be, shall have been received in the Mortgage Recovery Fund established under the Indenture and the Borrower hereby grants a security interest in said account to the Issuer, and the Issuer hereby assigns such security interest to Trustee on behalf of the Holders; and

(d) it is determined by an appraiser selected by the Bondholder Representative at the expense of the Borrower (unless waived by the Bondholder Representative) that the Project will, following reconstruction, have a fair market value which is at least equal to its value immediately prior to the casualty.

Section 6.5. *Conditions to Disbursement of Proceeds.* Prior to the Conversion Date, if all of the foregoing conditions are satisfied, proceeds held by the Trustee shall be disbursed subject to the consent of the Bondholder Representative in the same manner and subject to the same conditions, including without limitation consent of the Bondholder Representative to each disbursement (subject to adjustment to reflect the different nature of construction) as applied with respect to the initial disbursement of the proceeds of the Loan (as provided in **Schedule D** attached hereto). When obtaining disbursements from the Mortgage Recovery Fund established under the Indenture, the Borrower agrees to the conditions contained in, and agrees to comply with the procedures set forth in **Section 5.7** of the Indenture or otherwise reasonably required by Trustee. If the foregoing conditions are not satisfied, or if, after satisfaction of such conditions any proceeds of casualty insurance or condemnation awards remain, all such proceeds shall be remitted to the Trustee promptly on account of the outstanding balance on the Note for application to the redemption in whole or in part of the Bonds.

ARTICLE 7

COVENANTS OF THE BORROWER

Section 7.1. *Covenant for the Benefit of the Bondholder Representative.* The Borrower recognizes the authority of the Issuer to assign its interest in and right to receive moneys receivable under this Agreement (other than the Unassigned Issuer's Rights) to the Trustee as security for the payment of the principal of and interest and redemption premium, if any, on the Bonds, and the payment of all Additional Charges. The Borrower hereby agrees to be bound by, and grants a security interest to the Trustee in any right and interest the Borrower may have in sums held in the Funds described in the Indenture, pursuant to the terms and conditions thereof, to secure payment of the Bonds and payments made under the Loan Documents. Each of the terms and provisions of this Agreement is a covenant for the use and benefit of the Bondholder Representative, so long as the Bonds shall remain outstanding; but upon discharge of the Bonds in accordance with **Article 7** of the Indenture and payment of all reasonable fees and charges incurred by the Issuer and the Trustee and payable by the Borrower pursuant to the terms of the Indenture, all references in this Agreement to the Bondholder Representative, the Bonds, shall be ineffective, and the Bondholder Representative shall thereafter have no rights hereunder, save and except those that shall have

theretofore vested or that arise from provisions hereunder or under the Tax Regulatory Agreements, once executed, which survive termination of this Agreement.

Section 7.2. *Inspection and Access.*

(a) The Borrower agrees that, upon prior reasonable notice (of at least two (2) Business Days) by the Issuer, Bondholder Representative and/or the Trustee to the Borrower and the Property Manager (provided no such prior notice shall be required if an Event of Default is then continuing) but specifically subject to the rights of the tenants under the leases, the Issuer, the Bondholder Representative, the Trustee, and their duly authorized agents shall have the right to examine and inspect during normal business hours on a Business Day, and for that purpose to enter upon, the Project, and shall also have such right of access thereto at reasonable times and under reasonable conditions but specifically subject to the rights of tenants in possession as may be reasonably necessary to cause the Project to be properly maintained in accordance with **Article 5** of this Agreement and in accordance with the applicable provisions of the other Loan Documents.

(b) The Borrower hereby covenants to execute, acknowledge, and deliver all such further documents, and do all such other acts and things as may be necessary in order to grant to the Issuer, Bondholder Representative, and the Trustee the rights of access and entry described herein and agrees that such rights of access and entry shall not be terminated, curtailed, or otherwise limited by any assignment, lease, or other Transfer of the Project by the Borrower to any other Person; provided, that such rights will be specifically subject to the rights of tenants in possession under their respective leases.

Section 7.3. *Indemnity.*

(a) **THE BORROWER WILL PAY, DEFEND, AND WILL PROTECT, INDEMNIFY, AND SAVE THE ISSUER, THE SPONSOR, THE TRUSTEE, THE BONDHOLDER REPRESENTATIVE, AND EACH HOLDER OF THE BONDS (INCLUDING WITHOUT LIMITATION THE BONDHOLDER REPRESENTATIVE), AND THE MEMBERS OF THE GOVERNING BODY AND STAFF, DIRECTORS, OFFICIALS, OFFICERS, ATTORNEYS, AGENTS, AND EMPLOYEES OF EACH OF THEM AND ANY PERSON WHO CONTROLS ANY OF THEM WITHIN THE MEANING OF THE SECURITIES ACT OF 1933, AS AMENDED (FOR PURPOSES OF THIS SECTION 7.3 ONLY, COLLECTIVELY, THE “INDEMNIFIED PARTIES”), FROM AND AGAINST ALL LIABILITIES, LOSSES, DAMAGES, REASONABLE COSTS AND EXPENSES (INCLUDING WITHOUT LIMITATION REASONABLE ATTORNEYS’ FEES, LITIGATION AND COURT COSTS, AMOUNTS PAID IN SETTLEMENT AND AMOUNTS PAID TO DISCHARGE JUDGMENTS) ACTUALLY INCURRED, CAUSES OF ACTION (WHETHER IN CONTRACT, TORT, OR OTHERWISE), SUITS, CLAIMS, DEMANDS, AND JUDGMENTS OF EVERY KIND, CHARACTER, AND NATURE WHATSOEVER ASSERTED AGAINST ANY INDEMNIFIED PARTY BY ANY THIRD PARTY (COLLECTIVELY REFERRED TO HEREIN AS THE “LIABILITIES”) DIRECTLY OR INDIRECTLY ARISING FROM OR RELATING TO THE BONDS, THE LOAN OF THE PROCEEDS OF THE BONDS, THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS, THE PROJECT, THE MORTGAGE, THE INDENTURE, OR ANY DOCUMENT RELATED TO THE ISSUANCE AND SALE OF THE BONDS (BUT EXCLUDING FROM THE OBLIGATIONS UNDERTAKEN PURSUANT TO THIS SECTION 7.3 ANY OBLIGATIONS TO PAY PRINCIPAL OR**

INTEREST ON THE LOAN OR THE BONDS), INCLUDING, BUT NOT LIMITED TO, THE FOLLOWING:

(b) THE INDENTURE, THIS AGREEMENT, AND EACH REGULATORY AND RESTRICTIVE USE AGREEMENT, ONCE EXECUTED, OR THE EXECUTION OR AMENDMENT THEREOF OR THE TRANSACTIONS CONTEMPLATED THEREBY, INCLUDING THE ISSUANCE, SALE, RESALE, OR REMARKETING OF THE BONDS OR ANY OF THEM;

(c) ANY ACT OR OMISSION OF THE BORROWER OR ANY OF ITS AGENTS, CONTRACTORS, SERVANTS, EMPLOYEES, OR LICENSEES IN CONNECTION WITH THE LOAN OR THE PROJECT, THE OPERATION OF THE PROJECT, OR THE CONDITION, ENVIRONMENTAL OR OTHERWISE, OCCUPANCY, USE, POSSESSION, CONDUCT, OR MANAGEMENT OF WORK DONE IN, ON, OR ABOUT THE PROJECT, OR FROM THE PLANNING, DESIGN, ACQUISITION, INSTALLATION, OR CONSTRUCTION OF, THE PROJECT, OR ANY PART THEREOF;

(d) ANY INJURY TO OR DEATH OF ANY PERSON OR DAMAGE TO PROPERTY IN OR UPON THE PROJECT OR GROWING OUT OF OR CONNECTED WITH THE USE, NON-USE, CONDITION OR OCCUPANCY OF THE PROJECT OR ANY PART THEREOF;

(e) ANY LIEN OR CHARGE UPON PAYMENTS BY THE BORROWER TO THE ISSUER AND THE TRUSTEE HEREUNDER, OR ANY TAXES (INCLUDING, WITHOUT LIMITATION, ALL AD VALOREM TAXES AND SALES TAXES), ASSESSMENTS, IMPOSITIONS, AND OTHER CHARGES IMPOSED ON THE ISSUER OR THE TRUSTEE IN RESPECT OF ANY PORTION OF THE PROJECT;

(f) ACTUAL VIOLATION BY THE BORROWER OF ANY AGREEMENT OR CONDITION OF THIS AGREEMENT, THE REGULATORY AND RESTRICTIVE USE AGREEMENTS, ONCE EXECUTED, OR THE MORTGAGE;

(g) ACTUAL VIOLATION BY THE BORROWER OF ANY CONTRACT, AGREEMENT, OR RESTRICTION RELATING TO THE PROJECT;

(h) ACTUAL VIOLATION BY THE BORROWER OF ANY LAW, ORDINANCE, OR REGULATION AFFECTING THE PROJECT, OR ANY PART THEREOF OR THE OWNERSHIP, OCCUPANCY, OR USE THEREOF, INCLUDING WITHOUT LIMITATION ANY VIOLATION OF ANY APPLICABLE ENVIRONMENTAL LAW, RULE, OR REGULATION WITH RESPECT TO, OR THE RELEASE OF ANY HAZARDOUS SUBSTANCE FROM, THE PROJECT OR ANY PART THEREOF;

(i) THE DEFEASANCE OR REDEMPTION, IN WHOLE OR IN PART, OF THE BONDS;

(j) ANY STATEMENT, INFORMATION, OR CERTIFICATE FURNISHED BY THE BORROWER TO THE ISSUER WHICH IS MISLEADING, UNTRUE, OR INCORRECT IN ANY MATERIAL RESPECT, INCLUDING WITHOUT LIMITATION ANY UNTRUE STATEMENT OR MISLEADING STATEMENT OF A MATERIAL FACT BY THE BORROWER CONTAINED IN ANY OFFERING STATEMENT OR DOCUMENT FOR THE BONDS OR ANY OF THE DOCUMENTS

RELATING TO THE BONDS TO WHICH THE BORROWER IS A PARTY, OR ANY MATERIAL OMISSION FROM ANY OFFERING STATEMENT OR DOCUMENT FOR THE BONDS OF ANY MATERIAL FACT NECESSARY TO BE STATED THEREIN IN ORDER TO MAKE THE STATEMENTS MADE THEREIN BY THE BORROWER, IN THE LIGHT OF THE CIRCUMSTANCES UNDER WHICH THEY WERE MADE, NOT MISLEADING;

(k) ANY AND ALL LIABILITIES DIRECTLY OR INDIRECTLY ARISING OUT OF OR RESULTING FROM CONSTRUCTION OF ANY IMPROVEMENTS ON THE PROJECT, INCLUDING ANY DEFECTIVE WORKMANSHIP OR MATERIALS;

(l) ANY FAILURE TO SATISFY ANY REQUIREMENTS OF ANY APPLICABLE LAWS, REGULATIONS, ORDINANCES, GOVERNMENTAL POLICIES OR STANDARDS, REPORTS, SUBDIVISION MAPS, OR DEVELOPMENT AGREEMENTS THAT ACTUALLY APPLY AND PERTAIN TO THE PROJECT;

(m) BREACH OF ANY REPRESENTATION OR WARRANTY MADE OR GIVEN BY THE BORROWER TO ANY OF THE INDEMNIFIED PARTIES OR TO ANY PROSPECTIVE OR ACTUAL BUYER OF ALL OR ANY PORTION OF THE PROJECT;

(n) ANY CLAIM OR CAUSE OF ACTION OF ANY KIND BY ANY PARTY THAT ANY INDEMNIFIED PARTY IS LIABLE FOR ANY ACT OR OMISSION OF THE BORROWER OR ANY OTHER PERSON OR ENTITY IN CONNECTION WITH THE OWNERSHIP, SALE, OPERATION, OR DEVELOPMENT OF THE PROJECT; AND

(o) ANY DECLARATION OF TAXABILITY OF INTEREST ON THE BONDS, OR ALLEGATIONS OR REGULATORY INQUIRY THAT INTEREST ON THE BONDS IS TAXABLE, FOR FEDERAL TAX PURPOSES, EXCEPT BY REASON OF BEING HELD BY A "SUBSTANTIAL USER" OF THE PROJECT OR A "RELATED PERSON" WITHIN THE MEANING OF SECTION 147(A) OF THE CODE.

(p) THE BORROWER ALSO AGREES TO INDEMNIFY AND HOLD HARMLESS EACH OF THE INDEMNIFIED PARTIES FROM AND AGAINST THE LIABILITIES DIRECTLY OR INDIRECTLY ARISING FROM OR RELATING TO ANY FRAUD OR MISREPRESENTATIONS OR OMISSIONS BY THE BORROWER OCCURRING DURING ANY PROCEEDINGS OF THE ISSUER RELATING TO THE ISSUANCE OF THE BONDS OR PERTAINING TO THE FINANCIAL CONDITION OF THE BORROWER WHICH, IF KNOWN TO THE BONDHOLDER REPRESENTATIVE PURCHASING THE BONDS, MIGHT BE CONSIDERED A FACTOR IN ITS DECISION TO PURCHASE THE BONDS.

(q) NOTHING IN SECTION 7.3(A) HEREOF SHALL BE DEEMED TO REQUIRE THE BORROWER TO PROVIDE INDEMNIFICATION TO AN INDEMNIFIED PARTY WITH RESPECT TO LIABILITIES ARISING FROM THE FRAUD, WILLFUL MISCONDUCT, OR BREACH OF CONTRACTUAL DUTY (EXCEPT IN THE CASE OF ISSUER OR THE SPONSOR) OF ANY INDEMNIFIED PARTY. THE ISSUER AND THE SPONSOR SHALL BE INDEMNIFIED BY THE BORROWER WITH RESPECT TO LIABILITIES ARISING FROM EITHER OF THEIR OWN NEGLIGENCE, BUT NOT IF SOLELY AND EXCLUSIVELY ARISING FROM EITHER OF THEIR OWN BAD FAITH, WILLFUL MISCONDUCT OR FRAUD.

THE BONDHOLDER REPRESENTATIVE SHALL BE INDEMNIFIED BY THE BORROWER WITH RESPECT TO LIABILITIES ARISING FROM ITS OWN NEGLIGENCE.

(r) PROMPTLY AFTER RECEIPT BY AN INDEMNIFIED PARTY OF ACTUAL NOTICE OF THE COMMENCEMENT OF ANY ACTION OR PROCEEDING WITH RESPECT TO WHICH INDEMNIFICATION IS BEING SOUGHT HEREUNDER, SUCH INDEMNIFIED PARTY WILL AS SOON AS REASONABLY PRACTICAL NOTIFY THE BORROWER OF THE COMMENCEMENT OF SUCH PROCEEDING. RECEIPT OF SUCH NOTIFICATION SHALL BE A NECESSARY CONDITION PRECEDENT TO THE BORROWER'S INDEMNIFICATION OBLIGATION HEREUNDER, BUT FAILURE OF THE BORROWER TO RECEIVE SUCH NOTIFICATION OR DEFECTS IN SUCH NOTIFICATION WILL NOT RELIEVE IT FROM ANY LIABILITY TO AN INDEMNIFIED PARTY WHICH THE BORROWER MAY HAVE OTHERWISE. AS TO PARTIES OTHER THAN THE ISSUER, IF THE BORROWER SO ELECTS, IT MAY ASSUME THE DEFENSE OF SUCH ACTION OR PROCEEDING, INCLUDING THE EMPLOYMENT OF COUNSEL REASONABLY SATISFACTORY TO THE INDEMNIFIED PARTY, AND WILL PAY THE FEES AND DISBURSEMENTS OF SUCH COUNSEL. HOWEVER, NOTWITHSTANDING THE FOREGOING, (I) IF COUNSEL FOR SUCH INDEMNIFIED PARTY AND COUNSEL FOR THE BORROWER AGREE THAT (X) HAVING COMMON COUNSEL TO REPRESENT BOTH THE BORROWER AND THE INDEMNIFIED PARTY WOULD PRESENT A CONFLICT OF INTEREST OR (Y) DEFENSES ARE AVAILABLE TO SUCH INDEMNIFIED PARTY WHICH ARE NOT AVAILABLE TO THE BORROWER OR VICE VERSA (II) IF THE BORROWER FAILS TO ASSUME THE DEFENSE OF THE ACTION OR PROCEEDING IN A TIMELY MANNER, THEN SUCH INDEMNIFIED PARTY MAY EMPLOY SEPARATE COUNSEL TO REPRESENT OR DEFEND IT IN ANY SUCH ACTION OR PROCEEDING AND THE BORROWER WILL PAY THE REASONABLE FEES AND DISBURSEMENTS OF SUCH COUNSEL. IN ANY ACTION OR PROCEEDING THE DEFENSE OF WHICH THE BORROWER ASSUMES, THE INDEMNIFIED PARTY WILL HAVE THE RIGHT TO PARTICIPATE IN SUCH LITIGATION AND TO RETAIN ITS OWN COUNSEL AT SUCH INDEMNIFIED PARTY'S OWN EXPENSE. NOTWITHSTANDING THE FOREGOING, IF THE INDEMNIFIED PARTY IS THE ISSUER, THE ISSUER SHALL EMPLOY ITS OWN COUNSEL AND THE BORROWER SHALL BE LIABLE FOR THE REASONABLE COST OF SUCH COUNSEL. NO INDEMNIFIED PARTY SHALL SETTLE ANY LIABILITY FOR WHICH INDEMNIFICATION IS BEING SOUGHT HEREUNDER, WITHOUT THE PRIOR WRITTEN CONSENT OF THE BORROWER, WHICH CONSENT SHALL BE AT THE SOLE DISCRETION OF THE BORROWER.

(s) THE INDEMNIFIED PARTIES, OTHER THAN THE ISSUER AND BONDHOLDER REPRESENTATIVE, SHALL BE CONSIDERED TO BE INTENDED THIRD PARTY BENEFICIARIES OF THIS AGREEMENT FOR PURPOSES OF SECTIONS 7.3(A)-(D) HEREOF.

NOTWITHSTANDING ANY TRANSFER OF THE PROJECT TO ANOTHER OWNER IN ACCORDANCE WITH THE PROVISIONS OF THIS AGREEMENT PRIOR TO THE FULL AND FINAL PAYMENT OF THE NOTE, THE BORROWER SHALL REMAIN OBLIGATED TO INDEMNIFY EACH INDEMNIFIED PARTY PURSUANT TO THIS SECTION BUT ONLY FOR SUCH LIABILITIES ARISING FROM AND WITH RESPECT TO ACTION, INACTION, OR OTHER CIRCUMSTANCES OR EVENTS OCCURRING PRIOR TO SUCH TRANSFER, BUT ONLY IF THE BONDHOLDER REPRESENTATIVE AND THE TRUSTEE HAVE CONSENTED TO SUCH TRANSFER. IN THAT EVENT, SUCH SUBSEQUENT

OWNER SHALL INDEMNIFY ANY INDEMNIFIED PARTIES HEREUNDER FOLLOWING SUCH TRANSFER UNDER ALL OF THE TERMS AND CONDITIONS APPLICABLE TO BORROWER.

ANYTHING TO THE CONTRARY IN ANY OTHER LOAN DOCUMENT NOTWITHSTANDING, THE PROVISIONS OF THIS SECTION 7.3 HEREOF ARE NOT SECURED BY THE MORTGAGE, AND SURVIVE THE TERMINATION OF THIS AGREEMENT, REPAYMENT OF THE LOAN AND FORECLOSURE OF THE MORTGAGE OR SIMILAR PROCEEDINGS, FINAL PAYMENT OR DEFEASANCE OF THE BONDS, AND (IN THE CASE OF THE TRUSTEE) ANY RESIGNATION OR REMOVAL, INsofar AS SUCH INDEMNIFICATION RELATES TO ACTIONS OR CLAIMS ARISING FROM THE TRUSTEE'S SERVICES PRIOR TO SUCH RESIGNATION OR REMOVAL.

THE OBLIGATIONS OF THE BORROWER UNDER THIS SECTION 7.3 ARE INDEPENDENT OF ANY OTHER CONTRACTUAL OBLIGATION OF THE BORROWER TO PROVIDE INDEMNITY TO THE INDEMNIFIED PARTIES NAMED HEREIN, AND THE OBLIGATION OF THE BORROWER TO PROVIDE INDEMNITY HEREUNDER MAY NOT BE INTERPRETED, CONSTRUED, OR LIMITED IN LIGHT OF ANY OTHER SEPARATE INDEMNIFICATION OBLIGATION OF THE BORROWER. ANY INDEMNIFIED PARTY IS ENTITLED SIMULTANEOUSLY TO SEEK INDEMNITY UNDER THIS SECTION 7.3 AND ANY OTHER PROVISION UNDER WHICH IT IS ENTITLED TO INDEMNITY FROM THE BORROWER, PROVIDED, HOWEVER, SUCH INDEMNIFIED PARTY SHALL BE ENTITLED TO ONLY ONE RECOVERY OF INDEMNITY FOR THE SAME LIABILITIES.

THE BORROWER'S DUTY AND OBLIGATION TO DEFEND, INDEMNIFY, AND HOLD HARMLESS THE INDEMNIFIED PARTIES SHALL SURVIVE THE TERM OF THE BONDS, THE RELEASE, RECONVEYANCE, OR PARTIAL RECONVEYANCE OF THE MORTGAGE, THE TERMINATION OF THIS AGREEMENT, AND THE RESIGNATION OR REMOVAL OF THE TRUSTEE.

NOTWITHSTANDING ANYTHING TO THE CONTRARY SET FORTH IN THIS AGREEMENT AND/OR ANY OF THE OTHER LOAN DOCUMENTS, IN THE EVENT ANY LIABILITIES FOR WHICH THE BORROWER AND/OR THE GUARANTOR HAVE PROVIDED INDEMNIFICATION UNDER ANY OF THE LOAN DOCUMENTS ARISES AS A RESULT OF A NEGLIGENT ACT OR OMISSION OF ANY INDEMNIFIED PARTY (EXCEPT THE ISSUER OR THE SPONSOR), THE TOTAL AMOUNT OF SUCH LIABILITIES SHALL BE LIMITED TO THE PROCEEDS OF INSURANCE POLICIES CARRIED OR REQUIRED TO BE CARRIED BY THE BORROWER UNDER THE LOAN DOCUMENTS.

Section 7.4. *Keeping the Issuer Informed.* The Borrower must keep the Issuer informed, following its receipt of written request from Issuer, concerning the Borrower's financial condition and business operations, the condition and all uses of the Project, including all changes in condition or use, and any and all other circumstances that are a Material Adverse Change.

Section 7.5. *Status of the Borrower.*

(a) Throughout the term of this Agreement, the Borrower will maintain its existence as a limited partnership organized under the laws of the State in good standing and qualified to transact business in the State and will not wind up or otherwise dispose of all or substantially all of its assets except as provided in the Mortgage and **Section 5.2** of this Agreement.

(b) Notwithstanding the provisions of the Mortgage, the Borrower shall not effect a merger, consolidation, or Transfer if the result thereof would cause the interest on the Bonds (in the hands of any Person who is not a “substantial user” of the Project or a “related person”) to become includable in gross income for federal income tax purposes.

(c) Upon a change in the jurisdiction of the Borrower’s organization, the Issuer, the Trustee, and the Bondholder Representative shall be immediately informed, and if requested, the Borrower as newly constituted shall deliver to the Issuer, the Trustee, and the Bondholder Representative an instrument in form satisfactory to each of them affirming the liability of the Borrower hereunder, subject in all events to the terms and conditions of **Section 11.11** hereof.

(d) The Borrower will maintain in effect and enforce policies and procedures designed to ensure compliance by the Borrower, its subsidiaries and their respective directors, officers, employees and agents with Anti-Corruption Laws and applicable Sanctions.

Section 7.6. *Execution of Financing Statements.* Without limiting **Section 7.5** hereof, the Borrower agrees that it will, at its sole expense, file at the request of Bondholder Representative, any financing statements or continuation statements required or requested by the Bondholder Representative to perfect and preserve the security interest of the Issuer and the Trustee in this Agreement and the payments to be made hereunder, as granted in the Indenture.

Section 7.7. *Proceedings Relating to a Determination of Taxability.* If any action or proceeding is commenced which questions the excludability of interest on the Bonds from gross income under Section 103(a) of the Code or which might result in a Determination of Taxability, the Borrower, the Issuer, the Trustee, or the Bondholder Representative may contest such action or Determination of Taxability. All reasonable costs actually incurred by the Bondholder Representative, the Issuer and/or the Trustee in such contest shall be borne by the Borrower. No such action or proceeding shall be settled by the Borrower or the Trustee without the written consent of the Issuer and the Bondholder Representative, and, if no Event of Default has then occurred and is continuing, no such action or proceeding shall be settled by the Issuer, the Trustee or the Bondholder Representative without the written consent of the Borrower.

Section 7.8. *Financial Information.* The Borrower must keep true and correct financial books and records reflecting the results of operations of the Project in accordance with a modified cash basis accounting method consistent with financial statements previously delivered to the Bondholder Representative by the Borrower (or such other accounting method approved in writing by the Bondholder Representative). The Borrower shall furnish to the Bondholder Representative all financial and other information relating to the Borrower and the Project as the Bondholder Representative shall reasonably request, including, without limitation, all of the following:

(a) As soon as available, subject to the further terms of this subsection, within thirty (30) days from the end of each calendar month (beginning with the first (1st) calendar month after leasing has commenced for all or any part of the Project), unaudited statements addressed to Bondholder Representative, signed and dated by an authorized representative of the Managing Member of the Borrower attesting to the fact that the statements are true

and correct in all material respects, have been prepared in accordance with generally accepted accounting principles, consistently applied, and show the financial condition of the Borrower at the close of such calendar month, which statements shall include, without limitation, a balance sheet and an income/operating statement, a current rent roll (which shall include a summary of the number of units leased, available, and occupied and any rental concessions), the current month's budget, year to date activity, year to date budget, a rolling 12 month budget comparison, a reconciliation of net operating income for the period then ending, a rent roll, and all other matters as Bondholder Representative may reasonably request;

(b) As soon as available, and in any event within 120 days from the end of each fiscal year of the Borrower (beginning with the fiscal year ending December 31, 2016), an audited financial statement of the Borrower, showing the financial condition of the Borrower at the close of such fiscal year and the results of operation during such fiscal year, which financial statement shall include a balance sheet, income statement, statement of contingent liabilities, and statement of cash flows (sources and uses) and shall be accompanied by an annual compliance certificate ("*Compliance Certificate*") prepared on a form reasonably acceptable to the Bondholder Representative; providing that no Event of Default is then continuing, and statements that there is no default or other non-compliance then existing with respect to any other loans or subordinate debts/grants/operating or Operating Agreements, there is no litigation, threats, or contingent liability then existing not previously disclosed to the Bondholder Representative where the amount is either greater than \$75,000 or undetermined, and there has been no Material Adverse Change (or expected Material Adverse Change) to the financial condition of that entity;

(c) As soon as available, and in any event within 120 days after the end of each fiscal year of Guarantor (beginning with the fiscal year ending December 31, 2015), a financial statement for Guarantor which shall be reviewed by accountants satisfactory to the Bondholder Representative and in a manner acceptable to the Bondholder Representative showing the financial condition of Guarantor at the close of such fiscal year and the results of operation during such fiscal year, which financial statement shall include a balance sheet, income statement, statement of contingent liabilities, and statement of cash flows (sources and uses);

(d) As soon as available, and in any event within 120 days after the end of each fiscal year of Contractor (beginning with the fiscal year ending December 31, 2015), a financial statement reviewed by accountants satisfactory to the Bondholder Representative and in a manner acceptable to the Bondholder Representative and certified by a duly authorized representative of Contractor, showing the financial condition of Contractor at the close of such fiscal year and the results of operation during such fiscal year, which financial statement shall include a balance sheet, income statement, statement of contingent liabilities, and statement of cash flows (sources and uses); and

(e) If requested by the Bondholder Representative, within thirty (30) days after filing (but in no event later than 120 days from the end of that Person's fiscal year), copies of the Borrower's, Contractor's, and Guarantor's respective federal income tax returns.

Each of the Borrower statements, schedules and reports required by this **Section 7.8** shall be certified to be complete and accurate by an individual having authority to bind the Borrower or the Property Manager where applicable, and shall be in such form and contain such detail as the Bondholder Representative may reasonably require. If the Borrower fails to provide in a timely manner the statements, schedules and reports required by this **Section 7.8**, the Bondholder Representative shall have the right to have the Borrower's books and records audited, at the Borrower's expense, by independent certified public accountants selected by the Bondholder Representative in order to obtain such statements, schedules and reports, and all related reasonable costs and expenses of the Bondholder Representative shall become immediately due and payable. If an Event of Default has occurred and is continuing, the Borrower shall deliver to the Bondholder Representative upon written demand all books and records relating to the Project or its operation, provided, however, the Borrower can keep copies thereof. The Borrower authorizes Bondholder Representative to obtain a credit report on the Borrower at any time, at the cost of Bondholder Representative (unless an Event of Default is then continuing).

Section 7.9. *Notices.* The Borrower, upon receipt of actual notice, must notify the Bondholder Representative and the Issuer promptly in writing of:

(a) Any litigation not previously disclosed in writing to the Bondholder Representative and the Issuer affecting the Borrower or the Managing Member wherein the amount in issue is in excess of \$75,000, and the amount claimed is not fully covered by insurance (except for permitted deductibles);

(b) Any written or oral communication the Borrower receives from any governmental, judicial, or legal authority giving notice of any claim or assertion that the Project fails in any respect to comply with any of the Requirements or any other applicable governmental law and that failure is not fully cured within thirty (30) days after the date the applicable notice is given;

(c) Any Material Adverse Change in the physical condition of the Project (including any damage suffered as a result of earthquakes or floods or other natural disasters);

(d) Any Material Adverse Change in the financial condition or operations of the Borrower or the Managing Member or any change in the management of the Borrower or the Managing Member, or the Guarantor (to the extent the Borrower has actual knowledge of such change);

(e) Any default by the Contractor or any subcontractor, material supplier, or surety which could cause a Material Adverse Change with respect to the Guarantor, the Borrower, or any Managing Member or the Project, or any Material Adverse Change in the financial condition or operations of any of them which could cause a Material Adverse Change with respect to the Borrower or the Project;

(f) All material notices or other documents or communications that the Borrower receives from tax or Low Income Housing Tax Credit allocation authorities or

from the Issuer or which the Borrower gives to such entities with regard to or relating in any way to the Low Income Housing Tax Credit;

(g) Any Material Adverse Change in the Borrower's ability to timely perform any of its obligations under any of the Loan Documents;

(h) To the Borrower's actual knowledge, any Material Adverse Change in the Guarantor's ability to timely perform any of its obligations under any of the Loan Documents; and

(i) Any governmental investigation against the Borrower, the Managing Member, and, to the Borrower's actual knowledge, the Guarantor.

Section 7.10. *Notice of Change.* The Borrower shall give the Bondholder Representative, the Issuer, and the Trustee prior written notice of any change in:

(a) the location of its place of business or its chief executive office if it has more than one place of business; and

(b) the Borrower's name or business structure as a limited partnership.

Unless otherwise approved by the Bondholder Representative in writing, the Borrower agrees that all Mortgaged Property that consists of personal property (other than the books and records) will be located at the Project and that all books and records will be located at the Borrower's place of business, which place of business will be immediately identified to Bondholder Representative upon request.

