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**LOAN AGREEMENT**

**by and between**

**AUSTIN HOUSING FINANCE CORPORATION**

**and**

**VILLAGES AT FISKVILLE, LP**

**Dated as of [\_\_\_\_], 2017**

**Relating to:**

**\$3,500,000**

**Austin Housing Finance Corporation  
Subordinate Multifamily Housing Revenue Bonds  
(Villages at Fiskville Apartments) Series 2017B**

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The amounts payable to Austin Housing Finance Corporation (the “Issuer”) and other rights of the Issuer (except for Reserved Rights), under this Loan Agreement have been pledged and assigned to BOKF, NA, as trustee (the “Trustee”) under the Indenture of Trust between the Issuer and the Trustee dated as of [\_\_\_\_], 2017.

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## **LOAN AGREEMENT**

This LOAN AGREEMENT (as amended, modified or supplemented from time to time, this “Agreement”) made as of [\_\_\_\_], 2017, by and between AUSTIN HOUSING FINANCE CORPORATION, a public non-profit housing finance corporation duly organized and validly existing under the laws of the State of Texas (together with its successors and assigns, the “Issuer”) and VILLAGES AT FISKVILLE, LP, a limited partnership duly organized and validly existing under the laws of the State of Texas (together with its permitted successors and assigns, the “Borrower”).

### **WITNESSETH:**

WHEREAS, the Issuer is authorized under Chapter 394 of the Texas Local Government Code, as amended (the “Act”) to enter into loan agreements with respect to one or more projects authorized under the Act for such payments and upon such terms and conditions as the Issuer may deem advisable in accordance with the provisions of the Act; and

WHEREAS, the Issuer has determined that the public purposes set forth in the Act will be furthered by the issuance, sale and delivery of \$3,500,000 in original aggregate principal amount of its Subordinate Multifamily Housing Revenue Bonds (Villages at Fiskville Apartments) Series 2017B (the “Bonds”), pursuant to an Indenture of Trust (as amended, modified or supplemented from time to time, the “Indenture”), dated as of [\_\_\_\_], 2017, between the Issuer and BOKF, NA, as trustee (together with any successor trustee under the Indenture and their respective successors and assigns, the “Trustee”), to provide funds to finance the costs of the acquisition, construction and equipping of the Project Facilities (as hereunder defined); and

WHEREAS, the proceeds of the Bonds are being applied to finance the acquisition, construction and equipping of a residential rental development consisting of a total of 100 units and related personal property and equipment, located in Austin, Travis County, Texas and known as “Villages at Fiskville Apartments” (the “Project Facilities”).

NOW, THEREFORE, IN CONSIDERATION OF THE FOREGOING AND THE UNDERTAKINGS HEREIN SET FORTH AND OTHER GOOD AND VALUABLE CONSIDERATION, THE ADEQUACY AND RECEIPT OF WHICH ARE HEREBY ACKNOWLEDGED, AND INTENDING TO BE LEGALLY BOUND, THE BORROWER AND THE ISSUER HEREBY AGREE AS FOLLOWS:

### **ARTICLE 1 DEFINITIONS**

Section 1.1 Definitions. In this Agreement (except as otherwise expressly provided for or unless the context otherwise requires), any capitalized terms used, but not defined herein, shall have the meanings ascribed to them in the Indenture.

Section 1.2 Rules of Construction; Time of Day. In this Agreement, unless otherwise indicated, (i) defined terms may be used in the singular or the plural and the use of any gender includes all genders, (ii) the words “hereof”, “herein”, “hereto”, “hereby” and “hereunder” refer to this entire Agreement, and (iii) all references to particular Articles or Sections are references to the Articles or Sections of this Agreement, (iv) the terms “agree” and “agreements” contained herein are intended to include and mean “covenant” and “covenants”, (v) the term “including” shall mean “including, but not limited to,” and (vi) the terms “best knowledge” or “knowledge” shall mean the actual knowledge of any Authorized Person of the Borrower after due inquiry. References to any time of the day in this

Agreement shall refer to Eastern standard time or Eastern daylight saving time, as in effect in New York, New York on such day.

## **ARTICLE 2**

### **LOAN AND PROVISIONS FOR REPAYMENT**

#### **Section 2.1     Basic Loan and Repayment Terms.**

(a)     The Issuer agrees, upon the terms and conditions contained in this Agreement and the Indenture, to lend to the Borrower the proceeds received by the Issuer from the sale of the Bonds. The Loan shall be made by depositing the proceeds from the initial sale of the Bonds in accordance with Article IV of the Indenture. Such proceeds shall be disbursed to or on behalf of the Borrower as provided for in this Agreement and the Indenture. The Borrower's obligation to repay the Loan shall be evidenced by the Note, the form of which is attached hereto as Exhibit A.

(b)     The Borrower hereby agrees to pay the Note and repay the Loan made pursuant to this Agreement by paying or causing to be paid to the Trustee in immediately available funds for the account of the Issuer for deposit into the Bond Fund or the Redemption Fund, as applicable, on any dates that any payment of interest, premium, if any, or principal is required to be made in respect of the Bonds pursuant to the Indenture; whether at maturity, upon acceleration or mandatory redemption, until the principal of, premium, if any, and interest on the Bonds shall have been fully paid or provision for the payment thereof shall have been made in accordance with the Indenture, a sum which will enable the Trustee to pay the amount payable on such date as principal of (whether at maturity or upon mandatory redemption or acceleration or otherwise), premium, if any, and interest on the Bonds, as provided in the Indenture.

