

CERTIFICATE FOR RESOLUTION

THE STATE OF TEXAS

AUSTIN HOUSING FINANCE CORPORATION

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We, the undersigned officers of the Board of Directors of Austin Housing Finance Corporation, hereby certify as follows:

1. The Board of Directors of said corporation convened in REGULAR MEETING ON THE 1ST DAY OF OCTOBER, 2015, at the designated meeting place in Austin, Texas, and the roll was called of the duly constituted officers and members of said Board, to wit:

Steve Adler, President  
Ora Houston, Member  
Delia Garza, Member  
Sabino Renteria, Member  
Gregorio Casar, Member  
Ann Kitchen, Member  
Don Zimmerman, Member  
Leslie Pool, Member  
Ellen Troxclair, member  
Kathie Tovo, Member  
Sherrie Gallo, Member

and all of said persons were present, except the following absentees: None, thus constituting a quorum. Whereupon, among other business, the following was transacted at said Meeting: a written

**RESOLUTION AUTHORIZING THE ISSUANCE, SALE, AND DELIVERY OF MULTIFAMILY HOUSING REVENUE BONDS (ALRICH 51 APARTMENTS) SERIES 2015; APPROVING AND AUTHORIZING THE EXECUTION AND DELIVERY OF RELATED DOCUMENTS; AUTHORIZING THE EXECUTION OF A GROUND LEASE; AUTHORIZING REPRESENTATIVES OF THE AUSTIN HOUSING FINANCE CORPORATION TO EXECUTE DOCUMENTS; AND APPROVING RELATED MATTERS**

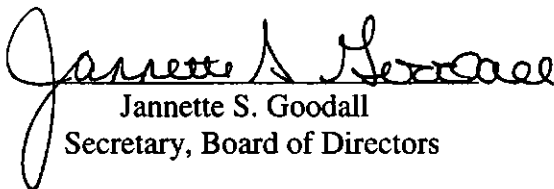
was duly introduced for the consideration of said Board and read in full. It was then duly moved and seconded that said Resolution be adopted; and, after due discussion, said motion carrying with it the adoption of said Resolution, prevailed and carried, with all members of said Board shown present above voting "Aye," except as follows:

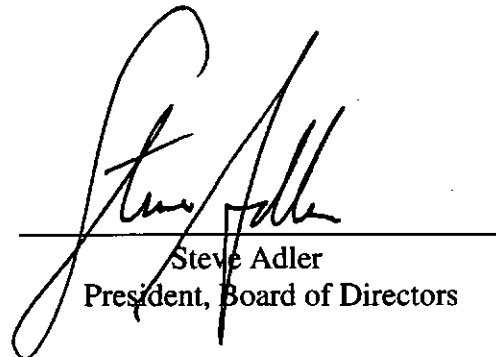
NOES:   1  

ABSTENTIONS:   0

2. A true, full and correct copy of the aforesaid Resolution adopted at the Meeting described in the above and foregoing paragraph is attached to and follows this Certificate; said Resolution has been duly recorded in said Board's minutes of said Meeting; the above and foregoing paragraph is a true, full and correct excerpt from said Board's minutes of said Meeting pertaining to the adoption of said Resolution; the persons named in the above and foregoing paragraph are the duly chosen, qualified and acting officers and members of said Board as indicated therein; each of the officers and members of said Board was duly and sufficiently notified officially and personally, in advance, of the time, place and purpose of the aforesaid Meeting, and that said Resolution would be introduced and considered for adoption at said Meeting, and each of said officers and members consented, in advance, to the holding of said Meeting for such purpose.

SIGNED the 1<sup>ST</sup> day of October, 2015.

  
Jannette S. Goodall  
Secretary, Board of Directors

  
Steve Adler  
President, Board of Directors

**RESOLUTION NO. 20151001-AHFC003**

**RESOLUTION AUTHORIZING THE ISSUANCE, SALE, AND DELIVERY OF MULTIFAMILY HOUSING REVENUE BONDS (ALDRICH 51 APARTMENTS) SERIES 2015; APPROVING AND AUTHORIZING THE EXECUTION AND DELIVERY OF RELATED DOCUMENTS; AUTHORIZING THE EXECUTION OF A GROUND LEASE; AUTHORIZING REPRESENTATIVES OF THE AUSTIN HOUSING FINANCE CORPORATION TO EXECUTE DOCUMENTS; AND APPROVINIG RELATED MATTERS**

**WHEREAS**, Austin Housing Finance Corporation (the "Issuer") has been duly 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"), to finance the costs of residential ownership and development that will provide decent, safe and sanitary housing for persons of low and moderate income at prices they can afford; and

**WHEREAS**, the Act authorizes the Issuer to issue bonds to defray, in whole or in part, the development costs of a residential development; and

**WHEREAS**, the Board of Directors of the Issuer (the "Board") has determined to (i) (i) authorize the issuance of the Issuer's Multifamily Housing Revenue Bonds (Aldrich 51 Apartments), Series 2015 (the "Bonds"), in accordance with the terms of a Trust Indenture (the "Indenture") by and between the Issuer and the trustee named in the Indenture (the "Trustee"), to obtain funds to finance the Project (defined below), in accordance with the Constitution and the Act and (ii) authorize the execution and delivery of a ground lease (the "Ground Lease") by the Issuer, as lessor, and Austin DMA Housing II, LLC (the "Borrower"), a Texas limited liability company (defined below), as lessee, and approves AHFC Aldrich 51 Non Profit Corporation (previously created by the Issuer) to act as Managing Member of the Borrower; and

**WHEREAS**, the Issuer desires to use the proceeds of the Bonds to fund a mortgage loan to the Borrower in order to finance the costs of acquisition and construction of the residential rental project located in Austin, Texas (the "Project") containing units occupied by persons of low and moderate income, as determined by the Issuer, as required by Section 142(d) of the Internal Revenue Code, and to pay costs of issuance of the Bonds (if necessary); and

**WHEREAS**, the Issuer, the Trustee and the Borrower will execute and deliver a Loan Agreement (the "Loan Agreement") in which the Issuer will agree to lend funds to the Borrower to enable the Borrower to finance the Project; and

**WHEREAS**, the Issuer, the Trustee and the Borrower will execute a Regulatory and Land Use Agreement (the "Regulatory Agreement") which will be filed of record in the real property records of Travis County, Texas; and

**WHEREAS**, the Board has further determined that the Issuer will deliver the Bonds to JPMorgan Chase Bank, N.A. (the "Purchaser") under a bond purchase agreement (the "Bond Purchase Agreement"); and

**WHEREAS**, the Board has examined proposed forms of the Indenture, the Loan Agreement, the Bond Purchase Agreement, the Regulatory Agreement and the Ground Lease all of which are attached to and comprise a part of this Resolution; has found the form and substance of such documents to be satisfactory and proper and the recitals contained to be true, correct and complete; and has determined to authorize the issuance of the Bonds, the execution and delivery of the documents and the taking of such other actions as may be necessary or convenient in connection with this transaction;

**NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF THE AUSTIN HOUSING FINANCE CORPORATION:**

**Section 1.1 - Issuance, Execution and Delivery of the Bonds.** The issuance of the Bonds is authorized in accordance with the conditions in the Indenture, and, upon execution and delivery of the Indenture, the authorized representatives of the Issuer named in the Resolution each are authorized to execute and attest to the Bonds and to deliver the Bonds to the Attorney General of the State of Texas for approval, the Comptroller of Public Accounts of the State of Texas for registration and the Trustee for authentication (to the extent required in the Indenture), and then to deliver the Bonds to the Purchaser. The interest rate for the Bonds will not exceed the maximum amount allowed under Texas law and the aggregate principal amount will not exceed \$25,000,000.

**Section 1.2 - Approval, Execution and Delivery of the Indenture.** The form and substance of the Indenture (including the form of Bonds therein) are approved in substantially final form, and the authorized representatives of the Issuer named in this Resolution each are authorized to execute and attest (if required) the Indenture and to deliver the Indenture to the Trustee.

**Section 1.3 - Approval, Execution and Delivery of the Loan Agreement and Regulatory Agreement.** The form and substance of the Loan Agreement and the Regulatory Agreement are approved in substantially final form, and the authorized representatives of the Issuer named in this Resolution each are authorized to execute and attest (if required) the Loan Agreement and the Regulatory Agreement.

**Section 1.4 - Approval, Execution and Delivery of the Bond Purchase Agreement.** The sale of the Bonds is approved, the form and substance of the Bond Purchase Agreement are approved in substantially final form solely with respect to the Bonds, and the authorized representatives of the Issuer named in this resolution each are authorized to execute and attest (if required) the Bond Purchase Agreement, and to deliver the Bond Purchase Agreement to the Purchaser.

**Section 1.5 - Approval, Execution and Delivery of the Ground Lease.** The form and substance of the Ground Lease are approved in substantially final form, and the authorized



representatives of the Issuer named in this Resolution each are authorized to execute and attest (if required) the Ground Lease, and to deliver the Ground Lease to the Borrower. AHFC Aldrich 51 Non Profit Corporation is approved to act as Managing Member of the Borrower.

**Section 1.6 - Execution and Delivery of Other Documents.** The authorized representatives of the Issuer named in this Resolution each are authorized to execute, attest to, and to affix the Issuer's seal to such other agreements, commitments, assignments, bonds, certificates, contracts, documents, instruments, releases, financing statements, letters of instruction, notices of acceptance, written requests and other papers as may be necessary or convenient to carry out or assist in carrying out the purposes of this Resolution.

**Section 1.7 - Exhibits Incorporated Herein.** That all of the terms and provisions of each of the documents listed below as an exhibit shall be and are hereby incorporated into and made a part of this Resolution for all purposes:

**Exhibit A - Indenture**

**Exhibit B - Loan Agreement**

**Exhibit C - Regulatory Agreement**

**Exhibit D - Bond Purchase Agreement**

**Exhibit E - Ground Lease**

**Section 1.8 - Power to Revise Form of Documents.** The authorized representatives of the Issuer named in this Resolution each are authorized to make or approve such revisions in the form of the documents attached as, in the judgment of such authorized representative or authorized representatives, and following consultation with McCall, Parkhurst & Horton L.L.P., Bond Counsel to the Issuer, may be necessary or convenient to carry out or assist in carrying out the purpose of this Resolution, such approval to be evidenced by the execution of such documents by the authorized representatives of the Issuer named in this Resolution.

**Section 1.9 - Authorized Representatives.** The President, Vice President, Treasurer and Secretary and Manager are hereby named as authorized representatives of the Issuer for purposes of executing, attesting, affixing the Issuer's seal to, and delivering the documents and instruments referred to herein.

**Section 1.10 - Meeting.** The meeting was held on October 1, 2015 and a quorum was present. The meeting was held in accordance with the Issuer's bylaws.

**ADOPTED:** October 1, 2015

**ATTEST:**

  
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Jannette S. Goodall  
Secretary



**Exhibit A**

**Indenture**

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TRUST INDENTURE

by and between

AUSTIN HOUSING FINANCE CORPORATION  
as Issuer

and

BOKF, NA DBA BANK OF TEXAS  
as Trustee

Dated as of November 1, 2015

Relating to

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

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**EXHIBIT A – Form of Requisition Certificate**

**EXHIBIT B – Form of Bond**

**EXHIBIT C – Investor’s Letter**

**EXHIBIT D – Sinking Fund Installments**

## TRUST INDENTURE

THIS TRUST INDENTURE (this "*Indenture*") dated as of November 1, 2015, by and between AUSTIN HOUSING FINANCE CORPORATION., a housing finance corporation duly organized and existing under the laws of the State of Texas (the "*Issuer*"), and BOKF, NA, DBA BANK OF TEXAS, a national banking association duly established, existing, and authorized to accept and execute trusts of the character herein set out, as the Trustee (the "*Trustee*," as that term is hereafter defined):

### 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 issuing its revenue bonds to finance the cost of residential ownership and development that will provide decent, safe, and sanitary housing at affordable pricing; and

WHEREAS, Austin DMA Housing II, LLC, a limited liability company organized and existing under the laws of the State of Texas (the "*Borrower*"), has requested that the Issuer issue bonds the proceeds of which will be used, among other things, to purchase, acquire, construct, and equip a 240-unit multifamily residential rental housing development known as Aldrich 51 Apartments to be located in the City of Austin, Travis County, Texas (the "*Project*"); and

WHEREAS, the Issuer has found and determined, and does hereby find and determine, that the purchase, acquisition, construction, and equipping of the Project by the Borrower will provide affordable and sanitary housing within the meaning of the Act, and that the Issuer, by assisting with the financing of the purchase, 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, pursuant to this Indenture, the Issuer has agreed to issue its Multifamily Housing Revenue Bonds (Aldrich 51 Apartments) Series 2015 (the "*Bonds*") for the purposes of funding a loan (the "*Loan*") to the Borrower the proceeds of which will be used to finance the purchase, acquisition, construction, and equipping of the Project and pay certain costs of issuance of the Bonds; and

WHEREAS, under the terms of the Loan Agreement dated as of November 1, 2015 (the "*Loan Agreement*"), among the Issuer, the Borrower and the Bondholder Representative (as hereinafter defined), the Issuer has agreed to make the Loan and the Borrower has agreed to the repayment of the sums borrowed pursuant thereto and the Borrower has executed or caused to be executed the Mortgage and the Loan Documents (as such terms are hereinafter defined) with respect to the Project to secure, among other things, the payments due and other obligations under the Loan Agreement; and

WHEREAS, the Bonds have initially been sold at a price of par to JPMorgan Chase Bank N.A.; and



WHEREAS, JP Morgan Chase Bank, N.A., and Boston Capital Partners (the "*Permanent Lender*") and the Borrower have entered into that certain Forward Bond Purchase Agreement, dated the date hereof in connection with the subsequent purchase of the Bonds by the Permanent Lender on the Conversion Date; and

WHEREAS, the execution and delivery of this Indenture and the issuance of the Bonds have been in all respects duly and validly authorized by the Issuer; and

WHEREAS, terms not otherwise defined in the recitals or granting clauses hereof shall have the meanings as hereinafter defined; and

WHEREAS, all things necessary to make the Bonds, when authenticated by the Trustee (to the extent required) and issued as provided in this Indenture, valid, binding, and legal limited obligations of the Issuer according to the import thereof, and to constitute this Indenture a valid contract for the security of the Bonds, have been done and performed; and the execution and delivery of this Indenture, and the execution and issuance of said Bonds, subject to the terms hereof, have in all respects been duly authorized;

NOW THEREFORE, KNOW ALL PERSONS BY THESE PRESENTS, THIS INDENTURE WITNESSETH:

#### GRANTING CLAUSES

The Issuer, in consideration of the premises and the acceptance by the Trustee of the trusts hereby created and of the purchase and acceptance of the Bonds by the Holders thereof, and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and, in order to secure the payment of the principal of and interest and premium, if any, on the Bonds according to their tenor and effect and the performance and observance by the Issuer of all the covenants, agreements, and conditions expressed or implied herein and in the Bonds, does hereby assign, transfer in trust, and pledge to the Trustee and its successors and assigns in trust forever, and does hereby grant a security interest unto the Trustee and its successors in trust, and to them and their assigns forever, the following (excepting, however, the Unassigned Issuer's Rights) (collectively referred to as the "*Trust Estate*"):

#### GRANTING CLAUSE FIRST

All right, title, interest, and privileges of the Issuer in, to, and under (but not its obligations under) the Loan Agreement and the Note (as hereinafter defined), including, but not limited to, all sums which the Issuer is entitled to receive from the Borrower pursuant to the Loan Agreement (but excluding the Unassigned Issuer's Rights), the Funds (excluding funds held in the Rebate Fund), and all other sums (except rebatable arbitrage whether or not deposited in the Rebate Fund) which are required to be deposited in the Funds in accordance with **Article 5** hereof;

## GRANTING CLAUSE SECOND

All of the Issuer's right, title, and interest in all property mortgaged, pledged, and assigned under the Mortgage and the Loan Documents to secure the Loan (not including the Unassigned Issuer's Rights) and/or the Bonds and any and all other property of every name and nature which may from time to time hereafter by delivery or by writing of any kind be subjected to the lien hereof by the Issuer or by anyone on its behalf or with its written consent, and the Trustee is hereby authorized to receive any and all such property at any and all times and to hold and apply the same as additional security hereunder subject to the terms hereof; and

## GRANTING CLAUSE THIRD

The earnings derived from the investment of any of the foregoing sums (except amounts on deposit in and rebatable arbitrage required to be deposited in the Rebate Fund) as provided herein.

TO HAVE AND TO HOLD all the Trust Estate, together with all rights and privileges hereby transferred, pledged, assigned and/or granted or agreed or intended so to be, to the Trustee and its successors and assigns in trust and to them and their assigns forever;

IN TRUST NEVERTHELESS, upon the terms and trusts herein set forth, first for the equal and proportionate benefit, security, and protection of all Holders from time to time of the Bonds other than the Holders of the Subordinated Bonds issued under and secured by this Indenture, without privilege, priority, or distinction as to the lien or otherwise of any of the Bonds over any of the others except as otherwise provided herein and second for the benefit of the Holders of the Subordinated Bonds, all as herein provided, and for the uses and purposes and upon the terms, agreements, and conditions set forth herein;

PROVIDED, HOWEVER, that if the Issuer, its successors or assigns, shall well and truly pay, or cause to be paid, or provide fully for payment as herein provided of the principal of the Bonds and the interest due or to become due thereon (together with premium, if any), at the time and in the manner set forth in the Bonds according to the true intent and meaning thereof, and shall make the payments into the Bond Fund as required under **Article 5** hereof or shall provide, as permitted hereby, for the payment thereof by depositing with the Trustee sums sufficient for payment of the entire amount due or to become due thereon as herein provided, and shall well and truly keep, perform and observe all the covenants and conditions pursuant to the terms of this Indenture to be kept, performed and observed by it, and shall pay to the Trustee all sums of money due or to become due to it in accordance with the terms and provisions hereof and of the Loan Documents, then this Indenture and the rights hereby granted shall cease, terminate, and be void except as otherwise provided herein.

THIS INDENTURE FURTHER WITNESSETH, and it is expressly declared, that all Bonds issued and secured hereunder are to be issued, authenticated (to the extent required), and delivered and that all the Trust Estate is to be held and applied under, upon and subject to the terms, conditions, stipulations, covenants, agreements, trusts, uses, and purposes as hereinafter expressed, and the

Issuer has agreed and covenanted, and does hereby agree and covenant, with the Trustee for the benefit of the Holders, as follows:

## ARTICLE 1

### DEFINITIONS, EXHIBITS AND GENERAL PROVISIONS

**Section 1.1.** Definitions. In this Indenture the following terms have the following meanings unless the context hereof clearly requires otherwise, and any other terms defined in the Loan Documents shall have the same meanings when used herein as assigned to them in the Loan Documents unless the context or use thereof indicates another or different meaning or intent:

*“Accounts”* means, collectively, the accounts of the Bond Fund created by Section 5.4 hereof, and the Servicing Fund created by Section 5.8 hereof.

*“Act”* has the meaning provided in the Recitals.

*“Additional Charges”* means the payments required by Section 4.3 of the Loan Agreement.

*“Administration Account”* means an Account of the Bond Fund established pursuant to Section 5.4 hereof.

*“Architecture Contract”* has the meaning assigned to that term in the Loan Agreement.

*“Authorized Denomination”* has the meaning assigned to that term in Section 2.2(2) hereof.

*“Bank”* means JPMorgan Chase Bank N.A., a national banking association, or its successors and assigns.

*“Bankruptcy Code”* means the United States Bankruptcy Reform Act of 1978, as amended, or any similar or succeeding federal bankruptcy law.

*“Basic Payments”* has the meaning assigned to that term in the Loan Agreement.

*“Bond Closing”* means the date on which there is delivery by the Issuer of, and payment by the initial purchaser for, the Bonds.

*“Bond Counsel”* means McCall, Parkhurst & Horton L.L.P., or any other firm of nationally recognized bond counsel experienced in tax exempt private activity bond financing selected by the Issuer.

*“Bond Documents”* means this Indenture, the Loan Agreement, the Regulatory Agreement, the Tax Certificate and the Project Certificate.

*“Bond Fund”* means the Fund created by Section 5.4 hereof.

*“Bondholder Representative”* means (i) the Bank or any affiliate of the Bank, so long as the Bank or such affiliate owns any of the Bonds; (ii) if neither the Bank nor any affiliate of Bank owns any of the Bonds, then (a) if and so long as one Holder holds a majority in principal amount of all Outstanding Bonds, such Holder or a person appointed to be the Bondholder Representative by such Holder; and (b) if and so long as no one Holder owns a majority in principal amount of all Outstanding Bonds, the Holder at the time in question who holds the greatest principal amount of all Outstanding Bonds. As set forth in Section 5.1, in the event of any sale, transfer or other disposition any of the Bonds by the Bank or any Bank affiliate that owns the Bonds, the Bank shall transfer all Funds and Accounts to the custody of the Trustee. So long as the Bonds are not equally owned by different Holders, the Trustee shall determine the identity of each successor Bondholder Representative based on the criteria set forth in this definition, such determination to be conclusive absent manifest error. If the Outstanding Bonds are equally owned by different Holders, the Bondholder Representative shall be the Bondholder Representative designated by the Holders of a majority in principal amount of all Outstanding Bonds at the time in question. The Trustee shall be provided written notice if there is a change to the initial Bondholder Representative.

*“Bond Register”* means the bond register maintained by the Bond Registrar pursuant to Section 2.9 hereof.

*“Bond Registrar”* means BOKF, NA dba Bank of Texas, and any successor thereto appointed, qualified, and then acting as such under the provisions of this Indenture.

*“Bonds”* means the Bonds and any Subordinated Bonds.

*“Bond Year”* means the one-year period beginning on January 1 and ending on the next succeeding December 31, provided that the first Bond Year shall begin on the date of the Bond Closing and end on December 31, 2015.

*“Borrower”* means the entity identified as the Borrower in the Recitals, its successors and assigns, and any surviving, resulting, or transferee entity which may assume its obligations under the Loan Documents.

*“Business Day”* means any day that is not a Saturday, Sunday, or other day on which commercial banks in Austin, Texas, and in New York City are authorized or required by law to remain closed.

*“Code”* or *“Internal Revenue Code”* means the Internal Revenue Code of 1986, as amended and in force and effect on the date hereof.

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

*“Completion Date”* means the date shown as the date required for substantial completion of construction of the Project in **Schedule E** to the Loan Agreement, or such later date as the Bondholder Representative approves.

*"Comptroller"* means the Comptroller of Public Accounts of the State.

*"Computation Date"* has the meaning set forth in Section 1.148-1(b) of the Regulations and as defined in the Loan Agreement.

*"Condemnation"* or the phrase "eminent domain" as used herein shall include the taking or requisition by Governmental Authority or by a person, firm, or corporation acting under governmental authority and a conveyance made under threat of such taking or requisition.

*"Condemnation Award"* shall mean payment for property condemned or conveyed under threat of Condemnation.

*"Conditions to Conversion"* shall have the meaning assigned to that term in the Loan Agreement.

*"Construction Contract"* has the meaning assigned to that term in the Loan Agreement.

*"Construction Term Maturity Date"* has the meaning assigned to that term in the Loan Agreement.

*"Conversion Date"* has the meaning assigned to that term in the Loan Agreement.

*"Costs of Issuance"* means, with respect to any Bonds, all expenses incurred in connection with the authorization, sale, issuance, and delivery of the Bonds, as described in Section 147(g) of the Code including, without limitation, counsel fees (including Bond Counsel, the Trustee's counsel, and Issuer's counsel, as well as any other specialized counsel fees incurred in connection with the issuance of the Bonds), the Issuance Fee, financial advisory fees, placement agent's fees, and accountant fees related to issuance of the Bonds, and initial Trustee, Bond Registrar, and Paying Agent fees, title insurance fees, survey fees and recording and filing fees, including any applicable documentary stamp taxes, intangible tax, and the mortgage registration tax.

*"Costs of Issuance Fund"* means the fund created by Section 5.9 hercof.

*"Dated Date"* means the date of this Indenture.

*"Debt Service"* means, for any period, the sum of all regularly scheduled principal and interest payments which would be due and payable under the Loan for the applicable number of months for which the Debt Service is being calculated.

*"Debt Service Coverage Ratio"* means, as of the date such calculation is made, the ratio, as determined by the Permanent Lender, of (a) Net Cash Flow from the Project for the applicable number of months for which the Debt Service Coverage Ratio is being calculated to (b) Debt Service for the same measured period of time.

*"Default Rate"* shall have the meaning assigned to that term in the Loan Agreement.

*"Defeasance Collateral"* shall have the meaning set forth in **Section 7.1** hereof.

*"Determination of Taxability"* means a final judgment or order of a court of original jurisdiction, a final order of any other court of competent jurisdiction, or a final ruling or decision of the Internal Revenue Service, in any such case to the effect that the interest on any of the Bonds (other than interest on any Bond for a period during which such Bond is held by a "substantial user" of any facility financed with the proceeds of the Bonds or a "related person," as such terms are used in Section 147(a) of the Code and except as a result of any minimum tax, preference tax, or other similar tax) is not excludable from the gross income for federal income purposes of the Holders thereof. With respect to the foregoing, a judgment or order of a court or a ruling or decision of the Internal Revenue Service shall be considered final only if no appeal or action for judicial review has been filed and the time for filing such appeal or action has expired.

*"Event of Default"* means any of the events set forth in **Section 8.1** hereof.

*"Facility"* means the buildings and improvements located on the Project Premises as they may now or from time to time exist.

*"Fiscal Year"* means the fiscal year of the Borrower which commences each January 1 and ends on December 31.

*"Forward Bond Purchase Agreement"* has the meaning assigned to that term in the Loan Agreement.

*"Funds"* means, collectively, the Bond Fund, the Project Fund, the Rebate Fund, the Revenue Fund, the Mortgage Recovery Fund, the Servicing Fund, and the Costs of Issuance Fund.

*"Government Obligations"* has the meaning assigned to that term in the Loan Agreement.

*"Governmental Authority"* means any nation, country, commonwealth, territory, Government, state, county, parish, municipality, agency, or other political subdivision and any entity exercising executive, legislative, judicial, regulatory, or administrative functions of or pertaining to government, including, without limitation, any state agencies and Persons responsible in whole or in part for monitoring compliance with environmental matters in the states in which Borrower is located or otherwise conducting its business activities and the United States Environmental Protection Agency.

*"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.

*"Hazardous Substances"* has the meaning assigned to that term in the Loan Agreement.

*"Holder"* means the person in whose name a Bond is registered in the Bond Register.

*“Indenture”* means this Trust Indenture, as the same may from time to time be amended or supplemented as herein provided.

*“Independent Accountant”* means a certified public accountant or firm of certified public accountants registered and qualified to practice as such under the laws of the State, and not employed by the Issuer or the Borrower, except to perform independent audits of the books and records of either or both of them or other similar periodic reviews and to perform other independent services.

*“Independent Counsel”* means any attorney acceptable to the Trustee, duly admitted to practice law before the highest court of any state or of the District of Columbia, who may be counsel to the Issuer but who may not be an officer or an employee of the Issuer.

*“Initial Bond”* means the Initial Bond registered by the Comptroller and subsequently canceled and replaced by definitive Bonds for each maturity.

*“Interest Account”* means an Account of the Bond Fund established pursuant to **Section 5.4** hereof.

*“Investor’s Letter”* means a letter in the form of **Exhibit C** hereto and executed by the initial Holder and any subsequent transferees of the Bonds pursuant to **Section 2.12** hereof.

*“Investor Member”* means the Investor Member under and as defined in the Loan Agreement, or its successors and assigns.

*“Issuance Fee”* means a fee equal to .5% of the initial aggregate principal amount of the Bonds, which is payable on the day of Bond Closing by the Trustee to the Issuer solely from amounts on deposit in the Costs of Issuance Fund.

*“Issuer”* means Austin Housing Finance Corporation., a housing finance corporation duly organized and existing under the laws of the State of Texas, including the Act, and its successors and assigns.

*“Issuer Administration Fee”* means the annual prorated amount payable January 1 of each year beginning January 1, 2016 to the Issuer for its ordinary monitoring fees and expenses under the Indenture in an amount equal to not less than the greater of (a) .0003 times the amount of Bonds Outstanding on January 1 of each year, (b) \$12 times the number of units in the Project, or (c) \$1,200 per year.

*“Loan”* means the loan of proceeds of the Bonds by the Issuer to the Borrower described in **Section 4.1** of the Loan Agreement.

*“Loan Agreement”* means the Loan Agreement dated of even date herewith by and among the Issuer, the Bank, as Bondholder Representative, and the Borrower, as the same may from time to time be amended, modified, or supplemented as provided therein and in this Indenture.

*"Loan Documents"* means the Loan Agreement, the Note, the Mortgage, the Collateral Assignment, the Regulatory Agreement, the Servicing Agreement, and assignments by Borrower to the Trustee of the Construction Contract, Architecture Contract, and Plans and Specifications and consents by the contracting parties to such assignments, the Permanent Loan Documents and any and all other documents evidencing, securing, or otherwise pertaining to the Loan.

*"Managing Member"* has the meaning assigned to that term in the Loan Agreement.

*"Maturity Date"* means \_\_\_\_\_, as subject to the terms hereof.

*"Maximum Lawful Rate"* means the maximum non-usurious interest that at any time or from time to time may be contracted for, taken, reserved, charged, or received on the indebtedness under this Indenture under the laws applicable to the Issuer that are presently in effect or, to the extent allowed by law, under such applicable laws that may hereafter be in effect and that allow a higher maximum non-usurious interest rate than the laws applicable to the Issuer now allow. As of the Dated Date, the Maximum Lawful Rate is 15% per annum. The Issuer shall notify the Trustee of any change in the Maximum Lawful Rate.

*"Mortgage"* means the Construction and Permanent Leasehold Deed of Trust, Security Agreement, Assignment of Leases and Rents and Fixture Filing of even date herewith from the Borrower as grantor to the trustee named therein with respect to the Project, as the same may from time to time be replaced, amended, or supplemented as provided therein and in this Indenture.

*"Mortgaged Property"* has of the meaning assigned to that term in the Mortgage.

*"Mortgage Recovery Fund"* means the Fund created by **Section 5.7** hereof.

*"Net Cash Flow"* means, as determined by the Permanent Lender, for any period, the excess, if any, of (A) the actual gross operating income generated by the lesser of actual or ninety-three percent (93%) economic occupancy of the Project during such period (excluding insurance and condemnation proceeds, loan proceeds, security and cleaning deposits made by any tenant (except to the extent Borrower is then entitled under the applicable lease to apply the same to rent or other amounts then payable by the tenant under the applicable lease) and similar items), over (B) Project Expenses. In computing the Debt Service Coverage Ratio for the Conditions to Conversion, rent concessions may be amortized over twelve months.

*"Net Proceeds"* shall have the meaning set forth in the Mortgage.

*"Nonpurpose Investments"* means 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"* means the Promissory Note in the original principal amount of \$\_\_\_\_\_.00 made as of even date herewith by the Borrower to the order of the Issuer and assigned to the Trustee for the benefit of the Holder.



*“Operations Office”* with respect to the Trustee means the designated office of the Trustee or any affiliate of the Trustee for the payment of interest and principal on the Bonds.

*“Ordinary Fees and Expenses”* means the fees and expenses charged or incurred by the Trustee in the fulfillment of its obligations hereunder which are reimbursable to the Trustee from the Trust Estate, plus its indirect out-of-pocket expenses.

*“Outstanding Bonds”* or *“Bonds Outstanding”* means, as of the date of determination, all Bonds theretofore issued and delivered under this Indenture except:

(a) Bonds theretofore canceled by the Bond Registrar, the Trustee, or the Paying Agent or delivered to the Bond Registrar, the Trustee, or the Paying Agent for cancellation;

(b) Bonds for which payment or redemption moneys or securities (as provided in Section 2.10 hereof or Article 7 hereof) shall have been theretofore deposited with the Trustee or the Paying Agent in trust for the Holders of such Bonds; provided, however, that if such Bonds are to be redeemed, notice of such redemption shall have been duly given pursuant to this Indenture or irrevocable action shall have been taken to call such Bonds for redemption at a stated redemption date; and

(c) Bonds in exchange for or in lieu of which other Bonds shall have been issued and delivered pursuant to Section 2.7 hereof or other provisions of this Indenture;

provided, however, that in determining whether the Holders of the requisite principal amount of Outstanding Bonds have given any request, demand, authorization, direction, notice, consent, or waiver hereunder, Bonds owned by the Borrower shall be disregarded and deemed not to be Outstanding Bonds (unless the Borrower owns all the Bonds otherwise outstanding, in which case they shall be deemed Outstanding), except that in determining whether the Trustee shall be protected in relying upon any such request, demand, authorization, direction, notice, consent, or waiver, only Bonds which the Trustee actually knows to be so owned shall be disregarded.

*“Paying Agent”* means the Trustee or any other entity designated pursuant to this Indenture as the agent of the Issuer and the Trustee to receive and disburse the principal of and premium, if any, and interest on the Bonds.

*“Payment Date”* has the meaning assigned to that term in the Loan Agreement.

*“Permanent Lender”* has the meaning assigned to that term in the Loan Agreement.

*“Permanent Loan Documents”* has the meaning assigned to that term in the Loan Agreement.

*“Permitted Investments”* means, to the extent not prohibited by State law, the following:

(i) certificates or interest-bearing notes or obligations of the United States, or those for which the full faith and credit of the United States are pledged for the payment of principal and interest;

(ii) investments in any of the following obligations, provided such obligations are backed by the full faith and credit of the United States: (a) direct obligations or fully guaranteed certificates of beneficial interest of the Export-Import Bank of the United States, (b) debentures of the Federal Housing Administration, (c) mortgage-backed securities of the Government National Mortgage Association, (d) certificates of beneficial interest of the Farmers Home Administration, (e) obligations of the Federal Financing Bank, (f) project notes and local authority bonds of the United States Department of Housing and Urban Development, or (g) obligations of the Private Export Funding Corp.;

(iii) investments in (a) senior obligations of the Federal Home Loan Bank System, (b) participation certificates or senior debt obligations of the Federal Home Loan Mortgage Corporation, (c) mortgage-backed securities and senior debt obligations (excluding stripped mortgage securities that are valued greater than par on the portion of the unpaid principal) of the Federal National Mortgage Association or (d) senior debt obligations of the Student Loan Marketing Association;

(iv) repurchase agreements with primary dealers and/or banks rated "A" or better by either of the Rating Agencies collateralized with the obligations described in (i) or (ii) above held by a third-party custodian;

(v) 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;

(vi) certificates of deposit of any bank (including the Trustee or an affiliate thereof), trust company or savings and loan association whose short-term obligations are rated "A-1" or better by either of the Rating Agencies provided that such certificates of deposit are fully secured by the obligations described in (i) or (ii) above, the Trustee has a perfected first security interest in the obligations securing the certificates and the Trustee holds (or shall have the option to appoint a bank, trust company or savings and loan association as its agent to hold) the obligations securing the certificates;

(vii) certificates of deposit of any bank (including the Trustee or an affiliate thereof), trust company or savings and loan association which certificates are fully insured by the Federal Deposit Insurance Corporation;

(viii) commercial paper rated "A-1+" or better by either of the Rating Agencies;

(ix) obligations of, or obligations fully guaranteed by, any state of the United States of America or any political subdivision thereof which obligations are rated by either of the Rating Agencies in the highest rating categories (without regard to any refinement or gradation of rating category by numerical modifier or otherwise and without regard to credit enhancement) assigned by such rating agency to obligations of that nature; and

(x) any other investment which is approved in writing delivered to the Trustee by the Bondholder Representative.

The Trustee shall not have a duty or any obligation to determine whether a Permitted Investment is prohibited by State law.

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

"*Plans and Specifications*" means the plans and specifications for the Facility identified in and defined as such in the Loan Agreement, together with such amendments thereto as are made from time to time in accordance with Section 5.10 of the Loan Agreement.

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

"*Principal Account*" means an Account of the Bond Fund established pursuant to Section 5.4 hereof.

"*Principal Office*" with respect to the Trustee means the office designated as such in Section 12.4 hereof.

"*Project*" means the Project Premises, the Facility, and any and all Project Equipment located on or used in connection with the Project Premises.

"*Project Certificate*" means the Project Certificate delivered to the Issuer by the Borrower on or before the Bond Closing.

"*Project Engineer*" means an engineer retained by the Bondholder Representative to provide consulting services to the Bondholder Representative with respect to the Project as its construction consultant as provided for in the Loan Agreement.

"*Project Equipment*" means the property described as "*Personal Property*" in the Mortgage.

"*Project Expenses*" means costs and expenses incurred by the Borrower during the applicable period in connection with the Borrower's operation, maintenance and leasing of the Project during such period, including, but not limited to, all amounts payable by the Borrower on account of all property management fees, costs and expenses (including all salaries, payroll taxes

and benefits), issuance fees on the Bond, all maintenance costs and expenses (including maintenance supply costs), all utility costs and expenses, all pest control costs and expenses, all property-related legal fees, costs and expenses, all property-related accounting fees, and all monthly amounts required to be deposited in any replacement reserve required under the Loan Documents (and for purposes of such determination, the Permanent Lender shall include as Project Expenses in any monthly period, 1/12th of the annual real estate taxes and assessments (assuming that the Project has been fully assessed for real estate tax purposes) constituting a lien on the Project (if any), 1/12th of the annual insurance premiums for all insurance required to be carried by the Borrower with respect to the Project and such portion of such other non-monthly expenses as the Permanent Lender may deem appropriate) (provided, however, that for purposes of calculating the Project Expenses described above, "Project Expenses" shall not include any repair or replacement cost which would, in accordance with generally accepted accounting principles, consistently applied, be treated as a capitalized cost or any Debt Service payments payable solely from cash flow). In computing the Debt Service Coverage Ratio for the Conditions to Conversion, Project Expenses in total for all expense categories, except Real Estate Taxes and Insurance, will not be lower than the greater of (1) the original underwriting specified in **Exhibit A** to the Rate Lock Letter or (2) actual expenses for the past three months annualized and (3), the most recent operating budget prepared by the approved property manager. Real Estate Taxes and Insurance will be included individually, at actual, assuming a fully assessed and occupied property. At any time while the Bonds are outstanding, if Real Estate Taxes are not assessed for the Project, then Project Expenses will not include the Real Estate Taxes.

*"Project Fund"* means the fund created under **Section 5.2** hereof.

*"Project Premises"* means the real property described in **Exhibit A** to the Mortgage.

*"Purchase Date"* means the date on which any Outstanding Bonds are purchased pursuant to **Article 3** hereof.

*"Qualified Project Costs"* means the costs and expenses of the Project incurred no earlier than sixty (60) days prior to December 18, 2014 (or which are qualifying preliminary expenditures), and no earlier than three (3) years prior to the date reimbursed with proceeds of the Bonds, but in no event shall such costs have been incurred with respect to a portion of the Project that is placed in service, within the meaning of Section 1.150-2 of the Regulations, earlier than eighteen (18) months prior to the date the related costs are reimbursed with proceeds of the Bonds; provided that such costs are chargeable to a capital account with respect to the Project for federal income tax purposes, or would be so chargeable either with a proper election by the Borrower or but for the proper election by the Borrower to deduct those amounts; provided, however, that, if any portion of the Project is being constructed by the Borrower or a Related Person (whether as a general contractor or a subcontractor), *"Qualified Project Costs"* shall include only (a) the actual out-of-pocket costs incurred by the Borrower or such Related Person in constructing the Project (or any portion thereof), (b) any reasonable fees for supervisory services actually rendered by the Borrower or such Related Person (but excluding any profit component), and (c) any overhead expenses incurred by the Borrower or such Related Person that are directly attributable to the work performed on the Project and shall not include, for example, intercompany profits resulting from

members of an affiliated group (within the meaning of Section 1504 of the Code) participating in the construction of the Project or payments received by such Related Person due to early completion of the Project (or any portion thereof). Qualified Project Costs do not include Costs of Issuance.

*"Rate Lock Letter"* means the Interest Rate Lock Letter under and as defined in the Loan Agreement.

*"Rating Agencies"* means Standard & Poor's Ratings Services, a Standard & Poor's Financial Services LLC business, or Moody's Investors Service, Inc.

*"Real Estate Taxes and Insurance"* means, for each particular fiscal year, ad valorem real estate taxes and assessments for the Project and insurance premiums related to the insurance required by the Loan Agreement to be maintained for the Project.

*"Real Estate Taxes and Insurance Account"* means an Account of the Servicing Fund established pursuant to Section 5.8(2)(a) hereof.

*"Rebate Amount"* has the meaning set forth in Section 1.148-1(b) of the Regulations.

*"Rebate Analyst"* means a rebate analyst selected by the Issuer and reasonably acceptable to the Borrower.

*"Rebate Analyst's Fee"* means the reasonable fee payable to the Rebate Analyst.

*"Rebate Fund"* means the fund so designated in Section 5.6 hereof into which the Trustee is to deposit rebatable arbitrage paid by the Borrower.

*"Rebate Requirement"* or *"Rebate Amount"* has the meaning ascribed in Section 1.148-3(b) of the Regulations and generally means the excess as of any date of the future value of all receipts on Nonpurpose Investments over the future value of all payments on Nonpurpose Investments all as defined and determined in accordance with Section 1.148-3 of the Regulations.

*"Record Date"* means with respect to any Payment Date, (a) the close of business on the first day of the month (whether or not a Business Day) of such Payment Date or (b) if there is a default in payment of interest and principal due on such Payment Date, a special Record Date for the payment of such defaulted interest established by the Trustee by notice mailed by the Trustee; such notice shall be mailed not less than 15 days preceding the applicable special Record Date, to the Holder as set forth in the Bond Register at the close of business on the fifth Business Day next preceding the date of mailing.

*"Recovery Proceeds"* means the proceeds of any insurance recovery or Condemnation Award less amounts reimbursed to the Borrower, the Trustee, and the Issuer for expenses incurred in connection therewith.

*“Redemption or Purchase Account”* means an Account of the Bond Fund established pursuant to **Section 5.4** hereof.

*“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 Regulation designed to supplement, amended or replace the specific Regulation referenced.

*“Regulatory Agreement”* means the Regulatory Agreement and Declaration of Restrictive Covenants, of even date herewith, among the Borrower, the Issuer, and the Trustee, together with any amendments and supplements thereto permitted thereby.

*“Related Person”* means a “related person” within the meaning of Section 147(a)(2) of the Code.

*“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 Maturity Date, as quoted in The Wall Street Journal published in print or on-line on the 2nd calendar day immediately preceding the date for prepayment, but if said 2nd day is not a Business Day (as such term is defined in the permanent loan agreement), then as quoted on the preceding Business Day (as such term is defined in the permanent loan agreement). If more than one Treasury Issue has the same maturity date, then the Treasury Issue having the market yield that differs least from the 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.

*“Replacement Reserve Account”* means an Account of the Servicing Fund established pursuant to **Section 5.8(2)(b)** hereof.

*“Replacement Reserve Deposit Requirement”* shall have the meaning given to such term in **Section (B)** of **Schedule F** of the Loan Agreement.

*“Representative”* means any officer of the Issuer or of the sole member of the Managing Member, or any other person at any time designated to act on behalf of the Issuer or the Borrower, as the case may be, as evidenced by a written certificate furnished to such other party and the Trustee containing the specimen signature of such person and signed for the Issuer by any officer or for the Borrower by any officer of the sole member of the Managing Member. The Trustee may conclusively presume that a person designated in a written certificate filed with it as a Representative is a Representative until such time as the Issuer or the Borrower, as the case may be, files with it a written certificate satisfying the above requirements, identifying a different person or persons to act in such capacity.

*“Requirements”* shall have the meaning assigned to that term in the Loan Agreement.

*“Responsible Agent”* means any person duly authorized and designated by the Trustee, the Bond Registrar, or the Paying Agent to act on its behalf in carrying out the applicable duties and powers of such entity as set forth in this Indenture; any action required by the Trustee, the Bond Registrar, or the Paying Agent under this Indenture may be taken by a Responsible Agent.

*“Revenue Fund”* means the Fund designated in Section 5.3 hereof.

*“Securities Act”* means the Securities Act of 1933, as amended.

*“Servicer”* means \_\_\_\_\_, its successors and assigns, and any successor Servicer engaged by the Borrower in accordance with the Loan Agreement; *provided* that references to the Servicer in this Indenture and the other Loan Documents shall only be effective and applicable during periods while a Servicer has been designated and is serving in such capacity.

*“Servicing Agreement”* means the Disbursing and Servicing Agreement to be entered into by the Borrower, Trustee and Servicer on or about the Conversion Date, as amended, modified, supplemented or restated from time to time or any agreement entered into in substitution therefor.

*“Servicing Fund”* means the Fund created by Section 5.8 hereof.

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

*“State”* means the State of Texas.

*“Subordinated Bond Interest Account”* means an Account of the Bond Fund established pursuant to Section 5.4 hereof.

*“Subordinated Bond Principal Account”* means an Account of the Bond Fund established pursuant to Section 5.4 hereof.

*“Subordinated Bond Redemption or Purchase Account”* means an Account of the Bond Fund established pursuant to Section 5.4 hereof.

*“Subordinated Bonds”* means Bonds which are purchased by or at the direction of Borrower with the consent of the Permanent Lender pursuant to Section 2.9(9) hereof.

*“Tax Certificate”* means the Borrower’s Federal Tax Certificate delivered to the Issuer by the Borrower on the Bond Closing in which the Borrower certifies to various facts relating to the Project and the Bond on the exclusion of interest on the Bonds from gross income for purposes of federal income taxation.

*“Tax Credits”* means the low income housing tax credits allocated to the Project pursuant to Section 42 of the Code.

*"Title Company"* means Independence Title and its successors and assigns.

*"Title Policy"* means the title insurance policy required pursuant to **Section 1(a)(11)** of **Schedule D** of the Loan Agreement.

*"Treasury"* means the United States Department of the Treasury, and any successor to its functions.

*"Treasury Issue"* means a U.S. government debt obligation.

*"Trustee"* means BOKF, NA dba Bank of Texas, and any co-trustee or successor trustee appointed, qualified, and then acting as trustee under the provisions of this Indenture.

*"Trust Estate"* means the Trust Estate as described and set forth in the Granting Clauses hereof.

*"Unassigned Issuer's Rights"* means the rights of the Issuer to receive notices, requests and other communications and to receive indemnification and certain direct payments to be made to it pursuant to **Sections 4.2(b)(iii), 4.3, 7.3, 7.16, 11.6, and 12.17** (but only insofar as the provisions of such Section relate to the Issuer) of the Loan Agreement, the Issuer's rights to give approvals and consents as set forth in the Loan Agreement, the Issuer's right to receive the Issuance Fee, and the Issuer's rights under and relating to the enforcement of the Regulatory Agreement and the tax credit extended use agreement relating to the Project.

*"Yield"* of (1) any Investment has the meaning set forth in Section 1.148-5 of the Regulations, and (2) the Bonds has the meaning set forth in Section 1.148-4 of the Regulations.

## **Section 1.2.** Rules of Interpretation.

(1) This Indenture shall be governed by and construed in accordance with the laws and judicial decisions of the State, except as they may be preempted by Federal rules, regulations, and laws applicable to the Issuer. References in this Indenture and the other Bond 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 Trustee expressly acknowledge and agree that any judicial action to enforce any rights of the Issuer under this Indenture may be brought and maintained at the option of the acting party in any state district court in the State having jurisdiction over the matter or in the United States District Court for any district in the State having jurisdiction over the matter or in any United States Bankruptcy Court in any case involving or having jurisdiction over the Borrower or over the Project.

(2) The words "*herein*," "*hereof*," and "*hereunder*" and words of similar import, without reference to any particular section or subdivision, refer to this Indenture as a whole rather than to any particular section or subdivision of this Indenture.



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

(4) All accounting terms not otherwise defined herein have the meanings assigned to them in accordance with generally accepted accounting principles; and all computations provided for herein shall be made in accordance with generally accepted accounting principles consistently applied and applied on the same basis as in prior years.

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

(6) 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 neuter state and vice versa.

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

(8) Any opinion of counsel called for herein shall be a written opinion of such counsel.

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

(10) Words of the masculine gender shall mean and include correlative words of the female gender and the neuter state, and words importing the singular number shall mean and include the plural number and vice versa.

(11) Words importing the redemption of a Bond or the calling of a Bond for redemption do not include or connote the payment of such Bond at its stated maturity or the purchase of such Bond.

(12) References in this Indenture to particular sections of the Code, the Act or any other legislation shall be deemed to refer also to any successor sections thereto or other re-designation for codification purposes.

(13) The terms "*receipt*," "*received*," "*recovery*," "*recovered*" and any similar terms, when used in this Indenture with respect to moneys or payments due the Issuer, shall be deemed to refer to the passage of physical possession and control of such moneys and payments to the Issuer, the Owners of the Bonds or the Trustee on its behalf.

(14) All references herein to time shall be to the prevailing Central time.

(15) All references in this Indenture to “*counsel fees*,” “*attorney fees*,” or the like shall mean and include fees and disbursements of in-house or outside counsel, whether or not suit is instituted, and including fees and disbursements preparatory to and during trial and appeal and in any bankruptcy or arbitration proceeding.

## ARTICLE 2

### THE BONDS

**Section 2.1.** Authorized Amount and Form of Bonds. The Bonds secured by this Indenture shall be issued in fully registered form without coupons and in substantially the form set forth herein with such appropriate variations, omissions, and insertions as are permitted or required by this Indenture, and in accordance with the further provisions of this **Article 2**. The maximum aggregate principal amount of Bonds that shall be issued hereunder shall be \$\_\_\_\_\_, unless duplicate Bonds are issued as provided in **Section 2.7** hereof or **2.11** hereof. The Bonds, together with the Certificate of Authentication, the form of Assignment, and the registration information thereon, shall be in substantially the forms found at **Exhibit B** hereto.

**Section 2.2.** Issuance of Bonds. The Bonds shall:

- (1) be dated as of the Dated Date;
- (2) be issued and delivered as fully registered bonds without coupons, in the minimum denominations of \$100,000 or any integral multiples of \$1,000 in excess of \$100,000; except that a Bond may be exchanged after redemption or purchase for a Bond in the denomination of less than \$100,000 to the extent necessary to represent the unredeemed or unpurchased portion of such Bond (the “*Authorized Denomination*”);
- (3) be designated Series 2015 Bonds;
- (4) except for the Initial Bond which shall be numbered I-1, be numbered from A-1 upwards in chronological order of delivery for each respective series of Bonds with such number being preceded by such designation as the Trustee shall determine;
- (5) mature on the Maturity Date;
- (6) shall bear interest from the date of delivery thereof at the rates provided for in the Bonds provided that the interest rate 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 a Determination of Taxability on the Bonds shall be applicable, and the Borrower shall pay to the Holders promptly upon demand any interest due retroactively;
- (7) be payable in such coin or currency of the United States of America as at the time of payment is legal tender for payment of public and private debts, at the Operations Office of the Trustee or Paying Agent, except that interest on the Bonds will be

payable by check mailed on the Payment Date by the Trustee to the Holders of such Bonds on the applicable Record Date (the "*Record Date Holders*" as defined in the form of Bond set forth in **Exhibit B** hereto) at the last addresses thereof as shown in the Bond Register on the applicable Record Date; and, if the Bonds are not in book-entry form, the principal of and any premium on any Bonds shall be payable at the Operations Office of the Trustee without presentation and surrender of the Bonds except for the final principal payment as provided in **Section 3.4(2)**; and

(8) be subject to redemption upon the terms and conditions and at the redemption prices specified in **Article 3** hereof.

Notwithstanding anything contained herein to the contrary, during any period of time that the Note bears interest at the Default Rate, the Bonds shall also bear interest at the Default Rate.

During any period of time that the Note bears interest at the rate described in **Section 7.14** of the Loan Agreement, the Bonds shall also bear interest at such rate; provided that in no event shall the interest rate on the Bonds exceed the Maximum Lawful Rate.

Notwithstanding the foregoing, if the date for payment of the principal of, premium, if any, or interest on the Bonds shall be a day which is not a Business Day, then the date for such payment shall be the next succeeding day which is a Business Day, and payment on such later date shall have the same force and effect as if made on the nominal date of payment.

Notwithstanding the foregoing, any Holder of at least \$1,000,000 principal amount of any Bonds (or a lesser amount of such Bonds if such Bonds constitute all the Outstanding Bonds at the time), upon payment by the Holder of the costs of wire transfers, may file with the Trustee an instrument satisfactory to the Trustee not less than five (5) days prior to the applicable Record Date requesting the interest amounts payable by the Trustee to such Holder be paid by transferring by wire transfer in immediately available funds, on the day such payment is due, the amount to be distributed to such Holder to a designated account maintained by such Holder at any bank in the United States. The designation so given will be effective unless and until rescinded in writing by the Holder at least five (5) days prior to the Record Date for the Payment Date to which such rescission is designated to apply. The Trustee shall pay all amounts payable by the Trustee hereunder to such Holder by transfer directly to said designated bank in accordance with the provisions of any such instrument, provided that if such amount represents a payment of the principal of and/or premium on any Bond, such Bond shall have been presented to the Trustee at its Operations Office. All payments so made shall be valid and effective to satisfy and discharge the liability upon such Bonds. Notwithstanding the foregoing, all payments of principal of and interest on and/or premium on the Bonds payable on the Maturity Date, a Purchase Date, or any date of redemption shall only be payable upon presentation of the Bonds maturing, being purchased or being redeemed at the Operations Office of the Trustee.

**Section 2.3** Execution; Limited Obligation. (1) Bonds shall be signed by, or executed with the facsimile or manual signature of, the President or Vice President of the Issuer and attested by the facsimile or manual signature of the Treasurer of the Issuer.

In case any officer of the Issuer whose signature or whose facsimile signature shall appear on any Bonds shall cease to be such officer before the delivery of such Bonds, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes, the same as if such officer had remained in office until such delivery, and also any Bond may be signed by such persons as at the actual time of the execution of such Bond shall be the proper officers to sign such Bond although at the date of delivery of such Bond such persons may not have been such officers.

(2) THE BONDS ARE SPECIAL, LIMITED OBLIGATIONS OF THE ISSUER, THE PRINCIPAL OF, PREMIUM, IF ANY, AND INTEREST ON WHICH ARE PAYABLE SOLELY FROM THE PLEDGED RECEIPTS OR FROM ANY OTHER MONEYS MADE AVAILABLE TO THE ISSUER FOR SUCH PURPOSE FROM THE TRUST ESTATE; PROVIDED, HOWEVER, THAT UNDER THIS INDENTURE, THE ISSUER HAS RESERVED TO ITSELF, AND HAS NOT PLEDGED OR ASSIGNED, THE UNASSIGNED ISSUER'S RIGHTS. THE BONDS DO NOT CONSTITUTE, WITHIN THE MEANING OF ANY STATUTORY OR CONSTITUTIONAL PROVISION, AN INDEBTEDNESS, AN OBLIGATION OR A LOAN OF CREDIT OF THE STATE, THE SPONSOR OR ANY OTHER MUNICIPALITY, COUNTY OR OTHER MUNICIPAL OR POLITICAL CORPORATION OR SUBDIVISION OF THE STATE. THE BONDS DO NOT CREATE A MORAL OBLIGATION ON THE PART OF THE STATE, THE SPONSOR OR ANY OTHER MUNICIPALITY, COUNTY OR OTHER MUNICIPAL OR POLITICAL CORPORATION OR SUBDIVISION OF THE STATE AND EACH OF SUCH ENTITIES IS PROHIBITED FROM MAKING ANY PAYMENTS WITH RESPECT TO THE BONDS. THE ISSUER HAS NO TAXING POWER. THE BONDS ARE ISSUED UNDER CHAPTER 303, TEXAS LOCAL GOVERNMENT CODE, AS AMENDED.

**Section 2.4.** Registration and Authentication; Initial Bond. (1) No Bond shall be valid or obligatory for any purpose or be entitled to any security or benefit under this Indenture unless a certificate of authentication or registration on such Bond, substantially in the form set forth in **Exhibit B** hereto, shall have been duly executed manually by a Responsible Agent of the Bond Registrar or, with respect to the Initial Bond, the Comptroller. Certificates of authentication or registration on different Bonds need not be signed by the same person. The Bond Registrar shall authenticate the signatures of officers of the Issuer on each Bond by execution of the certificate of authentication on the Bond; and the certificate of authentication so executed on each Bond shall be conclusive evidence that it has been authenticated and delivered under this Indenture.

(2) The Initial Bond, which shall be numbered I-1, registered by the Comptroller, shall be identical to the form of Bond attached as **Exhibit B**, except that the second-to-last paragraph of the Initial Bond shall read as follows:

“This Bond shall not be valid or become obligatory for any purpose or be entitled to any benefit or security under the Indenture unless the Comptroller’s Registration Certificate hereon has been executed by an authorized representative of the Texas Comptroller of Public Accounts by manual signature.”