Section 7.11. *Negative Covenants.* Without the Bondholder Representative's prior written consent, the Borrower may not:

(a) engage in any business activities substantially different from the Borrower's present business;

(b) liquidate or dissolve the Borrower's business;

(c) lease, sell, or dispose of (other than pursuant to the Leases allowed by this Agreement or the Mortgage) all or a substantial part of the Borrower's business or the Borrower's assets (except worn, obsolete, or damaged property);

(d) enter into any consolidation, merger, pool, joint venture, syndicate, or other combination;

(e) Incur, create, assume, or permit to exist any debt, except:

(i) the Loan and all obligations under the Loan Documents;

(ii) the Taxable Tail Loan (to the extent it is then subordinate to the Loan in a manner satisfactory to Bondholder Representative);

(iii) endorsements of negotiable instruments for collection or deposit in the ordinary course of business;

(iv) obligations from time to time incurred in the ordinary course of business, other than for borrowed money;

(v) taxes, assessments, or other government charges which are not yet due or which are being contested in good faith by appropriate action promptly initiated and diligently conducted if a reserve shall have been made therefor as required by GAAP;

(vi) obligation to pay the Developer Fee pursuant to the Development Agreement, subject to the conditions herein (but only to the extent the payment of the Developer Fee is unsecured and subordinated to the Loan in a manner satisfactory to the Bondholder Representative); and

(vii) obligations described in the Operating Agreement (to the extent subordinate to the payment of the Loan).

(f) Create, incur, assume, or permit to exist any mortgage, pledge, security interest, lien, or similar encumbrance on any of the Borrower's assets, including, without limitation, any of the Project, acquire or agree to acquire assets under any conditional sale agreement or title retention contract, or the sale and leaseback any assets, except that the foregoing restrictions shall not apply to:

(i) liens for taxes, assessments, and other governmental charges not yet due;

(ii) liens of vendors, carriers, warehousemen, landlords, mechanics, laborers, and materialmen arising by law in the ordinary course of business for sums not yet due or being contested in good faith if reserve shall have been made therefor as required by GAAP;

(iii) pledges or deposits in connection with or to secure worker's compensation, unemployment insurance, pensions, or other employee benefits;

(iv) mortgages, pledges, security interests, liens, encumbrances, landlord's liens, or title retention contracts existing as of the date of this Agreement and disclosed to the Bondholder Representative in writing and approved by the Bondholder Representative before the date hereof;

(v) liens securing the Taxable Tail Loan (to the extent it is then subordinate to the Mortgage in a manner satisfactory to Bondholder Representative);

(vi) liens and/or security interests required by this Agreement and the other Loan Documents;

(vii) a pledge of the Investor Member's Interest in the Borrower to a financial institution for the purpose of making the Capital Contributions (to the extent otherwise permitted under the terms of this Agreement); and

(viii) each Regulatory and Restrictive Use Agreement and the items set forth in **Exhibit B** to the Mortgage and other Permitted Encumbrances; and

(g) permit prior to the Conversion Date, the Loan to Value Ratio to exceed eighty five percent (85%) at any time.

(h) be or become subject at any time to any law, regulation, or list of any government agency (including, without limitation, the U.S. Office of Foreign Asset Control list) that prohibits or limits the Bondholder Representative from making any advance or extension of credit to the Borrower or from otherwise conducting business with the Borrower;

(i) fail to provide documentary and other evidence of the Borrower's identity as may be requested by the Bondholder Representative at any time to enable the Bondholder Representative to verify the Borrower's identity or to comply with any applicable law or regulation, including, without limitation, Section 326 of the USA Patriot Act of 2001, 31 U.S.C. Section 5318;

(j) except for Developer Fee which may be paid under the terms of this Agreement, make any distributions or advances to its members or partners, as applicable, without the written consent of the Bondholder Representative; or

(k) permit the Borrower or any of its respective officers, managers or principal employees to be on the list of Specially Designated Nationals and Blocked Persons issued by the office of Foreign Assets Control of the U.S. Department of Treasury.

(l) permit the Borrower to fail to satisfy the requirement of Section 42(h)(4)(B) of the Code.

(m) request any borrowing of the Loan and the Borrower shall not use and shall ensure that its or their respective directors, officers, employees and agents shall not use the proceeds of any borrowing of the Loan:

(i) 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 any Anti-Corruption Laws;

(ii) for the purpose of funding, financing or facilitating any activities, business or transaction of or with any Sanctioned Person, or in any Sanctioned Country, to the extent such activities, businesses or transactions would be prohibited by Sanctions if conducted by a corporation incorporated in the United States; or

(iii) in any manner that would result in the violation of any Sanctions applicable to any party hereto.

Section 7.12. *Tax Status of the Bonds.*

(a) It is the intention of the parties hereto that interest on the Bonds shall be and remain excludable from gross income for federal income tax purposes, and, to that end, the covenants and agreements of the Issuer and the Borrower in this Section are for the benefit of the Trustee on behalf of and for each and every holder of the Bonds, the Investor Member, and the Special Member.

(b) The Borrower covenants and agrees that it will not knowingly use or permit the use of any of the funds provided by the Issuer hereunder or knowingly use or invest or permit the use or investment of any other funds of the Borrower directly or indirectly, or direct the Trustee to invest any funds held by it hereunder or under the Indenture or otherwise, in such manner as would cause any Bond to be an “arbitrage bond” within the meaning of section 148 of the Code, a “hedge bond” within the meaning of section 149 of the Code, or “federally guaranteed” within the meaning of section 149(b) of the Code and applicable regulations promulgated from time to time thereunder. The Borrower covenants and agrees that neither it, nor any “related person” (as defined in section 147(a)(2) of the Code) will enter into any arrangement, formal or informal, for the purchase of Bonds. The Borrower covenants and agrees that it will observe and not violate the requirements of section 148 of the Code and any such applicable regulations which, in the opinion of Bond Counsel, are applicable to the Borrower or to the Bonds.

(c) In the event that at any time the Borrower is in receipt of an opinion of Bond Counsel to the effect that for purposes of this Section or the Indenture it is necessary to further restrict or limit the Yield on the investment of any money held by the Trustee under the Indenture beyond those situations and periods outlined in this Agreement or the Issuer’s Certificate as to Tax Exemption dated as of the Bond Closing, the Borrower shall notify the Trustee in writing of the limitations which, in the opinion of Bond Counsel, apply to the investment of such funds and instruct the Trustee to comply with these limitations.

(d) As additional consideration for the purchase of the Bonds by the purchaser thereof and the loan of the money represented thereby, and in order to induce such purchase by measures designed to ensure the excludability from gross income of the interest thereon for federal income tax purposes, the Borrower shall deliver to the Trustee, within 50 days after each Computation Date,

(i) a statement, signed by the Rebate Analyst stating the applicable portion of the Rebate Amount as of such Computation Date which must be paid over to the United States of America under section 148(f) of the Code taking into account all Gross Proceeds of the Bonds, and

(ii) if required, an Internal Revenue Service Form 8038-T completed as of such Computation Date and such other Internal Revenue Service forms or other

statements or forms required by the Code, Regulations, or other administrative rule, procedure, announcement, or guidelines.

(e) If the Borrower shall discover or be notified as of any date that any payment made to the United States Treasury pursuant to **Section 5.6** of the Indenture shall have failed to satisfy any requirement of the Regulations (whether or not such failure shall be due to any default by the Borrower, the Issuer, or the Trustee), the Borrower shall (i) deliver to the Trustee a brief written explanation of such failure and any basis for concluding that such failure was innocent and (ii) pay to the Trustee (for deposit to the Rebate Fund) and cause the Trustee to pay to the United States Treasury from the Rebate Fund, within 60 days after such discovery or notice, the “correction amount” in respect thereof specified in Regulation Section 1.148-3(h) together with the explanation described in the immediately preceding clause (i) and the other documents required by **Section 5.6** of the Indenture to accompany such payment from the Rebate Fund.

(f) The Borrower shall retain as part of the official transcript all of its accounting records relating to the funds held under the Indenture and the Rebate Fund and all calculations made in preparing the statements described in this Section for at least six years after the final payment of the Bonds, whether by reason of maturity or prior redemption.

(g) The Borrower shall not knowingly use or permit the use of any proceeds of Bonds or any funds of the Borrower, directly or indirectly, in any manner, and shall not knowingly take or permit to be taken any other action or actions which would conflict with the covenants contained herein or in the Regulatory Agreement. The Borrower acknowledges that such covenants are designed for the purpose of ensuring that the Bonds are treated as an obligation described in section 103(a) of the Code.

(h) Notwithstanding any provisions of this Section, if the Borrower shall provide to the Trustee and the Issuer an opinion of Bond Counsel that any specified action required under this Section or **Sections 4.9** and **5.6** of the Indenture is no longer required or that some further or different action is required to maintain the exclusion from gross income for purposes of federal income taxation of interest on the Bonds, the Trustee, the Issuer and the Borrower may conclusively rely on such opinion in complying with the requirements of this Section and **Sections 4.9** and **5.6** of the Indenture and be protected in so doing, and the covenants hereunder shall be deemed to be modified to that extent.

(i) The Issuer covenants and agrees that it has not taken and will not take, or permit to be taken by parties within its control, and the Borrower covenants and agrees that it has not taken or permitted to be taken and will not take or permit to be taken, any action which will cause the interest on the Bonds to become includable in gross income for purposes of federal income taxation pursuant to the provisions of section 103(a) of the Code, provided that neither the Borrower nor the Issuer shall have violated these covenants if the interest on any of the Bonds issued in accordance with section 103 of the Code becomes includable in gross income for purposes of federal income taxation to a person solely because such person is a “substantial user” of the Project or a “related person” within the meaning of section 147(a) of the Code.

(j) The Borrower hereby covenants that the Project and each unit thereof constitute and will constitute a qualified residential rental project, as defined in section 142(d) of the Code and the regulations thereunder, and that each residential unit in the Project (other than a reasonable number of units for resident manager or other administrative use) will be rented or available for rental on a continual basis to members of the general public for the period required by said Section. The Project consists of one or more proximate buildings or structures containing one or more similarly constructed accommodations containing separate and complete facilities for living, sleeping, eating, cooking and sanitation which are to be used on other than a transient basis and facilities which are functionally related and subordinate to such accommodations. The Borrower and the Issuer each hereby elect to apply the requirements of section 142(d)(1)(B) to the Project. Commencing on the Closing Date and continuing throughout the remainder of the Qualified Project Period, the Borrower represents, covenants and agrees that no less than 40% of the total number of units of the Project shall be, at all times, rented to and occupied by Low Income Tenants.

(k) The Borrower further agrees that it shall not discriminate on the basis of race, creed, color, sex or national origin in the lease, use or occupancy of the Project or in connection with the employment or application for employment of persons for the rehabilitation, operation and management of the Project.

(l) The Borrower further covenants that it has not executed and will not execute any other agreement, or any amendment or supplement to any other agreement, with provisions contradictory to, or in opposition to, the provisions hereof and of the Regulatory Agreement and that, in any event, the requirements of this Agreement and the Regulatory Agreement are paramount and controlling as to the rights and obligations herein set forth and supersede any other requirements in conflict herewith and therewith.

(m) The Borrower further covenants that it will not allow any proceeds of the Bonds to be used to provide any airplane, skybox or other private luxury box, health club facility, facility primarily used for gambling or facilities the primary purpose of which is the sale of alcoholic beverages for consumption off premises.

(n) The Borrower covenants and agrees not to allow the amount of Gross Proceeds invested during any Bond Year in Nonpurpose Investments with a Yield in excess of the Yield on the Bonds to exceed the lesser of (i) 150% of the scheduled debt service for that Bond Year and (ii) the amounts deposited in any other reserves required to be deposited or otherwise set aside by the Borrower to the extent that such amounts exceed 10% of the proceeds of the Bonds; and provided, further, that amounts invested in the Bond Fund or for an initial temporary period until needed for the governmental purpose of the Bonds shall at no time be considered subject to such restriction.

(o) The Borrower covenants and agrees that with regard to the Bond Fund (i) such fund will be depleted at least once a year, except possibly for a carryover amount not to exceed the greater of the previous Bond Year's earnings on the Bond Fund or one-twelfth of the previous Bond Year's debt service requirements on the Bonds; (ii) all amounts deposited to such fund will be spent within 13 months of deposit; and (iii) all

amounts received from investment of such fund will be deposited therein and will be expended within twelve months of receipt.

(p) As of the Closing Date, the Borrower is in compliance with all requirements pertaining to the Borrower set forth in the Tax Certificate. The Borrower has complied and will comply with all the terms and conditions of the Tax Certificate executed by the Borrower, including the terms and conditions of the exhibits thereto, and the representations set forth in the Tax Certificate executed by the Borrower pertaining to the Borrower and the Project are true and accurate.

Section 7.13 *Incorporation of the Project Certificate.* The covenants, representations, warranties, and agreements of the Borrower set forth in the Project Certificate are incorporated by reference herein as if fully set forth herein.

Section 7.14 *Loss of Tax Exclusion.* The Borrower understands that the interest rates provided under this Agreement with respect to the Bonds are based on the assumption that interest income paid on the Bonds and received by the Bondholders will be excludable from the Holders' gross income for federal income tax purposes. In the event that (i) if, prior to the Conversion Date, (i) the Borrower receives notice from the Bondholder Representative or the Issuer that the Bondholder Representative or the Issuer, respectively, has discovered any facts, actions, or failures to act by the Borrower that would cause interest on the Bonds to be includable in gross income for federal income tax purposes (unless the Borrower provides to the Holders, within thirty (30) days after the Borrower's receipt of such notice from the Bondholder Representative, an opinion from Bond Counsel, that notwithstanding any facts, actions or failures to act by the Borrower, interest on the Bonds will be excludable from the Bondholders' gross income for federal income tax purposes; or (ii) any Holder receives notice from the Internal Revenue Service or other government agency that interest on the Bonds is includable in gross income for federal income tax purposes, or that the Internal Revenue Service is challenging the status of interest on the Bonds as excludable from gross income for federal income tax purposes, then the interest rate on the Note and on all obligations under this Agreement shall be increased to a rate equal to the Default Rate. The Bondholder Representative receives notice of a Determination of Taxability, the Loan shall be subject to mandatory prepayment as set forth in **Section 10.1** herein and **Section 3.1(1)(d)** of the Indenture and the interest rate on the Loan shall be increased to the Default Rate for the period during which interest is deemed to be includable in gross income for federal income tax purposes.

If, on or after the Conversion Date, the Permanent Lender receives notice of a Determination of Taxability, the Borrower shall pay to the Permanent Lender (i) an additional amount equal to the difference between (A) the amount of interest paid to the Permanent Lender hereunder during the non-taxable period and (B) the amount of interest, at a rate equal to the product of the Permanent Loan Contract Rate and 1.20 (the "*Taxable Rate*"), that would have been paid to the Permanent Lender hereunder during the taxable period had this Note borne interest at the Taxable Rate, plus (ii) an amount equal to any interest, penalties on overdue interest and additions to tax owed by the Permanent Lender as a result of the occurrence of a Determination of Taxability. In addition, the rate of interest on this Note shall be automatically increased, effective

as of the date on which interest is determined to have been includable in gross income for federal income tax purposes.

The interest rates on the Bonds will be increased to a per annum rate equal to the Default Rate both prospectively and retroactively to the date on which such Determination of Taxability on the Bonds shall be applicable, and the Borrower shall pay to the Holders promptly upon demand any interest due retroactively. The Borrower shall also indemnify, defend, and hold the Bondholder Representative, the Trustee and the Issuer harmless from any penalties, interest expense or other costs, including reasonable attorneys' fees (including all allocated time and charges of the Bondholder Representative's, the Trustee's and the Issuer's "in house" and "outside" counsel) and accountants' costs, resulting from any dispute with the Internal Revenue Service concerning the proper tax treatment of interest on the Bonds and the interest payable to any Holder on the Bonds. The obligations of the Borrower under this paragraph shall survive termination of this Agreement and repayment of the Loan.

If, following any increase in interest rates pursuant to this **Section 7.14** a final determination is made, to the satisfaction of the Bondholder Representative, that interest paid on the Bonds is excludable from the Bondholders' gross income for federal income tax purposes, the Holders shall promptly refund to the Borrower any additional interest paid by the Borrower pursuant to this **Section 7.14** and the interest rate or rates on the Note that otherwise would have been in effect if not for the Determination of Taxability shall be reinstated retroactive to the date on which such rate or rates were increased pursuant to this **Section 7.14**.

Notwithstanding any provision of this **Section 7.14** to the contrary, in no event shall the interest rate on the Note exceed the maximum lawful rate under State law.

Section 7.15 *Low Income Housing Tax Credits.* The Borrower promises to keep each of the following covenants relating to the Low Income Housing Tax Credit:

(a) To observe and perform all obligations imposed on the Borrower in connection with the Low Income Housing Tax Credit, including the "placed in service" requirements under Section 42 of the Code, as applicable, and otherwise under the Taxable Tail Loan Documents and Operating Agreement in a timely manner to ensure the availability of each such Low Income Housing Tax Credit; and to operate the residential units of the Project or to use the Borrower's best efforts to ensure the appropriate parties operate the same in accordance with all applicable statutes and regulations governing the Low Income Housing Tax Credit;

(b) To preserve at all times the availability to the Project of the Low Income Housing Tax Credit;

(c) Following the Bond Closing, not to release, forego, alter, amend, or modify its rights to the Low Income Housing Tax Credit, without the Bondholder Representative's prior written consent, which the Bondholder Representative may give or withhold in the Bondholder Representative's reasonable discretion;

(d) Not to execute any Lease of all or any portion of the Project not complying fully with all requirements and regulations governing the Low Income Housing Tax Credit, except with the Bondholder Representative's prior written consent, which the Bondholder Representative may give or withhold in the Bondholder Representative's sole and reasonable discretion; excluding, however, any lease applying to the management unit or the police unit;

(e) To cause to be kept all records, and cause to be made all elections and certifications, pertaining to the number and size of apartment units, occupancy thereof by tenants, income levels of tenants, set asides for low income tenants, and any other matters now or hereafter required to qualify for and maintain the availability of Low Income Housing Tax Credit applicable to the Project;

(f) To comply with the appropriate minimum low income set aside requirements under the Code or applicable federal regulations ("*Federal Laws*"), and all laws and regulations of the State ("*State Laws*"), if any, applicable to the creation, maintenance and continued availability of the Low Income Housing Tax Credit;

(g) To certify compliance with the set aside requirement and report the dollar amount of qualified basis and maximum applicable percentage, date of "placed in service" under Section 42 of the Code, as applicable, and any other information required, and as applicable, for each of the Low Income Housing Tax Credit, at such time periods as required by Federal Laws or State Laws, as applicable;

(h) To set aside the appropriate number of units for households with incomes meeting the required standards of the area median income to qualify for the Low Income Housing Tax Credits (as determined pursuant to Section 42 of the Code and/or State Laws, if any), adjusted for family size, and to operate and maintain all such units as "low income units" qualifying for the Low Income Housing Tax Credits under Section 42(i)(3) of the Code and/or State Laws; and

(i) To exercise good faith in all activities relating to the acquisition, construction, operation and maintenance of the Project in accordance with the requirements of Federal Laws and State Laws, if any.

Section 7.16 *Payment of Rebate Amounts.* The Borrower covenants and agrees that it will hire the Rebate Analyst to calculate the Rebate Amount as required under the Indenture, and will provide a copy of each rebate report to the Bondholder Representative, the Issuer and the Trustee. The Borrower further covenants and agrees as follows:

(a) *Delivery of Documents and Money on Computation Dates.* The Borrower shall deliver, to the Trustee, within fifty (50) days after the end of each Bond Year:

(i) a statement, signed by the Rebate Analyst and the Borrower, stating the Rebate Amount as of the end of the Bond Year; and

(ii) if the end of the Bond Year is a Computation Date, other than the Final Computation Date, an amount that, together with any amount then held for the credit of the Rebate Fund, is equal to at least 90% of the Rebate Amount as of such Computation Date, less any “previous rebate payments” made to the United States (as that term is used in Section 1.148 3(f)(1) of the Regulations), or (2) if the end of the Bond Year is the final Computation Date, an amount that, together with any amount then held for the credit of the Rebate Fund, is equal to the Rebate Amount as of such final Computation Date, less any “previous rebate payments” made to the United States (as that term is used in Section 1.148 3(f)(1) of the Regulations); and

(iii) if the end of the Bond Year is a Computation Date, an Internal Revenue Service Form 8038 T properly completed (except for signature) as of such Computation Date.

(b) *Correction of Underpayment.* If the Borrower shall discover or be notified as of any date:

(i) that any amount required to be paid to the United States pursuant to this **Section 7.16**, **Section 5.6** of the Indenture and Section 13(a) of the Tax Regulatory Agreement, has not been paid as required; or

(ii) that any payment paid to the United States pursuant to this **Section 7.16**, **Section 5.6** of the Indenture, and the Tax Regulatory Agreement shall have failed to satisfy any requirement of Section 1.148 3 of the Regulations (whether or not such failure shall be due to any default by the Borrower or the Trustee), the Borrower shall

(X) deliver to the Trustee (for deposit to the Rebate Fund) (i) the Rebate Amount that the Borrower failed to pay, plus any interest, specified in Section 1.148 3(h)(2) of the Regulations, if such correction payment is delivered to and received by the Trustee within one hundred seventy five (175) days after such discovery or notice, or (ii) if such correction payment is not delivered to and received by the Trustee within one hundred seventy five (175) days after such discovery or notice, the amount determined in accordance with clause (i) of this subparagraph (X) plus the 50 percent (50%) penalty required by Section 1.148 3(h)(1) of the Regulations; and

(Y) deliver to the Trustee an Internal Revenue Service Form 8038 T properly completed (except for signature) as of such date.

Notwithstanding any other actions taken pursuant to this subsection (ii), the Borrower shall take such steps as are necessary to prevent the Bonds from becoming “arbitrage bond,” within the meaning of Section 148 of the Code.

(iii) *Records.* The Borrower shall retain all of its accounting records relating to the Funds and Accounts established under the Indenture and all

calculations made in preparing the statements described in this **Section 7.16** for at least six (6) years after the date the last Bond is discharged.

(iv) *Fees and Expenses.* The Borrower agrees to pay (to the extent not paid pursuant to **Section 4.2** hereof) all of the reasonable fees and expenses of the Rebate Analyst, which may be Bond Counsel, a certified public accountant, and/or any other necessary consultant employed by the Borrower in connection with computing the Rebate Amount.

In the event that the Trustee receives written notice from the Borrower, the Bondholder Representative, or the Issuer that the Borrower has failed to employ a Rebate Analyst, and if the Borrower's failure continues for thirty (30) days after the Trustee has made written demand on the Borrower for performance, the Trustee in consultation with and with the approval of the Bondholder Representative and the Issuer, will use its best efforts to hire a Rebate Analyst (at the expense of the Borrower) to calculate the Rebate Amount as required under the Indenture, provided that such a Rebate Analyst can be employed for amounts which do not exceed on an annual basis, the moneys that are and will be then available under the Indenture to pay the Rebate Analyst's Fee, or from other moneys furnished to the Trustee; in no event shall the Trustee be required to risk or expend its own moneys to employ a Rebate Analyst.

Section 7.17 *Qualifications Under the Act.* So long as the Bonds remain Outstanding, the Borrower will operate the Project in accordance with the Act and agrees to take all reasonable actions necessary to qualify and to continue to qualify the Project under the Act.

Section 7.18 *Rental Project.* The Borrower represents, covenants, and warrants that each unit in the Project, once available for occupancy, will be rented or available for rental subject to the limitations contained in this Agreement, the Ground Lease, the Regulatory and Restrictive Use Agreements and the requirements of Section 42 of the Code through the Qualified Project Period (unless occupied by or reserved for a resident manager, police, security personnel, or maintenance personnel), that the Borrower will not give preference in renting Project units to any particular class or group of persons other than those units for which there is a preference for senior families or for working families and other than as required or permitted by the Regulatory and Restrictive Use Agreements and the Ground Lease, and that at no time will any portion of the Project be exclusively reserved for use by a limited number of nonexempt persons in their trades or businesses.

Section 7.19 *Certification as to Qualified Project Period.* The Borrower shall provide to the Bondholder Representative, the Issuer, and the Trustee a certificate certifying (i) within ninety (90) days thereof, the date on which ten percent (10%) of the units are occupied; and (ii) within ninety (90) days thereof, the date on which fifty percent (50%) of the units are occupied.

Section 7.20 *Sales and Use Taxes.* If the Bondholder Representative reasonably determines, based upon any duly issued ruling, law, opinion, or regulation (or as the result of the withdrawal of any previously issued ruling, law, opinion, or regulation), that Contractor (or its subcontractors) is not exempt from State sales and use taxes, in such event, if the Contractor has not paid such taxes, at the written request of the Bondholder

Representative, the Borrower shall create and maintain a reserve or other account in a manner satisfactory to the Bondholder Representative in an amount equal to the aggregate sales and use taxes that the Contractor did not pay with respect to the development of the Project because the Contractor took the position it was exempt from such sales and use taxes. The Borrower agrees the Bondholder Representative has not represented to the Borrower or to any other Person, whether sales and use taxes are and shall be due with respect to the Project. The Borrower has and does hereby agree to indemnify and hold the Bondholder Representative, the Issuer, and the Trustee harmless from any loss, claims, or causes of action arising as a result of the failure of the Borrower or the Contractor to pay any such sales and use taxes.

ARTICLE 8

LEASES AND MANAGEMENT

Section 8.1. *Use of the Project and Lease Approval Prior to Conversion.*

(a) (b) The Borrower must not change its intended use of the Project without the Bondholder Representative's prior written approval.

(c) The Bondholder Representative must approve the Borrower's standard form of residential lease or rental agreement prior to its use by the Borrower. The Borrower may not materially modify the approved standard form residential lease without the Bondholder Representatives prior written consent, together with the approval of all other parties whose consent is required, including without limitation, the Investor Member, the Special Member, the Administrative Limited Partner, the Trustee, and the Issuer.

(d) The Borrower may enter into Leases (and amendments thereto) in the ordinary course of business with bona fide third party residential tenants if the Borrower uses the approved standard form residential lease, and:

(i) within fifteen (15) days after the Bondholder Representative's reasonable written request therefor, the Bondholder Representative receives a copy of the executed lease (accompanied by all financial information and certificates obtained by the Borrower pertaining to the tenant);

(ii) the Borrower, acting in good faith and exercising commercially reasonable due diligence, has determined that the tenant qualifies as a low income person for purposes of meeting the requirements for availability of the Low Income Housing Tax Credit;

(iii) the lease reflects an arm's length transaction; and

(iv) the lease does not affect more than one (1) residential unit within the Project and has a term of not less than six (6) months and not more than twelve (12) months, unless otherwise agreed in writing by Bondholder Representative.

(e) The prior written approval of the Bondholder Representative in the exercise of its reasonable discretion will be required in connection with any lease that does not comply with the foregoing provisions of this **Section 8.1**. If the Borrower at any time fails to comply with the requirements of this **Section 8.1** or if any Event of Default has occurred, the Bondholder Representative may make written demand on the Borrower to submit all future leases for the Bondholder Representative's approval prior to execution, and the Borrower will thereafter comply with that demand.

Section 8.2. *Leasing Information and Documents* Following the Substantial Completion, in addition to the requirements of **Section 7.8** (but without duplication thereof), within thirty (30) days after the end of each month, the Borrower must deliver to the Bondholder Representative a monthly rent roll and operating statement for the Project. The Borrower must promptly deliver to the Bondholder Representative such tenant income certificates, leasing schedules and reports and other leasing information as the Bondholder Representative from time to time may reasonably request.

Section 8.3. *Purpose and Effect of Lease Approval.* The Bondholder Representative's approval of any Lease (if and to the extent required by this Agreement) is for the sole purpose of protecting the Bondholder Representative's and the Issuer's security and preserving the rights of the Issuer, the Trustee and the Bondholder Representative under this Agreement and the Mortgage. No approval by the Bondholder Representative will result in a waiver of any default of the Borrower. In no event will the Bondholder Representative's approval of any lease be a representation of any kind with regard to the lease, its enforceability or the financial capacity of any tenant or guarantor.

Section 8.4. *Landlord's Obligations.* The Borrower must perform or will ensure that the Property Manager will perform in all material respects, all obligations required to be performed by it as landlord under any lease affecting any part of the Project or any space within the Improvements.

Section 8.5. *Lease Covenants and Limitations After Conversion.*

(a) Except as expressly contemplated by or permitted under Leases approved by the Permanent Lender or Leases not requiring the Permanent Lender's approval in accordance with **Section 8.5(c)** hereof, all Leases and termination of Leases shall be subject to the prior review and approval of the Permanent Lender, at the Borrower's expense. Except as otherwise consented to by the Permanent Lender, all Leases shall (a) have terms of no more than twelve (12) months; (b) be written on the standard form of lease, which shall have been approved by the Permanent Lender with no material changes thereto without the prior consent of the Permanent Lender except for changes made in the ordinary course of business by the Management Agent acting in a commercially reasonable manner; and (c) be at rental rates and on terms comparable to existing local rates and terms for similarly used units and shall be arm's-length transactions with bona fide, independent third party tenants with respect to any unrestricted units, or with respect to certain units that are restricted by Section 42 of the Code, in compliance with those provisions. The Borrower shall provide the Permanent Lender with executed copies of all Leases promptly upon the Permanent Lender's request.

(b) The Borrower shall perform all material obligations as lessor under all Leases and shall enforce all of the material terms, covenants and conditions contained therein upon the part of the lessee thereunder to be performed or observed, short of termination thereof. Except with the prior written consent of the Permanent Lender and except in the ordinary course of business by the Management Agent acting in a commercially reasonable manner, the Borrower shall not: (i) cancel, terminate, surrender, sublet or assign any Lease or consent to any cancellation, termination, surrender, subletting or assignment thereof; (ii) subordinate any Lease to any mortgage, deed of trust or other security interest that is subordinate to the Mortgage; (iii) enter into any new Lease or amend, modify or renew any existing Lease; (iv) waive any material default under or material breach of any Lease; (v) consent to or accept any prepayment or discount of rent or advance rent under any Lease; or (vi) take any other action in connection with any Lease which may impair or jeopardize the validity of such Lease or the Permanent Lender's interest therein.

(c) The Permanent Lender's prior consent shall not be required for the Borrower to enter into any new lease which is a Lease (including, without limitation, any cancellation, termination, surrender, renewal, amendment or modification of any existing Lease) provided that each of the following conditions are satisfied: (1) such Lease is written on a standard form approved by the Permanent Lender, in advance and in writing, and without material modification; (2) is an arm's-length transaction with a bona fide, independent third party tenant with respect to any unrestricted units, or with respect to certain units that are restricted by Section 42 of the Code, in compliance with those provisions; and (3) will not violate any provision of any other Lease, restriction, covenant or public or private agreement affecting the Mortgaged Property or this Agreement or any other Permanent Loan Document. If any of the aforesaid conditions are not satisfied, then the Permanent Lender's prior consent to such Lease, shall be required. The Permanent Lender's prior consent shall not be required for the Borrower to terminate any Lease, if in the ordinary course of business and if in the good faith business judgment of the Borrower, such termination is necessary or appropriate because of an uncured default or breach of such Lease.

(d) In addition to the foregoing, the Borrower shall comply with all terms and provisions relating to leases under the Mortgage.

(e) If an Event of Default exists, the Permanent Lender may, with or without exercising any other rights or remedies: (i) give or require the Borrower to give notice to any or all tenants under the Leases authorizing and directing them to pay all Project Revenues under the Leases directly to the Permanent Lender and to continue to do so until the tenants are otherwise notified by the Permanent Lender in writing; and (ii) without regard to any waste, adequacy of the security or solvency of the Borrower, apply for the appointment of a receiver of the Mortgaged Property to which appointment the Borrower hereby consents, whether or not foreclosure proceedings have been commenced under the Mortgage and whether or not a foreclosure sale has occurred.