(c)     It is understood and agreed that the Note and all payments payable by the Borrower under this Section 2.1 are assigned by the Issuer to the Trustee for the benefit of the Bondholders. The Borrower assents to such assignment. The Issuer hereby directs the Borrower and the Borrower hereby agrees to pay to the Trustee, at the address specified in or in accordance with Section 9.1 hereof, all loan re-payments payable to the Issuer pursuant to the Note and this subsection.

(d)     The Borrower shall have, and is hereby granted, the option to prepay the unpaid principal amount of the Loan, together with interest thereon to the date of redemption of the Bonds, but only pursuant to the provisions of Section 2.3(b) hereof and Section 2.12(a) of the Indenture with respect to voluntary prepayment of the Loan and optional redemption of the Bonds.

#### **Section 2.2     Fees.**

(a)     On the date of execution and delivery of this Agreement, the Borrower shall pay, or cause to be paid to the Issuer, a closing fee equal to \$\_\_\_\_\_.

(b)     The Borrower shall pay (as directed by the Controlling Person) on the first Business Day of each month commencing on April 1, 2017, through Final Completion of the Work in respect of the Project Facilities, an amount equal to the costs of the Engineering Consultant incurred by the Controlling Person in the prior month in an amount not to exceed \$\_\_\_\_\_ per month (plus travel and reasonable and necessary expenses).

(c)     The Borrower shall pay all reasonable fees and expenses of the Trustee.

(d)     The Borrower shall pay the Issuer Fees and Expenses.



Section 2.3 Termination; Voluntary Prepayment and Redemption.

(a) Notwithstanding anything to the contrary contained in this Agreement or the other Bond Documents, the Controlling Person's, the Majority Owner Representative's and the Majority Owner's rights, interests and remedies hereunder and under the other Bond Documents shall not terminate or expire or be deemed to have been discharged or released until the earlier to occur of (i) the payment in full of the Bonds, or (ii) defeasance of all of the Bonds. No such termination, expiration or release shall affect the survival of the indemnification provisions of this Agreement, which provisions shall survive any such termination, expiration or release.

(b) The Loan may be prepaid by the Borrower, and the Bonds shall be optionally redeemed pursuant to Section 2.12(a) of the Indenture, on any Interest Payment Date on or after [\_\_\_\_], 2018, upon the payment of the principal amount of the Bonds plus interest accrued thereon to, but not including, the date of redemption, without premium or penalty.

(c) Acceleration of the obligations of the Borrower hereunder upon an Event of Default prior to [\_\_\_\_], 2018 shall constitute an evasion of the prepayment provisions of this Agreement and any tender of payment of an amount necessary to satisfy the entire indebtedness evidenced by this Agreement shall include an acceleration premium, equal to the amount of interest which would have accrued on the amount of Bonds scheduled to be Outstanding from the date of acceleration to, but not including, [\_\_\_\_], 2018.

(d) The Borrower shall be required to prepay the Loan at the times and in the amounts necessary to provide funds for the payment of the mandatory redemption of the Bonds pursuant to Section 2.12(b) of the Indenture.

(e) Notwithstanding the foregoing, the Borrower shall have the right at any time to defease the Bonds in accordance with the provisions of Article V of the Indenture, without premium.

Section 2.4 Obligations Absolute. The obligations of the Borrower under this Agreement shall be absolute, unconditional and irrevocable, and shall be performed strictly in accordance with the terms of this Agreement, under all circumstances whatsoever, including without limitation the following circumstances: (i) any lack of validity or enforceability of the Bond Documents or any other agreement or document relating thereto; (ii) any amendment or waiver of or any consent to or departure from the Bond Documents or any document relating thereto; or (iii) the existence of any claim, set-off, defense or other right which the Borrower may have at any time against the Issuer or the Trustee (or any persons or entities for whom the Trustee may be acting) or any other person or entity, whether in connection with this Agreement, the transactions described herein or any unrelated transaction. The Borrower understands and agrees that no payment by it under any other agreement (whether voluntary or otherwise) shall constitute a defense to its obligations hereunder, except to the extent that the Loan evidenced hereby has been indefeasibly paid in full, whether owing under this Agreement or under the other Bond Documents.