In lieu of the authentication certificate of the Trustee, the Initial Bond shall contain the following certificate:

**"REGISTRATION CERTIFICATE OF  
COMPTROLLER OF PUBLIC ACCOUNTS**

OFFICE OF THE COMPTROLLER     §  
OF PUBLIC ACCOUNTS             §     REGISTER NO. \_\_\_\_\_  
THE STATE OF TEXAS             §

I HEREBY CERTIFY that this Bond has been examined, certified as to validity and approved by the Attorney General of the State of Texas, and duly registered by the Texas Comptroller of Public Accounts.

Witness my signature and seal of office this \_\_\_\_\_.

\_\_\_\_\_  
Comptroller of Public Accounts of the State of  
Texas

(SEAL)"

The provisions of **Exhibit B** may be rearranged or re-ordered for purposes of the Initial Bond.

**Section 2.5.** Conditions Precedent to the Delivery of Bonds. Upon the execution and delivery of this Indenture and delivery of the purchase price of the Bonds, the Issuer shall execute and deliver the Bonds to the Bond Registrar, and the Bond Registrar shall authenticate the Bonds (other than the Initial Bond that bears the certificate of registration of the Comptroller) for delivery from time to time as required by this Indenture. The Bond Registrar shall deliver the Initial Bond to or upon the order of the purchaser of the Bonds at such time as may be directed by the Issuer. Concurrently with the delivery of the Bonds the Trustee shall have received the following:

- (1) original executed counterparts of the Loan Agreement, the Note (endorsed to the Trustee), the Tax Certificate, and this Indenture;
- (2) copies of original executed counterparts of the Mortgage, the Regulatory Agreement, and UCC financing statements with evidence of recording and filing or that they will be recorded and filed as appropriate;
- (3) to the extent required by the Bondholder Representative (as it may direct the Title Company to provide to the Trustee), copies of original executed counterparts of all Loan Documents and Permanent Loan Documents not specifically referred to in paragraphs (1) and (2) above;

(4) a copy, duly certified, of the resolution passed by the governing body of the Issuer, approving the execution and delivery of this Indenture and the Loan Agreement and the issuance of the Bonds;

(5) a request and authorization (which may be part of a certificate of the Issuer) to the Trustee on behalf of the Issuer, signed by an authorized representative, to deliver the Bonds to the purchaser identified upon payment to the Trustee for the account of the Issuer of a specified sum and payment of the Costs of Issuance;

(6) the opinion of counsel to the Borrower in the form required by Bond Counsel and counsel to the Bondholder Representative, addressed to the Issuer, the Trustee, the Borrower, and the Bondholder Representative, compliance with such form to be evidenced by Bond Counsel's delivery of its opinion required in clause (7) below;

(7) the opinion of Bond Counsel, with a reliance letter addressed to the Borrower, Issuer, the Trustee, the Bondholder Representative, and the Permanent Lender, to the effect that (a) the Bonds have been duly and validly issued, and (b) the interest on the Bonds is excludable from gross income of the Holder thereof for federal income tax purposes, subject to the customary assumptions and qualifications;

(8) original of an Investor's Letter executed by the Bondholder Representative and addressed to the Trustee and the Issuer in the form of **Exhibit C** hereto;

(9) the approving opinion of the Attorney General of the State approving the Bonds; and

(10) any other documents or opinions which the Trustee, the Issuer, or Bond Counsel may reasonably require.

**Section 2.6.** No Additional Bonds. No additional Bonds may be issued hereunder.

**Section 2.7.** Mutilated, Lost, or Destroyed Bonds. In case any Bond issued hereunder shall become mutilated or be destroyed or lost, the Issuer shall, if not then prohibited by law, cause to be executed, and the Bond Registrar shall authenticate and deliver, a new Bond of like amount, series, Maturity Date, and tenor, in exchange and substitution for and upon cancellation of any such mutilated Bond, or in lieu of and in substitution for any such Bond destroyed or lost, upon the Holder's paying the reasonable expenses and charges of the Bond Registrar and the Issuer and, in the case of a Bond destroyed or lost, the Holder's filing with the Bond Registrar of evidence satisfactory to the Bond Registrar and the Trustee that such Bond was destroyed or lost, and of the Holder's ownership thereof, and furnishing the Borrower, the Issuer, the Trustee, and the Bond Registrar with indemnity satisfactory to them. If the mutilated, destroyed, or lost Bond has already matured or been called for redemption in accordance with its terms, it shall not be necessary to issue a new Bond prior to payment.

**Section 2.8.** Ownership of Bonds. The Issuer, the Trustee, the Bond Registrar, and Paying Agent may deem and treat the Holder of any Bond, whether or not such Bond shall be overdue, as the absolute owner of such Bond for the purpose of receiving payment thereof and for all other purposes whatsoever, and the Issuer (or any agent thereof), the Trustee, the Bond Registrar, and the Paying Agent shall not be affected by any notice to the contrary.

**Section 2.9.** Registration, Transfer, and Exchange of Registered Bonds. (1) The Bond Registrar shall, at the expense of the Borrower, prepare, execute, and authenticate fully registered Bonds, and shall cause to be kept at the designated corporate trust office of the Bond Registrar (which will be the Operations Office for the Trustee if it is the Bond Registrar) a Bond Register in which, subject to such reasonable regulations as the Bond Registrar may prescribe, the Trustee or the Bond Registrar shall provide for the registration of Bonds and the registration of transfers of Bonds. The Bond Registrar shall contain a record of every Bond, including bond number and principal amount at any time registered by the Comptroller or authenticated hereunder, together with the name and address of the Holder thereof, the date of registration or authentication, the date of transfer or payment, and such other matters as are appropriate for the Bond Register in the estimation of the Bond Registrar and the Trustee.

(2) The transfer of each Bond is subject to registration by the Holder thereof only upon compliance with the conditions for registration of transfer imposed on the Holder under this **Section 2.9** and **Section 2.12** hereof. Upon surrender of any Bond at the operations office of the Bond Registrar, the Issuer shall execute (if necessary), and the Bond Registrar shall authenticate and deliver, in the name of the designated transferee or transferees (but not registered in blank or to "bearer" or a similar designation), one or more new Bonds of any Authorized Denomination or Denominations of a like series and aggregate principal amount, having the same stated maturity and interest rate.

(3) At the option of the Holder, Bonds may be exchanged for other Bonds of any Authorized Denomination or Denominations of a like series and aggregate principal amount and stated maturity, upon surrender of the Bonds to be exchanged at the operations office of the Bond Registrar, and upon payment of the taxes, if any, hereinafter referred to. Whenever any Bonds are so surrendered for exchange, the Issuer shall execute (if necessary), and the Bond Registrar shall authenticate and deliver, the Bonds which the Holder making the exchange is entitled to receive.

(4) All Bonds delivered in exchange for or upon transfer of Bonds shall be valid special and limited obligations of the Issuer evidencing the same debt, and entitled to the same benefits under this Indenture, as the Bonds surrendered for such exchange or transfer.

(5) Registration of the transfer of a Bond may be made on the Bond Register by the Holder in person or by the Holder's attorney duly authorized in writing. Every Bond presented or surrendered for registration of transfer or exchange shall (i) be accompanied by evidence of compliance with the provisions of **Section 2.12** hereof, and (ii) be duly endorsed or be accompanied by a written instrument or instruments of transfer, in the form printed on the Bond or in another form satisfactory to the Bond Registrar, duly executed and with guaranty of signature

of the Holder thereof or his, her or its attorney duly authorized in writing, and (iii) include written instructions as to the details of the transfer of the Bond.

(6) No service charge shall be made to the Holder for any registration, transfer, or exchange, but the Bond Registrar and the Trustee shall require payment of a sum sufficient to cover any tax, fee, or other governmental charge that may be imposed in connection with any transfer or exchange of Bonds, other than exchanges expressly provided in this Indenture to be made without expense or without charge to Holders, and any legal or unusual costs of transfers and lost bonds.

(7) Subject to the provisions of subsection (8) below, the Bond Registrar shall endeavor to comply with rules applicable to transfer agents registered with the Securities and Exchange Commission as to the 72-hour "turnaround" standard established for the transfer of registered corporate securities.

(8) The Bond Registrar shall not be required (a) to transfer or exchange any Bond during a period beginning at the opening of business fifteen (15) days before the day of the mailing of a notice of redemption or purchase of Bonds under this Indenture and ending at the close of business on the day of such mailing or (b) to transfer or exchange any Bond so selected for redemption or purchase in whole or in part.

(9) Bonds purchased by the Borrower or any "related person" of the Borrower within the meaning of Section 144(a)(3) of the Code (to the extent actually known by the Trustee to be such a "related person") shall be canceled, unless the Issuer and the Trustee receive an opinion of Bond Counsel to the effect that such purchase will not adversely affect the exclusion of interest on the Bonds from gross income for federal income tax purposes; and the Bond Registrar shall register any Bonds purchased by any other person at the direction or request of the Borrower in the name of such person, and such Bonds shall be deemed to be Subordinated Bonds. The Borrower shall provide written notice to the Trustee of any transfer of the Bonds pursuant to this **Section 2.9(9)** and the Trustee shall note on the Bond Register that such Bonds are Subordinated Bonds. In the absence of such written notice from the Borrower, the Trustee may presume that a transfer is not being made pursuant to this **Section 2.9(9)**. Subordinated Bonds may only be purchased with the prior written consent of the Permanent Lender.

**Section 2.10** Nonpresentment of Bonds. In the event any Bond shall not be presented for payment when the principal, premium, if any, or purchase price thereof becomes due, if funds sufficient to pay such Bond or the purchase price thereof shall have been paid to the Trustee (or the Paying Agent (if any)) for the benefit of the registered owner thereof, all liability of the Issuer to the registered owner thereof for the payment of such Bond or the purchase price thereof shall forthwith cease, terminate, and be completely discharged, and thereupon it shall be the duty of the Trustee or other Paying Agent to hold such fund or funds, without liability for interest thereon, for the benefit of the Holder of such Bond, who shall thereafter be restricted exclusively to such fund or funds, for any claim of whatever nature on his part under this Indenture or on, or with respect to, said Bond. Any such moneys still held by the Trustee (or other Paying Agent, if any) after two years from the date on which such amount was paid to the Trustee or other Paying Agent, shall



first, if and to the extent permitted by State law, be paid to the Trustee or other Paying Agent, to the extent of any amounts owed by the Borrower hereunder, and any remaining balance shall be paid to the Borrower and shall be discharged from the trust and all liability of the Paying Agent or the Trustee with respect to such funds shall cease; and the owner of such Bond shall thereafter be entitled to look only to the Borrower for payment, and the Borrower shall not be liable for any interest thereon. If any Bond purchased in accordance with Section 3.1 hereof is not presented for payment when the purchase price thereof becomes due, if funds sufficient to pay such purchase price shall have been paid to the Trustee (or the Paying Agent (if any)) for the benefit of the registered owner thereof, the Trustee or the Bond Registrar shall authenticate and deliver a new Bond of like amount, series, Maturity Date, and tenor, but bearing a number not contemporaneously Outstanding, in substitution for such Bond or the principal amount thereof so subject to purchase.

**Section 2.11.** Disposition of Bonds. Whenever any Outstanding Bond shall be delivered to the Bond Registrar or the Trustee for cancellation pursuant to this Indenture, upon payment of the principal amount and interest represented thereby or for replacement pursuant to Section 2.7 hereof or transfer pursuant to Section 2.9 hereof, such Bond shall be canceled and disposed of by the Bond Registrar or the Trustee, as the case may be, in accordance with its applicable policies, and counterparts of a certificate of cancellation evidencing such cancellation shall be furnished by the Bond Registrar, or the Trustee, as the case may be, to the Issuer and the Bond Registrar or the Trustee, as the case may be, from time to time, upon request, and in accordance with the Bond Registrar's or the Trustee's policies.

**Section 2.12.** Restrictions on Transfer. The Bonds or interests in the Bonds may be transferred (i) to any subsidiary, affiliate or parent of the Bank, or following the receipt by the Trustee of evidence that each such Bond is rated "A" or better (or its equivalent) by one of the Rating Agencies, and an opinion of Independent Counsel to the effect that the exemption of the Bonds or any securities evidenced thereby from the registration requirements of the Securities Act, and the exemption of this Indenture from qualification under the Trust Indenture Act of 1939, as amended, will not be impaired as a result of such transfer, and an opinion of Bond Counsel that such transfer will not adversely affect the exclusion of interest on the Bonds from the calculation of gross income of the Holders thereof for federal income tax purposes, (ii) to an "*accredited investor*" (as defined in Rule 501(a)(1), (2), (3), (7), or (8) of Regulation D promulgated under the Securities Act) or (iii) to a Qualified Institutional Buyer (as defined in Rule 144A promulgated under the Securities Act). An Investor's Letter shall be delivered to the Issuer and the Trustee in connection with any transfer of the Bonds or interests in the Bonds pursuant to (ii) and (iii) of the immediately preceding sentence. The Trustee shall be entitled to rely, without any further inquiry, on any Investor's Letter delivered to it and shall be fully protected in registering any transfer or exchange of any Bonds in reliance on any such Investor's Letter which appears on its face to be correct and of which the Trustee or a Responsible Agent has no actual knowledge otherwise. For purposes of this Section, "*actual knowledge*" means the fact of knowledge without any duty to investigate. IN THE INVESTOR'S LETTER, ANY SUCH "*ACCREDITED INVESTOR*" OR QUALIFIED INSTITUTIONAL BUYER, AS TRANSFEREE, SHALL AGREE TO INDEMNIFY THE BORROWER, THE ISSUER, THE SPONSOR, THE TRUSTEE, AND THE BOND REGISTRAR FROM AND AGAINST ANY AND ALL LIABILITY, COST OR EXPENSE (INCLUDING ATTORNEYS' FEES) THAT MAY RESULT IF THE

REPRESENTATIONS CONTAINED IN SUCH INVESTOR'S LETTER ARE FALSE IN ANY MATERIAL RESPECT. The Trustee or the Bond Registrar, as the case may be, are authorized and directed to put a stop order on the Bond Register in regard to the foregoing restrictions on the transfer of the Bonds. Notwithstanding the foregoing, the Bondholder Representative may sell, assign, or transfer the Bonds in whole or in part at any time, subject to the Securities Act.

**Section 2.13.** Concerning Subordinated Bonds. (1) Interest on Subordinated Bonds shall be payable on each Payment Date (subject to the terms, provisions and priorities set forth in this Indenture). Holders of Subordinated Bonds shall be paid principal in accordance with their terms on each Maturity Date (subject to the terms, provisions, and priorities set forth in this Indenture).

(2) Subordinated Bonds shall be and hereby are subordinated in priority and in right and time of payment to all amounts due on the Bonds other than Subordinated Bonds. Payment of the Subordinated Bonds shall be made by the Trustee only from funds, if any, not required to be used for payment on the Bonds other than Subordinated Bonds, and the Holders of the Subordinated Bonds, by acceptance of the Subordinated Bonds, expressly agree and acknowledge that (A) no payment shall be due and payable or made on the Subordinated Bonds if the Trustee does not hold sufficient funds in the Interest Account, Principal Account or the Redemption or Purchase Account of the Bond Fund to make required payments then due on Bonds other than Subordinated Bonds and (B) no remedy shall be had for any default in payment on the Subordinated Bonds so long as any Bonds other than Subordinated Bonds remain Outstanding.

**Section 2.14.** No Usury. The Issuer intends to conform strictly to the usury laws applicable to this Indenture and the Bonds and all agreements made in the Bond Documents and the Loan Documents are expressly limited so that in no event whatsoever shall the amount paid or agreed to be paid to the Holders as interest or other amounts paid for the use of money advanced or to be advanced hereunder exceed the highest lawful rate prescribed by Texas Government Code Section 1204.006(a) or under any other law which a court of competent jurisdiction may deem applicable hereto. If, from any circumstances whatsoever, the fulfillment of any provision of the Bond Documents or the Loan Documents shall involve the payment of interest in excess of the limit prescribed by any law which a court of competent jurisdiction may deem applicable hereto, then, ipso facto, the obligation to pay interest hereunder shall be reduced to the maximum limit prescribed by law; and if from any circumstances whatsoever, the Holders shall ever receive anything of value deemed interest, the amount of which would exceed the highest lawful rate, such amount as would be excessive interest shall be deemed to have been applied, as of the date of receipt by the Holders, to the reduction of the principal remaining unpaid hereunder and under the Bonds and not to the payment of interest, or if such excessive interest exceeds the unpaid principal balance, such excess shall be refunded to the Borrower. Subject to the express terms of the Note, this paragraph shall control every other provision of the Bond Documents and all Loan Documents.

In determining whether the amount of interest charged and paid might otherwise exceed the limit prescribed by law, the Issuer intends and agrees that interest shall be computed upon the assumption that payments under the Bond Documents and the Loan Documents will be paid according to the agreed terms, and any sums of money which are taken into account in the

calculation of interest, even though paid at one time, shall be spread over the stated term of the Bonds.

### ARTICLE 3

#### REDEMPTION AND PURCHASE OF BONDS BEFORE MATURITY

**Section 3.1.** Redemption and Purchase. Subject to the provisions of Sections 3.2 and 3.4 hereof, the Bonds are subject to purchase or redemption as follows:

(1) Extraordinary Redemption. (a) The Bonds are subject to mandatory redemption, in whole or in part, on any Business Day, in the event of damage to, or destruction or Condemnation of the Project or any part thereof under the conditions and to the extent provided in Section 5.7(2) hereof, at a redemption price equal to the principal amount thereof plus accrued and unpaid interest and payment of any Prepayment Fee owed.

(b) The Bonds are subject to mandatory redemption in whole on the first date after which proper notice has been given in accordance with Section 3.4 of this Indenture if the Bondholder Representative gives written notice to the Trustee that (i) the Conversion Date has not occurred on or before the Construction Term Maturity Date (as may be extended as provided for in Section 4.2(f) of the Loan Agreement), and (ii) the Bondholder Representative demands such redemption at a redemption price equal to the principal amount thereof plus accrued and unpaid interest plus three percent (3.0%) of the principal of the Bonds Outstanding and any Prepayment Fee owed.

(c) The Bonds are subject to mandatory redemption in part on the first date after which proper notice has been given in accordance with Section 3.4 of this Indenture that Bond proceeds then remaining on deposit in the Project Fund are not needed for the development of the Project and to cause the Conditions to Conversion to be satisfied prior to the Construction Term Maturity Date (based on the written concurrence of the Bondholder Representative, after the Borrower advises the Trustee that no further requisitions will be made from the Project Fund), at a redemption price equal to a principal amount equal to the amount then on deposit in the Project Fund (or such lesser amount as the Bondholder Representative determines as may be needed to cause the Conversion Date to occur under and for purposes of the Loan Agreement).

(d) Prior to the Conversion Date, the Bonds are subject to mandatory redemption in whole upon the occurrence of a Determination of Taxability.

(e) Each mandatory redemption as provided above shall occur on the first Business Day after which proper notice is given under Section 3.4 of this Indenture.

(2) **Optional Redemption.** The Bonds are subject to redemption at the option of the Borrower (as a prepayment), in whole or in part on any date at a redemption price of par plus accrued and unpaid interest to the redemption date plus a premium as follows:

(a) **Prepayments Prior to the Conversion Date.** If, for any reason, the Conversion Date has not occurred on or before the Construction Term Maturity Date, the Bonds (and the Loan) may be prepaid in whole or in part, at a redemption price equal to par plus accrued interest to the redemption date, without penalty or premium (except as may be otherwise due to the Permanent Lender under the terms of the Forward Bond Purchase Agreement as a result of that prepayment).

(b) **Prepayments After Conversion Date.** The Bonds may be redeemed on any Business Date after, but not prior to the tenth (10<sup>th</sup>) anniversary of the Conversion Date, subject to the payment of any Prepayment Fee due in connection with such redemption and provided that no Event of Default exists.

(3) **Mandatory Sinking Fund Redemption.** The Bonds shall be subject to mandatory sinking fund redemption in the years and in the principal amounts set forth in **Exhibit D** attached to this Indenture (without notice to the Holder or presentment by the Holder); provided that, on the Conversion Date, the Bondholder Representative may provide to the Trustee a revised mandatory sinking fund redemption schedule showing substantially level monthly debt service on the Bonds, based on the principal amount of the Bonds outstanding on the Conversion Date at a thirty-five (35) year amortization interest rate of the Bonds, with a final principal payment equal to outstanding principal amount on the date that is 15 years from the Conversion Date.

(4) **Mandatory Redemption Upon Event of Default.** Prior to the Conversion Date, the Bonds are subject to mandatory redemption in whole upon the occurrence and continuance of an Event of Default and in connection with an acceleration under **Section 8.2** hereof at the written direction of the Bondholder Representative at a redemption price equal to the principal amount of the Bonds then Outstanding, plus accrued and unpaid interest and plus three percent (3.0%) of the principal of the Bonds Outstanding. Any prepayment or redemption in accordance with this Section is subject to the payment by the Borrower of a Prepayment Fee (if any) due to the Permanent Lender.

(5) **Redemption for Stabilization.** The Bonds are subject to purchase or redemption in part at the option of the Borrower, subject to **Section 3.1(2)(a)** hereof, on any date on or prior to the Conversion Date, in an aggregate amount sufficient to meet the Conditions to Conversion as provided in the Forward Bond Purchase Agreement, at a redemption price equal to the aggregate principal amount thereof plus accrued and unpaid interest plus any Prepayment Fee then due under **Section 3.1(2)(b)**.

If less than all Outstanding Bonds other than Subordinated Bonds are redeemed or purchased other than pursuant to mandatory sinking fund redemption, the Borrower shall provide to the Trustee a

revised sinking fund amortization table (as approved in writing by the Bondholder Representative), which shall provide for a mandatory sinking fund schedule in lieu of the then existing **Exhibit D** attached hereto.

**Section 3.2.** Notice of Redemption or Purchase.

(1) To effect the redemption or purchase of the Bonds under **Section 3.1** hereof, the Trustee shall promptly give notice within the time, in the manner and with the effect provided by this **Section 3.2**. Notice of redemption date or purchase shall be mailed by first class mail not less than thirty (30) days prior to the redemption date or Purchase Date by the Trustee to the Paying Agent and the Holders of Bonds to be redeemed or purchased. No defect in or failure to give notice shall affect the validity of the proceedings for redemption or purchase of any Bond not affected by such defect. Such notice, which shall be prepared by the Trustee at the expense of the Borrower, shall state the subsection under **Section 3.1** hereof pursuant to which the Bonds are being called for redemption or purchase, and the date on which and the place where they shall be presented for redemption or purchase and, unless all Outstanding Bonds are to be redeemed or purchased, each such notice shall refer to the Bonds to be redeemed or purchased by their numbers and maturities. The notice shall state the conditions precedent to redemption or purchase specified in **Section 3.4** hereof. Except as specifically provided in this Indenture and provided sufficient funds are on deposit with the Trustee with respect to such redemption or purchase, the Bonds thus called for redemption or purchase, provided funds for their redemption or purchase have been duly deposited, shall cease to bear interest from and after the specified redemption or purchase date and the Holder of such Bonds shall have no further rights with respect to the Bonds or under this Indenture except to receive the redemption or purchase price of such Bonds.

(2) The Bond Registrar, if not the Trustee, shall, upon the Trustee's request, furnish the names and addresses of the Holders of the Bonds as of the Record Date immediately preceding such redemption date or Purchase Date to the Trustee.

**Section 3.3** Cancellation. Subject to the provisions of **Section 2.10** hereof, all Bonds which have been redeemed shall be canceled by the Trustee as provided in **Section 2.11** hereof and shall not be reissued.

**Section 3.4.** Method of Redemption or Purchase.

(1) The Trustee shall redeem Bonds under **Section 3.1(1)** hereof only if it has received written notice and instructions from the Bondholder Representative to so redeem at least forty (40) days before the redemption date or Purchase Date (or such shorter period as consented to by the Trustee), and the Trustee has been provided with immediately available funds sufficient for such purpose when added to other funds on deposit in the Bond Fund, at least ten (10) Business Days prior to the redemption date. The Trustee shall purchase Bonds under **Section 3.1(2)** or **Section 3.1(5)** hereof in accordance with the instructions from the Borrower, subject to **Section 2.9(9)** and **Section 3.1(2)**. At least thirty-five (35) days prior to the redemption date (or such shorter period as consented to by the Trustee), the Borrower shall give the Trustee written notice of its election to redeem or purchase Bonds pursuant to **Section 3.1(2)** or **Section 3.1(5)**,

which notice shall contain the redemption date and the principal amount of Bonds to be redeemed and direct the Trustee to redeem the Bonds. Mandatory sinking fund redemptions under **Section 3.1(3)** do not require any prior notice of redemption.

(2) The Trustee shall select Bonds other than Subordinated Bonds for redemption or purchase at random. If a Bond may be redeemed or purchased only in part, it shall be surrendered to the Trustee (with, if the Issuer or the Trustee so requires, a written instrument of transfer in form satisfactory to the Issuer and the Trustee duly executed by the Holder thereof or his, her or its attorney duly authorized in writing) and the Issuer shall execute (if necessary) and the Bond Registrar shall authenticate and deliver to the Holder of such Bond, without service charge, a new Bond or Bonds of the same series, of any Authorized Denomination or Denominations, as requested by such Holder, having the same stated maturity and interest rate in aggregate principal amount equal to and in exchange for the unredeemed or unpurchased portion of the principal of the Bond so surrendered.

#### ARTICLE 4

##### GENERAL COVENANTS

**Section 4.1.** Payment of Principal, Premium, and Interest. The Issuer will duly and punctually pay or cause to be paid the principal of, premium, if any, and interest on the Bonds in accordance with the terms of the Bonds and this Indenture, but solely from moneys derived from the Loan Agreement and other moneys derived from the Granting Clauses set forth herein, and trust funds deposited in the Funds (excluding funds held in the Rebate Fund and rebatable arbitrage whether or not deposited in the Rebate Fund) to the extent hereof and in the manner provided in **Article 5** hercof. Nothing in the Bonds or in this Indenture shall be considered as assigning or pledging funds or assets of the Issuer other than those covered by the Granting Clauses set forth herein.

**Section 4.2.** Performance of Covenants. (1) The Issuer covenants that it will faithfully perform at all times any and all of its covenants, undertakings, stipulations, and provisions contained in this Indenture, and in every Bond executed, authenticated (to the extent required), and delivered hereunder; that it is duly authorized under the Constitution and laws of the State, including particularly and without limitation the Act, to issue the Bonds authorized hereby, to execute this Indenture, to loan the proceeds of the Bonds to the Borrower, and to assign and pledge the payments from the Loan Agreement in the manner and to the extent herein set forth; that all action required on its part for the issuance of the Bonds and the execution and delivery of this Indenture has been duly and effectively taken; and that the Bonds in the hands of the Holders thereof are and will be valid and enforceable obligations of the Issuer according to the terms thereof.

(2) The Trustee covenants that it is duly organized, validly existing, and in good standing and possesses all authorizations necessary to enter into this Indenture; that it has full power and authority to enter into this Indenture and the transactions contemplated hereby; that this Indenture has been duly executed and delivered by it; that this Indenture constitutes a legal, valid, binding,

and enforceable obligation of the Trustee (subject to bankruptcy, insolvency, or creditor rights laws generally and principles of equity generally); that the execution, delivery, and performance of this Indenture by the Trustee will not cause or constitute, including after due notice or lapse of time or both, a default under or conflict with organizational documents or other agreements or otherwise materially or adversely affect performance of duties; that the execution of this Indenture by the Trustee, assuming that neither the Trustee or this Indenture is required to be qualified under the Trust Indenture Act of 1939, as amended, will not violate any law, regulation, order, or decree of any Governmental Authority; assuming that neither the Trustee or the Indenture is required to be qualified under the Trust Indenture Act of 1939, as amended, that 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 this Indenture by the Trustee have been obtained or made; and that there is no pending action, suit, proceeding, arbitration, or governmental investigation against it, an adverse outcome of which would materially adversely affect its performance under this Indenture.

**Section 4.3.** Instruments of Further Assurance. The Issuer covenants that it has not made, done, executed, or suffered, and will not make, do, execute, or suffer, any act or thing whereby its interest in the Loan Agreement or any part thereof is now or at any time hereafter will be impaired, changed, or encumbered in any manner whatsoever, except as may be expressly permitted herein or in the Loan Agreement; and that it will do, execute, acknowledge, and deliver or cause to be done, executed, acknowledged, and delivered, such instruments supplemental hereto and such further acts, instruments, and transfers as the Trustee may reasonably require for the better assuring, transferring, pledging, assigning, and confirming unto the Trustee all and singular the sums assigned and pledged hereby to the payment of the principal of, premium, if any, and interest on the Bonds.

**Section 4.4.** Recording and Filing. The Trustee shall take such action, at the expense of the Borrower, as the Bondholder Representative may require with respect to the execution and filing of any financing statements and continuation statements as are necessary to perfect and maintain the perfection of the liens on personal property granted in the Mortgage and to preserve and protect fully the security of the Holders of the Bonds and the rights of the Trustee hereunder and under any of the other aforesaid instruments; provided, however, the Trustee shall not be responsible for the initial filing of any financing statements and the Trustee shall rely on such initial filings unless otherwise notified that the filing of a continuation statement is required to maintain the perfection of any lien or security interest in the Trust Estate. The Trustee shall take such action, at the expense of the Borrower, as the Bondholder Representative may require with respect to the execution and filing of any financing statements and continuation statements to perfect and maintain the perfection of the liens on personal property granted in the Mortgage and to preserve and protect fully the security of the Holders of the Bonds and the rights of the Trustee hereunder and under any of the other aforesaid instruments; provided, however, the Trustee shall not be responsible for the initial filing of any financing statements and the Trustee shall rely on such initial filings unless otherwise notified that the filing of a continuation statement is required to maintain the perfection of any lien or security interest in the Trust Estate. The Trustee shall not be responsible for and makes no representations as to existence, genuineness, value or protection of any collateral, for the legality, effectiveness or sufficiency of any Bond Document or Loan

Document, or for the creation, perfection, priority, sufficiency or protection of any liens securing the Note. The Trustee shall not be responsible for filing any financing or continuation statements or recording any documents or instruments in any public office at any time or times or otherwise perfecting or maintaining the perfection of any lien or security interest in the collateral.

**Section 4.5.** Books and Records. The Trustee covenants that so long as any Outstanding Bonds issued hereunder and secured by this Indenture shall be unpaid, the Trustee will keep proper books or records and accounts, in which full, true, and correct entries will be made of all its financial dealings or transactions in relation to the Project and the payments derived from the Loan Agreement, this Indenture, and the Mortgage. Upon reasonable notice and at reasonable times during the Trustee's regular business hours and under reasonable regulations established by the Trustee, such books shall be open to the inspection of the Borrower, the Bondholder Representative, the Holders, or the Issuer, and such accountants or other agencies as the Borrower, the Bondholder Representative, the Holders, or the Issuer may from time to time designate in writing to the Trustee.

**Section 4.6.** Holders' Access to Bond Register. At reasonable times and under reasonable regulations established by the Bond Registrar, the Bond Register or a copy thereof may be inspected and copied by the Borrower, the Issuer, the Trustee, or the Holders of ten percent (10%) or more in principal amount of the then Outstanding Bonds (or a designated representative thereof), such authority of any such designated representative to be evidenced to the reasonable satisfaction of the Bond Registrar. Except as otherwise may be provided by law, the Bond Register shall not be deemed a public record and shall not be made available for inspection by the public, unless and until notice to the contrary is given to the Bond Registrar by the Issuer and the Bondholder Representative.

**Section 4.7.** Rights Under Loan Agreement. The Loan Agreement sets forth covenants and obligations of the Issuer and the Borrower, and reference is hereby made to the same for a detailed statement of said covenants and obligations. The Issuer agrees to cooperate in the enforcement of all covenants and obligations of the Borrower under the Loan Agreement and agrees that the Trustee and the Bondholder Representative may enforce all rights of the Issuer (other than the Unassigned Issuer's Rights) and all obligations of the Borrower under and pursuant to the Loan Agreement in their respective names and on behalf of the Holders, whether or not the Issuer has undertaken to enforce such rights and obligations.

**Section 4.8.** Rights Under Mortgage.

(1) The Issuer acknowledges that it has assigned its interest in and to the Mortgage, other than the Unassigned Issuer's Rights, to the Trustee under this Indenture and that such instrument further secures payment of the Loan, interest thereon, and amounts due under certain other Loan Documents, and reference is hereby made to the same for a detailed statement of the obligations of the parties thereto.

(2) Subject to the terms of the Mortgage, the Loan Agreement and the Regulatory Agreement, until the occurrence of an Event of Default under the Loan Documents, the Borrower



shall be permitted to possess, use, and enjoy the Mortgaged Property and to receive and use the issues and profits of the Mortgaged Property.

**Section 4.9.** Tax Covenants Relating to the Bonds.

(1) The Issuer shall not use, permit the use of, or omit to use Gross Proceeds or any other amounts (or any property the acquisition, construction, or improvement of which is to be financed or refinanced directly or indirectly with Gross Proceeds) in a manner which, if made or omitted, respectively, would cause the interest on the Bonds to become includable in the gross income, as defined in section 61 of the Code, of the owners thereof for federal income tax purposes. Without limiting the generality of the foregoing, unless and until the Issuer shall have received a written opinion of Bond Counsel to the effect that failure to comply with such covenant will not adversely affect the exemption from federal income tax of the interest on the Bonds, the Issuer shall comply with each of the specific covenants in this Section.

(2) The Issuer shall not direct or make any investment of the proceeds of the Bonds or any other funds of the Issuer in a manner which would result in the Bonds becoming "*arbitrage bonds*" within the meaning of section 148 of the Code or "*hedge bonds*" within the meaning of section 149 of the Code. In the event the Issuer or the Borrower is of the opinion that it is necessary to restrict or limit the Yield on the investment of any money paid to or held by the Trustee hereunder in order to avoid classification of the Bonds as "*arbitrage bonds*" or "*hedge bonds*," the Issuer or the Borrower may issue to the Trustee a written instrument to such effect (along with appropriate written instructions), in which event the Trustee will take such action as is necessary to effect such written instructions so to restrict or limit the Yield on such investment in accordance with such instrument and instructions, irrespective of whether the Trustee shares such opinion. The Trustee may conclusively rely upon any such instructions and shall not be responsible for any loss resulting from investment of any money held hereunder in accordance with such instructions.

(3) Except to the extent permitted by section 149(b) of the Code and Regulations and rulings thereunder, the Issuer shall not take or omit to take any action which would cause the Bonds to be federally guaranteed within the meaning of section 149(b) of the Code and the Regulations and rulings thereunder.

(4) The Issuer shall timely file or cause to be timely filed the information required by section 149(e) of the Code with the Secretary of the Treasury on such form and in such place as such Secretary may prescribe.

(5) Except to the extent permitted by section 148 of the Code and the Regulations and rulings thereunder, the Issuer shall not, at any time prior to the earlier of the stated maturity or final payment of the Bonds enter into any transaction that reduces the amount required to be paid to the United States pursuant to **Section 5.6** hereof because such transaction results in a smaller profit or a larger loss than would have resulted if the transaction had been at arm's length and had the Yield of the Bonds not been relevant to either party.

(6) The Issuer hereby directs the Borrower to make elections permitted or required pursuant to the provisions of the Code or the Regulations, as it deems necessary or appropriate in connection with the Bonds.

(7) The weighted average maturity of the Bonds does not exceed 120% of the reasonably expected economic life, within the meaning of section 147(b) of the Code, of the Project.

**Section 4.10.** Change in Law. To the extent that published rulings of the Internal Revenue Service, or amendments to the Code or the Regulations modify the covenants of the Issuer or the Trustee which are set forth in this Indenture or which are necessary for interest on any issue of the Bonds to be excludable from gross income for federal income tax purposes, the Trustee and the Issuer will comply with such modifications to the extent advised by Bond Counsel to do so.

**Section 4.11.** Indemnification. The Borrower shall indemnify the Trustee or any predecessor Trustee and their agents for, and to hold them harmless against, any and all loss, damage, claims, liability or expense, arising out of or in connection with the acceptance or administration of the trust or trusts hereunder, including the costs and expenses of defending itself against any claim (whether asserted by the Borrower, or any Holder or any other person) or liability in connection with enforcing the provisions of this Section, except to the extent that such loss, damage, claim, liability, or expense is due to its own negligence or willful misconduct.

## ARTICLE 5

### FUNDS AND ACCOUNTS

**Section 5.1. Trust Funds Pledged and Assigned to the Trustee; Bank to Act as Custodian of Funds and Accounts if Sole Bondholder.** All payments, revenues, and income receivable by the Issuer under the Loan Agreement and Note and pledged and assigned by this Indenture to the Trustee, together with the balance of the Trust Estate, are to be paid directly to the Trustee and, subject to the provisions of **Section 8.6** hereof, deposited by it in the Funds and the Accounts described in this **Article V** and held in trust for the purposes set forth herein, and, except as otherwise provided herein, shall not be subject to any lien, levy, garnishment, or attachment by any creditor of the Issuer or the Borrower nor shall they be subject to any assignment or hypothecation by the Borrower. Moneys on deposit in the Funds and the Accounts described in this **Article 5** shall be maintained and administered by the Trustee in trust, and pending application in accordance with the provisions of this **Article V** shall be subject to a lien and charge in favor of the Holders until applied as hereinafter provided. The Trustee shall at all times maintain accurate records of deposits into and withdrawals from and transfers among such Funds and the day of receipt of such deposits, withdrawals, and transfers. In addition, each Fund shall constitute a segregated trust account or accounts maintained by the Trustee, segregated from all other funds of the Trustee, and shall be established in the name of the Trustee (or the Borrower, as may be applicable), bearing the designation provided below with a qualifier indicating such fund is held with respect to the Bonds. The Trustee shall not deposit into such Funds any moneys other than as provided in this Indenture or the Loan Agreement.

As long as the Bank (or any affiliate of the Bank) is the Holder of all the Bonds, all the Funds and Accounts established under this Article V, and all moneys and investments held in such Funds and Accounts, shall be deposited in accounts established at the Bank in the name of the Trustee for the benefit of the Holders of the Bonds, and the Bank shall be the custodian of such Funds and Accounts for and on behalf of the Trustee (which shall control the Funds and Accounts in the manner provided in this Indenture and as detailed in that certain Account Control Agreement between Trustee and Bank). The Bank as custodian shall have no beneficial ownership in the Funds and Accounts. In its capacity as custodian, the Bank shall furnish to the Trustee and the Issuer such reports and statements and other information reasonably requested by the Trustee or the Issuer as shall allow the Trustee and the Issuer to perform their respective duties under the Indenture. In connection with the foregoing, the Bank agrees to execute a custodial agreement with the Trustee on a form agreed to by the Bank, the Issuer and the Trustee. In connection with the full and final payment of the Bonds, at the direction of the Trustee and the Borrower, the Bank shall transfer the Funds and Accounts (and all moneys and investments held therein) to the Trustee. In the event of a default by Bank under the Loan Agreement, which is not cured within in any applicable grace or cure period, upon written request therefor by Trustee or Issuer, the Bank shall immediately transfer the Funds and accounts to the Trustee.

Prior to any sale, transfer or other disposition of any of the Bonds by the Bank (or any affiliate of the Bank that owns Bonds) other than to the Permanent Lender, the Bank shall upon thirty (30) days' written notice to the Trustee, transfer the Funds and Accounts (and all moneys and investments held therein) to the Trustee and shall provide a written certification of such action to the Trustee and the Issuer.

**Section 5.2.** Project Fund; Disbursement of Project Funds.

(1) A special trust fund is hereby created and designated the Project Fund. The proceeds of the Bonds (less any amounts representing proceeds of the Bonds deposited in the Costs of Issuance Fund) and any other amounts deposited by the Borrower shall be deposited with the Trustee on the date of Bond Closing for deposit in the Project Fund.

(2) No moneys shall be disbursed from the Project Fund until the Trustee shall have received evidence of the recordation of the Mortgage and the Regulatory Agreement in the real property records of Travis County, Texas. The Trustee may conclusively rely upon telephonic notice from the Title Company responsible for recording the Mortgage and the Regulatory Agreement as evidence of such recordation.

(3) Upon satisfaction of the requirements of this Section 5.2 and receipt from the Borrower of (a) a written requisition in the form of Exhibit A hereto, which requisition shall include Borrower's certification that not less than 95% of the funds representing proceeds of Bonds, including investment earnings, requisitioned will be expended for Qualified Project Costs that have not previously been paid or reimbursed and (b) written consent to such disbursement by the Bondholder Representative which will be provided according to the provisions regarding disbursement of funds from the Project Fund to the Borrower contained in the Loan Agreement, the Trustee shall promptly disburse all amounts requested in such requisition from funds in the

Project Fund to the Borrower; provided, however, that disbursements from the Project Fund that qualify as Qualified Project Costs to pay scheduled interest payments on the Bonds prior to the Completion Date will not require the consent of the Bondholder Representative, until (i) the aggregate of the Disbursements (as defined in the Loan Agreement) from the Project Fund prior to the Construction Term Maturity Date (without giving effect to any extension thereof) for payment of scheduled interest payments payable prior to the Construction Term Maturity Date total the sum of [\$220,461] or (ii) the Bondholder Representative gives the Trustee written notice that the Bondholder Representative's consent to any further such Disbursement is required, whichever is first.

(4) Neither the Trustee nor the Issuer shall be responsible for the application by the Borrower of moneys disbursed to the Borrower (if any money is disbursed thereto) in accordance with this **Section 5.2**.

(5) All requisitions in the form provided by this Indenture and all other statements, orders, certifications, and approvals received by the Trustee, as required by this Article as conditions of payment from the Project Fund, may be conclusively relied upon by the Trustee, and shall be retained by the Trustee, subject at all reasonable times to examination by the Borrower, the Issuer, the Bondholder Representative, and the agents and representatives thereof.

(6) Without duplication of the terms and requirements of the Loan Agreement, all costs incurred in connection with the requisition and disbursement of funds from the Project Fund, including but not limited to the cost of the Project Engineer and updates to the Title Policy, shall be paid by the Borrower.

(7) On or after the Conversion Date, all amounts remaining on deposit in the Project Fund representing amounts deposited by the Borrower shall be paid to the Borrower upon written request of the Borrower. If the Conversion Date does not occur by the Construction Term Maturity Date, or on such earlier date as the Borrower (with written concurrence of the Bondholder Representative) advises the Trustee no further draws will be made from the Project Fund as provided for in **Section 3.1(1)(c)** hereof, and all amounts remaining on deposit in the Project Fund representing proceeds of the Bonds shall be transferred to the Bond Fund and used to redeem Bonds in accordance with **Section 3.1(1)(c)** hereof.

**Section 5.3.** Revenue Fund. A special trust fund is hereby created and designated the Revenue Fund.

(1) Deposits to the Revenue Fund. All Basic Payments under the provisions of the Loan Agreement and the Note are assigned by the Issuer to the Trustee pursuant to this Indenture for monthly deposit to the Revenue Fund.

(2) Uses of Revenue Fund. Provided no Event of Default has occurred and is continuing, funds on deposit in the Revenue Fund shall be distributed at least monthly by the Trustee as follows:

(A) Through and including the Conversion Date (or such later date as approved by the Bondholder Representative):

FIRST: to the Principal Account of the Bond Fund in an amount equal to the principal due on the next Payment Date, if any, other than Subordinated Bonds, and to the Interest Account of the Bond Fund in an amount equal to the interest due on the next Payment Date, other than Subordinated Bonds;

SECOND: to the Rebate Fund, the amount calculated as due with respect to a particular Bond Year by the Rebate Analyst (to the extent written notice of such amount has been provided by the Borrower to the Trustee);

THIRD: to the Trustee, the amount of its Ordinary Fees and Expenses then due, if any, and then to the Rebate Analyst, the reasonable fees and expenses as billed and due to it for services hereunder;

FOURTH: to the Administration Account of the Bond Fund, 1/12th of the Rebate Analyst's Fee and 1/12<sup>th</sup> of the Issuer Administration Fee and to the Trustee and the Issuer, the Additional Charges of the Trustee and the Issuer, as applicable, which have not been paid pursuant to Section 4.3 of the Loan Agreement;

FIFTH: to the Subordinated Bond Interest Account of the Bond Fund in an amount equal to the interest on the Subordinated Bonds to become due on the next Payment Date.

(B) After Conversion Date (or such later date as approved by the Bondholder Representative):

FIRST: to the Principal Account of the Bond Fund in an amount equal to the principal (including sinking fund installments) of and to the Interest Account of the Bond Fund, the interest on the Bonds other than the Subordinated Bonds to become due on the next Payment Date, provided that in the month next preceding each Payment Date, sufficient amounts shall be transferred to the Bond Fund pursuant to Section 5.4 hereof on the Business Day next preceding such Payment Date so that the aggregate amount on deposit in the Bond Fund is equal to, but not in excess of, the next required payment of principal (including sinking fund installments) of and interest on the Bonds other than the Subordinated Bonds and provided, further, that when the amount in the Bond Fund is equal to the next required payment of principal (including sinking fund installments) of and interest on the Bonds other than the Subordinated Bonds no further transfers to the Bond Fund for purposes of

debt service on Bonds other than Subordinated Bonds shall be required until the monthly distribution date next following the related Payment Date;

SECOND: to the Rebate Fund, the amount calculated as due with respect to a particular Bond Year by the Rebate Analyst until such amount has been funded in full (to the extent written notice of such amount has been provided by the Borrower to the Trustee);

THIRD: to the Trustee, the amount of its Ordinary Fees and Expenses then due, or past due, if any, and then to the Rebate Analyst, the reasonable fees and expenses, if any, as billed and due to it for services hereunder;

FOURTH: to the Administration Account of the Bond Fund, 1/12th of the Rebate Analyst's Fee and 1/12th of the Issuer Administration Fee;

FOURTH: to the Real Estate Taxes and Insurance Account of the Servicing Fund, as required in the Mortgage, of the amount budgeted by the Borrower for annual premiums for insurance required to be maintained pursuant to the Loan Agreement and for any annual real estate taxes (or any payments in lieu of taxes) or other charges for governmental services for the current year (except for utility charges), which shall each be disbursed by the Trustee from time to time upon written instructions from the Bondholder Representative to pay such premiums, taxes, and other charges when due or reimburse the Borrower upon receipt of satisfactory evidence of payment thereof; provided, however, that distribution by the Trustee to the Real Estate Taxes and Insurance Account in respect of the first date or dates on which premiums for insurance and taxes or other payments described above are payable shall be made in amounts equal to the respective quotients obtained by dividing (i) the amount of such premiums and (ii) the amount of such taxes or other charges by the respective number of months, including the month of computation, to and including the month prior to the month in which such premiums or taxes are payable;

FIFTH: to the Replacement Reserve Account of the Servicing Fund the Replacement Reserve Deposit Requirement multiplied by the number of units in the Project until such amount is funded in full;

SIXTH: to the Trustee, the Additional Charges of the Trustee and the Issuer which have not been paid pursuant to Section 4.3 of the Loan Agreement;

SEVENTH: to the Subordinated Bond Interest Account of the Bond Fund, an amount up to the interest on the Subordinated Bonds (if any) to become due on the next succeeding Payment Date until such amount is funded in full; and

EIGHTH: to the Subordinated Bond Principal Account of the Bond Fund, an amount up to the principal of the Subordinated Bonds (if any) to become due on the next succeeding Payment Date until such amount is funded in full.

On December 15 of each year (or such other time as approved by the Bondholder Representative) and provided that sufficient amounts have been deposited in the Revenue Fund to enable the Trustee to make all deposits (or arrears in deposits) required above, amounts on deposit in the Revenue Fund shall be disbursed by the Trustee to the Borrower or at the Borrower's request may be used as a credit against its payment obligations under the Note.

**Section 5.4.** Bond Fund. A special trust fund is hereby created and designated the Bond Fund, which shall contain (i) the Interest Account, (ii) the Principal Account, (iii) the Redemption or Purchase Account, (iv) the Subordinated Bond Interest Account, (v) the Subordinated Bond Principal Account, (vi) the Subordinated Bond Redemption or Purchase Account, and (vii) the Administration Account.

(1) Interest Account. The Trustee shall deposit to the Interest Account moneys transferred from the Revenue Fund as provided in **Section 5.3** hereof. Moneys in the Interest Account shall be used to pay interest on the Bonds other than Subordinated Bonds as due. The Trustee shall also deposit to the Interest Account the proceeds, if any, from the Bonds to be used for interest as provided in **Section 5.2(3)** hereof.

(2) Principal Account. The Trustee shall deposit to the Principal Account moneys transferred from the Revenue Fund as provided in **Section 5.3** hereof. Moneys in the Principal Account shall be used to pay principal of and sinking fund installments on the Bonds other than Subordinated Bonds when due.

(3) Redemption or Purchase Account. The Trustee shall deposit to the Redemption or Purchase Account any amounts of funds transferred or deposited to effect redemption (other than mandatory sinking fund redemption) or purchase of Bonds other than Subordinated Bonds pursuant to **Article 3** hereof. Moneys on deposit in the Redemption or Purchase Account shall be used for redemption or purchase (other than mandatory sinking fund redemption pursuant to **Section 3.1(3)** hereof) of Bonds other than Subordinated Bonds pursuant to the provisions of Article 3 hereof.

(4) Subordinated Bond Interest Account. The Trustee shall deposit to the Subordinated Bond Interest Account moneys transferred from the Revenue Fund or any other another Fund as specified herein for payment of interest on Subordinated Bonds. Moneys in the Subordinated Bond Interest Account shall be used to pay interest on the Subordinated Bonds when due.

(5) Subordinated Bond Principal Account. The Trustee shall deposit to the Subordinated Bond Principal Account moneys transferred from the Revenue Fund or any other another Fund as specified herein for payment of principal (other than on redemption) of Subordinated Bonds. Moneys in the Subordinated Bond Principal Account shall be used to pay principal of the Subordinated Bonds when due.

(6) Subordinated Bond Redemption or Purchase Account. The Trustee shall deposit to the Subordinated Bond Redemption or Purchase Account any amounts of funds transferred or deposited to effect redemption or purchase of Subordinated Bonds pursuant to Article 2 hereof. Moneys on deposit in the Subordinated Bond Redemption or Purchase Account shall be used for redemption of Subordinated Bonds pursuant to the provisions of Article 2 hereof.

(7) Administration Account. The Trustee shall deposit to the Administration Account moneys transferred from the Revenue Fund as provided in Section 5.3 hereof. Moneys in the Administration Account shall be used to pay the Rebate Analyst's Fee and Issuer Administration Fee when due.

Notwithstanding anything contained herein to the contrary, moneys on deposit in the Subordinated Bond Interest Account, the Subordinated Bond Principal Account and the Subordinated Bond Redemption or Purchase Account created herein shall be transferred to accounts created for Bonds other than Subordinated Bonds if funds are insufficient to make payments with respect to Bonds other than Subordinated Bonds as provided herein and disbursements shall only be made from such accounts upon satisfaction of all conditions set forth in Section 2.13 hereof.

**Section 5.5.** Deposit of Funds with Paying Agent. (1) If the Trustee is not the Paying Agent, the Trustee shall transfer and remit sums from the Bond Fund to the Paying Agent on or before the Business Day immediately prior to each Payment Date or Maturity Date, from the balance then on hand in the Bond Fund, sufficient to pay all principal, interest and redemption premiums then due on the Bonds. The Paying Agent shall hold in trust for the Holders of such Bonds all sums so transferred to it until paid to such Holders or otherwise disposed of as herein provided.

(2) The Trustee will cause any Paying Agent which is not the Trustee to execute and deliver to it an instrument in which such Paying Agent shall agree with the Trustee, subject to the provisions of this Section 5.5 that such Paying Agent will:

(a) hold all sums held by it for the payment of principal of (and premium, if any) or interest on Bonds in trust for the benefit of the Holders of such Bonds until such sums shall be paid to such Holders or otherwise disposed of as herein provided; and

(b) at any time during the continuance of any default in the making of any such payment of principal (and premium, if any) or interest, upon the written request of the Trustee forthwith pay to the Trustee all sums so held in trust by such Paying Agent. The Trustee, acting as Paying Agent, shall also be bound by the terms of the foregoing requirements.

**Section 5.6.** Rebate Fund.

(a) The Trustee shall maintain the Rebate Fund, for the benefit of all persons who are or have at any time been Holders, at all times prior to the final payment to the United States of



America of the amounts described in Subsection (c) of this Section which fund shall not be part of the trust estate established hereunder. The money deposited to the Rebate Fund, together with all investments thereof and investment income therefrom, shall be held in trust separately and apart from the other funds held under the Indenture and applied solely as provided in this Section, unless in the opinion of Bond Counsel failure to make such application will not adversely affect any exclusion from gross income of interest on the Bonds under the Code.

(b) The Trustee shall deposit or transfer to the credit of the account of the Rebate Fund each amount delivered to the Trustee by the Borrower for deposit thereto and each amount directed by the Borrower to be transferred thereto. The Trustee shall credit all earnings and debit all losses from the investment of money held for the account of the Rebate Fund to such fund. The Trustee shall furnish to the Borrower all information reasonably requested by the Borrower with respect to the Bonds and investment of funds and accounts maintained by the Trustee hereunder.

(c) (i) Within 30 days after each Computation Date, the Trustee, on behalf of the Issuer, shall withdraw from the Rebate Fund and pay to the United States of America the appropriate portion of the Rebate Amount (determined by the Rebate Analyst on behalf of the Borrower) in the installments, to the place and in the manner required by section 148(f) of the Code, the Regulations, and rulings thereunder as instructed by the Borrower or its legal counsel and as provided in subsection (iii) below.

(ii) Within five days after receipt from the Borrower or the Rebate Analyst of written notification of any amount due to the United States of America pursuant to Section 1.148-3(h) of the Regulations accompanied by relevant IRS forms including IRS Form 8038-T, the Trustee shall withdraw from the Rebate Fund an amount which when added to all prior payments to the United States of America equals the correct appropriate portion of the Rebate Amount, plus any penalties and interest and pay such correction amount to the United States of America.

(iii) All payments to the United States of America pursuant to this subsection shall be made by the Trustee for the account and in the name of the Issuer and shall be paid by draft posted by certified United States Mail (return receipt requested), addressed to the appropriate Internal Revenue Service Center (and, if appropriate, accompanied by the relevant Internal Revenue Service Form, such as Form 8038-T or such other statements, explanations or forms required pursuant to the Regulations or other Internal Revenue Service promulgations).

(d) The Trustee shall preserve all statements, forms, and explanations received from the Borrower or the Issuer pursuant to this Section and all records of transactions in the Rebate Fund until six years after the discharge of the Bonds.

(e) The Trustee may conclusively rely on the information provided, instructions of and forms prepared by the Borrower or the Rebate Analyst with regard to any actions to be taken by it, including payments to be made, pursuant to this Section and shall have no liability for any consequences of any failure of the Borrower to supply accurate or sufficient instructions or to compute correctly any payment due pursuant to this Section. The Trustee shall have no

responsibility or duty to perform any rebate calculation or to expend its own funds to make any rebate payments.

(f) If at any time during the term of this Indenture the Borrower or the Issuer desires to take any action which would otherwise be prohibited by the terms of this Section, such person shall be permitted to take such action if it shall first obtain and provide at the expense of the Borrower to the other persons named herein an opinion of Bond Counsel to the effect that such action shall not adversely affect the exclusion of interest on the Bonds from gross income of the owners of any Bond for Federal income tax purposes and shall be in compliance with the laws of the State of Texas.

(g) Notwithstanding any provision of the bond documents or Mortgage Loan Documents and unless otherwise specifically agreed to in a separate written agreement, the Trustee shall not be liable or responsible for any method of calculation, or any calculation or determination which may be required in connection with or for the purpose of complying with Section 148 of the Code or any successor statute or any regulation, ruling, or other judicial or administrative interpretation thereof, including, without limitation, the calculation of amounts required to be paid the United States of America or the determination of the maximum amount which may be invested in Nonpurpose Investments having a higher yield than the yield on the Bonds, in connection with any such investments. The method of calculation, calculation and determination required by section 148 of the Code shall be accomplished by a Rebate Analyst engaged by the Borrower. The Trustee shall not be liable or responsible for the negligence or misconduct of the Rebate Analyst. The Trustee shall not be liable or responsible for monitoring the compliance by the Borrower or the Issuer of any of the requirements of Section 148 of the Code or any applicable regulation, ruling, or other judicial or administrative interpretation thereof (except for the administrative functions described in this Section and in this Indenture), it being acknowledged and agreed that the sole obligation of the Trustee in this regard shall be (i) to invest the moneys received by the Trustee pursuant to the written instructions of the Borrower in the specific investments identified by the Borrower or, in the absence of such identification, to make investments as otherwise provided herein and to disburse said moneys in accordance with the terms of this Indenture and (ii) to follow instructions contained in this Section and in this Indenture. The Trustee shall not be liable for the Bonds becoming "arbitrage bonds" within the meaning of the Code, as a result of investments it makes in compliance with the instructions it receives or pursuant to or in compliance with the terms of this Indenture.