Section 8.6. *Management After Conversion.* At all times after Conversion and prior to the payment in full of the Indebtedness, the Mortgaged Property shall be managed by a

management company reasonably satisfactory to the Permanent Lender, and pursuant to a management agreement reasonably satisfactory to the Permanent Lender. In addition, any leasing commissions agreement affecting the Mortgaged Property must be reasonably satisfactory to the Permanent Lender. The Permanent Lender approves the Management Agreement and the Management Agent, as manager of the Mortgaged Property. If at any time during the existence of an Event of Default the management company, management agreement or leasing commissions agreement, if any, is not reasonably satisfactory to the Permanent Lender, the Borrower shall have up to sixty (60) days after written notice to the Borrower of the Permanent Lender's disapproval, to obtain a management company, management agreement and/or leasing commissions agreement, if any, approved by and reasonably satisfactory to the Permanent Lender.

ARTICLE 9

REPRESENTATIONS, WARRANTIES AND COVENANTS OF THE BORROWER FOR THE PERMANENT LENDER

Section 9.1. *Post-Conversion Insurance Requirements.*

(a) *Property Insurance.* The Borrower shall maintain either "All Risk" or "Special Form" real and personal property insurance and "Boiler and Machinery Insurance", insuring one hundred percent (100%) of the insurable replacement cost value of the Improvements and the Equipment, and with a deductible not to exceed \$100,000 with the exception for Earthquake, Named Windstorm and Flood, providing no coinsurance or similar penalty. Such insurance shall also cover "Rent Loss" or "Business Interruption" and "Extra Expense" on an "Actual Loss Sustained Basis" (including Rent Loss), in an amount equal to at least twelve (12) months of the Property Income, and an extended period of indemnity of at least one hundred eighty (180) days. Covered perils shall include, but not be limited to, "Windstorm" (including "Named Windstorm"), and "Boiler and Machinery Insurance". The Borrower shall also maintain "Ordinance and Law" coverage. If the Improvements are non-conforming and such non-conformity is not covered under the "Ordinance & Law" provisions, the Borrower may be required by the Permanent Lender to purchase a separate policy covering such non-conformity for the benefit of the Permanent Lender. The Permanent Lender may from time to time also require that the Borrower maintain insurance acceptable to the Permanent Lender for "Builder's Risk" during the period of any construction, renovation or alteration of the Improvements. If the Mortgaged Property is defined to be in Seismic Zone 3 or 4, or its equivalent, earthquake insurance shall also be maintained by the Borrower. If the Mortgaged Property is located within a Special Hazard Flood Area, National Flood Insurance Program ("NFIP") insurance is required. In addition, the Property policy must provide an maintain a Flood Limit in excess of NFIP that is acceptable to the Permanent Lender.

(b) All insurance coverages, limits and deductibles must be reasonably satisfactory to the Permanent Lender.

(c) Liability Insurance. Borrower shall also maintain General Liability insurance (including contractual liability) in an amount equal to at least \$6,000,000 per occurrence and \$10,000,000 in the aggregate, with a Per Location aggregate endorsement if multiple properties are insured under the same policy. If applicable, Permanent Lender

may, from time to time also require that Borrower maintain insurance acceptable to Permanent Lender for “Commercial Auto”, “Workers Compensation”, and such other insurance as Permanent Lender may require. The liability insurance required by this section shall also name the Issuer and the Trustee as additional named insureds.

(d) *Evidence of Insurance By Acceptable Insurers.* At all times during the term of the Permanent Loan, the Borrower shall provide to the Permanent Lender the following evidences of insurance for approval by the Permanent Lender: (i) an ACORD 28 (current version) Evidence of Property Insurance provided by an authorized insurance agent, broker or insurance company or, where ACORD 28 (current version) is not available, other evidence of insurance confirming the same rights as are provided by ACORD 28 (current version) and all applicable policy endorsements; and (ii) an ACORD 28 (current version) Certificate of Liability Insurance, provided by an authorized insurance agent, broker or insurance company confirming coverages are maintained for liability insurance as required to be carried by the Borrower. Any ACORD or equivalent evidencing a Blanket insurance policy shall specifically identify the replacement cost of the improvements and the annual gross rents. The foregoing evidence shall be provided to the Permanent Lender at least five (5) Business Days prior to the expiration date of each such policy. Each evidence of insurance and certificate must include a mortgagee clause and a loss payee clause satisfactory to the Permanent Lender, and any Certificate of Liability Insurance must name the Permanent Lender as an Additional Insured for Commercial General Liability with respect to the Mortgaged Property. Each insurance company providing coverage must have an A.M. Best rating of A-X or better.

(e) *Blanket Insurance Policies.* The Borrower’s insurance requirements under this **Section 9.1** may be satisfied by maintaining either individual policies covering only the Mortgaged Property, or blanket insurance policies covering multiple properties, provided that with respect to any blanket insurance policies Borrower also covenants to either immediately reinstate any limits and coverages which are used, reduced or cancelled back up to the blanket policy limits approved by Permanent Lender, or to secure individual policy coverages for the Mortgaged Property satisfying these insurance requirements. Borrower will deliver to Permanent Lender a Schedule of Locations Insured under any blanket insurance policy together with the related certificates of insurance.

(f) *Miscellaneous Insurance Requirements.* All insurance policies and endorsements required pursuant to this Agreement must be reasonably satisfactory to the Permanent Lender and shall: (i) be endorsed to name the Permanent Lender as a primary additional insured thereunder, as its interest may appear, with loss payable to the Permanent Lender, without contribution, under a long-form, non-contributory mortgagee clause, or otherwise endorsed as the Permanent Lender may reasonably require; (ii) be fully paid for and contain such provisions and expiration dates and be in such form and issued by such insurance companies licensed to do business in the State; (iii) without limiting the foregoing, provide that such policy or endorsement may not be canceled or materially changed except upon prior written notice of intention of non-renewal, cancellation or material change on the property policy to the Permanent Lender, and that no act or thing done by the Borrower or the Permanent Lender shall invalidate the policy as against the

Permanent Lender; and (iv) be in form and content satisfactory to the Permanent Lender. Within ten (10) Business Days following a request by the Permanent Lender, the Borrower shall deliver to the Permanent Lender all original policies including all endorsements and renewals thereof, or copies thereof certified by the insurance company or authorized agent, together with all endorsements required hereunder and any other insurance policy information and other related information (such as “*Probable Maximum Loss*” or “*Scenario Upper Loss*” studies) as the Permanent Lender may request from time to time. The Borrower may request an extension of time not exceeding sixty (60) days to deliver the foregoing policies, endorsements and renewals or certified copies thereof if (1) the Borrower has done all things necessary to obtain the issuance of the policies, endorsements and renewals including the payment of all premiums therefor, and (2) the Borrower has delivered to the Permanent Lender within the above ten (10) day period an insurance binder and evidence of insurance satisfactory to the Permanent Lender issued by the approved insurer showing all required coverage to be in full force and effect for the succeeding twelve (12) month period along with evidence satisfactory to the Permanent Lender of payment in full of all premiums. If the Borrower fails to maintain insurance in compliance with this Agreement, the Permanent Lender may (but shall not be obligated to) obtain such insurance and make Advances to pay the premium therefor. Notwithstanding anything to the contrary contained herein or in any provision of law, the proceeds of insurance policies coming into the possession of the Permanent Lender shall not be deemed trust funds and the Permanent Lender shall be entitled to dispose of such proceeds as hereinafter provided.

Section 9.2. *Post Conversion Damage, Destruction and Restoration.* To the extent provided for in this Agreement with respect to prior to the Conversion Date, the provisions of this Section 9.2 shall only be applicable after the Conversion Date:

(a) In the event of any damage to or destruction of the Mortgaged Property and/or Equipment, the Borrower shall give prompt written notice to the Permanent Lender and shall promptly commence and diligently continue to complete the repair, restoration and rebuilding of the Mortgaged Property and/or Equipment so damaged or destroyed in full compliance with all Requirements of Law and with the provisions of **Sections 9.2(e), (f) and (h)** hereof, and free and clear from any and all liens and claims (unless bonded in a manner satisfactory to the Bondholder Representative). Such repair, restoration and rebuilding of the Mortgaged Property are sometimes hereinafter collectively referred to as the “*Work*”. Except as expressly permitted under **Section 9.2(h)** hereof, the Borrower shall not adjust, compromise or settle any claim for insurance proceeds without the prior consent of the Permanent Lender which consent shall not be unreasonably conditioned, withheld or delayed. The Permanent Lender shall have the option in its reasonable discretion to apply any insurance proceeds it may receive pursuant to this Agreement (less any cost to the Permanent Lender of recovering and paying out such proceeds, including reasonable attorneys’ fees, costs and expenses) to the payment of the Indebtedness or to allow all or a portion of such proceeds to be used for the Work. If any insurance proceeds are applied to reduce the Indebtedness, provided no Event of Default shall have occurred and be continuing, the Permanent Lender shall apply the same, without any Prepayment Fee, in accordance with the provisions of the Note. Notwithstanding the foregoing, if an Event of Default shall have occurred and be continuing, the Permanent Lender, at its option, may

apply any insurance proceeds to the Indebtedness in such order and priority as the Permanent Lender deems appropriate in its sole discretion and a Prepayment Fee or Closed Period Prepayment Fee shall be due and payable in accordance with the terms of the Note in connection with any such prepayment.

(b) In the event of the foreclosure of the Mortgage or other transfer of title to or assignment of the Mortgaged Property in extinguishment of the Indebtedness in whole or in part, all right, title and interest of the Borrower in and to all policies of insurance required by this Agreement and any insurance proceeds shall inure to the benefit of and pass to the Permanent Lender or any purchaser or transferee at the foreclosure sale of the Mortgaged Property.

(c) The Permanent Lender may notify any and all insurers under casualty and liability insurance policies that the Permanent Lender has a security interest pursuant to the provisions of this Agreement in and to such insurance policies and any proceeds thereof, and that any payments under those insurance policies are to be made directly to the Permanent Lender. The Permanent Lender's rights under this **Section 9.2** may be exercised by the Permanent Lender or a court appointed receiver appointed upon the request of the Permanent Lender and irrespective of whether or not an Event of Default shall have occurred under this Agreement.

(d) Notwithstanding the provisions of **Section 9.2(a)** hereof, the Permanent Lender shall, upon request by the Borrower, permit Borrower to use the proceeds of insurance policies in for the Work (subject to the provisions of, and less the Permanent Lender's reasonable costs described in **Section 9.2(e)** hereof), so long as:

(i) no Event of Default shall then exist nor any matter(s) exist which, after notice of default or passage of time or both, would constitute an Event of Default;

(ii) the Work can be completed, as determined by the Permanent Lender in its reasonable discretion, by the date which is the earlier to occur of (x) twelve (12) months from the date of the damage to or destruction of the Mortgaged Property, or (y) twelve (12) months prior to the Permanent Term Maturity Date;

(iii) all sums necessary to effect the Work over and above any available insurance proceeds (the "*Deficiency Amount*") shall be at the sole cost and expense of the Borrower and the Borrower shall deposit the Deficiency Amount, as estimated by the Permanent Lender in its sole, reasonable discretion, with the Permanent Lender prior to commencing any Work and at all times thereafter;

(iv) at all times during any such Work, the Borrower shall maintain, at its sole cost and expense, workers' compensation, builders risk and public liability insurance in amounts satisfactory to the Permanent Lender and in accordance with the provisions of this **Section 9.2**;

(v) at all times during any such Work, business income and extra expense including rental value insurance shall be in full force and effect and available to cover any loss of business income and rents resulting from the damage to or destruction of the Mortgaged Property and/or Equipment; and

(vi) the Improvements shall be restored as close as possible to the same size, character and condition that existed immediately prior to the damage or destruction except for immaterial changes as determined by the Permanent Lender in its reasonable judgment.

(e) If any insurance proceeds are used for the Work, then unless **Section 9.2(b)** hereof applies, such proceeds together with any Deficiency Amount shall be held by the Permanent Lender and shall be paid out from time to time to the Borrower as the Work progresses (less any reasonable out-of-pocket cost to the Permanent Lender of recovering and paying out such proceeds and/or Deficiency Amount, including reasonable attorneys' fees, costs and expenses and costs allocable to inspecting the Work and the plans and specifications therefor), subject to each of the following conditions:

(i) the Work shall be conducted under the supervision of a certified and registered architect or engineer reasonably satisfactory to the Permanent Lender. Before the Borrower commences any Work, other than temporary work to protect property or prevent interference with business, the Permanent Lender shall have approved the plans and specifications for the Work, which approval shall not be unreasonably withheld or delayed, it being nevertheless understood that such plans and specifications shall provide for Work so that, upon completion thereof, the Mortgaged Property shall be at least equal in value and general utility to the Mortgaged Property immediately prior to the damage or destruction;

(ii) each request for payment shall be made on not less than five (5) Business Days prior written notice to the Permanent Lender and shall be accompanied by a certificate of the architect or engineer in (I) above stating: (A) that all of the Work completed has been done in compliance with the approved plans and specifications in all material respects, if required under (I) above; (B) that the sum requested is justly required to reimburse the Borrower for payments by the Borrower, or is justly due to the contractor, subcontractors, materialmen, laborers, engineers, architects or other Persons rendering services or materials for the Work (giving a brief description of such services and materials), and that when added to all sums previously paid out by the Permanent Lender does not exceed the value of the Work done to the date of such certificate; (C) if the sum requested is to cover payment relating to repair and restoration of Equipment required or relating to the Mortgaged Property, that title to the items of Equipment covered by the request for payment is vested in the Borrower; and (D) that the amount of such proceeds together with any Deficiency Amount remaining in the hands of the Permanent Lender will be sufficient on completion of the Work to pay for the same in full (giving in such reasonable detail as the Permanent Lender may require an estimate of the cost of such completion). Additionally, each request for payment shall

contain a statement signed by the Borrower approving both the Work done to date and the Work covered by the request for payment in question;

(iii) each request for payment shall be accompanied by waivers of lien or conditional waivers of lien satisfactory to the Permanent Lender covering that part of the Work for which payment or reimbursement is being requested and, if required by the Permanent Lender, a search prepared by a title insurance company or licensed abstractor, or by other evidence satisfactory to the Permanent Lender that there has not been filed with respect to the Mortgaged Property any mechanics' or other lien relating to any part of the Work not discharged of record. Additionally, as to any Equipment covered by the request for payment, the Permanent Lender shall be provided with evidence of payment therefor and such further evidence satisfactory to assure the Permanent Lender of its valid first lien on the Equipment;

(iv) The Permanent Lender shall have the right to inspect the Work at all reasonable times and may condition any disbursement of proceeds upon the satisfactory completion, as determined by the Permanent Lender's reasonable discretion, of any portion of the Work for which payment or reimbursement is being requested. Neither the approval by the Permanent Lender of the plans and specifications for the Work nor the inspection by Permanent Lender of the Work shall make Permanent Lender responsible for the preparation of such plans and specifications or the compliance of such plans and specifications, or of the Work, with any applicable law, regulation, ordinance, covenant or agreement;

(v) Insurance proceeds shall not be disbursed more frequently than every thirty (30) days; and

(vi) any request for payment made after the Work has been completed shall be accompanied by a copy or copies of any certificate or certificates required by law to render occupancy and full operation of the Mortgaged Property legal.

- Upon any failure on the part of Borrower to promptly commence the Work or to proceed diligently and continuously to completion of the Work or upon the occurrence and continuation of any Event of Default, the Permanent Lender, at its sole option, shall be entitled to apply at any time all or any portion of the insurance proceeds it then or thereafter holds to the repayment of the Indebtedness or to the curing of any Event of Default.

(f) Upon completion of the Work and payment in full therefor any unexpended insurance proceeds, at the sole option of the Permanent Lender, shall either be paid over to the Borrower or shall be applied to the reduction of the Indebtedness without any Prepayment Fee that would otherwise be applicable to a prepayment of the Permanent Loan at that time.

(g) Notwithstanding any other provision of this **Section 9.2**, if no Event of Default shall exist and be continuing (nor any matters have occurred which, after notice or passage of time or both, would constitute an Event of Default) and in the Permanent

Lender's reasonable judgment the cost of the Work is less than five percent (5%) of the outstanding principal balance of the Note as of the date of loss or damage to the Mortgaged Property and/or Equipment and the Work can be completed in less than ninety (90) days, then the Permanent Lender shall, upon request by the Borrower, permit the Borrower to apply for and receive the insurance proceeds directly from the insurer (and the Permanent Lender shall advise the insurer to pay over such proceeds directly to the Borrower), provided that the Borrower shall apply such insurance proceeds solely to the prompt and diligent commencement and completion of such Work.

(h) Notwithstanding any other provision of this Agreement, in the event of a conflict between this **Section 9.2** and the provisions of the Mortgage, this **Section 9.2** shall apply.

Section 9.3. *Condemnation.* To the extent provided for in this Agreement with respect to prior to the Conversion Date, the provisions of this **Section 9.3** shall only be applicable after the Conversion Date. The Borrower shall notify the Permanent Lender immediately of the actual or threatened commencement of any proceedings for the condemnation or taking of the Mortgaged Property or any portion thereof and shall deliver to the Permanent Lender copies of any and all papers served in connection with such proceedings. The Permanent Lender may participate in such proceedings and the Borrower shall deliver to the Permanent Lender all instruments requested by Permanent Lender to permit such participation. The Borrower shall not adjust, compromise, settle or enter into any agreement with respect to such proceedings where the amount in question is in excess of \$1,000,000 without the prior reasonable consent of the Permanent Lender. All proceeds of any condemnation, or purchase in lieu thereof, of the Mortgaged Property or any portion thereof are hereby assigned to and shall be paid to the Permanent Lender. The Borrower hereby authorizes Permanent Lender to collect and receive such proceeds, to give proper receipts and acquittances therefor and, in the Permanent Lender's reasonable discretion, to apply such proceeds (less any reasonable out-of-pocket costs to the Permanent Lender of recovering and paying out such proceeds, including reasonable attorneys' fees, costs and expenses allocable to inspecting any repair, restoration or rebuilding work and the plans and specifications therefor) toward the payment of the Indebtedness or to the repair, restoration or rebuilding of the Mortgaged Property in the manner and subject to the conditions set forth in **Section 9.2** hereof. If the proceeds are used to reduce the Indebtedness, they shall be applied in the order provided in the Note, without any Prepayment Fee. The Borrower shall promptly execute and deliver all instruments requested by the Permanent Lender for the purpose of confirming the assignment of the condemnation proceeds to the Permanent Lender.

Section 9.4. *Impositions.*

(a) To the extent that Impositions exceed any amounts impounded therefor by the Permanent Lender under this Agreement, the Borrower shall pay and discharge such excess prior to delinquency and shall provide to the Permanent Lender validated receipts or other evidence satisfactory to the Permanent Lender showing the payment of such Impositions within fifteen (15) days after the same would otherwise have become delinquent. The Borrower's obligation to pay Impositions pursuant to this Agreement shall include, to the extent permitted by applicable law, taxes resulting from future changes in law which impose upon the Permanent Lender an obligation to pay any property taxes or

other Impositions. Should the Borrower default in the payment of any Impositions, the Permanent Lender may (but shall not be obligated to) pay such Impositions or any portion thereof.

(b) The Borrower shall not be required to pay, discharge or remove any Imposition so long as the Borrower contests in good faith such Imposition or the validity, applicability or amount thereof by an appropriate legal proceeding which operates to prevent the collection of such amounts and the sale of the Mortgaged Property or any portion thereof; provided, however, that such contest will not result in a tax certificate or other sale of the tax lien and prior to the date on which such Imposition would otherwise have become delinquent if the Borrower shall have: (i) given the Permanent Lender prior written notice of such contest; and (ii) deposited with the Permanent Lender, and shall deposit such additional amounts as are necessary to keep on deposit at all times, an amount equal to at least one hundred five percent (105%) of the total of: (A) the balance of such Imposition then remaining unpaid; plus (B) all interest, penalties, costs and charges accrued or accumulated thereon. Any such contest shall be prosecuted with due diligence, and the Borrower shall promptly pay the amount of such Imposition as finally determined, together with all interest, penalties, costs and charges payable in connection therewith. The Permanent Lender shall have full power and authority to apply any amount deposited with the Permanent Lender under this **Section 9.4(b)** to the payment of any unpaid Imposition to prevent the sale of any tax lien or the sale or forfeiture of the Mortgaged Property (or any portion thereof) for non-payment thereof. The Permanent Lender shall have no liability, however, for failure to so apply any amount deposited unless the Borrower requests the application of such amount to the payment of the particular Imposition for which such amount was deposited. Any surplus retained by the Permanent Lender after payment of the Imposition for which a deposit was made shall be repaid to the Borrower unless an Event of Default shall exist, in which case said surplus may be retained by the Permanent Lender to be applied to the Indebtedness. Notwithstanding any provision of this **Section 9.4(b)** to the contrary, the Borrower shall pay any Imposition which it might otherwise be entitled to contest if, in the reasonable opinion of the Permanent Lender, failure to pay will result in a tax certificate or other sale of the tax lien or the Mortgaged Property (or any portion thereof) is in jeopardy or in danger of being forfeited or foreclosed, or the Permanent Lender may make an Advance to pay the same. Additionally, in such event, if the Permanent Lender is prevented by law or judicial or administrative order from paying such Imposition, then the Permanent Lender, at its option, may declare the entire Indebtedness immediately due and payable.

(c) The Borrower shall deposit with the Permanent Lender, monthly, on the due date of each monthly installment under the Note, 1/12th of the annual charges (as estimated by Permanent Lender) for Impositions. All funds deposited with the Permanent Lender pursuant to this **Section 9.4(c)** shall be held without interest (unless the payment of interest thereon is required under applicable law), may be commingled with the Permanent Lender's other funds and the Permanent Lender shall pay the Impositions when and as payable provided that no Event of Default shall exist. Should an Event of Default exist that would not be cured by payment of the Impositions in accordance with the requirements of this Agreement, the funds so deposited may be applied in payment of the charges for

which such funds shall have been deposited or to the payment of the Indebtedness or any other charges affecting the Mortgaged Property, as the Permanent Lender in its sole discretion may determine, but no such application shall be deemed to have been made by operation of law or otherwise until actually made by the Permanent Lender as herein provided. The Borrower shall provide the Permanent Lender with bills and all other documents necessary for the payment of the foregoing charges within five (5) Business Days following the Borrower's receipt of the same, but in any event at least fifteen (15) days prior to the date on which each payment thereof shall first become due.

Section 9.5. *Financial Statements; Records.*

(a) The Borrower shall keep adequate books and records of account in accordance with generally accepted accounting principles related to real estate, consistently applied, and shall provide to the Permanent Lender in both hard copy and in electronic format, if available, via e-mail to emacdonald@cornerstoneadvisers or any successor recipient as required by the Permanent Lender, within the time periods set forth, the following (collectively, the "*Financial Information*"):

(i) a current certified rent roll, signed and dated by the Borrower, detailing for each of the Leases, the names of all tenants of the Mortgaged Property, the portion of the Mortgaged Property occupied by each tenant, the annual rental and any other charges payable, the amount of any security deposits or letter of credit held under the Lease, and the term of each of the Leases, including the expiration date, and any other information as is reasonably required by the Permanent Lender, within forty-five (45) days after the end of each calendar quarter;

(ii) quarterly operating statements of the Mortgaged Property, prepared and certified by the Borrower in a form approved by the Permanent Lender, detailing the revenues received, the expenses incurred and major capital improvements for that quarter and containing appropriate year to date information, within forty-five (45) days after the end of each fiscal quarter;

(iii) an annual operating statement of the Mortgaged Property detailing the total revenues received, total expenses incurred, total cost of all capital improvements, total debt service and total cash flow, to be prepared and certified by an authorized and responsible officer or representative of the Borrower in the form approved by the Permanent Lender in its reasonable discretion, or if required by the Permanent Lender in its reasonable discretion, an audited annual operating statement prepared and certified by an independent certified public accountant acceptable to the Permanent Lender within one hundred twenty (120) days after the close of each Fiscal Year of the Borrower;

(iv) an annual balance sheet and profit and loss statement of the Borrower and the Guarantor in a form approved by the Permanent Lender in its reasonable discretion, the prepared and certified by the Borrower and the Guarantor as to the applicable statement, and, such statements, if required by the Permanent Lender following the occurrence of an Event of Default, shall be audited financial

statements prepared and certified by an independent certified public accountant acceptable to the Permanent Lender, within one hundred twenty (120) days after the close of each Fiscal Year of the Borrower and the Guarantor, as applicable;

(v) an annual statement from the Borrower and the Guarantor, in a form reasonably approved by the Permanent Lender, certifying: (i) the names of all partners and Upstream Owners that either own (directly or indirectly) ten percent (10%) or more of the beneficial interest in the Borrower or own a general partnership interest in the Borrower; and (ii) that the Borrower has not obtained any financing prohibited by this Agreement and the other Permanent Loan Documents, signed and dated by Borrower, within one hundred twenty (120) days after the close of each Fiscal Year of the Borrower and from time to time as the Permanent Lender may reasonably request; and

(vi) an annual operating and capital budget, including cash flow projections for the upcoming Fiscal Year, and all proposed capital replacements and improvements, on the earlier to occur of when it is created, or within one hundred twenty (120) days after the close of each Fiscal Year.

(b) Financial Information Upon Request. Upon request from Permanent Lender, the Borrower shall deliver the following:

(i) a copy of the federal tax return of the Borrower, within thirty (30) days of filing with the Internal Revenue Service;

(ii) an accounting of all security deposits held in connection with any of the Leases, the name and address of the financial institutions in which such security deposits are held and the name of the person to contact at such financial institution, along with any authority or release from the Borrower to obtain information regarding such accounts directly from such financial institutions;

(iii) such other financial or management information from the Borrower and the Guarantor (including monthly or quarterly certified rent rolls meeting the requirements of **Section 9.5(a)(i)** above) as may, from time to time, be reasonably required by the Permanent Lender and in form and substance reasonably satisfactory to the Permanent Lender;

(iv) the Borrower's books and records regarding the Mortgaged Property for examination, review, copying and audit by the Permanent Lender or its auditors during normal business hours and convenient facilities for such examination review, copying and audit of the Borrower's books and records of account;

(v) a statement confirming: (A) whether there has been any Material Adverse Change in the financial condition of any of the parties with respect to which Financial Information is required to be provided to the Permanent Lender under this **Section 9.5** or in the rent roll for the Mortgaged Property from the Financial Information or rent roll most recently submitted to the Permanent Lender,

except those changes to the rent roll that have been approved or deemed approved by the Permanent Lender, or that do not require the Permanent Lender's consent under the terms of the Permanent Loan Documents, and if any such Material Adverse Change has occurred providing detailed information satisfactory to the Permanent Lender in its reasonable discretion with respect thereto; (B) that none of the Borrower, the Guarantor or any Principal has been the subject of any bankruptcy, reorganization, dissolution or insolvency proceeding; (C) that there does not exist any subordinate, mezzanine or other indebtedness prohibited by this Agreement or by any other Permanent Loan Document except for the Permitted Encumbrances; (D) that there has not occurred any transfer, sale, pledge or encumbrance prohibited by this Agreement or by any other Permanent Loan Document, except as previously disclosed to the Permanent Lender in writing and approved by the Permanent Lender in writing; and (E) that there has not been a default in any material respect by the Borrower or the Guarantor on any commercial indebtedness owing to any other party in connection with the Project and such lenders are pursuing remedies at law or equity with respect to such debt.

(c) **Failure to Deliver Financial Information.** If the Borrower fails to deliver to the Permanent Lender any Financial Information required hereunder within fifteen (15) days following written notice from the Permanent Lender to the Borrower that the Borrower has failed to timely deliver said Financial Information, the Permanent Lender may, in its sole and absolute discretion, (i) declare such failure to be an Event of Default pursuant to **Section 11.1(nn)** hereof, and/or (ii) charge Borrower (and Borrower shall pay to Permanent Lender) a fee equal to \$250.00 (the "*Financial Information Fee*"), for each thirty (30) day period or portion thereof during which the Borrower fails to timely deliver to the Permanent Lender any such Financial Information.

Section 9.6. *Mortgage Taxes.* The Borrower shall pay any and all taxes, charges, filing, registration and recording fees, excises and levies imposed upon the Permanent Lender by reason of its ownership of, or measured by amounts payable under, the Note, this Agreement, the Mortgage or any other Permanent Loan Document (other than income, franchise and doing business taxes), and shall pay all stamp taxes and other taxes required to be paid on the Note, the Mortgage, this Agreement or the other Permanent Loan Documents. If the Borrower fails to make such payment within five (5) days after notice thereof from the Permanent Lender, the Permanent Lender may (but shall not be obligated to) pay the amount due, and the Borrower shall reimburse the Permanent Lender on demand for all such Advances.

Section 9.7. *Payment of Liens.* Subject to the right to bond Liens as provided in this Agreement, the Borrower shall pay when due all payments and charges due under or in connection with any Liens and shall cause the prompt (but in no event later than thirty (30) days after imposition), full and unconditional discharge of all Liens imposed on or against the Mortgaged Property or any portion thereof, or if not so discharged the Permanent Lender may (but shall not be obligated to) make Advances to do so. The Borrower shall do or cause to be done, at the sole cost of the Borrower, everything reasonably necessary to fully preserve the priority of the Lien of the Mortgage subordinate only to the Tax Regulatory Agreement, the Credit Agency Tax Regulatory Agreement, and the other Permitted Encumbrances. If the Borrower fails to make any

such payment or if a Lien attaches to the Mortgaged Property or any portion thereof and is not discharged within said thirty (30) day period, the Permanent Lender may (but shall not be obligated to) make such payment or discharge such lien and the Borrower shall reimburse the Permanent Lender on demand for all such Advances. Notwithstanding the foregoing, with the Permanent Lender's prior written consent, which consent will not be unreasonably withheld, delayed or conditioned, in lieu of paying or discharging a lien, the Borrower may contest, bond over and/or insure any such lien arising from the claims and demands of mechanics, laborers and others so long as such lien is not in excess of the greater of 2% of the outstanding principal balance of the Permanent Loan or One Million Dollars (\$1,000,000.00), whichever is greater and the Borrower contests the same in accordance with the provisions for contesting Impositions under **Section 9.4(b)** hereof.

Section 9.8. *Estoppel Certificates.* Within ten (10) Business Days following a request by the Permanent Lender or any proposed assignee under **Section 12.42** hereof, the Borrower shall provide to the Permanent Lender a duly acknowledged written statement confirming: (a) the original principal amount of the Permanent Loan; (b) the unpaid principal amount of the Permanent Loan; (c) the rate of interest of the Permanent Loan; (d) the terms of payment and maturity date of the Permanent Loan; (e) the date installments of interest and/or principal were last paid; (f) that, except as provided in detail in such statement, there are no offsets or defenses against the Indebtedness or defaults or events which with the passage of time or the giving of notice, or both, would constitute an Event of Default under the Permanent Loan Documents; and (g) such other information that Permanent Lender shall reasonably request.