Section 2.5 Indemnification. THE BORROWER INDEMNIFIES AND HOLDS HARMLESS THE ISSUER, THE TRUSTEE, THE CONTROLLING PERSON, THE MAJORITY OWNER, THE MAJORITY OWNER REPRESENTATIVE AND EACH OF THEIR RESPECTIVE AFFILIATES AND EACH OF THEIR AND THEIR AFFILIATES' RESPECTIVE DIRECTORS, OFFICERS, EMPLOYEES, REPRESENTATIVES AND AGENTS (COLLECTIVELY, THE "INDEMNIFIED PARTIES"), EXCEPT AS LIMITED BELOW, FROM AND AGAINST ANY AND ALL CLAIMS, DAMAGES, LOSSES, LIABILITIES, COSTS OR EXPENSES (INCLUDING ATTORNEYS' FEES FOR COUNSEL OF EACH OF THE INDEMNIFIED PARTIES' CHOICE) WHATSOEVER WHICH THE INDEMNIFIED PARTIES MAY INCUR (OR WHICH MAY BE

CLAIMED AGAINST ANY OF THE INDEMNIFIED PARTIES BY ANY PERSON OR ENTITY WHATSOEVER) BY REASON OF OR IN CONNECTION WITH:

(a) ANY BREACH BY THE BORROWER OF ANY REPRESENTATION, WARRANTY, COVENANT, TERM OR CONDITION IN, OR THE OCCURRENCE OF ANY DEFAULT BY BORROWER UNDER, THIS AGREEMENT OR THE OTHER BOND DOCUMENTS, INCLUDING ALL REASONABLE FEES OR EXPENSES RESULTING FROM THE SETTLEMENT OR DEFENSE OF ANY CLAIMS OR LIABILITIES ARISING AS A RESULT OF ANY SUCH BREACH OR DEFAULT OR ANY DETERMINATION OF TAXABILITY;

(b) THE INVOLVEMENT OF ANY OF THE INDEMNIFIED PARTIES IN ANY LEGAL SUIT, INVESTIGATION, PROCEEDING, INQUIRY OR ACTION AS A CONSEQUENCE, DIRECT OR INDIRECT, OF THE CONTROLLING PERSON'S, THE MAJORITY OWNER REPRESENTATIVE'S OR THE MAJORITY OWNER'S ACTIONS TAKEN PURSUANT TO THIS AGREEMENT OR ANY OTHER EVENT OR TRANSACTION CONTEMPLATED BY ANY OF THE FOREGOING;

(c) THE ACCEPTANCE OR ADMINISTRATION OF THE BOND DOCUMENTS OR THE SECURITY INTERESTS THEREUNDER OR THE PERFORMANCE OF DUTIES UNDER THE BOND DOCUMENTS OR ANY LOSS OR DAMAGE TO PROPERTY OR ANY INJURY TO OR DEATH OF ANY PERSON THAT MAY BE OCCASIONED BY ANY CAUSE WHATSOEVER PERTAINING TO THE PROJECT FACILITIES OR THE USE THEREOF, INCLUDING WITHOUT LIMITATION ANY LEASE THEREOF OR ASSIGNMENT OF ITS INTEREST IN THIS AGREEMENT;

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

(e) ANY LIEN (OTHER THAN A PERMITTED ENCUMBRANCE) 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 FACILITIES;

(f) ANY VIOLATION OR ALLEGED VIOLATION OF ANY ENVIRONMENTAL LAW OR ANY INSPECTION, REVIEW OR TESTING WITH RESPECT TO, OR THE RELEASE OF ANY TOXIC SUBSTANCE FROM, THE PROJECT FACILITIES OR ANY PART THEREOF;

(g) THE ENFORCEMENT OF, OR ANY ACTION TAKEN BY THE ISSUER, RELATED TO REMEDIES UNDER, THIS AGREEMENT, THE INDENTURE AND THE OTHER BOND DOCUMENTS;

(h) ANY ACTION, SUIT, CLAIM, PROCEEDING, AUDIT, INQUIRY, EXAMINATION, OR INVESTIGATION OF A JUDICIAL, LEGISLATIVE, ADMINISTRATIVE OR REGULATORY NATURE CONCERNING OR RELATED TO INTEREST PAYABLE ON THE

BONDS NOT BEING EXCLUDABLE FROM GROSS INCOME FOR PURPOSES OF FEDERAL INCOME TAXATION OR EXEMPT FROM STATE INCOME TAXATION;

(i) ANY ACTION, SUIT, CLAIM OR DEMAND CONTESTING OR AFFECTING THE TITLE OF THE PROJECT FACILITIES;

(j) THE INVESTIGATION OF, PREPARATION FOR OR DEFENSE OF ANY LITIGATION, PROCEEDING OR INVESTIGATION IN CONNECTION WITH THE PROJECT FACILITIES OR THE TRANSACTIONS TO BE CONSUMMATED IN CONNECTION THEREWITH OF ANY NATURE WHATSOEVER, COMMENCED OR THREATENED AGAINST THE BORROWER, THE PROJECT FACILITIES OR ANY INDEMNIFIED PARTY; AND

(k) ANY BROKERAGE COMMISSIONS OR FINDERS' FEES CLAIMED BY ANY BROKER OR OTHER PARTY IN CONNECTION WITH THE BONDS OR THE PROJECT.