Any provision hereof to the contrary notwithstanding, amounts credited to the Rebate Fund shall be free and clear of any lien hereunder.

**Section 5.7.** Mortgage Recovery Fund. (1) The Trustee shall establish and maintain a special trust fund separate from any other Fund established and maintained hereunder designated as the Mortgage Recovery Fund.

(2). In the event there is damage, destruction, or Condemnation of the Project, the Recovery Proceeds shall be deposited in the Mortgage Recovery Fund and shall be disbursed in the following order of priority: (a) to pay or reimburse the Borrower for the costs of repairing or

replacing the Project subject to the requirements provided in paragraph (6) below; (b) to the extent required or permitted by Section 6.5 of the Loan Agreement (prior to the Conversion Date) or Section 9.2 of the Loan Agreement (after the Conversion Date), or if the Borrower fails to comply with the requirements of paragraph (6) below, to redeem or purchase Bonds, in whole or in part, or to pay the principal of and interest on the Bonds upon the acceleration of the maturity thereof; (c) to pay or reimburse the Trustee for any outstanding Ordinary Fees and Expenses or Additional Charges then due and owed; (d) to make payments of principal and interest on the Bonds; and (e) to pay any other Additional Charges and the amount of the Issuer Administration Fee due and owing. The Trustee's use of Recovery Proceeds is further subject to the provisions of paragraph (4) below. No such amounts (except proceeds of business interruption or rental loss insurance) shall be allocated to pay Subordinated Bonds until all Bonds other than Subordinated Bonds have been paid in full or are no longer Outstanding.

(3) In the event of a foreclosure of the Mortgage, the Net Proceeds realized from the foreclosure sale shall be deposited in the Mortgage Recovery Fund and shall be disbursed by the Trustee to: (a) redeem Bonds, in whole; (b) pay or reimburse the Trustee for any outstanding Ordinary Fees and Expenses or Additional Charges then due and owed; (c) make payments of principal and interest on the Bonds or other amounts due under the Loan Documents; or (d) pay any other Additional Charges and the amount of the Issuer Administration Fee due and owing. The Trustee's use of Net Proceeds pursuant to clause (c) is subject to the provisions of paragraph (4) below. No such amounts shall be allocated to pay Subordinated Bonds until all Bonds other than Subordinated Bonds have been paid in full or are no longer Outstanding.

(4) Moneys in the Mortgage Recovery Fund shall be transferred by the Trustee to the Bond Fund to pay principal of, premium and interest on the Bonds when due to the extent funds are not otherwise available to make payment on the Bonds when due. No such amounts shall be allocated to pay Subordinated Bonds until all Bonds other than Subordinated Bonds have been paid in full or are no longer Outstanding.

(5) In the event moneys (other than Recovery Proceeds) are deposited in the Mortgage Recovery Fund pursuant to the Mortgage, such moneys shall be disbursed in the manner set forth in paragraph (3) above.

(6) (a) Amounts in the Mortgage Recovery Fund shall be applied to pay or reimburse the Borrower for the costs of repairing or replacing the Project only if the following conditions are satisfied:

(i) The Trustee shall have been furnished a written confirmation from the Bondholder Representative that the conditions contained in Section 6.4 of the Loan Agreement have been satisfied or waived;

(ii) The Borrower shall have provided a construction statement itemizing the full cost of the repair or restoration (the "*Construction Statement*");

(iii) The Recovery Proceeds to be deposited in the Mortgage Recovery Fund to pay for such repair or restoration must be sufficient to complete such repair or restoration, or the Borrower must deposit in the Mortgage Recovery Fund the net difference prior to commencing repair or restoration;

(iv) Disbursements from the Mortgage Recovery Fund to pay the cost of such repair or restoration shall be made not more frequently than twice a month for restoration work completed and in place pursuant to the construction lending procedures and conditions contained in Sections 6.4 and 6.5 of the Loan Agreement; and

(v) The Borrower submits a written requisition in the form of **Exhibit A** hereto and the Bondholder Representative gives its written approval of such requisition.

(b) All requisitions in the form attached as **Exhibit A** hereto and all other statements, orders, certifications, and approvals received by the Trustee, as required by this Article as conditions of payment from the Mortgage Recovery Fund, may be conclusively relied upon by the Trustee, and shall be retained by the Trustee, subject at all reasonable times to examination by the Borrower (so long as the Loan Agreement shall remain in force and effect), the Issuer, and the agents and representatives of each of them.

(c) In the event that the Borrower does not deliver a Completion Certificate within ninety (90) days of the deposit of funds into the Mortgage Recovery Fund in accordance with the terms and schedule set forth above, the Trustee shall, after thirty (30) days' written notice from the Bondholder Representative to the Borrower of such failure and continuance of such failure at the end of such period, either disburse moneys in the Mortgage Recovery Fund, including retainage for the payment of costs of repairing or replacing the Project or disburse moneys in the Mortgage Recovery Fund in accordance with written instructions from Bondholder Representative.

(d) Upon the completion of the repair or replacement of the Project (as evidenced by a certificate of the Borrower), the accumulated retainage shall be disbursed to the Borrower and the balance in the Mortgage Recovery Fund, shall be disbursed to the Borrower.

**Section 5.8.** Servicing Fund. (1) The Trustee shall establish and maintain a special trust fund separate from any other Fund established and maintained hereunder designated as the Servicing Fund.

(2) The Trustee shall deposit amounts provided in Section 5.3 hereof into the Servicing Fund. Pursuant to **Schedule F** of the Loan Agreement, the following Accounts are established in the Servicing Fund:

(a) Real Estate Taxes and Insurance Reserve Account. In accordance with written instructions from the Bondholder Representative and Section 5.23 and **Schedule F** of the Loan Agreement, the Trustee shall transfer from the Revenue Fund amounts required by Section 5.3 hereof for deposit to the Real Estate Taxes and Insurance Account (the "*Real Estate Taxes and Insurance Account*") and shall maintain separate accounting of

payments applicable to each of real estate taxes and other governmental charges and insurance premiums. Interest accrued on this Account shall become a part of this Account and may be utilized for the purposes of this Account. The Trustee shall pay all of the real estate taxes and other governmental charges with respect to the Project, in accordance with written instructions from the Borrower, with the written concurrence of the Bondholder Representative, solely from funds earmarked for real estate taxes and other governmental charges and accounted for as part of the Real Estate Taxes and Insurance Account in all events not later than when due. The Trustee shall pay all of the insurance premiums due with respect to the Project, in accordance with written instructions from the Borrower, with the written concurrence of the Bondholder Representative, solely from funds available therefor and earmarked for insurance premiums and accounted for as part of the Real Estate Taxes and Insurance Account in all events not later than when due. In the event insurance for the Project is provided through a blanket policy of insurance covering additional properties other than the Project, the Trustee shall pay such portion of the premiums therefor as may be properly allocated to the Project, in accordance with written instructions from the Borrower, with the written concurrence of the Bondholder Representative. The Trustee shall only be required to pay insurance premiums, real estate taxes, and other governmental charges from funds available therefor as provided in this Indenture and in the Loan Agreement. In the event there are insufficient funds in the Real Estate Taxes and Insurance Account to pay the real estate taxes and other governmental charges and insurance premiums when due, the Trustee will notify the Borrower and the Bondholder Representative of such deficiency, and Borrower shall, on demand of the Trustee, deposit with the Trustee any amount necessary to make up the deficiency. Amounts in the Real Estate Taxes and Insurance Account in excess of the requirements therefor shall be credited against future required transfers from the Revenue Fund.

(b) Replacement Reserve Account. In accordance with Section 5.23 and Schedule F of the Loan Agreement, the Trustee shall transfer from the Revenue Fund amounts required by Section 5.3 hereof for deposit to the Replacement Reserve Account and shall maintain separate accounting thereof (the "*Replacement Reserve Account*"). The Trustee shall disburse amounts from such funds accounted for as the Replacement Reserve Account with the written consent of the Bondholder Representative for disbursements over Five Thousand Dollars (\$5,000) in any calendar year, to pay or reimburse the Borrower for the payment of capital expenditures and replacements to the Project, exclusive of ordinary or routine maintenance. The Bondholder Representative or an agent thereof shall monitor the Borrower's requests to ensure no duplication of disbursements. Interest accrued on the Replacement Reserve Account shall become a part of this Account and may be utilized for the purposes of this Account. In no event shall the Trustee be obligated to consider, nor shall the Bondholder Representative be obligated to consent to, requests for more than one (1) disbursement from the Replacement Reserve Account each calendar month. Moneys in the Replacement Reserve Account shall be transferred by the Trustee to the Bond Fund to pay principal of and interest on the Bonds other than Subordinated Bonds when due to the extent funds are not otherwise available to make payment on the Bonds other than Subordinated Bonds when due; provided, however, no such amounts shall be allocated to

pay Subordinated Bonds until all Bonds other than Subordinated Bonds have been paid in full or are no longer Outstanding.

(c) **Schedule F.** In addition to the deposits, withdrawals, and transfers contained herein in regard to moneys deposited in the Servicing Fund, the Trustee shall make deposits, withdrawals, and transfers of such moneys as provided in **Schedule F** of the Loan Agreement, to which reference is hereby made. In the case there are any inconsistencies between such **Schedule F** and the provisions of this **Section 5.8**, the Trustee shall be entitled to rely upon the written instructions of the Bondholder Representative in regard to the deposit and/or disposition of moneys in the Servicing Fund.

**Section 5.9.** **Costs of Issuance Fund.** A special trust fund is hereby created and designated the Costs of Issuance Fund. There shall be deposited to the credit of the Costs of Issuance Fund on Bond Closing amounts provided by the Borrower other than proceeds of the Bonds. The Trustee shall first disburse proceeds of the Bonds; including investment earnings, and second disburse Borrower's equity contribution in such Fund upon written direction of the Issuer and receipt of written approval by the Bondholder Representative to pay or reimburse the Borrower for Costs of Issuance. Any proceeds of the Bonds, including investment earnings, in the Costs of Issuance Fund on the ninetieth (90th) day following the Bond Closing shall be transferred to the Project Fund, and any balance of the Borrower's equity contribution shall be returned to the Borrower free and clear of any lien thereon or pledge thereof created by this Indenture upon receipt by the Trustee of a written certification from the Bondholder Representative that all of the conditions to the Conversion Date have been satisfied.

**Section 5.10.** **Interest Earned on Funds.** The interest earned from the investment of money held by the Trustee in each of the Funds and the Accounts created under this **Article 5** (other than the Rebate Fund) shall inure to the benefit of the Borrower and shall be retained in such separate Fund or Account and applied as a credit against the payment next due into such separate Fund or Account.

**Section 5.11.** **Final Balances.** Upon the deposit with the Trustee of moneys sufficient to pay all principal of, premium, if any, and interest on the Bonds, and upon satisfaction of all claims against the Issuer hereunder and under the Loan Documents, including any rebate obligation, and all fees, charges, and expenses of the Trustee, the Bond Registrar, the Issuer, and any Paying Agent which are properly due and payable hereunder, or upon the making of adequate provisions for the payment of such amounts as permitted hereby, all moneys remaining in all Funds, except: (1) moneys necessary to pay principal of, premium, if any, and interest on the Bonds, or the purchase price of Bonds due in accordance with **Section 3.1(3)** which moneys shall be held by the Trustee to be paid to the Holders; and (2) moneys, if any, set aside pursuant to **Section 5.6** hereof, shall be remitted to the Borrower.

## ARTICLE 6

### INVESTMENTS

#### **Section 6.1.** Investments by the Trustee.

(1) Moneys held hereunder by the Trustee in the Funds shall, as nearly as may be practicable, be invested by the Trustee: (a) unless an Event of Default has occurred and is continuing under the Loan Agreement or other Loan Documents, upon the oral (if confirmed in writing) or written direction of the Borrower and be approved in writing by the Bondholder Representative if required by (x) of the definition of Permitted Investments (which direction shall specify the amount thereof to be so invested), in Permitted Investments maturing on or before the Business Day immediately prior to the day such amounts are required and in the amounts required, to enable the Trustee to make payments due hereunder on the Bonds or otherwise, but in no event longer than 180 days (unless approved in writing by the Bondholder Representative) or (b) if an Event of Default has occurred and is continuing under the Loan Agreement or the other Loan Documents, in the investments in Permitted Investments of the type described in clause (v) of the definition of Permitted Investments. If no direction is provided to the Trustee pursuant to (1)(a) above, the Trustee will invest such moneys in investments described in (v) of the definition of Permitted Investments that invest only in Government Obligations. In this regard the Trustee may use its automatic cash management system. The Trustee shall not be responsible for any funds held by the Bank pursuant to **Section 5.1**.

(2) The Trustee shall sell and reduce to cash a sufficient portion of investments under the provisions of this **Section 6.1** whenever the cash balance in the Fund for which the investment was made is insufficient for its current requirements. Securities so purchased as an investment of money shall be held by the Trustee, shall be registered in the name of the Trustee or its nominee if registration is required, and shall be deemed at all times a part of the applicable Fund, and the interest accruing thereon and any profit realized from such investments shall be credited to the Fund from which the investment was made, subject to any transfer to another Fund as herein provided. Any loss resulting from such investment shall be charged to the Fund from which the investment was made, and in the event such loss reduces the amount held in such Fund below the amount required to be deposited in such Fund, the Trustee shall request the Borrower to transfer to the Trustee for deposit into such Fund the amount required to restore amounts in such Fund to the required amount. The Trustee shall not be liable for any loss incurred from the purchase or sale of any investment in accordance with directions given by the Borrower or the Bondholder Representative under this **Section 6.1** or in accordance with subparagraph (1)(b) above, except for any loss resulting from the negligence or willful misconduct of the Trustee or its employees.

(3) The Trustee may purchase from or sell to itself, or through any affiliated company, as principal or agent, securities herein authorized so long as such purchase or sale is at fair market value.

(4) Although the Issuer and the Borrower each recognizes that it may obtain a broker confirmation with respect to the investment of monies in any fund or account (or a written statement containing comparable information) at no additional cost, the Issuer and the Borrower hereby agree that confirmations of Permitted Investments are not required to be issued by the Trustee for any month in which a monthly statement is rendered. No statement need be rendered for any fund or account for any month if no activity occurred in such fund or account during such month.

(5) The Trustee may rely on the directions of the Borrower or the Bondholder Representative given as provided above as to the suitability, the legality and the compliance with the terms of this Indenture of the investments so directed.

**Section 6.2.** Computation of Balances in Funds. In computing the assets of any Fund established hereunder, investments and accrued but unpaid interest thereon shall be deemed a part thereof, and, such investments shall be valued at market value, or at the redemption price thereof, if then redeemable at the option of the obligor, whichever is lower.

**Section 6.3.** Downgrade of Investments. If any rating of a Permitted Investment actually controlled by the Trustee during the term of this Indenture falls below such rating that is required pursuant to the definition of "*Permitted Investments*" then the Trustee shall within two (2) Business Days after the Trustee or a Responsible Agent's having actual knowledge of the downgrade of the rating of an investment and that funds are held by the Bank in such investment notifies the Borrower and the Bondholder Representative in writing of such downgrade. The Borrower shall within five (5) Business Days of the receipt of the downgrade notice from the Trustee, direct the Trustee in writing to reinvest such downgraded investment in other Permitted Investments. The Trustee shall not have a duty or obligation to monitor the investment grade of Permitted Investments.

## ARTICLE 7

### DISCHARGE OF LIEN

**Section 7.1.** Payment of Bonds; Satisfaction, Defeasance, and Discharge of Bonds, and Obligation to Holders. Whenever the conditions specified in either clause (A) or clause (B) of the following subsection (1) and the conditions specified in the following subsections (2), (3), (4), and (5) to the extent applicable, shall exist, namely:

(1) either:

(A) all Bonds have become due and payable and all principal or premium, if any, and interest on the Bonds shall have been paid in full, or all Bonds have been canceled by the Trustee or delivered to the Trustee for cancellation, except for:



(i) Bonds for which funds have theretofore been deposited in trust or segregated and held in trust by the Paying Agent or the Trustee (even if thereafter repaid to the Issuer or discharged from such trust, as provided in Section 2.10 hereof); and

(ii) Bonds alleged to have been destroyed or lost which have been replaced or paid as provided in Section 2.7 hereof, and (1) which, prior to the satisfaction and discharge of this Indenture as hereinafter provided, have not been presented to the Paying Agent or the Trustee with a claim of ownership and enforceability by the Holder hereof, or (2) whose enforceability by the Holder thereof has been determined adversely to the Holder by a court of competent jurisdiction or other competent tribunal; or

(B) the Borrower has deposited or caused to be deposited, as trust funds, with the Trustee cash and/or Permitted Investments of the type described in clause (i) of the definition of that term which do not permit the redemption thereof at the option of the issuer thereof, the principal of, premium, if any, and interest on which when due (or upon the redemption thereof at the option of the holder), will, without reinvestment, provide cash, which together with the cash, if any, deposited with the Trustee at the same time, shall be sufficient, to pay and discharge the entire indebtedness on Bonds (excluding Bonds described in clauses (i) and (ii) of paragraph (A) above) not theretofore canceled by the Trustee or delivered to the Trustee for cancellation at their stated maturity or redemption date, as the case may be (the "*Defeasance Collateral*"), and has made arrangements satisfactory to the Trustee for the giving of notice of redemption, if any, by the Trustee at the expense of the Borrower in the same manner as is provided by Section 3.2 hereof;

(2) the Issuer or Borrower has paid, caused to be paid or made arrangements satisfactory to the Trustee for the payment of all other sums due and payable hereunder, including any rebate obligation and Ordinary Fees and Expenses, Issuer Administration Fee and Additional Charges due and owed under the Loan Documents;

(3) if discharge is to be effected under paragraph (B) of subsection (1), the Borrower has delivered to the Trustee and the Issuer a report of an Independent Accountant stating that the payments to be made on any securities, together with the cash, if any, deposited pursuant to paragraph (B) of subsection (1) of this Section 7.1 will be sufficient to pay when due the principal of, premium, if any, and interest on the Bonds to be defeased;

(4) if discharge is to be effected under paragraph (B) of subsection (1) of this Section 7.1, an opinion of Bond Counsel is delivered to the Trustee and the Issuer stating in effect that such discharge will not impair the exclusion of interest on the Bonds from gross income for federal income tax purposes; and

(5) if discharge is to be effected under paragraph (B) of subsection (1) of this Section 7.1, the Borrower has delivered to the Trustee and the Issuer an opinion of Independent Counsel

which opinion may contain, and be subject to, conditions, exceptions or qualifications as are then customarily included in such opinions, to the effect that (i) the Defeasance Collateral has been duly and validly assigned and delivered to the Trustee, (ii) the security interest of the Trustee for the ratable benefit of the Holders, with respect to Defeasance Collateral, is a first priority perfected security interest as security for payment of the Bonds, (iii) making the payment which accompanies such opinion would not constitute an avoidable preference under Section 547 of the Bankruptcy Code or under applicable state law in the event of a filing of a petition for relief under the Bankruptcy Code or such applicable state law by or against the Borrower, and (iv) the Defeasance Collateral would not be part of the bankruptcy estate under Section 541 of the Bankruptcy Code or be subject to the automatic stay under Section 362 of the Bankruptcy Code in the event of a filing of a petition for relief under the Bankruptcy Code by or against the Borrower; then, except as otherwise provided in **Section 7.5** hereof, the rights of the Holders shall be limited to the cash or cash and securities deposited as provided in subsection (1)(A) or (1)(B) of this **Section 7.1**, the rights and interest hereby granted or granted by the Loan Documents to or for the benefit of the Trustee or the Holders shall cease and terminate, and the Issuer and the Trustee shall, at the expense of the Borrower and upon the Borrower's request, execute and deliver such instruments of satisfaction and transfer as may be necessary, and forthwith the estate, right, title and interest of the Trustee and all rights under this Indenture and the Loan Documents (except the moneys or securities or both deposited as required above and rebatable arbitrage and except as may otherwise be provided in **Section 7.5** hereof) shall thereupon be discharged and satisfied; except that in any event the obligations of the Borrower under **Sections 4.3, 7.3, 11.4, 12.16, and 12.17** of the Loan Agreement shall survive.

**Section 7.2.** Cancellation of Surrendered Bonds. The Issuer or the Borrower may at any time surrender to the Trustee for cancellation by the Trustee any Bonds previously authenticated and delivered hereunder which the Issuer or Borrower acquired in any manner whatsoever, and such Bonds, upon such surrender and cancellation, shall be deemed to be paid and retired.

**Section 7.3.** Payment of Bonds. Any Bonds shall be deemed paid if the conditions set forth in **Section 7.1** hereof have been satisfied with respect thereto, even though other Bonds may remain Outstanding.

**Section 7.4.** Application of Deposited Money. All money, securities, and income thereon deposited with the Trustee pursuant to **Section 7.1** hereof for the purpose of paying the principal, premium, if any, and interest on Bonds shall be applied by the Trustee solely for such purpose.

**Section 7.5.** Survival of Certain Provisions. Notwithstanding satisfaction of the conditions set forth in **Section 7.1(1)(B)** hereof, the provisions contained in **Sections 4.7, 4.8, and 5.6** hereof shall survive the discharge of this Indenture pursuant to **Section 7.1(1)(B)** hereof.

## ARTICLE 8

### DEFAULT PROVISIONS AND REMEDIES

**Section 8.1.** Events of Default. Subject to the provisions of **Section 8.10** hereof and the cure period set forth below, each of the following events is hereby defined as and declared to be and to constitute an Event of Default (whatever the reason for such an Event of 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):

(1) Failure to make payment of any interest on any Outstanding Bond other than a Subordinated Bond on the due date thereof; or

(2) Failure to make payment of the principal or purchase price of any Outstanding Bond other than a Subordinated Bond, on the stated maturity thereof, on the date fixed for redemption or purchase thereof or upon acceleration, or failure to timely pay any redemption premium, if any, on the Bonds other than Subordinated Bonds; or

(3) Failure to pay any other moneys required to be paid to the Trustee due on the Bonds otherwise under the provisions of this Indenture and such default shall have continued for a period of five (5) days after written notice thereof, specifying such default, shall have been given by the Trustee to the Issuer and the Borrower, or to the Issuer, the Borrower and the Trustee by the Holders of not less than 25% in aggregate principal amount of the Bonds then Outstanding; or

(4) Failure by Issuer to perform or observe any other of the covenants, agreements, or conditions on the part of the Issuer contained in this Indenture or in the Bonds, and such default shall have continued for a period of thirty (30) days after written notice thereof given in the manner provided in clause (3) above; or

(5) The occurrence of any Event of Default under the Loan Agreement.

The Trustee shall provide the Bondholder Representative, the Holders, the Borrower, and the Issuer notice of any Event of Default as provided in **Section 9.3** hereof.

If no Bonds other than Subordinated Bonds are Outstanding, the Events of Default stated in clauses (1) and (2) above shall be construed as applicable to any Subordinated Bonds then Outstanding.

**Section 8.2.** Acceleration. The Trustee shall upon written direction of the Bondholder Representative, following the occurrence of an Event of Default and by notice in writing delivered to the Issuer and the Borrower, declare the principal of all of the Bonds Outstanding and the unpaid interest accrued thereon immediately due and payable. The Trustee shall give notice of acceleration to Holders in the same manner as notice of redemption is given under **Section 3.2**

hereof (except as to the timing thereof) stating the accelerated date upon which the Bonds are due and payable, provided that the Trustee shall not be required to delay the effective date of acceleration until such notice is given.

**Section 8.3.** Remedies. (1) During the continuance of an Event of Default, the Trustee shall only take such actions as the Bondholder Representative shall direct (subject to receipt of indemnity acceptable to it pursuant to **Section 9.1** hereof) to enforce any and all rights available to the Issuer (other than the Unassigned Issuer's Rights) or Holders under this Indenture, the Loan Agreement, the Regulatory Agreement, and the Mortgage or otherwise, and, in this regard, is specifically authorized to transfer funds from any Fund created pursuant to **Article 5** hereof (except rebatable arbitrage whether or not deposited in the Rebate Fund), and moneys held in trust for the payment of principal, premium, purchase price, or interest with respect to the Bonds which has matured or otherwise become payable prior to such Event of Default to the Bond Fund for its use in paying principal and interest on the Bonds. The Bondholder Representative may take any such action for and on behalf of the Trustee.

(2) No remedy by the terms of this Indenture conferred upon or reserved to the Trustee (or the Holders) is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative and shall be in addition to any other remedy (i) given to the Trustee or to the Holders hereunder or (ii) now or hereafter existing at law or in equity or by statute.

(3) No delay or omission to exercise any right or power accruing upon any Event of Default shall impair any such right or power or shall be construed to be a waiver of any such Event of Default, or acquiescence therein; and every such right and power may be exercised from time to time and as often as may be deemed expedient.

(4) No waiver of any Event of Default hereunder, whether by the Trustee or the Holders, shall extend to or shall affect any subsequent Event of Default or impair any rights or remedies consequent thereon (and in any event no waiver of an Event of Default shall be effective unless joined in or consented to by the Bondholder Representative).

**Section 8.4.** Direction of Proceedings by Bondholder Representative. Anything in this Indenture to the contrary notwithstanding, but subject to the Unassigned Issuer's Rights, the Bondholder Representative shall have the right, at any time, by an instrument or instruments in writing executed and delivered to the Trustee and subject to receipt by the Trustee of indemnity acceptable to it pursuant to **Section 9.1** hereof, to direct the method, time, and place of conducting all proceedings to be taken in connection with the enforcement of the terms and conditions of this Indenture, the Loan Agreement, the Regulatory Agreement, and the Mortgage or for the appointment of a receiver or any other proceedings hereunder, provided that such direction shall not be otherwise than in accordance with the provisions of law and of this Indenture, the Loan Agreement, the Regulatory Agreement, and the Mortgage.

**Section 8.5.** Waiver of Stay or Extension Laws. Upon the occurrence of an Event of Default, to the extent that such rights may then lawfully be waived, neither the Issuer nor anyone claiming through it or under it shall or will set up, claim, or seek to take advantage of any

appraisal, valuation, stay, extension, or redemption laws now or hereafter in force, in order to prevent or hinder the enforcement of this Indenture, but the Issuer, for itself and all who may claim through or under it, hereby waives to the extent that it lawfully may do so the benefit of all such laws and all right of appraisal and redemption to which it may be entitled under the laws of the State.

**Section 8.6.** Priority of Payment and Application of Moneys. All Bonds issued hereunder and secured hereby shall be equally and ratably secured by and payable from the Bond Fund, without priority of one Bond over any other, except payment of any Subordinated Bond shall be subordinate to payment of the Bonds other than Subordinated Bonds and as otherwise expressly provided herein. During the continuation of an Event of Default, all moneys collected pursuant to action taken under the Loan Agreement, the Regulatory Agreement, or the Mortgage (other than sums payable directly to the Issuer in connection with Unassigned Issuer's Rights), after payment of the costs and expenses (including court costs and reasonable attorneys' fees) of the proceedings resulting in the collection of such moneys (including any such costs and expenses incurred by the Issuer) and of the expenses, liabilities, and advances (provided that the Trustee shall not be required to make any advances, as set forth in **Section 9.1(12)** hereof) incurred or made by the Trustee, and any amounts needed to be deposited into the Rebate Fund, and after any other prior application of such moneys has been made as is required by law, or required or permitted by the Loan Documents, shall be deposited in such Fund or Funds described in **Article 5** hereof as the Trustee deems appropriate; and all moneys in the Bond Fund and, at the discretion of the Trustee except when otherwise required hereunder, any other Fund described in **Article 5** hereof (except rebatable arbitrage, whether or not deposited in the Rebate Fund, and moneys held in trust for the payment of principal, premium, purchase price or interest with respect to Bonds which have matured or otherwise become payable prior to such Event of Default) shall be applied as follows:

(1) Subject to direction by the Bondholder Representative pursuant to the Agreement, unless the principal of all the Bonds other than Subordinated Bonds shall have become or shall have been declared due and payable, all such moneys shall be applied:

FIRST: To reimburse and/or pay to the Trustee in full for costs, expenses, and fees (including, without limitation, all amounts payable as Additional Charges pursuant to the Loan Agreement). Notwithstanding any right of the Bondholder Representative to change the payment priority, the Trustee shall still be paid in full for costs, expenses and fees;

SECOND: To the payment to the persons entitled thereto of first all installments of interest and late payment charges, if any, then due on the Bonds other than Subordinated Bonds other than interest which has become payable prior to such Event of Default and moneys for the payment of which are held in trust pursuant to the provisions of this Indenture, in the order of the maturity of the installments of such interest and, if the amount available shall not be sufficient to pay in full any particular installment, then to the payment ratably, according to the amounts due on such installment, to the persons entitled thereto, without any discrimination or privilege, and second unpaid principal on the Bonds other than Subordinated Bonds which shall have become due (other than Bonds which have matured or have otherwise become payable prior to such Event of Default and moneys for

the payment of which are held in trust pursuant to the provisions of this Indenture) in the order of their due dates and, if the amount available shall not be sufficient to pay in full the unpaid principal on such Bonds due on any particular due date, then to the payment ratably, according to the amount of principal due on such date, to the persons entitled thereto; and

THIRD: To reimburse and/or pay to the Issuer in full for costs, expenses or fees (including without limitation, the Issuer Administration Fee and all amounts payable as the Additional Charges pursuant to the Loan Agreement) not described in the first unnumbered paragraph of this **Section 8.6**; and

FOURTH: To pay, first, interest and late payment charges, if any, on Subordinated Bonds then due, other than interest which has become payable prior to such Event of Default and moneys for the payment of which are held in trust pursuant to the provisions of this Indenture, and, if the amount available shall not be sufficient to pay in full any particular installment, then to the payment ratably, according to the amounts due on such installment, to the persons entitled thereto, without any discrimination or privilege and, second, unpaid principal on Subordinated Bonds which shall have become due (other than Subordinated Bonds which have matured or have otherwise become payable prior to such Event of Default and moneys for the payment of which are held in trust pursuant to the provisions of this Indenture) in the order of their due dates and, if the amount available shall not be sufficient to pay in full the unpaid principal on such Subordinated Bonds due on any particular due date, then to the payment ratably, according to the amount of principal due on such date, to the persons entitled thereto; and

(2) If the principal of any Bonds shall have become due or shall have been declared due and payable, all such moneys shall be applied first to reimburse and/or pay to the Trustee in full for costs, expenses, or fees (including, without limitation, all amounts payable as Additional Charges pursuant to the Loan Agreement) not described in the first unnumbered paragraph of this **Section 8.6**, second to the payment of the principal, interest, and late payment charges, if any, on the Bonds, other than principal and interest which has become payable prior to such Event of Default and moneys for the payment of which are held in trust pursuant to the provisions of this Indenture, without preference or priority of principal over interest or of interest over principal, or of any installment of interest over any other installment of interest, or of any Bond over any other Bond (other than Subordinated Bonds) of the same series, ratably, according to the amounts due respectively for principal and interest to the persons entitled thereto, without any discrimination or privilege; third to reimburse the Issuer for any portion of the Issuer Administration Fee or any Additional Charges not described in the first unnumbered paragraph of this **Section 8.6**; and fourth to pay interest and principal of the Subordinated Bonds other than principal, interest, and late payment charges, if any, which has become payable prior to such Event of Default and moneys for the payment of which are held in trust pursuant to the provisions of this Indenture, without preference or priority of principal over interest or of interest over principal, or of any installment of interest over any other installment of interest, or of any Subordinated Bond over any other Subordinated Bond of the same series, ratably, according to the amounts due respectively for principal and interest to the persons entitled thereto, without any discrimination or privilege.

(3) If the principal of any Bonds shall have been declared due and payable, and if such declaration shall thereafter have been rescinded and annulled for all Bonds under the provisions of this **Article 8**, then, subject to the provisions of paragraph (2) of this **Section 8.6** in the event that the principal of any Bonds shall later become due or be declared due and payable, the moneys shall be applied in accordance with the provisions of paragraph (1) of this **Section 8.6**.

Whenever moneys are to be applied by the Trustee pursuant to the provisions of this **Section 8.6**, such moneys shall be applied by it at such times, and from time to time, as the Trustee shall determine, having due regard for the amount of such moneys available for application and the likelihood of additional moneys becoming available for such application in the future. Whenever the Trustee shall apply such funds, it shall (i) fix the date (which shall be a Payment Date unless it shall deem another date more suitable) upon which such application is to be made and upon such date interest on the amounts of principal to be paid on such dates shall cease to accrue and (ii) on or before such date set aside the moneys necessary to effect such application. The Trustee, at the expense of the Borrower, shall give to the Holders mailed notice of the deposit with it of any such moneys and of the fixing of any such date. Neither the Trustee nor any Paying Agent shall be required to make payment of principal or redemption premium to the Holder of any Bond until such Bond shall be presented to the Trustee for appropriate endorsement or for cancellation if fully paid.

Whenever all Bonds and premium and interest and late payment charges, if any, thereon have been paid or provided for under the provisions of this **Section 8.6**, all expenses and charges of the Trustee and the Issuer have been paid and rebatable arbitrage has been paid or provided for, any balance remaining shall be paid to the person entitled to receive the same pursuant to **Section 5.11** hereof.

**Section 8.7.** Remedies Vested in the Trustee. All rights of action (including the right to file proof of claims) under this Indenture or under any of the Bonds may be enforced by the Trustee without the possession of any of the Bonds or the production thereof in any trial or other proceedings relating thereto, and any such suit or proceeding instituted by the Trustee shall be brought in its name as the Trustee without the necessity of joining as plaintiffs or defendants any Holders, and any recovery or judgment shall be first for the equal benefit of the Holders of the Outstanding Bonds and second for the equal benefit of the Holders of the Outstanding Subordinated Bonds, to the extent and in the manner provided herein. The Issuer and Trustee hereby agree, without in any way limiting the effect and scope thereof, that the pledge and assignment hereunder to the Trustee of all rights included within the Trust Estate shall constitute an agency appointment coupled with an interest on the part of the Trustee which, for all purposes of this Indenture, shall be irrevocable and shall survive and continue in full force and effect notwithstanding the bankruptcy or insolvency of the Issuer or its default hereunder or on the Bonds.

**Section 8.8.** Rights and Remedies of Holders. No Holder shall have any right to institute any suit, action or proceeding in equity or at law for the enforcement of this Indenture or any Loan Document or for the execution of any trust hereof or any remedy hereunder or thereunder or for the appointment of a receiver, unless: (i) a default thereunder shall have become an Event of Default and the Bondholder Representative shall have made written request to the Trustee and

shall have offered it reasonable opportunity either to proceed to exercise the powers hereunder granted or to institute such action, suit, or proceeding in its own name; (ii) the Bondholder Representative shall have offered furnished indemnity in an amount satisfactory to the Trustee as provided in **Section 9.1** hereof; and (iii) the Trustee shall thereafter fail or refuse to exercise within sixty (60) days the remedies hereunder granted, or to institute such action, suit or proceeding in its own name. Such notification, request, and furnishing of indemnity are hereby declared in every such case at the option of the Trustee to be conditions precedent to the execution of the powers and trusts of this Indenture, and to any action or cause of action for the enforcement of this Indenture or any Loan Document, or for the appointment of a receiver or for any other remedy hereunder; it being understood and intended that no one or more Holders shall have any right in any manner whatsoever to affect, disturb, or prejudice the lien of this Indenture or any Loan Document, by its, his, her, or their action or to enforce any right thereunder except in the manner herein provided, and that all proceedings at law or in equity shall be instituted, had, and maintained in the manner herein provided and for the equal benefit of the Holders of all Bonds then Outstanding (subject to the provisions hereof as to subordination of Subordinated Bonds); provided, however, that nothing herein shall be construed to preclude any Holder from enforcing, or impair the right of any Holder to enforce, the payment by the Trustee of principal of, and interest and premium, if any, on any Bond of such Holder at or after its date of maturity, if and to the extent that such payment is required to be made to such Holder by the Trustee from available funds in accordance with the terms hereof.

**Section 8.9.** Termination of Proceedings. In case the Trustee shall have proceeded to enforce any right under this Indenture or any Loan Document by the appointment of a receiver, by entry and possession, or otherwise, and such proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely to the Trustee, then and in every such case the Issuer and the Trustee shall be restored to their former positions and rights hereunder with respect to the property herein conveyed, and all rights, remedies, and powers of the Trustee shall continue as if no such proceedings had been taken.

**Section 8.10.** Waiver of an Event of Default. The Trustee shall waive any Event of Default hereunder and its consequences and shall rescind any declaration of acceleration of maturity or principal, upon written direction of the Bondholder Representative.

**Section 8.11.** Defaults and Remedies for Holders of Subordinated Bonds. As long as any Bonds other than Subordinated Bonds are Outstanding, the Trustee shall not, without the prior written authorization and direction of the Bondholder Representative, declare a default with respect to the Subordinated Bonds or otherwise enforce the provisions hereof relating to the Subordinated Bonds. The Holders of the Subordinated Bonds, by acceptance thereof, expressly agree to and acknowledge that until the conditions set forth in the preceding sentence are met, (x) whether or not the Issuer or the Borrower is insolvent, no payments will be made on the Subordinated Bonds, if the Trustee does not hold sufficient moneys in the Interest Account, Principal Account, or the Redemption or Purchase Account of the Bond Fund to make payments then due with respect to Bonds other than Subordinated Bonds then Outstanding and (y) no Holder of an Subordinated Bond will institute against, or join any other person in instituting against, the Issuer, the Borrower, or the General Partner, or any affiliate of any of them under any bankruptcy,



reorganization, arrangement, insolvency, or liquidation proceeding, or other collection or enforcement proceeding under any law, until the date on which no Bonds other than Subordinated Bonds remain Outstanding.

(i) Upon any distribution of all or any part of the property or assets of the Borrower,

(A) in the event of any insolvency or bankruptcy case or proceeding, or any receivership, liquidation, reorganization, or other similar case or proceeding in connection therewith, relative to the Borrower or to any of its creditors, as such, or to its assets;

(B) in the event of any liquidation, dissolution, or other winding up of the Borrower, whether voluntary or involuntary and whether or not involving insolvency or bankruptcy;

(C) in the event of any assignment for the benefit of creditors or any other marshaling of assets and liabilities of the Borrower; or

(D) in any manner inconsistent with the provisions of Section 2.13 hereof and this Section 8.11;

then in any such event the Holders of the Bonds other than Subordinated Bonds shall receive payment in full of all amounts due or to become due (whether or not an Event of Default has occurred or the Bonds have been declared due and payable prior to the date on which they would otherwise have become due and payable) on or in respect of the Bonds other than Subordinated Bonds, including any post-petition interest thereon (whether or not such interest is an allowable claim under any applicable Federal or state bankruptcy law) before the Holders of the Subordinated Bonds are entitled to receive any moneys.

(ii) If any proceeding or event referred to in subsection (i) above is commenced by or against or occurs relating to the Borrower, (A) the Bondholder Representative is hereby irrevocably authorized and empowered (in its own name or in the name of the Issuer or any Holder), but shall have no obligation to, demand, sue for, collect and receive every payment or distribution referred to in subsection (i) or otherwise seek judicial enforcement of the Bonds and take such action as it may deem necessary or advisable for the exercise or enforcement of any of the rights or interest of the Bondholder Representative, the Issuer, or the Holders, provided that the Bondholder Representative shall apply all proceeds received in the manner required by this Indenture; and (B) the Trustee shall duly and promptly take such action as the Bondholder Representative may request (x) to collect all payments made on account of the Subordinated Bonds (in which case the proceeds so collected shall be applied as provided in (i) above), (y) to execute and deliver to the Bondholder Representative such instruments as the Bondholder Representative may request with respect to the Subordinated Bonds and (z) to collect and receive any and all payments or distributions which may be payable or deliverable with respect to the Subordinated Bonds.

(iii) If any payments are received by the Holders of Subordinated Bonds on account of the Subordinated Bonds contrary to the provisions hereof, such payments shall be held in trust by such Holders for the Trustee's benefit and the benefit of Holders of Bonds other than Subordinated Bonds and shall be delivered to the Trustee in kind, to be applied to, or held as collateral for, the payment of the Bonds other than Subordinated Bonds to the extent of amounts due and payable on such Bonds and all other amounts due hereunder and under the Loan Agreement.

Subject to the forgoing and upon satisfaction of all conditions contained in Section 2.13 hereof and this Section 8.11, Events of Default with respect to Subordinated Bonds shall include all Events of Default set forth in Section 8.1 hereof after substituting "*Subordinated Bonds*" for "*Bonds other than Subordinated Bonds*" each place such term occurs and Holders of Subordinated Bonds shall have all rights and remedies set forth in Sections 8.2 through and including 8.10 hereof after substituting "*Subordinated Bonds*" for "*Bonds other than Subordinated Bonds*" each place such term occurs.

## ARTICLE 9

### THE TRUSTEE

Section 9.1. Acceptance of the Trustee. The Trustee, prior to the occurrence of an Event of Default and after the curing of all Events of Default that may have occurred, undertakes to perform such duties and only such duties as are specifically set forth in this Indenture; and no implied covenants or obligations shall be read into this Indenture against the Trustee. In case an Event of Default has occurred, the Trustee agrees to follow the instructions of the Bondholder Representative as provided herein and shall be accountable only for the failure to follow such instructions or, in absence of such instructions during the continuance of an Event of Default, to exercise such of the rights and powers vested in it by this Indenture, and use the same degree of care in their exercise as a prudent person would exercise or use under the circumstances in the conduct of his or her own affairs, but in any event, only upon and subject to the following express terms and conditions:

(1) The Trustee may execute any of the trusts or powers hereof and perform any of its duties by or through attorneys, accountants, agents, receivers or employees, including, but not limited to, the duties set forth in Section 5.8 hereof, and shall not be liable for any misconduct or negligence on the part of any agent or attorney appointed with due care, and shall be entitled to advice of counsel concerning all matters of trusts hereof and duties hereunder, and may in all cases pay such reasonable compensation to any attorney, accountant, agent, or receiver retained or employed by it in connection herewith and shall be entitled to reimbursement from the Borrower for such payment. The Trustee may act upon the written opinion or written advice of any attorney, surveyor, engineer, or accountant selected by it in the exercise of reasonable care or, if selected or retained by the Issuer, acceptable to the Trustee in the exercise of such care, provided that the only legal advice or opinion that the Trustee may rely upon for purposes of securing advice or an opinion relating to the exclusion from gross income for federal income tax purposes of interest on the Bonds is advice or an opinion given by Bond Counsel. The Trustee shall

not be responsible for any loss or damage resulting from any action in reliance upon such legal opinion or advice.

(2) The Trustee shall not be responsible for any recital herein, or in the Bonds or for the investment of moneys as herein provided (except as provided in Section 6.1 or Section 6.3 hereof), or for collecting any property insurance proceeds, or for the validity of the execution by the Issuer of this Indenture, or of any supplemental indentures or instruments of further assurance, or for the sufficiency of any security for the Bonds, or for the value of title of the property herein conveyed, if any, or otherwise as to the maintenance of the security hereof; except as otherwise provided in Section 4.4 hereof and except that in the event the Trustee enters into possession of a part or all of the property conveyed pursuant to any provisions of this Indenture or the Mortgage, it shall use due diligence in preserving such property. The Trustee may, but shall be under no duty to, require of the Borrower full information and advice as to the performance of the covenants, conditions, and agreements in the Loan Agreement, the Regulatory Agreement, and the Mortgage as to the condition of any Mortgaged Property and the performance of all other obligations thereunder.

(3) The Trustee shall not be accountable for the use or application of any of the Bonds or the proceeds thereof (except as herein expressly provided) or for the use or application of any money paid over by the Trustee in accordance with the provisions of this Indenture or for the use and application of money received by any Paying Agent or for money not controlled by the Trustee. The Trustee may become the owner of Bonds secured hereby with the same rights it would have if it were not the Trustee.

(4) The Trustee shall be protected in acting in accordance with the standard of care otherwise required hereunder upon any written notice, order, requisition, request, consent, certificate, opinion (including an opinion of Independent Counsel or Bond Counsel), affidavit, letter, telegram, or other paper or document believed by it in good faith to be genuine and correct and to have been signed or sent by the proper person or persons, and the Trustee shall be under no duty to make an investigation or inquiry into any statement contained therein. Any action taken by the Trustee pursuant to this Indenture upon the request or authority or consent of any person who at the time of making such request or giving such authority or consent is the Holder of any Bond, shall be conclusive and binding upon all future Holders of the same Bond and upon Bonds issued in exchange therefor, upon transfer thereof, or in place thereof.

(5) As to the existence or non-existence of any fact or as to the sufficiency or authenticity of any instrument, paper, or proceeding, the Trustee shall be entitled to rely upon a certificate of the Issuer signed by its Representative as sufficient evidence of the facts stated therein as the same appear from the books and records under the Secretary's or the Assistant Secretary's custody or control or are otherwise known to such officer. The Trustee may accept a certificate of the Secretary or the Assistant Secretary of the Issuer to the effect that a motion, resolution, or ordinance in the form therein set forth has been adopted by the governing body of the Issuer as conclusive evidence that such motion or

resolution has been duly adopted, and is in full force and effect, and may accept such motion, resolution, or ordinance as sufficient evidence of the facts stated therein and the necessity or expediency of any particular dealing, transaction or action authorized or approved thereby, but may at its discretion secure such further evidence deemed necessary or advisable, but shall in no case be bound to secure the same.

(6) The Trustee shall not be personally liable for any debts contracted or for damages to persons or to personal property injured or damaged, or for salaries or nonfulfillment of contracts during any period in which it may be in possession of or managing the real and tangible personal property as in this Indenture provided.

(7) Upon the occurrence and continuance of an Event of Default at any and all reasonable times, the Trustee, and its duly authorized agents, attorneys, experts, engineers, accountants, and representatives, shall have the right fully to inspect any and all of the property comprising the Mortgaged Property, and all books, papers, and records of the Issuer pertaining to the Mortgaged Property and the Bonds, and to photocopy such memoranda from and with regard thereto as may be desired.

(8) The Trustee shall not be required to give any bond or surety with respect to the execution of said trusts and powers or otherwise with respect to the premises.

(9) Notwithstanding anything contained elsewhere in this Indenture, the Trustee shall have the right, but shall not be required, to demand, with respect to the authentication of any Bonds, the withdrawal of any cash, other than as required expressly by the terms hereof, the release of any property or any action whatsoever within the purview of this Indenture, any showings, certificates, opinions (including opinions of Independent Counsel), appraisals, environmental reports, or other information, or corporate action or evidence thereof, in addition to that by the terms hereof required as a condition of such action by the Trustee, deemed desirable for the purpose of establishing the right of the Issuer to the authentication of any Bonds, the withdrawal of any cash, the release of any property, or the taking of any other action by the Trustee.

(10) Neither the Issuer nor the Sponsor shall be liable for the payment of sums due hereunder or for providing for the indemnification of the Trustee.

(11) Notwithstanding any provision of this Indenture to the contrary, before taking any action hereunder, the Trustee may require that it be furnished indemnity satisfactory to it for the reimbursement of all expenses to which it may be put and to protect it against all liability (except liability which is adjudicated to have resulted from the negligence or willful misconduct of the Trustee) by reason of any action so taken by the Trustee.

(12) No provision of this Indenture or any Loan Document shall require the Trustee to expend or risk its own funds, make advances, or otherwise incur any financial

liability in the performance of any of its duties, or the exercise of its rights and powers hereunder.

(13) Notwithstanding anything to the contrary contained in this Indenture, in the event the Trustee is entitled or required to commence an action or otherwise exercise remedies to acquire control or possession of any or all of the Project under, but not limited to, the provisions of the Mortgage, the Trustee shall not be required to commence any such action or exercise any such remedy if the Trustee has determined in good faith that it may incur liability under an Environmental Law (as defined below) as the result of the presence at, or release on or from the Project of any Hazardous Substances unless the Trustee has received security or indemnity, from a person, in an amount and in a form all satisfactory to the Trustee in its sole discretion, protecting the Trustee from all such liability. To determine if it may incur liability under an Environmental Law, the Trustee, with the consent of the Bondholder Representative (which consent shall not be unreasonably withheld) may (but shall not be required to) obtain (at Borrower's expense) an appropriate environmental study with respect to the Project. The term "*Environmental Laws*" shall mean all federal, state, and local environmental, land use, zoning, health, chemical use, safety and sanitation laws, statutes, ordinances, and codes relating to the protection of the environment or governing the use, storage, treatment, generation, transportation, processing, handling, production, or disposal of Hazardous Substances and the rules, regulations, policies, guidelines, interpretations, decisions, orders, and directives of federal, state, and local governmental agencies and authorities with respect thereto.

(14) The Trustee is under no obligation to monitor the receipt of rents by the Borrower.

(15) The Trustee shall not be deemed to have notice of any Event of Default under subsections (3), (4), and (5) of Section 8.1 hereof unless the Trustee or a Responsible Agent has actual knowledge or shall be specifically notified in writing of such Event of Default by the Issuer, the Bondholder Representative, the Borrower, or the Holders of at least fifty-one percent (51%) in aggregate principal amount of Bonds Outstanding, delivered to the Trustee at the Principal Office of the Trustee, and, in the absence of such notice so delivered, the Trustee may conclusively assume there is no such Event of Default.

(16) The Trustee will not be liable for any error in judgment made in good faith by a Responsible Agent, unless it is proven that the Trustee was negligent in ascertaining the pertinent facts.

(17) Except during the continuance of an Event of Default, and unless expressly provided in this Indenture, the Regulatory Agreement, or in the Mortgage, the Trustee does not have a duty or obligation to ascertain or inquire as to the performance or observance of any covenants, conditions, or agreements on the part of the Issuer or on the part of the Borrower in such agreements.

(18) The permissive rights of the Trustee under this Indenture shall not be construed as duties of the Trustee.

(19) The Trustee shall not be liable for any action taken or omitted to be taken in accordance with the direction of the Bondholder Representative.

(20) The Trustee's right to immunities and protection from liability hereunder will survive its resignation or removal and the final payment or defeasance of the Bonds.

**Section 9.2.** The Trustee's Fees, Charges, and Expenses. (1) The Trustee and any Paying Agent shall be entitled to payment and/or reimbursement for Ordinary Fees and Expenses and, following the occurrence of an Event of Default, all advances, counsel fees, and other expenses reasonably made or incurred by the Trustee in and about the execution of the trusts created by this Indenture in connection with the Event of Default and in and about the exercise and performance of the powers and duties of the Trustee hereunder in connection with the Event of Default and for the reasonable and necessary costs and expenses incurred in defending any liability in the premises of any character whatsoever (unless such liability is adjudicated to have resulted from the negligence or willful misconduct of the Trustee or Paying Agent) in connection with the Event of Default. In this regard, provisions have been made in **Section 4.3** of the Loan Agreement for the payment of said fees, advances, counsel fees, costs, and expenses, and reference is hereby made to the Loan Agreement for the provisions so made; and the Issuer shall not otherwise be liable for the payment of such sums.

(2) As security for the performance of the Borrower's obligations under this **Section 9.2** and under the Loan Agreement to pay the Trustee its fees and expenses as provided herein and therein, during the occurrence and continuance of an Event of Default, the Trustee shall have a lien, prior to the lien securing the Bonds, which it may exercise through a right of set off, upon all property or funds held or collected by the Trustee pursuant to this Indenture (other than the Rebate Fund); provided, however, nothing contained in this sentence shall in any way affect the right of the Bondholder Representative to give directions to the Trustee as provided herein (or the application of any amounts set off which shall be as provided in **Section 8.6**). The obligations of the Borrower to make the payments described in this **Section 9.2** shall survive discharge of this Indenture, the resignation or removal of the Trustee, and payment in full of the Bonds.

(3) The compensation of the Trustee shall not be limited by any provision of law which limits the compensation of a Trustee of an express trust.

(4) When the Trustee incurs expenses or renders services in connection with any bankruptcy or insolvency proceeding, such expenses (including the fees and expenses of its counsel) and the compensation for such services are intended to constitute expenses of administration under any bankruptcy law or law relating to creditors rights generally.

**Section 9.3.** Notice to Holders of Default. The Trustee (at the direction of the Bondholder Representative) or, in the alternative, the Bondholder Representative shall give to the Borrower, the Investor Member, the Holders, and the Issuer written notice of all Events of Default known to

the Trustee, within five (5) days after the Trustee has actual knowledge or receives written notice of such Event of Default. The failure of the foregoing persons to receive such notice or failure of the Trustee to give such notice shall not affect any of the proceedings under **Article 8** hereof.

**Section 9.4.** Intervention by the Trustee. In any judicial proceeding to which the Issuer is a party and which in the opinion of the Trustee and its counsel has a substantial bearing on the interests of Holders, the Trustee may intervene on behalf of Holders and shall, subject to being indemnified as provided herein, so do if requested in writing by the Bondholder Representative. The rights and obligations of the Trustee under this Section are subject to the approval of a court of competent jurisdiction in the premises.

**Section 9.5.** Successor Trustee. Any corporation, association, or agency into which the Trustee may be converted or merged, or with which it may be consolidated, or to which it may sell or transfer its corporate trust business and assets as a whole or substantially as a whole, or any corporation or association resulting from any such conversion, sale, merger, consolidation, or transfer to which it is a party, ipso facto, shall be and become successor Trustee and paying agent under this Indenture and vested with all of the title to the Trust Estate, and all the trusts, powers, discretions, immunities, privileges, and all other matters as was its predecessor, without the execution or filing of any instrument or any further act, deed or conveyance on the part of any of the parties hereto, anything herein to the contrary notwithstanding.

**Section 9.6.** Resignation by the Trustee. The Trustee and any successor Trustee may at any time resign from the trusts hereby created by giving thirty (30) days' written notice to the Issuer, the Bondholder Representative, and the Borrower and by first-class mail to each Holder as shown on the Bond Register, and such resignation shall take effect upon the appointment of a successor Trustee as provided in **Section 9.8** hereof. Such notice to the Issuer, the Bondholder Representative, or the Borrower may be served personally or sent by registered or certified mail, or overnight courier. In the event no successor Trustee is appointed, the Trustee may petition a court of competent jurisdiction to appoint a successor Trustee.

**Section 9.7.** Removal of the Trustee. The Trustee may be removed at any time by an instrument or concurrent instruments in writing delivered to the Trustee, Borrower, and/or Issuer, and signed by (i) the Issuer so long as no Event of Default has occurred and is continuing and (ii) the Issuer and the Bondholder Representative during such time as an Event of Default has occurred and is continuing.

**Section 9.8.** Appointment of Successor Trustee. In case the Trustee hereunder shall resign or be removed, or be dissolved or shall be in course of dissolution or liquidation, or otherwise become incapable of acting hereunder, or in case it shall be taken under the control of any public officer or officers, or of a receiver appointed by a court, a successor Trustee may be appointed by the Issuer with the consent of the Bondholder Representative, by an instrument or concurrent instruments in writing signed by the Issuer. Nevertheless, in case of such vacancy the Issuer by resolution of its governing body may appoint a temporary Trustee to fill such vacancy until a successor Trustee shall be approved by the Bondholder Representative in the manner above provided; and any such temporary Trustee so appointed by the Issuer shall immediately and

without further act be superseded by the successor Trustee so approved by the Bondholder Representative. Every such Trustee appointed pursuant to the provisions of this Section 9.8 must be a trust company or bank having trust powers and having a reported capital and surplus not less than \$50,000,000. In the event that 60 days following the resignation or removal of the Trustee, no successor Trustee has been appointed and accepted its obligations under this Indenture, the Trustee shall have the right to petition a court of competent jurisdiction for the appointment of a successor (any costs incurred by Trustee shall be reimbursed in the same manner as other expenses of the Trustee are to be paid under this Indenture).

**Section 9.9.** Acceptance by Successor Trustees. Every successor Trustee appointed hereunder shall execute, acknowledge, and deliver to its predecessor, to the Borrower and also to the Issuer, an instrument in writing accepting such appointment hereunder, and thereupon such successor, without any further act, deed, or conveyance shall become fully vested with all the estates, properties, rights, powers, trusts, duties, and obligations of its predecessors as the Trustee and Paying Agent; but such predecessor shall, nevertheless, on the written request of the Issuer, or of its successor Trustee, execute and deliver an instrument transferring to such successor Trustee all the estates, properties, rights, powers, and trusts of such predecessor hereunder, and every predecessor Trustee shall deliver all securities and moneys held by it as the Trustee hereunder to its successor. Should any instrument in writing from the Issuer be required by any successor Trustee for more fully and certainly vesting in such successor the estates, rights, powers, and duties hereby vested or intended to be vested in the predecessor Trustee, any and all such instruments in writing shall, on request, be executed, acknowledged, and delivered by the Issuer. The resignation of any Trustee and the instrument or instruments removing any Trustee and appointing a successor hereunder, together with all other instruments provided for in this Article, shall be forthwith filed or recorded or both by the successor Trustee in each recording office where this Indenture or the Mortgage shall have been filed or recorded or both.