Section 9.9. *Requirements of Law and Maintenance of the Mortgaged Property.* To the best of the Borrower's knowledge, except as disclosed to the Permanent Lender in writing, the Mortgaged Property is in compliance with all Requirements of Law. The Borrower shall maintain the Mortgaged Property in good and safe condition, working order and repair, and comply with all Requirements of Law in all material respects. The Borrower shall permit the Permanent Lender and its agents to enter upon and inspect: (a) the areas of the Mortgaged Property which are open to the public at all reasonable hours without prior notice and (b) subject to the rights of tenants under the Leases, all other areas of the Mortgaged Property during regular business hours upon at least two (2) Business Days' prior written notice, except that no notice shall be required in the event of an emergency. The Borrower shall not, without the prior written consent of the Permanent Lender, which consent may be granted or withheld in the Permanent Lender's sole and absolute discretion: (a) change the use of the Mortgaged Property; (b) cause or permit the use or occupancy of any part of the Mortgaged Property to be discontinued if such discontinuance would violate any zoning or other law, ordinance or regulation; (c) apply for or consent to any subdivision, re-subdivision, zoning reclassification, modification or restriction affecting the Mortgaged Property; (d) commit or permit any waste, structural or material addition to or material alteration, demolition or removal of the Mortgaged Property or any portion thereof (provided that the Equipment included within the Mortgaged Property may be removed if obsolete or if replaced with similar items of equal or greater value); (e) take any action whatsoever to apply for, consent to, or acquiesce in the conversion of the Mortgaged Property, or any portion thereof, to a condominium or cooperative form of ownership, or (f) take any action whatsoever to apply for, consent to or acquiesce in any subdivision or re-subdivision of the Mortgaged Property, or any portion thereof. No provision of this **Section 9.9** shall prohibit the Borrower from undertaking and completing

tenant improvement work authorized under Leases previously approved by the Permanent Lender or not requiring the Permanent Lender's prior approval.

Section 9.10. *Prohibition Against Conveyances, Encumbrances and Borrowing.* Except as otherwise permitted in **Sections 9.11** through **9.13** hereof and except with the prior written consent of the Permanent Lender, which consent may be granted or withheld in the Permanent Lender's sole and absolute discretion, and except as otherwise expressly permitted in this Agreement, neither the Borrower nor any other Upstream Owner shall sell, transfer, convey, assign, mortgage, encumber, pledge, hypothecate, grant a security interest in, grant options with respect to, or otherwise dispose of (directly or indirectly, voluntarily or involuntarily, by operation of law or otherwise, and whether or not for consideration or of record) all or any portion of any legal or beneficial interest in: (a) all or any material portion of the Mortgaged Property including the Leases; or (b) all or any (direct or indirect) ownership interest in the Borrower or in any Upstream Owner, except (I) for the sale or transfer of any publicly traded shares in any Upstream Owner or (II) to a Guarantor Entity. In furtherance of the foregoing, subordinate liens (voluntary or involuntary) secured by any portion of the Mortgaged Property, or any beneficial interest in the Mortgaged Property, and any mezzanine or any other financing, whether unsecured or secured by any ownership interest in the Borrower or in any Upstream Owner, shall not be permitted except (a) with the prior written consent of the Permanent Lender in each case or (b) to the extent that such financing is in the form of an unsecured Permanent Loan from one of the Borrower's partners for the purpose of funding Operating Expenses. Without limiting the Permanent Lender's right to withhold its consent to any transfer or encumbrance, any transfer or encumbrance must be to or with a United States citizen or an entity owned or controlled by United States citizens which is not an OFAC Prohibited Person. All requests for the Permanent Lender's consent under this **Section 9.10** shall be on a form previously approved by the Permanent Lender and shall be accompanied by the payment to Permanent Lender of a non-refundable administrative processing fee in the amount of \$10,000 (the "*Processing Fee*"). The Permanent Lender's consent to any of the foregoing actions, if given (in the Permanent Lender's sole and reasonable discretion), may be conditioned upon a change in the interest rate, maturity date, amortization period or other terms under this Agreement, the payment of a transfer or encumbrance fee and/or any other requirements of the Permanent Lender. In addition to the Processing Fee, the Borrower shall pay or reimburse the Permanent Lender on demand for all reasonable expenses (including reasonable attorneys' fees, costs and expenses, title search costs, and title insurance endorsement premiums) incurred by the Permanent Lender in connection with the review, approval and documentation of any such transaction. The foregoing prohibitions are not intended to prevent the individual Upstream Owners (other than the Managing Member of the Borrower or any other Upstream Owner that is required to comply with the provisions of **Section 2.7** hereof) from obtaining personal loans or providing a guaranty on any loans unrelated to the Borrower and the Mortgaged Property and are also not intended to prevent the Borrower from incurring reasonable and customary trade payables and unsecured operational debt incurred with trade creditors in the ordinary course of its business of owning and operating the Mortgaged Property that are not secured by any portion of the Mortgaged Property, do not exceed One Hundred Thousand Dollars (\$100,000) in the aggregate, and will be satisfied within sixty (60) days of incurrence, provided that such debt is not evidenced by tax exempt financing and is paid when due.

Section 9.11. *Removal of Managing Member.* Notwithstanding anything to the contrary contained in the Permanent Loan Documents, the removal by the Investor Member or Special Member of the Managing Member in accordance with the terms of the Borrower's Organizational Documents and the replacement of any such removed partner with the Investor Member or Special Member or an Affiliate of the Investor Member or Special Member (a) shall not require the prior written consent of the Permanent Lender, (b) shall not be a default under the Permanent Loan Documents, (c) shall not cause an acceleration of the Permanent Loan and (d) shall not require the payment of the Processing Fee. Any amendments to the Borrower's Organizational Documents executed for the sole purpose of effectuating the transfers permitted by the preceding sentence shall not require the prior written consent of the Permanent Lender. If the Investor Member or Special Member exercises their right to remove the Managing Member in accordance with the terms of the Borrower's Organizational Documents and the replacement for any such removed partner is any Person that is not the Investor Member or Special Member or an Affiliate of the Investor Member or Special Member, such replacement shall require the prior written approval of the Permanent Lender which consent will not be unreasonably conditioned, delayed or withheld. Any amendments to the Borrower's Organizational Documents executed for the sole purpose of effectuating the transfers permitted by the preceding sentence shall require the prior written consent of the Permanent Lender which consent will not be unreasonably conditioned, delayed or withheld.

Section 9.12. *Transfers of Investor Member or Special Member's Interests in the Borrower.* Notwithstanding anything to the contrary contained in the Permanent Loan Documents, the transfer of the interest of the Investor Member or Special Member in the Borrower to an Affiliate of the Investor Member or Special Member shall not require the Permanent Lender's consent, shall not be a default under the Permanent Loan Documents, and the Permanent Lender shall not have the right to accelerate the Permanent Loan based on such transfers. Amendments to the Borrower's Organizational Documents executed solely to effectuate any transfers described in the immediately preceding sentence shall not require the prior written consent of the Permanent Lender, however, the Borrower must deliver copies of any such amendments to Permanent Lender within thirty (30) days of the execution thereof. The interest of the Investor Member or Special Member in the Borrower shall be transferable to a Person that is not an Affiliate of the Investor Member or Special Member (a) prior to funding of all of its Capital Contributions with the consent of the Permanent Lender, which consent shall not be unreasonably withheld, and, (b) after funding all of its Capital Contributions, without the prior written consent of the Permanent Lender. Amendments to the Borrower's Organizational Documents executed solely to effectuate any transfers described in clause (a) of the immediately preceding sentence shall require the prior written consent of the Permanent Lender, which consent shall not be unreasonably withheld, and amendments pursuant to clause (b) of the immediately preceding sentence shall not require the prior written consent of the Permanent Lender.

Section 9.13. *Transfers of Interests in Investor Member or Special Member.* Notwithstanding anything to the contrary contained in the Permanent Loan Documents, provided that (i) completion of construction, as evidenced by delivery of the Completion Certificate, has occurred, (ii) all of the capital contributions of the Investor Member or Special Member have been funded in accordance with the Borrower's Organizational Documents and (iii) there is no violation of any applicable law, rule or regulation, including OFAC, the transfer of any interests in the

Investor Member or Special Member, the Special Member and in any of the Upstream Owners of such entities shall be permitted without the prior written consent of the Permanent Lender.

Section 9.14. *Title.* (A) No Regulatory and Restrictive Use Agreement, Easement Agreement or Easement created thereunder has been modified, amended or supplemented and they are all in full force and effect; and (B) no defaults have occurred under any Regulatory and Restrictive Use Agreement or Easement Agreement, and, to Borrower's knowledge, no event has occurred which with notice or the passage of time would constitute an event of default under any Regulatory and Restrictive Use Agreement or Easement Agreement. With respect to each Regulatory and Restrictive Use Agreement, Easement Agreement and Permitted Encumbrance, the Borrower shall, to the extent commercially reasonable to do so: (i) observe, perform and discharge all material obligations, covenants and warranties required to be kept and performed by the Borrower, and (ii) enforce or secure the performance of each and every material obligation, term, covenant, condition and agreement to be performed by any other party under any Regulatory and Restrictive Use Agreement or Easement Agreement. The Borrower shall also (a) promptly deliver to the Permanent Lender copies of all material written notices, demands or requests sent or otherwise made by the Borrower or any other Person, and (b) timely pay any charges assessed against the Mortgaged Property as and when finally due pursuant to the Regulatory and Restrictive Use Agreements or Easement Agreements or Permitted Encumbrances. Without the prior written consent of the Permanent Lender, which consent shall not be unreasonably withheld, delayed or conditioned, the Borrower will not consent to or enter into any agreement or writing that modifies, amends, supplements, restates, terminates or reduces any: (V) Regulatory and Restrictive Use Agreement, (W) Easement Agreement, (X) any public or private parking rights, or (Y) any appurtenant rights or interests, including any reversionary interests which the Borrower possesses or may acquire related to parking.

ARTICLE 10

BORROWER'S OPTIONS

Section 10.1. *Principal Prepayments.*

(a) During the Construction Term, the Borrower shall prepay all or part of the Loan upon any redemption of the Bonds under **Article 3** of the Indenture at the times and in the amounts necessary to effect any such redemption, including a prepayment fee or premium due in connection with that prepayment (or corresponding redemption of the Bonds) as provided for in the Indenture.

(b) There are no full or partial prepayment privileges of the principal amount of the Bonds after the Conversion Date except as set forth in this Agreement.

(c) The Borrower shall have the right to pre-pay the Bonds in whole or in part on any Business Date after, but not prior to, the tenth (10th) anniversary of the Conversion Date (the "*Closed Prepayment Date*"), subject to the payment of any Prepayment Fee due in connection with such redemption and provided that no Event of Default exists.

The "*Prepayment Fee*" shall be equal to the greater of (x) or (y) where:

- (x) is equal to the amount to be prepaid multiplied by one percent (1%); and
- (y) is the present value of the series of Monthly Payment Differentials from the date of prepayment to the Permanent Term Maturity Date, discounted at the Reinvestment Yield on a monthly basis.

The “*Monthly Payment Differential*” means the monthly interest (without amortization), which would be earned if the prepayment were invested at the Permanent Loan Contract Rate less the monthly interest that would be earned by reinvesting the prepayment at the Reinvestment Yield.

The “*Reinvestment Yield*” means the yield to maturity of a Treasury Issue, adjusted from a semi-annual rate to a monthly rate, which has the closest maturity (month and year) prior to the Permanent Term Maturity Date, as quoted in The Wall Street Journal published in print or on-line on the second (2nd) calendar day immediately preceding the date for prepayment, but if said second (2nd) day is not a Business Day, then as quoted on the preceding Business Day. If more than one Treasury Issue has the same maturity date, then the Treasury Issue having the market yield that differs least from the Permanent Loan Contract Rate will be used in the calculations. If The Wall Street Journal is not in publication on the applicable date, or ceases to publish such Treasury Issue information in print or on-line on the applicable date, then any other publication selected by the Permanent Lender quoting daily market yields for Treasury Issues may be used.

(d) If the Permanent Term Maturity Date is accelerated by the Permanent Lender because of the occurrence of an Event of Default or as otherwise provided in the Permanent Loan Documents (an “*Acceleration Event*”), the acceleration shall be deemed to be an election on the part of the Borrower to prepay the Permanent Loan. Accordingly, there shall be added to the amount due after an Event of Default and resulting acceleration, the Prepayment Fee or the Closed Period Prepayment Fee, as applicable, calculated as set forth below and using as the Prepayment Date the date on which any tender of payment is made (the “*Prepayment Date*”), and the Borrower agrees to pay same. Any tender of payment made (or judgment entered) after acceleration by or on behalf of the Borrower (including payment by the Guarantor or purchaser at a foreclosure sale), shall include the Prepayment Fee or the Closed Period Prepayment Fee, as applicable computed as provided below. If the Acceleration Event occurs prior to the Closed Prepayment Date, a prepayment fee (a “*Closed Period Prepayment Fee*”) shall nevertheless be paid, which Closed Period Prepayment Fee shall be calculated as set forth in **Section 10.1(c)** above, except that with respect to clause (x), the Closed Period Prepayment Fee shall equal the amount to be prepaid multiplied by three percent (3%) (rather than one percent (1%)), and that with respect to clause (y), the Reinvestment Yield (calculated as provided for above) shall be reduced by two (2) percentage points.

(e) There will be due with any principal prepayment, all accrued and unpaid interest and all other fees, charges and payments due under the Permanent Loan Documents.

(f) No Prepayment Fee or Closed Period Prepayment Fee, as applicable, shall be required to be paid in connection with payment of fire, casualty, or condemnation

proceeds to the Permanent Lender which the Permanent Lender requires to be applied to the Indebtedness in accordance with the provisions of this Agreement, except if such application to the Indebtedness is after an Event of Default.

(g) The Borrower acknowledges and agrees that all of the economic terms set forth in the Permanent Loan Documents, including the Permanent Loan Contract Rate, have been agreed to by the Permanent Lender based on the Permanent Lender's expectation that the Permanent Loan will not be repaid prior to the Permanent Term Maturity Date. However, in order to accommodate the Borrower, the Permanent Lender has agreed to permit the Borrower to repay the Permanent Loan prior to the Permanent Term Maturity Date in accordance with, and subject to, the terms set forth above provided that, and as consideration for such agreement, the Borrower agrees to pay the Permanent Lender the Prepayment Fee or Closed Period Prepayment Fee, as applicable. The Borrower acknowledges and agrees that, even if the Permanent Lender is able to loan the amount prepaid by the Borrower to another Person on the same terms and conditions as herein provided, the Permanent Lender shall not have fully recovered the Permanent Lender's lost profits, costs, expenses and damages suffered as a result of such early prepayment; therefore, the Borrower and the Permanent Lender have agreed on the Prepayment Fee and Closed Period Prepayment Fee as compensation for the Permanent Lender's estimated lost profits, costs, expenses and damages resulting from such prepayment. The Prepayment Fee or Closed Period Prepayment Fee, as applicable, shall be paid without prejudice to the right of the Permanent Lender to collect any other amounts provided to be paid under this Agreement or the other Permanent Loan Documents, or pursuant to the provisions of law.

(h) No Prepayment Fee shall be required to be paid during the last ninety (90) days prior to Permanent Term Maturity Date.

Section 10.2. *Direction of Investments.* Subject to prior written consent of the Bondholder Representative, except during the continuance of an Event of Default, the Borrower shall have the right during the term of this Agreement to direct the Trustee to invest or reinvest all money held for the credit of Funds established by **Article 5** of the Indenture in Permitted Investments subject, however, to the further conditions of **Article 6** of the Indenture.

Section 10.3. *Termination of Loan Agreement: Required Prepayment.*

(a) Except during the continuance of an Event of Default, the Borrower shall have the option of terminating this Agreement if (i) the Bonds have been paid in full or if provision is otherwise made for payment of the Bonds in such manner that the Indenture will be discharged under **Article 7** thereof on or before the date of termination, (ii) such prepayment and termination is allowed by the Mortgage, and (iii) the Borrower provides the Trustee and the Issuer with an opinion of Bond Counsel to the effect that all such conditions have been satisfied and that such action will not adversely affect the exclusion of interest on the Bonds from gross income for federal income tax purposes; provided that this Agreement may not be terminated unless and until (x) all of the Borrower's obligations under the Loan Documents have been satisfied and (y) all of the Borrower's obligations with respect to the Issuer Administration Fee's and any rebate obligation have been satisfied and the Borrower has so certified to the Issuer and the Trustee. All obligations of

the Borrower under **Sections 4.3** and **7.3** hereof and shall survive termination of this Agreement.

(b) Notwithstanding the foregoing, the Borrower may not terminate this Agreement unless and until the Trustee has on deposit an amount equal to the sum of the following:

(i) Funds on deposit in any of the Funds established under **Article 5** of the Indenture and available for that purpose which are sufficient to discharge the Indenture in accordance with **Article 7** thereof and to pay amounts due under **Section 10.1** hereof, plus

(ii) to the extent not paid under subsection (a) above, an amount equal to the Trustee's fees and expenses due or to become due under the Indenture not otherwise paid or provided for pursuant to **Section 4.2** or **4.3** hereof and any other amounts due and unpaid under **Section 7.3** hereof, accrued and to accrue until the Bonds are fully paid and redeemed and all other advances, fees, costs, and expenses reasonably incurred and to be incurred on or before the Termination Date by the Trustee pursuant to the Indenture and by the Issuer and the Trustee under this Agreement and/or the other Loan Documents; provided that in any event, in order to effect prepayment or discharge of the Outstanding Bonds the Borrower shall, prior to the Termination Date, satisfy the requirements of **Section 7.1** of the Indenture.

(c) On the Termination Date, a closing shall be held at any office mutually agreed upon among the Issuer, the Borrower, the Bondholder Representative, and the Trustee (which closing may be conducted by first class mail or recognized overnight delivery service). At the closing the Issuer and the Trustee shall, upon acknowledgment of receipt of the sum set forth in subsection (b) above, execute and deliver to the Borrower such release and other instruments as the Borrower reasonably determines is necessary to terminate this Agreement and the other Loan Documents. All further obligations of the Borrower hereunder (except as specifically provided in **Sections 4.3** and **7.3**) shall thereupon terminate, provided, however, that the Borrower shall also remain obligated to pay or reimburse the Issuer, the Bondholder Representative, and the Trustee for the payment of all other fees, costs, and expenses unaccounted for in the sum paid in accordance with subsection (b) above and reasonably incurred before or subsequent to such closing in connection with the Bonds.

ARTICLE 11

EVENTS OF DEFAULT AND REMEDIES

Section 11.1. *Events of Default.* Any one or more of the following events is an Event of Default under this Agreement, and the term "*Event of Default*," wherever used herein, means any one of the following events, whatever the reason for such default and whether it shall be voluntary or involuntary or be effected by operation of law or pursuant to any judgment, decree, or order of any court or any order, rule or regulation of any administrative or governmental body:

(a) the Borrower shall fail to pay (a) any amount due under **Section 4.2** on the date such payment is due; (b) any Additional Charges when due and such failure shall continue for five (5) days after receipt by the Borrower of a written notice to the Borrower by the Issuer, the Trustee, or the Bondholder Representative stating that such Additional Charges were not received on the due date; and (c) any amount due under this Agreement with respect to the funding of the Operating Reserve within five (5) days following the date such amount is due; or

(b) other than as described in **Section 11.1(ff)** and **(ww)**, the Borrower shall fail in any respect to observe and perform or shall breach in any respect any other provision, covenant, condition, or agreement on its part under this Agreement and shall fail to remedy such default or breach within thirty (30) days after written notice to the Borrower from the Issuer, the Trustee, or the Bondholder Representative, specifying such default or breach and requesting that it be remedied; or

(c) the occurrence and continuance of an event of default or default by the Borrower under and in connection with any of the Taxable Tail Loan Documents, which is not fully cured or waived within any applicable cure or grace period, or as a result thereof, the holder of the Taxable Tail Loan would be entitled to accelerate the Taxable Tail Loan will be entitled to accelerate the Taxable Tail Loan; or

(d) an Act of Bankruptcy shall occur with respect to the Borrower, the Investor Member, or the Guarantor, or with respect to the Managing Member unless, in the case of an Act of Bankruptcy of the Managing Member or the Guarantor, within sixty (60) days after such Act of Bankruptcy, the Managing Member or the Guarantor, as applicable, is replaced with an entity reasonably acceptable to the Bondholder Representative; or

(e) the Borrower, the Guarantor, or the Managing Member dissolves, terminates, or liquidates, unless such Guarantor or the Managing Member is replaced with a new guarantor or general partner as applicable reasonably acceptable to the Bondholder Representative within thirty (30) days after such dissolution, termination, or liquidation, as applicable; or

(f) the occurrence and continuance of an event of default or a default shall occur under the Indenture, the Tax Regulatory Agreement, or any Loan Document and any applicable period for remedying or waiving such event of default has expired; or

(g) any representation or warranty made by the Borrower herein, or in any document or certificate furnished to the Issuer or the Bondholder Representative, in connection herewith or pursuant hereto shall prove at any time to be, in any material adverse respect, incorrect or misleading as of the date made; or

(h) the Managing Member ceases for any reason to act in that capacity, and is not replaced with the Special Member (or an Affiliate thereof) or another substitute general partner reasonably acceptable to the Bondholder Representative within thirty (30) days; or

(i) except with respect to the investment in the Investor Member by an Affiliate of the Bondholder Representative, any interest in the Borrower or in any partner in the Borrower is transferred to any person or entity if such Transfer would result in a Determination of Taxability; or

(j) the Borrower or the Project fails to meet or exceed the Pro Forma Schedule set forth at **Schedule E** herein (except as may be extended by the terms of this Agreement); or

(k) Construction of the Project is not completed by the Bondholder Representative's Required Completion Date (except as may be extended by the terms of this Agreement); or

(l) subject to Excusable Delays, Construction of the Project is abandoned or halted prior to the Bondholder Representative's Required Completion Date for any period of thirty (30) consecutive days for any cause not beyond the reasonable control of the Borrower or the Contractor, excluding Excusable Delays; or

(m) any governmental, judicial, or legal authority having jurisdiction over the Project orders or requires that Construction of the Project be stopped in whole or in part, for reasons other than Excusable Delays, or any required approval, license, or permit relating to the construction or operation of the Project is withdrawn or suspended, and the order, requirement, withdrawal, or suspension remains in effect for a period of thirty (30) consecutive days; or

(n) the Trustee fails to have an enforceable first lien on or security interest in any property given as security for the Loan (to the extent an enforceable security interest may be granted in the particular property); provided that this Event of Default shall not extend to any actions or omissions of the Trustee, the Issuer or the Bondholder Representative which in and of itself causes the loss of such first lien; or

(o) prior to the Substantial Completion of the Improvements, the Borrower is in material default under the Construction Contract and any applicable period for remedying such default has expired, or has not been waived, or if no cure period is otherwise specified, the Borrower shall fail to remedy such default within thirty (30) days after written notice from the Issuer, the Trustee, or the Bondholder Representative specifying such default and requesting that it be remedied; or

(p) the (i) failure of the Investor Member to deposit in the Capital Contribution Account any of the Construction Capital Contributions when due under the terms of the Operating Agreement, (ii) failure of the Investor Member to make any other scheduled installment of its Capital Contribution as and when due under the terms of the Operating Agreement, or (iii) amendment to the Operating Agreement in any material manner relating to the timing, amount, and conditions to the payment of Capital Contributions unless the amendment is approved by the Bondholder Representative in writing, which approval shall not be unreasonably withheld, conditioned or delayed; or

(q) a determination by the Bondholder Representative in its reasonable judgment that there has been a Material Adverse Change in the Borrower's, the Managing Member's, or the Guarantor's financial condition, unless in the case of the Managing Member and the Guarantor, the Managing Member and/or the Guarantor, as applicable, is replaced within sixty (60) days after such Material Adverse Change with an entity reasonably acceptable to Bondholder Representative; or

(r) the occurrence of a Determination of Taxability, unless as a result of the investment in Investor Member by an affiliate of the Bondholder Representative or if the Borrower elects for the Note to bear interest at the rate set forth in **Section 7.14** hereof; or

(s) the Borrower fails to satisfy any condition to any request for approval of a Requisition or Draw Request in **Schedule D** attached hereto which is not fully cured or waived in writing by the Bondholder Representative within 30 days after written notice thereof is provided by Bondholder Representative to the Borrower; or

(t) the Borrower fails to satisfy any of the conditions to payment to the Borrower of any of the Borrower's Sources in a timely manner, which failure is not cured or waived in writing prior to the expiration of any applicable grace or cure period; or

(u) the Borrower or its authorized representatives and Affiliates shall challenge or contest in any action, suit, or proceeding the validity or enforceability of this Agreement or any of the Loan Documents, the legality or enforceability of any of the obligations secured by the Loan Documents or the perfection or priority of any lien or security interests granted to Issuer or Trustee; or

(v) failure of the Borrower or the Project to fully comply with all of the rules and regulations with respect to the Low Income Housing Tax Credit, and such failure is not fully cured within thirty (30) days after written notice thereof is provided by the Bondholder Representative to the Borrower or within such longer period permitted by the Credit Agency; or

(w) a judgment or judgments are entered (which there is no legal right to appeal), or any Government Authority takes action, against the Borrower or the Managing Member in any case which results in a Material Adverse Change; or

(x) the Borrower fails to comply with any provision contained in this Agreement other than those provisions elsewhere referred to in this **Section 11.1** and does not cure that failure within thirty (30) days after its receipt of written notice from the Bondholder Representative, or

(y) the Tax Regulatory Agreement shall be materially amended (including without limitation any "automatic amendment") without the written consent of the Bondholder Representative in such a manner as to impose restrictions more burdensome upon the Project than those contained (or contemplated to be contained) in the Tax Regulatory Agreement of the Bond Closing, and which will have a Material Adverse Change; or

(z) the Borrower fails to satisfy the Conditions to Conversion on or before the Construction Term Maturity Date (or such later date if such date is extended under **Section 4.2(f)** hereof); or

(aa) the cancellation, termination, or expiration of the Ground Lease; or

(bb) the cancellation, termination, or expiration of the Forward Bond Purchase Agreement; or

(cc) failure to permit the Permanent Lender or its agents to enter to the Mortgaged Property or to access the Borrower's books and records in accordance with the terms of this Agreement and the other Permanent Loan Documents and such failure shall continue for more than five (5) days after written notice to the Borrower from the Permanent Lender; or

(dd) except for the payments described in **Sections 11.1(a)** and **11.1(t)** hereof, failure to pay any other amount due under this Agreement, the Note, the Mortgage or any other Permanent Loan Document within ten (10) days following notice from the Permanent Lender that such amount is due; or

(ee) violation of any of the terms, obligations, covenants or conditions set forth in **Section 8.5** hereof (which is not cured within five (5) Business Days after receipt of notice), **Section 9.14** hereof (which is not cured within five (5) Business Days after receipt of notice), **Sections 9.10, 9.11, 9.12,** and **9.13** hereof; or

(ff) the occurrence of an Event of Default, or default following any required notice to Borrower and following the expiration of any applicable grace or cure period, under any guaranty, indemnity or other instrument delivered to the Permanent Lender in connection with the Permanent Loan; or

(gg) if any representation, warranty, certification or other statement made in any Permanent Loan Document or in any statement or certificate at any time given to the Permanent Lender in connection with the Permanent Loan shall prove to be untrue or misleading in any material respect at the time when made or given; provided, however, if (i) the Borrower makes a good faith, unintentional misrepresentation in any Permanent Loan Document, (ii) there is no failure by the Borrower to timely pay any sum of money when due under the Permanent Loan Documents, and (iii) the underlying facts or situation that rendered such representation inaccurate or untrue can be remedied to the Permanent Lender's satisfaction within thirty (30) days following the earlier to occur of the discovery of such misrepresentation by the Borrower or written notice from the Permanent Lender to the Borrower of such misrepresentation and the Borrower actually remedies said underlying facts or situation so as to make the original representation in the Permanent Loan Document(s) true and correct in all material respects on a going forward basis prior to the expiration of said thirty (30) day period and there are not remaining material adverse consequences to the Permanent Lender, the Permanent Loan or the Mortgaged Property, then such misrepresentation shall not be deemed to be an Event of Default; or

(hh) if, on or after the Conversion Date, the Permanent Lender fails to have a legal, valid, binding and enforceable lien on the Mortgaged Property or any material portion thereof, subordinate only to the Permitted Encumbrances, the Credit Agency Tax Regulatory Agreement, and the Tax Regulatory Agreement; or

(ii) failure to pay any Imposition prior to delinquency (except as expressly permitted in accordance with **Section 9.4(b)**), or to maintain insurance or apply insurance proceeds as required by this Agreement; or

(jj) after the Conversion Date, except as permitted in this Agreement, adjusting, compromising, settling or entering into any agreement with respect to insurance settlements and condemnation proceedings, without the prior consent of the Permanent Lender; or

(kk) except as permitted in this Agreement: (i) a change in the use of any of the Mortgaged Property or causing or permitting the use or occupancy of any part of the Mortgaged Property to be discontinued if such change of use or discontinuance would violate any zoning or other law, ordinance or regulation; (ii) consent to any zoning reclassification, modification or restriction affecting any of the Mortgaged Property; (iii) taking any steps whatsoever to convert any of the Mortgaged Property, or any portion thereof, to a condominium or cooperative form of ownership; or (iv) the structural or material alteration, demolition or material removal of any of the Improvements, without the prior written consent of the Permanent Lender; or

(ll) failure to deliver copies of any material notices from a Governmental Authority or other regulatory authority in accordance with the terms of this Agreement and the other Permanent Loan Documents within thirty (30) days of the Borrower's receipt of the same; or

(mm) failure to deliver financial statements required by **Section 9.5** hereof following the written notice from the Permanent Lender to the Borrower and the expiration of the cure period described in **Section 9.5(c)** hereof or the failure to deliver the estoppel certificates required by **Section 9.8** hereof within ten (10) Business Days after the delivery of written notice from the Permanent Lender; or

(nn) if a default or event of default shall occur and continue beyond all applicable notice, grace, and cure periods under any permitted mortgage, encumbrance, lien or security agreement encumbering all or any portion of the Mortgaged Property, which is subordinate or superior to the lien of the Mortgage, or if any party under any such instrument shall commence a foreclosure or other collection or enforcement action in connection therewith; or

(oo) failure to obtain a Management Agent and/or Management Agreement reasonably satisfactory to the Permanent Lender within the sixty (60) day period set forth in **Section 8.6** hereof; or

(pp) failure of the Borrower or the Guarantor to preserve and keep in full force and effect its existence, franchises, licenses, authorizations, registrations, permits and approvals required under the laws of the State and any franchises, licenses, authorizations, registrations, permits and approvals required or necessary to operate its business, unless in the case of the Guarantor, the Guarantor is replaced within thirty (30) days thereafter with an entity reasonably acceptable to Bondholder Representative; or

(qq) except as otherwise permitted herein, if Borrower or the Guarantor shall institute or cause to be instituted any proceeding for the termination or dissolution of the Borrower, any Principal, or the Guarantor, unless in the case of the Guarantor, the Guarantor is replaced within thirty (30) days thereafter with an entity reasonably acceptable to Bondholder Representative; or

(rr) any termination statements or correction statements are filed with respect to the Permanent Lender's financing statements in connection with the Mortgage without the Permanent Lender's prior written consent; or

(ss) if the Borrower or the Guarantor takes an action, or fails to take an action, within their respective control, that causes a Determination of Taxability; or

(tt) if the Borrower or any Guarantor takes an action, or fails to take an action, within their respective control, that causes the forfeiture of the ad valorem property tax exemption and Borrower or such Guarantor fails to provide substitute funds to cover any resulting operating deficit; or

(uu) failure of the Borrower to obtain and provide to the Permanent Lender copies of IRS Forms 8609 for each building of the Project prior to the first (1st) anniversary of the Conversion Date; and/or

(vv) the Borrower shall breach or violate in any respect the negative covenant set forth in **Section 7.11(m)**.