THE INDEMNIFICATION SET FORTH IN THIS SECTION 2.5 SHALL INCLUDE THE REASONABLE COSTS AND EXPENSES OF DEFENDING ITSELF OR INVESTIGATING ANY CLAIM OF LIABILITY AND OTHER REASONABLE EXPENSES AND ATTORNEYS' FEES INCURRED BY ANY INDEMNIFIED PARTY, PROVIDED THE BORROWER SHALL NOT BE REQUIRED TO INDEMNIFY AN INDEMNIFIED PARTY FOR ANY CLAIMS, DAMAGES, LOSSES, LIABILITIES, COSTS OR EXPENSES TO THE EXTENT, BUT ONLY TO THE EXTENT, CAUSED BY THE WILLFUL MISCONDUCT, BAD FAITH OR FRAUD OF THE ISSUER OR THE WILLFUL MISCONDUCT OR GROSS NEGLIGENCE OF SUCH INDEMNIFIED PARTY OTHER THAN THE ISSUER. THE INDEMNIFICATION DESCRIBED IN THIS SECTION 2.5 SHALL RELATE TO INDEMNIFIED OBLIGATIONS ARISING FROM AN INDEMNIFIED PARTY'S OWN NEGLIGENCE. THE OBLIGATIONS OF THE BORROWER UNDER THIS SECTION SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT AND THE INDENTURE. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT OR THE INDENTURE TO THE CONTRARY, THE BORROWER AGREES (I) NOT TO ASSERT ANY CLAIM OR INSTITUTE ANY ACTION OR SUIT AGAINST THE TRUSTEE OR ITS EMPLOYEES ARISING FROM OR IN CONNECTION WITH ANY INVESTMENT OF FUNDS MADE BY THE TRUSTEE IN GOOD FAITH AS DIRECTED BY THE BORROWER, THE CONTROLLING PERSON, THE MAJORITY OWNER REPRESENTATIVE OR THE MAJORITY OWNER, AND (II) TO INDEMNIFY AND HOLD THE TRUSTEE AND ITS EMPLOYEES HARMLESS AGAINST ANY LIABILITY, LOSSES, DAMAGES, COSTS, EXPENSES, CAUSES OF ACTION, SUITS, CLAIMS, DEMANDS AND JUDGMENTS OF ANY NATURE ARISING FROM OR IN CONNECTION WITH ANY SUCH INVESTMENT. NOTHING IN THIS SECTION IS INTENDED TO LIMIT THE BORROWER'S OBLIGATIONS CONTAINED IN SECTION 2.1 AND 2.2 HEREOF. AMOUNTS PAYABLE TO THE ISSUER HEREUNDER SHALL BE DUE AND PAYABLE FIVE (5) DAYS AFTER DEMAND AND WILL ACCRUE INTEREST AT THE DEFAULT RATE, COMMENCING WITH THE EXPIRATION OF THE FIVE (5) DAY PERIOD. WHEN THE ISSUER INCURS EXPENSES OR RENDERS SERVICE 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. THE OBLIGATIONS OF BORROWER TO THE ISSUER AND THE TRUSTEE UNDER THIS SECTION SHALL NOT BE SUBJECT TO THE RECOURSE LIMITATIONS OF SECTION 9.13 HEREOF.

Section 2.6 Amounts Remaining on Deposit Upon Payment of the Bonds. After payment in full of the principal of, premium, if any, and interest on the Bonds (or defeasance of the Bonds) and upon payment of amounts payable to the United States pursuant to any rebate requirement and the payment of any other amounts owed hereunder or under the Indenture, all amounts on deposit with the Trustee pursuant to the Indenture, this Agreement or any other Bond Document shall be paid by the Trustee to the Borrower.

### **ARTICLE 3 SECURITY**

Section 3.1 Mortgage and Other Security Documents. To further secure the Borrower's obligations under this Agreement, the Borrower shall, at its sole expense, execute and deliver to the Trustee (and where required, duly record), (a) the Subordinate Fee and Leasehold Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing (With Power of Sale) dated as of the date hereof, made by the Borrower to the Trustee covering the Project Facilities (the "Mortgage"); (b) the Environmental Indemnity Agreement, dated as of the date hereof, by the Borrower and Guarantor in favor of the Trustee and the Majority Owner Representative (the "Environmental Indemnity") pursuant to which the Borrower and the Guarantor shall indemnify and hold the Trustee harmless from environmental liabilities; (c) the Guaranty of Payment, dated as of the date hereof by the Guarantor in favor of the Trustee and the Majority Owner Representative (the "Guaranty of Payment"); and (d) the Completion Guaranty dated the date hereof, made by the Borrower in favor of the Trustee and the Majority Owner Representative (the "Completion Guaranty").

Section 3.2 Financing Statements. The Borrower shall file, or cause to be filed, on or before the Issue Date, such financing statements and continuation statements, and perform such other acts, under the Uniform Commercial Code of the State or other applicable Legal Requirements as are necessary or advisable to perfect and maintain perfection of the Issuer's and/or the Trustee's security interests under this Agreement, the Indenture, the Mortgage and the other Bond Documents. The Borrower hereby authorizes the Trustee, without the signature of the Borrower, to file continuation statements, and perform such other acts, under the Uniform Commercial Code of the State or other applicable Legal Requirements as are necessary or advisable to perfect and maintain perfection of the Issuer's and/or the Trustee's security interests under this Agreement, the Indenture, the Mortgage and the other Bond Documents. The Borrower will pay upon demand the costs of filing the foregoing financing or continuation statements and the Financing Statements required under Section 7.8 of the Indenture in such public offices as the Controlling Person may designate.

### **ARTICLE 4 REPRESENTATIONS OF ISSUER**

Section 4.1 Representations by the Issuer. The Issuer represents and warrants as follows:

(a) The Issuer is a Texas public non-profit housing finance corporation and is authorized by the Act to execute and to enter into this Agreement and to undertake the transactions contemplated herein and to carry out its obligations hereunder.