**Section 9.10.** Right of the Trustee To Pay Taxes and Other Charges. In case any tax, assessment, or governmental or other charge upon any part of the Project is not paid, to the extent, if any, that the same is legally payable, the Trustee may, but shall be under no duty to, pay such tax, assessment, or governmental or other charge, without prejudice, however, to any rights of the Trustee or Holders hereunder arising as a consequence of such failure; and any amount at any time so paid under this Section 9.10, Section 4.3 of the Loan Agreement, or under the Mortgage, with interest thereon as provided in Section 4.3 of the Loan Agreement at the Default Rate, shall be repaid to the Trustee upon demand out of Additional Charges under the Loan Agreement, and shall become so much additional indebtedness secured by this Indenture, and the same shall be given a preference in payment over any of the Bonds, except with respect to the payment of any principal, interest, or premium on the Bonds which is then due but not paid, but the Trustee shall be under no obligation to make such payment of taxes, assessments, or governmental charges unless it shall have been requested to do so by the Bondholder Representative and shall have been provided with adequate indemnity for the purpose of such payment. Any such payment shall be made upon five days' prior written notice to the Borrower unless the delay occasioned by any such written notice could result in the forfeiture or termination of any right.



**Section 9.11.** The Trustee Protected in Relying Upon Resolutions. The resolutions, orders, requisitions, opinions, certificates, and other instruments provided for in this Indenture may be accepted by the Trustee as conclusive evidence of the facts and conclusions stated therein and shall be full warrant, protection, and authority to the Trustee.

**Section 9.12.** Successor Trustee as Custodian of Funds and Paying Agent. In the event of a change in the office of the Trustee, the predecessor Trustee which has resigned or been removed shall cease to be custodian of the Funds described in **Article 5** hereof and shall cease to act as a Paying Agent for principal and interest on the Bonds, and the successor Trustee shall be and become such custodian and a Paying Agent.

**Section 9.13.** Co-Trustee. (1) At any time or times upon the consent of the Bondholder Representative, for the purpose of meeting any legal requirements of any jurisdiction in which any part of the Trust Estate may at the time be located, the Trustee shall have the power to appoint, and, upon the request of the Trustee, the Issuer shall for such purpose join with the Trustee in the execution, delivery, and performance of all instruments and agreements necessary or proper to appoint one or more persons either to act as co-Trustee or co-Trustees, jointly with the Trustee, of all or any part of the Trust Estate, or to act as separate Trustee or separate Trustees of all or any part of the Trust Estate, and to vest in such person or persons, in such capacity, such right to the Trust Estate or any part thereof, and such rights, powers, duties, trusts or obligations as the Trustee may consider necessary or desirable, subject to the remaining provisions of this **Section 9.13**. Every such co-Trustee or separate Trustee appointed pursuant to the provisions of this **Section 9.13** must be a trust company or bank having trust powers and having a reported capital and surplus not less than \$50,000,000, if there be such an institution willing, qualified, and able to accept the trust upon reasonable or customary terms.

(2) The Issuer shall execute, acknowledge, and deliver all such instruments as may be required by any such co-Trustee or separate Trustee for more fully confirming such title, rights, powers, trusts, duties, and obligations to such co-Trustee or separate Trustee.

(3) Every co-Trustee or separate Trustee shall, to the extent permitted by law but to such extent only, be appointed subject to the following terms, namely:

(a) All rights, powers, trusts, duties, and obligations conferred by this Indenture upon the Trustee with respect to the custody, control or management of moneys, papers, securities, and other personal property shall be exercised solely by the Trustee.

(b) All rights, powers, trusts, duties, and obligations conferred or imposed upon the Trustees shall be conferred or imposed upon and exercised or performed by the Trustee, or by the Trustee and such co-Trustee or co-Trustees or separate Trustee or separate Trustees jointly, as shall be provided in the instrument appointing such co-Trustee or co-Trustees or separate Trustee or separate Trustees; provided, however, the Trustee shall remain responsible for exercising all rights and powers, maintaining all trusts and performing all duties and obligations conferred or imposed upon the Trustees, except to the extent that, under the law of any jurisdiction in which any particular act or acts are to

be performed, the Trustee shall be incompetent or unqualified to perform such act or acts, in which event such act or acts shall be performed by such co-Trustee or co-Trustees or separate Trustee or separate Trustees.

(c) Any request in writing by the Trustee to any co-Trustee or separate Trustee to take or to refrain from taking any action hereunder shall be sufficient warrant for the taking, or the refraining from taking, of such action by such co-Trustee or separate Trustee.

(d) Any co-Trustee or separate Trustee may delegate to the Trustee the exercise of any right, power, trust, duty, or obligation, discretionary or otherwise.

(e) The Trustee at any time, by an instrument in writing, may accept the resignation of or remove any co-Trustee or separate Trustee appointed under this **Section 9.13**. Upon the request of the Trustee, the Issuer shall join with the Trustee in the execution, delivery and performance of all instruments and agreements necessary or proper to effectuate such resignation or removal. A successor to any co-Trustee or separate Trustee so resigned or removed may be appointed in the manner provided in this **Section 9.13**.

(f) No Trustee hereunder shall be personally liable by reason of any act or omission of any other Trustee hereunder.

(g) Any demand, request, direction, appointment, removal, notice, consent, waiver, or other action in writing delivered to the Trustee shall be deemed to have been delivered to each co-Trustee or separate Trustee.

(h) Any moneys, papers, securities, or other items of personal property received by any such co-Trustee or separate Trustee hereunder shall forthwith, so far as may be permitted by law, be turned over to the Trustee promptly.

(4) Upon the acceptance in writing of such appointment by any such co-Trustee or separate Trustee, such co-Trustee or separate Trustee shall be vested with such interest in and to the Trust Estate or any part thereof, and with such rights, powers, duties or obligations, as shall be specified in the instrument of appointment jointly with the Trustee (except insofar as local law makes it necessary for any such co-Trustee or separate Trustee to act alone) subject to all the terms of this Indenture. Every such acceptance shall be filed with the Trustee. Any co-Trustee or separate Trustee may, at any time by an instrument in writing, constitute the Trustee its attorney-in-fact and agent, with full power and authority to do all acts and things and to exercise all discretion on its behalf and in its name.

(5) In case any co-Trustee or separate Trustee shall become incapable of acting, resign or be removed, the title to the Trust Estate and all rights, powers, trusts, duties, and obligations of said co-Trustee or separate Trustee shall, so far as permitted by law, vest in and be exercised by the Trustee unless and until a successor co-Trustee or separate Trustee shall be appointed in the manner herein provided.

**Section 9.14.** Obligations as to Reporting. The Trustee shall provide to the Issuer, the Bondholder Representative, and the Borrower monthly reports of the balances in the Funds and the Accounts held under **Article 5** hereof, including summaries of the deposits to and withdrawals from and transfers among such Funds and Accounts.

**Section 9.15.** Appointment of Bond Registrar and Paying Agent. The Issuer at the direction of the Borrower hereby appoints the Trustee as Bond Registrar and Paying Agent under this Indenture.

**Section 9.16.** Successor Paying Agent or Bond Registrar. The provisions of **Sections 9.5** through **9.9** hereof with respect to removal, resignation, and appointment of a successor Trustee shall be equally applicable to the removal, resignation, and appointment of a successor to the Paying Agent and the Bond Registrar. If permissible under applicable law, the Trustee shall be eligible for appointment as successor to the Paying Agent and Bond Registrar if the Trustee is not then already serving in such capacity.

**Section 9.17.** Confirmation of the Trustee. (1) At any time while Bonds remain Outstanding under this Indenture, if the Trustee reasonably questions whether it has proper authority to take certain actions hereunder, the Trustee may proceed in accordance with an opinion of counsel which may be Bond Counsel.

(2) In construing and interpreting this Indenture and any other Loan Document, the objective shall always be to ascertain and effectuate the intention of the parties.

(3) The Trustee or successor Trustee shall not be answerable for actions taken in compliance with any non-appealable final order of the court. The Trustee or successor Trustee shall not be entitled to require an indemnity bond pursuant to **Section 9.1** hereof, prior to taking any action directed by non-appealable final order of the court.

**Section 9.18.** Certain Representations of the Trustee. The Trustee represents that:

(1) The Trustee will take possession of the Note in accordance with the terms of this Indenture in the ordinary course of its business.

(2) The Trustee is a bank which in the ordinary course of its business maintains security accounts for its customers and is acting in that capacity pursuant to the terms of this Indenture and it will maintain the accounts hereunder as custody accounts and shall administer such accounts in the same manner it administers similar accounts established for the same purpose.

(3) The Trustee or a nominee within the control of the Trustee is and will at all relevant times be a "*Member Bank*" (as such term is used in 31 C.F.R. section 115(g)) of the Federal Reserve Bank of New York and maintains a book-entry securities account with the Federal Reserve Bank of New York and is a participant in each clearing corporation (as defined in § 8-102(5) of the Uniform Commercial Code) in which securities are held or

will be held hereunder and any book-entry securities and physical securities in the custody of a clearing corporation credited to the accounts hereunder will be represented in accounts at the book-entry system maintained at the Federal Reserve Bank of New York and the appropriate clearing corporation in the name of the Trustee or its nominee which include only assets held by the Trustee for customers, including, but not limited to, accounts in which the Trustee acts in a fiduciary or agency capacity.

(4) In no event shall the Trustee be responsible or liable for special, indirect, punitive or consequential loss or damage of any kind whatsoever (including, but not limited to, loss of profit) irrespective of whether the Trustee has been advised of the likelihood of any such loss or damage and regardless of the form of action.

(5) The Trustee shall not be liable or responsible for the failure of the Borrower to maintain insurance on the Project as provided in the Loan Agreement, nor shall it be responsible for any loss due to the insufficiency of such insurance or by reason of the failure of any insurer to pay the full amount of any loss against which it may have insured to the Issuer, the Borrower, the Trustee or any other person.

## ARTICLE 10

### SUPPLEMENTAL INDENTURES

**Section 10.1.** Supplemental Indentures Not Requiring Consent of Holders. The Issuer and the Trustee may, from time to time and at any time with the prior written consent of the Bondholder Representative and the Borrower, but without the consent of, or notice to, any of the other Holders, and when so required by this Indenture shall, enter into an indenture or indentures supplemental to this Indenture (which supplemental indenture or indentures shall thereafter form a part hereof), so as to thereby (1) cure any ambiguity or formal defect or omission in this Indenture or in any supplemental indenture, (2) grant to or confer upon the Trustee for the benefit of the Holders any additional rights, remedies, powers, authority, or security that may lawfully be granted to or conferred upon the Holders or the Trustee, (3) more precisely identify the Trust Estate, or any other property which may become a part of the Trust Estate, (4) subject to the lien and pledge of this Indenture additional revenues, properties, or collateral, (5) evidence the appointment of a separate Trustee or a co-Trustee or the succession of a new Trustee, Bond Registrar, or Paying Agent or both hereunder, (6) modify, eliminate, and/or add to the provisions of this Indenture to such extent as shall be necessary to prevent any interest on the Bonds from becoming includable in gross income for federal income tax purposes or to effect the qualification of this Indenture under the Trust Indenture Act of 1939, as then amended, or under any similar federal statute hereafter enacted, and to add to this Indenture such other provisions as may be expressly permitted by said Trust Indenture Act of 1939, as then amended, excluding however the provisions referred to in section 316(a)(2) of said Trust Indenture Act of 1939, as then amended, (7) make any other change which is required by any provision of this Indenture or which is deemed by the Trustee necessary to reconcile this Indenture with the Loan Documents, or any amendments thereto, or (8) make any other change which in the judgment of the Trustee, based upon an opinion of Bond Counsel, is necessary or desirable and will not materially prejudice any Holder.

**Section 10.2.** Supplemental Indentures Requiring Consent of Holders. Exclusive of supplemental indentures covered by **Section 10.1** hereof and subject to the terms and provisions contained in this Section, and not otherwise, the Trustee, upon receipt of an instrument evidencing the consent to the below-mentioned supplemental indenture by the Bondholder Representative or the Holders of not less than 51% of the aggregate principal amount of Bonds Outstanding and the Borrower, shall join with the Issuer in the execution of such other indenture or indentures supplemental hereto as shall be deemed necessary and desirable for the purpose of modifying, altering, amending, adding to, or rescinding, in any particular, any of the terms or provisions contained in this Indenture or in any supplemental indenture; provided, however, that nothing herein contained shall permit or be construed as permitting without the consent of the Holders of 100% of the principal amount of all Bonds adversely affected thereby: (1) an extension of the date when the principal or the interest on or any premium on any Bond is due; (2) a reduction in the principal amount of any Bond or the rate of interest thereon, or any premium; (3) a privilege or priority of any Bond or Bonds over any other Bond or Bonds except as may be otherwise expressly provided herein; (4) a reduction in the aggregate principal amount of the Bonds required for consent to such supplemental indenture; or (5) the modification of any of the provisions of this **Section 10.2.**

If at any time the Issuer shall request the Trustee to enter into any such supplemental indenture for any of the purposes of this **Section 10.2.**, the Trustee shall, upon being satisfactorily indemnified with respect to expenses, cause notice of the proposed execution of such supplemental indenture to be mailed by first class mail, postage prepaid, to the Borrower and the Holders at the addresses shown on the Bond Register. Such notice shall briefly set forth the nature of the proposed supplemental indenture and shall state that copies thereof are on file at the Principal Office of the Trustee for inspection by the Borrower and all Holders. The Trustee shall not, however, be subject to any liability to any Holder by reason of its failure to mail such notice to any particular Holder if notice was generally mailed to Holders, and any such failure shall not affect the validity of such supplemental indenture when consented to and approved as provided in this **Section 10.2.** If the Borrower and the Bondholder Representative or the Holders of not less than the applicable percentage (as referenced above) in aggregate principal amount of the Bonds then Outstanding at the time of the execution of any such supplemental indenture shall have consented to and approved the execution thereof as herein provided, no Holder shall have any right to object to any of the terms and provisions contained herein or the operation thereof, or in any manner to question the propriety of the execution thereof, or to enjoin or restrain the Trustee or Issuer from executing the same or from taking any action pursuant to the provisions thereof. Upon the execution of any such supplemental indenture as in this **Section 10.2** permitted and provided, this Indenture shall be and is deemed to be modified and amended in accordance herewith.

**Section 10.3.** Opinion of Bond Counsel. Any supplemental indenture governed by this Article shall be accompanied by an opinion of Bond Counsel, that such supplemental indenture is permitted hereunder and does not impair the exclusion of interest on the Bonds from gross income for federal income tax purposes.

**Section 10.4.** Rights of the Trustee. The Trustee shall not be obligated to enter into any supplemental indenture which may adversely affect the Trustee's own rights, duties, or immunities

under this Indenture. The Trustee shall not consent to any supplemental indenture referred to in this Article unless it has first received an opinion of Independent Counsel or Bond Counsel that such amendment is authorized or permitted by this Indenture. In executing a supplemental indenture, the Trustee shall be fully protected in relying upon such opinion.

## ARTICLE 11

### AMENDMENTS TO LOAN DOCUMENTS

**Section 11.1.** Amendments Not Requiring Holder Consent. The Issuer or the Trustee or both may, with the prior written consent of the Bondholder Representative, but without the consent of or notice to the Holders, consent to any amendment, change, or modification of any of the Loan Documents:

- (1) which may be required or permitted with the consent of the Bondholder Representative, but without Holder consent, by the provisions of the Loan Documents or this Indenture;
- (2) for the purpose of curing any ambiguity or formal defect or omission;
- (3) in connection with additional land, equipment, or improvements which may be acquired and which constitute a part of the Mortgaged Property, so as to (A) more precisely identify the same, (B) substitute or add additional land or additional equipment, or (C) sell or remove such land or equipment, all as provided in the Mortgage; provided, however, that any such amendment, change, or modification of any of the Loan Documents as provided in this **Section 11.1(3)** shall not be effective until notice of such action is given to the Holders of the Bonds;
- (4) to reconcile any Loan Documents with any amendment or supplement to this Indenture; or
- (5) to effect any other change in a Loan Document which will not materially prejudice any Holder.

**Section 11.2.** Amendments Requiring Holder Consent. Except for (1) amendments, changes, or modifications as provided in **Section 11.1** hereof and (2) amendments, changes, or modifications permitted by any Loan Document, neither the Issuer nor the Trustee shall consent to any other amendment, change, or modification of any Loan Document without the giving of notice and the written approval or consent of the Bondholder Representative or the Holders of not less than fifty-one percent (51%) of the principal amount of the Bonds then Outstanding given and procured as provided in this **Section 11.2**; provided that in no event shall such amendment, change, or modification relieve the Borrower of the obligation under any Loan Documents to make when and as due any payments required for the payment of principal, interest, and any premium due or to become due on the Bonds unless the consent of the Holders of one hundred percent (100%) of the principal amount of all Bonds adversely affected thereby is first secured. If at any time the

Issuer and the Borrower shall request the consent of the Trustee to any such proposed amendment, change, or modification of any Loan Documents to which the Issuer is a party or the Borrower shall request consent of the Trustee to any such proposed amendment, change, or modification of any other Loan Document to which the Issuer is not a party, the Trustee shall, upon being satisfactorily indemnified with respect to expenses, cause notice of such proposed amendment, change, or modification to be given in the same manner as provided in **Section 10.2** hereof with respect to supplemental indentures. Such notice shall briefly set forth the nature of such proposed amendment, change, or modification and shall state that copies of the instrument embodying the same are on file at the Principal Office of the Trustee for inspection by all Holders. The Trustee shall not, however, be subject to any liability to any Holder by reason of its failure to mail such notice to any particular Holder if notice was generally mailed to Holders, and any such failure shall not affect the validity of such amendment, change or modification when consented as provided in this **Section 11.2**. If the Bondholder Representative or the Holders of not less than a majority in aggregate principal amount of the Bonds then Outstanding at the time of the execution of any such amendment shall consent to the execution thereof as herein provided, no Holder of any Bond shall have any right to object to any of the terms and provisions contained therein, or the operation thereof, or in any manner to question the propriety of the execution thereof, or to enjoin or restrain the Trustee or Issuer from executing the same or from taking any action pursuant to the provisions thereof. Upon the execution of any such amendment, the applicable Loan Document thereby amended shall be deemed to be modified and amended in accordance therewith.

**Section 11.3.** Opinion of Bond Counsel. Any amendment governed by this Article shall be accompanied by an opinion of Bond Counsel, addressed to the Issuer and the Trustee and, provided at the expense of the Borrower, that such amendment is permitted hereunder and does not adversely affect the exclusion of interest on the Bonds from gross income for federal income tax purposes.

**Section 11.4.** Rights of the Trustee. The Trustee shall not consent to any amendment referred to in this Article unless it has first received an opinion of Independent Counsel or Bond Counsel that such amendment is authorized or permitted by this Indenture. In consenting to any such amendment, the Trustee shall be fully protected in relying upon such opinion.

## ARTICLE 12

### MISCELLANEOUS PROVISIONS

**Section 12.1.** Consent of Holders. Any consent, request, direction, approval, objection, or other instrument required by this Indenture to be signed and executed by the Holders may be in any number of concurrent writings of similar tenor and must be signed or executed by such Holders in person or by agent appointed in writing. Proof of the execution of any such consent, request, direction, approval, objection, or other instrument or of the writing appointing any such agent and of the ownership of Bonds, if made in the following manner, shall be sufficient for any of the purposes of this Indenture, and shall be conclusive in favor of the Trustee with regard to any action taken by it under such request or other instrument, namely:

(1) The fact and date of the execution by any person of any such writing may be proved by the certificate of any officer in any jurisdiction who by law has power to take acknowledgments within such jurisdiction that the person signing such writing acknowledged before him the execution thereof, or by an affidavit of any witness to such execution; and

(2) The fact of the ownership by any person of Bonds and the amounts and numbers of such Bonds, and the date of the holding of the same, may be proved only by reference to the Bond Register.

**Section 12.2.** Rights Under Indenture. Nothing expressed or mentioned in or to be implied from this Indenture or the Bonds is intended or shall be construed to give any person or company other than the parties hereto, the Borrower, and the Holders, any legal or equitable right, remedy, or claim under or with respect to this Indenture or any covenants, conditions, and provisions herein contained; this Indenture and all of the covenants, conditions, and provisions hereof being intended to be and being for the sole and exclusive benefit of the parties hereto, the Borrower, and the Holders of the Bonds hereby secured as herein provided.

**Section 12.3.** Severability. If any provision of this Indenture 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.

**Section 12.4.** Notices. All notices, certificates, or other communications hereunder 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, electronic mail, or facsimile or (ii) two (2) 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. Notices, except to the Trustee, shall be deemed given when mailed as provided herein. Notices to the Trustee shall be deemed given only when received by the Trustee. All parties identified below may, by written notice given by each to the others, designate any address or addresses to which notices, certificates, or other communications to them shall be sent when required as contemplated by this Indenture. Any notice, 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, certificates, and communications to each of them shall be addressed as follows:



To the Issuer: Austin Housing Finance Corporation  
1000 E. 11<sup>th</sup> 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. 11<sup>th</sup> Street  
Austin, Texas 78702  
Attn: David Potter  
Telephone: 512-974-3100

with copies to: DMA Development Company.  
4101 Parkstone Heights Dr, Suite 310  
Austin, Texas 78746  
Attn: Janine Sisak  
Telephone: 512-328-3232

Coats | Rose  
9 Greenway Plaza, Suite 1100  
Houston, Texas 77046-0307  
Attn: Barry J. Palmer  
Telephone: 713-653-7395

Applegate & Thorne-Thomsen  
626 West Jackson Street  
Suite 400  
Chicago, Illinois 60661  
Attn: Paul Davis, Esq.  
Telephone: 312-491-2205

To the Trustee: BOKF, NA dba Bank of Texas  
801 Cherry Street  
Suite 3325, Unit 27  
Fort Worth, Texas 76102  
Attn: Pamela Black, Senior VP  
Telephone: 817-348-5797

With a copy to: Naman, Howell, Smith & Lee, P.L.L.C.  
8310 Capital of Texas Hwy. N., Suite 490  
Austin, Texas 78731  
Attn: William C. "Cliff" Blount, Esq.

To the initial  
Bondholder Representative: JPMorgan Chase Bank, N.A.  
Community Development Group  
221 West 6<sup>th</sup> Street, Floor 2  
Austin, Texas 78701  
Attn: 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

To the Servicer: Cornerstone Real Estate Advisers  
One Financial Plaza, Suite 1700  
Hartford, CT 06103  
Attn: Robert Biddleman  
Telephone: (860) 509-2367

To Permanent Lender: Cornerstone Permanent Mortgage Fund III, LLC  
c/o Boston Capital Partners  
One Boston Place, 22<sup>nd</sup> Floor  
Boston, MA 02108  
Attn: Sean Curry, Vice President

With a copy to: Holland & Knight  
10 St. James Avenue  
Boston, Massachusetts 02116  
Attn: Suanne C. St. Charles, Esq.

**Section 12.5.** Required Approvals. Consents and approvals required by this Indenture to be obtained from the Borrower, the Issuer, the Bondholder Representative, or the Trustee shall be in writing and shall not be unreasonably withheld or delayed.

**Section 12.6.** Counterparts. This Indenture 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 12.7.**    Limitation of Liability.

(1) No covenant, agreement, or obligation contained herein shall be deemed to be a covenant, agreement, or obligation of any present or future member, officer, employee, or agent of the Issuer or the Sponsor in his/her individual capacity, and neither the members or directors of the Issuer nor any officer thereof 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. No member, officer, employee, or agent of the Issuer or the Sponsor shall incur any personal liability with respect to any other action taken by him pursuant to this Indenture or the Act, provided such member, officer, employee, or agent acts in good faith.

(2) No agreements or provisions contained in this Indenture nor any agreement, covenant, or undertaking by the Issuer contained in any document executed by the Issuer in connection with the Project, or the issuance, sale, and delivery of the Bonds shall give rise to any pecuniary liability of the Issuer or the Sponsor or a charge against the general credit of the Issuer or the Sponsor, or shall obligate the Issuer or the Sponsor financially in any way except as may be payable from the payments by the Borrower under the Loan Agreement or Note and the proceeds of the Bonds and the other amounts held as part of the Trust Estate under this Indenture. No failure of the Issuer to comply with any term, condition, covenant, or agreement herein or in any document executed by the Issuer in connection with the issuance and sale of the Bonds shall subject the Issuer or the Sponsor to liability for any claim for damages, costs, or other financial or pecuniary charge except to the extent that the same can be paid or recovered from the payments by the Borrower under the Loan Agreement or proceeds of the Bonds or the other amounts held as part of the Trust Estate under this Indenture. Nothing herein shall preclude a proper party in interest from seeking and obtaining, to the extent permitted by law, specific performance against the Issuer for any failure to comply with any term, condition, covenant, or agreement herein, provided that no costs, expenses, or other monetary relief shall be recoverable from the Issuer except as may be payable from the Trust Estate or from the proceeds of the Bonds or from the other amounts held as part of the Trust Estate under this Indenture.

(3) No recourse shall be had for the payment of the principal of or premium or interest on any of the Bonds or for any claim based thereon or upon any obligation, covenant, or agreement contained in this Indenture against any past, present or future officer, director, member, employee, or agent of the Issuer or the Sponsor, or of any successor public corporation of the Issuer, as such, either directly or through the Issuer or any successor public corporation, under any rule of law or equity, statute, or constitution or by the enforcement of any assessment or penalty or otherwise, and all such liability of any such officers, directors, members, employees, or agents, as such, is hereby expressly waived and released as a condition of, and consideration for, the execution of this Indenture and the issuance of such Bonds.

(4) Anything in this Indenture to the contrary notwithstanding, it is expressly understood and agreed by the parties hereto that (a) 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 or the Borrower as to the existence of any fact or state of affairs required hereunder to be noticed by the

Issuer; (b) the Issuer shall not be under any obligation hereunder to perform any record keeping or to provide any legal services; and (c) none of the provisions of this Indenture shall require the Issuer to expend or risk its own funds or otherwise incur financial liability in the performance of any of its duties or in the exercise of any of its rights or powers hereunder, unless it shall first have been adequately indemnified to its satisfaction against the cost, expenses, and liability which may be incurred thereby.

(5) Neither the members of the Issuer nor any person executing the Bonds shall be liable personally on the Bonds by reason of the issuance thereof. The Bonds are issued pursuant to the Act, and the Bonds shall so state on their face, and shall state that the Bonds shall not be a debt of the Issuer, the Sponsor, or the State, or any political subdivision thereof; and neither the Issuer, the Sponsor, nor the State nor any political subdivision thereof, shall be liable thereon; nor in any event shall such Bonds or obligations be payable out of any funds or properties other than those of the Issuer identified herein.

**Section 12.8.** Subordination to Extended Use Loan Agreement. The Borrower has informed the Trustee that the Borrower intends that the Project qualify for an allocation of low-income housing tax credits under Section 42 of the Internal Revenue Code ("*Tax Credits*"). In order to receive an allocation of Tax Credits, the Borrower will be required to record in the real property records of Travis County, Texas, an "*extended low-income housing commitment*" (as defined in section 42(h)(6)(B) of the Code) (the "*Extended Use Loan Agreement*"). If requested by the Borrower, the Trustee is directed to execute, or cause to be executed by the appropriate parties a subordination agreement, in form and substance satisfactory to the Trustee and the Bondholder Representative, wherein the lien of the Mortgage is subordinated to the Extended Use Loan Agreement in such manner as is required for Tax Credit purposes.

**Section 12.9.** Governing Law. This Indenture shall be governed by and construed in accordance with the laws of the State of Texas.

**Section 12.10.** Complete Agreement. The Issuer and the Trustee understand that oral agreements or commitments to loan money, extend credit, or forbear from enforcing repayment of a debt, including promises to extend or renew such debt, are not enforceable. To protect the Issuer and the Trustee from misunderstanding, any agreements the Issuer and the Trustee reach covering such matters are contained in this Indenture, which is the complete and exclusive statement of the agreement between the Issuer and the Trustee, except as the Issuer and the Trustee may later agree in writing to modify this Indenture as more particularly provided herein.

[SIGNATURE PAGE FOLLOWS]

Doc #02-426558.3

IN WITNESS WHEREOF, the Issuer has caused this Indenture to be signed in its name and behalf by its duly authorized officer, and to evidence its acceptance of the trusts hereby created, the Trustee has caused this Indenture to be signed in its name and behalf by its duly authorized officer, all as of the date first above written.

AUSTIN HOUSING FINANCE CORPORATION

By: \_\_\_\_\_

Name: David Potter

Title: Manager

BOKF, NA DBA BANK OF TEXAS

By: \_\_\_\_\_

Name: Pamela M. Black

Title: Senior Vice President

**EXHIBIT A**

**(FORM OF REQUISITION CERTIFICATE)**

\_\_\_\_\_ **FUND**

Re: Austin Housing Finance Corporation  
Multifamily Housing Revenue Bonds (Aldrich 51 Apartments)  
Series 2015

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Gentlemen:

You are requested to disburse funds from the \_\_\_\_\_ Fund pursuant to Section \_\_\_\_ of the Indenture and Section \_\_\_\_ of the Loan Agreement in the amount(s), to the person(s) and for the purpose(s) set forth in this requisition (the "*Requisition*"). The terms used in this Requisition shall have the meanings given to those terms in the Trust Indenture (the "*Indenture*"), dated as of November 1, 2015, by and between Austin Housing Finance Corporation, as Issuer, and BOKF, NA dba Bank of Texas, as Trustee, securing the above-referenced Bonds or in the Regulatory Agreement (as defined in the Indenture).

1. REQUISITION NO.: \_\_\_\_\_

2. PAYMENT DUE TO ADDRESS:

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

WIRING INSTRUCTIONS:

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

SPECIAL INSTRUCTIONS:

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

3. AMOUNT OF DRAW REQUESTED (before retainage withheld): \$

LESS RETAINAGE: \$

AMOUNT TO BE DISBURSED: \$

4. The amount requested to be disbursed pursuant to this Requisition will be used to pay or reimburse the Borrower for those Qualified Project Costs detailed in **Schedule I** attached to this Requisition.

5. The undersigned Borrower certifies that:

(i) the amounts included in 3 above were made or incurred or financed and were necessary for the Project and were made or incurred in accordance with the construction contracts, plans, and specifications heretofore in effect;

(ii) the amount paid or to be paid, as set forth in this Requisition, represents a part of the funds due and payable for Qualified Project Costs, such funds were not paid in advance of the time, if any, fixed for payment and such funds are due in accordance with the terms of any contracts applicable to the Project and in accordance with usual and customary practice under existing conditions;

(iii) the expenditures for which amounts are requisitioned represent proper charges against the \_\_\_\_\_ Fund, have not been included in any previous requisition, have been properly recorded on the Borrower's books and are set forth in **Schedule I** attached hereto;

(iv) the moneys requisitioned are not greater than those necessary to meet obligations due and payable or to reimburse the Borrower for its funds actually advanced for Qualified Project Costs and do not represent a reimbursement to the Borrower for working capital;

(v) the amount remaining in the \_\_\_\_\_ Fund, together with expected investment income on the \_\_\_\_\_ Fund, in addition to other funds available to the Borrower for the payment of Qualified Project Costs, will, after payment of the amount requested by this Requisition, be sufficient to pay the costs of completing the Project substantially in accordance with the construction contracts, plans, and specifications and building permits therefor, if any, currently in effect;

(vi) all of the funds being requisitioned are being used in compliance with all tax covenants set forth in the Indenture, the Loan Agreement, and the Regulatory Agreement;

(vii) not less than ninety-five percent (95%) of the sum of:

(A) the amounts requisitioned by this Requisition allocable to Bonds;  
plus

(B) all amounts previously requisitioned and disbursed from the \_\_\_\_\_ Fund allocable to Bonds;

have been or will be applied by the Borrower to pay Qualified Project Costs;



(viii) no event of default exists under the Loan Agreement, the Regulatory Agreement, or the Mortgage and nothing has occurred to the knowledge of the Borrower that would prevent the performance of its obligations under the Loan Agreement, the Regulatory Agreement, or the Mortgage;

(ix) no amounts being requisitioned by this Requisition are to pay or reimburse Costs of Issuance;

(x) to the best of the undersigned's knowledge, there has not been filed with or served upon the Issuer or the Borrower notice of any lien, right, or attachment upon, or claim affecting the right of any such persons, firms, or corporations to receive payment of, the respective amounts stated in this Requisition which has not been released or will not be released simultaneously with the payment of such obligation;

(xi) (A) obligations as stated on this Requisition have been properly incurred, (B) such work was actually performed or such materials or supplies were actually furnished or installed in or about or delivered to the Project, and (C) either such materials or supplies are not subject to any lien or security interest other than the lien evidenced by the Mortgage or any such lien or security interest will be released or discharged upon payment of this Requisition or is being contested by Borrower in accordance with the Loan Documents; and

(xii) all rights, title, and interest to any and all personal property acquired with the proceeds of this Requisition is vested or upon payment therefor will become vested in the Borrower.

**[BORROWER SIG BLOCK]**

Approved this \_\_\_\_\_ day of \_\_\_\_\_,  
201\_.

The Bondholder Representative is not making  
any certification as to the matters certified to  
by the Borrower in this Requisition.

*"Bondholder Representative"*

JPMORGAN CHASE BANK, N.A.

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**EXHIBIT B**

**FORM OF BOND**

THIS BOND IS A RESTRICTED SECURITY AND MAY BE TRANSFERRED ONLY AS PROVIDED HEREIN AND IN THE HEREIN DESCRIBED INDENTURE.

**UNITED STATES OF AMERICA  
STATE OF TEXAS**

**\$ \_\_\_\_\_**

**AUSTIN HOUSING FINANCE CORPORATION  
MULTIFAMILY HOUSING REVENUE BONDS  
(ALDRICH 51 APARTMENTS) SERIES 2015**

No. I- \_\_\_\_\_

THIS BOND IS BEING ISSUED UNDER THE PROVISIONS OF THE TEXAS HOUSING FINANCE CORPORATIONS ACT, CHAPTER 394, TEXAS LOCAL GOVERNMENT CODE, AS AMENDED. THIS BOND AND THE ISSUE OF WHICH IT FORMS A PART ARE NOT GENERAL OBLIGATIONS OF THE ISSUER, BUT ARE LIMITED OBLIGATIONS PAYABLE SOLELY FROM THE MONEYS AND PROPERTIES PLEDGED FOR PAYMENT THEREOF.

INTEREST RATE

MATURITY DATE

DATED DATE

Prior to the Conversion Date,  
at the applicable Construction  
Interest Rate

\_\_\_\_\_, as subject to the  
terms of the Indenture

November 1, 2015

On and after the Conversion  
Date at \_\_\_\_\_% per annum

REGISTERED HOLDER:

JPMORGAN CHASE BANK, N.A.

PRINCIPAL AMOUNT:

\$ \_\_\_\_\_

Austin Housing Finance Corporation (the "Issuer"), a housing finance corporation duly organized and existing under the laws of the State of Texas, and empowered to issue revenue bonds pursuant to the provisions of the Act, for value received, promises to pay to the Registered Holder

B-1

specified above, or registered assigns, but only from the Bond Fund established under the Indenture described below (the "*Bond Fund*") the Principal Amount specified above, on the Maturity Date specified above, or, if this Bond is redeemable as stated below, on a prior date on which it shall have been duly called for redemption, and to pay interest as specified above (and hereafter further provided) on said Principal Amount to the Record Date Holder hereof, as defined below, solely from the Bond Fund, until the Principal Amount is paid or discharged.

Notwithstanding the foregoing, (a) during any period of time that the Note bears interest at the Default Rate, the Bonds shall also bear interest at the Default Rate; and (b) during any period of time that the Note bears interest at the rate described in Section 7.14 of the Loan Agreement, the Bonds shall also bear interest at such after-tax equivalent rate (or the Maximum Lawful Rate, if less). Interest hereon shall accrue from the Bond Closing and shall be calculated on the basis of a 360 day year for the actual number of days elapsed. Interest shall be payable on the fifth (5th) day of each month commencing December 5, 2015, through and including the Conversion Date, and thereafter, principal and interest shall be payable as described in the Indenture (each a "*Payment Date*"). The "*Record Date Holder*" is the person in whose name this Bond is registered (the "*Holder*" hereof) in the Bond Register maintained by BOKF, NA, doing business as Bank of Texas, as Bond Registrar, or its successor either (i) on the close of business on the first (1st) day of the month (whether or not a Business Day) of each Payment Date (the "*Record Date*"), irrespective of any transfer or exchange of such Bond subsequent to such Record Date and prior to such Payment Date, or (ii) if there shall be a default in payment of principal and/or interest due on such Payment Date, at the close of business on a date (the "*Special Record Date*") for the payment of such defaulted principal and/or interest established by notice mailed by the Trustee. Notice of the Special Record Date shall be mailed not less than fifteen (15) days before the Special Record Date, to the Holder at the close of business on the fifth Business Day next preceding the date of mailing. Interest shall be payable by check mailed on the Payment Date to the Holder at his, her, or its address as it last appears on the Bond Register on the Record Date or the Special Record Date, as the case may be, except as otherwise provided in the Indenture. Notwithstanding the foregoing, any Holder of at least \$1,000,000 principal amount of any Bonds (or a lesser amount of such Bonds if such Bonds constitute all the Bonds at the time Outstanding), upon payment to the Trustee by the Holder of the costs of such wire transfers, may file with the Trustee an instrument satisfactory to the Trustee not less than five (5) days prior to the applicable Payment Date requesting the amounts payable by the Trustee to such Holder be paid by transferring by wire transfer in immediately available funds, on the day such payment is due, the amount to be distributed to such Holder to a designated account maintained by such Holder at any bank in the United States. Notwithstanding the foregoing, all payments of principal of and interest and/or premium on the Bonds payable on the Maturity Date or a Purchase Date shall only be payable upon presentation of the Bonds being purchased or redeemed, at the Operations Office of the Trustee. The principal of and interest and premium, if any, on this Bond are payable in lawful money of the United States of America.

The Bonds are issued under the provisions of and in full compliance with the Act, and a resolution duly adopted by the Issuer pursuant to which this Bond is issued and which authorizes the execution and delivery of the Loan Agreement (as herein defined) and the Indenture. This

Bond and the issue of which it is a part are special limited obligations of the Issuer, and the principal and premium, if any, and interest thereon are payable solely and only from revenues, and other amounts derived by the Issuer from the Loan Agreement pledged and assigned by the Issuer to the Trustee under the Indenture to secure payment of the principal of, premium, if any, and interest on this Bond.

THE BONDS ARE SPECIAL, LIMITED OBLIGATIONS OF THE ISSUER PAYABLE SOLELY FROM THE REVENUES, INCOME AND RECEIPTS OF THE ISSUER PLEDGED TO THE PAYMENT THEREOF. THE BONDS DO NOT CONSTITUTE, WITHIN THE MEANING OF ANY STATUTORY OR CONSTITUTIONAL PROVISION, AN INDEBTEDNESS, AN OBLIGATION OR A LOAN OF CREDIT OF THE STATE, THE SPONSOR, OR ANY OTHER MUNICIPALITY, COUNTY OR OTHER MUNICIPAL OR POLITICAL CORPORATION OR SUBDIVISION OF THE STATE. THE BONDS DO NOT CREATE A MORAL OBLIGATION ON THE PART OF THE STATE, THE SPONSOR OR ANY OTHER MUNICIPALITY, COUNTY OR OTHER MUNICIPAL OR POLITICAL CORPORATION OR SUBDIVISION OF THE STATE AND EACH OF SUCH ENTITIES IS PROHIBITED BY THE ACT FROM MAKING ANY PAYMENTS WITH RESPECT TO THE BONDS. THE ISSUER HAS NO TAXING POWER.

NO RECOURSE SHALL BE HAD FOR THE PAYMENT OF THE PRINCIPAL OF OR PREMIUM OR INTEREST ON THIS BOND AGAINST ANY PAST, PRESENT, OR FUTURE OFFICER, DIRECTOR, MEMBER, EMPLOYEE, OR AGENT OF THE ISSUER, OR OF ANY SUCCESSOR TO THE ISSUER, AS SUCH, EITHER DIRECTLY OR THROUGH THE ISSUER OR ANY SUCCESSOR TO THE ISSUER, UNDER ANY RULE OF LAW OR EQUITY, STATUTE, OR CONSTITUTION OR BY THE ENFORCEMENT OF ANY ASSESSMENT OR PENALTY OR OTHERWISE, AND ALL SUCH LIABILITY OF ANY SUCH OFFICERS, DIRECTORS, MEMBERS, EMPLOYEES, OR AGENTS, AS SUCH, IS HEREBY EXPRESSLY WAIVED AND RELEASED AS A CONDITION OF, AND CONSIDERATION FOR, THE EXECUTION AND ISSUANCE OF THIS BOND.

All capitalized terms used in this Bond and not defined herein shall have the meaning ascribed thereto in the Indenture.

This Bond is one of a duly authorized issue of bonds of the Issuer, issued in the initial aggregate principal amount of \$\_\_\_\_\_, known as the Multifamily Housing Revenue Bonds (Aldrich 51 Apartments) Series 2015 (the "*Bonds*"), issued in accordance with a Trust Indenture dated as of November 1, 2015 (the "*Indenture*"), by and between the Issuer and BOKF, NA dba Bank of Texas, as the Trustee (the "*Trustee*"), setting forth the terms upon which such Bonds are issued. The Bonds are issued by the Issuer for the purpose of making a loan of the proceeds thereof (the "*Loan*") to Austin DMA Housing II, LLC, a Texas limited liability company (the "*Borrower*"), under the provisions of a Loan Agreement dated as of November 1, 2015 (the "*Loan Agreement*"), by and among the Issuer, the Borrower, and the initial Bondholder Representative to finance the acquisition, construction, and equipping of a multifamily residential rental housing development to be located in the City of Austin, Texas (the "*Project*"). The loan made pursuant to the Loan Agreement (the "*Loan*") is evidenced by a promissory note from the Borrower to the Issuer and assigned by the Issuer to the Trustee (the "*Note*"). The Borrower has agreed under the Loan Agreement to repay the Loan, together with interest thereon, in amounts and at times sufficient to pay the principal of, premium, if any, and interest on the Bonds as the same shall become due and payable.

Under certain circumstances described in the Indenture certain Bonds may become subordinated (the "*Subordinated Bonds*") in priority and in right and time of payment to all amounts due on the Bonds other than the Subordinated Bonds. Interest on Subordinated Bonds shall be payable on each Payment Date. Payment of the Subordinated Bonds shall be made by the Trustee only from funds, if any, not required to be used for payment on the Bonds other than Subordinated Bonds, and the Holders of the Subordinated Bonds, by acceptance of the Subordinated Bonds, expressly agree and acknowledge that (A) no payment shall be due and payable or made on the Subordinated Bonds if the Trustee does not hold sufficient funds in the Subordinated Bond Interest Account, Subordinated Bond Principal Account or the Subordinated Bond Redemption or Purchase Account of the Bond Fund to make such payment and (B) no remedy shall be had for any default in payment on the Subordinated Bonds so long as any Bonds other than Subordinated Bonds remain Outstanding.

Pursuant to the Indenture, the Issuer has assigned and pledged to the Trustee, for the equal and ratable benefit of the Holders, all revenues and receipts derived by the Borrower from the operation of the Project. Pursuant to a Construction and Permanent Leasehold Deed of Trust with Assignment of Leases and Rents, Security Agreement and Fixture Filing filed with respect to the Project (the "*Mortgage*") of even date herewith and executed by the Borrower for the benefit of the Issuer, the Borrower has granted to the Trustee on the Mortgage, for the equal and ratable benefit of the Holders of the Bonds, a first priority mortgage lien on and a security interest in the Project and the rents and leases thereof. The Mortgage may be released or modified in any respect upon compliance with certain conditions in the Mortgage and the Indenture.

Reference is hereby also made to the Loan Agreement, the Indenture, and the Mortgage, including all supplements thereto, for a description of the property encumbered and assigned, the provisions, among others, with respect to the nature and extent of the security, the rights of the Issuer, and the rights, duties, and obligations of the Borrower, the Trustee, and the Holders of the Bonds, and the terms upon which the Bonds are issued and secured, redeemed and any Prepayment Fee assessed.

## CONSTRUCTION INTEREST RATE PROVISIONS

The following terms as provided shall be applicable under this Bond prior to the Conversion Date:

### DEFINITIONS

*“Adjusted CB Floating Rate”* means the sum of the CB Floating Rate minus \_\_\_% per annum.

*“Adjusted LIBO Rate”* means an interest rate per annum (rounded upwards, if necessary, to the next one-sixteenth of one percent) equal to (a) the LIBO Rate for a one month interest period multiplied by (b) the Statutory Reserve Rate.

*“Adjusted One Month LIBO Rate”* means, an interest rate per annum equal to the sum of (i) 2.50% per annum plus (ii) the Adjusted LIBO Rate for a one month Interest Period on such day (or if such day is not a Business Day, the immediately preceding Business Day); provided that, for the avoidance of doubt, the Adjusted LIBO Rate for any day shall be based on the rate appearing on the Reuters Screen LIBOR01 Page (or on any successor or substitute page) at approximately 11:00 a.m. London time on such day (without any rounding).

*“Construction Interest Rate”* means (a) for each Eurodollar Drawing, the applicable Fixed Rate for the Interest Period in effect for such Drawing, and for amounts of the Loan then on deposit in the Project Fund, the applicable Fixed Rate for the applicable Interest Period, and (b) for each CBFR Drawing, the Adjusted CB Floating Rate.

*“Business Day”* means any day that is not a Saturday, Sunday, or other day on which commercial banks in Austin, Texas, and in New York City are authorized or required by law to remain closed; provided that, when used in connection with a Eurodollar Drawing, the term *“Business Day”* shall also exclude any day on which banks are not open for dealings in U.S. dollar deposits in the London interbank market.

*“CB Floating Rate”* means the Prime Rate; provided that the CB Floating Rate shall never be less than the Adjusted One Month LIBO Rate for a one month Interest Period on such day (or if such day is not a Business Day, the immediately preceding Business Day). Any change in the CB Floating Rate due to a change in the Prime Rate or the Adjusted One Month LIBO Rate shall be effective from and including the effective date of such change in the Prime Rate or the Adjusted One Month LIBO Rate, respectively.

*“CBFR”*, when used in reference to the Drawing, refers to when the Drawing is bearing interest at the Adjusted CB Floating Rate.

*“Change in Law”* means the occurrence after the Bond Closing or, (a) the adoption of any law, rule, regulation, or treaty, (b) any change in any law, rule, regulation, or treaty or in the

interpretation or application thereof by any Governmental Authority or (c) compliance by the Bondholder Representative (or, for purposes of this Indenture, by any lending office of the Bondholder Representative or by such Bondholder Representative's holding company, if any with any request, guideline or directive (whether or not having the force of law) of any Governmental Authority made or issued after the date of this Indenture; provided that, notwithstanding anything herein to the contrary, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (y) all requests, rules, guidelines, or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall be deemed to be a "Change in Law", regardless of the date enacted, adopted or issued.

*"Drawing"* means each disbursement from the Project Fund pursuant to a requisition approved by the Bondholder Representative as recorded by the Trustee in the records of the Trustee.

*"Eurodollar"*, when used in reference to any Borrowing (other than a CBFR Borrowing), refers to whether such Borrowing is bearing interest at a rate determined by reference to the Adjusted LIBO Rate.

*"Fixed Rate"* means, (a) with respect to the proceeds of the Loan then on deposit in the Project Fund, for the relevant Interest Period, the sum of the applicable Adjusted LIBO Rate plus 1.50% per annum, and (b) with respect to all Eurodollar Drawings for the relevant Interest Period (to the extent the Drawing is then Outstanding), the sum of the applicable Adjusted LIBO Rate plus 2.00% per annum.

*"Interest Period"* means with respect to any Eurodollar Drawing (including for purposes hereof the initial deposit of the proceeds of the Bond into the Project Fund), the period commencing on the date of such Drawing and ending on the numerically corresponding day in the calendar month that is one month thereafter, as the Borrower may elect, provided, that (i) if any Interest Period would end on a day other than a Business Day, such Interest Period shall be extended to the next succeeding Business Day unless such next succeeding Business Day would fall in the next calendar month, in which case such Interest Period shall end on the next preceding Business Day and (ii) any Interest Period that commences on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the last calendar month of such Interest Period) shall end on the last Business Day of the last calendar month of such Interest Period. For purposes hereof, the date of a Drawing initially shall be the date on which such Drawing is made and, thereafter shall be the effective date of the most recent conversion or continuation of such Drawing.

*"Interpolated Rate"* means, at any time, for any interest period, the rate per annum (rounded to the same number of decimal places as the LIBO Screen Rate) determined by Bank (which determination shall be conclusive and binding absent manifest error) to be equal to the rate that results from interpolating on a linear basis between: (a) the LIBO Screen Rate for the longest period (for which the LIBO Screen Rate is available) that is shorter than the Impacted Interest Period and (b) the



LIBO Screen Rate for the shortest period (for which the LIBO Screen Rate is available) that exceeds the Impacted Interest Period, in each case, at such time.

*"LIBO Rate"* means the London interbank offered rate administered by the ICE Benchmark Administration (or any other Person that takes over the administration of such rate for U.S. Dollars) for a one month period as displayed on pages LIBOR01 or LIBOR02 of the Reuters Screen or, in the event such rate does not appear on a Reuters page or screen, on any successor or substitute page on such screen that displays such rate, or on the appropriate page of such other information service that publishes such rate as shall be selected by Bank from time to time in its reasonable discretion (in each case, the "LIBO Screen Rate") at approximately 11:00 a.m., London time, two (2) Business Days prior to the commencement of such interest period; provided, that, if any LIBO Screen Rate shall be less than zero, such rate shall be deemed to be zero for purposes of this Note and provided, further, if the LIBO Screen Rate shall not be available at such time for such interest period (an "Impacted Interest Period"), then the LIBO Rate shall be the Interpolated Rate, provided, that, if any Interpolated Rate shall be less than zero, such rate shall be deemed to be zero for purposes of this Note.

*"Prime Rate"* means the rate of interest per annum publicly announced from time to time by JPMorgan Chase Bank, N.A., as its prime rate; each change in the Prime Rate shall be effective from and including the date such change is publicly announced as effective. The Prime Rate is a reference rate and is not necessarily the lowest rate.

*"Statutory Reserve Rate"* means a fraction (expressed as a decimal), the numerator of which is the number one and the denominator of which is the number one minus the aggregate of the maximum reserve percentages (including any marginal, special, emergency or supplemental reserves) expressed as a decimal established by the Board of Governors of the Federal Reserve System to which the Bank is subject, with respect to the Adjusted LIBO Rate, for Eurocurrency funding (currently referred to as *"Eurocurrency Liabilities"* in Regulation D of the Board). Such reserve percentages shall include those imposed pursuant to such Regulation D. Eurodollar Drawings shall be deemed to constitute Eurocurrency funding and to be subject to such reserve requirements without benefit of or credit for proration, exemptions or offsets that may be available from time to time under such Regulation D or any comparable regulation. The Statutory Reserve Rate shall be adjusted automatically on and as of the effective date of any change in any reserve percentage.

*"Type"*, when used in reference to any Drawing, refers to whether the rate of interest on such Drawing is determined by reference to the LIBO Rate or the CBFR.

#### INTEREST RATE

(a) The initial deposit of the proceeds of this Bond at Bond Closing into the Project Fund shall accrue interest at the Fixed Rate applicable to amounts on deposit in the Project Fund. Amounts on deposit in the Project Fund at the end of an Interest Period (and not drawn from the Project Fund and covered by subsection (b) below) shall continue to accrue interest at the Fixed Rate applicable to amounts on deposit in the Project Fund for the next Interest Period.

(b) Each Drawing from the Project Fund pursuant to a Requisition, if (i) at the end of the Interest Period applicable to the previous Eurodollar Drawing(s), shall be a Eurodollar Drawing and accrue interest at the Fixed Rate applicable to Eurodollar Drawings, and (ii) not at the end of the Interest Period applicable to the previous Eurodollar Drawing(s), shall be a CBFR Drawing accruing interest at CBFR.

(c) Any CBFR Drawings shall be converted to a Eurodollar Drawing having a one month Interest Period upon the commencement of the next one month Interest Period next succeeding any such CBFR Drawing and accrue interest at the Fixed Rate applicable to Eurodollar Drawings.

(d) Unless such Drawing is repaid as provided herein, at the end of such Interest Period, such Drawing shall be renewed as a Eurodollar Drawing and accrue interest at the Fixed Rate applicable to Eurodollar Drawings having the same Interest Period as the Eurodollar Drawing the Interest Period of which has just expired (unless such renewal would result in an Interest Period ending after the Maturity Date, in which case such Drawing shall be converted to a CBFR Drawing and accrue interest at CBFR).

#### INTEREST ACCRUALS

(a) Each CBFR Drawing shall bear interest at the Adjusted CB Floating Rate.

(b) Each Eurodollar Drawing shall bear interest at the applicable Fixed Rate for the Interest Period in effect for such Drawing.

(c) Notwithstanding the foregoing, if any principal of or interest on the Loan or any fee or other amount payable by the Borrower hereunder is not paid when due, whether at stated maturity, upon acceleration or otherwise, such overdue amount shall bear interest, after as well as before judgment, at a rate per annum equal to (i) in the case of overdue principal of a Drawing, three percent (3.0%) plus the rate otherwise applicable to such Drawing as provided in (a) and (b) above or (ii) in the case of any other amount, three percent (3.0%) plus the rate applicable to CBFR Drawings as provided in paragraph (a) above.

(d) Notwithstanding anything in this Bond, the Indenture, or the Loan Agreement to the contrary, accrued interest on each Drawing shall be payable in arrears on each Payment Date for all unpaid and accrued interest on the first day of the month preceding that Payment Date and upon maturity of the Loan for all unpaid accrued interest then due; provided that (i) default interest which has accrued pursuant to paragraph (c) above shall be payable on demand, (ii) in the event of any repayment or prepayment of any Drawing (other than a prepayment of a CBFR Drawing), accrued interest on the principal amount repaid or prepaid shall be payable on the date of such repayment or prepayment, and (iii) in the event of any conversion of any Eurodollar Drawing prior to the end of the current Interest Period therefor, accrued interest on such Drawing shall be payable on the effective date of such conversion.

(e) Notwithstanding anything herein to the contrary, all interest hereunder shall be computed on the basis 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). The applicable Prime Rate or Adjusted LIBO Rate shall be determined by the Bank and such determination shall be conclusive absent manifest error.

#### INCREASED COSTS

(a) If any Change in Law shall:

(i) impose, modify, or deem applicable any reserve, special deposit, or similar requirement against assets of, deposits with or for the account of, or credit extended by, the Bondholder Representative (except any such reserve requirement reflected in the LIBO Rate); or

(ii) impose on the Bondholder Representative or the London interbank market any other condition affecting this Note or Eurodollar Drawings made by the Bondholder Representative;

and the result of any of the foregoing shall be to increase the cost to the Bondholder Representative of making or maintaining any Eurodollar Drawing (or of maintaining its obligation to make any such Drawing) or to increase the cost or to reduce the amount of any sum received or receivable by the Bondholder Representative (whether of principal, interest, or otherwise), then the Borrower will pay to the Bondholder Representative such additional amount or amounts as will compensate the Bondholder Representative for such additional costs incurred or reduction suffered.

(b) If the Bondholder Representative determines that any Change in Law regarding capital requirements has or would have the effect of reducing the rate of return on the Bondholder Representative's capital or on the capital of the Bondholder Representative's holding company, if any, as a consequence of this Note or the Loan made to a level below that which the Bondholder Representative or the Bondholder Representative's holding company could have achieved but for such Change in Law (taking into consideration the Bondholder Representative's policies with respect to capital adequacy), then from time to time the Borrower will pay to the Bondholder Representative, such additional amount or amounts as will compensate the Bondholder Representative or the Bondholder Representative's holding company for any such reduction suffered.

(c) A certificate of the Bondholder Representative describing the applicable Change in Law and its effect on the Bondholder Representative triggering the Borrower's obligation to compensate the Bondholder Representative under (a) or (b) above, the Bondholder Representative's calculation for determining the amount of the Borrower's obligation and setting forth the amount or amounts necessary to compensate the Bondholder Representative or its holding company, as the case may be, as specified in paragraph (a) or (b) above shall be delivered to the Borrower and shall be conclusive absent manifest error. The Borrower shall pay the Bondholder

Representative the amount shown as due on such certificate within thirty (30) days after receipt thereof.