Notwithstanding the foregoing, the Investor Member and Guarantor shall have the right (but not the obligation) to cure any event set forth in this **Section 11.1** during any applicable cure period. The Bondholder Representative shall accept a timely cure of a particular event from either the Investor Member or the Guarantor as if provided by the Borrower, and, in that event, the Bondholder Representative shall not exercise (nor direct the Trustee or Issuer to exercise) any remedies relating to that event which has been cured unless the Investor Member and Guarantor were provided written notice of that event and failed to cure the event within the applicable grace or cure period.

Section 11.2. Remedies. If an Event of Default exists under this Agreement, the Bondholder Representative may direct the Trustee, as assignee of the rights of the Issuer, to exercise any right or remedy that the Issuer has under any of the Loan Documents or that is otherwise available at law or in equity or by statute, and all of such rights and remedies shall be cumulative. The Trustee shall take such actions hereunder and under the Loan Documents as directed in writing by the Bondholder Representative, subject to the Trustee's rights to

indemnification in the Indenture. If any Default or Event of Default occurs and is continuing, the Bondholder Representative's obligation to approve funding under the Loan Documents shall automatically terminate and the Bondholder Representative may, in its sole discretion, withhold its approval of any one or more Requisitions or any one or more disbursements. The Bondholder Representative may also withhold its approval of any one or more Requisitions or any one or more disbursements during the continuance of a Default or an Event of Default. No disbursement of Loan funds by the Trustee or approval of any one or more Requisitions and/or Draw Request will cure any Default or Event of Default of the Borrower, unless the Bondholder Representative agrees otherwise in writing in each instance. The Bondholder Representative may, upon the occurrence and continuance of an Event of Default but subject to any of the other Loan Documents or the Indenture, instruct the Trustee to redeem the Bonds pursuant to **Section 3.1** of the Indenture.

Notwithstanding anything to the contrary contained in the Indenture, this Agreement, or any of the other Loan Documents, the Bondholder Representative has the right to instruct the Issuer and the Trustee to take any action which the Bondholder Representative, in its good faith discretion, deems prudent in order to enforce any right or remedy of the Issuer or the Trustee under the Loan Documents, provided that such action shall not adversely affect the exclusion of interest on the Bonds from gross income for federal income tax purposes and provided that the costs and expenses of the Trustee in taking any such action shall be provided by the Bondholder Representative if sufficient funds are or will not be timely available from the Trust Estate.

Following expiration of all applicable notice and cure periods provided herein, if the Borrower commits an Act of Bankruptcy, all of the Borrower's obligations under the Loan Documents shall automatically, ipso facto, become immediately due and payable upon the filing of the petition commencing such proceeding, all without notice of default, presentment or demand for payment, protest or notice of nonpayment or dishonor, or other notices or demands of any kind or character. Upon the occurrence of any other Event of Default, all of the Borrower's obligations under the Loan Documents may become immediately due and payable without notice of default, presentment or demand for payment, protest, or notice of nonpayment or dishonor, or other notices or demands of any kind or character, all at the Bondholder Representative's option, exercisable in its sole discretion. If such acceleration occurs, the Bondholder Representative may direct the Trustee to apply the undisbursed Loan funds, and the Bondholder Representative may apply any other available the Borrower's Sources to the obligations of the Borrower under the Loan Documents, in any order and proportions that the Bondholder Representative in its sole discretion may choose, subject to the requirements of the Indenture with respect to the application of Bond Proceeds and the rights of the Trustee.

Also upon the occurrence and continuance of any Event of Default that occurs during the Construction of the Project, the Trustee (upon direction from the Bondholder Representative) or the Bondholder Representative in its sole discretion may enter and take possession of the Project, whether in person, by agent or by court appointed receiver, to take any and all actions which the Bondholder Representative in its sole discretion may consider necessary to complete Construction of the Project, including making changes in plans, specifications, work, or materials and entering into, modifying, or terminating any contractual arrangements (subject to the specific termination provisions of such contractual arrangements), all subject to the Bondholder Representative's right at any time to discontinue any work without liability and cause to be exercised any and all rights

and remedies of the Issuer (except for Unassigned Issuer's Rights) under the Loan Documents in such order and to such extent as the Bondholder Representative determines in its sole and reasonable discretion. If the Bondholder Representative chooses to complete the Project, it shall not assume any liability to the Borrower or any other Person for completing the Project, or for the manner or quality of Construction of the Project, and the Borrower expressly waives any such liability of the Bondholder Representative for the period prior to the Bondholder Representative's exercise of its rights pursuant to this **Section 11.2**. If the Bondholder Representative or the Trustee exercises any of the rights or remedies provided in this paragraph, that exercise shall not make the Bondholder Representative or the Trustee, or cause the Bondholder Representative or Trustee to be deemed to be, a partner or joint venturer of the Borrower. The Bondholder Representative in its sole discretion may choose to complete construction in its own name. All reasonable sums which are expended by the Bondholder Representative in completing construction shall be considered to have been disbursed to the Borrower on behalf of the Issuer and shall be secured by the Mortgage and any other collateral held by the Issuer, the Trustee, or the Bondholder Representative in connection with the Loan; any sums of principal shall be considered to be an additional loan to the Borrower bearing interest at the Default Rate, and shall be secured by the Mortgage and any other collateral held in connection with the Loan. For these purposes, the Bondholder Representative, in its sole discretion, may reallocate any line item or cost category of the Budget.

If an Event of Default exists, the Bondholder Representative may for, and on behalf of the Borrower, cure any default or event of default under the Ground Lease.

The Bondholder Representative shall also have, and is hereby granted, a continuing security interest in, lien on, and right of set off against the Capital Contribution Account, the Disbursement Checking Account, the Borrower's Funds Account, and all other deposit and other accounts of the Borrower now or hereafter located at the Bondholder Representative (except for the Funds established pursuant to the Indenture).

Except as otherwise expressly provided in this Agreement and the other Loan Documents and Permanent Loan Documents, the Borrower waives presentment, demand for payment, notice of dishonor and any or all notices or demands in connection with the delivery, acceptance, performance, default or enforcement of the Note and consents to any or all delays, extensions of time, renewals, release of any party to the Note, the Mortgage, this Agreement or any other Loan Document and of any available security therefor, to any party to the Note, the Mortgage, this Agreement, or the other Loan Documents or to the actual holder thereof and any and all waivers or modifications that may be granted or consented to by the Trustee (with the authorization of the Bondholder Representative) with regard to the time of payment or with respect to any other provisions of the Note, the Mortgage, this Agreement or the other Loan Documents, and agrees that no such action, delay or failure to act on the part of the Bondholder Representative shall be construed as a waiver by the Trustee (with the authorization of the Bondholder Representative) of, or otherwise affect, in whole or in part, its right to avail itself of any remedy with respect thereto. No notice to or demand on the Borrower shall be deemed to be a waiver of the obligation of the Borrower or of the right of the Issuer, Trustee, and/or the Bondholder Representative to take further action without further notice or demand as provided in the Note, the Mortgage, this Agreement, or the other Loan Documents.

The parties hereby acknowledge and agree that the Low Income Housing Tax Credit is an inseparable benefit of ownership of the Project which is transferred with the transfer of ownership of the Project and that the Low Income Housing Tax Credit may not be transferred or assigned by the Bondholder Representative separately from its security interest in the Project nor by the Borrower and its partners to any other Person separately from the Borrower and its partners' ownership of the Project. In the event that the Bondholder Representative (or its designee) obtains title to and ownership of the Project, the Borrower (or the Investor Member) shall have no right to claim the portion of the Low Income Housing Tax Credit which is generated by the Project from and after the date on which the Bondholder Representative (or its designee) obtains title to and ownership of the Project. Therefore, only to the extent permitted under applicable Requirements of Law, from and after the date of foreclosure, deed in lieu of foreclosure, or otherwise obtaining title to the Project, the Bondholder Representative (acting for and on behalf of the Trustee) may exercise and claim ownership and control of the Low Income Housing Tax Credit. In connection with the foregoing, the Borrower grants to the Bondholder Representative an irrevocable power of attorney, coupled with an interest, which the Bondholder Representative may exercise from and after the date of foreclosure, deed in lieu of foreclosure, or otherwise obtaining title to the Project, pursuant to which the Bondholder Representative may obtain and exercise all rights or documents deemed by the Bondholder Representative to be necessary to obtain, retain, or sell all or any portion of the Low Income Housing Tax Credit (but only to the extent permitted under applicable Requirements of law).

Upon discovery by the Bondholder Representative of any material deviations from the Plans and Specifications or of any defective material or labor being used in the Construction of the Project, the Bondholder Representative may immediately order stoppage of construction and demand that any unsatisfactory work be replaced and that the condition be corrected, whether or not any unsatisfactory work has already been incorporated into the Improvements. After issuance of such an order in writing, the condition shall be corrected within thirty (30) days from the date of stoppage ordered by the Bondholder Representative, subject to Excusable Delays. The Bondholder Representative shall have the right to withhold approval of all further requisitions of the Bond proceeds until the condition is corrected and no other work shall be done on the Improvements (other than to correct that condition) without the prior written consent of the Bondholder Representative unless, and until, such condition has been fully corrected. Notwithstanding the foregoing, the Bondholder Representative acknowledges that its judgment with regard to any decision to halt work shall be reasonably exercised in light of the scope of the deficiency discovered in comparison to the current ongoing Construction of the Project and the actual impact of such deficiency on the Borrower's and the Contractor's ability to continue with other portions of the Construction of the Project regardless of the presence of such deficiency.

If the Borrower shall fail, refuse or neglect to make any payment or perform any act required by the Loan Documents and/or the Permanent Loan Documents, then while any Event of Default exists, and without notice to or demand upon the Borrower and without waiving or releasing any other right, remedy or recourse that the Bondholder Representative may, because of such Event of Default (but shall not be obligated to), make Advances to make such payment or perform such act, and shall have the right to enter upon the Mortgaged Property (subject to the rights of tenants) for such purpose and to take all such action thereon and with respect to the Mortgaged Property as it may reasonably deem necessary or appropriate. Similarly, in making

any payments to protect the security intended to be created by the Loan Documents and/or the Permanent Loan Documents, the Bondholder Representative shall not be bound to inquire into the validity of any apparent or threatened adverse title, lien, encumbrance, claim or charge before making an advance for the purpose of preventing or removing the same. THE BORROWER SHALL INDEMNIFY, DEFEND AND HOLD THE BONDHOLDER REPRESENTATIVE HARMLESS FROM AND AGAINST, AND BE RESPONSIBLE FOR, ANY AND ALL LOSSES, LIABILITIES, CLAIMS, DAMAGES (EXCLUDING CONSEQUENTIAL DAMAGES), EXPENSES, OBLIGATIONS, PENALTIES, ACTIONS, JUDGMENTS, SUITS, COSTS OR DISBURSEMENTS OF ANY KIND OR NATURE WHATSOEVER, INCLUDING REASONABLE OUT-OF-POCKET ATTORNEYS' FEES, INCURRED OR ACCRUING BY THE REASON OF ANY ACTS PERFORMED BY THE BONDHOLDER REPRESENTATIVE PURSUANT TO THE PROVISIONS OF THIS **SECTION 11.2**, INCLUDING THOSE ARISING FROM THE JOINT, CONCURRENT, OR COMPARATIVE NEGLIGENCE OF THE BONDHOLDER REPRESENTATIVE, EXCEPT SOLELY AND EXCLUSIVELY ARISING AS A RESULT OF THE BONDHOLDER REPRESENTATIVE'S (OR ANY PERSON ACTING ON BEHALF OF BONDHOLDER REPRESENTATIVE) GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.

If an Event of Default shall exist under this Agreement and the Issuer, the Bondholder Representative, or the Trustee employ attorneys or actually incur other reasonable expenses for the collection of any amounts due hereunder, or for the enforcement of performance of any obligation or agreement on the part of the Borrower, the Borrower shall promptly pay upon written demand therefor, together with a reasonable accounting of such amounts due to the Issuer, the Bondholder Representative, or the Trustee, as applicable.

The Bondholder Representative agrees to accept performance on the part of the Investor Member or an Affiliate, or the Guarantor, as though the same had been performed by the Borrower under any of the Loan Documents. The Bondholder Representative will provide Investor Member and the Guarantor with copies of all notices provided to the Borrower hereunder or under the Loan Documents at the time the notice is provided to the Borrower.

Section 11.3. *Waiver of Marshalling of Assets.* To the fullest extent permitted by law, the Borrower, for itself and its successors and assigns, waives all rights to a marshalling of the assets of the Borrower, and others with interests in the Borrower, and of the Mortgaged Property, and agrees not to assert any right under any laws pertaining to the marshalling of assets, homestead exemption, the administration of estates of decedents, or any other matters whatsoever to defeat, reduce or affect the right of the Bondholder Representative under the Loan Documents and/or the Permanent Loan Documents to a sale of the Mortgaged Property for the collection of the Indebtedness without any prior or different resort for collection or of the right of the Bondholder Representative to the payment of the Indebtedness out of the net proceeds of the Mortgaged Property in preference to every other claimant whatsoever. The Borrower agrees that the actions, sales, proceedings and foreclosure described herein or in any of the other Loan Documents and/or the Permanent Loan Documents may be commenced in any order determined by the Bondholder Representative.

Section 11.4. *Advances.* The Bondholder Representative shall have the right (but not the obligation) to make Advances and obtain reimbursement for any and all Advances to satisfy any of the Borrower's obligations under this Agreement that the Borrower fails to timely satisfy, which Advances shall constitute additions to the Loan; provided, however, that it is understood that the principal amount of the Bonds shall not be increased and the interest earned on such portion of the

Loan shall not be excluded from gross income for federal tax purposes. The Bondholder Representative may make an Advance in reliance on any bill, statement or assessment procured from the appropriate Governmental Authority or other issuer thereof without inquiring into the accuracy or validity thereof. All Advances shall bear interest at the Default Rate from the date that each such Advance or expense is made or incurred to the date of repayment. The Borrower shall pay or reimburse the Bondholder Representative within five (5) Business Days after written demand for any and all Advances made pursuant to this Agreement, including for all interest thereon and for all reasonable costs and expenses (including reasonable out-of-pocket attorneys' and appraisers' and receivers' fees, costs and expenses and the expenses and reasonable fees of any similar official) incurred by Bondholder Representative in connection with the collection of the Indebtedness, any foreclosure of the Mortgage, the Loan Documents or any other Permanent Loan Document, any enforcement, compromise or settlement of any Permanent Loan Document or the Indebtedness in any judicial, arbitration, administrative, probate, appellate, bankruptcy, insolvency or receivership proceeding, as well as in any post-judgment proceeding to collect or enforce any judgment or order relating to the Indebtedness, the Loan Documents or any Permanent Loan Document, as well as any defense or assertion of the rights or claims of the Bondholder Representative in respect of any thereof, by litigation or otherwise. All Advances made and any reasonable expenses incurred at any time by the Bondholder Representative pursuant to the provisions the Loan Documents and/or the Permanent Loan Documents or under applicable law shall be secured by the Mortgage as part of the Indebtedness, with equal rank and priority.

Section 11.5. *Effect of Waiver.* In the event any agreement contained in this Agreement is breached by any party and thereafter such breach is waived by another party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

Section 11.6. *The Issuer and the Trustee May File Proofs of Claim.* In case of the pendency of any receivership, insolvency, liquidation, bankruptcy, reorganization, arrangement, adjustment, composition, or other judicial proceeding relative to the Borrower or the property of the Borrower, the Trustee or the Issuer (with the prior consent of the Trustee), shall be entitled and empowered, by intervention in such proceeding or otherwise:

(a) to file and prove a claim and to file such other papers or documents as may be necessary or advisable in order to have the claims of the Issuer and the Trustee (including any claim for the reasonable compensation, expenses, disbursements, and advances of the Issuer and Trustee, their agents, and counsel) allowed in such judicial proceeding; and

(i) to collect and receive any moneys or other property payable or deliverable on any such claims, and to distribute the same.

Section 11.7. *Restoration of Positions.* If a party has instituted any proceeding to enforce any right or remedy under this Agreement, and such proceeding has been discontinued or abandoned for any reason, or has been determined adversely to a party, then and in every such case the parties shall, subject to any determination in the proceeding, be restored to the positions they held prior to commencement of such proceedings, and thereafter all rights and remedies of the parties shall continue as though no such proceeding had been instituted.

Section 11.8. *Suits to Protect the Project.* If the Borrower shall fail so to do after thirty (30) days' prior written notice from the Issuer or the Trustee, the Issuer or the Trustee shall have power to institute and to maintain such proceedings as either of them may reasonably deem expedient to prevent any impairment in any material respect of the Project or any portion thereof, by any acts which may be unlawful or in violation of this Agreement, and such suits and proceedings as the Issuer or the Trustee may reasonably deem expedient to protect its interests in the Project or any portion thereof, including power to institute and maintain proceedings to restrain the enforcement of or compliance with any governmental enactment, rule, or order that may be unconstitutional or otherwise invalid, if the enforcement of, or compliance with, such enactment, rule, or order would have a Material Adverse Change on the Project or be prejudicial to the interests of the Trustee in any material respect.

Section 11.9. *Performance of Third Parties.* The Trustee or the Issuer (with the prior written consent of the Trustee), may permit third parties to perform any and all acts or take such action as may be necessary for and on behalf of the Borrower to cure any Event of Default hereunder. The acceptance by the Issuer or the Trustee of any such performance by third parties shall not in any way diminish or absolve the Borrower of primary liability hereunder.

Section 11.10. *Exercise of the Issuer Remedies by Bondholder Representative.* Whenever any Event of Default shall have occurred and be continuing, the Trustee may, but except as otherwise provided in the Indenture shall not be obligated to, exercise any or all of the rights of the Issuer under this **Article 11** with notice to the Issuer.

Section 11.11. *Recourse/Non-Recourse Provisions.* (a) Prior to the Conversion Date, the Borrower and the Guarantor are personally liable for any deficiency in the payment of any "Secured Obligations" (as defined in the Mortgage) that may remain following a judicial foreclosure (or, to the extent permitted by law, a non-judicial foreclosure) of the Mortgage.

(a) Following the Conversion Date, no person may seek or obtain judgment against the Borrower, the Guarantor, the Managing Member, or any other partner of the Borrower, any Person who holds a direct or indirect ownership interest in the Managing Member, or any such other partner, or any officer, directors, trustee, employee, agent, or affiliate of any such Person for payment of principal or interest under the Note or any other amount due under the Note or any other Loan Document, or any representation or warranty under or in connection with the Loan Documents, or other obligations under the Loan Documents, and the sole recourse against the Borrower, the Guarantor, the Managing Member, or any other member of Borrower, or any Person who holds a direct or indirect ownership interest in Managing Member, or any such other partner, or any officer, directors, trustee, employee, agent, or affiliate of any such Person for any such payment, representation, warranty, or other obligation is limited to the Project and any other collateral for the Loan; provided, however, that the limitation of liability set forth in this **Section 11.11** will not prejudice or affect the Issuer's and the Trustee's (as the Issuer's assignee) rights to:

(i) Name the Borrower, the Guarantor, or the Managing Member as a party defendant in any action, proceeding, or arbitration, subject to the limitations of this Section; or

(ii) Assert any unpaid amounts on the Loan as a defense to or offset against any claim or cause of action made or alleged against the Issuer or Trustee by the Borrower, the Guarantor, the Managing Member, or indemnitor in connection with the Loan; or

(iii) Exercise self-help remedies permitted under applicable law such as set off or non-judicial foreclosure against or sale of any real or personal property collateral or security; or

(iv) Collect or recover rents, insurance proceeds, amounts payable under surety bonds or letters of credit, Condemnation Awards or any other awards arising out of any public action, or any damages or awards against third parties arising out of any damage or injury to, or decrease in value of, all or part of the collateral for the Loan; or

(v) Collect or recover an amount from the Borrower, the Guarantor, or the Managing Member equal to any rents or other sums of any type that are not applied as required by this Agreement after an Event of Default has occurred and while it is continuing; or

(vi) Enforce and collect, or recover all sums owed under **Sections 4.2(b)(i), (iii), (iv), and (v), and Sections 4.2(c), and 7.3** of this Agreement by the Borrower (other than accrued and unpaid interest and unpaid principal on the Loan); or

(vii) Enforce any and all of the Borrower's and the Managing Member's obligations under this Agreement relating to preserving the condition of the Project or the priority of the Issuer's interest in the Project, including obligations to pay all taxes and charges that may affect or become a lien on the Project, to maintain the Project and all insurance in accordance with this Agreement, and to repay all sums advanced by the Issuer or the Trustee, as the Issuer's assignee, for any such purposes (other than accrued and unpaid interest and unpaid principal on the Loan); or

(viii) Enforce any agreement of the Borrower or any other party (other than this Agreement) specifically stating that it is not subject to the limitation of liability contained in this **Section 11.11**; or

(ix) Recover any expenses, damages (excluding consequential damages), or costs, including reasonable attorneys' fees (including the allocated costs for services of in house counsel), that the Issuer or the Trustee, as the Issuer's assignee, may incur because of the Borrower's fraud, intentional misrepresentation, misapplication of funds, waste, or intentional damage of or to any collateral for the Loan; or

(x) Enforce any and all of the Borrower's obligations to complete construction on the Project as contemplated by this Agreement, including

obligations to repay sums advanced by the Issuer or the Trustee, as the Issuer's assignee, for such purpose; or

(xi) Enforce any indemnity or other obligation of the Borrower arising from or in connection with the issuance by or the performance of or under by the Issuer, or by the Trustee (as the Issuer's assignee) any set aside letter or comparable undertaking to any municipality or contractor concerning the sufficiency of the Loan to pay specified costs or the enforcement of any set aside letter against the Issuer or the Trustee (as the Issuer's assignee); or

(xii) Enforce the Borrower's obligations to pay the Issuer Administration Fee, the Issuer Compliance Fee, the Trustee's Ordinary Fees and Expenses, the Rebate Analyst's Fee, the Additional Charges with respect to the Issuer and the Trustee under **Section 4.3**, and the fees and expenses referred to in **Sections 11.4** and **12.17** hereof.

Notwithstanding anything to the contrary set forth in this **Section 11.11**, in no event shall any payments required under **Section 11.11(b)(i)** through and including **(xi)** include payment of accrued and unpaid interest or outstanding principal on the Loan.

(b) Notwithstanding any provisions of **Section 11.11(b)** hereof, the Borrower and the Guarantor shall be personally liable to the Permanent Lender and the Permanent Lender shall have full recourse to the Borrower and the Guarantor in connection with the Note to the extent provided below in connection with the following:

(i) Fraud or material misrepresentation in connection with (A) information provided by Borrower and relied upon by Permanent Lender to make the Permanent Loan, (B) this Agreement, (C) any other the Permanent Loan Documents or (D) the making of the Permanent Loan, upon such occurrences the Borrower and the Guarantor shall be subjected to recourse liability for the entire Indebtedness;

(ii) Insurance and/or condemnation proceeds received by or on behalf of the Borrower but not paid over to the Permanent Lender or applied in accordance with the terms of **Sections 9.1, 9.2** and **9.3** hereof, upon such occurrences the Borrower and the Guarantor shall be subjected to recourse liability for any such proceeds which are neither paid over to the Permanent Lender, nor applied in accordance with the terms of **Sections 9.1, 9.2** and **9.3** hereof;

(iii) Failure to apply any security deposits not returned to tenants, advances or prepaid rents, cancellation or termination payments and other sums received by the Borrower or the Management Agent in connection with the operation of the Mortgaged Property in accordance with the terms of the Permanent Loan Documents, or the misappropriation of any of the aforementioned sums received by the Borrower or the Management Agent, upon such occurrence the Borrower and the Guarantor shall be subjected to recourse liability for the amount

of any such sum applied in accordance with the terms of the Permanent Loan Documents or not paid over to the Permanent Lender.

(iv) Removal of any material non-obsolete Equipment from the Mortgaged Property by or on behalf of the Borrower or its Affiliates which is not replaced with Equipment of equal or greater utility and of the same or greater value, upon such occurrence the Borrower and the Guarantor shall be subjected to recourse liability for the replacement value of any Equipment which is removed and not so replaced;

(v) Any act of arson, malicious destruction or physical waste affecting any of the Mortgaged Property by the Borrower, the Managing Member or any act of arson, malicious destruction or physical waste affecting any of the Mortgaged Property committed by any individual employed by any of the Borrower, the Managing Member or the Guarantor that is intentionally directed or encouraged by any of the Borrower, the Managing Member or the Guarantor, upon such occurrences the Borrower and the Guarantor shall be subjected to recourse liability for any losses incurred by the Permanent Lender arising out of or related to each such act;

(vi) Any failure to apply any income or proceeds of the Mortgaged Property to any obligations under the Permanent Loan Documents for capital improvements and operating expenses of the Mortgaged Property (including any deposits or reserves required by a Permanent Loan Document) (except that the Borrower will not be personally liable (i) to the extent that Borrower lacks the legal right to direct the disbursement of such sums because of a bankruptcy, receivership or similar judicial proceeding, or (ii) with respect to rents that are distributed on account of any calendar year if the Borrower has paid all operating expenses and debt service amounts for that calendar year), upon such occurrences the Borrower and the Guarantor shall be subjected to recourse liability to the extent of any such income or proceeds which are not applied as aforesaid, *provided* that the Permanent Lender shall not have the right to recover distributions made in good faith to any partner of the Borrower or any Upstream Owner (after determining the sufficiency of revenues to cover any such payments) more than 180 days prior to a default occurring under any Permanent Loan Document;

(vii) Filing by the Borrower or the Guarantor a voluntary bankruptcy or insolvency proceeding, or the filing against any of them, or against any of the Mortgaged Property of an involuntary bankruptcy or insolvency proceeding that is consented to or acquiesced by the Borrower or the Guarantor, upon such occurrences the Borrower and the Guarantor shall be subjected to recourse liability for the entire Indebtedness with respect to filings by or against the Borrower or the Mortgaged Property under this **Section 11.11(b)(vii)** and recourse liability for Losses incurred by the Permanent Lender relating to filings by or against the Guarantor;

(viii) Failure of the Borrower to timely maintain, or pay the premiums for, any insurance required to be maintained under **Sections 9.1, 9.2 and 9.3** hereof or any other Permanent Loan Document, or to pay any Impositions against the Mortgaged Property, upon such occurrences the Borrower and the Guarantor shall be subjected to recourse liability for any losses incurred by the Permanent Lender in connection with such failure to timely maintain insurance, pay any Imposition or pay insurance premiums;

(ix) Violation of the restrictions on transfers of the Mortgaged Property or any ownership interest in the Borrower set forth in **Section 9.10** hereof, upon such occurrences the Borrower and the Guarantor shall be subjected to recourse liability for the entire Indebtedness;

(x) Violation of the restrictions on subordinate, mezzanine and other financing set forth in **Section 9.10** hereof, upon such occurrences the Borrower and the Guarantor shall be subjected to recourse liability for the entire Indebtedness; and

(xi) Violation of the Single Purpose Entity requirements contained in **Section 2.7** hereof, upon such occurrence the Borrower and the Guarantor shall be subjected to recourse liability for any Losses incurred by the Permanent Lender relating to such violation of such Single Purpose Entity requirements.

If there is any irreconcilable inconsistency between this **Section 11.11** and any Loan Document including without limitation, the Mortgage and the Note, this Section shall control (except that the terms of the Forward Bond Purchase Agreement shall govern and control if this **Section 11.11** is in conflict with that agreement).

ARTICLE 12

GENERAL PROVISIONS

Section 12.1. *Amounts Remaining in Funds.* Any amounts remaining in the Funds created under **Article 5** of the Indenture upon cancellation of the liens and trusts of the Indenture shall be distributed as provided in **Section 5.11** of the Indenture.

Section 12.2. *Notices.* All notices, demands, certificates, or other communications hereunder and under each other Loan Document shall be given to all parties identified below, shall be in writing (except as otherwise expressly provided herein) and shall be sufficiently given and shall be deemed given (i) when delivered by hand delivery, telegram or facsimile or (ii) five days after such notice is served by depositing the same with the United States Postal Service, or any official successor thereto, designated as Registered or Certified Mail, Return Receipt Requested, bearing adequate postage, or (iii) upon delivery by reputable private courier such as Federal Express, Airborne, DHL, United Parcel Service or similar overnight delivery service, and addressed as hereinafter provided. All parties identified below may, by written notice given by each to the others, designate any address or addresses to which notices, demands, certificates, or other communications to them shall be sent when required as contemplated by this Agreement. Any notice, demand, certificate, report, financial statement, or other communication properly

provided by legal counsel on behalf of any party hereunder shall be deemed properly provided by the party represented by such counsel. Until otherwise provided by the respective parties, all notices, demands, certificates, and communications to each of them shall be addressed as follows:

To the Issuer:	Austin Housing Finance Corporation 1000 E. 11 th Street Austin, Texas 78702 Attn: David Potter Telephone: 512-974-3100
With a copy to:	McCall, Parkhurst & Horton L.L.P. 717 N. Harwood, Suite 900 Dallas, Texas 75201 Attn: Mark Malveaux Telephone: 214-754-9221
To the Borrower:	Austin DMA Housing II, LLC 1000 E. 11th Street Austin, Texas 78702 Attn: David Potter Telephone: 512-974-3100
With a copy to:	Coats Rose 9 Greenway Plaza, Suite 1100 Houston, Texas 77046-0307 Attn: Barry J. Palmer Telephone: 713-653-7395
And to:	DMA Development Company. 4101 Parkstone Heights Dr, Suite 310 Austin, Texas 78746 Attn: Janine Sisak Telephone: 512-328-3232
And to:	Applegate & Thorne-Thomsen, P.C. 626 West Jackson Blvd., Suite 400 Chicago, Illinois 60661 Attn: Warren P. Wenzloff Telephone: (312) 491-3321
To the Trustee:	BOKF, NA dba Bank of Texas 801 Cherry Street Suite 3325, Unit 27 Fort Worth, Texas 76102 Attn: Pamela M. Black, CCTS, Senior Vice President Telephone: (817) 348-5797

With a copy to:	Naman, Howell, Smith & Lee, PLLC 8310 Capital Texas Hwy. N., Suite 490 Austin, Texas 78731 Attn: William C. "Cliff" Blount, Esq. Telephone: (512) 807-2454
To the initial Bondholder Representative:	JPMorgan Chase Bank, N.A. Community Development Group 221 West 6 th Street, Floor 2 Austin, Texas 78701 Attention: David H. Saling Telephone: (512) 479-2218
With a copy to:	JPMorgan Chase Bank, N.A. Legal Department 237 Park Avenue, 12th Floor Mail Code NY1-R065 New York, New York 10017 Attention: Michael R. Zients, Executive Director and Assistant General Counsel Telephone: (212) 648-1201
To the Key Principal:	DMA Development Company. 4101 Parkstone Heights Dr., Suite 310 Austin, Texas 78746 Attn: Janine Sisak Telephone: 512-328-3232
To Permanent Lender:	Cornerstone Permanent Mortgage Fund III, LLC c/o Boston Capital Finance LLC One Boston Place, 22 nd Floor Boston, Massachusetts 02108 Attn: Sean P. Curry Telephone: (617) 624-8935
With a copy to:	Holland & Knight 10 St. James Avenue Boston, Massachusetts 02116 Attn: Suanne C. St. Charles Telephone: (617) 305-2111

Section 12.3. *Binding Effect.* This Agreement shall inure to the benefit of and shall be binding upon the Bondholder Representative, the Issuer, and the Borrower and their respective

successors and assigns. Insofar as this Agreement provides for rights of the Trustee, this Agreement shall also inure to the benefit of the Trustee.