(b) The Issuer has all requisite power, authority and legal right to execute and deliver the Bond Documents to which it is a party and all other instruments and documents to be executed and delivered by the Issuer pursuant thereto, to perform and observe the provisions thereof and to carry out the transactions contemplated by the Bond Documents. All action on the part of the Issuer which is required for the execution, delivery, performance and observance by the Issuer of the Bond Documents has been duly authorized and effectively taken, and such execution, delivery, performance and

observation by the Issuer do not contravene applicable law or any contractual restriction binding on or affecting the Issuer.

(c) The Issuer has duly approved the issuance of the Bonds and the loan of the proceeds thereof to the Borrower for the acquisition and construction of the Project Facilities; and all authorizations, approvals, or other action by any Governmental Authority which would constitute a condition precedent to the performance by the Issuer of the obligations under the Bond Documents to which the Issuer is a party have been obtained or will be obtained on or before the Issue Date.

(d) This Agreement is, and each other Bond Document to which the Issuer is a party when delivered will be, legal, valid and binding special obligations of the Issuer enforceable against the Issuer in accordance with its terms except as the enforceability thereof may be limited by bankruptcy, insolvency or similar laws affecting the enforcement of creditors' rights generally.

(e) There is no default of the Issuer in the payment of the principal of or interest on any of its indebtedness for borrowed money or under any instrument or instruments or agreements under and subject to which any indebtedness for borrowed money has been incurred which does or could affect the validity and enforceability of the Bond Documents or the ability of the Issuer to perform its obligations thereunder, and no event has occurred and is continuing under the provisions of any such instrument or agreement which constitutes or, with the lapse of time or the giving of notice, or both, would constitute such a default.

(f) There are no obligations of the Issuer other than the Bonds that have been, are being or will be (i) sold at substantially the same time, (ii) sold pursuant to the same plan of financing, and (iii) reasonably expected to be paid from substantially the same source of funds.

(g) There is no action, suit, proceeding, inquiry, or investigation at law or in equity or before or by any court, public board or body pending, or, to the knowledge of the Issuer, threatened against or affecting the Issuer wherein an unfavorable decision, ruling or finding would adversely affect (i) the transactions contemplated by, or the validity or enforceability of, the Bonds, the Indenture or this Agreement or (ii) the exclusion from gross income of interest on the Bonds for purposes of federal income taxation.

(h) In connection with the authorization, issuance and sale of the Bonds to JPMorgan Chase Bank, N.A., the Issuer has complied in all material respects with all provisions of the laws of the State, including the Act. Except as set specifically set forth in the preceding sentence, no representation is made as to compliance with any state securities or "blue sky" laws.

(i) The Issuer has not assigned or pledged and will not assign or pledge its interest in this Agreement except as contemplated by Section 6.25 herein. The Bonds constitute the only bonds or other obligations of the Issuer in any manner payable from the revenues to be derived from this Agreement, and except for the Bonds, no bonds or other obligations have been or will be issued on the basis of this Agreement.

(j) The Issuer is not in default under any of the provisions of the laws of the State, which default would affect the issuance, validity or enforceability of the Bonds or the transactions contemplated by this Agreement or the Indenture.

(k) The Issuer covenants and agrees that it will take or cause to be taken all required actions to preserve the exclusion from gross income for federal income tax purposes of interest on the Bonds. All of the amounts received upon the sale of the Bonds shall be allocated to, and shall be used, for

the purpose of financing the aggregate basis of land and building costs within the meaning of Section 42(h)(4)(B) of the Code. To the extent within the reasonable control of the Issuer, and provided that the Issuer shall be under no duty to enforce compliance, the amounts received upon the sale of the Bonds and interest and other investment earnings on those amounts shall be allocated and used for financing Project Costs of the building and related land in the Project Facilities so that the aggregate basis of the building and related land, within the meaning of Section 42(h)(4) of the Code, shall be financed fifty percent (50%) or more from those amounts and amounts received from the sale of the Series 2017A Bonds.

(l) The Issuer used no broker in connection with the execution hereof and the transactions contemplated hereby.

(m) THE ISSUER MAKES NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, THAT THE FUNDS APPLIED BY THE BORROWER WILL BE SUFFICIENT TO FINANCE THE ACQUISITION, CONSTRUCTION AND EQUIPPING OF THE PROJECT FACILITIES OR THAT THE PROJECT FACILITIES WILL BE ADEQUATE OR SUFFICIENT FOR THE BORROWER'S INTENDED PURPOSES. THE ISSUER MAKES NO WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE PROJECT FACILITIES 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 LEGAL REQUIREMENTS.