(d) Failure or delay on the part of the Bondholder Representative to demand compensation pursuant to this section entitled "*INCREASED COSTS*" shall not constitute a waiver of the Bondholder Representative's right to demand such compensation; provided that the Borrower shall not be required to compensate the Bondholder Representative pursuant to this section entitled "*INCREASED COSTS*" for any increased costs or reductions incurred more than ninety (90) days prior to the date that the Bondholder Representative notifies the Borrower of the Change in Law giving rise to such increased costs or reductions and of the Bondholder Representative's intention to claim compensation therefor; provided further that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the ninety (90) day period referred to above shall be extended to include the period of retroactive effect thereof. If the Borrower exercises its option to prepay the Note or any portion thereof, the Borrower will be reimbursed for the portion of any amounts paid to the Bondholder Representative pursuant to this section entitled "*INCREASED COSTS*" allocable to the numbers of days early the Note or any portion thereof was repaid.

#### BREAK FUNDING PAYMENTS

In the event of (a) the payment of any principal of any Eurodollar Drawing other than on the last day of an Interest Period applicable thereto (including as a result of an Event of Default), (b) the conversion of any Eurodollar Drawing other than on the last day of the Interest Period applicable thereto, or (c) the failure to borrow, convert, continue or prepay any Eurodollar Drawing on the date specified in any notice delivered pursuant hereto, then, in any such event, the Drawing shall compensate the Holder for the loss, cost and expense attributable to such event.

In the case of a Eurodollar Drawing, such loss, cost or expense to the Holder shall be deemed to include an amount determined by the Holder to be the excess, if any, of (i) the amount of interest which would have accrued on the principal amount of such Drawing had such event not occurred, at the Adjusted LIBO Rate that would have been applicable to such Drawing, for the period from the date of such event to the last day of the then current Interest Period therefor (or, in the case of a failure to borrow, convert or continue, for the period that would have been the Interest Period for such Drawing), over (ii) the amount of interest which would accrue on such principal amount for such period at the interest rate which the Holder would bid were it to bid, at the commencement of such period, for dollar deposits of a comparable amount and period from other banks in the Eurodollar market. A certificate of the Holder setting forth any amount or amounts that the Holder is entitled to receive pursuant to this section entitled "*BREAK FUNDING PAYMENTS*" shall be delivered to the Borrower and shall be conclusive absent manifest error. The Borrower shall pay the Holder the amount shown as due on any such certificate within ten (10) days after receipt thereof.

#### **PAST DUE PAYMENT.**

If any payment required under this Bond is not paid within ten (10) 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 or \$25.00, whichever is greater, up to the maximum amount of \$1,500.00 per late charge 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.

#### **PERMANENT TERM INTEREST RATE PROVISION**

Interest will accrue on this Bond on and after the Conversion Date at a fixed rate per annum equal to \_\_\_\_%.

#### **REDEMPTION AND PURCHASE PROVISIONS**

This Bond is subject to redemption or purchase prior to maturity as provided for in the Indenture.

#### **MISCELLANEOUS PROVISIONS**

1. **Business Day Payments.** If the date for payment of the principal of, premium, if any, or interest on this Bond shall be a day which is not a Business Day, then the date for such payment shall be the next succeeding day which is a Business Day, and payment on such later date shall have the same force and effect as if made on the nominal date of payment.

2. **Enforcement; Modification of Indenture and Loan Documents.** The Holder of this Bond shall have no right to enforce the provisions of the Indenture or to institute action to enforce the covenants therein, or to take any action with respect to any Event of Default under the Indenture, or to institute, appear in or defend any suit or other proceedings with respect thereto, except as provided in the Indenture. Modifications or alterations of the Indenture, of any indenture supplemental thereto or of Loan Documents, may be made only to the extent and in the circumstances permitted by the Indenture and may be made in certain cases without the consent of the Holders of the Bonds.

3. **Consent to Modifications.** With the consent of the Issuer, Borrower, Bondholder Representative, and the Trustee, as appropriate, and to the extent permitted by and as provided in the Indenture, the terms and provisions of the Indenture and the Loan Documents or any instrument supplemental thereto may be modified or altered by the consent of the Holders of the requisite percentage of Bonds Outstanding required by the Indenture. Supplemental indentures may also

be executed and delivered, without consent of or notice to any Holders, for the purpose of curing any ambiguity or formal defect or omission in the Indenture or in any supplemental indenture, granting for the benefit of the Holders additional rights, remedies, powers, authority, or security, more precisely identifying the Trust Estate, subjecting to the lien and pledge of the Indenture additional rights, preventing the interest on the Bonds from becoming includable in gross income for federal income tax purposes, qualifying the Indenture under the Trust Indenture Act of 1939, evidencing appointment of a co-Trustee or successor Trustee, bond registrar, or successor paying agent, reconciling the Indenture with Loan Documents, or making any other change which in the judgment of the Trustee based upon an opinion of Bond Counsel is necessary or desirable and will not materially prejudice any non-consenting Holders. Every Holder hereof is deemed by the Holder's purchase and retention of this Bond to consent to be bound by every supplemental indenture and every modification and amendment adopted in accordance with the provisions of the Indenture, whether or not noted or endorsed hereon or incorporated herein.

4. **Waiver or Consent Conclusive.** The Indenture also contains provisions permitting the Trustee, on behalf of all the Holders, to waive any Event of Default as defined under the Indenture and rescind any acceleration of the Bonds.

5. **Denomination; Exchange; Treatment of Registered Holder.** The Bonds are issued as fully registered bonds without coupons in the minimum denominations of \$100,000 or any integral multiple of \$1,000 in excess of \$100,000 minimum per Holder thereof of a single maturity or series; except that a Bond may be exchanged after redemption or purchase for a Bond in the denomination of less than \$100,000 to the extent necessary to represent the unredeemed portion of any Bond. The Bonds may be exchanged by the Holder for other Bonds of any authorized denominations and of a like aggregate principal amount, series, and stated maturity, upon surrender thereof by the Holder at the Operations Office of the Bond Registrar or, in the case in which the Trustee is the Bond Registrar, at the Operations Office of the Trustee, in the manner and subject to the limitations provided in the Indenture. The Issuer, the Trustee, the Bond Registrar, and the Paying Agent may deem and treat the Holder of this Bond as the absolute owner of this Bond (whether or not this Bond shall be overdue) for the purpose of receiving payment on this Bond (except as otherwise herein above provided with respect to the Record Date and special Record Date) and for all other purposes, and the Issuer (or any agent thereof), the Trustee, the Bond Registrar, and the Paying Agent shall not be affected by any notice to the contrary.

6. **Registration of Transfer.** The transfer of this Bond is subject to certain restrictions as provided in the Indenture and described below and to registration by the Holder or by the Holder's attorney hereof upon surrender of this Bond at the designated corporate trust office of the Bond Registrar or, in the case in which the Trustee is the Bond Registrar, at the Operations Office of the Trustee, duly endorsed or accompanied by a written instrument or instruments of transfer in the form printed on this Bond or in another form satisfactory to the Bond Registrar and duly executed and with guaranty of signature of the Holder hereof or his, her, or its attorney duly authorized in writing, containing written instructions as to the details of the registration of the transfer of the Bond. Thereupon the Issuer shall execute (if necessary) and the Bond Registrar shall authenticate and deliver in the name of the designated transferee or transferees (but not registered in blank or

to "bearer" or a similar designation), one or more new Bonds of any Authorized Denomination or Denominations, of a like series and aggregate principal amounts having the same stated maturity and interest rate.

THE TRUSTEE SHALL NOT REGISTER ANY TRANSFER OR EXCHANGE OF ANY BONDS UNLESS ALL REQUIREMENTS OF **SECTION 2.12** OF THE INDENTURE ARE MET AND, IF REQUIRED BY THE INDENTURE, SUCH HOLDER'S PROSPECTIVE TRANSFEREE DELIVERS TO THE TRUSTEE AN INVESTOR'S LETTER SUBSTANTIALLY IN THE FORM SET FORTH IN **EXHIBIT C** TO THE INDENTURE.

The Bond Registrar shall not be required (a) to transfer or exchange any Bond during a period beginning at the opening of business fifteen (15) days before the day of the mailing of a notice of redemption or purchase of Bonds under the Indenture and ending at the close of business on the day of such mailing or (b) to transfer or exchange any Bond so selected for redemption or purchase in whole or in part.

7. Service Charges, Taxes. No service charge shall be made to the Holder for any registration, transfer, or exchange herein before referred to, but the Bond Registrar and the Trustee shall require payment of a sum sufficient to cover any tax, fee, or other governmental charge that may be imposed in connection with any transfer or exchange of Bonds, other than exchanges expressly provided in the Indenture to be made without expense or without charge to Holders, and any legal or unusual costs of transfers and lost Bonds.

8. Acceleration. In certain events, on the conditions, in the manner and with the effect set forth in the Indenture, the principal of all the Bonds then Outstanding under the Indenture may become or may be declared due and payable before the stated maturities thereof, together with the interest accrued thereon.

9. Governing Law. This Bond shall be governed by and construed in accordance with the laws of the State of Texas.

10. Indenture Controlling. The terms of this Bond are subject in all respects to the terms of the Indenture. If there is a conflict between the provisions of this Bond and the Indenture, the Indenture shall control.

This Bond shall not be valid or become obligatory for any purpose or be entitled to any benefit or security under the Indenture until it shall have been authenticated by the execution by the Bond Registrar on the certificate of authentication endorsed hereon.

IT IS HEREBY CERTIFIED AND DECLARED that all acts, conditions, and things required to exist, happen, and be performed precedent to and in the execution and delivery of the Indenture and the issuance of this Bond do exist, have happened, and have been performed in due time, form, and manner as required by law.

IN WITNESS WHEREOF, Austin Housing Finance Corporation, has caused this Bond to be executed with the facsimile or manual signature of an authorized officer and attested by facsimile or manual signature of an authorized officer.

AUSTIN HOUSING FINANCE CORPORATION

By: \_\_\_\_\_

Name: David Potter

Title: Manager

Attest:

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: Secretary



**FORM OF CERTIFICATE OF AUTHENTICATION**

**CERTIFICATE OF AUTHENTICATION**

This Bond is one of the Bonds described in the within mentioned Indenture.

Date of Authentication: \_\_\_\_\_, \_\_\_\_\_.

BOKF, NA DBA BANK OF TEXAS, as Bond  
Registrar

By: \_\_\_\_\_

Authorized Signature

[Form of Comptroller's Registration to be included on initial Bond only]

COMPTROLLER'S REGISTRATION CERTIFICATE: REGISTER NO. \_\_\_\_\_

I hereby certify that this Bond has been examined, certified as to validity, and approved by the Attorney General of the State of Texas, and that this Bond has been registered by the Comptroller of Public Accounts of the State of Texas.

WITNESS MY SIGNATURE AND SEAL this \_\_\_\_\_.

\_\_\_\_\_  
Comptroller of Public Accounts of the State of  
Texas

**(SEAL)**

## FORM OF ASSIGNMENT

FOR VALUE RECEIVED, the undersigned hereby sells, assigns, and transfers unto \_\_\_\_\_ (Please Print or Typewrite Name and Address) (Please Insert Social Security or Other Identifying Number of Assignee: \_\_\_\_\_) the within Bond and all rights and title therein, and hereby irrevocably constitutes and appoints \_\_\_\_\_ attorney to transfer the within Bond on the books kept for registration thereof, with full power of substitution in the premises.

Dated: \_\_\_\_\_

(Registered Owner)

NOTICE: The signature(s) to this assignment must correspond with the name as it appears upon the face of the within Bond in every particular, without alteration or enlargement or any change whatever.

Signature guaranteed

\_\_\_\_\_  
NOTICE: Signature(s) must be guaranteed by a member firm of the New York Stock Exchange or a commercial bank or trust company that is a medallion guarantor.

The following abbreviations, when used in the inscription on the face of the within Bond, shall be construed as though they were written out in full according to applicable laws or regulations.

TEN COM

as tenants in common

TEN ENT

as tenants by the entirety

JT TEN

as joint tenants with rights of survivorship  
common

and not as tenants in

UNIF GIFT MIN ACT \_\_\_\_\_

Custodian \_\_\_\_\_

(Minor)

(Cust)

Under Uniform Gifts to Minors Act

(State)

Additional abbreviations may also be used though not in the above list.

**EXHIBIT C**

**INVESTOR'S LETTER**

Austin Housing Finance Corporation

Austin, Texas

BOKF, NA dba Bank of Texas

Fort Worth, Texas

Re: Austin Housing Finance Corporation  
Multifamily Housing Revenue Bonds  
(Aldrich 51 Apartments) Series 2015

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Ladies and Gentlemen:

The undersigned representative of \_\_\_\_\_ (the "*Purchaser*"), being the [initial] purchaser of \$ \_\_\_\_\_ of the aggregate principal amount of the Austin Housing Finance Corporation Multifamily Housing Revenue Bonds (Aldrich 51 Apartments) Series 2015 (the "*Bonds*") does hereby certify, represent and warrant for the benefit of Austin Housing Finance Corporation (the "*Issuer*") and BOKF, NA dba Bank of Texas, as the Trustee (the "*Trustee*"), and Austin DMA Housing II, LLC (the "*Borrower*") that the Purchaser is an Accredited Investor (as defined in Rule 501(a)(1), (2), (3), (7) or (8) of Regulation D promulgated under the Securities Act of 1933, as amended) or a Qualified Institutional Buyer (as defined in Rule 144A promulgated under the Securities Act of 1933, as amended). Capitalized terms used herein and not otherwise defined shall have the meaning ascribed to such terms in the Trust Indenture dated as of November 1, 2015 (the "*Indenture*"), between the Issuer and the Trustee.

The Purchaser hereby acknowledges, represents, and warrants to, and agrees with, the Issuer and the Trustee, as follows:

(1) The Purchaser is purchasing such Bonds with its own funds (or with funds from accounts over which it has sole investment authority) and not the funds of any other person, and for its own account (or for accounts over which it has sole investment authority) and not as nominee or agent for the account of any other person and not with a view to any distribution thereof.

(2) The Purchaser has such knowledge and experience in business and financial matters and with respect to the purchase and ownership of Multifamily Housing Mortgage Revenue Bonds, tax exempt securities, and other investment vehicles similar in character

to the Bonds so as to enable it to understand and evaluate the risks of such investments and form an investment decision with respect thereto, the Purchaser has no need for liquidity in such investment and the Purchaser is (or any account for which it is purchasing is) able to bear the risk of such investment for an indefinite period and to afford a complete loss thereof.

(3) The Purchaser understands that no offering document has been prepared in connection with the sale of the Bonds and acknowledges that it has been provided with, and has had the opportunity to review, all documents relating to the issuance of the Bonds by the Issuer. The Purchaser either has been supplied with or has had access to information, including financial statements and other financial information, and has had the opportunity to ask questions and receive answers from individuals concerning the Issuer, the Borrower, the credit standing of the Borrower, the Project, the Loan Agreement, dated as of November 1, 2015, among the Issuer, the Borrower, and the Bondholder Representative (the "*Loan Agreement*"), the Indenture, and the Bonds so that, as a sophisticated investor, the Purchaser has been able to make its decision to purchase the Bonds.

(4) The Purchaser has had the opportunity to ask questions of the Issuer and the Borrower or other Person and receive answers concerning the terms and conditions of the offering and to obtain any additional information it may request.

(5) THE PURCHASER UNDERSTANDS THAT:

(i) NEITHER THE STATE OF TEXAS NOR ANY POLITICAL SUBDIVISION OR AGENCY OF THE STATE OF TEXAS, SHALL BE LIABLE OR OBLIGATED (GENERALLY, SPECIALLY, MORALLY OR OTHERWISE) TO PAY THE PRINCIPAL OF THE BONDS OR THE PREMIUM, IF ANY, OR INTEREST THEREON, AND NEITHER THE FAITH AND CREDIT NOR THE TAXING POWER OF THE STATE OF TEXAS, OR ANY OTHER POLITICAL SUBDIVISION OR AGENCY THEREOF, IS PLEDGED TO THE PAYMENT OF THE PRINCIPAL OF, PREMIUM, IF ANY, OR INTEREST ON THE BONDS; AND

(ii) THE ISSUER HAS NO TAXING POWER AND PRINCIPAL, PREMIUM, IF ANY, AND INTEREST ON THE BONDS ARE PAYABLE SOLELY OUT OF THE MONEYS TO BE RECEIVED BY THE TRUSTEE ON BEHALF OF THE ISSUER UNDER THE INDENTURE AND AMOUNTS ON DEPOSIT IN THE FUNDS AND ACCOUNTS ESTABLISHED AND PLEDGED UNDER THE INDENTURE.

(6) The Purchaser understands that, in connection with any proposed transfer of the Bonds, such transfer must be limited to an Eligible Purchaser. "*Eligible Purchaser*" means a prospective transferee that can make representations with respect to itself to substantially the same effect as the representations set forth herein.

(7) The Purchaser also understands that it shall provide indemnification to Borrower, the Issuer, the Sponsor, the Trustee and the Bond Registrar from and against any

and all liability, cost, or expense (including attorneys' fees) that may result if the representations contained in this Investor's Letter are false in any material respect.

(8) It is agreed by the Purchaser that the Purchaser is not relying on any other party or person to undertake the furnishing or verification of information related to the referenced transaction.

This letter and the representations and agreements contained herein are made for your benefit.

IN WITNESS WHEREOF, I have hereunto set my hand the \_\_\_\_\_ day of \_\_\_\_\_.

PURCHASER

Name: \_\_\_\_\_

Title: \_\_\_\_\_

MUST BE SIGNED BY ACTUAL PURCHASER.

MAY NOT BE SIGNED BY NOMINEE OR AGENT.

**EXHIBIT D**

**SINKING FUND INSTALLMENTS**

**DATE**

**PRINCIPAL AMOUNT**

**Exhibit B**

**Loan Agreement**



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

\$ 25,000,000

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 II 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 II (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 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 /VIIIF") 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.

(c) 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 [emaconnald@cornerstoncadvisers](mailto:emaconnald@cornerstoncadvisers) 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(f)** 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 <sup>th</sup> 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<sup>th</sup> 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<sup>nd</sup> 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 Leaschold 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**

**C-1-1**

## 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 (10<sup>th</sup>) 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. 11<sup>th</sup> 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. 11<sup>th</sup> 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.

**Exhibit C**

**Regulatory Agreement**

..... SPACE ABOVE THIS LINE FOR RECORDER'S USE .....  
.....

After Recording Return To:

McCall, Parkhurst & Horton L.L.P.  
717 North Harwood, Suite 900  
Dallas, Texas 75201  
Attention: Mark A. Malveaux

## REGULATORY AND LAND USE RESTRICTION AGREEMENT

Among

AUSTIN HOUSING FINANCE CORPORATION,  
as Issuer,

BOKF, NA DBA BANK OF TEXAS,  
as Trustee,

and

AUSTIN DMA HOUSING II, LLC  
as Owner

Dated as of November 1, 2015

Relating to

\$ \_\_\_\_\_  
AUSTIN HOUSING FINANCE CORPORATION  
MULTIFAMILY HOUSING REVENUE BONDS  
(ALDRICH 51 APARTMENTS)  
SERIES 2015



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## REGULATORY AND LAND USE RESTRICTION AGREEMENT

THIS REGULATORY AND LAND USE RESTRICTION AGREEMENT (this "Agreement" or this "Regulatory Agreement") dated as of November 1, 2015 is among the Austin Housing Finance Corporation, a housing finance corporation duly organized and validly existing under the laws of the State of Texas (together with its successors and assigns, the "Issuer"), BOKF, NA dba Bank of Texas, a national banking association, as trustee (together with any successor or trustee under the Indenture (as defined below), and their respective successors and assigns, the "Trustee") under the hereinafter-defined Indenture, and Austin DMA Housing II, LLC, a Texas limited liability company (together with its permitted successors and assigns, the "Owner"),

### WITNESSETH:

WHEREAS, pursuant to the Act (as hereinafter defined), the Issuer is authorized to issue one or more series of its revenue bonds and to loan the proceeds thereof to finance the acquisition, rehabilitation and equipping of residential rental housing for persons of low and moderate income; and

WHEREAS, the Owner has requested the assistance of the Issuer in financing a multifamily residential affordable housing project located on the real property described in Exhibit A hereto (the "Project Site") and described in Exhibit B hereto (the "Project Facilities" together with the Project Site, the "Project" or "Development"), and, as a condition to such financial assistance, the Owner has agreed to enter into this Regulatory Agreement, setting forth certain restrictions with respect to the Project; and

WHEREAS, the Issuer has determined to assist in the financing of the Project by issuing Austin Housing Finance Corporation Multifamily Housing Revenue Bonds (Aldrich 51 Apartments) Series 2015 in the aggregate principal amount of \$\_\_\_\_\_ (the "Bonds"), and making a mortgage loan to the Owner of such principal amount, upon the terms and conditions set forth in the Loan Agreement (as hereinafter defined);

WHEREAS, in order for interest on the Bonds to be excluded from gross income for federal income tax purposes under the Internal Revenue Code of 1986, as amended (the "Code"), and the income tax regulations (including temporary, proposed and final regulations) and rulings with respect to the Code, and in order to comply with the requirements of the Act, relating to the Bonds, the use and operation of the Project must be restricted in certain respects; and

WHEREAS, the Issuer, the Trustee and the Owner have determined to enter into this Regulatory Agreement in order to set forth certain terms and conditions relating to the acquisition, rehabilitation, equipping and operation of the Project and in order to ensure that the Project will be acquired, constructed, equipped, used and operated in accordance with the Code and the Act.

NOW, THEREFORE, in consideration of the premises and the mutual representations, covenants and undertakings set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Issuer, the Trustee and the Owner hereby agree as follows:

Section 1. Definitions and Interpretation<sup>3</sup>. In addition to terms defined above, capitalized terms shall have the respective meanings assigned to them in this Section 1 or the Indenture unless the context in which they are used clearly requires otherwise:

"Act" means the Texas Housing Finance Corporations Act, Chapter 394, Texas Local Government Code, as amended.

"Affiliated Party" means a partner of the Owner, a person whose relationship with the Owner would result in a disallowance of losses under section 267 or 707(b) of the Code or a person who, together with the Owner, is a member of the same controlled group of corporations (as defined in section 1563(a) of the Code, except that "more than 50 percent" shall be substituted for "at least 80 percent" each place it appears therein).

"Agreement" or "Regulatory Agreement" means this Regulatory and Land Use Restriction Agreement, as it may be amended from time to time.

"Anticipated Annual Income" means the anticipated annual income of a person (together with the anticipated annual income of all persons who intend to reside with such person in one Unit), as determined in accordance with Section 1.167(k)-3(b)(3) of the Regulations (prior to its withdrawal by T.D. 8473, April 27, 1993) or with such other Regulations as may be imposed pursuant to section 142(d) of the Code.

"Compliance Monitoring Report" means the certified residential affordable housing program compliance report to be filed by the Owner with the Issuer and the Trustee pursuant to Section 4(b)(iv) hereof and the Loan Agreement with respect to the Project, in substantially the form attached hereto as Exhibit D, or in such other form as the Issuer may reasonably prescribe.

"Computation Date" means each Installment Computation Date and the Final Computation Date.

"Eligible Tenants" means persons of low and moderate income whose adjusted gross income, together with the adjusted gross income of all persons who intend to reside with those persons in one dwelling unit, did not for the preceding tax year exceed the maximum amount constituting moderate income under the Issuer's rules, resolutions relating to the issuance of bonds, or financing documents relating to the issuance of bonds, which as of the date hereof, is 80% of median family income.

"Favorable Opinion of Bond Counsel" means an opinion of Bond Counsel, addressed to the Issuer and the Trustee, to the effect that the action to be taken will not adversely affect the excludability of interest on the Bonds from gross income for federal tax purposes

"Final Computation Date" means the date the last Bond is discharged.

"Gross Proceeds" means any Proceeds and any Replacement Proceeds of the Bonds.

"Indenture" means the Trust Indenture of even date herewith by and between the Issuer and the Trustee, relating to the issuance of the Bonds, and any indenture supplemental thereto.

"Inducement Date" means June 18, 2015.

"Installment Computation Date" means the last day of each fifth year commencing December 31, 2016, and the date on which the final payment in full of all Outstanding Bonds is made.

"Investment" has the meaning set forth in section 1.148-1(b) of the Regulations.

"Investment Proceeds" means any amounts actually or constructively received from investing Proceeds.

"Issue Price" means "issue price" as defined in sections 1273 and 1274 of the Code, unless otherwise provided in Sections 1.148-0 through 1.148-11 of the Regulations and, generally, is the aggregate initial offering price to the public (excluding bond houses, brokers and other intermediaries acting in the capacity of wholesalers or underwriters) at which a substantial amount of each maturity of Bonds is sold.

"Loan" means the loan to be made to the Owner pursuant to the the Mortgage and the Loan Agreement.

"Loan Agreement" means the Loan Agreement of even date herewith among the Trustee and the Owner, as it may be amended, modified, supplemented or restated from time to time to the extent permitted by the Indenture.

"Low-Income Tenants" means persons whose aggregate Anticipated Annual Income does not exceed 60% of the Median Gross Income for the Area. For purposes of this definition, the occupants of a Unit shall not be deemed to be Low-Income Tenants if all the occupants of such Unit at any time are "students", as defined in section 151(c)(4) of the Code, no one of whom is entitled to file a joint return under section 6013 of the Code.

"Low-Income Unit" means a Unit which is included as a Unit satisfying the requirements of the Set Aside.

"Median Gross Income for the Area" means, with respect to the Project, the median income for the households in the area which includes the standard metropolitan statistical area in which the Project is located, as determined from time to time by the Secretary of Housing and Urban Development, under Section 8 of the United States Housing Act of 1937, as amended (or if such program is terminated, median income determined under the program in effect immediately before such termination), in each case as adjusted for family size.

"Net Proceeds" means any Net Sale Proceeds, Investment Proceeds and Transferred Proceeds of the Bonds.

"Net Sale Proceeds" means the Sale Proceeds of the Bonds less any such proceeds deposited into a Reasonably Required Reserve or Replacement Fund under section 148(d) of the Code.

"Nonpurpose Investments" means any "investment property," within the meaning of section 148(b) of the Code, acquired with the Gross Proceeds of the Bonds.

"Owner Representative" means any Person who at the time and from time to time may be designated as such, by written certificate furnished to the Issuer and the Trustee containing the specimen signature of such Person and signed on behalf of the Owner by the General Partner, which certificate may designate an alternate or alternates.

"Person" means any individual, entity, corporation, partnership, joint venture, association, joint-stock company, trust, unincorporated organization or government or any agency or political subdivision thereof.

"Proceeds" means any Sale Proceeds, Investment Proceeds and Transferred Proceeds of the Bonds.

"Project" means the Project Facilities and the Project Site.

"Project Costs" means, to the extent authorized by the Act, any and all costs incurred by the Owner with respect to the acquisition, construction, rehabilitation and equipping, as the case may be, of the Project, whether paid or incurred prior to or after the date of this Regulatory Agreement, including, without limitation, costs for site preparation, the planning of housing and improvements, the removal or demolition of existing structures, and all other work in connection therewith, and all costs of financing, including, without limitation, the cost of consultant, accounting and legal services, other expenses necessary or incident to determining the feasibility of the Project, contractor's and Owner's overhead and supervisor's fees and costs directly allocable to the Project, administrative and other expenses necessary or incident to the Project and the financing thereof.

"Project Facilities" means the multifamily affordable housing complex set forth in Exhibit B hereto.

"Project Site" means the parcel or parcels of real property described in Exhibit A, which is attached hereto and by this reference incorporated herein, and all rights and appurtenances appertaining thereunto.

"Qualified Project Costs" means the Project Costs incurred no earlier than 60 days prior to the Inducement Date (or which are qualifying preliminary expenditures) and no earlier than three years prior to the date reimbursed with Proceeds, but in no event shall such costs have been incurred with respect to a portion of the Project that is placed in service, within the meaning of Section 1.150-2 of the Regulations, earlier than 18 months prior to the date the related costs are reimbursed with Proceeds; provided that such costs are chargeable to a capital account with respect to the Project for Federal income tax and financial accounting purposes, or would be so chargeable either with a proper election by the Owner or but for the proper election by the Owner to deduct those amounts; provided, however, that, if any portion of the Project is being constructed by the Owner or an Affiliated Party (whether as a general contractor or a subcontractor), "Qualified Project Costs" shall include only (a) the actual out-of-pocket costs incurred by the Owner or such Affiliated Party in constructing the Project (or any portion thereof), (b) any reasonable fees for supervisory services actually rendered by the Owner or such Affiliated Party (but excluding any profit component) and (c) any overhead expenses incurred by the Owner or such Affiliated Party which are directly attributable to the work performed on the Project and shall not include, for example, intercompany profits resulting from members of an affiliated group (within the meaning of section 1504 of the Code) participating in the construction of the Project or payments received by such Affiliated Party due to early completion of the Project (or any portion thereof). Qualified Project Costs do not include Costs of Issuance.

"Qualified Project Period" means, with respect to the Project, the period beginning on the closing date and ending on the later of (i) the date which is 15 years after the closing date, (ii) the first date on which no tax-exempt bond issued with respect to the Project is outstanding, or (iii) the first date on which the Project no longer receives assistance under Section 8 of the United States Housing Act of 1937, as amended.

"Reasonably Required Reserve or Replacement Fund" means any fund described in section 148(d) of the Code, provided that the amount thereof allocable to the Bonds invested at a Yield materially higher than the Yield on the Bonds does not exceed 10% of the proceeds of the Bonds, within the

meaning of section 148(d) of the Code, and does not exceed the size limitations in Section 1.148-2(f)(2)(ii) of the Regulations.

"Rebate Amount" has the meaning ascribed in Section 1.148-3(b) of the Regulations and generally means the excess as of any date of the future value of all receipts on Nonpurpose Investments over the future value of all payments on Nonpurpose Investments all as determined in accordance with section 1.148-3 of the Regulations. In the case of any Spending Exception Issue, the "Rebate Amount" as of any Computation Date shall be limited to the "Rebate Amount" attributable to any Reasonably Required Reserve or Replacement Fund.

"Regulations" means the applicable proposed, temporary or final Income Tax Regulations promulgated under the Code or, to the extent applicable to the Code, under the Internal Revenue Code of 1954, as such regulations may be amended or supplemented from time to time.

"Replacement Proceeds" has the meaning set forth in Section 1.148-1(c) of the Regulations.

"Sale Proceeds" means any amounts actually or constructively received from the sale (or other disposition) of any Bond, including amounts used to pay underwriters' discount or compensation and accrued interest other than pre-issuance accrued interest. Sale Proceeds also include amounts derived from the sale of a right that is associated with any Bond and that is described in Section 1.148-4 of the Regulations.

"Set Aside" has the meaning assigned to such term in Section 2(i) hereof.

"Spending Exception Issue" means any issue of Bonds that meets either the six month exception or the 18-month exception set forth in section 1.148-7 of the Regulations.

"Stated Maturity," when used with respect to the Note or the Bonds or any installment of interest thereon, means any date specified in the Note or the Bonds as a fixed date on which the principal of the Loan or the Bonds or a portion thereof or such installment of interest is due and payable.

"Tenant Income Certification" means a certification as to income and other matters executed by the household members of each tenant in the Project, in substantially the form of Exhibit C attached hereto, or in such other form as reasonably may be required by the Issuer all in satisfaction of the requirements of Regulations Section 1.167(k)-3(b)(3) (prior to its withdrawal by T.D. 8473, April 27, 1993) and other regulations of the Issuer and as described in Section 4(b)(ii), including the Tenant Income Certification Form as set forth in Exhibit C.

"Transferred Proceeds" means, with respect to any portion of the Bonds that is a refunding issue, proceeds that have ceased to be proceeds of a refunded issue and are transferred proceeds of the refunding issue by reason of Section 1.148-9 of the Regulations.

"Unit" means a residential accommodation containing separate and complete facilities for living, sleeping, eating, cooking and sanitation located within the Project.

"Yield" means yield as determined in accordance with section 148(h) of the Code, and generally, is the yield which when used in computing the present worth of all payments of principal and interest to be paid on an obligation produces an amount equal to the Issue Price of such obligation.

Unless the context clearly requires otherwise, as used in this Regulatory Agreement, words of the masculine, feminine or neuter gender shall be construed to include each other gender, and words of the singular number shall be construed to include the plural number, and vice versa. This Regulatory

Agreement and all the terms and provisions hereof shall be construed to effectuate the purposes set forth herein and to sustain the validity hereof.

The defined terms used in the preamble and recitals of this Regulatory Agreement have been included for convenience of reference only, and the meaning, construction and interpretation of all defined terms shall be determined by reference to this Section 1, notwithstanding any contrary definition in the preamble or recitals hereof. The titles and headings of the sections of this Regulatory Agreement have been inserted for convenience of reference only and are not to be considered a part hereof and shall not in any way modify or restrict any of the terms or provisions hereof or be considered or given any effect in construing this Regulatory Agreement or any provisions hereof or in ascertaining intent, if any question of intent shall arise.

Section 1A. Acquisition, Rehabilitation and Equipping of the Project. The Owner hereby represents, as of the date hereof, covenants and agrees as follows;

(a) The Owner has incurred, or will incur within six months after the Closing Date, a substantial binding obligation to commence the rehabilitation of Project Facilities, pursuant to which the Owner is or will be obligated to expend at least 5 percent of the Sale Proceeds of the Bonds.

(b) The Owner's reasonable expectations respecting the total cost of the acquisition, rehabilitation and equipping of the Project are accurately set forth in the Federal Tax Certificate and any attachments thereto.

(c) The Owner has commenced or will commence the acquisition, rehabilitation and equipping of each of the Projects and will proceed with due diligence to complete the same.

(d) The Owner reasonably expects to expend not less than 85 percent of the Sale Proceeds of the Bonds for Project Costs prior to the date that is three years after the Closing Date.

(e) The statements made in the various certificates delivered by the Owner to the Issuer, Bond Counsel and/or the Trustee are true and correct in all material respects.

(f) The Owner will submit, or cause to be submitted, to the Trustee, on or before the date of each disbursement of Proceeds of the Bonds from the Project Fund, if any, held by the Trustee under the Indenture, a requisition in substantially the form required by the Indenture, duly executed by an Owner Representative and certifying that the full amount of such disbursement will be applied to pay or to reimburse the Owner for the payment of Project Costs and that, after taking into account the proposed disbursement, the aggregate disbursements from the Acquisition Fund will have been applied to pay or to reimburse the Owner for the payment of Qualified Project Costs in an amount equal to 95 percent or more of the aggregate disbursements from such fund.

(g) [Reserved].

(h) The Owner (and any Affiliated Party) will not take or omit to take, as is applicable, any action if such action or omission would in any way cause the Proceeds of the Bonds to be applied in a manner contrary to the requirements of the Indenture, the Loan Agreement or this Regulatory Agreement. The Owner acknowledges that such requirements have been designed for the purpose of ensuring compliance with the provisions of the Act or the Code applicable to the Owner and the Project.

Section 2. Tax-Exempt Status of the Bonds. The Owner shall not take any action or omit to take any action which, if taken or omitted, respectively, would adversely affect the excludability of interest on the Bonds from the gross income (as defined in section 61 of the Code) of the holders of the Bonds, for federal income tax purposes. With the intent not to limit the generality of the foregoing, the Owner covenants and agrees that prior to the final maturity of the Bonds, unless it has received and filed with the Issuer and Trustee a Favorable Opinion of Bond Counsel to the effect that failure to comply with any such covenant or agreement, in whole or in part, will not adversely affect the exclusion from gross income for Federal income tax purposes of interest paid or payable on the Bonds:

(a) The Owner's use of the Net Proceeds of the Bonds shall at all times satisfy the following requirements:

(i) At least 95 percent of the Net Proceeds of the Bonds shall be used to pay Qualified Project Costs that are costs of a "qualified residential rental project" (within the meaning of sections 142(a)(7), 142(d) and 145(d) of the Code and section 1.103-8(b)(4) of the Regulations) and property that is "functionally related and subordinate" thereto (within the meaning of Sections 1.103-8(a)(3) and 1.103-8(b)(4)(iii) of the Regulations), all of which costs shall be properly chargeable to the Project's capital account or would be so chargeable either with a proper election by the Owner or but for a proper election by the Owner to deduct such amounts.

(ii) Less than 25 percent of the Net Proceeds of the Bonds actually expended will be used, directly or indirectly, for the acquisition of land or an interest therein. Notwithstanding the immediately preceding sentence no portion of the Net Proceeds of the Bonds will be used, directly or indirectly, for the acquisition of land or an interest therein to be used for farming purposes.

(iii) No portion of the Net Proceeds of the Bonds will be used for the acquisition of any existing property or an interest therein unless (i) the first use of such property is pursuant to such acquisition or (ii) the rehabilitation expenditures with respect to any building and the equipment therefor equal or exceed 15 percent of the cost of acquiring such building financed with the proceeds of the Bonds (with respect to structures other than buildings, this clause shall be applied by substituting 100 percent for 15 percent). For purposes of the preceding sentence, the term "rehabilitation expenditures" shall have the meaning set forth in section 147(d)(3) of the Code.

(iv) The Owner covenants and agrees that the Costs of Issuance financed with the proceeds of the Bonds shall not exceed 2 percent of the Sale Proceeds.

(v) The Owner shall not use or permit the use of any Net Proceeds of the Bonds or any income from the investment thereof to provide any airplane, skybox, or other private luxury box, any facility primarily used for gambling, or any store the principal business of which is the sale of alcoholic beverages for consumption off premises.

(b) The Owner shall not take any action or omit to take any action with respect to the Gross Proceeds of the Bonds which, if taken or omitted, respectively, would cause any Bond to be classified as an "arbitrage bond" within the meaning of section 148 of the Code.

(c) Except as provided in the Indenture and the Loan Documents, the Owner shall not pledge or otherwise encumber, or permit the pledge or encumbrance of, any money, investment, or investment property as security for payment of any amounts due under the Loan



Agreement relating to the Bonds, shall not establish any segregated reserve or similar fund for such purpose and shall not prepay any such amounts in advance of the redemption date of an equal principal amount of Bonds, unless prior to taking any action described in this subsection (c), the Owner has obtained and delivered to the Trustee a Favorable Opinion of Bond Counsel.

(d) The Owner shall not, at any time prior to the final maturity of the Bonds, direct or permit the Trustee to invest Gross Proceeds of the Bonds in any Investment (or to use Gross Proceeds to replace money so invested), if as a result of such investment the Yield of all Investments acquired with Gross Proceeds (or with money replaced thereby) on or prior to the date of such investment exceeds the Yield of the Bonds to Stated Maturity, except as permitted by section 148 of the Code or as provided in the Tax Certificate dated the Closing Date delivered by the Issuer with respect to the Bonds.

(e) Except to the extent permitted by section 149(b) of the Code, neither the Issuer nor the Owner shall take or omit to take any action which would cause the Bonds to be "federally guaranteed" within the meaning of section 149(b) of the Code.

(f) (i) Unless the Owner delivers a Favorable Opinion of Bond Counsel that the Owner does not need to comply with this subsection, the Owner shall cause to be delivered, to the Trustee, within 25 days after each Computation Date:

(A) a statement of the Rebate Amount as of such Computation Date; and

(B) (1) if such Computation Date is an Installment 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 Installment Computation Date, less any "previous rebate payments" made to the United States (as that term is used in the Regulations), or (2) if such Computation Date 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 the Regulations); and

(C) an Internal Revenue Service Form 8038-T properly signed and completed as of such Computation Date.

The foregoing notwithstanding, the Owner shall not be required to deliver the foregoing to the Trustee if the Owner certifies that the Bonds are excepted from the requirements of section 148(f) of the Code.

(ii) If the Owner shall discover or be notified as of any date:

(A) that any amount required to be paid to the United States pursuant to this Section and the Indenture has not been paid as required; or

(B) that any payment paid to the United States pursuant to this Section 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 Owner or the Trustee),

the Owner shall

(X) deliver to the Trustee (for deposit to the Rebate Fund) and cause the Trustee to pay to the United States from the Rebate Fund (I) the Rebate Amount that the Owner failed to pay, plus any interest, specified in the Regulations, if such correction payment is delivered to and received by the Trustee within 175 days after such discovery or notice, or (II) if such correction payment is not delivered to and received by the Trustee within 175 day after such discovery or notice, the amount determined in accordance with clause (I) of this subparagraph (X) plus the 50 percent penalty required by the Regulations; and

(Y) deliver to the Trustee an Internal Revenue Service Form 8038-T properly signed and completed as of such date.

(iii) The Owner shall retain all of its accounting records relating to the funds established under the Indenture and all calculations made in preparing the statements described in this Section for at least six years after the date the last Bond is discharged.

(iv) The Owner agrees to pay all of the reasonable and actual fees and expenses of the Rebate Analyst, charged at rates substantially similar to the rate by such party for work of this type which may be Bond Counsel, a certified public accountant and any other necessary consultant employed by the Owner or the Trustee in connection with computing the Rebate Amount.

(g) The Owner covenants and agrees that not more than 50 percent of the Proceeds of the Bonds will be invested in Nonpurpose Investments having a substantially guaranteed Yield for four years or more within the meaning of section 149(g)(3)(A)(ii) of the Code, and the Owner reasonably expects that at least 85 percent of the spendable Proceeds of the Bonds will be used to carry out the governmental purposes of such issue of Bonds within the three-year period beginning on the Closing Date.

(h) The Owner hereby covenants and agrees that Project, will be operated as a "qualified residential rental project" within the meaning of sections 142(a)(7), 142(d), 145(d) of the Code and section 1.103-8(b)(4) of the Regulations, on a continuous basis during the longer of the Qualified Project Period or the period during which any Bond remains outstanding, to the end that the interest on the Bonds shall be excluded from gross income for federal income tax purposes. In particular, the Owner covenants and agrees, and will cause the manager to covenant and agree for the longer of the Qualified Project Period or the period during which any Bonds remain outstanding, as follows:

(i) The Project Facilities qualify as residential rental property and will be owned, managed and operated at all times during the term specified above as a qualified residential rental project comprised of residential dwelling units and facilities functionally related and subordinate thereto, in accordance with section 142(d) of the Code;

(ii) The Project Facilities will consist of one building or structure or several proximate and interrelated buildings or structures, each of which will be a discrete edifice or other man-made construction consisting of an independent foundation, outer walls and a roof, and all of which (A) will be located on a single tract of land or two or more parcels of land that are contiguous (i.e., their boundaries meet at one or more points) except for the interposition of a road, street, stream or similar property, (B) are owned by the same person for Federal tax purposes, and (C) were financed pursuant to a common plan;

(iii) Substantially all of the Project will consist of similarly constructed Units together with functionally related and subordinate facilities for use by Project tenants, such as swimming pools, other recreational facilities, parking areas, heating and cooling equipment, trash disposal equipment, units for resident managers, security personnel or maintenance personnel and other facilities that are reasonably required for the Project;

(iv) Each Unit in the Project will contain complete facilities for living, sleeping, eating, cooking and sanitation, e.g., a living area, a sleeping area, bathing and sanitation facilities, and cooking facilities equipped with a cooking range, refrigerator and sink, all of which will be separate and distinct from other Units;

(v) Each Unit in the Project will be rented or available for rental on a continuous basis to members of the general public at all times during the term specified above (unless occupied by or reserved for a resident manager, security personnel or maintenance personnel) and that the Owner will not give preference in renting Project Units to any particular class or group of persons, other than Low-Income Tenants as provided herein;

(vi) At no time during the term specified above will any Unit in any building or structure in the Project which contains fewer than five Units be occupied by the Owner;

(vii) At no time during the term specified above will any of the Units in the Project be utilized on a transient basis by being leased or rented for a period of less than thirty days or by being used as a hotel, motel, dormitory, fraternity house, sorority house, rooming house, hospital, sanitarium, nursing home, rest home, trailer park or trailer court;

(viii) The land and the facilities will be functionally related and subordinate to the Units comprising the Project and will be of size and character which is commensurate with the size and number of such Units; and

(i) The Owner hereby represents, covenants and agrees, continuously during the Qualified Project Period, as follows:

(i) Forty percent 40% of the Units (except for manager, security personnel and maintenance units that are reasonably required for the Project) (the "Set Aside") within the Project (and any other building which is comprised of similarly constructed Units, will be owned by the Owner for federal income tax purposes, will be located on the same or contiguous tract that is not separated from the Project except by a road, street, stream, or similar property, and is financed by the Bonds) that are available for occupancy, including expiration or lawful termination of an existing lease, shall be occupied or held vacant and available for occupancy at all times by Low-Income Tenants. For the purposes of this subparagraph (i), a vacant Unit which was most recently

occupied by a Low-Income Tenant is treated as rented and occupied by a Low-Income Tenant until reoccupied, at which time the character of such Unit shall be redetermined.

(ii) The Owner shall maintain complete and accurate records pertaining to Low-Income Tenants and file all documents as required by section 142(d) of the Code and this Agreement, including Tenant Income Certifications attached as Exhibit C hereto.

(iii) No tenant qualifying as a Low-Income Tenant shall be denied continued occupancy of a Unit in the Project because, after admission, such tenant's Anticipated Annual Income increases to exceed the qualifying limit for Low-Income Tenants; provided, however, that, should a Low-Income Tenant's Anticipated Annual Income, as of the most recent determination thereof, exceed 140% of the then applicable income limit for a Low-Income Tenant of the same family size and such Low-Income Tenant constitutes a portion of this Section, the next available Unit of comparable or smaller size must be rented to (or held vacant and available for immediate occupancy by) a Low-Income Tenant and such new Low-Income Tenant will then constitute a portion of the Set Aside requirement of paragraph (i) of this Section; and provided, further, that, until such next available Unit is rented to a tenant who is a Low-Income Tenant, the former Low-Income Tenant who has ceased to qualify as such shall be deemed to continue to be a Low-Income Tenant for purposes of the requirement of subparagraph (i) of this Section 2(i).

The parties hereto recognize that the requirements stated in Section 2(h) shall continue in effect until the termination of the Qualified Project Period or until no Bonds remain outstanding, whichever occurs later, and the requirements in this Section 2(i) shall continue in effect until the termination of the Qualified Project Period.

(j) The Owner further covenants and agrees to prepare and submit to the Trustee, no more than 60 days prior to the last day of the Qualified Project Period a certificate setting forth the date on which the Qualified Project Period will end, which certificate shall be in recordable form. The Issuer need not affirmatively consent to the termination of the covenants.

(k) Anything in this Agreement to the contrary notwithstanding, it is expressly understood and agreed by the parties hereto that the Issuer and the Trustee may rely conclusively on the truth and accuracy of any certificate, opinion, notice, representation or instrument made or provided by the Owner in order to establish the existence of any fact or statement of affairs solely within the knowledge of the Owner, and which is required to be noticed, represented or certified by the Owner hereunder or in connection with any filings, representations or certifications required to be made by the Owner in connection with the issuance and delivery of the Bonds.

(l) The Owner shall provide to the Trustee a certificate certifying (i) within 90 days thereof, the date on which ten percent (10%) of the Units in the Project are occupied; and (ii) within 90 days thereof, the date on which fifty percent (50%) of the Units in each Project are occupied.

Section 3. Modification of Tax Covenants. Subsequent to the issuance of the Bonds and prior to their payment in full (or provision for the payment thereof having been made in accordance with the provisions of the Indenture), this Agreement may not be amended, changed, modified, altered or terminated except as permitted in Section 19 and by the Indenture. Anything contained in this Agreement or the Indenture to the contrary notwithstanding, the Issuer, the Trustee and the Owner hereby agree upon the written request of one of the parties hereto, to amend this Agreement and, if appropriate, the Indenture and the Loan Agreement, to the extent required, in the opinion of Bond Counsel, in order for interest on

the Bonds, to remain excludable from gross income for federal income tax purposes. The party requesting such amendment shall notify the other parties to this Agreement in writing of the proposed amendment and send a copy of such requested amendment to Bond Counsel. After review of such proposed amendment, Bond Counsel shall render to the Trustee, the Owner and the Issuer an opinion to the effect that such amendments are necessary and sufficient in order to enable compliance with the provisions of the Code such that the interest on the Bonds will remain excludable from gross income for purposes of Federal income taxation. The Owner shall pay all necessary fees and expenses incurred with respect to such amendment, including necessary reasonable and actual attorney's fees and expenses incurred by Bond Counsel in rendering such opinion. The Owner, the Issuer and, where applicable, the Trustee pursuant to written instructions from the Issuer, shall execute, deliver and, if applicable, the Owner shall file of record, any and all documents and instruments, including without limitation, an amendment to this Regulatory Agreement, necessary to effectuate the intent of this Section, and the Owner and the Issuer hereby appoint the Trustee as their true and lawful attorney-in-fact to execute, deliver and, if applicable, file of record on behalf of the Owner or the Issuer, as is applicable, any such document or instrument (in such form as may be approved by and upon instruction of Bond Counsel) if either the Owner or the Issuer defaults in the performance of its obligation under this Section; provided, however, that the Trustee shall take no action under this Section without first notifying the Owner or the Issuer, as is applicable, in writing of its intention to take such action and providing the Owner or the Issuer, as is applicable, ten (10) business days after such notice to comply with the requirements of this Section.

Section 4. Residential Development. The Issuer and the Owner hereby recognize and declare their understanding and intent that the Project is to be owned, managed and operated as a "residential development," as such term is defined in Section 394.003(13) of the Act, and in compliance with applicable restrictions and limitations as provided in the Act and the rules of the Issuer, until the expiration of the Qualified Project Period or for as long as any portion of the Bonds remains outstanding and unpaid, whichever is longer.

(a) The Owner hereby represents, as of the date hereof, and covenants and agrees for the term of this Regulatory Agreement that substantially all (at least 90%) of the Project dwelling units shall be rented to Eligible Tenants and that the Owner shall not rent or lease any unit in the Project to a person not an Eligible Tenant if such rental would cause less than 90% of the dwelling units in the Project to be rented to Eligible Tenants.

(b) The Owner hereby represents, covenants and agrees as follows:

(i) To assure that 40% of the occupied Units at the Project are occupied at all times by Low Income Tenants;

(ii) To obtain a Tenant Income Certification from each tenant in the Project not later than the date of such tenant's initial occupancy of a Unit in the Project and to maintain a file of all such Tenant Income Certifications, together with all supporting documentation, for a period of not less than three years following the end of the Qualified Project Period;

(iii) To obtain from each tenant in the Project, at the time of execution of the lease pertaining to the Unit occupied by such tenant, a written certification, acknowledgment and acceptance that (A) such lease is subordinate to the Mortgage and this Regulatory Agreement, (B) all statements made in the Tenant Income Certification submitted by such tenant are accurate, (C) the family income and eligibility requirements of this Agreement and the Loan Agreement are substantial and material obligations of tenancy in the Project, (D)

such tenant will comply promptly with all requests for information with respect to such requirements from the Owner, the Trustee and the Issuer, and (E) failure to provide accurate information in the Tenant Income Certification or refusal to comply with a request for information with respect thereto will constitute a violation of a substantial obligation of the tenancy of such tenant in the Project;

(iv) To cause to be prepared and submitted to the Issuer and the Trustee on the first day of the Qualified Project Period, and thereafter by the tenth calendar day of each March, June, September, and December, or a quarterly schedule as determined by the Issuer, a certified Compliance Monitoring Report and Occupancy Summary in a form attached hereto as Exhibit D or at the reasonable request of the Issuer in such other form provided by the Issuer from time to time;

(v) To the extent legally permissible to permit any duly authorized representative of the Issuer or the Trustee (without any obligation to do so) to inspect the books and records of the Owner pertaining to the Project or the incomes of Project tenants, including but not limited to tenant files, during regular business hours and to make copies therefrom if so desired and file such reports as are necessary to meet the Issuer's requirements; and

(vi) The Owner will obtain a Tenant Income Certification from each tenant at least annually after the tenant's initial occupancy or as otherwise directed by the Issuer in writing.

Section 5. [Reserved].

Section 6. Consideration. The Issuer has issued the Bonds to provide funds to make the Loan to finance the Project, all for the purpose, among others, of inducing the Owner to acquire, rehabilitate, equip and operate the Project. In consideration of the issuance of the Bonds by the Issuer, the Owner has entered into this Regulatory Agreement and has agreed to restrict the uses to which this Project can be put on the terms and conditions set forth herein.

Section 7. Reliance. The Issuer, the Trustee and the Owner hereby recognize and agree that the representations and covenants set forth herein may be relied upon by all persons interested in the legality and validity of the Bonds, and in the excludability from gross income for purposes of Federal income taxation of the interest on the Bonds. In performing their duties and obligations hereunder, the Issuer and the Trustee may rely upon statements and certificates of the Low-Income Tenants and the Owner and upon audits of the books and records of the Owner pertaining to the Project. In addition, the Issuer, the Owner and the Trustee may consult with counsel, and the opinion of such counsel shall be full and complete authorization and protection in respect of any action taken or suffered by the Issuer, the Owner or the Trustee hereunder in good faith and in conformity with such opinion. In determining whether any default by the Owner exists under this Regulatory Agreement, the Trustee shall not be required to conduct any investigation into or review of the operations or records of the Owner and may rely on any written report, notice or certificate delivered to the Trustee by any Person retained to review the Owner's compliance with this Regulatory Agreement or by the Owner or the Issuer with respect to the occurrence or absence of a default unless it has actual knowledge that the report, notice or certificate is erroneous or misleading.

Section 8. Project in Austin, Texas. The Owner hereby represents that the Project is located entirely within Austin, Texas.

Section 9. Sale or Transfer of the Project. The Owner covenants and agrees not to sell, transfer or otherwise dispose of the Project prior to the expiration of the Qualified Project Period or the

date on which the Bonds have been paid in full, whichever is later, without (i) complying with any applicable provisions of the Loan Documents and (ii) obtaining the prior written consent of the Issuer. Such consent of the Issuer shall not be unreasonably withheld or delayed and shall be given if all conditions to the sale set forth in this Regulatory Agreement are met or are waived in writing by the Issuer, including (1) there is delivered to the Trustee and the Issuer a written Opinion of Counsel satisfactory to the Trustee and the Issuer, addressed to the Trustee and the Issuer, concluding that the transferee has duly assumed all of the rights and obligations of the Owner under the Loan Documents and this Regulatory Agreement and that each of the documents executed by the transferee in connection therewith has been duly authorized, executed and delivered by the transferee and is a valid and enforceable obligation of the transferee, subject to customary qualifications, (2) the Issuer receives a Favorable Opinion of Bond Counsel, which opinion shall be furnished at the expense of the Owner or the transferee, regarding such sale, transfer or disposition, (3) the proposed purchaser or assignee executes any document reasonably requested by the Issuer with respect to assuming the obligations of the Owner under this Agreement and the Loan Agreement, and (4) the Issuer shall not have any reason to believe that the purchaser or assignee is incapable, financially or otherwise, of complying with, or may be unwilling to comply with, the terms of all agreements and instruments binding on such proposed purchaser or assignee relating to the Project, including but not limited to the Loan Agreement, the Mortgage and this Agreement. The Owner hereby expressly stipulates and agrees that any sale, transfer or other disposition of the Project in violation of this subsection shall be ineffective to relieve the Owner of its obligations under this Agreement. Upon any sale, transfer or other disposition of the Project in compliance with this Agreement, the Owner so selling, transferring or otherwise disposing of the Project shall have no further liability for obligations under the Loan Agreement arising after the date of such disposition. The foregoing notwithstanding, the duties and obligations of the Owner as set forth in the Loan Documents with respect to matters arising prior to the date of such sale, transfer or other disposition shall not terminate upon the sale, transfer or other disposition of the Project. The foregoing restrictions on transfer shall not apply to foreclosures, deeds in lieu of foreclosure, transfer by exercise of the power of sale or other similar transfer. Any such sale or transfer shall be subject to the Issuer's multifamily rules.

Section 10. Term. This Regulatory Agreement and all and each of the provisions hereof shall become effective upon its execution and delivery, shall remain in full force and effect for the periods provided herein and, except as otherwise provided in this Section, shall terminate in its entirety at the end of the Qualified Project Period, it being expressly agreed and understood that the provisions hereof are intended to survive the retirement of the Bonds, discharge of the Mortgage, termination of the Loan Agreement and defeasance or termination of the Indenture.