Section 12.4. *No Oral Agreement.* THIS WRITTEN LOAN AGREEMENT AND THE OTHER LOAN DOCUMENTS AND PERMANENT LOAN DOCUMENTS REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES. If there is any conflict between the terms, conditions, and provisions of this Agreement and those of any other agreement or instrument, including any other Loan Document, the terms, conditions, and provisions of this Agreement shall prevail as among said parties to this Agreement.

Section 12.5. *Severability.*

(a) If any provision of this Agreement shall be held or deemed to be or shall, in fact, be inoperative or unenforceable as applied in any particular case in any jurisdiction or jurisdictions or in all jurisdictions or in all cases because it conflicts with any provisions of any constitution or statute or rule of public policy, or for any other reason, such circumstances shall not have the effect of rendering the provision in question inoperative or unenforceable in any other case or circumstance, or of rendering any other provisions herein contained invalid, inoperative, or unenforceable to any extent whatever.

(b) The invalidity of any one or more phrases, sentences, clauses, or paragraphs contained in this Agreement shall not affect the remaining portions of this Agreement or any part thereof.

Section 12.6. *Amendments, Changes and Modifications.* This Agreement may not be modified or amended except by a written agreement signed by the parties hereto. Except as otherwise provided in this Agreement or in the Indenture, subsequent to the issuance of the Bonds and before the lien of the Indenture is satisfied and discharged in accordance with its terms, this Agreement may not be effectively amended, changed, modified, altered, or terminated without the written consent of the Borrower, the Holders of not less than a majority of the aggregate principal amount of the Bonds then Outstanding as provided in **Article 11** of the Indenture, and the Issuer. The Bondholder Representative shall have the right to waive or modify, conditionally or unconditionally, the conditions to its approvals and consents provided hereunder, without the consent of any party other than the Borrower.

Section 12.7. *Execution in Counterparts.* This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 12.8. *Required Approvals.* Consents and approvals required by this Agreement to be obtained from the Bondholder Representative, the Borrower, the Issuer, or the Trustee shall be in writing and shall not be unreasonably withheld, conditioned or delayed unless otherwise specifically provided herein.

Section 12.9. *Limitation on Issuer's Liability.* (a) All obligations of the Issuer incurred under this Agreement, the Tax Regulatory Agreement, and the Indenture shall be limited obligations of the Issuer, payable solely and only from the proceeds of the Bonds and revenues and other amounts derived by the Issuer from the Trust Estate. THE BONDS SHALL BE PAYABLE SOLELY FROM THE PROJECT REVENUES AND OTHER FUNDS AND PROPERTY PLEDGED UNDER THE INDENTURE FOR THE PAYMENT OF THE BONDS, AND NO OWNER OR OWNERS OF ANY OF THE BONDS SHALL EVER HAVE THE RIGHT TO COMPEL ANY EXERCISE OF THE TAXING POWER OF THE ISSUER, THE SPONSOR, THE STATE, OR ANY POLITICAL SUBDIVISION OR OTHER PUBLIC BODY OF THE STATE, NOR TO ENFORCE THE PAYMENT OF THE BONDS AGAINST ANY PROPERTY OF THE ISSUER, THE SPONSOR, THE STATE, OR ANY SUCH POLITICAL SUBDIVISION OR OTHER PUBLIC BODY, EXCEPT AS PROVIDED IN THE INDENTURE. NO MEMBER, OFFICER, AGENT, DIRECTOR, EMPLOYEE, ATTORNEY, OR MEMBER OF THE ISSUER OR ANY SPONSOR, INCLUDING ANY PERSON EXECUTING THIS AGREEMENT ON BEHALF OF THE ISSUER, SHALL BE LIABLE PERSONALLY UNDER THIS AGREEMENT OR FOR ANY REASON RELATING TO THE ISSUANCE OF THE BONDS. NO RECOURSE SHALL BE HAD FOR THE PAYMENT OF THE PRINCIPAL OF, PREMIUM, IF ANY, OR THE INTEREST ON THE BONDS, OR FOR ANY CLAIM BASED ON THE BONDS, OR OTHERWISE IN RESPECT OF THE BONDS, OR BASED ON OR IN RESPECT OF THIS AGREEMENT OR ANY AMENDMENT TO THIS AGREEMENT, AGAINST ANY MEMBER, OFFICER, EMPLOYEE, DIRECTOR, AGENT, ATTORNEY, OR MEMBER OF THE GOVERNING BODY, AS SUCH, OF THE ISSUER OR ANY SPONSOR, OR ANY SUCCESSOR WHETHER BY VIRTUE OF ANY CONSTITUTION, STATUTE, OR RULE OF LAW, OR BY THE ENFORCEMENT OF ANY ASSESSMENT OR PENALTY OR OTHERWISE, ALL SUCH LIABILITY BEING, BY THE ACCEPTANCE OF THIS AGREEMENT AND AS PART OF THE CONSIDERATION FOR THE ISSUANCE OF THE BONDS, EXPRESSLY WAIVED AND RELEASED.

(b) It is expressly understood and agreed by the parties to this Agreement that:

(i) the Issuer may rely conclusively on the truth and accuracy of any certificate, opinion, notice or other instrument furnished to the Issuer by the Trustee, the Bondholder Representative, any Holder or the Borrower as to the existence of a fact or state of affairs required under this Agreement to be noticed by the Issuer;

(ii) the Issuer shall not be under any obligation to perform any record keeping or to provide any legal service, it being understood that such services shall be performed or caused to be performed by the Borrower or such other appropriate party; and

(iii) none of the provisions of this Agreement shall require the Issuer to expend or risk its own funds (apart from the proceeds of Bonds issued under the Indenture) or otherwise endure financial liability in the performance of any of its duties or in the exercise of any of its rights under this Agreement unless it first shall have been adequately indemnified to its satisfaction against the costs, expenses and liabilities which may be incurred by taking any such action.

(c) No provision, representation, covenant or agreement contained in this Agreement or in the Indenture, the Bonds, or any obligation herein or therein imposed upon the Issuer, or the breach thereof, shall constitute or give rise to or impose upon the Issuer a pecuniary liability (except to the extent of any loan repayments, revenues and receipts

derived by the Issuer pursuant to this Agreement and other moneys held pursuant to the Indenture, other than in the Rebate Fund). No provision hereof shall be construed to impose a charge against the general credit of the Issuer, the State, the Sponsor or any other political subdivision or public body of the State, the taxing powers of the foregoing, within the meaning of any Constitutional provision or statutory limitation, or any personal or pecuniary liability upon any director, officer, agent or employee of the Issuer or the Sponsor.

(d) All covenants, obligations and agreements of the Issuer contained in this Agreement and the Indenture shall be effective to the extent authorized and permitted by applicable law. No such covenant, obligation or agreement shall be deemed to be a covenant, obligation or agreement of any present or future director, officer, agent or employee of the Issuer in other than his official capacity, and no official executing the Bonds shall be liable personally on the Bonds or be subject to any personal liability or accountability by reason of the issuance thereof or by reason of the covenants, obligations or agreements of the Issuer contained in this Agreement or in the Indenture. No provision, covenant or agreement contained in this Agreement, the Indenture or the Bonds, or any obligation herein or therein imposed upon the Issuer, or the breach thereof, shall constitute or give rise to or impose upon the Issuer a pecuniary liability or a charge. No recourse shall be had for the enforcement of any obligation, covenant, promise, or agreement of the Issuer contained in this Agreement or in any Bond or for any claim based hereon or otherwise in respect hereof or upon any obligation, covenant, promise, or agreement of the Issuer contained in any agreement, instrument, or certificate executed in connection with the Project or the issuance and sale of the Bonds, against any member of the board of directors of the Issuer, its officers, counsel, financial advisor, or agents, as such, in his or her individual capacity, past, present, or future, or of any successor thereto, whether by virtue of any Constitutional provision, statute, or rule of law, or by the enforcement of any assessment or penalty or otherwise; it being expressly agreed and understood that no personal liability whatsoever shall attach to, or be incurred by, any member of the governing board, officers, counsel, financial advisors, or agents, as such, in his or her individual capacity, past, present, or future, of the Issuer or of any successor thereto, either directly or by reason of any of the obligations, covenants, promises, or agreements entered into between the Issuer and the Trustee or the Borrower to be implied therefrom as being supplemental hereto or thereto, and that all personal liability of that character against every such director, officer, counsel, financial advisor, or agent, is, by the execution of the Bonds, this Agreement, and the Indenture, and as a condition of, and as part of the consideration for, the execution of the Bonds, this Agreement, and the Indenture, expressly waived and released.

Section 12.10. *No Waiver; Consents.* No alleged waiver by the Trustee, the Bondholder Representative, the Borrower, or the Issuer will be effective unless in writing, and no waiver will be construed as a continuing waiver. No waiver may be implied from any delay or failure by the Trustee, the Bondholder Representative, the Borrower, or the Issuer to take action on account of any default or to exercise any right or remedy or any security. Consent by the Trustee, the Bondholder Representative, the Borrower or the Issuer to any act or omission may not be construed

as a consent to any other or subsequent act or omission or as a waiver of the requirement for consent to be obtained in any future or other instance. All rights and remedies are cumulative.

Section 12.11. *Purpose and Effect of Bondholder Representative Approval.* The Bondholder Representative's approval of any matter in connection with the Loan is for the sole purpose of protecting the Issuer's security and rights of the Trustee and the Bondholder Representative. No such approval will result in a waiver of any Event of Default hereunder.

Section 12.12. *No Commitment to Increase Loan.* From time to time, the Bondholder Representative may approve changes to the Plans and Specifications at the Borrower's request and also require the Borrower to make corrections to the work of construction, all on and subject to the terms and conditions of this Agreement. The Borrower acknowledges that no such action or other action by the Bondholder Representative will in any manner commit or obligate the Bondholder Representative to increase the amount of the Loan.

Section 12.13. *Third Parties Benefited.* This Agreement is made and entered into for the sole protection and benefit of the Bondholder Representative, the Issuer, the Borrower and their permitted successors and assigns and, to the extent expressly set forth herein, the Trustee. The parties hereto expressly recognize that the Trustee is a third party beneficiary of the Issuer to this Agreement and may enforce any right, remedy or claim conferred, given or granted to the Issuer hereunder. No trust fund is created by this Agreement, and no other Persons have any right of action under this Agreement or any right to the proceeds of the Loan.

Section 12.14. *Authority to File Notices.* The Borrower irrevocably appoints the Bondholder Representative as its attorney-in-fact, with full power of substitution, during the continuance of an Event of Default to file or record, at the Borrower's cost and expense and in the Borrower's name, any notices of completion, notices of cessation of labor, or any other notices that the Bondholder Representative in its sole and reasonable discretion considers necessary or desirable to protect the Project, if the Borrower fails to do so after receipt of five days' prior written notice from the Bondholder Representative. Nothing in this **Section 12.14** shall impose any obligations on the Bondholder Representative.

Section 12.15. *Affirmative Action.* The Borrower shall not discriminate in its employment practices against any employee or applicant for employment because of the applicant's race, creed, religion, national origin or ancestry, sex, age, sexual orientation or preference, marital status, color, physical disability, familial status and disability, mental condition or medical condition, including pregnancy, childbirth, or related condition.

Section 12.16. *Actions.* Each of the Trustee, the Bondholder Representative, and the Issuer has the right, but not the obligation, to commence, appear in, and defend any action or proceeding that might affect its security or its rights, duties, or liabilities relating to the Loan, the Project, or any of the Loan Documents pursuant to the terms of **Section 7.3** hereof and otherwise in this Agreement and the other Loan Documents.

Section 12.17. *Attorneys' Fees.* In any lawsuit, reference, or arbitration arising out of or relating to this Agreement, the Loan Documents, or the Loan, including but not limited to any alleged tort action, regardless of which party commences the action, the prevailing party will be

entitled to recover from each other party such sums as the court, referee, or arbitrator adjudges to be reasonable attorneys' fees in the action, reference, or proceeding, in addition to reasonable costs and expenses otherwise allowed by law. Any reasonable attorneys' fees actually incurred by a party in enforcing a judgment in its favor under this Agreement will be recoverable separately from and in addition to any other amount included in the such judgment, and the attorneys' fees obligation is intended to be severable from the other provisions of this Agreement and to survive and not be merged into any judgment. In all other situations, including any bankruptcy or other voluntary or involuntary proceeding, in or out of court, for the adjustment of debtor creditor relationships, the Borrower agrees to pay all of the Trustee's, the Bondholder Representative's, and the Issuer's costs and expenses, including reasonable attorneys' fees, that may be incurred in any effort to collect or enforce the Loan or any part of it or any term of any Loan Document; from the time(s) incurred until paid in full, all such sums will bear interest at the Default Rate.

Section 12.18. *Assignment of Issuer's Rights.* As security for payment of the Bonds, the Issuer will pledge the amounts payable hereunder and collaterally assign, without recourse or liability, to the Trustee, the Issuer's rights under this Agreement and the Note, including the right to receive payments hereunder (but excluding Unassigned Issuer's Rights), and hereby directs the Borrower to make said payments directly to the Trustee, or otherwise upon the order of the Trustee. The Borrower herewith consents to such collateral assignment and will make payments under this Agreement directly to the Trustee, or otherwise to the order of the Trustee without defense or set off by reason of any dispute between the Borrower and the Issuer, the Trustee, or any Bondholder Representative.

Section 12.19. *Applicable Law.* This Agreement is governed by the laws of the State of Texas without regard to the choice of law rules of that State.

Section 12.20. *Heirs, Successors, and Assigns Participation.* The terms of this Agreement will bind and benefit the heirs, legal representatives, successors, and assigns of the parties; provided, however, that the Borrower may not assign this Agreement or any Loan proceeds, or assign or delegate any of its rights or obligations, without the prior written consent of the Bondholder Representative and the Issuer in each instance. Also without notice to or the consent of the Borrower, the Bondholder Representative, and the Issuer may disclose to any actual or prospective purchaser of any securities issued or to be issued by the Bondholder Representative or the Issuer and to any actual or prospective purchaser or assignee of any participation or other interest in the Loan or any other loans made by the Bondholder Representative or the Issuer to the Borrower (whether under this Agreement or otherwise), any financial or other information, data, or material in Bondholder Representative's possession relating to the Borrower, any partners of the Borrower, the Loan, or the Project. Nothing in this Agreement shall impose any restrictions on the ability of the Holders of the Bonds to sell or otherwise transfer the Bonds.

Section 12.21. *Relationships With Other Bondholder Representative Customers.* From time to time, the Bondholder Representative may have business relationships with the Borrower's customers, suppliers, contractors, tenants, partners, shareholders, officers, or directors, or with businesses offering products or services similar to those of the Borrower, or with Persons seeking to invest in, borrow from or lend to the Borrower. The Borrower agrees that the Bondholder Representative may extend credit to such parties and take any action it deems necessary to collect the credit, regardless of the effect that such extension or collection of credit may have on the

Borrower's financial condition or operations. The Borrower further agrees that in no event will the Bondholder Representative be obligated to disclose to the Borrower any information concerning any other the Bondholder Representative customer.

Section 12.22. *Disclosure to Title Company.* Without notice to or the consent of the Borrower, the Bondholder Representative may disclose to any title insurance company insuring any interest of the Bondholder Representative under the Mortgage (whether as primary insurer, coinsurer, or reinsurer) any information, data, or material relating to the Borrower, the Loan, or the Project, and related to such title insurance coverage associated with the Project in the Bondholder Representative's possession.

Section 12.23. *Improvement District.* The Borrower may not vote in favor of, or directly or indirectly advocate or assist in, the incorporation of any part of the Project into any improvement or utility district, special assessment district, or other district without the Bondholder Representative's prior written consent in each instance.

Section 12.24. *Restriction on Disposition of Personal Property.* Except for the replacement of personal property made in the ordinary course of the Borrower's business with items of similar value, the Borrower may not sell, convey, or otherwise transfer or dispose of its interest in any tangible personal property in which the Bondholder Representative has a security interest or contract to do any of the foregoing, without the prior written consent of the Bondholder Representative in each instance.

Section 12.25. *Interpretation.* The language of this Agreement must be construed as a whole according to its fair meaning, and not strictly for or against any party. Whenever the context requires, all words used in the singular will be construed to have been used in the plural, and vice versa, and each gender and the neuter state will include the other gender and the neuter state. The captions of the sections of this Agreement are for convenience only and do not define or limit any terms or provisions. The word "include(s)" means "include(s), without limitation," and the word "including" means "including, but not limited to." No listing of specific instances, items or matters in any way limits the scope or generality of any language of this Agreement. The Schedules to this Agreement are hereby incorporated in this Agreement.

Section 12.26. *Miscellaneous.* Time is of the essence in the performance by the Borrower of its obligations under this Agreement and the other Loan Documents.

Section 12.27. *Publicity.* The Borrower hereby authorizes the Bondholder Representative and its Affiliates, without further notice or consent, to use the Borrower's and its Affiliates' names, logos, and photographs related to the Project in its advertising, marketing and communications materials on a national and/or international basis. Such materials may include web pages, print ads, direct mail and various types of brochures or marketing sheets, and various media formats other than those listed (including without limitation video or audio presentations through any media form). In these materials, the Bondholder Representative also may discuss at a high level the types of services and solutions the Bondholder Representative has provided the Borrower. This authorization shall remain in effect unless the Borrower notifies the Bondholder Representative in writing in accordance with the notice provisions set forth herein that such authorization is revoked. The Borrower hereby agrees that the Bondholder Representative, at its expense, may publicize the

financing of the Project and, in connection therewith may use the address, description and a photograph or other illustrative drawing of the Project.

Section 12.28. *Participations.* The Borrower acknowledges and agrees that the Bondholder Representative may provide any information the Bondholder Representative may have about the Borrower or about any matter relating to this Agreement to the Bondholder Representative, its parent, its subsidiaries, its affiliates or their successors, or to any one or more purchasers or potential purchasers of the Bonds (or interests therein). The Borrower agrees that the Bondholder Representative may at any time sell, assign or transfer one or more interests or participations in all or any part of its rights or obligations in the Note and the Bonds to any or more purchasers whether or not related to the Bondholder Representative. The Borrower authorizes the Bondholder Representative to disseminate any information it has pertaining to the Loan and the Bonds, including, without limitation, credit information on the Borrower, any of its principals, or any other party liable, directly or indirectly for the Loan and the Bonds, to any such assignee or participant or prospective assignee or participant. The Borrower shall execute, acknowledge, and deliver any and all instruments reasonably requested by the Bondholder Representative to satisfy such assignee or participant that the Loan is outstanding in accordance with the terms and provisions of the Note and the Loan Documents.

Section 12.29. *Loan Commission.* The Bondholder Representative is not obligated to pay any brokerage commission or fee in connection with or arising out of the Loan. The Borrower must pay any and all brokerage commissions or fees arising out of or in connection with the Loan as a result of any commitment made by the Borrower.

Section 12.30. *Compliance with Usury Laws.* Notwithstanding any provision of this Agreement, the Note, or any of the Loan Documents to the contrary, it is hereby agreed that in no event (including without limitation the acceleration of the Note) shall the amount of interest contracted for, charged, received, reserved, or taken in connection with the Loan (including interest on the Note together with any other costs or considerations that constitute interest under applicable law which are contracted for, charged, received, reserved, or taken pursuant to the Loan Documents) (“*interest*”), cause the rate of interest on the Notes to exceed the maximum lawful rate. For purposes of this **Section 12.30** to the maximum extent permitted by law, Interest shall be: (i) spread over the term of the Loan; (ii) if appropriate, characterized as a premium for the privilege of making an optional prepayment of the Loan; and (iii) computed after giving effect to the provisions of any other Loan Documents which require the cancellation or refunding of Interest. Default Rate Interest, if any (after the application of the foregoing provisions), provided for in this Agreement, the Note, or any of the Loan Documents shall be canceled automatically as of the date of such acceleration or mandatory prepayment or, if theretofore paid, shall be credited on the principal of the Note or if the principal of the Note has been paid in full, refunded to the Borrower. The provisions of this **Section 12.30** shall control all agreements, whether now or hereafter existing and whether written or oral, by the Issuer, the Borrower, the Trustee, and the Holders.

This Agreement is also subject to the condition that amounts paid hereunder representing late payments or penalty charges or the like shall only be payable to the extent permitted by State law or applicable federal law.

Section 12.31. *Right To Contest Liens, Taxes, Etc.* The Borrower will have the right to contest in good faith any claim, charge, demand, levy, or assessment payable to a person or entity other than the Bondholder Representative, the nonpayment of which would constitute an Event of Default, but only with the Bondholder Representative's written consent. If the Bondholder Representative grants such consent, such nonpayment will not constitute an Event of Default so long as such consent remains effective. The Bondholder Representative will not unreasonably withhold, delay or condition its consent, provided that the Bondholder Representative may reasonably require the Borrower to furnish reasonable bond satisfactory to or deposits with the Bondholder Representative cash collateral sufficient, in the Bondholder Representative's sole and reasonable discretion, to fully discharge such claim, charge, demand, levy or assessment in the event the Borrower should not prevail in such contest. The Bondholder Representative may withdraw such consent at any time if: (a) the Borrower fails to prosecute such contest diligently, in full compliance with all conditions to the Bondholder Representative's consent and in a manner not prejudicial to the Bondholder Representative or to the Project, or (b) the Bondholder Representative, in its sole discretion, determines that such contested claim, charge, demand, levy, or assessment has caused a Material Adverse Change to occur with respect to the Project or the Bondholder Representative or that any bond or cash collateral previously accepted by the Bondholder Representative has become insufficient.

Section 12.32. *Americans with Disabilities Act.* The Bondholder Representative and the Borrower shall be in full compliance with all applicable federal and state laws, including those of the Americans with Disabilities Act ("ADA"), 42 U.S.C. 12101 et seq. and its implementing regulations. Under the ADA, the Bondholder Representative and the Borrower shall provide for reasonable accommodations to allow qualified individuals access to and participation in their programs, services and activities. In addition, the Bondholder Representative and the Borrower shall not discriminate against individuals with disabilities nor against persons due to their relationship or association with a person with a disability. Firms granted subawards (i.e., subcontractors, subgrants, contracts under loans, etc.) shall comply with the ADA and certify and disclose accordingly. The Bondholder Representative and the Borrower shall provide certificates attesting to compliance with the provisions of this **Section 12.32.**

Section 12.33. *Integration and Relation to Construction Commitment.* The Loan Documents (a) integrate all the terms and conditions mentioned in or incidental to this Agreement, (b) supersede all oral negotiations and prior writings with respect to their subject matter, including the Construction Commitment, and (c) are intended by the parties as the final expression of their agreement with respect to the terms and conditions set forth in those documents and as the complete and exclusive statement of the terms agreed to by the parties. No representation, understanding, promise, or condition is enforceable against any party unless it is contained in the Loan Documents. If there is any conflict among the terms, conditions, and provisions of this Agreement and those of any other agreement or instrument, including any other Loan Document, the terms, conditions, and provisions of this Agreement will prevail. If there is any conflict among the terms, conditions and provisions of this Agreement and those of the Indenture, the terms, conditions, and provisions of the Indenture will prevail.

Section 12.34. *Venue.* Notwithstanding anything to the contrary set forth in this Agreement and/or any of the other Loan Documents, the parties hereto hereby agree that the state

and federal courts located in Travis County, Texas, shall have exclusive jurisdiction and venue with respect to all actions brought by or against any party under or pursuant to this Agreement.

Section 12.35. *JURY WAIVER.* EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION

Section 12.36. *Increased Costs.* If any law, regulation or change in any law or regulation or in the interpretation thereof, or any final, non-appealable ruling, decree, judgment, guideline, directive or recommendation (whether or not having the force of law) by any regulatory body, court, central bank, or any administrative or Governmental Authority charged or claiming to be charged with the administration thereof (including, without limitation, a request or requirement which affects the manner in which the Bondholder Representative allocates capital resources to its commitments including its obligations hereunder) shall either (i) impose upon, modify, require, make or deem applicable to the Bondholder Representative or any of its Affiliates, subsidiaries or participants any reserve requirement, special deposit requirement, insurance assessment or similar requirement against or affecting the Loan, or (ii) subject the Bondholder Representative or any of its Affiliates, subsidiaries or participants to any tax, charge, fee, deduction or withholding of any kind whatsoever in connection with the Loan or change the basis of taxation of the Bondholder Representative or any of its Affiliates, subsidiaries or participants (other than a change in the rate of tax based on the overall net income of the Bondholder Representative or such participant), or (iii) impose any condition upon or cause in any manner the addition of any supplement to or increase of any kind to the Bondholder Representative's or an Affiliate's, subsidiary's or participant's capital or cost base for issuing or owning a participation in the Loan which results in an increase in the capital requirement supporting the Loan, or (iv) impose upon, modify, require, make or deem applicable to the Bondholder Representative or any of its Affiliates, subsidiaries or participants any capital requirement, increased capital requirement or similar requirement, such as the deeming of the Loan to be an asset held by the Bondholder Representative or any of its Affiliates, subsidiaries or participants for capital adequacy calculation or other purposes (including, without limitation, a request or requirement which affects the manner in which the Bondholder Representative or any participant allocates capital resources to its commitments including its obligations hereunder or under the Loan), and the result of any events referred to in (i), (ii), (iii) or (iv) above shall be to increase the costs in any way to the Bondholder Representative or any Affiliate, subsidiary or participant of issuing, maintaining or participating in the Loan or reduce the amounts payable by the Borrower hereunder or reduce the rate of return on capital, as a consequence of the issuing, maintaining or participating in the Loan, to a level below that which the Bondholder Representative, its Affiliates, subsidiaries or participants could have achieved but for such events; then and in such event, and to the extent such law, regulation or change in law or regulation or the interpretation thereof, or any final non appealable ruling, decree, judgment,

guideline, directive or recommendation allows the terms and conditions of this **Section 12.36** to become operative or enforceable under federal or State law, the Borrower shall, promptly upon receipt of written notice to the Borrower, together with a reasonable accounting by the Bondholder Representative of such increased costs and/or decreased benefits, pay within sixty (60) Business Days of demand therefor to the Bondholder Representative all such additional amounts which, in the Bondholder Representative's or participant's commercially reasonable good faith calculation as allocated to the Loan, shall be sufficient to compensate it for all such increased costs and/or decreased benefits, all as reasonably accounted for and certified by the Bondholder Representative or such participants in said written notice to the Borrower. Such certification shall be accompanied by a reasonable accounting concerning the calculation of such increased costs and/or decreased benefits and shall be conclusive and binding on the parties hereto, absent manifest error. In determining such amount, the Bondholder Representative or any participant may use any reasonable averaging or attribution methods.

Section 12.37. *USA Patriot Act Notification.* The following notification is provided to the Borrower pursuant to Section 326 of the USA Patriot Act of 2001, 31 U.S.C. Section 5318:

IMPORTANT INFORMATION ABOUT PROCEDURES FOR OPENING A NEW ACCOUNT. To help the government fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify, and record information that identifies each person or entity that opens an account, including any deposit account, treasury management account, loan, other extension of credit, or other financial services product. What this means for the Borrower: When the Borrower opens an account, if the Borrower is an individual, Bondholder Representative will ask for the Borrower's name, taxpayer identification number, residential address, date of birth, and other information that will allow Bondholder Representative to identify the Borrower, and, if the Borrower is not an individual, Bondholder Representative will ask for the Borrower's name, taxpayer identification number, business address, and other information that will allow Bondholder Representative to identify the Borrower. Bondholder Representative may also ask, if the Borrower is an individual, to see the Borrower's driver's license or other identifying documents, and, if the Borrower is not an individual, to see the Borrower's legal organizational documents or other identifying documents.

Without limiting the foregoing, Bondholder Representative hereby notifies the Borrower that pursuant to the requirements of the USA Patriot Act (Title III of Pub. L. 107 56 (signed into law October 26, 2001)) (as heretofore defined as the "*Patriot Act*"), it is required to obtain, verify and record information that identifies the Borrower, which information includes the name and address of the Borrower and other information that will allow Bondholder Representative to identify the Borrower in accordance with the Patriot Act.

Section 12.38. *Waiver of Special Damages.* TO THE EXTENT PERMITTED BY APPLICABLE LAW, EACH OF THE PARTIES HERETO SHALL NOT ASSERT, AND

HEREBY WAIVES, ANY CLAIM AGAINST ANY OF THE OTHER PARTIES HERETO, ON ANY THEORY OF LIABILITY, FOR SPECIAL, INDIRECT, CONSEQUENTIAL OR PUNITIVE DAMAGES (AS OPPOSED TO DIRECT OR ACTUAL DAMAGES) ARISING OUT OF, IN CONNECTION WITH, OR AS A RESULT OF, THIS AGREEMENT OR ANY AGREEMENT OR INSTRUMENT CONTEMPLATED HEREBY, THE TRANSACTIONS, THE BONDS, THE LOAN OR THE USE OF THE PROCEEDS THEREOF.

Section 12.39. *Reserved. No Offset.* All payments due by the Borrower to Issuer under the Loan Documents are to be made by the Borrower without offset or other reduction.

Section 12.41. *Publicity.* The Borrower hereby authorizes the Bondholder Representative and its Affiliates, without further notice or consent, to use the Borrower's and its Affiliates' names, logos, and photographs related to the Project in its advertising, marketing and communications materials on a national and/or international basis. Such materials may include web pages, print ads, direct mail and various types of brochures or marketing sheets, and various media formats other than those listed (including without limitation video or audio presentations through any media form). In these materials, the Bondholder Representative also may discuss at a high level the types of services and solutions the Bondholder Representative has provided the Borrower. This authorization shall remain in effect unless the Borrower or any of its Affiliates notifies the Bondholder Representative in writing in accordance with the notice provisions set forth herein that such authorization is revoked as to the Borrower or any such Affiliate, as applicable.

Section 12.42. *Transfer of the Permanent Loan.* Subject to the transfer restrictions set forth in the Bond Documents, Permanent Lender may, at any time, sell, transfer or assign this Agreement, the Note, the Mortgage and the other Permanent Loan Documents or any portion thereof, and any or all servicing rights with respect thereto (collectively, a "*Transfer*"), or grant participations therein (a "*Participation*") or issue mortgage pass-through certificates or other securities (the "*Securities*") evidencing a beneficial interest in a rated or unrated public offering or private placement (a "*Securitization*"). In the case of a Transfer, the transferee shall have, to the extent of such Transfer, the rights, benefits and obligations of the "*Permanent Lender*" hereunder and the other Permanent Loan Documents. The Permanent Lender may forward to each purchaser, transferee, assignee, servicer, participant, investor in such Transfer, Participation or Securitization or any Rating Agency rating such Securitization (collectively, the "*Investor*") and each prospective Investor or any agency maintaining databases on the underwriting and performance of commercial mortgage loans, all documents and information which the Permanent Lender now has or may hereafter acquire relating to the Permanent Loan, the Mortgaged Property, the Borrower and the Guarantor, whether provided by the Borrower, the Guarantor, or otherwise, as the Permanent Lender determines necessary or desirable. The Borrower irrevocably waives any and all rights it may have under applicable state or federal law to prohibit disclosure, including any right of privacy. Further the Borrower acknowledges that such information may be transmitted via the Internet or by email. The Permanent Lender will notify the Borrower in writing of any Transfer of the Permanent Loan that results in the Permanent Lender or its affiliates not retaining any ownership or servicing interest in the Permanent Loan.