Section 4.2 No Liability of Issuer; No Charge Against Issuer's Credit. Any obligation of the Issuer created by, arising out of, or entered into in contemplation of this Agreement, including the payment of the principal of, premium if any, and interest on the Bonds, shall not impose or constitute a debt or pecuniary liability upon the Issuer, the State or any political subdivision thereof or constitute a charge upon the general credit or taxing powers of any of the foregoing. Any such obligation shall be payable solely out of the revenues and any other moneys derived hereunder and under the Indenture, except (as provided in the Indenture and in this Agreement) to the extent it shall be paid out of moneys attributable to the proceeds of the Bonds or the income from the temporary investment thereof. No recourse shall be had for the payment of the principal of, premium, if any, or interest on any of the Bonds or for any claim based thereon or upon any obligation, covenant or agreement of the Issuer hereunder against any past, present or future trustee, officer, member, employee or agent of the Issuer, whether directly or indirectly, and all such liability of any such individual as such is expressly waived and released as a condition of and in consideration for the execution of this Agreement, the making of the loan of the proceeds of the Bonds to the Borrower, and the issuance of the Bonds.

## **ARTICLE 5**

### **REPRESENTATIONS AND WARRANTIES OF THE BORROWER**

The Borrower represents and warrants to and for the benefit of the Issuer, the Trustee, the Controlling Person, the Majority Owner Representative and the Holders from time to time of the Bonds as follows:

Section 5.1 Existence. The Borrower is a limited partnership, duly organized, validly existing and active under the Legal Requirements of the State. The Borrower has furnished to the Issuer, the Trustee, the Majority Owner Representative and the Controlling Person true and complete copies of its partnership agreement and certificate of formation. The Borrower owns or leases and will own no other assets other than the Project Facilities. The Borrower has been, is and will be engaged solely in the

business of acquiring, constructing, equipping, financing, owning, managing and operating the Project Facilities and activities incident thereto. The General Partner of the Borrower is Villages at Fiskville GP, LLC, a limited liability company, duly organized, validly existing and active under the laws of the State. The General Partner has furnished to the Issuer, the Trustee, the Majority Owner Representative and the Controlling Person true and complete copies of its certificate of formation and operating agreement. The General Partner has and will have no other assets other than its partnership interests in the Borrower.

Section 5.2 Power, Authorization and No Conflicts. The Borrower has all requisite power and authority and the legal right to own and operate its properties and to conduct its business and operations as they are currently being conducted and as proposed to be conducted by it. The execution, delivery and performance by the Borrower of this Agreement and the other Bond Documents to which the Borrower is a party (i) are within the Borrower's powers, (ii) have been duly authorized by all necessary company and legal action by or on behalf of the Borrower, and (iii) do not contravene the partnership agreement, operating agreement, or certificate of formation of the Borrower or the General Partner, as applicable, or any Legal Requirement applicable to the Borrower or the General Partner or any Material Contract or restriction binding on or affecting the Borrower, the General Partner or any of their respective assets, or result in the creation of any mortgage, pledge, lien or encumbrance upon any of its assets other than as provided by the terms thereof.

Section 5.3 Governmental Authorizations and Other Approvals. The Borrower and the General Partner have all necessary Governmental Actions and qualifications, and have complied with all applicable Legal Requirements necessary to conduct their business as it is presently conducted and to own, operate and construct the Project Facilities in accordance with the provisions of the Bond Documents. The Borrower has obtained all Governmental Actions from such Governmental Authorities which are a necessary precondition to construct, own and operate the Project Facilities and all such Governmental Actions were duly issued, are in full force and effect and are not subject to any pending judicial or administrative proceedings, the period for judicial or administrative appeal or review having expired and no petition for administrative or judicial appeal or review having been filed. The Project Facilities (upon completion of construction of the Project Facilities as contemplated in the Plans and Specifications) will comply with all Governmental Actions and Legal Requirements, including all zoning restrictions (including without limitation, use density, setbacks, parking and other similar requirements) or the Borrower has a valid variance for or exemption from such requirements. No such Governmental Action will terminate, or become void or voidable or terminable, upon any sale, transfer or other disposition of the Project Facilities including any transfer pursuant to foreclosure sale under the Mortgage.

Section 5.4 Validity and Binding Effect. This Agreement, the Ground Lease, the other Bond Documents to which the Borrower is a party and the Series A Bond Documents (as such term is defined in the Intercreditor Agreement) are the legal, valid and binding obligations of the Borrower, enforceable against it in accordance with their respective terms, subject to the application by a court of general principles of equity and to the effect of any applicable bankruptcy, insolvency, reorganization, moratorium or similar Legal Requirement affecting creditors' rights generally.

Section 5.5 No Litigation. Except as disclosed on Schedule 1 attached hereto, there is no pending action or proceeding, including eminent domain proceedings, before any Governmental Authority or arbitrator against or involving the Borrower, the General Partner or to the Borrower's knowledge after due inquiry, the Project Facilities and, to the best knowledge of the Borrower and the General Partner, there is no threatened action or proceeding, including eminent domain proceedings, affecting the Borrower or the General Partner before any Governmental Authority or arbitrator which, in any case, might materially and adversely affect the business, operations, assets, condition (financial or otherwise) or prospects of the Borrower or the General Partner, or the validity or enforceability of this

Agreement, the Bonds, the Bond Documents, the Construction Disbursement Documents, the Subordinate Loan Documents (as such term is defined in the Intercreditor Agreement) or the construction, operation or ownership of the Project Facilities, or the exclusion from gross income of interest on the Bonds for purposes of federal income taxation or the exemption of the Project Facilities from ad valorem real estate taxation under the laws of the State.