The terms of this Regulatory Agreement to the contrary and notwithstanding, this Regulatory Agreement, the Loan Agreement and the Indenture shall terminate, without the requirement of any consent by the Issuer and the Trustee, and be of no further force and effect in the event of involuntary noncompliance with the provisions of this Regulatory Agreement caused by fire, seizure, requisition, change in a federal law or an action of a federal agency after the Closing Date which prevents the Issuer or the Trustee from enforcing the provisions hereof, or foreclosure or transfer of title by deed in lieu of foreclosure or exercise of the power of sale, condemnation or a similar event, but only if, within a reasonable period thereafter, either the Bonds are retired in full or amounts received as a consequence of such event are used to provide a qualified residential rental project which meets the requirements of the Code set forth in Sections 1A through 4 of this Regulatory Agreement and the Act. The provisions of the preceding sentence shall cease to apply and the requirements referred to therein shall be reinstated if, at any time during the Qualified Project Period after the termination of such requirements as a result of involuntary noncompliance due to foreclosure, transfer of title by deed in lieu of foreclosure or exercise of power of sale or similar event, the Owner or any related person (within the meaning of Section 1.103-10(e) of the Regulations) obtains an ownership interest in the Project for tax purposes. The Issuer shall

not be required to consent to termination of this Regulatory Agreement for any reason other than those specified above.

Upon the termination of the terms of this Regulatory Agreement, the parties hereto agree to execute, deliver and record appropriate instruments of release and discharge of the terms hereof; provided, however, that the execution and delivery of such instruments shall not be necessary or a prerequisite to the termination of this Agreement in accordance with its terms. All costs, including reasonable and actual fees and expenses of the Issuer and the Trustee, incurred in connection with the termination of this Regulatory Agreement shall be paid by the Owner and its successors in interest.

Section 11. Covenants To Run With the Land. The Owner hereby subjects the Project to the covenants, reservations and restrictions set forth in this Regulatory Agreement. The Issuer, the Trustee and the Owner hereby declare their express intent that the covenants, reservations and restrictions set forth herein shall be deemed covenants running with the land and shall pass to and be binding upon the Owner's successors in title to the Project; provided, however, that upon the termination of this Agreement said covenants, reservations and restrictions shall expire. Each and every contract, deed or other instrument hereafter executed covering or conveying the Project or any portion thereof shall conclusively be held to have been executed, delivered and accepted subject to such covenants, reservations and restrictions, regardless of whether such covenants, reservations and restrictions are set forth in such contract, deed or other instruments.

No breach of any of the provisions of this Regulatory Agreement shall impair, defeat or render invalid the lien of any mortgage, deed of trust or like encumbrance made in good faith and for value encumbering the Project or any portion thereof.

Section 12. Burden and Benefit. The Issuer, the Trustee and the Owner hereby declare their understanding and intent that the burden of the covenants set forth herein touch and concern the land in that the Owner's legal interest in the Project is rendered less valuable thereby. The Issuer, the Trustee and the Owner hereby further declare their understanding and intent that the benefit of such covenants touch and concern the land by enhancing and increasing the enjoyment and use of the Project by Low-Income Tenants, the intended beneficiaries of such covenants, reservations and restrictions, and by furthering the public purposes for which the Bonds were issued.

Section 13. Uniformity; Common Plan. The covenants, reservations and restrictions hereof shall apply uniformly to the entire Project in order to establish and carry out a common plan for the use, development and improvement of the Project Site.

Section 14. Default; Enforcement. If the Owner defaults in the performance or observance of any covenant, agreement or obligation of the Owner set forth in this Regulatory Agreement, and if such default remains uncured for a period of 60 days after written notice thereof shall have been given by the Issuer or the Trustee to the Owner in accordance with the Indenture, then the Trustee, acting on its own behalf or on behalf of the Issuer, provided a responsible officer of the Trustee actually knows of such default, shall declare an "Event of Default" to have occurred hereunder; provided, further, however, that, if the default stated in the notice is of such a nature that it cannot be corrected within 60 days, such default shall not constitute an Event of Default hereunder so long as (i) the Owner institutes corrective action within said 60 days and diligently pursues such action until the default is corrected and (ii) in the opinion of Bond Counsel, the failure to cure said default within 60 days will not adversely affect the tax-exempt status of interest on the Bonds. The Issuer and the Trustee agree that a cure of any Event of Default made or tendered by any partner or member of Owner shall be deemed to be a cure by the Owner and shall be accepted or rejected on the same basis as if tendered by Owner.



Following the declaration of an Event of Default hereunder, the Trustee, subject to being indemnified to its satisfaction with respect to the costs and expenses of any proceeding, or the Issuer may, at its option, take any one or more of the following steps:

(i) by mandamus or other suit, action or proceeding for specific performance, including injunctive relief, require the Owner to perform its obligations and covenants hereunder or enjoin any acts or things which may be unlawful or in violation of the rights of the Issuer or the Trustee hereunder;

(ii) have access to and inspect, examine and make copies of all of the books and records of the Owner pertaining to the Project; and

(iii) take such other action at law or in equity as may appear necessary or desirable to enforce the obligations, covenants and agreements of the Owner hereunder.

The Owner hereby agrees that specific enforcement of the Owner's agreements contained herein is the only means by which the Issuer and the Trustee may obtain the benefits of such agreements made by the Owner herein, and the Owner therefore agrees to the imposition of the remedy of specific performance against it in the case of any Event of Default by the Owner hereunder.

All rights and remedies herein given or granted to the Issuer and the Trustee are cumulative, nonexclusive and in addition to any and all rights and remedies that the Issuer and the Trustee may have or may be given by reason of any law, statute, ordinance, document or otherwise. Notwithstanding the availability of the remedy of specific performance provided for in this Section, promptly upon determining that a violation of this Regulatory Agreement has occurred, the Issuer shall to the extent that it has actual knowledge thereof, give written notice to the Trustee that a violation of this Regulatory Agreement has occurred.

Section 15. The Trustee. The Trustee shall act as specifically provided herein and in the Indenture. Subject to the right of the Trustee to be indemnified as provided in the Indenture, the Trustee shall act as the agent of and on behalf of the Issuer when requested in writing by the Issuer to do so, and any act required to be performed by the Issuer as herein provided shall be deemed taken if such act is performed by the Trustee. The Trustee is entering into this Regulatory Agreement solely in its capacity as Trustee under the Indenture, and the duties, powers, rights and obligations of the Trustee in acting hereunder shall be subject to the provisions of the Indenture, including, without limitation, the provisions of Article IX thereof, which are incorporated by reference herein. The incorporated provisions of the Indenture are intended to survive the retirement of the Bonds, discharge of the Mortgage, termination of the Loan Agreement and defeasance or termination of the Indenture.

Neither the Trustee nor any of its officers, directors or employees shall be liable for any action taken or omitted to be taken by it or them hereunder or in connection herewith except for its or their own gross negligence, bad faith, fraud or willful misconduct. No provision of this Regulatory Agreement shall require the Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of its duties hereunder, in the exercise of any of its rights or powers if it shall have reasonable grounds for believing that the payment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it.

The Trustee shall examine all documents prepared by the Borrower and furnished to the Trustee to determine whether such documents conform on their face to the requirements of this Regulatory Agreement (which shall not require the Trustee to determine compliance with the resolutions herein). The Trustee shall notify the Issuer and Borrower in writing if the Trustee does not receive any document from the Borrower at the time required under this Regulatory Agreement or if such document does not

conform on its face to the requirements of this Regulatory Agreement. The Trustee may conclusively rely on and shall be protected in acting or omitting to act in good faith upon the certificates and other writings, which conform to the requirements of this Regulatory Agreement, as the Trustee may receive in connection with the administration of its obligation hereunder and has no duty or obligation to make an independent investigation with respect thereto.

Section 16. Recording and Filing. The Owner shall cause this Regulatory Agreement, and all amendments and supplements hereto and thereto, to be recorded and filed in the real property records of Travis County, Texas and in such other places as the Issuer or the Trustee may reasonably request. The Owner shall pay all fees and charges incurred in connection with any such recording. This Agreement is subject to and subordinate to all matters of record as of the date hereof.

Section 17. Reimbursement of Expenses. Notwithstanding any prepayment of the Loan and notwithstanding a discharge of the Indenture, throughout the term of this Regulatory Agreement, the Owner shall continue to pay to the Issuer and the Trustee reimbursement for all fees and expenses actually incurred thereby required to be paid to the Issuer and the Trustee by the Owner pursuant to the Loan Agreement.

Section 18. Governing Law. This Regulatory Agreement shall be governed by the laws of the State (other than in respect of conflicts of laws). The Trustee's rights, duties, powers and obligations hereunder are governed in their entirety by the terms and provisions of this Agreement and the Indenture.

Section 19. Amendments. Subject to the provisions of Section 3 hereof, this Regulatory Agreement shall be amended only by a written instrument executed by the parties hereto, or their successors in title and duly recorded in the real property records of Orange County, and only upon receipt by the Issuer, the Owner and the Trustee of a Favorable Opinion of Bond Counsel regarding such amendment.

Section 20. Notices. Any notice required to be given hereunder to the Issuer, the Trustee or the Owner shall be given in the manner and to the address as set forth in the Indenture.

Section 21. Severability. If any provision of this Regulatory Agreement shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining portions hereof shall not in any way be affected or impaired thereby.

Section 22. Multiple Counterparts. This Regulatory Agreement may be simultaneously executed in multiple counterparts, all of which shall constitute one and the same instrument, and each of which shall be deemed to be an original.

Section 23. Authorization to Act for Issuer. To the extent allowed by law, the Issuer hereby authorizes the Owner to take on behalf of the Issuer all actions required or permitted to be taken by it hereunder, or under the Indenture and the Loan Agreement and to make on behalf of the Issuer all elections and determinations required or permitted to be made by the Issuer hereunder or under the Indenture and the Loan Agreement. In addition, the Issuer hereby authorizes the Owner to exercise, on behalf of the Issuer, any election with respect to the Bonds pursuant to the Code or the Regulations, and the Issuer will cooperate with the Owner and execute any form of statement required by the Code or the Regulations to perfect any such election.

*[EXECUTION PAGES FOLLOW]*

IN WITNESS WHEREOF, the Issuer, the Trustee and the Owner have executed this Regulatory Agreement by duly authorized representatives, all as of the date first above written.

AUSTIN HOUSING FINANCE CORPORATION

By: \_\_\_\_\_  
Name:  
Title: Manager

Attest:

By: \_\_\_\_\_  
Name:  
Title: Secretary

**BOKE, NA DBA BANK OF TEXAS, as Trustee**

By: \_\_\_\_\_  
Name:  
Title:

**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: \_\_\_\_\_

ACKNOWLEDGMENT

STATE OF TEXAS

§

§

COUNTY OF TRAVIS

§

This Regulatory Agreement was acknowledged before me on \_\_\_\_\_, 2015, by David Potter, Manager of Austin Housing Finance Corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

\_\_\_\_\_  
Notary Public Signature

(Personalized Seal)

ACKNOWLEDGMENT

STATE OF \_\_\_\_\_

§

§

COUNTY OF \_\_\_\_\_

§

This instrument was acknowledged before me on \_\_\_\_\_, 2015, by \_\_\_\_\_,  
authorized signatory of BOKF, NA DBA BANK OF TEXAS.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

\_\_\_\_\_  
Notary Public Signature

(Personalized Seal)

ACKNOWLEDGMENT

STATE OF \_\_\_\_\_

§

§

COUNTY OF \_\_\_\_\_

§

This instrument was acknowledged before me on \_\_\_\_\_, 2015, by \_\_\_\_\_, \_\_\_\_\_, the President of AHFC Aldrich 51 Non-Profit Corporation, the managing member of Austin DMA Housing II, LLC.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

\_\_\_\_\_  
Notary Public Signature

(Personalized Seal)  
Authorized Officer \_\_\_\_\_ the

EXHIBIT A

Legal Description for Title Commitment attached on next page.



**EXHIBIT B**

**PROJECT AND OWNER**

**Owner:** Austin DMA Housing II, LLC.

**Project Site:** West side of Aldrich Street, between Barbara Jordan Blvd., and 51st Street,  
**Austin TX:** 240 Units

## EXHIBIT C

### TENANT INCOME CERTIFICATION

Austin Housing Finance Corporation  
Multifamily Housing Revenue Bonds  
(Aldrich 51 Apartments)  
Series 2015

#### VERIFICATION OF INCOME

RE:

Apartment Number: \_\_\_\_\_ Building Number: \_\_\_\_\_ Square footage: \_\_\_\_\_

Number of Bedrooms: \_\_\_\_\_ Apartment Address (1034 Clayton Lane, Austin, Texas) Initial  
Monthly Rent: \$ \_\_\_\_\_

I/We, the undersigned, being first duly sworn, state that I/we have read and answered fully and truthfully each of the following questions for all persons who are to occupy the unit in the above apartment development for which application is made, all of whom are listed below:

1. Name of Members of the Household	2. Relationship to Head of Household	3. Age	4. Social Security Number	5. Place of Employment
	Head			
	Spouse			

6. The anticipated income of all the above persons during the 12-month period beginning on the later of the date on which (a) the above persons first occupy the apartment or sign a lease with respect to the apartment or (b) such annual period commencing on the anniversary date of such date of first occupancy or the signing of a lease, including income described in (a) below, but excluding all income described in (b) below, is \$ \_\_\_\_\_.

(a) The amount set forth above includes all of the following income (unless such income is described in (b) below):

(i) all wages and salaries, overtime pay, commissions, fees, tips and bonuses and other compensation for personal services, before payroll deductions;

(ii) net annual income from the operation of a business or profession or from the rental of real or personal property (without deducting expenditures for business expansion or amortization or capital indebtedness). (An allowance for depreciation of assets used in a business or profession may be deducted, based on straight-line depreciation, as provided in Internal Revenue Service regulations. Include any withdrawal of cash or assets from the operation of a business or profession, except to the extent the withdrawal is reimbursement of cash or assets invested in the operation by the above persons);

(iii) interest and dividends (include all income from assets as set forth in item 7(b) below and include any withdrawal of cash or assets from an investment, except to the extent the withdrawal is reimbursement of cash or assets invested by the above persons);

(iv) the full amount of periodic payments received from social security, annuities, insurance policies, retirement funds, pensions, disability or death benefits and other similar types of periodic receipts, including a lump-sum payment for the delayed start of a periodic payment;

(v) payments in lieu of earnings, such as unemployment and disability compensation, workers' compensation and severance pay;

(vi) any welfare assistance: if the welfare assistance payment includes an amount specifically designated for shelter and utilities that is subject to adjustment by the welfare assistance agency in accordance with the actual cost of shelter and utilities, include as income (a) the amount of the allowance or grant exclusive of the amount specifically designated for shelter or utilities, plus (b) the maximum amount that the welfare assistance agency could in fact allow the above persons for shelter and utilities. (If the welfare assistance is ratably reduced from the standard of need by applying a percentage, the amount calculated under clause (b) shall be the amount resulting from one application of the percentage);

(vii) periodic and determinable allowances, such as alimony and child support payments and regular contributions and gifts received from persons not residing in the dwelling;

(viii) all regular pay, special pay and allowances of a member of the Armed Forces (whether or not living in the dwelling) who is the head of the household, spouse or other household member whose dependents are residing in the unit; and

(ix) any earned income tax credit to the extent it exceeds income tax liability.

(b) The following income is excluded from the amount set forth above:

(i) Income from employment of children (including foster children) under the age of 18 years;

(ii) Payment received for the care of foster children;

(iii) Lump-sum additions to household assets, such as inheritances, insurance payments (including payments under health and accident insurance and workers' compensation), capital gains and settlement for personal or property losses;

(iv) Amounts received by the household that are specifically for, or in reimbursement of, the cost of medical expenses for any household member;

(v) Income of a live-in aide;

(vi) Amounts of education scholarships paid directly to the student or to the educational institution, and amounts paid by the government to a veteran, for use in meeting the costs of tuition, fees, books, equipment, materials, supplies, transportation and miscellaneous personal expenses of the student. Any amount of such scholarship or payment to a veteran not used for the above purposes that is available for subsistence is to be included in income;

(vii) The special pay to a household member serving in the Armed Forces who is exposed to hostile fire;

(viii) (a) Amounts received under training programs funded by Housing and Urban Development ("HUD");

(b) Amounts received by a disabled person that are disregarded for a limited time for purposes of Supplemental Security Income eligibility and benefits because they are set aside for use under a Plan to Attain Self-Sufficiency ("PASS");

(c) Amounts received by a participant in other publicly assisted programs which are specifically for or in reimbursement of out-of-pocket expenses incurred (special equipment, clothing, transportation, child care, etc.) and which are made solely to allow participation in a specific program;

(ix) Temporary, nonrecurring or sporadic income (including gifts); or

(x) Amounts specifically excluded by any other federal statute from consideration as income for purposes of determining eligibility or benefits under a category of assistance programs that includes assistance under the United States Housing Act of 1937.

7. If any of the persons described in column 1 above (or any person whose income or contributions were included in item 6) has any savings, stocks, bonds, equity in real property or other form of capital investment (excluding interests in Indian trust lands, but including the value of any assets disposed of for less than fair market value (including a disposition in trust, but not in a foreclosure or bankruptcy sale) during the previous two years), provide:

(a) the total value of all such assets owned by all such persons:

\$ \_\_\_\_\_; and

(b) the amount of income expected to be derived from such assets in the 12-month period commencing this date: \$ \_\_\_\_\_.

8. (a) Will all of the persons listed in column 1 above be or have they been full-time students during five calendar months of this calendar year at an educational institution (other than a correspondence school) with regular faculty and students?

Yes \_\_\_ No

(b) (Complete only if the answer to Question 8(a) is "Yes.") Is any such person (other than nonresident aliens) married and eligible to file a joint federal income tax return?

Yes \_\_\_ No

We acknowledge that all of the above information is relevant to the status under federal income tax law of the interest on bonds issued to finance construction of the apartment building for which application is being made. We consent to the disclosure of such information to the issuer of such bonds, the holders of such bonds, any trustee acting on their behalf and any authorized agent of the Treasury Department or Internal Revenue Service.

Date: \_\_\_\_\_

\_\_\_\_\_  
Head of Household

\_\_\_\_\_  
Spouse

STATE OF TEXAS           §  
                                  §  
COUNTY OF \_\_\_\_\_ §

Subscribed, sworn to and acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2011.

\_\_\_\_\_  
Notary Public of the State of Texas

(Notary Seal)

NOTE TO PROJECT OWNER: A vacant unit previously occupied by individuals or a family of very low income may be treated as occupied by individuals or a family of very low income until reoccupied (other than for a period of 31 consecutive days or less), at which time the character of the unit shall be redetermined.

FOR COMPLETION BY PROJECT OWNER ONLY:

I. Calculation of eligible income:

- (A) Enter amount entered for entire household in 6 above: \$ \_\_\_\_\_
- (B) If the amount entered in 7(a) above is greater than \$5,000, enter:
- (i) the product of the amount entered in 7(a) above multiplied by the current passbook savings rate as determined by HUD: \$ \_\_\_\_\_
- (ii) the amount entered in 7(b) above: \$ \_\_\_\_\_
- (iii) line (i) minus line (ii) (if less than \$0, enter \$0): \$ \_\_\_\_\_
- (C) TOTAL ELIGIBLE INCOME (line I(A) plus line I(B)(iii)): \$ \_\_\_\_\_

II. Qualification as individuals or a family of low income:

- (A) Is the amount entered in line I(c) less than 60% of Median Income for the Area<sup>1</sup> with adjustments for smaller and larger families?
- Yes \_\_\_\_ No \_\_\_\_
- (B) (i) If line II(A) is "No," then the household does not qualify as individuals or a family of low income; skip to item III.
- (ii) If line II(A) above is "Yes" and 8(a) above is "No," then the household qualifies as individuals or a family of low income; skip to item III.
- (iii) If line II(A) above is "Yes" and 8(b) above is "Yes," then the household qualifies as individuals or a family of low income; skip to item III;
- (iv) If neither (ii) nor (iii) is applicable, then the household does not qualify as individuals or a family of low income.

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<sup>1</sup> "Median income for the Area" means the area median gross income as determined by the Secretary of the Treasury in a manner consistent with determinations of lower-income families and area median gross income under Section 8 of the United States Housing Act of 1937, including adjustments for family size or, if programs under Section 8 are terminated, area median gross income determined under the method in effect immediately before such termination.

III. (Check one)

The household does not qualify as individuals or a family of low income.

The household qualifies as individuals or a family of low income.

IV. Number of apartment unit assigned:  
(enter here and on page 1)

V. Method used to verify applicant's income:

\_\_\_\_ Employer income verification

\_\_\_\_ Copies of tax returns

\_\_\_\_ Other (\_\_\_\_)

Date: \_\_\_\_\_

**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: \_\_\_\_\_

EXHIBIT D

COMPLIANCE MONITORING REPORT

TO: Austin Housing Finance Corporation  
c/o Program Manager  
P.O. Box 1088  
Beaumont, Texas 77701

Austin Housing Finance Corporation  
Multifamily Housing Revenue Bonds  
(Alrich 51 Apartments)  
Series 2015

Austin DMA Housing, LLOC (the "Owner"), hereby represents and warrants that:

1. A review of the activities of the Owner during the period of \_\_\_\_\_ through \_\_\_\_\_ and of then Owner's performance under the Loan Agreement has been made under the supervision of the undersigned.
2. The Owner owns Fox Run Apartments (the "Project").
3. The Project was financed, in substantial part, as a result of the indirect loan of the proceeds of the Bonds.
4. The undersigned and the Owner have read and are thoroughly familiar with the provisions of (1) the Regulatory Agreement and Land Use Restriction Agreement (the "Regulatory Agreement"), dated as of November 1, 2015, among the Owner, Austin Housing Finance Corporation (the "Issuer") and BOKF, NA dba Bank of Texas, as Trustee (the "Trustee"); and (2) the Loan Agreement, dated as of November 1, 2015, among the Owner, the Trustee and the Issuer (the "Loan Agreement"). The Regulatory Agreement was executed, delivered, and recorded against the Project in connection with the issuance of the Bonds. Hereinafter, unless otherwise expressly provided herein or unless the context requires otherwise, the capitalized terms used but not defined herein shall have the meanings assigned to such terms in the Regulatory Agreement.
5. The Project's Qualified Project Period with respect to the project, the period beginning on the closing date and ending on the later of (i) the date which is 15 years after the closing date, (ii) the first date on which no tax-exempt bond issued with respect to the Project is outstanding, or (iii) the first date on which the Project no longer receives assistance under Section 8 of the United States Housing Act of 1937, as amended.
6. Commencing on the Closing Date and continuing throughout the remainder of the Qualified Project Period 40% of the units at each Project Facility shall at all times be rented to and occupied by Low Income Tenants.
7. As of the date of this Certificate, the following percentages of completed residential units in the Project (i) are occupied by Low Income Tenants or (ii) are currently vacant and being held available for such occupancy and have been so held continuously since the date a Low Income Tenant vacated such unit, as indicated:

Occupied by Low Income Tenants: \_\_\_\_\_ percent



Held vacant for occupancy  
continuously since last  
occupied by Low Income  
Tenant:

\_\_\_\_\_ percent

8. At no time since the date of filing of the last Continuing Program Compliance Certificate has less than all of the units in the Project been occupied by or, if vacant, been last occupied by Low Income Tenants.
9. To the best knowledge of the undersigned, after due inquiry, all Units were rented or available for rental on a continuous basis during the immediately preceding year to members of the general public, and the Owner is not now and has not been in default under the terms of the above-referenced Regulatory Agreement and, to the best knowledge of the undersigned, no Determination of Taxability has occurred with respect to the Bonds.
10. (If the Owner is in default under the terms of the Regulatory Agreement or the Owner has actual knowledge of a Determination of Taxability with respect to the Bonds, such knowledge should be detailed here: )
11. The Owner has not transferred any interest in the Project since the date of submission of the Continuing Program Compliance Certificate last submitted to the Trustee and the Issuer with respect to the Project. (If the Owner has transferred any interest in the Project, such transfer should be detailed here:)

Attached is a separate sheet (the "Occupancy Summary") listing, among other items, the percentage of units which are occupied by Low Income Tenants and which became Low Income Units since the filing of the last Continuing Program Compliance Certificate. The information contained thereon is, to the best knowledge of the Owner (based upon information supplied by tenants of the Project), true and accurate.

**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: \_\_\_\_\_

OCCUPANCY SUMMARY  
AS OF \_\_\_\_\_

Austin Housing Finance Corporation  
Multifamily Housing Revenue Bonds  
(Aldrich 51 Apartments)  
Series 2015

PROJECT NAME: ALDRICH 51 APARTMENTS

PROJECT LOCATION: West side of Aldrich Street, between Barbara Jordan Blvd., and 51st  
Street, Austin TX

I.D.#:

Page \_\_ of

TOTAL NO. UNITS: \_\_\_\_ REQ'D NO. LOW INCOME UNITS:

TOTAL UNITS OCCUPIED:

TOTAL LOW INCOME OCCUPIED:

(PERCENTAGE: %)

PREPARED AND SUBMITTED BY:

\_\_\_\_\_

Phone: \_\_\_\_\_

Date: \_\_\_\_\_

Number of Low Income Tenants commencing occupancy this month/quarter:

Number of Low Income Tenants whose Adjusted Income exceeded 140% of the applicable income limit  
for a Low Income Tenant of the same family size this month/quarter:

Number of Low Income Tenants terminating occupancy this month/quarter:

For Period \_\_\_\_\_ through \_\_\_\_\_



**Exhibit D**

**Bond Purchase Agreement**

## BOND PURCHASE AGREEMENT

\$ \_\_\_\_\_ AUSTIN HOUSING FINANCE CORPORATION  
 MULTIFAMILY HOUSING REVENUE BONDS  
 (ALDRICH 51 APARTMENTS)  
 SERIES 2015

\_\_\_\_\_, 2015

Austin Housing Finance Corporation  
 1000 E. 11th Street  
 Austin, Texas 78702

Ladies and Gentlemen:

JPMorgan Chase Bank, N.A., a national banking association (the "*Purchaser*"), offers to enter into the following agreement with Austin Housing Finance Corporation, a housing finance corporation duly organized and existing under the laws of the State of Texas (the "*Issuer*"), and Austin DMA Housing II, LLC, a Texas limited liability company (the "*Borrower*"), which, upon acceptance, will be binding upon the Issuer, the Borrower and the Purchaser. This offer is made subject to your acceptance of this Bond Purchase Agreement (this "*Bond Purchase Agreement*") on or before 5:00 p.m., Central Time, on the date hereof. Reference is made to the Trust Indenture, dated as of \_\_\_\_\_ 1, 2015 (the "*Indenture*"), between the Issuer and BOKF, NA d/b/a Bank of Texas, as trustee (the "*Trustee*") and the Loan Agreement dated as of \_\_\_\_\_ 1, 2015 (the "*Loan Agreement*") by and among the Issuer, the Purchaser, as Bondholder Representative and the Borrower. All capitalized terms used herein and not otherwise defined shall have the meanings given such terms in the Indenture and Loan Agreement.

#### SECTION 1. PURCHASE, SALE AND DELIVERY OF THE BONDS

(a) Subject to the terms and conditions and in reliance upon the representations, warranties and agreements set forth herein, in the Indenture and in the Loan Agreement, the Purchaser hereby agrees to purchase from the Issuer, and the Issuer hereby proposes to issue and agrees to sell to the Purchaser, the Issuer's Multifamily Housing Revenue Bonds (Aldrich 51 Apartments) Series 2015 (the "*Bonds*"). Subject to the further conditions set forth in this Bond Purchase Agreement, the purchase price of the Bonds shall be advanced by the Purchaser on the Closing Date (as defined herein). The Bonds shall bear interest at the interest rate determined pursuant to the Indenture, and the purchase price thereof shall be advanced by the Purchaser on the Closing Date to the Trustee for the account of the Issuer at a price equal to par.

(b) The Bonds shall be substantially in the form described in, shall be issued and secured under the provisions of, and shall be payable and subject to redemption as provided in, the Indenture. The final terms and conditions of the Indenture shall be subject to the approval of the Issuer and the Purchaser, and the obligations of the Issuer and the Purchaser thereunder and

under this Purchase Agreement are expressly conditioned upon such approval. The issuance of the Bonds is authorized pursuant to the provisions of the Texas Housing Finance Corporation's Act, Chapter 394, Texas Local Government Code, as amended (the "*Act*"). The Bonds will be limited obligations of the Issuer payable solely from the Trust Estate. Proceeds of the sale of the Bonds will be used by the Issuer in accordance with the Indenture, the Loan Agreement and the Act to fund one or more loans to the Borrower in accordance with the terms of the Loan Agreement to be used to finance the costs of the acquisition and construction of the Project by the Borrower and the issuance of the Bonds.

(c) On \_\_\_\_\_, 2015 (such date being herein referred to as the "*Closing Date*"), the Purchaser will advance the full purchase price of the Bonds in the principal amount of \$ \_\_\_\_\_. The Bonds shall be in registered form, registered in the name of the Purchaser or its nominee, and in such denominations as set forth in the Indenture.

## SECTION 2. REPRESENTATIONS AND COVENANTS

(a) The Issuer hereby confirms for the benefit of the Purchaser each of the representations of the Issuer set forth in Section 2.1 of the Loan Agreement as if and to the extent fully set forth in this Bond Purchase Agreement.

(b) The Borrower hereby confirms for the benefit of the Purchaser each of the representations, warranties and covenants of the Borrower set forth in Sections 2.2, 2.3, 2.4, 2.5 and 2.6 of the Loan Agreement as if and to the extent fully set forth in this Bond Purchase Agreement.

(c) The Borrower hereby covenants that it will not (i) be or become subject at any time to any legal requirement, or list of any governmental agency (including, without limitation, the U.S. Office of Foreign Asset Control List) that prohibits or limits the Purchaser from making any advance or extension of credit to or for the benefit of the Borrower or from otherwise conducting business with the Borrower, or (ii) fail to provide documentary and other evidence of the Borrower's identity as may be requested by the Purchaser at any time to enable the Purchaser to verify the Borrower's identity or to comply with any applicable legal requirement, including, without limitation, Section 326 of the U.S.A. Patriot Act of 2001, 31 U.S.C. § 5318 (the "*Patriot Act*").

SECTION 3. PRECONDITIONS TO CLOSING DATE. The Purchaser has entered into this Bond Purchase Agreement in reliance upon the representations, warranties and covenants of the Issuer and the Borrower contained herein and to be contained in the Indenture, the Loan Agreement and the other documents and instruments to be delivered on or prior to the Closing Date, as required hereunder, and upon the performance by the Issuer of its obligations hereunder prior to the Closing Date, as required hereunder. Accordingly, the Purchaser's obligations under this Bond Purchase Agreement to advance the purchase price of the Bonds and to accept delivery of and to pay for the Bonds shall be subject to the performance of such obligations to be performed by the Issuer under the Indenture and by the Borrower hereunder and under the Loan Agreement on or prior to the Closing Date, and shall also be subject to the following conditions:

(a) The representations of the Issuer contained herein and in the Indenture and Loan Agreement shall be true, complete and correct on the date hereof, and on and as of the Closing Date with the same effect as if made on the Closing Date;

(b) The representations, warranties and covenants of the Borrower contained herein and in a Loan Agreement shall be true, complete and correct in all material respects on the date hereof, and on and as of the Closing Date with the same effect as if made on the Closing Date;

(c) On the Closing Date, the Indenture shall have been duly authorized, executed and delivered by the respective parties thereto, shall be in form and content satisfactory to the Purchaser and the Issuer, and shall be in full force and effect, and shall not have been amended, modified or supplemented, except as may have been agreed to by the Issuer and Purchaser;

(d) On the Closing Date, the Mortgage shall have been delivered for recording and the title insurer has committed to issue a Title Policy in an amount equal to the committed principal amount of the Bonds insuring the Mortgage as a first priority lien on the leasehold interest in the Project;

(e) On the Closing Date, the Loan Documents shall have been duly authorized, executed and delivered by the respective parties thereto, shall be in form and content satisfactory to the Purchaser and Issuer, and shall be in full force and effect and shall not have been amended, modified or supplemented, except as may have been agreed to by the Purchaser;

(f) On the Closing Date, the Issuer shall cause the Trustee to deposit all funds held under the Indenture pursuant to the terms of the Indenture;

(g) On the Closing Date, all approvals, consents and orders of any governmental authority or agency having jurisdiction in the matter, which would constitute a condition precedent to the performance by the Issuer of its obligations under this Bond Purchase Agreement, the Bonds and the performance by the Issuer and the Borrower of their respective obligations under the Indenture and the Loan Agreement and Loan Documents will have been obtained, and any consents, approvals and orders so received will be in full force and effect;

(h) On the Closing Date, the Purchaser shall have received approving opinions, dated the Closing Date and addressed to the Issuer, of bond counsel for the Issuer, and reliance letters of such counsel dated the Closing Date and addressed to the Purchaser to the effect that such respective approving opinion may be relied on by the Purchaser to the same extent as if such opinion were addressed to the Purchaser;

(i) On the Closing Date, the Purchaser shall have received an opinion with respect to the Borrower and the Guarantor dated the Closing Date and addressed to the Issuer and the Purchaser, of counsel for the Borrower and the Guarantor to the effect that:



(a) the Borrower and the Guarantor are duly organized and validly existing under the laws of the state of their respective organization; (b) the Borrower has the full legal right, power and authority to enter into the Loan Documents to which it is a party and to carry out the transactions contemplated thereby; (c) the Borrower has duly authorized and executed such Loan Documents and such Loan Documents constitute the valid and binding obligations of the Borrower, enforceable in accordance with their terms; (d) the Guarantor has full legal right, power and authority to enter into the Guaranty of Payment and Completion and the Environmental Indemnity (together the "Guaranties"); and (e) the Guarantor has duly authorized and executed such Guaranties and such Guaranties constitute the valid and binding obligation of the Guarantor, enforceable in accordance with their respective terms.

(j) On the Closing Date, pursuant to the terms of the Indenture and the Loan Agreement, funds shall have been deposited with the Trustee which are sufficient to pay the costs of issuance of the Bonds;

(k) On the Closing Date, there shall not exist any uncured default or Event of Default under the terms of the Indenture, the Loan Agreement or any of the other Loan Documents;

(l) On the Closing Date, the Purchaser shall have received and authorized a requisition in the form of Exhibit A to the Indenture; and

(m) On the Closing Date, each of the conditions for the disbursement of moneys from the funds and accounts established under Article 5 of the Indenture from the proceeds of the Bonds purchased by the Purchaser shall have been satisfied.

4. FEES AND EXPENSES. The Purchaser shall be under no obligation to pay, and the Borrower shall pay or cause to be paid (out of proceeds of the Bonds or any other legally available funds of the Borrower) all expenses incident to the performance of the Issuer's and the Borrower's obligations hereunder, including, but not limited to, the cost of delivering the Bonds to the Purchaser, the fees and disbursements of the Trustee, Bond counsel, Issuer, Purchaser's counsel, accountants, financial advisors and any other experts or consultants retained in connection with the Bonds, and any other expenses incurred in connection with the issuance of the Bonds. Whether or not the Bonds are delivered to the Purchaser as set forth herein, the Issuer shall be under no obligation to pay any costs or expenses relating to the issuance, sale and delivery of the Bonds.

#### 5. NOTICES

(a) All notices, certificates and other communications hereunder shall be in writing and shall be sufficiently given and shall be deemed given when (i) sent to the applicable address stated below by registered or certified mail, return receipt requested, or by such other means as shall provide the sender with documentary evidence of such delivery, or (ii) if delivery is refused by the addressee, as evidenced by the affidavit of the person who attempted to effect such delivery.

(b) The address to which notices, certificates and other communications hereunder are as follows:

If to the Issuer:

Austin Housing Finance Corporation  
1000 E. 11th Street  
Austin, Texas 78702  
Attention: David Potter

With a copy to:

McCall Parkhurst & Horton L.L.P.  
717 N. Harwood, Suite 900  
Dallas, Texas 75201  
Attention: Mark Malveaux, Esq.

If to the Purchaser:

JPMorgan Chase Bank, N.A.  
Community Development Banking  
221 West 6th Street, 2nd Floor  
Austin, Texas 78701  
Attention: David H. Saling, Vice President

With copies to:

JPMorgan Chase Bank, N.A.  
Legal Department  
237 Park Avenue, 12th Floor  
Mail Code NY1-R065  
New York, New York 10017-3140  
Attention: Michael R. Zients, Executive Director  
and Assistant General Counsel

and

Phillips Lytle LLP  
1400 First Federal Plaza  
Rochester, New York 14614  
Attention: Thomas R. Burns, Esq.

If to the Trustee:

BOKF, NA d/b/a Bank of Texas  
801 Cherry Street, Suite 3325, Unit 27  
Fort Worth, Texas 76102  
Attention: Pamela Black, Senior Vice President

With a copy to:

Naman Howell Smith & Lee, P.L.L.C.  
8310 Capital of Texas Highway N., Suite 490  
Austin, Texas 78721  
Attention: William C. "Cliff" Blount, Esq.

If to the Borrower:

Austin DMA Housing II, LLC  
1000 E. 11th Street  
Austin, Texas 78702  
Attention: David Potter

With copies to:

Coates/Rose  
9 Greenway Plaza, Suite 1100  
Houston, Texas 77046  
Attention: Barry J. Palmer, Esq.

and

DMA Development Company  
4101 Parkstone Heights Drive, Suite 310  
Austin, Texas 78746  
Attention: Janie Sisak

6. AMENDMENT. This Bond Purchase Agreement may not be amended, changed, modified, altered or terminated except by written instrument executed and delivered by the parties hereto.

7. BINDING EFFECT. This Bond Purchase Agreement shall be binding upon and inure to the benefit of the Issuer, the Borrower and the Purchaser and their respective successors and assigns.

8. EXECUTION OF COUNTERPARTS. This Bond Purchase Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument. Delivery of an executed counterpart of a signature page of this

Bond Purchase Agreement by e-mail transmission, facsimile transmission or other means of communication capable of being evidenced by a paper copy shall be effective as delivery of manually executed counterpart.

9. **APPLICABLE LAW.** This Bond Purchase Agreement shall be governed by and construed in accordance with the laws of the State of Texas.

10. **NO RECOURSE; SPECIAL OBLIGATION.** All covenants, stipulations, promises, agreements and obligations of the Issuer contained in this Bond Purchase Agreement, the Bonds, the Indenture and Loan Documents executed by the Issuer and in the other documents and instruments connected herewith or therewith, and in any documents supplemental thereto shall be deemed to be the covenants, stipulations, promises, agreements and obligations of the Issuer and not of any member, director, officer, agent, servant or employee of the Issuer in his individual capacity, and no recourse under or upon any obligation, covenant or agreement in the Documents contained or otherwise based upon or in respect of the Indenture and the Loan Documents, or for any claim based hereon or thereon or otherwise in respect hereof or thereof, shall be had against any past, present or future member, director, officer, agent, servant or employee, as such, of the Issuer or of any successor public corporation or political subdivision or any Person executing any of the Indenture and the Loan Documents on behalf of the Issuer, either directly or through the Issuer or any successor public corporation or political subdivision or any Person so executing any of the Indenture and the Loan Documents on behalf of the Issuer, it being expressly understood that the Indenture and the Loan Documents and the Bonds issued thereunder are solely corporate obligations, and that no such personal liability whatever shall attach to, or is or shall be incurred by, any such member, director, officer, agent, servant or employee of the Issuer or of any successor public corporation or political subdivision or any Person so executing any of the Indenture and the Loan Documents on behalf of the Issuer because of the creation of the indebtedness thereby authorized, or under or by reason of the obligations, covenants or agreements contained in the Indenture and the Loan Documents or implied therefrom; and that any and all such personal liability of, and any and all such rights and claims against, every such member, director, officer, agent, servant or employee because of the creation of the indebtedness authorized by the Loan Documents, or under or by reason of the obligations, covenants or agreements contained in the Loan Documents or implied therefrom, are, to the extent permitted by law, expressly waived and released as a condition of, and as a consideration for, the execution by the Issuer of the Loan Documents and the issuance, sale and delivery of the Bonds.

11. **SEVERABILITY**

(a) If any provision of this Bond Purchase Agreement shall, for any reason, be held or shall, in fact, be inoperative or unenforceable in any particular case, such circumstances shall not render the provision in question inoperative or unenforceable in any other case or circumstance or render any other provision herein contained on any provision of any of the other Financing Documents inoperative or unenforceable.

(b) The invalidity of any one or more phrases, sentences, clauses, paragraphs or sections in this Bond Purchase Agreement shall not affect the remaining portion of this Bond Purchase Agreement or any part thereof.

12. **SURVIVAL OF OBLIGATIONS.** This Bond Purchase Agreement shall survive the purchase and sale of the Bonds and shall remain in full force and effect until the principal of the Bonds, together with the premium, if any, and interest thereon and all amounts payable under this Bond Purchase Agreement, the Indenture and the Loan Documents, shall have been irrevocably paid in full.

13. **RECORDING AND FILING**

(a) The Borrower shall record or file or cause to be recorded or filed, as the case may be, at the Borrower's expense, the Mortgage and all other security instruments and financing statements reasonably requested by the Purchaser with respect to the Bonds in such manner and in such places as may be required by law to perfect the liens and security interests contemplated herein and therein.

(b) The Purchaser is authorized to file all security instruments, including without limitation financing statements and continuation statements under the Uniform Commercial Code of the State of Texas, in such manner and in such places as may be required by law to protect and maintain in force all such liens and security interests. The Issuer and the Borrower hereby authorize the Purchaser to file such instruments and statements without execution thereof by the Issuer, the Trustee or the Borrower, and the Issuer shall have no liability to Purchaser if any such instrument or statement is not filed when required.

14. **PATRIOT ACT NOTICES.** The Purchaser hereby notifies the Borrower that pursuant to the requirements of Section 326 of 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 the Purchaser to identify the Borrower in accordance with the Patriot Act.

15. **EXPENSES; INDEMNITY; DAMAGE WAIVER**

(a) The Borrower shall pay:

(i) all out-of-pocket expenses incurred by the Issuer and the Purchaser, including appraisal fees, inspection fees, inspecting engineer charges, title and escrow charges and original fees, reasonable charges and disbursements of counsel for the Issuer and the Purchaser in connection with the issuance, sale, purchase and securing of the Bonds, or any amendments, modifications or waivers of the provisions hereof or thereof (whether or not the transactions contemplated hereby or thereby shall be consummated), and

(ii) all out-of-pocket expenses incurred by the Issuer and the Purchaser including the reasonable fees, charges and disbursements of any counsel in connection with the enforcement or protection of its rights in connection with the Indenture, this Bond Purchase

Agreement or the Loan Documents, including all such out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of the Bonds.

(b) The Borrower shall indemnify the Issuer and the Purchaser and their respective officers, directors, members, employees and agents (each of the foregoing being called an "Indemnatee") against, and hold each Indemnatee harmless from, any and all losses, claims, damages, judgments, liabilities and related expenses, including the reasonable fees, charges and disbursements of any counsel for any Indemnatee incurred by or asserted against any Indemnatee arising out of, in connection with or as a result of (i) the execution or delivery of this Bond Purchase Agreement or any agreement or instrument or instrument contemplated hereby, the performance by the parties hereto of their respective obligations hereunder or the consummation of the transactions contemplated hereby, (ii) the use of the proceeds of the Bonds, or (iii) any claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory regardless of any Indemnatee being a party thereto, except if such losses, claims, damages, judgments, liabilities and related expenses arise solely from the gross negligence or willful misconduct of any such Indemnatee.

16. **RATE MANAGEMENT TRANSACTION.** All Rate Management Transactions, if any, between the Borrower and the Purchaser or any Affiliate of the Purchaser are independent agreements governed by the written provisions of the Rate Management Transaction, which shall remain in full force and effect, unaffected by any payment, prepayment, acceleration, reduction, increase or change in the terms of the Financing Documents, except as otherwise expressly provided in the Rate Management Transaction, and any payoff statement from the Purchaser relating to the Bonds shall not apply to a Rate Management Transaction. The term "*Rate Management Transaction*" means (a) any transaction (including an agreement with respect thereto) now existing or hereafter entered into between the Borrower and JPMorgan Chase Bank, N.A. and the Purchaser and/or its affiliates which is a rate swap, swap option, basis swap, forward rate transaction, commodity swap, commodity option, equity or equity index swap, equity or equity index option, bond option, interest rate option, foreign exchange transaction, Cap, floor, collar, currency swap, cross-currency rate swap, currency option, credit protection transaction, credit swap, credit default swap, credit default option, total return swap, credit spread, repurchase transaction, reverse repurchase transaction, buy/sell-back transaction, securities lending transaction, whether index transaction or forward purchase or sale of a security, commodity or other financial instrument or interest (including any option with respect to any of these transactions, or (b) any type of transaction that is similar to any transaction referred to in clause (a) above that is currently, or in the future becomes, recurrently entered into in the financial markets and which is a forward, swap, future, option or other derivative on one or more rates, currencies, commodities, equity securities or other equity instruments, debt securities or other debt instruments, economic indices or measures of economic risk or value, or other benchmarks against which payments or derivatives are to be made, or any combination of the foregoing transactions.

17. **PARTICIPATIONS.** The Purchaser may at any time, without consent of the Issuer or the Borrower, sell participations to any Person (other than a natural Person, the Borrower, Guarantor or any Affiliate of the Borrower or Guarantor) (each a "*Participant*") in all or a portion of the Bonds, provided that (a) Purchaser's obligations under this Bond Purchase Agreement and other

Loan Documents shall remain unchanged, (b) the Purchaser shall remain solely responsible to the other parties hereto for the performance of such obligations, (c) the Issuer and the Borrower shall continue to deal solely and directly with the Purchaser in connection with the Purchaser's rights and obligations under this Bond Purchase Agreement and the other Financing Documents. Notwithstanding the foregoing, in order to be effective under this Bond Purchase Agreement, any sale of a participation interest, in whole or in part, with respect to Bonds owned by the Purchaser or the rights and obligations related to such Bonds, shall be subject to compliance by the Purchaser and the prospective transferee or assignee with the terms and conditions of Section 2.12 of the Indenture and shall require the execution and delivery by the Participant of an investor letter in the form of Exhibit C to the Indenture.

18. **HEADINGS.** The headings of the several sections in this Bond Purchase Agreement have been prepared for the convenience of reference only and shall not control, affect the meaning of or be taken as an interpretation of any provision of this Bond Purchase Agreement.

19. **INCONSISTENT PROVISIONS.** Any irreconcilable inconsistency or conflict between the terms of this Bond Purchase Agreement and the terms of the Indenture or the Loan Agreement, shall be governed and controlled by the terms of this Bond Purchase Agreement. Provided, however, nothing in this Section 19 shall be deemed to modify the terms of the Loan Agreement or Regulatory Agreement or affect the Issuer's or Trustee's rights with respect to the Unassigned Issuer's Rights.

20. **EFFECTIVE DATE.** This Bond Purchase Agreement shall become effective upon the execution of the acceptance hereof by the Issuer and Borrower and shall be valid and enforceable as of the time of such acceptance.

21. **WAIVER OF SPECIAL DAMAGES.** Except to the extent prohibited by applicable law, the Borrower shall not assert, and hereby waives, any claim against the Purchaser and its respective officers, directors, members, employees and agents, 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 Bond Purchase Agreement or any agreement or instrument contemplated hereby, the transactions, the Bonds or the use of the proceeds thereof.

22. **WAIVER OF JURY TRIAL.** THE BORROWER, THE ISSUER AND THE PURCHASER WAIVE, TO THE FULL EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A JURY TRIAL IN ANY LEGAL PROCEEDING, DIRECTLY OR INDIRECTLY, ARISING OUT OF OR RELATING TO THIS BOND PURCHASE 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 ANOTHER PARTY HAS REPRESENTED, EXPRESS 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 BOND PURCHASE

**AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.**

[Signature Pages Follow]

Doc #02-430288.1



VERY TRULY YOURS,

JPMORGAN CHASE BANK, N.A.

By: \_\_\_\_\_  
David H. Saling, Authorized Officer

[Signature Page to Bond Purchase Agreement]

Accepted as of the date first above written:

AUSTIN HOUSING FINANCE CORPORATION

By: \_\_\_\_\_  
David Potter, Manager

[Signature Page to Bond Purchase Agreement]

AUSTIN DMA HOUSING II, LLC  
a Texas limited liability company  
AHFC Aldrich 51, non-profit corporation  
a Texas nonprofit corporation  
its managing member

By: \_\_\_\_\_

[Signature Page to Bond Purchase Agreement]

**Exhibit E**

**Ground Lease**

**GROUND LEASE**

**between**

**AUSTIN HOUSING FINANCE CORPORATION,  
as Landlord**

**AND**

**AUSTIN DMA HOUSING II, LLC,  
as Tenant**

**Dated as of November 1, 2015**

**GROUND LEASE**  
**between**  
**AUSTIN HOUSING FINANCE CORPORATION, as Landlord**  
**and**  
**AUSTIN DMA HOUSING II, LLC, as Tenant**

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#### **Addenda and Exhibits**

Exhibit A	Description of Land
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## **GROUND LEASE**

This Ground Lease (the "**Lease**") is made and entered into as of the 1st day of November, 2015, by and between the undersigned parties: **AUSTIN HOUSING FINANCE CORPORATION**, a Texas housing finance corporation, having an address at 1000 East 11<sup>th</sup> Street, Suite 200, Austin, Texas 78702, as landlord ("**Landlord**"), and **AUSTIN DMA HOUSING II, LLC**, a Texas limited liability company, having an address at 4101 Parkstone Heights, Suite 310, Austin, Texas 78746, as tenant ("**Tenant**").

## **RECITALS**

**WHEREAS**, Landlord is a housing finance corporation in Austin, Texas and is the owner of certain Land (as defined herein) all of which Landlord has agreed to lease under the terms and conditions hereof to Tenant for Tenant's construction and operation of a rental project ("**Project**") to be comprised of 240 rental units (the "**Units**"); and

**WHEREAS**, Landlord is concurrently conveying to Tenant by Bill of Sale of even date herewith all improvements located upon the Land; and

**WHEREAS**, Tenant and Landlord intend that the Units shall be rented to Residents (hereinafter defined) whose incomes do not exceed sixty percent of the area median income so as to qualify the Units for Low Income Housing Tax Credits as defined in Section 42 of the Code (as defined herein) (the "**Restricted Units**"); and

**WHEREAS**, Landlord and Tenant desire to enter into this Lease on the terms and conditions set forth herein;

**NOW THEREFORE, IN CONSIDERATION** of the covenants and agreements of the parties hereto, as are hereinafter set forth, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged by each party hereto, Landlord hereby leases to Tenant and Tenant hereby leases from Landlord all of that tract of land (the "**Land**") in Austin, Texas, which is described in Exhibit A attached hereto,

**TOGETHER WITH** any and all rights, alleys, right of ways, privileges, appurtenances, easements, and advantages, to the same belonging or in any way appertaining (all of which, together with the Land, are hereinafter referred to collectively as the "**Premises**"), including any and all Improvements and Equipment now or hereafter thereon (but without limiting Landlord's rights thereto under this Lease),

**SUBJECT TO THE OPERATION AND EFFECT** of the Permitted Encumbrances,

**TO HAVE AND TO HOLD** the Premises unto Tenant, its successors and permitted assigns, for the purposes and term of years set forth herein,

**ON THE TERMS AND SUBJECT TO THE CONDITIONS** which are hereinafter set forth:

## **SECTION 1. DEFINITIONS.**

1.1 Specific. As used herein, the following terms have the following meanings:

**"Additional Rent"** has the meaning given to it in Section 4.1.2.

**"Annual Rent"** has the meaning given to it in paragraph 4.1.1.

**"Bankruptcy"** shall be deemed, for any Person, to have occurred either

(a) if and when such Person (i) applies for or consents to the appointment of a receiver, trustee or liquidator of such Person or of all or a substantial part of its assets, (ii) files a voluntary petition in bankruptcy or admits in writing its inability to pay its debts as they come due, (iii) makes an assignment for the benefit of its creditors, (iv) files a petition or an answer seeking a reorganization or an arrangement with its creditors or seeks to take advantage of any insolvency law, (v) performs any other act of bankruptcy, or (vi) files an answer admitting the material allegations of a petition filed against such Person in any bankruptcy, reorganization or insolvency proceeding; or

(b) if (i) an order, judgment or decree is entered by any court of competent jurisdiction adjudicating such Person a bankrupt or an insolvent, approving a petition seeking such an adjudication, or reorganization, or appointing a receiver, trustee or liquidator of such Person or of all or a substantial part of its assets, or (ii) there otherwise commences with respect to such Person or any of its assets any proceeding under any bankruptcy, reorganization, arrangement, insolvency, readjustment, receivership or similar law, and if such order, judgment, decree or proceeding continues unstayed for any period of ninety (90) consecutive days after the expiration of any stay thereof.

**"Bill of Sale"** has the meaning given it in paragraph 20.2.

**"CBLP Diminution"** has the meaning given to it in Section 20.1(a).

**"City"** means the City of Austin, Texas.

**"Code"** means the Internal Revenue Code of 1986, as amended.

**"Commencement Date"** has the meaning given it in paragraph 3.1.1.

**"Compliance Period"** means the fifteen year tax credit compliance period under Section 42 of the Code.

**"Construction Completion Date"** has the meaning given it in paragraph 9.1.3.

**"Conveyance Documents"** shall have the meaning given it in paragraph 20.2.

**"Depository"** means a federally-insured bank or trust company designated by Landlord having a capital of not less than \$50,000,000 and having its main office in Texas, or if no such bank or trust company is willing to act as such, Landlord. For purposes of this Lease, (a) a bank

or trust company qualified as aforesaid shall be deemed willing to act as Depository hereunder if in connection therewith it employs its customary form of escrow agreement which does not contain provisions inconsistent with those of this Lease, and agrees to undertake the duties provided for herein, and (b) no such bank or trust company shall be deemed willing to act as Depository if Landlord gives written notice to Tenant and the Investor Members that no bank or trust company with qualifications as aforesaid to which it has applied is willing to act as Depository, and neither Tenant nor any Investor Member, within thirty (30) days after being given such notice, designates as Depository a bank or trust company having such qualifications and willing to act as such.

**“Environmental Laws”** shall mean any and all federal, state, or local statutes, laws, rules, regulations, ordinances, orders, codes, determinations, decrees, or rules of common law pertaining to health, safety, or the environment now or at any time hereafter in effect and any judicial or administrative interpretation thereof (including, but not limited to, any judicial or administrative order, consent decree or judgment relating to the environment or Hazardous Materials (as hereafter defined), or exposure to Hazardous Materials) including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, the Superfund Amendments and Reauthorization Act of 1986, as amended, the Resource, Conservation and Recovery Act of 1976, as amended, the Clean Air Act, as amended, the Federal Water Pollution Control Act, as amended, the Oil Pollution Act of 1990, as amended, the Safe Drinking Water Act, as amended, the Hazardous Materials Transportation Act, as amended, the Toxic Substances Control Act, as amended, and any other environmental or health conservation or protection laws.

**“Equipment”** means all apparatus, machinery, devices, fixtures, appurtenances, equipment and personal property owned by Tenant now or hereafter located on or within the Premises or the Improvements and necessary or desirable for the proper operation and maintenance of the Premises or the Improvements (other than moveable equipment belonging to any third parties or belonging to any Resident of a Unit), including but not limited to any and all awnings, shades, screens and blinds; asphalt, vinyl, composition and other floor, wall and ceiling coverings; partitions, doors and hardware; elevators, escalators and hoists; heating, plumbing and ventilating apparatus; gas, electric and steam fixtures; chutes, ducts and tanks; oil burners, furnaces, heaters, incinerators and boilers; air-cooling and air-conditioning equipment; washroom, toilet and lavatory fixtures and equipment; engines, pumps, dynamos, motors, generators, electrical wiring and equipment; tools, building supplies, lobby decorations and window washing hoists and equipment; garage equipment, security systems, and gardening and landscaping equipment; swimming pool, recreational furniture and equipment; refrigerators, dishwashers, disposals, ranges, washers, dryers, and other kitchen appliances and all additions thereto and replacements thereof.

**“Event of Default”** has the meaning given it in subsection 15.1.

**“Fee Estate”** means the fee simple estate in the Premises, subject to the operation and effect of this Lease.

**“Force Majeure”** means any (a) strike, lock-out or other labor troubles, (b) governmental restrictions or limitations, (c) failure or shortage of electrical power, gas, water, fuel oil, or other

utility or service, (d) riot, war, insurrection or other national or local emergency, (e) accident, flood, fire or other casualty, (f) adverse weather conditions resulting in cessation of work on the Project for in excess of one (1) week, (g) other act of God, (h) inability to obtain a building permit or a certificate of occupancy, or (i) other cause similar or dissimilar to any of the foregoing and beyond the reasonable control of the Person in question.

**"Ground Lease Assignment"** has the meaning given it in paragraph 20.2.

**"Hazardous Materials"** means any pollutants, contaminants or industrial, toxic, hazardous or extremely hazardous chemicals, wastes, materials or substances, and in such amounts, which are defined, determined, classified or identified as such in any Environmental Law or in any judicial or administrative interpretation of any Environmental Law, including, without limitation, oil, petroleum, petroleum by-products, friable asbestos, polychlorinated biphenyls and urea formaldehyde, excluding, within legal limits, household cleaners, lawn products and pesticides.