[Remainder of this Page Intentionally Left Blank]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and delivered as of the day and year first above written.

BORROWER:

AUSTIN DMA HOUSING II, LLC,
a Texas limited liability company

By: AHFC Aldrich 51 Non-Profit Corporation,
a Texas nonprofit corporation

Its: Managing Member

By: _____

Name: _____

Title: _____

ISSUER:

AUSTIN HOUSING FINANCE CORPORATION

By: _____

Name: David Potter

Title: Manager

BONDHOLDER REPRESENTATIVE:

JPMORGAN CHASE BANK, N.A.

By: _____

Name: David H. Saling

Title: Authorized Officer

Executed to acknowledge the terms of Section 5.30 of this Agreement.

AUSTIN HOUSING FINANCE CORPORATION

By: _____
David Potter, Manager

SCHEDULE A

LEGAL DESCRIPTION OF PROJECT

SCHEDULE A-1

PERMITTED ENCUMBRANCES

As set forth in the Mortgage.

SCHEDULE B
PROMISSORY NOTE

\$ _____

Austin, Texas

November 1, 2015

FOR VALUE RECEIVED, AUSTIN DMA HOUSING II, LLC a Texas limited liability company (the "Borrower"), promises to pay in lawful money of the United States of America to the order of the AUSTIN HOUSING FINANCE CORPORATION, its successors or assigns (the "Issuer"), the principal sum of _____ and No/100 Dollars (\$ _____), or so much thereof as may be advanced as provided herein, with interest thereon from the date of delivery hereof at the rates per annum on the outstanding principal balance hereon from time to time as provided with respect to the Bonds in the hereinafter referred to Indenture. Terms not otherwise defined in this Note shall have the respective meanings as set forth in the Loan Agreement. All interest hereunder shall be computed on the basis of a year of 360 days, and in each case shall be payable for the actual number of days elapsed (including the first day but excluding the last day) except as otherwise provided in **Section 4.2(h)** of the Loan Agreement (hereinafter defined) during the Permanent Term.

The principal and interest on this Note shall be payable at the times and in the amounts determined as provided in **Section 4.2(a)**, **Section 4.2(b)** and **Section 4.2(h)(iv)** and **(v)** of the Loan Agreement dated as of even date herewith (the "*Loan Agreement*"), among the Issuer, the Borrower and JPMorgan Chase Bank, N.A., with the final payment of all outstanding principal and interest on this Note to be paid on _____ (as subject to the terms of the Loan Agreement). Both principal and interest under this Note shall be payable at the payment office of BOKF, NA, dba Bank of Texas, at Suite 3325, Unit 27, Fort Worth, Texas 76102 (the "*Trustee*"). The Borrower may make prepayments upon this Note as provided in **Section 10.1** of the Loan Agreement.

This Note is made pursuant to the Loan Agreement wherein, among other things, the Issuer has agreed to loan to the Borrower and the Borrower has agreed to accept a loan in the aggregate principal amount of \$ _____, being the proceeds from the sale of the Issuer's Multifamily Housing Mortgage Revenue Bonds (Aldrich 51 Apartments) Series 2015 in the principal amount of \$ _____ (the "*Bonds*"), said proceeds to be disbursed to the Borrower from time to time in accordance with the provisions of the Loan Agreement. The Bonds are being issued by the Issuer pursuant to a Trust Indenture dated as of November 1, 2015 (the "*Indenture*"), between the Issuer and the Trustee.

During the existence of any Event of Default as described in **Section 11.1** of the Loan Agreement, all unpaid principal of and accrued and unpaid interest on this Note may be declared to be forthwith due and payable in the manner and with the effect provided in the Loan Agreement. Failure to exercise this option shall not constitute a waiver of the right to exercise the same in the event of any subsequent occurrence of an Event of Default.

The Borrower shall notify the Bondholder Representative by telephone (confirmed by telecopy) of any prepayment hereunder in the case of a prepayment, not later than 11:00 a.m., Dallas, Texas time, three (3) Business Days before the date of prepayment. Each such notice shall

be irrevocable and shall specify the prepayment date or portion thereof to be prepaid. Prepayments shall be accompanied by accrued interest on the amount prepaid.

Notices of prepayments under this Note, may be made by electronic communication (including email and internet or intranet websites) pursuant to procedures approved by Bondholder Representative. Such approval may be limited to particular notices or communications.

Unless Bondholder Representative otherwise prescribes, notices and other communications sent to an e mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e mail or other written acknowledgment), *provided* that if such notice or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next business day for the recipient, and notices or communications posted to an internet or intranet website shall be deemed received upon the "receipt" by the intended recipient at its email address as described above that such notice or communication is available and identifying the website address therefor.

Any party hereto may change its address or telecopier number or email address for notices and other communications hereunder by notice to the other parties hereto.

The indebtedness evidenced by this Note is secured by a Construction and Permanent Leasehold Deed of Trust, Security Agreement, Assignment of Leases and Rents and Fixture Filing dated as of November 1, 2015, and by certain other personal property collateral.

The obligations of the Borrower to make Basic Payments, Additional Charges, and payment of any other amounts due under the Loan Agreement shall be absolute and unconditional, and the Borrower shall make such payments without abatement, diminution, or deduction regardless of any cause or circumstances whatsoever including, without limitation, any defense, setoff, recoupment, or counterclaim which the Borrower may have or assert against the Issuer, the Trustee, or any other person and/or entity.

If this Note shall be placed in the hands of an attorney or attorneys for collection, the Borrower agrees to pay, in addition to the amount due hereon, the reasonable costs and expenses of collection, including reasonable attorneys' fees. All parties to this Note, whether principal, surety, guarantor or endorser, hereby waive presentment for payment, demand, protest, notice or protest and notice of dishonor.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

Executed as of the date first above written.

AUSTIN DMA HOUSING II, LLC,
a Texas limited liability company

By: AHFC Aldrich 51 Non-Profit Corporation,
a Texas nonprofit corporation
Its: Managing Member

By: _____
Name: _____
Title: _____

SCHEDULE C

(PROJECT EXPENSES)

The Budget attached as **Schedule C-1** to this Agreement is an analysis, caused to be prepared by the Borrower and approved by the Bondholder Representative, of the total amount needed by the Borrower to construct the Facility and to perform the Borrower's other obligations under the Loan Documents. The categories of costs are further broken down by line items, each for a specific type of cost associated with construction or performance of the Borrower's obligations under the Loan Documents.

Whenever a revised Budget is required, the Borrower must prepare and submit it for the Bondholder Representative's approval. Any revised Budget approved by the Bondholder Representative will be a more recent version of the analysis provided in the Budget, and must include revised versions of any detailed breakdowns included in the Budget.

SCHEDULE C-1

BUDGET

SCHEDULE D

DISBURSEMENT SCHEDULE

All capitalized terms not defined herein shall be defined as they are defined in the Indenture and the Loan Agreement, as applicable.

1. *Conditions to Disbursement.* Before the Bondholder Representative becomes obligated to consent to any disbursement under this Agreement, all conditions to the disbursement must be satisfied at the Borrower's sole cost and expense in a manner acceptable to the Bondholder Representative. The Borrower acknowledges that delays in disbursements may result from the time necessary for the Bondholder Representative to verify satisfactory fulfillment of any and all conditions to a given disbursement. If the Bondholder Representative in its sole discretion purchases the Bonds or consents to a particular disbursement, before all applicable conditions are satisfied, such fact will not be a waiver of such conditions as to any other disbursement unless waived in writing by the Bondholder Representative.

(a) *Bond Closing.* The Bondholder Representative is not required to purchase the Bonds until the following requirements have been satisfied or waived in writing by the Bondholder Representative:

(1) The Bondholder Representative must have received and approved the Bond Documents and all Loan Documents duly executed and, where required, acknowledged.

(2) The Bondholder Representative must have received and approved a fully executed, original counterpart of the Forward Bond Purchase Agreement (and all fees due thereunder shall have been paid and the Borrower shall otherwise be in full compliance with the terms hereof).

(3) The Bondholder Representative must have received and approved copies of the fully executed Indenture, Regulatory and Restrictive Use Agreements and the Ground Lease (and an estoppel certificate from the Ground Lessor on a form satisfactory to the Bondholder Representative).

(4) The Bondholder Representative must have received evidence that the proceeds of the Bonds will be loaned to the Borrower pursuant to the Loan Agreement and except for proceeds to be used to pay Costs of Issuance, the proceeds will be deposited in the Project Fund.

(5) The Bondholder Representative must have received evidence satisfactory to the Bondholder Representative that the Borrower's Sources, taking into account the amount and timing thereof, are sufficient to pay the Total Project Expenses on a timely basis.

(6) The Bondholder Representative must have received evidence of a determination pursuant to Section 42(m)(2)(D) of the Code (confirming a reservation of the Low Income Housing Tax Credit).

(7) The Bondholder Representative must have received (x) a copy of the Operating Agreement; (y) a copy of the filed Certificate of Formation for the Borrower and such other evidence of the Borrower's and the Managing Member's existence and good standing, and (z) copies of all development agreements (including the Development Agreement), management agreements, investment agreements, deficit funding facility agreements, equity notes (if any), purchase options, and other documents and agreements referenced in the Operating Agreement, and all modifications and amendments thereto, or otherwise required in connection therewith by the Investor Member.

(8) The Taxable Tail Loan shall have closed.

(9) The Mortgage and the Assignment of Mortgage, each Regulatory and Restrictive Use Agreement (as then applicable), and all financing statements required by the Bondholder Representative must be executed and, where required, acknowledged by all parties thereto and each be delivered to a title insurer, in a manner satisfactory to the Bondholder Representative for recording in the office of the county clerk in which the Project is located.

(10) The security interest held by the Issuer or the Trustee, as the case may be, in all fixtures and personal property covered by the Mortgage, and in all collateral covered by the Collateral Assignment or otherwise granted pursuant to the Loan Agreement, must be a duly perfected first priority lien.

(11) A title insurer acceptable to the Bondholder Representative must execute an instruction letter in a manner satisfactory to the Bondholder Representative agreeing to issue a loan policy of title insurance satisfying the requirements of **Schedule I** to the Loan Agreement (the "*Title Policy*"), in the amount of the Loan and one in the amount insuring the Mortgage as a first priority encumbrance against the Project, subject only to the Permitted Encumbrances and other exceptions as may be consented to by the Bondholder Representative in writing, together with such endorsements as the Bondholder Representative may require, subject only to exceptions consented to by the Bondholder Representative in writing, together with such endorsements as the Bondholder Representative may reasonably require. The Bondholder Representative must have reviewed and approved a current ALTA survey of the Project prepared at the Borrower's expense by a licensed surveyor reasonably acceptable to the Bondholder Representative, certified to the Bondholder Representative and the title insurance company and otherwise satisfying the requirements of **Schedule J** to the Loan Agreement.

(12) The Borrower shall deliver to the Bondholder Representative copies of or certificates acceptable to the Bondholder Representative evidencing all policies of insurance required pursuant to the Mortgage and the Bondholder Representative's insurance requirements.

(13) The Budget attached to the Agreement as **Schedule C-1** must have been approved by the Bondholder Representative.

(14) The Plans and Specifications must have been approved by the Bondholder Representative and by all governmental authorities as needed for lawful Construction of the Project.

(15) The Capital Contribution Account and the Disbursement Checking Account to be maintained in the name of the Borrower with the Bondholder Representative must be opened with the Bondholder Representative in accordance with the Bondholder Representative's customary policies for the establishment of such accounts.

(16) All executed contracts and subcontracts with respect to the Construction of the Project must be acceptable to the Bondholder Representative and be in full force and effect.

(17) The Bondholder Representative must have received an environmental disclosure statement prepared and certified by the Borrower using the Bondholder Representative's prescribed form, and the information set forth in it must be acceptable to the Bondholder Representative. If the Bondholder Representative so requires, it must also receive a Phase I Report and (if applicable) a Phase II Report prepared by a consultant reasonably acceptable to the Bondholder Representative stating that there are no Hazardous Substances present in, on, under, or around the Project, and that there is no condition or circumstance which warrants further investigation or analysis in the opinion of the preparer of the report. The Bondholder Representative shall also receive satisfactory evidence, if required, of the abatement, removal, disposal, or correction of all unacceptable conditions identified in such reports, and the Borrower must execute an operations and maintenance plan on the Bondholder Representative's form or otherwise acceptable to the Bondholder Representative if asbestos containing materials or lead paint will continue to be present on the Project after abatement.

(18) The Bondholder Representative's loan fees required pursuant to the Loan Agreement and the Issuance Fee as then due under the Indenture, have been paid as set forth therein. The Borrower shall have paid all of the Bondholder Representative's reasonable costs and fees due in connection with the Loan, including, without limitation, appraisal, administrative, closing, escrow, and title fees (which title fees will include, among other things, for all required endorsements to the Title Policy as provided in **Schedule I** to the Loan Agreement, in such number as the Bondholder Representative specifies), cost engineering fees, environmental fees, and legal expenses. Said items must be paid by the Borrower out of sources other than the Borrower's Sources except to the extent included in the Budget.

(19) The Bondholder Representative must have received and approved such financial statements, tax returns, and other financial information which it may require regarding the financial condition of the Borrower, any of its general partners or joint venturers, the Guarantors, any other parties, or the Project.

(20) The Bondholder Representative must have received and approved certified copies of such of the entity formation documents of the Borrower and the Managing Member as the Bondholder Representative may require, including, without limitation, a copy of the Operating Agreement executed by all of the general and limited partners, including, without limitation, all limited partners who will be providing equity contributions to the Borrower.

(21) The Bondholder Representative must have received evidence satisfactory to the Bondholder Representative that the Borrower has received a predetermination letter from the applicable appraisal district that the Project will be exempt from property taxes (including an opinion to that effect from counsel to the Borrower).

(22) the Payment and Performance Bond;

(23) The Bondholder Representative must have received the Payment and Performance Bond.

(24) The Bondholder Representative must have received an executed copy of the Architecture Contract and the Construction Contract.

(25) The Bondholder Representative must have received evidence satisfactory to the Bondholder Representative that all utilities will be provided which are necessary to develop and occupy the Project, including written assurances from such utility companies as the Bondholder Representative may require. The Bondholder Representative must also receive evidence satisfactory to the Bondholder Representative of the availability of such amounts of potable water as are necessary to develop and occupy the Project, as contemplated by the Agreement.

(26) The Bondholder Representative must have received evidence of such zoning (including variances) and other land use entitlements and building permits as may be necessary to lawfully commence and carry on construction of the Facility to completion, and thereafter to operate and occupy the Project as an apartment complex as contemplated hereby (except that actual issuance of permits necessary to commence construction may be evidenced by a city letter confirming availability of building permit(s) subject only to payment of the applicable fees).

(27) The Bondholder Representative must have received an opinion of the Borrower's and the Guarantor's counsel in form, scope, and substance reasonably satisfactory to the Bondholder Representative, covering the due formation and good standing of the Borrower and the Managing Member, the Borrower's authority to enter in the transaction contemplated by the Loan Documents, conflict with applicable laws and other agreements, material litigation, enforceability, and such other matters as the Bondholder Representative shall require. If the Loan Documents include a Guaranty, the Bondholder Representative

must have received an opinion of each Guarantor's counsel to the same effect regarding the Guaranty and each guarantor.

(28) The Bondholder Representative must have received evidence satisfactory to it that all of the conditions under any applicable development agreement for the development and construction of the Project have been satisfied in full by the Borrower.

(29) The Bondholder Representative must have received and approved a copy of each Regulatory and Restrictive Use Agreement or similar document affecting the Project in final form.

(30) The Bondholder Representative must have received and approved evidence that use of the proceeds of the Bonds will meet the 50% Bond test in accordance with Section 42(h)(B) of the Code.

(31) The Bondholder Representative must have received and approved the Borrower's standard form of residential lease to be used for the Project.

(32) The Bondholder Representative must have received and approved a list of all contractors, subcontractors, and the material suppliers to be employed in connection with the Construction of the Project (setting forth the nature of the work to be performed, the labor and materials to be supplied and the dollar amount of such work or materials). If requested by the Bondholder Representative, the Borrower shall also submit copies of all bids received for each item of work to be performed as well as copies of executed subcontracts with accepted bidders.

(33) The Bondholder Representative must have received evidence that the initial funding of the first installment of the Capital Contribution from the Investor Member, in the amount set forth in **Schedule H** to the Loan Agreement (net of amounts paid for Costs of Issuance and amounts retained by the Investor Member for its fees as provided in the Operating Agreement), shall have been deposited in the Capital Contribution Account for the purposes set forth in **Schedule H** to the Loan Agreement (which may occur simultaneously with the Bond Closing).

(34) No mechanic's lien shall be recorded against the Project, unless the Borrower has (i) furnished and perfected a bond issued by a company satisfactory to the Bondholder Representative and on a form and in an amount satisfactory to Bondholder Representative, or (ii) provided 150% cash deposit with the title company and the title company has deleted such lien from the down date endorsement the Borrower.

(35) The Bondholder Representative must have received evidence that the requirements of **Section 4.7** of the Loan Agreement have been met.

(36) The Bondholder Representative must have received proof in form and substance satisfactory to Bondholder's Representative that the required permits

building and otherwise, and authorizations from all appropriate governmental authorities necessary or required in connection with the Construction of the Project have been obtained, or will be obtained when they become necessary (such as a will issue letter), together with copies of all other required governmental permits.

(37) The Bondholder Representative must have received and approved a pro forma operating statement for the Project as attached as **Schedule E** to the Loan Agreement.

(38) An Appraisal of the Project, reflecting the market value of the Project and will include the valuation of the Low Income Housing Tax Credit, anticipated to be available with respect to the Project reflecting a Loan to Value Ratio of not more than 85% (as restricted, as completed, and as stabilized as is and including value of the Capital Contribution), and a projected Loan to Value Ratio for the Permanent Term which otherwise satisfies the requirements of the Forward Bond Purchase Agreement.

(39) The Bondholder Representative and Permanent Lender shall have approved the identity and experience of the management company, and received all management contracts, development agreements, operating agreements, franchise agreements, or other contractual arrangements affecting the operation of the Project.

(40) The Bondholder Representative must have received a market study or any market survey data prepared for the Borrower.

(41) An agreement from the Contractor, consenting to the assignment of the Construction Contract and the Plans and Specifications to Trustee, and providing for the subordination of all statutory and contractual liens and claims of that Contractor against the Project.

(42) The Bondholder Representative shall have received and approved the Plans and Specifications (which shall have been approved, as applicable, by the Credit Agency, the Investor Member and by the Bondholder Representative's construction consultant) and all applicable departments of the Bondholder Representative, and which shall in any event comply, as applicable, with the ADA.

(43) The Bondholder Representative shall have received and approved evidence no portion of the Project is in any "wetlands" or is located on or over a ground fault.

(44) The Bondholder Representative shall have received and approved certificates of a reporting service acceptable to the Bondholder Representative, reflecting the results of a search of the central and local Uniform Commercial Code records made no earlier than thirty (30) days prior to the date hereof, showing no filings against the Borrower or any of the collateral for the Loan except those, if any, approved by the Bondholder Representative or to be paid in connection with the Bond Closing.

(45) The Cash Collateral Account shall have been opened in a manner satisfactory to the Bondholder Representative and pledged to the Bondholder Representative (or the Issuer, as the case may be) on terms satisfactory to the Bondholder Representative.

(b) *Subsequent Disbursements.* After the Bonds have been purchased, the Bondholder Representative is not required to approve any Requisition for disbursement by the Trustee of any Loan proceeds from the Project Fund or to the disbursement or release of any other of the Borrower's Sources held by the Bondholder Representative or the Trustee (as applicable) if:

(1) Any of the items set forth in subsection 1(a) above, which was not satisfied as a condition of closing, has not been satisfied or specifically waived by the Bondholder Representative in writing as a condition of making disbursements.

(2) The Bondholder Representative fails to receive (i) a Draw Request (as defined below) accompanied by such documentation and information as the Bondholder Representative may require, (ii) any other documentation or information that the Bondholder Representative may require under **Section 2** of this Disbursement Schedule, or the Bondholder Representative considers any such Draw Request, documentation or information to be unacceptable. Without limiting the foregoing, if the Draw Request is for amounts in the Project Fund, the Draw Request shall be accompanied by a completed, signed Requisition in the form attached to the Indenture as **Exhibit A**.

(3) With respect to any advance or disbursement for hard costs, the Bondholder Representative shall not have received an AIA Document G 702 and G 703 (1992 Edition), completed by each appropriate Contractor and certified by the Architect (if required by Bondholder Representative).

(4) With respect to any advance for soft costs (including contingencies), the Bondholder Representative shall not have received all vouchers, invoices, and other evidence required by the Bondholder Representative.

(5) The Borrower shall not have delivered to the Bondholder Representative and its construction consultant, for their approval, evidence (which shall include a report of an inspection by its construction consultant) that (i) construction is proceeding in a manner to assure completion of the Improvements by the Bondholder's Representative's Required Completion Date; (ii) the amount theretofore invested by the Borrower in the Land and the Improvements, together with the Borrower's Sources remaining for the development of the Improvements, are adequate to meet all costs incurred and to be incurred in connection with the Improvements; and (iii) that construction of the Improvements has been substantially in accordance with the Plans and Specifications and in accordance with the Loan Documents, which shall include, without limitation, any other due diligence with respect to the Project required by Bondholder Representative's construction consultant.

(6) The Bondholder Representative shall not have received, at the Borrower's cost and expense, a satisfactory "downdate endorsement" and all other endorsements if or as required by Bondholder Representative to the title policy in connection with the advance as disbursed.

(7) If and to the extent required by the Bondholder Representative, prior to the pouring of a slab and upon completion of that slab, the Borrower shall not have delivered a current survey evidencing the intended and actual location of the slab, showing no encroachment. If and to the extent required by the Bondholder Representative, the Borrower shall have delivered a slab survey, if the proceeds of the advance are for, among other things, costs associated with the slab to the Improvements, showing, among other things, no encroachments on or over any boundary line, easement, setback line, or other restricted area.

(8) Any part of the Project then subject to the Mortgage is materially damaged and not repaired (to the extent expressly required by the Loan Agreement), unless the Bondholder Representative receives funds from the Borrower or insurance proceeds sufficient to pay for all repairs in a timely manner.

(9) Any part of the Project then subject to the Mortgage, or any interest in any of it, is affected by eminent domain or Condemnation proceedings.

(10) The Loan is "out of balance" and the Borrower fails to timely comply with any demand by the Bondholder Representative to deposit funds, and/or the Bondholder Representative does not consent to any revised Budget proposed by the Borrower.

(11) A Default or an Event of Default under the Loan Agreement has occurred or is continuing.

(12) A default has occurred and is continuing under any of the Requirements.

(13) Any pending installment of the Capital Contribution is not made when all of the conditions set forth in the Operating Agreement for the specific installment are satisfied.

(14) Funds shall not have been expended by the Borrower as approved by the Bondholder Representative or any uncured material default exists under any liens or encumbrances (other than Permitted Encumbrances).

(15) Prior to the first disbursement for hard costs, a copy of a filed Affidavit of Commencement, in the form of **Schedule L** attached hereto, as filed within thirty (30) days after commencement of Construction of the Improvements with the County Clerk of Travis County, Texas, and satisfying the requirements of the Texas Property Code, as amended (which shall evidence that commencement of construction of the Improvements began after the date the Mortgage was recorded) is not submitted to Bondholder Representative.

(16) If received by the Borrower at the time, the Bondholder Representative shall not have received original recorded counterparts of the Tax Regulatory Agreement, the Mortgage, any assignment documents relating to the Bonds and the security therefor, and the related financing statements, and copies of all documents relating to the conveyance of the land relating to the Project to the Borrower, in a manner satisfactory to the Bondholder Representative.

(17) The Borrower fails to satisfy any other conditions to funding set forth in the Loan Documents and required by the Bondholder Representative and such failure is continuing.

(c) *Final Hard Cost Disbursement.* The Bondholder Representative is not required to approve the final disbursement for payment of hard costs (including Retainage) of Loan proceeds by the Trustee from the Project Fund or other funding source until all of the following conditions are satisfied or waived in writing by the Bondholder Representative:

(1) The Facility must be fully completed in accordance with the Plans and Specifications and all Requirements in all material respects.

(2) Thirty one (31) days have elapsed after the later of (i) “completion” of the Improvements, as defined in and required by Section 53.106 of the Texas Property Code, or (ii) the date of filing with the County Clerk of Travis County of an Affidavit and Certificate of Completion (the “*Affidavit of Completion*”), executed by the Borrower, the Contractor, and Architect, in the form of **Schedule M** to the Loan Agreement, or (iii) the date the Borrower has otherwise fully and completely satisfied the requirements of Section 53.106 of the Texas Property Code, including, without limitation, providing a copy of any such affidavit to all parties, and within the time periods, required by such Section 53.106.

(3) The Bondholder Representative must receive evidence that all certificates of occupancy or other permits necessary for occupancy of all of the Project have been obtained from the appropriate governmental authorities.

(4) The Bondholder Representative must receive a final Draw Request, accompanied by written certification by the Architect and the Contractor that the Facility as completed conform to the Plans and Specifications and all Requirements, (including, without limitation, an AIA G 704 Certificate of Substantial Completion with respect to the Project executed by the Architect) and by such other documentation and information as the Bondholder Representative may require under **Section 2** of this Disbursement Schedule.

(5) The Borrower must provide endorsements to or a rewrite of the Bondholder Representative’s title insurance policy insuring lien free completion of the Project as well as first lien priority of the final disbursement.

(6) The Bondholder Representative must receive complete as built Plans and Specifications for the completed Facility certified by the Architect as being complete and accurate.

(7) The Bondholder Representative must receive and approve an ALTA as built survey of the completed Project without any encroachments or exceptions of any kind except as acceptable to the Bondholder Representative, prepared by a licensed surveyor, certified to the Bondholder Representative and the title insurer.

(8) An affidavit of bills paid and/or lien release, in a form acceptable to Bondholder Representative, executed by each Contractor, Architect, subcontractor, material suppliers, and such other persons or entities as the Bondholder Representative may require to satisfy itself that the Project (and all other improvements to the Land completed through the date of any such affidavit) has been completed lien free and that the costs of all materials furnished and labor performed in connection with such construction have been paid in full subject to Retainage.

(9) No default shall have occurred and be continuing under any of the Loan Documents and no event shall have occurred that upon notice or the passage of time would become such a default.

(10) An affidavit of bills paid and/or lien release, in a form reasonably acceptable to Bondholder Representative, executed by the Contractor.

(11) No Event of Default, or event which with notice, passage of time or both shall result in an Event of Default, shall have occurred and be continuing.

2. *Draw Requests.* Before the Bondholder Representative becomes obligated to make any disbursement from the Capital Contribution Account (if then on deposit with the Bondholder Representative) of any of the Taxable Tail Loan then on deposit with the Bondholder Representative or approves any Requisitions made on the Project Fund, it must receive a written request signed by the Borrower or the Borrower's agent designated in **Section 7** of this Disbursement Schedule, using a form acceptable to the Bondholder Representative ("*Draw Request*"), accompanied by such documentation and information as the Bondholder Representative may reasonably require (if the Draw Request requests amounts in the Project Fund, the Draw Request shall be accompanied by a fully completed, signed Requisition). If the Bondholder Representative approves a Requisition, the Bondholder Representative will then submit the Requisition to the Trustee. In each Draw Request, the Borrower shall request disbursement for one or more specified line item(s) of the Budget. Each Draw Request shall be accompanied by the items required pursuant to **Section 5.2** of the Indenture (including, without limitation, the approval of the Issuer). In addition, if an Event of Default is then continuing, each Draw Request shall be accompanied by checks (to be drawn on the Disbursement Checking Account) made out to each of the Borrower's merchants, vendors, materialmen, suppliers, laborers, subcontractors, and other appropriate parties in the amount of the funds owed to such parties after appropriate adjustment for any retainages. The Bondholder Representative shall not be obligated to fund any Draw Request earlier than ten (10) Business Days after receipt of a complete

supporting package. The Borrower may submit Draw Requests to the Bondholder Representative no more frequently than once each calendar month, unless the Bondholder Representative has given its prior written consent in each instance.

With each Draw Request, the Borrower shall submit to the Bondholder Representative such items of information and documentation, including invoices, canceled checks, lien waivers, and other evidence as may be reasonably required by the Bondholder Representative to show that the Borrower is in compliance with the Loan Documents. All such items must be acceptable in form and substance to the Bondholder Representative.

Each Draw Request shall constitute the Borrower's representation and warranty to the Bondholder Representative that:

- (i) The Loan is "in balance" as defined in the Agreement.
- (ii) All of the documentation submitted with the Draw Request is genuine and unaltered.
- (iii) All disbursements made to date as well as those being currently requested were and will be in strict compliance with the Budget, unless the Borrower has notified the Bondholder Representative in writing to the contrary and the Bondholder Representative has approved such deviation.
- (iv) The funds requested by the Draw Request (whether from the Capital Contribution Account or the Project Fund) will pay in full all invoices received by the Borrower or by the Contractor to date for labor, materials, and services furnished in connection with the Construction of the Project (net of applicable retainage).
- (v) The Borrower has caused or will promptly cause the amounts requested by the Draw Request to be paid to the respective individuals or entities for which such amounts were requested.
- (vi) All amounts disbursed by the Bondholder Representative pursuant to each previous Draw Request have been paid in the amounts and to the respective individuals or entities for which such amounts were requested.
- (vii) The payments made pursuant to the Draw Request are for Qualified Project Costs.

3. *Disbursement Amounts.* For each line item of the Budget, the Bondholder Representative shall approve Requisitions and/or make disbursements of the Borrower's Sources in amounts which, when totaled, do not exceed the maximum allocation of funds for that line item, as shown in the Budget, taking into account all prior disbursements, any reallocations of the Borrower's Sources made by the Bondholder Representative and all applicable retention requirements (or made by the Borrower and reported to the Bondholder Representative if the approval of the Bondholder Representative is not required), the Borrower may at any time and from time to time, by written notice to the Bondholder Representative, reallocate from the construction contingency item in the Budget to other items of hard construction costs an aggregate amount equal to the same percentage of the original amount of the construction contingency line

item as the then percentage of completion (as determined by the Bondholder Representative's inspector) of the work to be performed under the Construction Contract. Whenever the portion of the work to be performed under the Construction Contract represented by any line item of the Budget has been completed to the reasonable satisfaction of the Bondholder Representative and all costs represented by that line item have been paid in full and statutory lien waivers obtained from the Contractor and all subcontractors and others who or which are to be paid from that line item, the Borrower may at any time and from time to time, by written notice to the Bondholder Representative, reallocate unused funds from that line item to any other one or more line items. If at any time the Bondholder Representative is holding the Borrower's Funds in the Capital Contribution Account or of deposits of the Taxable Tail Loan, or in the Borrower's Funds Account, the Bondholder Representative shall make all disbursements first from such funds until they are exhausted, in the manner provided in **Section 4** of this Disbursement Schedule. On the first (1st) day of each month occurring from and after the date hereof (whether or not the Bondholder Representative disburses or is obligated to disburse any of the proceeds of the Loan and whether or not the Bondholder Representative releases or is obligated to release any funds from the Capital Contribution Account), the Borrower shall pay to the Bondholder Representative a Construction Inspection Fee set forth in **Section 5.18** of the Loan Agreement per inspection. In the event that the Bondholder Representative permits the Borrower to make more than one Draw Request in a month, the Borrower shall pay to the Bondholder Representative the fees for such additional inspection.