Section 5.6 No Violations. The Borrower and the General Partner are in compliance with, and not in breach of or default under (a) any applicable Governmental Actions or Legal Requirements with respect to the Project Facilities of any Governmental Authority having jurisdiction, or (b) the Bond Documents or any other credit agreement, indenture, mortgage, agreement or other instrument to which it is a party or otherwise subject. No event has occurred and is continuing which, with the passage of time or the giving of notice or both, would constitute an event of default under any such instrument. The Borrower is not in violation, nor is there any notice or other record of any violation of any Legal Requirements, restrictive covenants or other restrictions applicable to any of the Project Facilities.

Section 5.7 Compliance. The ownership of the Project Facilities, the construction of the Project Facilities, and the use and operation of the Project Facilities as contemplated hereby do and shall, in all material respects, comply with, and are lawful and permitted uses under, the Borrower Tax Certificate and the Land Use Restriction Agreement, all applicable building, fire, safety, zoning, subdivision, sewer, Environmental Laws, health, insurance and other Legal Requirements and plan approval conditions of any Governmental Authority. The Borrower has obtained all Governmental Actions from such Governmental Authorities which are a necessary precondition to construct own and operate the Project Facilities and all such Governmental Actions were duly issued, are in full force and effect and are not subject to any pending judicial or administrative proceedings, the period for judicial or administrative appeal or review having expired and no petition for administrative or judicial appeal or review having been filed. The Project Facilities are located wholly within the boundaries of the Issuer's jurisdiction. The Project Facilities will satisfy all requirements of the Act and the Code with respect to multifamily rental housing and/or qualified residential rental facilities.

Section 5.8 Title to Properties; Liens and Encumbrances. The Borrower has a leasehold interest in the Project Facilities, free and clear of all liens or encumbrances except for the Permitted Encumbrances. All such real property, fixtures and equipment necessary to the conduct of the business of the Borrower and the operation of the Project Facilities are and will be in reasonable working order and are suitable for the purposes for which they are and will be used. There exist no liens, encumbrances or other charges against the Project Facilities (including without limitation statutory and other liens of mechanics, workers, contractors, subcontractors, suppliers, taxing authorities and others), except Permitted Encumbrances.

Section 5.9 Utilities and Access. All utility services necessary for the operation of the Project Facilities in the manner contemplated hereby, including water supply, storm and sanitary sewer facilities, gas, electricity and telephone facilities are available (or will be timely available) within the boundaries of the Project Facilities; and all roads necessary for the full utilization of the Project Facilities in the manner contemplated hereby either have been completed or rights-of-way therefor have been acquired by the appropriate governmental authority or others or have been dedicated to public use and accepted by such Governmental Authority.

Section 5.10 Financial Information.

(a) All of the financial information furnished to the Controlling Person or the Majority Owner Representative with respect to the Borrower, the General Partner and, to the best of the Borrower's knowledge, the Guarantor, in connection with this Agreement (i) is complete and correct in



all material respects as of the date hereof; and (ii) accurately presents the financial condition of such party as of the date hereof. None of the Borrower, the General Partner or, to the best of the Borrower's knowledge, the Guarantor, has any material liability or contingent liability not disclosed to the Controlling Person and the Majority Owner Representative in writing; and

(b) Since its formation, each of the Borrower, the General Partner and, to the best of the Borrower's knowledge, the Guarantor, has conducted its operations in the ordinary course, and no material adverse change has occurred in the business, operations, assets or financial condition of the Borrower, the General Partner or, to the best of the Borrower's knowledge, the Guarantor.

Section 5.11 ERISA. No employee pension plan maintained by the Borrower or the General Partner or any ERISA Affiliate which is subject to Part 3 of Title I of the Employee Retirement Income Security Act of 1974, as amended ("ERISA") has an accumulated funding deficiency (as defined in Section 302(a) of ERISA), no reportable event (as defined in Section 4043 of ERISA) has occurred with respect to any employee pension plan maintained for employees of the Borrower or any ERISA Affiliate and covered by Title IV of ERISA, no liability has been asserted against the Borrower, the General Partner or any ERISA Affiliate by the Pension Benefit Guaranty Corporation ("PBGC") or by a trustee appointed pursuant to Section 4042(b) or (c) of ERISA, and no lien has been attached and no person has threatened to attach a lien to any of the Borrower's, the General Partner's or any ERISA Affiliate's property as a result of failure to comply with ERISA or as a result of the termination of any employee pension plan covered by Title IV of ERISA. Each employee pension plan (as defined in Section 3(2) of ERISA) maintained for employees of the Borrower, the General Partner or any ERISA Affiliate which is intended to be qualified under Section 401 (a) of the Code, including all amendments to such plan or to any trust agreement, group annuity or insurance contract or other governing instrument, is the subject of a favorable determination by the Internal Revenue Service with respect to its qualification under Section 401(a) of the Code. With respect to any multi-employer pension plan (as defined in Section 3(37) of ERISA) to which the Borrower, the General Partner or any ERISA Affiliate is or has been required to contribute after September 25, 1980, (i) no withdrawal liability (within the meaning of Section 4201 of ERISA) has been incurred by the Borrower, the General Partner or any ERISA Affiliate, (ii) no withdrawal liability has been asserted against the Borrower, the General Partner or any ERISA Affiliate by a sponsor or an agent of a sponsor of any such multi-employer plan, (iii) no such multi-employer pension plan is in reorganization (as defined in Section 4241(a) of ERISA), and (iv) neither the Borrower, the General Partner nor any ERISA Affiliate has any unfilled obligation to contribute to any such multi-employer pension plan. As used in this Agreement, "ERISA Affiliate" means (i) any corporation included with the Borrower or the General Partner in a controlled group of corporations within the meaning of Section 414(b) of the Code, (ii) any trade or business (whether or not incorporated or for-profit) which is under common control with the Borrower, or the General Partner within the meaning of Section 414(c) of the Code, (iii) any member of an affiliated service group of which the Borrower, or the General Partner is a member within the meaning of Section 414(m) of the Code, and (iv) any other entity treated as being under common control with the Borrower or the General Partner under Section 414(o) of the Code.