**"Holdover Rent"** has the meaning given it in paragraph 3.3.2.

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

**"ILP Diminution"** has the meaning given to it in Section 20.1(a).

**"Improvements"** means any and all buildings, structures, alterations, improvements, fixtures, and non-movable Equipment now located or at any time in the future located on or in the Premises, and all subsequent alterations, additions, and/or replacements thereto and/or thereof.

**"Independent Appraiser"** has the meaning given to it in Section 20(b).

**"Insurance Requirements"** has the meaning given it in paragraph 5.2.1.

**"Investor Member"** means RBC Tax Credit Equity, LLC, an Illinois limited liability company, and any entity which succeeds to its interest as an investor member in the Tenant.

**"Landlord"** means Landlord and its successors and assigns as owner of the Fee Estate.

**"Landlord Event of Default"** shall have the meaning given it in paragraph 15.5.

**"Landlord's Related Parties"** shall have the meaning given it in paragraph 7.5.4.

**"Land Records"** means the Official Public Records of Real Property of Travis County, Texas.

**"Lease Year"** means (a) the period commencing on the Commencement Date and terminating on the first (1st) anniversary of the last day of the calendar month containing the Commencement Date, and (b) each successive period of twelve (12) calendar months thereafter during the Term.

**“Leasehold Estate”** means the leasehold estate in the Premises held by Tenant under this Lease.

**“Leasehold Mortgagee”** means any Permitted Leasehold Mortgagee holding a Mortgage against the Leasehold Estate.

**“Leasing Consideration Payment”** has the meaning given to it in paragraph 4.1.1.

**“Legal Requirements”** has the meaning given it in paragraph 5.2.1.

**“LIHTC Housing Requirements”** means applicable Low Income Housing Tax Credits requirements as found in Section 42 of the Code, and as required by the Texas Department of Housing and Community Affairs for the appropriate extended use period.

**“Investor Members”** means the Investor Member and Special Investor Member.

**“LURA”** has the meaning given to it in paragraph 8.1.

**“Managing Member”** means AHFC Aldrich 51 Non-Profit Corporation, a Texas non-profit corporation, and any entity which succeeds to its interest as an managing member in the Tenant.

**“Mortgage”** means any mortgage or deed of trust at any time encumbering any or all of Tenant’s leasehold interest in the Property, and any other security interest therein existing at any time under any other form of security instrument or arrangement used from time to time in the locality of the Property (including but not limited to any such other form of security arrangement arising under any deed of trust, sale-and-leaseback documents, lease-and-leaseback documents, security deed or conditional deed, or any financing statement, security agreement or other documentation used pursuant to the Uniform Commercial Code – Secured Transactions, or any successor or similar statute), provided that such mortgage, deed of trust or other form of security instrument, and an instrument evidencing any such other form of security arrangement, has been recorded among the Land Records or in such other place as is, under applicable law, required for such instrument to give constructive notice of the matters set forth therein. Notwithstanding anything to the contrary which may be construed hereunder, all Mortgages are subordinated in all respects to this Lease.

**“Mortgagee”** means the Person secured by a Mortgage.

**“New Tenant”** has the meaning given to it in paragraph 8.3.

**“Operating Agreement”** means that certain Amended and Restated Operating Agreement of Austin DMA Housing II, LLC, as amended.

**“Operating Expenses”** has the meaning given it in paragraph 6.4.1.

**“Option”** has the meaning given it in paragraph 20.1.

**“Option Exercise Notice”** has the meaning given it in paragraph 20.1.

**"Partial Taking"** has the meaning given it in paragraph 13.4.

**"Permitted Encumbrances"** means any and all instruments and matters of record or in fact on the date hereof, including but not limited to the instruments and matters listed in a schedule attached hereto as Exhibit B and matters permitted under paragraph 9.1.10 herein, and including without limitation, the LURA, any liens or encumbrances securing any construction and/or permanent loans made to the Tenant, at Tenant's request, in connection with the Project and matters permitted by Permitted Leasehold Mortgagees of such loans.

**"Permitted Leasehold Mortgage"** has the meaning given to it in paragraph 9.1.10.

**"Permitted Leasehold Mortgagee"** means the Person owed indebtedness the repayment of which is secured by a Permitted Leasehold Mortgage.

**"Person"** means a natural person, a trustee, a corporation, a partnership, a limited liability company and any other form of legal entity.

**"Plans and Specifications"** has the meaning given it in paragraph 9.1.1.

**"Premises"** has the meaning given it hereinabove; provided, that if at any time hereafter any portion of the Premises becomes no longer subject to this Lease, **"Premises"** shall thereafter mean so much thereof as remains subject to this Lease.

**"Property"** means the Premises, the Improvements and the Equipment.

**"Purchase Price"** has the meaning given in paragraph 20.1.

**"Rent"** means the Leasing Consideration Payment, all Annual Rent and all Additional Rent.

**"Resident"** means a person occupying a Unit in the Project pursuant to a Tenancy Agreement.

**"Restoration"** means the repair, restoration or rebuilding of any or all of the Property after any damage thereto or destruction thereof, with such alterations or additions thereto as are made by Tenant in accordance with this Lease, together with any temporary repairs or improvements made to protect the Property pending the completion of such work.

**"Special Investor Member"** means RBC Tax Credit Manager II, Inc., a Delaware corporation, together with its successors and assigns.

**"Special Member"** means DMA Aldrich 51, LLC, a Texas limited liability company, together with its successors and assigns.

**"Taxes"** has the meaning given it in subsection 6.1.

**"TDHCA"** means the Texas Department of Housing and Community Affairs or a successor state department.

**“Tenancy Agreement”** means the form of lease agreement between the Tenant and a Resident under the terms of which a Resident is entitled to enjoy possession of a Unit in the Project.

**“Tenant”** means Tenant and its successors and permitted assigns as holder of the Leasehold Estate.

**“Tenant’s Property”** has the meaning given it in paragraph 20.1.

**“Tenant’s Related Parties”** has the meaning given it in paragraph 7.5.4.

**“Term”** has the meaning given it in paragraph 3.1.1.

**“Termination Date”** has the meaning given it in paragraph 3.1.1.

**“Total Taking”** has the meaning given to it in paragraph 13.3.

**“Transfer”** has the meaning given it in paragraph 14.1.

1.2 General. Any other term to which meaning is expressly given in this Lease shall have such meaning.

1.3 Construction. Any Rent or any other amount paid hereunder shall be construed as made by Tenant solely for the use of the Premises, as Tenant shall be deemed to own the Improvements and the Equipment for all purposes. Any covenants contained herein made by the Tenant regarding the Improvements and the Equipment shall be construed solely to protect Landlord from liability in connection with the Improvements and the Equipment.

**SECTION 2. TITLE.** Tenant and Landlord hereby acknowledge that the Fee Estate upon which the Improvements are to be operated is held exclusively by Landlord.

**SECTION 3. TERM.**

3.1 Length.

3.1.1 Original Term. This Lease shall be for a term (**“Term”**) commencing on the date of this Lease (**“Commencement Date”**), and (b) terminating at 11:59 o’clock P.M. on the day immediately before the seventy-fifth (75th) anniversary of the first (1st) day of the first (1st) full calendar month following the Commencement Date (the **“Termination Date”**, except that if the date of such termination is hereafter advanced to an earlier date or postponed pursuant to any provision of this Lease, or by express, written agreement of the parties hereto (and only with the written consent of the Managing Member, Investor Members, Permitted Leasehold Mortgagee and Special Member), or by operation of law, the date to which it is advanced or postponed shall thereafter be the **“Termination Date”** for all purposes of this Lease). Nothing in this Lease shall be deemed in any way to extend or permit the extension of the Term beyond the seventy-fifth (75th) anniversary, anything in this Lease to the contrary notwithstanding.



3.1.2 Confirmation of Commencement and Termination. Landlord and Tenant shall upon either's request therefor, within fifteen (15) days after, respectively, (a) the commencement of the Term, and (b) the expiration of the Term or any earlier termination of this Lease by action of law or in any other manner, confirm in writing by instrument in recordable form that, respectively, such commencement or such termination has occurred, setting forth therein the Commencement Date and the Termination Date.

### 3.2 Surrender.

3.2.1 Tenant shall, at its expense, at the expiration of the Term or any earlier termination of this Lease, subject to the terms of paragraph 3.4, (a) shall peaceably leave, quit and surrender the Premises promptly yield up to Landlord the Property in a condition similar to a like property of a similar age, subject to reasonable ordinary wear and tear, and damage by casualty, subject to Section 12, excepted, and broom clean, (b) remove therefrom Tenant's personal property that is not part of the Property or otherwise owned by Landlord or a Resident, and (c) repair any damage to the Property caused by such removal, all subject to the rights of Residents in possession of Units under Tenancy Agreements with Tenant. Upon such expiration or termination, the Premises, Improvements and Equipment, or any portion thereof so terminated, shall become the sole property of Landlord at no cost to Landlord, and shall be free of all liens and encumbrances (other than the Permitted Encumbrances and such other encumbrances which may be granted from time to time in accordance with the terms hereof).

3.2.2 Upon such expiration or termination (whether by reason of an Event of Default or otherwise), (a) neither Tenant nor its representatives shall thereafter have any right at law or in equity in or to any or all of the Property (including the Units and the rest of the Improvements) or to repossess any of same, or in, to or under this Lease, and Landlord shall automatically be deemed immediately thereupon to have succeeded to all of the same, free and clear of the right, title or interest therein of any creditor of Tenant or any other Person whatsoever (but subject to the rights of any Person then holding any lien, right, title or interest in or to the Fee Estate, the Leasehold Estate, or the Property), and (b) Tenant hereby waives any and all rights of redemption which it may otherwise hold under any applicable law

### 3.3 Holding Over.

3.3.1 Nothing in this Lease shall be deemed in any way to permit Tenant to use or occupy the Premises after the expiration of the Term or any earlier termination of this Lease. If and only if Tenant continues to occupy the Premises after such expiration or termination after obtaining Landlord's express, written consent thereto,

(a) such occupancy shall (unless the parties hereto otherwise agree in writing) be deemed to be under a month-to-month tenancy, which shall continue until either party hereto notifies the other in writing, by at least thirty (30) days before the end of any calendar month, that the party giving such notice elects to terminate such tenancy at the end of such calendar month, in which event such tenancy shall so terminate;

(b) subject to the provisions of subparagraph 3.3.1(c), but anything in the remaining provisions of this Section to the contrary notwithstanding, the Annual Rent payable

with respect to each such monthly period shall equal one twelfth (1/12) of the Annual Rent for the Lease Year then in effect or the last Lease Year of the Term, as applicable, during which such expiration or termination occurred, as aforesaid, and the Additional Rent shall continue to be payable under Section 4; and

(c) such month-to-month tenancy shall be on the same terms and subject to the same conditions as those set forth in this Lease, except that if Landlord gives Tenant, by at least thirty (30) days before the end of any calendar month during such month-to-month tenancy, written notice that such terms and conditions (including any thereof relating to the amount and payment of Rent) shall, after such month, be modified in any manner specified in such notice, then such tenancy shall, after such month, be on the said terms and subject to the said conditions, as so modified.

3.3.2 If Tenant continues to occupy the Premises after the expiration of the Term or any earlier termination of this Lease without having obtained Landlord's express, written consent thereto, then without altering or impairing any of Landlord's rights under this Lease or applicable law, (a) Tenant hereby agrees to pay to Landlord immediately on demand by Landlord as holdover rental ("**Holdover Rent**") for the Premises, for each calendar month or portion thereof after such expiration of the Term or such earlier termination of this Lease, as aforesaid, until Tenant surrenders possession of the Premises to Landlord, a sum equaling the Annual Rent plus Fifty and 00/100 Dollars (\$50.00) per each day of such holdover occupancy, and (b) Tenant shall surrender possession of the Premises to Landlord immediately on Landlord's having demanded the same. Nothing in this Lease shall be deemed in any way to give Tenant any right to remain in possession of the Premises after such expiration or termination, regardless of whether Tenant has paid any such Holdover Rent to Landlord, without Landlord's express written approval

3.4 Title to and Alterations of Improvements. At all times during the Term of this Lease, legal and beneficial title to the Improvements and the Equipment shall be vested in the Tenant and during the Term, to the extent permitted by applicable law, Tenant alone shall be entitled to all of the tax attributes of ownership, including, without limitation, the right to claim depreciation or cost recovery deductions and the right to claim the low-income housing tax credit described in Section 42 of the Code, if applicable, and Tenant shall have the right to amortize capital costs and to claim any other federal or state tax benefits attributable to the Property.

#### **SECTION 4. RENT.**

4.1 Amount. As rent for the Premises, Tenant shall pay to Landlord:

4.1.1 Rent. Landlord hereby acknowledges the receipt of the payment of One Million Eight Hundred Thousand and 00/100 Dollars (\$1,800,000.00), representing the payment in full of 100% of the rent due for the entire Term of the Lease (the "**Leasing Consideration Payment**"). Accordingly, no annual rent ("Annual Rent") shall be due under this Lease.

4.1.2 Additional Rent. Additional rent ("**Additional Rent**") in the amount of any payment referred to as such in this Lease which accrues while this Lease is in effect (which Additional Rent shall include any and all charges or other amounts which Tenant is obligated to

pay under this Lease, including, but not limited to, costs of taxes, insurance and public utility charges, other than the Leasing Consideration Payment and the Annual Rent). Such Additional Rent, unless required to be paid sooner hereunder, shall be due and payable within 30 days of Landlord's written demand therefor.

4.2 Tax on Lease. If federal, state or local law now or hereafter imposes any tax, payment in lieu of tax, assessment, levy or other charge (other than any income tax) directly or indirectly upon (a) Landlord with respect to this Lease or the value thereof, (b) Tenant's use or occupancy of the Premises, (c) the Rent, or (d) this transaction, Tenant shall pay the amount thereof as Additional Rent to Landlord upon demand unless Tenant is prohibited by law from doing so, provided Tenant shall not be obligated to pay any tax which is solely attributable to Landlord's ownership interest as owner of the Land.

4.3 Security Deposit. None.

4.4 Net Lease. Other than as is expressly set forth in this Lease (and except for Landlord's legal fees, third-party consultants retained by Landlord and Landlord's own costs), all costs, expenses, liabilities, charges or other deductions whatsoever with respect to the Premises and the construction, ownership, leasing, operation, maintenance, repair, rebuilding, use, occupation of, or conveyance of any or all of Tenant's Leasehold Estate shall be the sole responsibility of and payable by Tenant, including, but not limited to any reasonable cost, expenses, liabilities, charges or other sums incurred by Landlord in connection with this Lease that are Tenant's responsibility pursuant to the terms of this Lease; all of which costs, expenses, liabilities and charges shall be deemed Additional Rent hereunder.

4.5 Condition of the Premises. **TENANT ACKNOWLEDGES AND AGREES THAT THE PREMISES SHALL BE LEASED TO TENANT AND TENANT SHALL ACCEPT THE PREMISES, "AS IS, WHERE IS, AND WITH ALL FAULTS." LANDLORD HEREBY EXPRESSLY DISCLAIMS ANY AND ALL REPRESENTATIONS AND WARRANTIES OF ANY KIND OR CHARACTER, EXPRESS OR IMPLIED, WITH RESPECT TO THE PREMISES. WITHOUT LIMITING THE GENERALITY OF THE PRECEDING SENTENCE OR ANY OTHER DISCLAIMER SET FORTH HEREIN, LANDLORD AND TENANT HEREBY AGREE THAT LANDLORD HAS NOT MADE AND IS NOT MAKING ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, WRITTEN OR ORAL, AS TO (A) THE NATURE OR CONDITION, PHYSICAL OR OTHERWISE, OF THE PREMISES OR ANY ASPECT THEREOF, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OF HABITABILITY, SUITABILITY, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR USE OR PURPOSE; (B) THE SOIL CONDITIONS, DRAINAGE CONDITIONS, TOPOGRAPHICAL FEATURES, ACCESS TO PUBLIC RIGHTS-OF-WAY, AVAILABILITY OF UTILITIES OR OTHER CONDITIONS OR CIRCUMSTANCES WHICH AFFECT OR MAY AFFECT THE PREMISES OR ANY USE TO WHICH TENANT MAY PUT THE PREMISES; (C) ANY CONDITIONS AT OR WHICH AFFECT OR MAY AFFECT THE PREMISES WITH RESPECT TO ANY PARTICULAR PURPOSE, USE, DEVELOPMENT POTENTIAL OR OTHERWISE; (D) ANY ENVIRONMENTAL, GEOLOGICAL, METEOROLOGICAL, STRUCTURAL OR OTHER CONDITION OR**

**HAZARD OR THE ABSENCE THEREOF, HERETOFORE, NOW, OR HEREFTER AFFECTING IN ANY MANNER THE PREMISES, INCLUDING, BUT NOT LIMITED TO, THE ABSENCE OF ASBESTOS, LEAD PAINT, OR ANY OTHER HAZARDOUS MATERIALS ON, IN, UNDER OR ADJACENT TO THE PREMISES, AND (E) THE COMPLIANCE OF THE PREMISES OR THE OPERATION OR USE OF THE PREMISES WITH ANY APPLICABLE RESTRICTIVE COVENANTS, OR ANY LEGAL REQUIREMENTS (INCLUDING SPECIFICALLY, WITHOUT LIMITATION, ANY ZONING LAWS OR REGULATIONS, ANY BUILDING CODES, ANY ENVIRONMENTAL LAWS, AND THE AMERICANS WITH DISABILITIES ACT OF 1990, ALL AS AMENDED FROM TIME TO TIME).**

**SECTION 5. USE OF PROPERTY.**

5.1 Nature of Use. Tenant shall throughout the Term use and operate the Property only for residential rental apartments and related uses, including operation, marketing for lease and leasing of the Units in a manner which satisfies the requirements of this Lease.

5.2 Compliance with Law and Covenants. Tenant, throughout the Term and at its sole expense, in its construction, possession and use of the Premises, the Units or the rest of the Improvements, and the Equipment,

5.2.1 shall comply promptly and fully with (a) all applicable laws, ordinances, notices, orders, rules, regulations and requirements of all federal, state and municipal governments and all departments, commissions, boards and officers thereof, including all applicable LIHTC Housing Requirements (all of which are hereinafter referred to collectively as “**Legal Requirements**”); and (b) all requirements imposed by any policy of insurance required by Section 7 to be maintained by Tenant (all of which are hereinafter referred to collectively as “**Insurance Requirements**”); and (c) the provisions of the other Permitted Encumbrances, all if and to the extent that any of the Legal Requirements, the Insurance Requirements or the said provisions relate to any or all of the Premises, the Improvements, the Equipment, the fixtures and equipment upon the Premises, or the use or manner of use thereof, whether any of the foregoing are foreseen or unforeseen, or are ordinary or extraordinary;

5.2.2 (without limiting the generality of the foregoing provisions of this subsection) shall keep in force throughout the Term all licenses, consents and permits required from time to time by applicable Legal Requirement to permit the Property to be used in accordance with this Lease;

5.2.3 shall pay or cause to be paid before past due all personal property taxes, income taxes, license fees and other taxes or special assessments assessed, levied or imposed upon Tenant or any other Person (other than Landlord) in connection with the operation of the Project or its use thereof;

5.2.4 shall not take or fail to take any action, as the result of which action or failure to act Landlord’s estate, right, title or interest in and to any or all of the Premises or the rest of the Property might be impaired; and

5.2.5 shall not (either with or without negligence) (a) knowingly cause or permit the escape, disposal or release of any Hazardous Materials, or (b) knowingly allow the storage or use Hazardous Materials in any manner not sanctioned by law or by the highest standards prevailing in the industry for the storage and use of such substances or materials, or (c) knowingly allow any Hazardous Materials to be brought onto the Property except to use in the ordinary course of Tenant's business or by Residents for use within the Units in quantities permitted under the Legal Requirements. If any Permitted Leasehold Mortgagee or governmental agency reasonably requires testing to ascertain whether or not there has been any release of Hazardous Materials on the Premises while this Lease is in effect, then the reasonable costs thereof paid by Landlord shall be reimbursed by Tenant to Landlord upon demand as Additional Rent if such requirement applies to the Premises. Tenant shall execute affidavits, representations and the like from time to time at Landlord's reasonable request concerning Tenant's best knowledge and belief regarding the presence of Hazardous Materials on the Premises.

### **5.3 Restrictions Applicable to Units.**

5.3.1 Tenant shall comply with the restrictive covenants contained in any land use restrictions that are now or hereafter recorded in the Land Records and pertain to the Property, including, without limitation, the LURA.

5.3.2 Tenant shall comply with the provisions of the Legal Requirements prohibiting discrimination in housing on the grounds of race, color, creed, national origin, sex, marital status, sexual orientation, or a physical or mental handicap, including, but not limited to, Title VI of the Civil Rights Act of 1964 (Public Law 88-352) and Title VIII of the Civil Rights Act of 1968 (Public Law 90-284) and the Fair Housing Act (42 U.S.C. §§3601-3620).

5.3.3 The Restricted Units are subjected to and benefited by the terms and conditions of the LIHTC Housing Requirements. All LIHTC Housing Requirements and this Section 5 with respect to applicable Restricted Units shall be binding upon Landlord and Tenant and each of their respective successors and assigns, except for, to the extent permitted by applicable Legal Requirements, any entity which succeeds to Tenant's interest in the Premises by foreclosure or an instrument in lieu of foreclosure. The Landlord (in its capacity as Landlord) shall have no control or participation in the control or operation of the Property and shall not be entitled to any benefits from or uses thereof except for the Rent required hereunder.

5.3.4 Notwithstanding anything to the contrary contained in this Lease, following foreclosure by any Permitted Leasehold Mortgagee or assignment of the Leasehold Estate in lieu of such foreclosure, the use restrictions contained in this Section 5.3 shall be terminated and of no further force and effect to the extent permitted by applicable Legal Requirements.

## **SECTION 6. TAXES AND OPERATING EXPENSES.**

6.1 **Tenant to Pay.** Tenant (a) shall bear the full expense of any and all real property, personal property or other taxes, including any and all PILOT Payments, if applicable, city, county, metropolitan district charges or other state or local assessments, charges or fees levied

against any or all of the Premises, the Units, the other Improvements and the Equipment, whether against the Fee Estate or the Leasehold Estate therein, or the condominium association, if any, and payable with respect to any calendar or tax year or other period falling wholly or partly within the Term, including but not limited to any assessments or fees levied against the Units pursuant to any Permitted Encumbrances (all of which are hereinafter referred to collectively as "Taxes"), except that if any such tax, charge or assessment is levied with respect to a period beginning before the Commencement Date or ending after the Termination Date, Tenant shall bear the full expense of only that percentage thereof equaling the percentage of such period falling within the Term; (b) shall pay the same before past due and before any penalty is incurred for late payment thereof; and (c) shall deliver to Landlord the receipted bill for such Taxes within ten (10) days after Landlord requests it from Tenant in writing. Tenant shall not be required to pay any income taxes otherwise chargeable to the Landlord. Landlord hereby agrees, as owner of the Premises, to use its best efforts to maintain any existing or future ad valorem tax exemption under the Texas Tax Code for the Premises.

6.2 Delivery of Bills and Notices. Each party hereto shall deliver to the other, promptly after such party's receipt thereof, the originals or accurate copies of any and all bills for Taxes and notices of assessments or reassessments made or to be made for the purpose of levying any Taxes. If the Premises are not now treated as a separate tax lot by the assessing authority, Landlord shall use its reasonable efforts promptly hereafter to have the Premises so treated.

6.3 Tenant Proceedings to Contest; Indemnification of Landlord. Tenant may, without postponing payment thereof, as aforesaid, bring proceedings to contest any Legal Requirement and to contest the validity or the amount of any Taxes, or to recover any amount thereof paid by Tenant, provided that prior thereto Tenant notifies Landlord in writing that Tenant intends to take such action. Tenant shall indemnify and hold harmless Landlord against and from any expense arising out of any such action. Landlord shall, upon written request by Tenant, cooperate with Tenant in taking any such action, provided that Tenant indemnifies and holds harmless Landlord against and from any expense or liability arising out of such cooperation.

6.3.1 Property Tax Exemption. The Property is anticipated to qualify for exemption from all state and local government real estate taxes. Tenant and Landlord, and/or Landlord's successors, will use best efforts to entitle the Property to qualify for the exemption from state and local government real estate taxes. Landlord agrees not to take any action within its reasonable control which would jeopardize the property tax exemption, and further agrees to take such commercially reasonable action as Tenant or the Investor Members may request (at Tenant's expense) to preserve such real estate taxes, unless such action is otherwise prohibited by law.

6.4 Operating Expenses.

6.4.1 Tenant's Obligations. Subject to Tenant's legal rights to dispute expenses, Tenant will pay (or cause to be paid) directly to the providers of such services all costs and expenses attributable to or incurred in connection with the development, construction and rehabilitation, completion, marketing, leasing, maintenance, management and occupancy of the

Premises, including the Improvements (collectively, “**Operating Expenses**”), including without limitation (a) all energy sources for the Improvements, such as propane, butane, natural gas, steam, electricity, solar energy and fuel oil; (b) all water, sewer and trash disposal services; (c) all maintenance, repair, replacement and rebuilding of the Improvements including, without limitation, all Equipment; (d) all landscaping, maintenance, repair and striping of all parking areas; (e) all insurance premiums relating to the Premises and the Improvements, including fire and extended coverage, public liability insurance, rental insurance and all risk insurance; and (f) the cost and expenses of all capital improvements or repairs (whether structural or non-structural) required to maintain the Improvements in good order and repair, including but not limited to any required by any governmental or quasi-governmental authority having jurisdiction over the Premises or the Improvements.

6.4.2 Permits and Licenses. Tenant shall also procure, or cause to be procured, at Tenant’s sole cost and expense, any and all necessary permits, licenses, or other authorizations required for the lawful and proper installation and maintenance upon the Premises of wires, cables, pipes, conduits, tubes, fiber optics and other equipment and appliances for use in supplying any such service to the Improvements and upon the Premises. Landlord, upon request of Tenant, and at the sole expense and liability of Tenant, will join with Tenant in any application required for obtaining or continuing any such services.

6.5 Right to Pay Taxes and Senior Mortgage. Any Permitted Leasehold Mortgagee, one or both Investor Members or the Special Member shall have the right (but not the obligation) to pay any taxes payable by Landlord or Tenant with respect to the Premises, and to cure any monetary or non-monetary default by Landlord or Tenant under any Mortgage (excluding, with respect to a Permitted Leasehold Mortgagee, such Permitted Leasehold Mortgagee’s Permitted Leasehold Mortgage) or other encumbrance on the Premises which has priority over the Lease, but only to the extent permitted by such Permitted Leasehold Mortgagee’s Permitted Leasehold Mortgage; and if a Permitted Leasehold Mortgagee or one or both Investor Members or the Special Member do so pay or cure, Landlord or Tenant, as applicable, agrees that it will reimburse the Permitted Leasehold Mortgagee or one or both Investor Members or the Special Member, as applicable, for the amount thereof promptly following request by such Permitted Leasehold Mortgagee or one or both Investor Members or the Special Member, as applicable, therefor unless the Landlord or Tenant is protesting such taxes in good faith.

## **SECTION 7. INSURANCE AND INDEMNIFICATION.**

7.1 Insurance to be Maintained by Tenant. Tenant shall maintain at its expense throughout the Term the insurance specified in the Operating Agreement, as the same may be reasonably modified from time to time due to changes in such insurance, as customarily provided for projects similar in scope and size to the Project, subject to Landlord’s approval. Nothing in this subsection 7.1 is intended, nor shall be construed, to relieve Tenant from compliance with all of the insurance requirements imposed upon Tenant under each Permitted Leasehold Mortgage. All insurance coverages shall have waiver of subrogation provisions reasonably acceptable to Landlord and Tenant. Approval, disapproval or failure to act by Landlord regarding any insurance applied by Tenant shall not relieve Tenant of full responsibility or liability for damages or accidents as set forth in this Lease. Neither shall the bankruptcy, insolvency or denial of liability by the insurance company exonerate Tenant from any such liability.

7.2 Insureds. Each such policy shall name Tenant as the insured, and shall name as additional insureds thereunder (a) Landlord, and (b) any Permitted Leasehold Mortgagee. Landlord's entitlement to proceeds from Tenant's insurance policies is subordinate to the rights of all Permitted Leasehold Mortgagees under all Permitted Leasehold Mortgages.

7.3 Insurer. All insurance required and all renewals of insurance shall be issued by companies of recognized responsibility licensed to issue such policies and otherwise transact business in the State of Texas. All insurance policies will expressly provide that such policies will not be canceled or altered without thirty (30) days' prior written notice to Landlord, and any other named insured thereunder, in the case of "All Risk" coverage insurance, and to Landlord, and all other named insureds thereunder, in the case of general liability insurance. Such insurance will, to the extent obtainable, provide that no act or omission of Tenant which would otherwise result in forfeiture or reduction of the insurance will affect or limit the obligation of the insurance company to pay the amount of any loss sustained; and will, to the extent obtainable, contain a waiver by the insurer of its rights of subrogation against Landlord. Upon Landlord's request a duplicate policy or a certificate of such policy shall be delivered to Landlord.

7.4 Evidence. Tenant shall deliver to Landlord no later than thirty (30) days after the Commencement Date a certificate of insurance or a signed duplicate copy of each such policy, and upon Landlord's request, Tenant shall deliver to Landlord a certificate of insurance or a signed duplicate copy of a replacement policy therefor. All public liability, property damage liability, and casualty policies maintained by Tenant will be written as primary policies, not contributing with and not in excess of coverage that Landlord may carry.

7.5 Indemnification of Landlord.

**7.5.1 TENANT SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS LANDLORD FROM THIRD PARTY CLAIMS NOT ATTRIBUTABLE TO LANDLORD'S OR ANY OF LANDLORD'S RELATED PARTIES' ACTION OR INACTION AND AGAINST AND FROM ANY AND ALL LIABILITY, CLAIM OF LIABILITY OR REASONABLE EXPENSE INCURRED BY LANDLORD AND ARISING OUT OF OR IN ANY WAY CONNECTED WITH (A) THE USE, OCCUPANCY, CONDUCT, OPERATION OR MANAGEMENT OF THE PROPERTY DURING THE TERM, OR (B) ANY WORK OR THING WHATSOEVER DONE OR NOT DONE ON THE PROPERTY DURING THE TERM OR ARISING OUT OF ANY FAILURE OF TENANT'S COVENANTS OR WARRANTIES IN SECTION 9.1.9, OR (C) ANY BREACH OR DEFAULT BY TENANT IN PERFORMING ANY OF ITS OBLIGATIONS UNDER THIS LEASE OR APPLICABLE LAW, OR (D) ANY NEGLIGENT, INTENTIONALLY TORTIOUS OR OTHER ACT OR OMISSION OF TENANT OR ANY OF TENANT'S RELATED PARTIES DURING THE TERM, OR (E) ANY INJURY TO OR DEATH OF ANY PERSON, OR DAMAGE TO ANY PROPERTY, OCCURRING ON THE PROPERTY DURING THE TERM OR (F) ANY DEFAULT OR BREACH BY TENANT OF ANY PERMITTED LEASEHOLD MORTGAGE, AND FROM AND AGAINST ALL REASONABLE EXPENSES AND LIABILITIES INCURRED IN CONNECTION WITH ANY SUCH CLAIM OR ANY ACTION OR PROCEEDING BROUGHT THEREON (INCLUDING BUT NOT LIMITED TO THE**



REASONABLE FEES OF ATTORNEYS, INVESTIGATORS AND EXPERTS), ALL REGARDLESS OF WHETHER SUCH CLAIM IS ASSERTED DURING OR AFTER THE EXPIRATION OF THE TERM OR ANY EARLIER TERMINATION OF THIS LEASE BUT EXCLUDING, HOWEVER, THE PORTION OF ANY LIABILITY, CLAIM OF LIABILITY OR EXPENSE CAUSED WHOLLY AND DIRECTLY BY LANDLORD OR ANY OF LANDLORD'S RELATED PARTIES. THIS SUBSECTION 7.5.1 SHALL SURVIVE THE TERMINATION OF THIS LEASE.

7.5.2 TENANT AGREES THAT LANDLORD SHALL NOT BE LIABLE FOR ANY DAMAGE OR LIABILITY OF ANY KIND OR FOR ANY INJURY TO OR DEATH OF PERSONS OR DAMAGE TO PROPERTY OF TENANT OR ANY OTHER PERSON FROM ANY CAUSE WHATSOEVER BY REASON OF ANY WORK, LABOR OR MATERIALS PERFORMED OR DELIVERED TO, OR CONNECTED TO THE USE, OCCUPANCY, OR ENJOYMENT OF THE PREMISES BY TENANT OR ANY PERSON ON THE PREMISES OR HOLDING ALL OR ANY PART OF THE PREMISES UNDER TENANT. TENANT DOES HEREBY INDEMNIFY AND SAVE HARMLESS LANDLORD FROM ALL CLAIMS, ACTIONS, DEMANDS, COSTS AND REASONABLE EXPENSES AND LIABILITY WHATSOEVER, INCLUDING REASONABLE ATTORNEYS' FEES, ON ACCOUNT OF ANY SUCH REAL OR CLAIMED DAMAGE OR LIABILITY SUSTAINED BY THIRD PARTIES AND FROM ALL LIENS, CLAIMS AND DEMANDS OCCURRING IN OR AT THE PREMISES, OR ARISING OUT OF THE CONSTRUCTION, USE, OCCUPANCY OR ENJOYMENT OF THE PREMISES AND ITS FACILITIES, OR ANY REPAIRS OR ALTERATIONS WHICH TENANT MAY MAKE UPON THE PREMISES, OR OCCASIONED IN WHOLE OR IN PART BY ANY ACT OR OMISSION OF TENANT OR ANY OF TENANT'S RELATED PARTIES, OTHER THAN THE PORTION OF CLAIMS, ACTIONS, DEMANDS, COSTS AND EXPENSES AND LIABILITIES ARISING DIRECTLY AND SOLELY FROM THE ACTS OR OMISSIONS OF LANDLORD OR ANY OF LANDLORD'S RELATED PARTIES.

7.5.3 TENANT HEREBY WAIVES AND RELEASES ANY CLAIM AGAINST LANDLORD FOR INJURY TO OR DEATH OF ANY PERSON AND ANY PROPERTY DAMAGE ARISING OUT OF OR ATTRIBUTABLE TO ANY CRIMINAL ACTIVITY IN OR ABOUT THE PREMISES, SPECIFICALLY INCLUDING, BUT NOT LIMITED TO, VANDALISM, THEFT, BURGLARY, ROBBERY, RAPE, MURDER OR ASSAULT.

7.5.4 TENANT HEREBY AGREES TO INDEMNIFY, PROTECT, DEFEND AND HOLD LANDLORD AND LANDLORD'S RELATED PARTIES HARMLESS FROM ANY AND ALL CLAIMS, CAUSES OF ACTIONS AND SUITS FOR INJURY TO OR DEATH OF ANY OF TENANT'S RELATED PARTIES OR RESIDENTS OF THE UNITS RESULTING FROM CRIMINAL ACTIVITIES IN OR ABOUT THE PREMISES, INCLUDING ALL COSTS, REASONABLE ATTORNEYS' FEES AND EXPENSES INCURRED. TENANT SHALL DEFEND ANY SUCH CLAIM, CAUSE OF ACTION OR SUIT MADE OR BROUGHT AGAINST LANDLORD OR LANDLORD'S RELATED PARTIES AT TENANT'S SOLE REASONABLE EXPENSE, BY COUNSEL REASONABLY SATISFACTORY TO LANDLORD. AS USED HEREIN,

**"LANDLORD'S RELATED PARTIES" SHALL MEAN AND REFER TO LANDLORD'S OFFICERS, DIRECTORS, AFFILIATES, AGENTS, CONTRACTORS, VOLUNTEERS AND EMPLOYEES, AND THEIR RESPECTIVE HEIRS AND PERSONAL REPRESENTATIVES, SUCCESSORS AND ASSIGNS. AS USED HEREIN, "TENANT'S RELATED PARTIES" SHALL MEAN TENANT'S AGENTS, CONTRACTORS, EMPLOYEES, PATRONS, BUSINESS INVITEES AND GUESTS. NOTWITHSTANDING ANYTHING TO THE CONTRARY SET FORTH IN THIS SECTION 7.5.4, TENANT SHALL HAVE NO OBLIGATION TO INDEMNIFY LANDLORD PURSUANT TO THIS SECTION 7.5.4 IF SUCH LIABILITY ARISES DIRECTLY OR INDIRECTLY FROM THE ACTS OR OMISSIONS OF LANDLORD, ANY AFFILIATE OF LANDLORD, OR ANY OF LANDLORD'S RELATED PARTIES.**

**7.5.5 SUBJECT TO THE LIMITATIONS SET FORTH BELOW, TENANT HEREBY AGREES TO INDEMNIFY LANDLORD AND HOLD LANDLORD HARMLESS FROM AND AGAINST ANY AND ALL LOSS, DAMAGES, LIABILITIES, REASONABLE EXPENSE AND COST INCLUDING, WITHOUT LIMITATION, REASONABLE ATTORNEYS' FEES, PAID, INCURRED OR SUFFERED BY LANDLORD AS A DIRECT OR INDIRECT RESULT OF THE PRESENCE ON OR UNDER, OR THE ESCAPE, SEEPAGE, LEAKAGE, SPILLAGE, EMISSION, DISCHARGE, MIGRATION OR RELEASE FROM THE PROPERTY OF ANY HAZARDOUS MATERIALS. THE FOREGOING INDEMNITY SHALL BE LIMITED TO MATTERS THAT ARE NOT CAUSED BY ACTS OF GOD AND NOT CAUSED BY LANDLORD OR ANY OF LANDLORD'S RELATED PARTIES. THE FOREGOING SHALL NOT BE CONSTRUED TO LIMIT THE LIABILITY OF THE TENANT FOR SUCH MATTERS WHICH OCCUR DURING THE TERM, BUT WHICH ARE DISCOVERED SUBSEQUENT TO THE EXPIRATION OF THE TERM.**

7.5.6 Notwithstanding anything in this Section 7.5 or in Section 4.5 to the contrary, in no event shall Tenant be liable to Landlord hereunder for (i) any Hazardous Materials contamination or conditions existing prior to the commencement of this Lease, unless any Legal Requirement imposes such liability, (ii) any item caused by the Landlord or any of Landlord's Related Parties, (iii) any environmental contamination migrating onto the Land from adjacent property, except to the extent such migration is exacerbated by Tenant, and (iv) any item caused by any managing member of the Tenant so long as the managing member of Tenant is an Affiliate of Landlord.

**7.6 Increase in Risk. Tenant:**

7.6.1 shall not do or permit to be done any act or thing as a result of which either (a) any policy of insurance of any kind covering any or all of the Property or any liability of Landlord in connection therewith becomes void or suspended and such insurance policy is not replaced, or (b) the insurance risk under any such policy would (in the opinion of the insurer thereunder) be made materially greater and action is not taken to address the risk; and

7.6.2 if such insurance is maintained by Landlord, Tenant shall pay as Additional Rent the amount of any increase in any premium for such insurance resulting from

any breach of such covenant, within ten (10) business days after Landlord notifies Tenant in writing of such increase.

7.7 Insurance Proceeds and Condemnation Awards. Landlord and the Tenant hereby agree that any and all property insurance proceeds and/or condemnation awards received by the Tenant or the Landlord in connection with the Property shall be treated as set forth in the most senior Permitted Leasehold Mortgage.

## **SECTION 8. PERMITTED LEASEHOLD MORTGAGE REQUIREMENTS.**

8.1 Future Fee Estate Mortgages. Other than Permitted Encumbrances and restrictive covenants comprising a Land Use Restriction Agreement ("LURA") required by TDHCA or HUD, Landlord shall not consent to any future mortgages or permit any future liens, or encumbrances against the Fee Estate or Premises, or otherwise pledge, subordinate, assign or otherwise dispose of the Fee Estate or Premises, without the prior written consent of Tenant and all Permitted Leasehold Mortgagees. To the extent a future mortgage on the Fee Estate is permitted hereunder, such mortgage shall expressly provide that it is subordinate and subject to the Tenant's interest under this Lease. Additionally, the Tenant shall not subordinate its interest in the Leasehold Estate to any future mortgage of the Fee Estate obtained by Landlord.

8.2 Nonmerger. This Lease shall not terminate as to any Permitted Leasehold Mortgagee because of any conveyance of Tenant's interest in the Leasehold Estate to Landlord or of the Landlord's interest hereunder to the Tenant. Accordingly, if the Leasehold Estate and the Fee Estate are commonly held, then they shall remain separate and distinct estates. They shall not merge without the prior written consent from all Permitted Leasehold Mortgagees and the Investor Members.

8.3 Foreclosure Rights of Permitted Leasehold Mortgagee. Upon foreclosure or assignment in lieu of foreclosure of the Leasehold Estate, the most senior Permitted Leasehold Mortgagee shall have the right to acquire the Lease in its own name or the name of a nominee without consent or approval of Landlord. In the event that Tenant's interest in the Leasehold Estate is acquired by any Permitted Leasehold Mortgagee, or its nominee, then such Permitted Leasehold Mortgagee, or its nominee, shall also have the right to further assign or sublet the Leasehold Estate to a third party with the consent of Landlord.

Foreclosure of any Permitted Leasehold Mortgage, or any sale thereunder, whether by judicial proceedings or by virtue of any power contained in the Permitted Leasehold Mortgage, or in lieu of, foreclosure or other appropriate proceedings in the nature thereof, shall not require the consent of Landlord or constitute a breach of any provision of, or a default under, the Lease, and upon such foreclosure, sale or conveyance, Landlord shall recognize the purchaser or other transferee in connection therewith as the Tenant under the Lease (the "New Tenant"). Following such foreclosure, sale or conveyance in lieu thereof, the New Tenant shall have the right to further assign or sublet the Leasehold Estate to a third party with the consent of Landlord.

8.4 Obligations of New Tenant. The New Tenant shall only be personally obligated for performance of obligations under the Lease commencing as set forth in Section 21.20 hereof and ending as of the date of any permitted assignment of the Lease to a successor Tenant. New

Tenant shall take the Leasehold Estate subject to the agreements, covenants, conditions and terms of this Lease on the part of Tenant to be kept, observed and performed, subject to the foregoing subsection.

8.5 Voluntary Surrender. Notwithstanding anything set forth in this Lease to the contrary, Landlord shall not accept a voluntary surrender of the Lease at any time during which the Leasehold Estate is (1) encumbered by a Permitted Leasehold Mortgage; or (2) prior to the expiration of the Compliance Period.

## **SECTION 9. IMPROVEMENTS TO PREMISES.**

### **9.1 Construction, Renovation or Rehabilitation of Improvements.**

9.1.1 Plans and Specifications. Landlord authorizes Tenant, at Tenant's sole cost and expense, to construct Improvements on the Premises, provided that Tenant hereby obligates itself to undertake any construction of the Project substantially in accordance with plans and specifications (collectively, "**Plans and Specifications**") previously submitted to and approved by Landlord.

9.1.2 Amendments to Plans and Specifications. Tenant shall take no action to effectuate any material amendments, modifications or any other alterations to the Plans and Specifications that are not permitted by the Permitted Leasehold Mortgagee.

9.1.3 Completion Schedule. Subject to Force Majeure delays, Tenant shall no later than the date which is thirty (30) months after the Commencement Date (the "**Construction Completion Date**"), construct the Improvements as herein provided to the extent required for Tenant to be issued a permanent, unconditional certificate of occupancy therefor or temporary occupancy permits subject to punchlist items that do not interfere with occupancy of the Units by the Residents. Failure of Tenant to complete construction/rehabilitation of the Improvements and make such Improvements available for occupancy as contemplated hereunder by the Construction Completion Date shall constitute a default by Tenant hereunder; provided, however, that Landlord shall give Tenant, Permitted Leasehold Mortgagee, Investor Members and Special Member 90 days written notice and opportunity to cure such failure (and any additional time as provided by this Lease) prior to exercising any remedy under this Lease, and a cure of such failure shall cure such default.

### **9.1.4 Intentionally Omitted.**

9.1.5 Utilities. Prior to the commencement of any construction, renovation or rehabilitation activities involving excavation activities by Tenant, Tenant shall contact all appropriate utility agencies for the purpose of verifying the location, depth and nature of all utilities affecting the Premises and any areas bordering upon the Premises.

9.1.6 Safety. Tenant shall comply in all respects with the reasonable overall safety programs promulgated by the Landlord any applicable governmental or quasi-governmental agency, from time to time, which are applicable to the Premises.

9.1.7 Post Completion Alterations. Except in the event of an emergency, as required for life-safety purposes or in the course of ordinary maintenance and repair (including capital repairs and replacements) of the Premises, Tenant shall not make any material post-completion alteration, improvement or addition to the Premises having a cost greater than \$100,000.00, or demolish any substantial portion thereof, without first presenting to Landlord complete plans and specifications (to the extent having been prepared) therefor and obtaining Landlord's written consent thereto (which consent shall not unreasonably be withheld so long as, in Landlord's reasonable judgment such alteration, improvement, addition or demolition will not violate applicable Legal Requirements or this Lease, or materially impair the value of the Property and Tenant's ability to perform in accordance with the terms of this Lease). Tenant shall make no post-completion alterations to the Premises until Tenant has procured, as applicable, required permits and authorizations required by the applicable governmental authorities and, if required, consents from Permitted Leasehold Mortgagees. Any post-completion improvements made to the Premises by either party hereto shall be made only in good and workmanlike manner using new materials of the same quality as the original Improvements and in accordance with all applicable building codes and other laws.

9.1.8 Intentionally Omitted.

9.1.9 Covenants and Warranties. Tenant covenants and warrants to Landlord that material and equipment furnished in connection with the construction of the Improvements, or any alteration, renovation or addition thereto, undertaken in accordance with paragraph 9.1.7, will be done in a good and workmanlike manner and of a quality consistent with industry standards and practices and substantially in accordance the Plans and Specifications, that all construction work associated with the construction of Improvements will be free from any material defect in workmanship and materials, and that such construction work will comply in all material respects with the requirements of the approved Plans and Specifications. All construction work not conforming to these requirements, including substitutions, shall be considered defective. Tenant's covenant excludes any damage to the extent directly caused by the gross negligence, violations of laws, or misfeasance by Landlord or any of Landlord's Related Parties, and normal wear and tear under normal usage. If required by Landlord, Tenant shall furnish satisfactory evidence as to the kind and quality of materials and equipment. Without limiting the indemnification provisions of subsection 7.5, but intending to elaborate thereon, Tenant shall defend, indemnify and hold harmless Landlord against and from any and all liability, claim of liability or reasonable expense arising directly or indirectly, wholly or in part out of any failure of Tenant's warranties hereunder to be true, complete and accurate in all material respects. This paragraph 9.1.9 shall survive the termination of this Lease for a period of twelve (12) months.

9.1.10 Permitted Leasehold Mortgages.

(a) Landlord acknowledges and agrees that it will not be possible for the Tenant to construct the Improvements without obtaining a loan or loans from one or more Persons in order to finance the construction of said Improvements and the development and operation of the Project. Therefore, Landlord hereby covenants and agrees that the Landlord's interest in this Lease and its Fee Estate are and shall be subject to, subordinate and inferior to any and all loans (interim, permanent, "cash flow", "soft" or refinancings thereof) obtained by

the Tenant for the purpose of financing the construction of the Improvements and the development and operation of the Project, and to the lien of any Mortgages evidencing any such loans (such Mortgages, together with assignments of rents and leases, security agreements, and other collateral or security documents or instruments required by the Permitted Leasehold Mortgagee(s) providing such financing, all other documents governing, securing, and/or evidencing the loan secured by the applicable Mortgage, and all renewals, extensions, modifications, consolidations, replacements, assignments and refinancings thereof, collectively a "**Permitted Leasehold Mortgage**"), and to all advances made or hereafter to be made upon the security of such Permitted Leasehold Mortgages. Landlord shall, at Tenant's request, join in, execute and/or deliver any and all Permitted Leasehold Mortgages as may be required by such Permitted Leasehold Mortgagees in order to subject and subordinate the Landlord's interest in this Lease and its Fee Estate, or to otherwise consent to or facilitate the subordination or encumbrance of the Tenant's interest in the Lease and the Property, to the lien of the Permitted Leasehold Mortgages, and upon Tenant's request, Landlord shall join in, execute and/or deliver any and all such further instruments or assurances as any such Permitted Leasehold Mortgagees may reasonably deem necessary to evidence or confirm the subordination of this Lease, or the encumbrance of the Landlord's interest herein and the Fee Estate, to the lien of the Permitted Leasehold Mortgages. Provided, however, and notwithstanding anything contained herein to the contrary, Landlord shall not be required to suffer, incur, accept or assume any personal liability for any such financing, loans or indebtedness, or any costs or expenses thereof, or any other indebtedness or liability of Tenant thereunder, and any Permitted Leasehold Mortgage and other collateral or security documents or instruments of any nature whatsoever which the Landlord may be called upon to join in, execute and/or deliver under and pursuant to this section, shall expressly exculpate Landlord from and against any and all such personal liability.

Neither Tenant nor any successor in interest to the Premises or any part thereof shall, without the prior written consent of Landlord in each instance, which consent may be withheld in Landlord's sole discretion, engage in any financing or any other transaction creating any mortgage or other encumbrance or lien upon the Premises, whether by express agreement or operation of law, or suffer any encumbrance or lien to be made on or attached to the Premises, except for the Permitted Leasehold Mortgages.

(b) Landlord agrees to accept payment or performance by Permitted Leasehold Mortgagee as though Tenant had done the same.

(c) Landlord agrees that, for so long as the Permitted Leasehold Mortgage remains a Permitted Encumbrance, the following provisions shall apply:

(i) There shall be no cancellation, surrender, or modification of this Lease by joint action of Landlord and Tenant, without the prior written consent of Permitted Leasehold Mortgagee, provided such consent is not unreasonably withheld, delayed or conditioned; and

(ii) Without confirming any right of Landlord to terminate this Lease other than as expressly set forth in this Lease, if Landlord elects to terminate this Lease due to an Event of Default of Tenant, after the expiration of all applicable notice

and cure periods, by delivery to Tenant and the Permitted Leasehold Mortgagee of a written notice of termination, then Permitted Leasehold Mortgagee shall have the right to nullify any such notice of termination within ninety (90) days after receipt of Landlord's notice of termination by either (1) curing such Event of Default; or (2) commencing to cure or cause to be cured any then existing Event of Default of Tenant, and promptly initiating action to acquire or sell Tenant's interest in this Lease by foreclosure of the Permitted Leasehold Mortgage or otherwise and prosecuting the same to completion with due diligence and without any interruption.

(d) Permitted Leasehold Mortgagee shall not be obligated or required to cure a default or an Event of Default of Tenant that is uniquely specific to Tenant, such as bankruptcy, and Landlord shall not terminate this Lease, provided Permitted Leasehold Mortgagee has cured any other non-specific default or Event of Default of Tenant, and Landlord enters into a new lease on substantially the same terms and conditions with the same priorities with Permitted Leasehold Mortgage.

(e) Permitted Leasehold Mortgagee shall have the right to assume this Lease as Tenant in its own name or in the name of a nominee upon foreclosure or assignment in lieu of foreclosure of the Permitted Leasehold Mortgage.

(f) Permitted Leasehold Mortgagee shall not be liable hereunder unless and until Permitted Leasehold Mortgagee expressly assumes such liability in writing. Furthermore, no assumption of liability hereunder shall be inferred from Permitted Leasehold Mortgagee's foreclosure or other appropriate proceedings in lieu thereof.

(g) Except as permitted pursuant to this Section 9.1.10, neither Tenant nor any successor in interest to the Premises or any part thereof shall engage in any transaction creating any encumbrance or lien upon the Premises, whether by express agreement or operation of law, or suffer any encumbrance or lien to be made on or attached to the Premises, except as approved with the prior written consent of Landlord in each instance, which consent may be withheld in Landlord's sole discretion (any Mortgage consented to by Landlord, as aforesaid, is also hereinafter referred to singularly as a Permitted Leasehold Mortgage), and except for an inchoate lien for taxes or municipal obligations, utility and access easements, restrictions required by Section 42 of the Code, the LURA, other encumbrances incurred in the ordinary course of business of the Tenant, and Permitted Encumbrances.

## **9.2 Mechanic's or Other Liens.**

9.2.1 Tenant shall: (a) within sixty (60) days after it is filed or claimed, have released (by bonding, insuring over, or otherwise) any mechanics', materialman's or other lien filed against any or all of the Premises, or Property, by reason of labor or materials provided for or about any or all of the Premises, the Units, or the Improvements or the Property during the Term, or otherwise arising out of Tenant's use or occupancy of any or all of the Premises, the Units, or the Improvements or the Property, and (b) defend, indemnify and hold harmless Landlord against and from any and all liability, claim of liability or reasonable expense (including but not limited to that of reasonable attorneys' fees) incurred by Landlord on account

of any such lien or claim other than such liens arising out of the actions of the Landlord or any of Landlord's Related Parties.

9.2.2 Nothing in this Lease shall be deemed in any way (a) to constitute Landlord's consent or request, express or implied, that any contractor, subcontractor, laborer or materialman provide any labor or materials for any alteration, addition, improvement or repair to any or all of the Property, if doing so would give rise to the filing of any mechanics' or materialmen's lien against any or all of the Property or Landlord's estate or interest therein or (b) to give Tenant any right, power or authority to contract for or permit to be furnished any service or materials, if doing so would give rise to the filing of any mechanics' or materialmen's lien against any or all of the Property or Landlord's estate or interest therein, or (c) to evidence Landlord's consent that the Property be subjected to any such mechanic's or materialman's lien.

9.2.3 Right to Contest Certain Claims. Notwithstanding the provisions of Sections 9.2.1 or 9.2.2 of this Lease to the contrary, Tenant shall not be in default for failure to comply with any Legal Requirement or to pay or discharge any tax, assessment, fine, claim, or mechanic's or materialman's lien asserted against the Property if, and so long as (a) Tenant shall have notified Landlord of same within ten (10) business days of obtaining knowledge thereof; (b) Tenant shall diligently and in good faith contest the same by appropriate legal proceedings which shall cooperate to prevent the enforcement or collection of the same and the sale of the Property or any part thereof, to satisfy the same; and (c) Tenant complies with all requirements under the most senior Permitted Leasehold Mortgage necessary to avoid a default thereunder. Upon the discharge and/or dismissal of all tax assessments, fines and liens covered by this Section 9.2.3, Landlord shall return any unexpended funds delivered to it by Tenant to fulfill its obligations under this Section 9.2.3.

9.3 Fixtures. Any and all improvements, repairs, alterations and all other property attached to or otherwise installed as a fixture within the Premises by Landlord or Tenant shall, immediately on the completion of their installation, become part of the Property and, except as replaced in accordance with Section 10 hereof, remain with the Property at the expiration or earlier termination of this Lease, except that any machinery, equipment or fixtures installed by Tenant at no expense to Landlord and used in the conduct of Tenant's trade or business (rather than to service the Premises, the Units or the Property generally) and not part of the Equipment shall remain Tenant's property, and may be removed from the Premises by Tenant at the end of the Term (and any damage to the Property caused by such removal shall be repaired at Tenant's expense).

9.4 Joinder. Without limiting Landlord's obligations under any other provision of this Lease, Landlord shall, promptly at Tenant's request and expense at any time during the Term (and provided that Landlord thereby assumes no liability or obligation), join in any and all applications for building permits, subdivision plat approvals or certificates of dedication thereon, public works or other agreements and permits for sewer, water or other utility services, other instruments of dedication or other permits or approvals, the granting of or entry into which by any governmental or quasi-governmental authority having jurisdiction over the Property is necessary to permit (a) the subdivision, development, improvement, use and occupancy of the Property for the purposes permitted by this Lease, without violating applicable law; and (b) the dedication to the City of Austin, the applicable utility providers, and/or the State of Texas after



the Commencement Date of such title to or easements for utility, roadway and slope or storm drainage areas or facilities as are, in Tenant's opinion, necessary or desirable in connection therewith. Subject to the provisions of subsection 9.1, Landlord shall, at no expense to Landlord, use its reasonable efforts to cooperate with Tenant in Tenant's efforts to obtain such final approval and recordation.

9.5 Signs. Tenant shall have the right to erect from time to time about the Property, in accordance with applicable law, such signs as it desires, (or as required by the most senior Permitted Leasehold Mortgage and/or the Investor Members), and provided that any such sign has been approved by all architectural review committees having jurisdiction over any portion of the Property pursuant to any Permitted Encumbrance. Moreover, Tenant shall erect from time to time, at Tenant's expense, and upon the request of Landlord, about the Property, in accordance with applicable law, such signs as Landlord reasonably desires in order to advise the public of Landlord's participation in the Project, if applicable.