Notwithstanding the preceding paragraph, the Borrower shall not be entitled to reallocate from any line item to pay any additional costs resulting from a change which would necessitate the Bondholder Representative's approval under **Section 5.10** of the Loan Agreement or other section of the Loan Agreement unless and until the Bondholder Representative's approval has been given.

4. *Disbursements of Certain Costs Not Requiring Retention.* For each line item of the Budget other than hard costs, if otherwise approved, the Bondholder Representative shall make one or more disbursements to the Borrower or for its account in the amount applied for in the Borrower's Draw Request, without retention for Retainage.

5. *Disbursements of Costs Requiring Retention.* Retainage shall be withheld from each disbursement from the Project Fund and from the Capital Contribution Account for payment of artisans and mechanics or any other party who performs labor or service for Construction of the Project under a subcontract with the Contractor, or such other general contractor approved by the Bondholder Representative shall be withheld until all conditions to the Bondholder Representative's final disbursement have been satisfied or waived in writing by the Bondholder Representative.

The Borrower, at its option, may request disbursement of the Retainage before requesting the final disbursement of the Borrower's Sources, provided that all conditions to the final disbursement have been satisfied or waived in writing by the Bondholder Representative.

6. *The Borrower's Funds.* At all time when the Bondholder Representative is holding the Borrower's Funds in the Borrower's Funds Account or in the Capital Contribution Account, the Bondholder Representative shall make all disbursements first from the Borrower's Funds until

they are exhausted, subject however to the condition that 95% of the proceeds of the Bond proceeds be spent on Qualified Project Costs.

7. *Disbursement Procedures.*

(a) *Disbursements.* Disbursements of all of the Borrower's Sources shall be made to the Disbursement Checking Account, except as otherwise provided in the Agreement or as otherwise agreed in writing by the Bondholder Representative and the Borrower, and delivered to the Trustee.

(b) *Authorized Signers.* All Draw Requests and other documents in connection with the administration of the Loan must be signed by a duly authorized representative of the Borrower listed in **Schedule D-1**.

(c) *The Developer Fee.* Prior to the Conversion Date, the Developer Fee is payable only to the extent and at the times specified in the Budget, notwithstanding anything contrary contained in the Operating Agreement or any other document executed in connection with the Operating Agreement; provided, however, this provision does not authorize the Borrower to pay any Developer Fee earlier than provided for in the Operating Agreement.

Notwithstanding anything herein to the contrary, until the Conversion Date, no Developer Fees or overhead shall be paid; provided, however, that notwithstanding the foregoing, if no Event of Default is then existing (or would result from that payment), Developer Fees may be then paid prior to the Conversion Date from the Capital Contributions as follows:

(1) On the Bond Closing, up to \$_____ of budgeted cash Developer Fees may be paid from the first Capital Contribution set forth in **Schedule H** to the Loan Agreement.

(2) Upon the later to occur of: (i) Investor Member making the second Capital Contribution or (ii) delivery of documentation to Bondholder Representative in form satisfactory to Bondholder Representative evidencing that 50% of the units comprising the Improvements are occupied by qualified tenants whose occupancy and leases (including specified rents) qualify such units for the Low Income Housing Tax Credit, up to \$_____ of the budgeted cash Developer Fees may be paid from the second Capital Contribution set forth in **Schedule H** to the Loan Agreement.

All other remaining developer fees (if any) shall be deferred and may be paid on or after the Conversion Date from Net Cash Flow. Notwithstanding the foregoing, in no event may developer fee or overhead be paid in an amount that would exceed the amount permitted under the Operating Agreement or in any other way violate the Operating Agreement or the terms of the Taxable Tail Loan Documents.

SCHEDULE D-1

AUTHORIZED SIGNERS

ELIZABETH SPENCER

DAVID POTTER

SCHEDULE E

PRO FORMA SCHEDULE

Construction Commencement: After the date of Bond Closing and before the date that is thirty (30) days after Bond Closing

Substantial Completion: Twenty (20) months from the Bond Closing

Completion Date and Deadline For Conversion Date/Construction Term Maturity Date: January 1, 2018 (or such later date as extended under **Section 4.2(f)** of the Loan Agreement)

SCHEDULE F
CONDITIONS RELATING TO
RESERVE ACCOUNTS

(a) Establishment of Reserve Accounts. In conjunction with **Section 5.8** of the Indenture, on or before the Conversion Date, the Borrower shall establish with the Trustee (i) a replacement reserve (the “*Replacement Reserve Account*”); (ii) a real estate taxes and insurance reserve account (the “*Real Estate Taxes and Insurance Reserve Account*”); and (iii) the Operating Reserve (the “*Operating Reserve Account*”) (each, a “*Reserve Account*,” and collectively, the “*Reserve Accounts*”). The foregoing shall not be duplicative of the reserves required by the Operating Agreement, and the foregoing shall count toward any reserves required by the Operating Agreement; provided, however, if the Operating Agreement requires reserves in excess of those required in this Agreement, then compliance with the foregoing shall not satisfy the Operating Agreement reserve requirements.

(b) Replacement Reserve Deposit. Commencing not later than the Conversion Date and continuing by 9:00 am Central time on the tenth (10th) day of every month thereafter while the Loan Documents are in force and effect, Borrower shall deposit with Trustee an amount equal to the product of (i) the number of apartment units on the Premises and (ii) \$300.00 per unit per year (and increasing by 3.00% per annum) (such deposits are hereinafter collectively referred to as the “*Replacement Reserve Deposits*”).

(c) Operating Reserve Deposit. On or before the Conversion Date, Borrower shall deposit with Trustee, the sum of not less than \$_____ (“*O.R. Deposit*”) (which will be funded from the third installment of the Capital Contribution listed in **Schedule H** payable on the Conversion Date) and said O.R. Deposit shall be held by Trustee in the Operating Reserve Account.

(d) [Reserved].

(e) Investments, Earnings, Charges, and Annual Accounting.

(i) Investments. Moneys held by the Trustee in each Reserve Account shall be invested in money market mutual funds registered with the Securities Exchange Commission conforming to Rule a-7 of the Investment Company Act of 1940 that invest primarily in direct obligations issued by the U.S. Treasury and repurchase agreements backed by those obligations, and rated in the highest category by either of the Rating Agencies or any Permitted Investments that may be selected by the Borrower from time to time and approved by the Bondholder Representative. The Borrower agrees that it shall include all interest, earnings, or profits on Permitted Investments on deposit in any Reserve Account as its income (and, if the Borrower is a partnership or other pass-through entity, the partners, members, or beneficiaries of the Borrower, as the case may be), and shall be the owner of such accounts for federal and applicable state and local tax purposes, except to the extent that the Trustee retains such interest, earnings, or profits for its own account in accordance with the provisions of this Agreement. The Borrower shall have no right whatsoever to direct the investment of the proceeds in any Reserve Account.

(ii) Earnings. All interest, earnings, or profits on the Permitted Investments of funds in any of the Reserve Accounts shall be deposited into the applicable Reserve Account, provided that the Trustee may, upon direction to do so by the Bondholder Representative, retain for the account of any of the Bondholders, pursuant to the Indenture, any such interest, earnings, or profits on any or all of the Reserve Accounts during the occurrence and continuance of an Event of Default.

(f) Assignment to Trustee of Reserve Accounts and Rights and Claims.

(i) Assignment of Reserve Accounts. The Borrower hereby assigns to the Trustee and grants to the Trustee a security interest in the Reserve Accounts, as additional security for all of the Borrower's obligations under this Agreement and the other Loan Documents.

(ii) Assignment of Rights and Claims. The Borrower assigns to the Trustee all rights and claims the Borrower may have against (1) all persons or entities claiming amounts due for taxes, utilities, rent or insurance, or (2) all persons or entities supplying labor or materials in connection with any Repair; provided, however, that the Trustee may not pursue any such right or claim unless an Event of Default exists under any of the Loan Documents, and then only upon receipt of direction from the Bondholder Representative to do so.

(iii) Fiduciary Account. Each Reserve Account shall be held by the Trustee in trust, in the Trustee's fiduciary capacity, and shall not be subject to any lien or attachment by any creditor of Borrower, Permanent Lender or the Trustee. Each Reserve Account shall be (A) clearly designated as being held by the Trustee, in trust, for the benefit of the Permanent Lender and (B) physically segregated from other assets held by the Trustee. The tax identification number for each Reserve Account shall be the Borrower's taxpayer identification number, which is 47-2613851.

(g) Application of Reserve Accounts Upon an Event of Default. Notwithstanding anything herein to the contrary, upon receipt by Trustee of written notice from Permanent Lender that there has been an Event of Default under the Loan Documents, and after any applicable notice and cure periods, Trustee shall forthwith pay over to Permanent Lender all funds, principal and interest, then in the Reserve Accounts, to then be applied by Permanent Lender, at Permanent Lender's election, to make payments under the Note, to cure the default, or to pay for Capital Improvements (as hereinafter defined).

(h) Disbursements from the Replacement Reserve Account. The Trustee shall make disbursements from the Replacement Reserve Account to Borrower upon the following terms and conditions:

(i) Provided Trustee has received (i) no notice from Permanent Lender that an Event of Default as defined in the Loan Documents has occurred or that a condition exists which with the giving of any required notice or lapse of time, or both, would constitute such Event of Default ("*Permanent Lender Notice*") and (ii) a written request from Borrower (which written request shall be approved in writing by RBC Tax Credit Equity,

LLC, LLC (“*Investor Member*”), Trustee shall, within ten (10) Business Days after the receipt of items in this **Section h(i)** disburse from the Replacement Reserve Account amounts necessary to pay for Capital Improvements, as hereinafter defined, and in accordance with the terms and conditions of this Agreement.

(ii) Borrower’s request for such payments shall be approved in writing by the Investor Member and be based on inspections and/or documentation satisfactory to Investor Member that the Capital Improvements have been fully performed in accordance with contract requirements and plans and specifications, in a good and workmanlike manner, in accordance with applicable building codes, and that the Premises are free from all liens, except liens in favor of Permanent Lender and Trustee and that the amount disbursed is necessary to pay for said Capital Improvements. Trustee shall be entitled to rely on the written approval of Investor Member and shall have no duty to determine whether any improvements made by Borrower are Capital Improvements.

(iii) Such disbursements are to be made no more frequently than monthly. Such payments are to be made to Borrower at the address of Borrower as set forth below, so long as Permanent Lender has not provided Trustee and Investor Member with the Permanent Lender Notice. In the event Permanent Lender has provided Trustee and Investor Member with the Permanent Lender Notice, such payments are to be made, at Permanent Lender’s sole option, to Permanent Lender or to such other person or entity as Permanent Lender elects in writing. Each disbursement shall be applied by Borrower to payment of only those Capital Improvements for which said disbursement has been authorized by Investor Member. Capital Improvements are improvements to the Premises not currently deductible for tax purposes but are depreciable as a Capital Expenditure as defined and set forth in Section 167 of the Internal Revenue Code of 1986, as amended (the “*Code*”), which improvements include but are not limited to the replacement and reconstruction, but excluding normal maintenance, of the heating, ventilating and air conditioning equipment, appliances, roof, sidewall, flooring, mechanical equipment, window treatments, paving, utilities, windows and exterior paint and brick repairs (“*Capital Improvements*”).

(iv) Permanent Lender or its representative and Investor Member or its representative shall have the right at reasonable times to inspect the Premises and Borrower’s books and records to determine compliance with the conditions for disbursement and with the other provisions of this Agreement or the Loan Documents. Trustee shall have no right or duty to inspect the Premises or Borrower’s books and records.

(v) The Borrower’s obligations relating to the Replacement Reserve Account shall terminate and such account shall be closed: (i) on full payment and performance of all obligations of Borrower under the Loan Documents and this Agreement, in which event the balance of said Replacement Reserve Account, principal and interest, shall be released to Borrower, or (ii) upon an Event of Default under the terms of the Loan Documents and payment to Permanent Lender of the Replacement Reserve Account, principal and interest, pursuant to the terms of this Agreement.

(i) Operating Reserve Definitions. In addition to the terms defined elsewhere herein, with respect to the Operating Reserve Account, the following terms shall have the definitions assigned to them:

“Debt Service” means any amounts payable with respect to the Bonds (including without limitation, payments due at maturity of the Bonds or upon acceleration of the Bonds in accordance with the terms thereof).

“GAAP” means generally accepted accounting principles as in effect on the date of the application thereof and consistently applied throughout the periods covered by the applicable financial statements.

“Operating Deficit” means an amount equal to the negative number (if any) obtained by subtracting Operating Expenses from Operating Income.

“Operating Expenses” means, with respect to any period of time, the total of all expenses actually paid or payable, computed in accordance with GAAP, of whatever kind relating to the operation, maintenance and management of the Property, including without limitation, Debt Service, utilities, ordinary repairs and maintenance, insurance premiums, license fees, taxes and other charges, advertising expenses, payroll and related taxes, computer processing charges, the management fees actually paid under the Management Agreement, operational equipment or other lease payments as approved by Permanent Lender, and deposits into the Replacement Reserve Account due in connection with the Bonds but specifically excluding deposits into the Operating Reserve Account, depreciation and amortization, income taxes, any incentive fees due under the Management Agreement, any item of expense that in accordance with GAAP should be capitalized but only to the extent the same would qualify for funding from the reserve accounts, any item of expense that would otherwise be covered by the provisions hereof but which is paid by any tenant under such tenant’s lease or other agreement.

“Operating Income” means, with respect to any period of time, all income, computed in accordance with GAAP, derived from the ownership and operation of the Property from whatever source, including, but not limited to, rents, utility charges, escalations, forfeited security deposits, interest on credit accounts, service fees or charges, license fees, parking fees, rent concessions or credits, and other required pass-throughs, but excluding sales, use and occupancy or other taxes on receipts required to be accounted for by Borrower to any governmental authority, refunds and uncollectible accounts, sales of furniture, fixtures and equipment, interest income from any source other than the escrow accounts, reserve accounts or other accounts required pursuant to the Loan Documents, insurance proceeds (other than business interruption or other loss of income insurance), awards, unforfeited security deposits, utility and other similar deposits, income from tenants not paying rent, income from tenants in bankruptcy, non-recurring or extraordinary income, including, without limitation lease termination payments, and any disbursements to Borrower from any reserve fund required pursuant to the Loan Documents.

(j) Disbursements from Operating Reserve Account. Upon the occurrence of an Operating Deficit, Borrower may request in writing that Permanent Lender authorize disbursements from the Operating Reserve which such request shall be accompanied by (i) an officer’s certificate from an officer of Borrower certifying that an Operating Deficit exists, (ii) a

detailed calculation of the Operating Deficit, and (iii) such other information as Permanent Lender may require in its sole and reasonable discretion. Upon any such request, Permanent Lender shall authorize the disbursement of amounts from the Operating Reserve. Any withdrawals from the Operating Reserve to fund an Operating Deficit must be consented to by the Investor Member, which consent shall not be unreasonably withheld.

Borrower shall not make a request for, nor shall Permanent Lender have any obligation to make any disbursement from, the Operating Reserve more frequently than once in any month.

(k) Balance in the Operating Reserve. The Borrower's obligations relating to the Operating Reserve Account shall terminate and such account shall be closed: (i) on full payment and performance of all obligations of Borrower under the Loan Documents and this Agreement, in which event the balance of said Operating Reserve Account, principal and interest, shall be released to Borrower, or (ii) upon an Event of Default under the terms of the Loan Documents and payment to Permanent Lender of the Operating Reserve Account, principal and interest, pursuant to the terms of this Agreement. The insufficiency of any balance in the Operating Reserve Account shall not abrogate the Borrower's agreement to fulfill all preservation, maintenance, and operational covenants in the Loan Documents.

(l) Indemnification. The Borrower hereby indemnifies, defends, and holds the Trustee and the Bondholder Representative, and their respective affiliates, and the officers, directors, employees, and agents of each of them, harmless for, from and against any and all actual or threatened liabilities, claims, actions, causes of action, judgments, orders, damages (excluding consequential damages), costs, expenses, fines, penalties and losses (including sums paid in settlement of claims and all reasonable consultant, expert and legal fees and expenses of the Trustee's and the Bondholder Representative's counsel), and any resulting damages, harm or injuries to the person or property of any third parties (collectively, "*Claims*"), directly or indirectly arising out of, resulting from, or in any way connected with (a) any repairs or replacements made by the Borrower or the performance of Eligible Replacement Items, (b) unpaid taxes, utility bills, rent, or insurance premiums owed by the Borrower, and/or (c) the holding or investment of the Reserve Accounts, excepting those arising out of, or resulting, solely from the gross negligence or willful misconduct of the Trustee or the Bondholder Representative, as applicable.

The indemnification of the Trustee and the Bondholder Representative as provided in this **Section (l)** shall remain in full force and effect if any such Claims directly or indirectly result from, arise out of, or relate to, or is asserted to have resulted from arisen out of or related to, the sole or contributory negligence of any of the Trustee and/or the Bondholder Representative.

(m) No Impairment. Nothing in this **Schedule F** shall, in any manner whatsoever, alter, impair, or affect the obligations of the Borrower or relieve the Borrower of any of its obligations to make payments and perform all of its obligations required under the Loan Documents.

(n) Waiver of Offset. Trustee specifically and irrevocably waives any and all rights Trustee now has or may have hereafter to offset against the funds in the Reserve Accounts any amounts due from Permanent Lender and/or Borrower to Trustee to satisfy any claims, of whatever nature, Trustee may have against Borrower and/or Permanent Lender.

SCHEDULE F-1

[RESERVED]

SCHEDULE F-2

[RESERVED]

SCHEDULE G

LIST OF PLANS AND SPECIFICATIONS

As previously provided to and approved by the Bondholder Representative (a copy of the Plans and Specifications is on file with the Bondholder Representative).

SCHEDULE H

EQUITY FUNDING

CONTRIBUTION	EVENT	AMOUNT TO BE LOANED OR CONTRIBUTED	APPLICATION
First (Initial Funding)	Loan Closing	\$_____	Pay closing costs, then pay up to \$_____ of cash developer fee if and to the extent payable as provided in the Development Agreement referred to in the Operating Agreement from the Capital Contribution, then pay budgeted project items.
Second	Substantial Completion	\$_____	Pay budgeted project items other than deferred items (if any), then pay \$_____ of the Taxable Tail Loan, then pay up to \$_____ of cash developer fee as and when payable under the terms of this Agreement.
Third	Conversion to Permanent Loan/Breakeven Operations	\$_____	Pay the Taxable Tail Loan in full and pay the Loan as needed to meet Conditions to Conversion, then pay budgeted projected items (if any) and fund Operating Reserve Account, developer fees, and otherwise as provided for in the Operating Agreement and the Development Agreement.
Fourth	After Conversion to Permanent Loan (Form 8609)	\$ _____	Pay developer fee to the extent permitted by the Operating Agreement and the Development Agreement.
TOTAL		\$_____	

SCHEDULE I

TITLE INSURANCE REQUIREMENTS

A current Pro Forma Policy for title insurance covering the subject property issued by a title insurance company acceptable to JPMorgan Chase Bank, N.A. (“*Chase*”) addressed to Chase (and/or the Trustee, as requested by Chase) for the amount of the loan, which must:

a. Show record title to be vested in the Borrower; or, if not then vested in the Borrower, show how title is vested and require that title be vested in the Borrower prior to closing;

b. Contain a legal description of the subject property, which description must be identical with the description of the subject property included in the survey mentioned below.

c. Include such endorsements as may be requested by Chase which may include the following (but only to the extent available in Texas):

- comprehensive (extended coverage) endorsement
- contiguity endorsement
- gap endorsement
- mechanics lien endorsement
- variable rate endorsement
- environmental protection lien endorsement
- creditors’ rights endorsement
- survey endorsement
- improvement endorsement
- access endorsement
- zoning endorsement
- patent endorsement
- water rights endorsement
- endorsements relating to affirmative coverage for any encroachments, protrusions or other title defects
- multiple indebtedness mortgage endorsement

d. Show as an exception only ad valorem taxes and assessments by any taxing authority for the year in which the loan is closed and subsequent years; and

List and identify by reference to the volume and page where recorded all easements, rights of way and other instruments or matters affecting title to the subject property.

As a condition to the conversion to the Permanent Term, on and after the Conversion Date, the title insurance requirements of the Forward Bond Purchase Agreement shall restate and replace the foregoing.

SCHEDULE J

SURVEY REQUIREMENTS

I. *Field Note Description.* The Survey shall contain a certified metes and bounds description complying with the following: (i) the beginning point shall be established by a monument located at the beginning point, or by reference to a nearby monument; (ii) the sides of the Land shall be described by giving the distances and bearings of each; (iii) the distances, bearings, and angles shall be taken from an instrument survey by a registered professional engineer or registered professional land surveyor; (iv) curved sides shall be described by data including: length of arc, central angle, radius of circle for the arc and chord distance, and bearing; (v) the description shall be a single perimeter description of the entire Land. If and as instructed, there shall also be a separate metes and bounds description of one or more constituent tracts out of the Land; (vi) the description shall include a reference to all streets, alleys, and other rights of way that abut the Land, and the width of all rights of way mentioned shall be given the first time these rights of way are referred to; (vii) for each boundary line abutting a street, road, alley or other means of access, the description must, in calling the boundary line, state that the boundary line and the right of way line are the same; (viii) if the Land has been recorded on a map or plat as part of an abstract or subdivision, reference to such recording data shall be made; and (ix) the total acreage and square footage of the Land shall be certified.

II. *Lot and Block Description.* If the Land consists of one or more complete lots or blocks included within a properly established recorded subdivision or addition, then a lot and block description will be an acceptable substitute for a metes and bounds description, *provided* that the lot and block description must completely and properly identify the name or designation of the recorded subdivision or addition and give the recording information therefor.

III. *Map or Plat.* The Survey shall also contain a certified map or plat clearly showing the following: (i) the Land; (ii) the relation of the point of beginning of the Land to the monument from which it is fixed; (iii) all easements, streets, roads, alleys and rights of way on or abutting the Land, showing recording information therefor by volume and page; (iv) if the Land has been recorded on a map or plat as part of an abstract or subdivision, all survey lines must be shown, and all lot and block lines (with distances and bearings) and numbers, must be shown; (v) the established building setback lines, if any, including those by restrictive covenant, recorded plat and zoning ordinance (identifying the source in each case, by volume and page reference if applicable); (vi) all easements appurtenant to said Land, with recording information by volume and page; (vii) the boundary lines of the street or streets abutting the Land and the width of said streets and the width of the rights of way therefor; (viii) the distance from the nearest intersecting street or road to the Land; (ix) all structures and improvements on the Land (with designation and dimensions of each party wall, if any) with horizontal lengths of all sides and the relation thereof by distances to (a) all boundary lines of the Land, (b) easements, (c) established building lines and (d) street lines; (x) the types of materials comprising the exterior walls and roofs of all buildings; (xi) all street addresses of improvements on the Land; (xii) all curb cuts, driveways, fences, sidewalks, stoops and landscaping; (xiii) the number of stories of all multi story structures; (xiv) the location, type and size of all utility lines as they service the Land and improvements (sewer, water, gas, electric and telephone); (xv) all encroachments and protrusions, if any, from or upon the Land or any improvements thereon or upon any easement, building setback line or other

restricted area, with exact measurements; (xvi) all parking and paved areas, including the number of vehicles that may be parked; (xvii) all distances, angles and other calls contained in the legal description; (xviii) the location, type and size of all monuments, and as to each monument, indication whether it was found or placed by the surveyor; (xix) the boundaries of any flood hazard area or flood plain area in which any part of the Land lies, with the map number, date and source (Governmental Authority) of each flood map shown; (xx) all surface water bodies or courses; (xxi) the date of any revisions subsequent to the initial survey prepared pursuant to these requirements; (xxii) a legend explaining the meaning of all symbols used on the plat; and (xxiii) the scale of all distances and dimensions on the plat.

IV. *Certification.* To (name of insured, if known), JPMorgan Chase Bank, N.A., and its successors and/or assigns, (name of insurer, if known), (names of others as negotiated with the client):

This is to certify that this map or plat and the survey on which it is based were made in accordance with the 2011 Minimum Standard Detail Requirements for ALTA/ACSM Land Title Surveys, jointly established and adopted by ALTA and NSPS, and includes Items 1 4, 7 9, 11(b) of Table A thereof. The field work was completed on _____.

Date of Plat or Map:_____ (Surveyor's signature, printed name and seal with Registration/License Number).

V. *Post Conversion.* As a condition to the conversion to the Permanent Term, on and after the Conversion Date, the survey requirements of the Forward Bond Purchase Agreement shall restate and replace the foregoing.

SCHEDULE K
TAX CREDIT ALLOCATION
[FOLLOWS THIS PAGE]

SCHEDULE L

AFFIDAVIT OF COMMENCEMENT

THE STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

BEFORE ME, the undersigned authority, on this day personally appeared _____, _____ of Austin Housing Finance Corporation, sole member of _____, managing member of AUSTIN DMA HOUSING II, LLC (“*Owner*”), and _____, _____ of _____ (“*Original Contractor*”), known to me to be the persons whose names are subscribed below, and who, being by me first duly sworn, did each on his or her oath state as follows:

1. The Owner is the lessee of the real property (the “*Land*”) situated in Travis County, Texas, more particularly described in **Exhibit A**, attached hereto and made a part hereof for all purposes, on which building and other related improvements (the “*Improvements*”) are being constructed or renovated.

2. The address of Owner is:

Austin DMA Housing II, LLC
c/o Austin Housing Finance Corporation
1000 E. 11th Street, Suite 200
Austin, Texas 78767

3. The address of Original Contractor is:

4. The name and address of any other original contractor, presently known, after reasonable inquiry, to the Affiants, to the Owner or to the Original Contractor, that is furnishing, or will furnish, labor, service, or materials, for the construction of the Improvements, and the nature of such labor, service or materials, is as follows:

5. Work on the Improvements (including the first delivery of materials and equipment to the Land in connection with the Improvements) actually commenced on _____, 20__ at ____ o'clock __.m.

6. This affidavit has been jointly made by Owner and Original Contractor by and through an authorized representative of each, the same being the undersigned Affiants. This affidavit may be executed in identical counterparts, each of which shall be deemed an original, and all of which, collectively, shall constitute one affidavit.

EXECUTED this _____ day of _____, 20__.

OWNER:

AUSTIN DMA HOUSING II, LLC,
a Texas limited liability company

By: AHFC Aldrich 51 Non-Profit Corporation,
a Texas nonprofit corporation
Its: Managing Member

By: _____
Name: _____
Title: _____

CONTRACTOR:

By: _____
Name: _____
Title: _____

THE STATE OF TEXAS §
 §
COUNTY OF _____ §

SUBSCRIBED AND SWORN BEFORE ME, on this ____ day of _____, 20__,
by _____, _____ of Austin Housing Finance Corporation, on
behalf of said corporation, in its capacity as sole member of _____ LLC, a Texas limited
liability company, on behalf of said limited liability company, in its capacity as managing member
of AUSTIN DMA HOUSING II, LLC, a Texas limited liability company.

Notary Public, State of Texas

THE STATE OF TEXAS §
 §
COUNTY OF _____ §

SUBSCRIBED AND SWORN BEFORE ME, on this ____ day of _____,
20__, by _____, _____ of _____, a Texas
_____, on behalf of said _____.

Notary Public, State of Texas

EXHIBIT A
DESCRIPTION OF THE LAND

SCHEDULE M

AFFIDAVIT AND CERTIFICATE OF COMPLETION

THE STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

BEFORE US, the undersigned authorities, on this day personally appeared _____ of _____ (“*Architect*”), _____, _____ of _____ (“*Original Contractor*”), and _____, _____ of Austin Housing Finance Corporation, sole member of _____, LLC, managing member of AUSTIN DMA HOUSING II, LLC (“*Owner*”), known by us to be the persons whose names are subscribed below, and who, being by first duly sworn, did on their oath state and certify as follows:

1. Owner, whose address is _____, is the owner of a leasehold estate in the real property situated in Travis County, Texas, more particularly described on **Exhibit A** hereto, on which real property certain Improvements (herein so called) were constructed and furnished under the original contract with the Original Contractor, whose address is _____.
2. The Improvements under the original contract between the Owner and the Original Contractor (including all on site and off site Improvements) have been completed in accordance with the approved Plans and Specifications listed on **Exhibit B** hereto.
3. After reasonable investigation, to the best of their knowledge, (a) the Project complies with all applicable restrictive covenants, building codes, permit requirements, and all other applicable laws, ordinances, codes, rules and regulations and (b) no hazardous or toxic substances or materials, as defined under any state, local or federal law have been used on site in constructing the Improvements or incorporated into the Project, other than in compliance with applicable law.
4. All utility services necessary for the proper operation of the Improvements for its intended purpose are connected to and in sufficient capacity at the Project, including water supply, storm and sanitary sewer facilities and gas (if the Plans and Specifications require the Improvements to be served by gas), electricity and telephone facilities (in the case of Owner, this statement being made to the best of Owner’s knowledge).
5. After reasonable investigation, to the best of our knowledge, the condition of the soil of the Project is adequate to support the Improvements.
6. The Improvements are ready for immediate occupancy (in the case of Owner, this statement being made to the best of Owner’s knowledge).

Architect did and does hereby additionally state and certify as follows:

(a) Design and as built conditions for the Project are such that no drainage or surface or other water other than normal surface drainage will drain across or rest upon either the Project or land of others; and

(b) None of the Improvements creates or will create an encroachment over, across or upon any of the Project boundary lines, building liens, setbacks, rights of way or easements, and no buildings or other Improvements on adjoining land create such an encroachment.

The Owner did and does hereby additionally state and certify as follows: All roads and rights of way necessary for the utilization of the Project for its intended purposes have been completed or acquired.

AFFIANT "ARCHITECT":

SUBSCRIBED AND SWORN BEFORE ME, on this ____ day of _____, 20__ by _____.

Notary Public, State of Texas

AFFIANT "ORIGINAL CONTRACTOR":

SUBSCRIBED AND SWORN BEFORE ME, on this ____ day of _____, 20__ by _____.

Notary Public, State of Texas

AFFIANT "OWNER"

AUSTIN DMA HOUSING II, LLC,
a Texas limited liability company

By: AHFC Aldrich 51 Non-Profit Corporation,
a Texas nonprofit corporation

Its: Managing Member

By: _____

Name: _____

Title: _____

SUBSCRIBED AND SWORN BEFORE ME, on this ____ day of _____, 20__ by

_____.

Notary Public, State of Texas

EXHIBIT A
DESCRIPTION OF LAND

EXHIBIT B

PLANS AND SPECIFICATIONS

SCHEDULE N

CONVERSION CERTIFICATE

_____, 20__

AUSTIN DMA HOUSING II, LLC
c/o Austin Housing Finance Corporation
1000 E. 11th St. Suite 200
Austin, Texas 78702

Re: Loan Agreement (the "*Agreement*") dated as of November 1, 2015, to be effective as of the date of delivery of the Agreement, by and among AUSTIN DMA HOUSING II, LLC (the "*the Borrower*"), the AUSTIN HOUSING FINANCE CORPORATION ("*Issuer*"), and JPMorgan Chase Bank, N.A. ("*Bondholder Representative*")

To whom it may concern:

All Conditions to Conversion have been satisfied or waived by Permanent Lender and the Construction Loan has been converted to the Permanent Loan. Capitalized terms not otherwise defined shall have the definitions provided in the Agreement.

JPMORGAN CHASE BANK, N.A.

By: ____
Name: ____
Title: ____

ACKNOWLEDGED:

_____, LLC

By: ____
Name: ____
Title: ____

EXHIBIT O
EASEMENTS

As reflected in the Permitted Encumbrances.