9.6 Tenant Control. Notwithstanding anything to the contrary herein, the Landlord shall have not control over the construction and rehabilitation of the Improvements.

## **SECTION 10. REPAIRS AND MAINTENANCE.**

10.1 Repairs. Tenant shall, throughout the Term and at its expense, use commercially reasonable effort to:

10.1.1 take good care of the Property and keep it in good order and condition; and

10.1.2 promptly make any and all repairs, ordinary or extraordinary, foreseen or unforeseen, to the Property (including but not limited to the landscaping thereon) as are necessary to maintain it in good condition, subject to ordinary wear and tear and casualty (including but not limited to any and all such repairs to the plumbing, heating, ventilating, air-conditioning, electrical and other systems for the furnishing of utilities or services to the Property), and replace or renew the same where necessary (using replacements at least equal in quality and usefulness to the original improvements, equipment or things so replaced), and Landlord shall have no obligation hereunder as to the same

10.2 Maintenance. Tenant shall use commercially reasonable efforts to keep and maintain all of the Property in a clean and orderly condition, free of accumulation of dirt, rubbish, snow and ice, and shall keep all grass, ground cover and other plantings mown, weeded and trimmed.

## **SECTION 11. LANDLORD'S RIGHT OF ENTRY.**

11.1 Inspection and Repair. Subject to the rights of any Resident under a Tenancy Agreement, Landlord and its authorized representatives shall be entitled to enter the Project and Units and the rest of the Property at any time during Tenant's business hours and at any other reasonable time after giving Tenant at least two (2) business days' notice of Landlord's intention to take such action, to (a) inspect the Property, and (b) with the prior written consent of the Permitted Leasehold Mortgagees (except in connection with repairs for life and/or safety issues,

in which case prompt notice shall be provided to the Permitted Leasehold Mortgagees), and subject to the rights of any Resident under a Tenancy Agreement, Landlord and its authorized representatives shall be entitled to make any repairs thereto and/or take any other action therein which is required by Legal Requirements, or which Landlord is permitted to make by any provision of this Lease, after giving Tenant at least two (2) business days' notice of Landlord's intention to take such action and allowing Tenant reasonable time to take the appropriate action (in any situation in which, due to an emergency or otherwise, the health, welfare or safety of the Residents or physical condition of the Project and Units or any other part of the Property would be unreasonably jeopardized unless Landlord were to take such action immediately, Landlord shall give only such notice, if any, to Tenant as is reasonable under the circumstances, and may enter the same at any time). Nothing in this Section shall be deemed to impose any duty upon Landlord to make any such repair or take any such action, and Landlord's performance thereof shall not constitute a waiver of Landlord's right hereunder to have Tenant perform such work. Landlord may, while taking any such action upon the Property, store therein any and all necessary materials, tools and equipment, and Tenant shall have no liability to Landlord for any damage to or destruction of any such materials, tools and equipment, except if and to the extent that such damage or destruction is proximately caused by the gross negligence or intentional conduct of Tenant or its agents and employees. Landlord shall not in any event be liable to Tenant for any inconvenience, annoyance, disturbance, loss of business or other damage sustained by Tenant by reason of the making of such repairs or the taking of such action, or on account of the bringing of materials, supplies and equipment onto the Property during the course thereof (except if and to the extent is proximately caused by the gross negligence or intentional conduct of Landlord or any Landlord Related Party), and Tenant's obligations under the provisions of this Lease shall not be affected thereby. In exercising its rights under this subsection 11.1, Landlord shall use reasonable efforts not to cause or allow any interference or disruption of Tenant's work or Tenant's use, operation or enjoyment of the Property, or that of any Resident, except in the event of an emergency.

**11.2 Exhibiting the Premises.** Landlord and its business invitees may from time to time, after giving at least two (2) business days' notice thereof to Tenant, and subject to the rights of any Resident under a Tenancy Agreement, enter the Project and the Units and the rest of the Property during Tenant's normal business hours to exhibit the Premises for purposes of (a) pledging or assigning any or all of Landlord's right, title and interest in and to the Premises or under this Lease (to the extent permitted hereunder), (b) during the last twenty-four (24) months of the Term (or at any time after Landlord or Tenant has exercised any right to terminate this Lease which it holds hereunder), leasing the Premises to any prospective tenant thereof, and (c) exhibiting the same to any governmental and/or quasi-governmental authorities or other third-parties which may have an interest in developments similar to the Property or similarly financed or for any other business purpose; provided that in doing so Landlord and each such invitee observes all reasonable safety standards and procedures which Tenant may require. In exercising its rights under this subsection 11.2, Landlord shall use its good faith, reasonable efforts to minimize any interference or disruption of Tenant's work or Tenant's use or operation of the Property, or that of any Resident.

## **SECTION 12. FIRE AND OTHER CASUALTIES.**

### **12.1 Where Cost of Restoration Exceeds Specified Sum.**

12.1.1 Subject to the provisions of Sections 12.2 and 12.4 hereof, if any or all of the Property is damaged or destroyed, Tenant shall (a) immediately notify Landlord thereof if the cost of Restoration on account thereof equals or exceeds Two Hundred Thousand and 00/100 Dollars (\$200,000.00), and (b) provided that insurance proceeds are available to Tenant and are adequate for such purposes and regardless of the dollar amount of such damage or loss (and regardless of whether the cost of Restoration is less than or greater than Two Hundred Thousand and 00/100 Dollars (\$200,000.00)), commence and complete Restoration with reasonable diligence at Tenant's expense, as nearly as possible to the Property's value, condition and character immediately before such damage or destruction, to the extent that insurance proceeds are made available to Tenant by the Permitted Leasehold Mortgagee. After expiration of the Compliance Period pursuant to Section 42 of the Code, such Restoration shall be in accordance with plans and specifications therefor which shall have been approved in writing by Landlord, such approval not to be unreasonably delayed, withheld or conditioned.

12.1.2 Subject to the provisions of Sections 12.1.1 and 12.4 hereof, all insurance proceeds (other than any proceeds which are separately paid on account of any damage to or destruction of Tenant's personal property, inventory or work-in-process, all of which shall be paid to Tenant) payable as a result of such casualty under policies of insurance held by or for the account of Tenant pursuant to Section 7 against such casualty and received by Tenant (less such reasonable attorneys' fees or other expenses as are incurred by the Landlord or Tenant in the collection thereof, which shall be paid out of such proceeds), shall be paid to the most senior Permitted Leasehold Mortgagee or a trustee it designates, to be used in accordance with the applicable Permitted Leasehold Mortgage. Upon receipt by Landlord of evidence satisfactory that such Restoration has been completed and the cost thereof paid in full, and that no mechanics', materialmen's or similar lien for labor or materials supplied in connection therewith may attach to the Property, the balance, if any, of such proceeds shall be paid to Tenant or as it may direct. In the case of a casualty, this Lease shall continue, unless Tenant and Landlord agree to terminate this Lease with the prior written consent of the Permitted Leasehold Mortgagee, the Investor Members and the Special Member.

12.2 **Application of Proceeds on Termination.** Anything in this Lease to the contrary notwithstanding, upon the expiration or earlier termination of this Lease before such Restoration is completed free and clear of any such liens, any insurance proceeds not theretofore applied to the cost of such Restoration or disbursed to Permitted Leasehold Mortgagees (the most senior Permitted Leasehold Mortgagee being entitled to proceeds first) shall be paid to Tenant to the extent permitted by the Permitted Leasehold Mortgages, then to Landlord.

12.3 **No Termination.** Except as provided in Section 12.1.2 and Section 12.6, no total or partial damage to or destruction of any or all of the Property shall entitle Tenant or Landlord to surrender or terminate this Lease, or shall relieve Tenant from its liability hereunder to pay in full the Annual Rent, any Additional Rent and all other sums and charges which are otherwise payable by Tenant hereunder, or from any of its other obligations hereunder, and Tenant hereby waives any right now or hereafter conferred upon it by statute or otherwise, on account of any

such damage or destruction, to surrender this Lease, to quit or surrender any or all of the Property, or to have any suspension, diminution, abatement or reduction of the Annual Rent or any Additional Rent or other sum payable by Tenant hereunder (except that, if and to the extent that Landlord has, on account of any such Rent or other sum, received for its own account the proceeds of any rent insurance pursuant to the provisions of this Lease, Tenant shall be entitled to a credit therefor against its obligations hereunder to pay such Rent and other sums, by applying such credit toward the unpaid installments of Annual Rent in the order in which they fall due hereunder).

12.4 Rights of the Parties Under the Loan Documents. Notwithstanding anything herein to the contrary, for so long as any Permitted Leasehold Mortgages are in effect, the most senior Permitted Leasehold Mortgage shall control the use and application of all casualty proceeds relating to the Property.

12.5 Notice. The Landlord will provide reasonable prior notice to Permitted Leasehold Mortgagees, the Investor Members and Tenant of any proceeding for adjustment or adjudication of any insurance or condemnation claim involving the Premises and will permit the Permitted Leasehold Mortgagees and Tenant to participate therein as interested parties at each respective party's choosing.

12.6 Termination upon Non-Restoration. Notwithstanding anything in this Lease to the contrary, following a casualty, the Lease may be terminated by Tenant, with the prior written consent of the Permitted Leasehold Mortgagee, the Investor Members and Special Member, if such casualty prevents the use and operation of Property as a low-income or moderate-income development under Section 42 of the Code and in accordance with the LURA or if the insurance proceeds made available to Tenant are insufficient to restore the Property to a condition substantially similar to the conditions existing prior to such casualty.

### **SECTION 13. CONDEMNATION.**

13.1 Notice of Taking. Forthwith upon receipt by either Landlord or Tenant of notice of the institution of any proceedings for the taking or condemnation of all or a portion of the Property or Improvements by the government of the United States, State of Texas, County of Travis, City of Austin or any other governmental authority, or any corporation under the right of eminent domain (a "**Taking**"), the party receiving such notice shall promptly give notice thereof to the other, and such other party may also appear in such proceeding and be represented by counsel, who may be counsel for the party receiving such notice.

13.2 Condemnation Awards. Subject to Section 13.8 hereof, Tenant's share of any condemnation award shall be no less than the total condemnation award less the value of Landlord's remainder interest in the Premises, considered as if unimproved but encumbered by this Lease and the Permitted Leasehold Mortgages. To the extent that Tenant is entitled to any condemnation award, it shall be paid to the most senior Permitted Leasehold Mortgagee to be used in accordance with the applicable Permitted Leasehold Mortgage, with any remaining balance being paid directly to Tenant.

13.3 Total Taking. Subject to the provisions of Section 13.8 herein, in the event of a permanent Taking of the entire Fee Estate, the Property or of the entire Leasehold Estate hereunder (a "**Total Taking**"), this Lease shall thereupon terminate as of the effective date of such Total Taking, without liability or further recourse to the parties, provided that any outstanding Rent payable or obligations owed by the Tenant to the Landlord as of the date of said Total Taking shall be paid or otherwise carried out in full, with due credit given for any pre-payment of Rent.

13.4 Partial Taking. Subject to the provisions of Section 13.6 and Section 13.8 herein, in the event of a permanent Taking of less than the entire Property (a "**Partial Taking**"), this Lease shall continue unless Tenant and Landlord shall agree to terminate the Lease with the prior written consent of the Permitted Leasehold Mortgagee, the Investor Members and Special Member. Any condemnation award shall be paid to the most senior Permitted Leasehold Mortgagee or a trustee it designates to be used in accordance with the applicable Permitted Leasehold Mortgage. Any remainder shall be disbursed to the most senior Permitted Leasehold Mortgagee to the extent required by its loan documents and any excess to Tenant.

13.5 Notice. The Landlord will provide reasonable prior notice to Permitted Leasehold Mortgagees, the Investor Members and Tenant of any proceeding for adjustment or adjudication of any insurance or condemnation claim involving the Property and will permit the Permitted Leasehold Mortgagees, the Investor Members and Tenant to participate therein as interested parties.

13.6 Termination upon Non-Restoration. Following a Partial Taking, the Lease may be terminated by Tenant, with the prior written consent of the Permitted Leasehold Mortgagee, the Investor Members and Special Member, if such Partial Taking (a) prevents the use and operation of Property as a low-income or moderate-income development under Section 42 of the Code and in accordance with the terms of the LURA, (b) if the proceeds made available to Tenant are insufficient to restore the Improvements to a condition substantially similar to the conditions existing prior to such Partial Taking, or (c) Tenant reasonably determines that the continued use and occupancy of the remainder of the Property by Tenant cannot be made to be economically viable and structurally sound based upon the amount of eminent domain proceeds and, at Tenant's option, any other funds of Tenant as are demonstrably available for the purpose of paying for such Restoration.

13.7 No Waiver. No provisions in this Lease shall limit the rights of either Landlord or Tenant to seek compensation from a condemning authority as provided by statute, common law, the State of Texas or the United States Constitution.

13.8 Rights of the Parties Under the Loan Documents. Notwithstanding anything herein to the contrary, for so long as any Permitted Leasehold Mortgages are in effect the most senior Permitted Leasehold Mortgage shall control the use and application of all condemnation proceeds relating to the Property and, as applicable, the operation of the Lease termination provisions hereunder. In any event, the Tenant and the Permitted Leasehold Mortgagee shall participate in all settlements.

#### **SECTION 14. ASSIGNMENT AND SUBLETTING.**

14.1 Limits on Transfers. Subject to the provisions of this Lease, Tenant hereby acknowledges that Landlord has entered into this Lease because of Tenant's financial strength, goodwill, ability and expertise, and that, accordingly, this Lease is one which is personal to Tenant, and Tenant agrees for itself and its successor and assigns in interest hereunder that it will not, other than by the terms of the Permitted Leasehold Mortgage and leases made in accordance with Section 21.17 herein, (a) assign this Lease or any of its rights under this Lease as to all or any portion of the Premises, the Units, the rest of the Improvements, the Equipment or the Property generally, or (b) make or permit any voluntary total or partial sale, lease, assignment, conveyance, mortgage, pledge, encumbrance or other transfer of any or all of the Premises, the Units, the rest of the Improvements, the Equipment or the Property or the occupancy or use thereof, other than in accordance with LIHTC Housing Requirements and this Lease (each of which is hereinafter referred to as a "Transfer") without first obtaining Landlord's express written consent thereto by an instrument which makes specific reference to this paragraph 14.1 and is executed by Landlord (which consent will not be unreasonably withheld, delayed or conditioned). Further, notwithstanding anything to the contrary herein, the Landlord shall not transfer, encumber or otherwise dispose of the Fee Estate or the Property or any interest therein without the consent of the Tenant, the Investor Members, the Permitted Leasehold Mortgagee and Special Member.

14.2 Permitted Transfers. Notwithstanding anything to the contrary set forth elsewhere in this Lease, any transfer or pledge of a Special Member or Investor Member interest in Tenant in accordance with the terms of the Operating Agreement or the Permitted Leasehold Mortgages shall be a permitted Transfer hereunder and shall not require Landlord's consent. Any transfer, in whole or in part, of the Property or the Leasehold Estate (a) in accordance with the Operating Agreement or any Permitted Leasehold Mortgage, or any other transfers permitted thereunder, (b) in accordance with any Land Use Regulatory Agreement between TDHCA and Tenant, including without limitation, the LURA, (c) in the ordinary course of business including, without limitation, any residential lease and any utility and access easement, (d) required by LIHTC Housing Requirements, and/or (e) any right of first refusal under Section 42(i)(7) of the Code or otherwise given to the Landlord, shall be a permitted transfer hereunder and shall not require Landlord's consent. For the avoidance of doubt, (i) Landlord approves the admission of the Investor Members as investor members of Tenant, (ii) Landlord's consent shall not be required for the transfer of any Investor Member interest in the Tenant, the transfer of Special Member's interest in Tenant, the admission of any new investor member into Tenant, or transfers of interests within the Investor Members, and (iii) Landlord acknowledges the right under the Operating Agreement of an Investor Member to remove the managing member of Tenant and to designate a substitute managing member of Tenant in accordance with the terms of the Operating Agreement or pursuant to the terms of any pledge or security agreement between the managing member and an Investor Member without Landlord's consent. Further notwithstanding anything to the contrary herein, during the Term of this Lease, the Landlord shall not transfer, encumber or otherwise dispose of the Premises or any interest therein without the written consent of the Tenant, the Investor Members, the Permitted Leasehold Mortgagee and the Special Member.

14.3 Effect on Obligations. Except as set forth in this Lease, no such Transfer shall alter or impair the obligations hereunder of Tenant or any other Person constituting Tenant or holding any interest hereunder before any such Transfer.

14.4 Benefit and Burden. Subject to the foregoing provisions of this Section, this Lease shall be binding on and inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors and assigns in interest hereunder.

## **SECTION 15. DEFAULT.**

15.1 As used in this Lease, and subject to the expiration of all notice and cure periods herein set forth, including without limitation those set forth in paragraph 15.2 below, each of the following events shall constitute an “**Event of Default**”:

15.1.1 if Tenant fails (a) to pay any Annual Rent, Additional Rent or other sum which it is obligated to pay under this Lease, when and as it is due and payable hereunder and after demand therefor, or (b) to perform any of its obligations under this Lease; or

15.1.2 Intentionally deleted; or

15.1.3 if Tenant’s Bankruptcy occurs and such Bankruptcy is not consented to or acquiesced in by the managing member of, or the sole member of the managing member of, Aldrich 51, LP; or

15.1.4 Intentionally deleted.

15.1.5 if Tenant fails to abide by LIHTC Housing Requirements and Legal Requirements, and such failure is not cured during any applicable cure period or such longer period of time as provided by the applicable authority; or

15.1.6 if Tenant fails to comply in all respects with Tenant’s obligations under any instrument, lease, Mortgage (other than a Permitted Leasehold Mortgage) or other agreement to which Landlord is a party, and a copy of which has been provided to Tenant, and for which a default under this Lease would constitute a default under such instrument, lease, Mortgage or other agreement, which failure is not cured by Tenant within any permissible cure period provided herein or in such instrument, lease, mortgage or other agreement.

15.2 Notice to Tenant; Opportunity to Cure. Anything in this Section to the contrary notwithstanding, if an Event of Default occurs, Landlord shall not exercise any right or remedy on account thereof which it holds under this Lease or applicable law unless and until Landlord shall so notify Tenant, Investor Members, Special Member and all Permitted Leasehold Mortgagees in writing. Each shall have the right to cure such Event of Default, and Landlord shall not terminate this Lease for Tenant’s default unless and until Landlord has given all Permitted Leasehold Mortgagees, the Investor Members and Special Member written notice of such Event of Default and 30 days in addition to any applicable cure period given Tenant in which to cure it. If it cannot be reasonably cured within 30 days, each Permitted Leasehold Mortgagee, the Investor Members and Special Member shall have such additional time as it shall reasonably require (not to exceed 120 days unless delay is due to Force Majeure), so long as a

Permitted Leasehold Mortgagee or an Investor Member or Special Member is proceeding with reasonable diligence. Landlord agrees to accept any such cure by an Investor Member or Permitted Leasehold Mortgagee as if made by Tenant.

**15.3 Landlord's Rights on Event of Default.**

15.3.1 If an Event of Default occurs and continues beyond applicable notice and cure periods, Landlord may (subject to the other provisions of this Lease, including without limitation, subsections 9.1.3 and 15.2) take any or all of the following actions:

(a) subject to any Tenancy Agreements, Legal Requirements, and LIHTC Housing Requirements, reenter and repossess any or all of the Premises and any or all Improvements thereon and additions thereto; and/or

(b) declare the entire balance of the Annual Rent for the remainder of the Term to be due and payable immediately, and collect such balance in any manner not inconsistent with applicable law; provided that if Landlord elects to relet any or all of the Premises following such acceleration of Annual Rent, the provisions of subparagraph 15.3.1(d) shall be applicable to the rights of Landlord and Tenant. Accelerated payments payable hereunder shall not constitute a penalty or forfeiture or liquidated damages, but shall merely constitute payment of Annual Rent in advance; and/or

(c) if the Event of Default occurs after the expiration of the Property's initial 15-year tax credit compliance period, terminate this Lease by giving written notice of such termination to Tenant (and as otherwise required in accordance with the other provisions of this Lease), which termination shall be effective as of the date of such notice or any later date therefor specified by Landlord therein (provided, that without limiting the generality of the foregoing provisions of this subparagraph 15.3.1(c), Landlord shall not be deemed to have accepted any abandonment or surrender by Tenant of any or all of the Premises or Tenant's Leasehold Estate under this Lease unless Landlord has so advised Tenant expressly and in writing, regardless of whether Landlord has reentered or relet any or all of the Premises or exercised any or all of Landlord's other rights under this Section or applicable law); and, on the date specified in such notice, Tenant's right to possession of the Property will cease and the Leasehold Estate conveyed by this Lease upon Tenant shall revert in Landlord, provided, however, such reversion of the Leasehold Estate and the reentry by Landlord shall be subject to and limited by and shall not defeat, render invalid or limit in any way the lien of any Permitted Leasehold Mortgage or any provision of LIHTC Housing Requirements; and/or

(d) in Landlord's own name (but either (i) as agent for Tenant, if this Lease has not then been terminated, or (ii) for the benefit of Tenant, if this Lease has then been terminated), relet any or all of the Premises, with or without any additional premises, for any or all of the remainder of the Term (or, if this Lease has then been terminated, for any or all of the period which would, but for such termination, have constituted the remainder of the Term) or for a period exceeding such remainder, on such terms and subject to such conditions as are acceptable to Landlord in its sole discretion (including but not limited to the alteration of any or all of the Premises in any manner which, in Landlord's judgment, is necessary or desirable as a condition to or otherwise in connection with such reletting, and the allowance of one or more



concessions or "free-rent" or reduced-rent periods), and collect and receive the rents therefor. Anything in this Lease or applicable law to the contrary notwithstanding, (i) Landlord shall not have any duty or obligation to relet any or all of the Premises as the result of any Event of Default, or any liability to Tenant or any other Person for any failure to do so or to collect any rent or other sum due from any such reletting; (ii) Tenant shall have no right in or to any surplus which may be derived by Landlord from any such reletting, if the proceeds of such reletting exceed any Rent, if any, installment thereof or other sum owed by Tenant to Landlord hereunder; and (iii) Tenant's liability hereunder shall not be diminished or affected by any such failure to relet or the giving of any such initial or other concessions or "free-rent" or reduced rent periods in the event of any such reletting. In the event of any such reletting, Tenant shall pay to Landlord, at the times and in the manner specified by Section 4, both (i) the installments of Rent accruing during such remainder (or, if this Lease has then been terminated, damages equaling the respective amounts of such installments of Rent which would have accrued during such remainder, had this Lease not been terminated), less any monies received by Landlord with respect to such remainder from such reletting of any or all of the Premises, plus (ii) the reasonable cost to Landlord of any such reletting (including but not limited to any reasonable attorneys' fees, leasing or brokerage commissions, repair or improvement expenses and the expense of any other actions taken in connection with such reletting), plus (iii) any other sums for which Tenant is liable under paragraph 15.3.4 (and Tenant hereby waives any and all rights which it may have under applicable law, the exercise of which would be inconsistent with this subparagraph 15.3.1(d)); and/or

(e) enforce any one or more of LIHTC Housing Requirements or Legal Requirements; and/or

(f) cure such Event of Default in any other manner; and/or

(g) pursue any combination of such remedies and/or any other right or remedy available to Landlord on account of such Event of Default under this Lease and/or at law or in equity.

15.3.2 No such expiration or termination of this Lease, or summary dispossession proceedings, abandonment, reletting, bankruptcy, re-entry by Landlord or vacancy, shall relieve Tenant of any of its liabilities and obligations under this Lease (whether or not any or all of the Premises are relet), that arose during the Term of this Lease, and Tenant shall remain liable to Landlord for all damages resulting from any Event of Default, including but not limited to any damage resulting from the breach by Tenant of any of its obligations under this Lease to pay Rent and any other sums which Tenant is obligated to pay hereunder.

15.3.3 If any or all of the Premises are relet by Landlord for any or all of the unexpired Term of this Lease, the amount of rent reserved upon such reletting shall be deemed to be the fair and reasonable rental value for the part or the whole of the Premises so relet during the term of the reletting.

15.3.4 If an Event of Default exists, Tenant shall, immediately on its receipt of a written demand therefor from Landlord, reimburse Landlord for (a) all reasonable expenses (including but not limited to any and all reasonable repossession costs, management expenses,

operating expenses, legal expenses and reasonable attorneys' fees) incurred by Landlord (i) in curing or seeking to cure any Event of Default and/or (ii) in exercising or seeking to exercise any of Landlord's rights and remedies under this Lease and/or at law or in equity on account of any Event of Default, and/or (iii) otherwise arising out of any Event of Default, and/or (iv) (regardless of whether it constitutes an Event of Default) in connection with any action, proceeding or matter of the types referred to in paragraphs 15.1.2 and 15.1.3, plus (b) interest on all such expenses, at the lesser of prime rate (as reported by the Wall Street Journal's bank survey) plus four percent (4%) or the highest rate then permitted on account thereof by applicable law, all of which expenses and interest shall be Additional Rent and shall be payable by Tenant immediately on demand therefor by Landlord.

15.3.5 Tenant hereby expressly waives, so far as permitted by law and only if an Event of Default has occurred and is continuing, the service of any notice of intention to re-enter provided for in any statute, and except as is herein otherwise provided, Tenant, for itself, also waives any and all right of redemption or re-entry or repossession in case Tenant is dispossessed by a judgment or warrant of any court or judge or in case of re-entry or repossession by Landlord or in case of any expiration or termination of this Lease. The terms "enter," "re-enter," "entry" or "re-entry" as used in this Lease are not restricted to their technical legal meanings. **BECAUSE THE PREMISES ARE LOCATED IN THE STATE OF TEXAS, TENANT EXPRESSLY WAIVES ANY AND ALL RIGHTS AND REMEDIES IT MAY HAVE, AND ANY DUTIES, LIABILITIES OR OBLIGATIONS LANDLORD MAY HAVE, ARISING OUT OF OR IN CONNECTION WITH SECTION 93.002 OF THE TEXAS PROPERTY CODE, AS IT MAY BE AMENDED OR SUPERSEDED FROM TIME TO TIME, PERTAINING TO THE INTERRUPTION OF UTILITIES, REMOVAL OF PROPERTY AND THE EXCLUSION OF A COMMERCIAL TENANT, WHICH STATUTE SHALL BE OF NO FORCE AND EFFECT.**

15.3.6 Notwithstanding anything contained in this Lease to the contrary, Landlord agrees that at any time a Permitted Leasehold Mortgage(s) encumbers the Property, Landlord shall not exercise any of its remedies under the Lease, other than to specifically enforce the Tenant's obligation to comply with Section 5 and Section 7.5 hereof, and the Lease shall not be terminated without the prior written consent of the applicable Permitted Leasehold Mortgagee(s).

15.3.7 Notwithstanding anything contained in this Lease to the contrary, Landlord agrees that it will not exercise any of its remedies under this Lease, other than to specifically enforce Tenant's obligations to comply with Section 5 and Section 7.5 hereof, at any time that Landlord or any of its affiliates directly or indirectly controls the managing member of Tenant and (i) the managing member wrongfully withdrew or was removed from Tenant as managing member, or (ii) Tenant's managing member is in default under the Operating Agreement.

15.4 Intentionally Omitted.

15.5 Landlord Event of Default. Landlord shall be deemed in default of its obligations under this Lease if Landlord shall fail to perform, in a timely manner in accordance with the terms of this Lease, any obligation under this Lease required to be performed by Landlord, or if

any Landlord representation made herein is false in any material respect, or if Landlord is the subject of a bankruptcy action under Section 365(h)(A)(i) of Chapter 11 of the U.S. Bankruptcy Code or its successor statute (each a “**Landlord Event of Default**”). If such Landlord Event of Default shall continue for sixty (60) days after written notice of such failure from Tenant or such additional period as may be reasonably required to cure such failure, if the same may not be reasonably cured within sixty (60) days so long as Landlord commences such cure within thirty (30) days after notice thereof and thereafter diligently prosecutes the same to completion, but in any event such cure must be completed to Tenant’s reasonable satisfaction within one hundred twenty (120) days of Tenant’s notice to Landlord subject to the parties’ mutual agreement to extend such time period and subject to delays caused directly by Force Majeure and matters outside the reasonable control of Landlord so long as Landlord has acted diligently, with dispatch, and in good faith to prevent or shorten any such delays. In no event shall Landlord be entitled to any cure period for any failure to repay the Rent under the terms and conditions set forth in Section 4.1.1 herein. If Landlord fails to complete such cure as provided above, then subject to the provisions of any Permitted Leasehold Mortgage, Tenant shall thereupon be entitled to exercise any and all remedies available to Tenant for such default under this Lease or at law or in equity. Without waiving or limiting any other remedies available to Tenant, upon such default by Landlord (and subject to the notice and cure rights of Landlord), Tenant shall be entitled (but not obligated) to perform or cause such obligations to be so performed on behalf of Landlord, and Landlord shall reimburse Tenant for its reasonable third party out-of-pocket costs and expenses incurred by Tenant in doing so, which amount shall be due within sixty (60) days of Landlord’s receipt of a written statement of the costs and expenses so incurred by Tenant. In the event Landlord or a creditor thereof files a petition for relief naming Landlord as a debtor under Title 11 of the United States Code, Landlord hereby acknowledges and agrees that Tenant’s possessory interest under this Lease and ownership of the Improvements are unique interests and cannot be converted into a cash claim under Section 363 of Title 11 of the United States Code unless Tenant expressly consents to the same.

#### **SECTION 16. ESTOPPEL CERTIFICATE; SHORT FORM.**

16.1 **Estoppel Certificate.** Each party hereto shall, at any time and from time to time within ten (10) days after being requested to do so by the other party, an Investor Member and/or any Permitted Leasehold Mortgagee in writing, execute, acknowledge, and address and deliver to the requesting party (or, at the latter’s request, to any existing or prospective Mortgagee, transferee or other assignee of the requesting party’s interest in the Property or under this Lease which acquires such interest in accordance with this Lease) a certificate in recordable form,

16.1.1 certifying (a) that this Lease is unmodified and in full force and effect (or, if there has been any modification thereof, that it is in full force and effect as so modified, stating therein the nature of such modification); (b) that Tenant has accepted possession of the Premises, and the date on which the Term commenced; (c) as to the dates to which Rent and other charges arising hereunder have been paid; (d) as to the amount of any prepaid Rent or any credit due to Tenant hereunder; (e) as to whether, to the best of such party’s knowledge, information and belief, the requesting party is then in default in performing any of its obligations hereunder (and, if so, specifying the nature of each such default); and (f) as to any other fact or condition reasonably requested by the requesting party; and

16.1.2 acknowledging and agreeing that any statement contained in such certificate may be relied upon by the requesting party and any such other addressee.

16.2 Short form. The parties hereto shall, at the request of Landlord, Tenant or any Permitted Leasehold Mortgagee, execute, acknowledge and deliver simultaneously with the execution of this Lease or at any time hereafter, in recordable form, a short form thereof (in form and substance satisfactory to each party hereto in its reasonable judgment) for recordation among the said Land Records at the expense of the Person so requesting.

## **SECTION 17. CONDITION OF TITLE AND PROJECT.**

17.1 Limited Warranties. Tenant hereby acknowledges that it has examined the Premises, the title thereto, zoning which may be applicable thereto, if any, the municipal parking ordinance, the streets, sidewalks, parking areas, curbs and access ways adjoining them, any surface and subsurface conditions thereof, and the present uses and nonuses thereof, if any, and that it accepts each of them in its present condition or state, without restriction, representation, covenant or (except as is set forth in subsection 17.2) warranty, express or implied, in fact or at law, by Landlord or any other Person, and without recourse to Landlord, as to any appurtenances thereto, the nature, condition or usability thereof, or the uses to which any or all of the Property may be put.

17.2 Quiet Enjoyment. Landlord hereby

17.2.1 represents, warrants, covenants and agrees that, at the time of the execution and delivery of this Lease by the parties hereto, it (a) is the owner of the Fee Estate, subject to the operation and effect of and only of the Permitted Encumbrances, and that it has no knowledge of any claim or demand contesting or impairing its interests in the Fee Estate, and (b) has the full right, power and authority to enter into this Lease and thereby to lease the Premises; and

17.2.2 warrants that Tenant will have quiet and peaceful possession of the Premises during the Term so long as all of Tenant's obligations hereunder are timely performed, except if and to the extent that such possession is terminated pursuant to Sections 12 or 13 or any other provision of this Lease.

17.3 Limitation on Liability. Nothing in this Lease shall be deemed to impose on Landlord any liability on account of any act or failure to act by any Person other than Landlord (or, where expressly so provided herein, Landlord's agents and employees). Notwithstanding anything to the contrary in this Lease, Tenant shall not be liable under this Lease except to the extent of its ownership interest in the Property.

17.4 Title to Personal Property. Landlord hereby waives any landlord's lien it might hold, statutory, constitutional, contractual or otherwise, in any personal property owned or leased by Tenant and now or hereafter located in the Premises. If so requested by Tenant, Landlord shall execute a waiver of any right, title or interest or right to seize any of Tenant's personal property on the Premises that may be subject to a lien or security interest in favor of Permitted Leasehold Mortgagee or a seller of Tenant's personal property or creditor holding a security interest in such personal property.

**SECTION 18.**            **INTENTIONALLY OMITTED.**

**SECTION 19.**            **NOTICES.** Any notice, demand, consent, approval, request or other communication or document to be provided hereunder to Landlord or Tenant (a) shall be in writing, and (b) shall be deemed to have been provided on the earlier of (i) (1) five (5) business days after being sent as certified mail with the United States Postal Service, postage prepaid, return receipt requested, or (2) the next business day after having been deposited (in time for delivery by such service on such business day) with Federal Express or another national courier service, signature requested upon delivery, or (3) (if such party's receipt thereof is acknowledged in writing) upon having been sent by telefax or another means of immediate electronic communication, in each case to the address of such party set forth hereinabove or to such other address in the United States of America as such party may designate from time to time by notice to each other party hereto, or (ii) (if such party's receipt thereof is acknowledged in writing) its having been given by hand or other actual delivery to such party.

Any notice required or permitted to be given under this Lease shall be deemed given if provided in accordance with the foregoing paragraph of this Section 19, and addressed as indicated on Exhibit C attached hereto and made a part hereof; provided, however, that any party may change its address for notice purposes by timely notice to the other party.

Landlord shall forward copies of any notices, demands, consents, approvals, requests and other communication and documents (other than Rent and other periodic billing notices) that are sent to Tenant to the Permitted Leasehold Mortgagee, Investor Members and Special Member. No notice given by Landlord shall be effective against a Permitted Leasehold Mortgagee or an Investor Member unless Landlord has given a copy of the notice to such Permitted Leasehold Mortgagee or Investor Member or Special Member.

**SECTION 20.**            **PURCHASE OPTION.**

20.1 Tenant hereby grants Landlord the right (the "**Option**") to purchase all of the Property owned by the Tenant at the time of purchase, including without limitation Tenant's Leasehold Estate (collectively, the "**Tenant's Property**"), (i) on any date thirty (30) days after Landlord delivers written notice to Tenant, Investor Members and the Permitted Leasehold Mortgagees of Landlord's intent to exercise the Option (the "**Option Exercise Notice**"), and (ii) upon the Tenant's receipt of the Purchase Price (as defined below). The "**Purchase Price**" for the Tenant's Property pursuant to the Option shall be set forth hereinbelow:

(a) Price Formula. An amount, determined by the Tenant's accountants, equal to the greater of (i) the fair market value of the Tenant's Property as determined in accordance with Section 20.1(b) below, or (ii) an amount sufficient to ensure receipt by the Investor Member from the proceeds of the sale of the Property (when distributed pursuant to liquidation provisions in the Operating Agreement) of an amount not less than an amount equal to any unpaid obligations to which the Investor Members are entitled under the Operating Agreement (including, but not limited to, an amount equal to the Exit Taxes (as defined in the Operating Agreement), any unpaid loans (and any accrued interest thereon) made to the Tenant by the Investor Members or their affiliates, any unpaid credit adjusters pursuant to Section \_\_\_\_ of the Operating Agreement, and any accrued but unpaid Asset Management Fee (as defined in

the Operating Agreement)), plus (iii) if the Option is exercised during the Compliance Period, an amount equal to the diminution of economic value to the Investor Member as a result of the purchase of the Tenant's Property by the Landlord during the Compliance Period (the "**ILP Diminution**"), which shall include without limitation (A) all capital contributions of the Investor Member under the Operating Agreement which shall not be returned by the partners or the Tenant, (B) the outstanding balance of all loans (and any accrued interest thereon) made to the Tenant by the Investor Member or its affiliates and the Permitted Leasehold Mortgagees, which will not otherwise be repaid at the time of the purchase, (C) the amount of any Projected Credit, as defined in the Operating Agreement, which, as a result of the purchase will not be available to the Investor Member and the amount of any Tax Credits, as defined in the Operating Agreement, which will be recaptured from the Investor Member as a result of the purchase, (D) all costs and penalties incurred by the Investor Member with respect to the tax credits already received (including the costs of any recapture bonds), and (E) the present value and the anticipated cash flow payable to the Investor Members using a discounted rate of 10%, and (F) all costs and expenses incurred by or on behalf of the Investor Member with respect to (1) its admission to the Tenant, (2) its activities with respect to the Tenant prior to the Landlord's purchase of the Tenant's Property under this Option, and (3) an amount to distribute to the Tenant's partners cash proceeds sufficient to enable the partners to pay, on an after-tax basis after any and all taxes imposed on such distribution, the taxes projected to be imposed on the partners as a result of the sale pursuant to the Option; plus (iv) if the Option is exercised during the Compliance Period, the diminution of economic value to the Special Member as a result of the purchase of Tenant's Property by Landlord during the Compliance Period (the "**CBLP Diminution**"), which shall include without limitation (A) all capital contributions of the Special Member under the Operating Agreement, (B) all outstanding loans made to Tenant by Special Member or Guarantor (as defined in the Operating Agreement), including without limitation, any Operating Deficit Loans (as such terms are defined in the Operating Agreement) and any earned deferred portion of the Development Fee (as defined in the Operating Agreement and that is due to Special Member's affiliate that is serving or served as the developer), that are subject to repayment under the terms of the Operating Agreement and which will not be repaid at the time of the purchase, (C) the present value of the anticipated Net Cash Flow (as defined in the Operating Agreement) and fees payable to the Special Member and its affiliates pursuant to the terms of the Operating Agreement using a 10% discount rate, and (D) all reasonable costs and expenses incurred by or on behalf of the Special Member with respect to (A) its admission to Tenant, and (B) its activities with respect to Tenant prior to Landlord's purchase of Tenant's Property under this Purchase Option. The calculation of any ILP Diminution and CBLP Diminution shall be determined by the accountants to the Tenant. All payments of ILP Diminution and the CBLP Diminution shall be paid directly by Landlord to the Investor Member and Special Member, as applicable.

(b) Fair market value of the Tenant's Property for purposes of Section 20.1 shall be calculated as follows: As soon as practicable following the delivery of the Option Exercise Notice, the Landlord and the Tenant shall select a mutually acceptable Independent Appraiser (as defined below). In the event that the parties are unable to agree upon an Independent Appraiser within fifteen (15) business days following the date of delivery of the Option Exercise Notice, the Landlord and the Tenant each shall select an Independent Appraiser within the next succeeding five (5) business days. If either party fails to select an Independent Appraiser within such time period, the determination of the other Independent Appraiser shall

control. If the difference between the Appraised Fair Market Values set forth in the two appraisals is not more than ten percent (10%) of the Appraised Fair Market Value set forth in the lower of the two appraisals, the fair market value for purposes of this Section shall be the average of the two appraisals. If the difference between the two appraisals is greater than ten percent (10%) of the lower of the two appraisals, then the two Independent Appraisers shall jointly select a third Independent Appraiser whose determination of Appraised Fair Market Value shall be deemed to be binding on all parties as long as the third determination is between the other two determinations. If the third determination is either lower or higher than both of the other two appraisers, then the average of all three appraisals shall be the Appraised Fair Market Value for purposes of Section 20.1. The Landlord and the Tenant shall each pay one-half of the fees and expenses of any Independent Appraiser(s) selected pursuant to this Section 20.1. For purposes of the foregoing, the term "**Independent Appraiser**" means a firm which is generally qualified to render opinions as to the fair market value of assets such as those owned by the Tenant, which is mutually acceptable to the Landlord and the Tenant and which satisfies the following criteria:

- (i) such firm is not a Partner, or an Affiliate (as such terms are defined in the Operating Agreement) of the Landlord or the Tenant;
- (ii) such firm (or a predecessor in interest to the assets and business of such firm) has been in business for at least five (5) years, and at least one of the principals of such firm has been in the active business of appraising substantially similar assets for at least ten (10) years;
- (iii) such firm has regularly rendered appraisals of substantially similar assets for at least five (5) years on behalf of a reasonable number of unrelated clients, so as to demonstrate reasonable market acceptance of the valuation opinions of such a firm;
- (iv) one or more of the principals or appraisers of such firm are members in good standing of an appropriate professional association or group which establishes and maintains professional standards for its members; and
- (v) such firm renders an appraisal to the Tenant only after entering into a contract that specifies the compensation payable for such appraisal.

20.2 Upon determination of the Purchase Price, Tenant and Landlord, shall enter into a written contract for the purchase and sale of the Tenant's Property in accordance with the terms of this Lease and containing such other terms and conditions as are standard and customary for similar commercial transactions in the geographic area in which the Property is located, providing for a closing not later than the date specified in the Option Exercise Notice or thirty (30) days after the Purchase Price has been determined, whichever is later. In the absence of any such contract, this Lease shall be specifically enforceable upon the exercise of the Option. The purchase and sale hereunder shall be closed through a deed-and-money escrow with the title insurer of Tenant's interest in the Property or another mutually acceptable title company. Tenant's right, title, and interest in the Tenant's Property shall be conveyed by an assignment of Lease ("**Ground Lease Assignment**") and a blanket conveyance, bill of sale, an assignment agreement (the "**Bill of Sale**" and together with the Ground Lease Assignment, the "**Conveyance**")

**Documents**”). Upon closing, the Tenant shall deliver to Landlord, along with the Conveyance Documents, a Texas form Owner’s Title Policy dated as of the close of escrow, in the amount of the Purchase Price, subject to the liens, encumbrances and other exceptions then affecting the title. Landlord shall be responsible for all costs including, but not limited to, transfer taxes, title policy premiums and recording costs. Rents, insurance, taxes, debt service then due and payable and other costs and revenues then prepaid or accrued, as the case may be, shall be apportioned as of midnight of the day preceding the closing of title, except that rents shall be apportioned as of the date of actual collection thereof (which obligation shall survive the closing).

20.3 In consideration of the Option granted hereunder at the Purchase Price specified herein, Landlord hereby agrees that the Ground Lease Assignment granting the Tenant’s interest in the Property to Landlord shall contain a covenant running with the land, restricting the use of the Property to low-income housing to the extent required by any document of record. Such covenant shall include a provision requiring Landlord to pay any and all costs, including attorneys’ fees, incurred by Tenant and/or the Investor Member in enforcing or attempting to enforce such use restrictions, and to pay any and all damages incurred by Tenant and/or the Investor Member from any delay in or lack of enforceability of the same. All provisions relating to such use restrictions contained the Ground Lease Assignment and in this Lease (but not the LURA and other pre-existing restrictions required by any Legal Requirements) shall be subject and subordinate to any third-party liens of Permitted Leasehold Mortgages encumbering the Tenant’s Property.

20.4 In the absence of a Ground Lease Assignment conforming to the requirements of this Lease, the provisions of this Lease shall run with the land. In the event that the Option is not exercised, or the sale pursuant thereto is not consummated, then, upon conveyance of the Tenant’s Property to anyone other than Landlord, the foregoing provisions shall terminate and have no further force or effect.

20.5 Notwithstanding any term to the contrary contained herein, the Option granted in this Section 20 shall be subordinate, in all respects, to the Mortgages held by the Permitted Leasehold Mortgagees.

## **SECTION 21. GENERAL.**

21.1 **Effectiveness.** This Lease shall become effective on and only on its execution and delivery by each party hereto.

21.2 **Complete Understanding.** This Lease represents the complete understanding between the parties hereto as to the subject matter hereof, the Premises, the Units, the rest of the Improvements, the Equipment, or the rest of the Property, and the rights and obligations of the parties hereto as to the same, and supersedes all prior negotiations, representations, guaranties, warranties, promises, statements or agreements, either written or oral, between the parties hereto as to the same. No inducements, representations, understandings or agreements have been made or relied upon in the making of this Lease, except those specifically set forth in this Lease. Neither party hereto has any right to rely on any other prior or contemporaneous representation made by anyone concerning this Lease which is not set forth herein.



21.3 Amendment. This Lease may be amended, modified, restated or supplemented by and only by an instrument executed and delivered by each party hereto, and only with the prior written consent of any Permitted Leasehold Mortgagee, Investor Members and Special Member. Any amendment, modification, change, cancellation, waiver or termination shall not bind Permitted Leasehold Mortgagees or its successors and assigns unless made with such Permitted Leasehold Mortgagee's consent.

21.4 Waiver. No party hereto shall be deemed to have waived the exercise of any right which it holds hereunder unless such waiver is made expressly and in writing (and, without limiting the generality of the foregoing, no delay or omission by any party hereto in exercising any such right shall be deemed a waiver of its future exercise). No such waiver made in any instance involving the exercise of any such right shall be deemed a waiver as to any other such instance, or any other such right. Without limiting the generality of the foregoing, no action taken or not taken by Landlord under this Section or any other provision of this Lease (including but not limited to Landlord's acceptance of the payment of Rent if an Event of Default exists) shall operate as a waiver of any right to be paid a late charge or of any other right or remedy which Landlord would otherwise have against Tenant on account of such Event of Default under this Lease or applicable law (Tenant hereby acknowledging that, in the interest of maintenance of good relations between Landlord and Tenant, there may be instances in which Landlord chooses not immediately to exercise some or all of its rights if an Event of Default exists).

21.5 Applicable Law. This Lease shall be given effect and construed by application of the law of the State of Texas, and any action or proceeding arising hereunder shall be brought in the courts of the State of Texas; provided, that if any such action or proceeding arises under the Constitution, laws or treaties of the United States of America, or if there is a diversity of citizenship between the parties thereto, so that it is to be brought in a United States District Court, it shall be brought in the United States District Court for the Northern District of Texas, or any successor federal court having original jurisdiction.

21.6 Consent. Except as otherwise herein provided, when a party hereto is required to provide its consent or approval, such consent or approval (or the denial of such consent or approval, as the case may be) shall not be unreasonably withheld or conditioned and shall be given within a reasonable time after its receipt of the request therefor, taking into consideration the circumstances of the request. Any requirement of consent from the Special Member set forth herein shall only be applicable during such time as the Special Member has guaranty liability to the Investor Members or Permitted Leasehold Mortgagee, and such guaranty liability is related to the Project.

21.7 Time of Essence. Time shall be of the essence of this Lease, except that, whenever the last day for the exercise of any right or the discharge of any obligation hereunder falls on a Saturday, Sunday or statutory holiday, the party having such right or obligation shall have until 5:00 p.m. local time on the next succeeding day which is not a Saturday, Sunday or statutory holiday to exercise such right or discharge such obligation.

21.8 Headings. The headings of the Sections, subsections, paragraphs and subparagraphs hereof are provided herein for and only for convenience of reference, and shall not be considered in construing their contents.

21.9 Construction. As used herein, all references made (a) in the neuter, masculine or feminine gender shall be deemed to have been made in all such genders, (b) in the singular or plural number shall be deemed to have been made, respectively, in the plural or singular number as well, and (c) to any Section, subsection, paragraph or subparagraph shall be deemed, unless otherwise expressly indicated, to have been made to such Section, subsection, paragraph or subparagraph of this Lease. The parties agree that when interpreting this Lease there shall be no presumption against any party on account of the fact that such party caused the drafting of this Lease.

21.10 Exhibits. Each writing or plat referred to herein as being attached hereto as an exhibit or otherwise designated herein as an exhibit hereto is hereby made a part hereof.

21.11 Severability. No determination by any court, governmental or administrative body or agency or otherwise that any provision of this Lease or any amendment hereof is invalid or unenforceable in any instance shall affect the validity or enforceability of (a) any other such provision, or (b) such provision in any circumstance not controlled by such determination. Each such provision shall remain valid and enforceable to the fullest extent allowed by, and shall be construed wherever possible as being consistent with, applicable law.

21.12 Disclaimer of Partnership Status. Nothing in this Lease shall be deemed in any way to create between the parties hereto any relationship of partnership, joint venture or association, and the parties hereto hereby disclaim the existence of any such relationship.

21.13 Commissions. Each party hereto hereby represents and warrants to the other that, in connection with the leasing of the Premises hereunder, the party so representing and warranting has not dealt with any real estate broker, agent or finder, and there is no commission, charge or other compensation due on account thereof. Each party hereto shall defend, indemnify and hold harmless the other against and from any liability, claim of liability or expense arising out of any inaccuracy in such party's representation.

21.14 Prevailing Party. In the event either party hereunder initiates judicial action against the other in order to enforce the terms, covenants and provisions of this Lease, the non-prevailing party in such judicial action shall reimburse the prevailing party in such judicial action for all reasonable expenses, fees, costs, including reasonable attorneys' fees incurred by the prevailing party in connection with such judicial action.

21.15 Limited Third Party Rights. Notwithstanding anything to the contrary set forth elsewhere in this Lease, the Investor Members and each Permitted Leasehold Mortgagee shall be deemed a third-party beneficiary of the provisions of this Lease that reference the Investor Members and/or the Permitted Leasehold Mortgagees. The foregoing rights of the Investor Members and each Permitted Leasehold Mortgagee to be a third-party beneficiary under this Lease shall be the only right (express or implied) of the Investor Members and each Permitted Leasehold Mortgagee to be a third-party beneficiary under this Lease.

21.16 Intentionally Omitted.

21.17 Subleases. Tenant may, without Landlord's consent, sublease the Units to residential subtenants as their dwellings. Landlord shall not disturb the possession, interest, or quiet enjoyment of any subtenant. Any sublease is subordinate to this Lease, the Permitted Leasehold Mortgage and any new lease entered into between the Landlord and Permitted Leasehold Mortgagees. The Landlord agrees to enter into a reasonable non-disturbance agreement with the sub-tenants. In connection with any subletting right, the subtenants will be required to attorn to the Permitted Leasehold Mortgagees if the Permitted Leasehold Mortgagees foreclose and become the owner of the Leasehold Estate.

21.18 Intentionally Omitted.

21.19 Tenant's Rights, Generally. Upon and during the continuation of an event of default under, and subject to, any documents relating to the Property, any Permitted Leasehold Mortgagee and/or any Investor Member may exercise all of Tenant's rights under this Lease, subject to the terms hereof.

21.20 No Personal Liability. No Permitted Leasehold Mortgagee or its designee or affiliate shall have any liability under this Lease for acts or omissions taking place prior to the date it acquires record title to Tenant's interest and becomes Tenant under this Lease. Any liability to Landlord or Landlord's successors and assigns shall be limited to the value of each Permitted Leasehold Mortgagee's or its designee's or affiliate's respective interest in the Leasehold Estate. If a Permitted Leasehold Mortgagee or its designee or affiliate shall succeed to the interest of the Tenant under the Lease, whether as a purchaser at a foreclosure sale or by the acceptance of a deed-in-lieu of foreclosure, such Permitted Leasehold Mortgagee, designee or affiliate shall (a) not be liable for any act or omission of Tenant and (b) be released from all liability prior to the date such Permitted Leasehold Mortgagee or its designee or affiliate succeeds to the interest of Tenant, such release being automatic with no further action required by any party.

21.21 Memorandum of Ground Lease. The Parties shall execute, for recording purposes, a memorandum of ground lease in conformity with the law and practice of the State of Texas, and the same shall be placed of record at Tenant's expense. If requested by Landlord, Tenant shall, upon termination of this Lease as provided herein, execute and deliver to Landlord an appropriate release, in form proper for recording, of Tenant's interest in the Property.

21.22 Landlord Not Entitled to Proceeds. Landlord shall not be entitled to share in the proceeds of any loan obtained as a result of any financing or refinancing undertaken by Tenant that is secured by a Permitted Leasehold Mortgage.

21.23 No Subordination of Leasehold Estate. Except as otherwise provided in this Lease, at no time shall Tenant's Leasehold Estate, or Tenant's interest in this Lease, be subordinated in any manner to the interest of any Mortgagee with a security interest in the Fee Estate.

[SIGNATURES BEGIN ON THE NEXT PAGE]

IN WITNESS WHEREOF, each party hereto has executed this Lease or caused it to be executed on its behalf by its duly authorized representatives, the day and year first above written.

**LANDLORD:**

**AUSTIN HOUSING FINANCE CORPORATION**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**TENANT:**

**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: \_\_\_\_\_

STATE OF TEXAS

COUNTY OF TRAVIS

I HEREBY CERTIFY that on or about this day of November, 2015, before me, a Notary Public for the state aforesaid, personally appeared \_\_\_\_\_, known to me or satisfactorily proven to be the person whose name is subscribed to the foregoing Ground Lease, who acknowledged that he is the \_\_\_\_\_ of **AUSTIN HOUSING FINANCE CORPORATION**; that he has been duly authorized to execute, and has executed, such instrument on its behalf for the purposes therein set forth; and that the same is its act and deed.

IN WITNESS WHEREOF, I have set my hand and Notarial Seal, the day and year first above written.

\_\_\_\_\_  
Notary Public

My commission expires on \_\_\_\_\_.

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

I HEREBY CERTIFY that on or about this \_\_\_\_ day of November, 2015, before me, a Notary Public for the state aforesaid, personally appeared \_\_\_\_\_, known to me or satisfactorily proven to be the person whose name is subscribed to the foregoing Ground Lease, who acknowledged that he is the \_\_\_\_\_ of AHFC Aldrich 51, a Texas nonprofit corporation, the managing member of Austin DMA Housing II, LLC, a Texas limited liability company; that he has been duly authorized to execute, and has executed, such instrument on its behalf for the purposes therein set forth; and that the same is its act and deed.

IN WITNESS WHEREOF, I have set my hand and Notarial Seal, the day and year first above written.

\_\_\_\_\_  
Notary Public

My commission expires on \_\_\_\_\_.

**EXHIBIT A**

**Description of Land**

**EXHIBIT B**

**Schedule of Permitted Encumbrances**

**EXHIBIT C**

**Notice Addresses**

**Landlord:**

Austin Housing Finance Corporation  
1000 East 11<sup>th</sup> Street  
Austin, Texas 78702  
Attn: David Potter  
Telephone: (512) 974-3100

**With a copy to:**

William L. Gehrig  
Greenberg Traurig, LLP  
2101 L Street, NW  
Suite 1000  
Washington, DC 20037  
Telephone: (202) 331-3170

**Tenant:**

Austin DMA Housing II, LLC  
4101 Parkstone Heights Drive  
Suite 310  
Austin, Texas 78746  
Attention: Diana McIver  
Telephone: (512) 328-3232

**With a copy to:**

Scott Marks  
Coats Rose  
901 S. Mopac Blvd  
Building 1, Suite 500  
Austin, Texas 78746  
Telephone: (512) 684-3843

**Investor Members:**

RBC Tax Credit Equity, LLC  
600 Superior Avenue  
Suite 2300  
Cleveland, Ohio 44114  
Attention: President and General Counsel  
Telephone: (216) 875-2612



RBC Tax Credit Manager II, Inc.  
600 Superior Avenue  
Suite 2300  
Cleveland, Ohio 44114  
Attention: President and General Counsel  
Telephone: (216) 875-2612

With a copy to:

Applegate & Thorne-Thomsen P.C.  
626 West Jackson, Suite 400  
Chicago, Illinois 60661  
Attn: Bennett P. Applegate  
Telephone: (312) 491-3322

Permitted Leasehold Mortgagee:

JPMorgan Chase Bank, N.A.  
Community Development Group  
221 West 6<sup>th</sup> Street, Floor 2  
Austin, Texas 78701  
Attention: David H. Saling  
Telephone: (512) 479-2218

With a copy to:

Phillips Lytle, LLP  
1400 First Federal Plaza  
Rochester, New York 14614  
Attn: Tom Burns  
Telephone: (585) 238-2001

With a copy to:

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

With a copy to:

Special Member:

DMA Aldrich 51, LLC  
4101 Parkstone Heights Drive, Suite 310  
Austin, Texas 78746

With a copy to:

Coats Rose  
901 South Mopac Blvd.  
Building 1, Suite 500  
Austin, Texas 78746  
Attn: Scott Marks  
Telephone: (512) 684-3843