Section 5.12 Environmental Representations. Except as set forth on the Environmental Audit delivered to the Controlling Person and the Majority Owner Representative (a) the Borrower has no knowledge of any activity at the Project Facilities, or any storage, treatment or disposal of any Hazardous Substances connected with any activity at the Project Facilities, which has been conducted, or is being conducted, in violation of any Environmental Law; (b) the Borrower has no knowledge of any of the following which could give rise to material liabilities, material costs for remediation or a material adverse change in the business, operations, assets, or condition (financial or otherwise) of the Borrower: (i) Contamination present at the Project Facilities, (ii) polychlorinated biphenyls present at the Project Facilities, (iii) asbestos or materials containing asbestos present at the Project Facilities, (iv) urea

formaldehyde foam insulation present at the Project Facilities, or (v) lead-based paint at the Project Facilities; (c) no portion of the Project Facilities constitutes an Environmentally Sensitive Area; (d) the Borrower has no knowledge of any investigation of the Project Facilities for the presence of radon; (e) no tanks presently or formerly used for the storage of any liquid or gas above or below ground are present at any of the Project Facilities; (f) no condition, activity or conduct exists on or in connection with the Project Facilities which constitutes a violation of Environmental Laws; (g) no notice has been issued by any Governmental Authority to the Borrower or the General Partner identifying the Borrower or the General Partner as a potentially responsible party under any Environmental Laws; (h) there exists no investigation, action, proceeding or claim by any Governmental Authority or by any third party which could result in any liability, penalty, sanctions or judgment under any Environmental Laws with respect to the Project Facilities; and (i) the Borrower is not required to obtain any permit or approval from any Governmental Authority or need notify any Governmental Authority pursuant to any Environmental Law with regard to the construction of the Project Facilities.

Section 5.13 Outstanding Obligations and Material Contracts. Attached hereto as Schedule 2 is (i) a complete list of all Obligations of the Borrower and the General Partner as of the date of execution and delivery hereof, together with a description of the instruments evidencing, governing or securing such Obligations (provided that no description need be provided of the Obligations hereunder) and (ii) a complete list of all other Material Contracts. There exists no default under any such instrument. Except for the Obligations listed on Schedule 2, neither the Borrower nor the General Partner has incurred any Obligations, secured or unsecured, direct or contingent. Each of the Borrower and the General Partner has complied with all provisions of such Material Contracts in all material respects, to the extent such contract is applicable to such party, and there exists no default or event which, with the giving of notice or the passage of time, or both, would constitute a default, under any such Material Contract.

Section 5.14 Solvency. Each of the Borrower, the Guarantor and the General Partner is and, after giving effect to this Agreement and all other agreements of the Borrower and the General Partner being entered into on the date of execution and delivery of this Agreement, will be solvent (which for this purpose shall mean that it is able to pay its current debts as they come due).

Section 5.15 Full Disclosure. This Agreement, the exhibits hereto and the other documents, certificates, opinions, schedules and statements furnished to the Controlling Person or the Majority Owner Representative by or on behalf of the Borrower, the Guarantor or the General Partner in connection with the transactions contemplated hereby or by the Bond Documents, do not contain any untrue statement of a material fact with respect to the Borrower, the Guarantor or the General Partner or the Project Facilities and do not omit to state a material fact with respect to the Borrower, the Guarantor or the General Partner or the Project Facilities necessary in order to make the statements contained therein not misleading in light of the circumstances under which they were made. There is no fact known to the Borrower, the Guarantor or the General Partner which materially adversely affects or in the future may adversely affect the business, operations, properties, assets or financial condition of the Borrower, the Guarantor or the General Partner which has not been set forth in this Agreement or in the other documents, certificates, opinions, schedules and statements furnished to the Controlling Person or the Majority Owner Representative on behalf of any such party before the date of execution and delivery of this Agreement in connection with the transactions contemplated hereby.

Section 5.16 Bond Documents. The Borrower has provided the Controlling Person and the Majority Owner Representative with true, correct and complete copies of: (i) all documents executed by the Borrower, the Guarantor or the General Partner in connection with the Bonds, including all amendments thereto and compliance reports filed thereunder; (ii) the Ground Lease; (iii) the Series A Bond Documents (as defined in the Intercreditor Agreement); (iv) all management and service contracts entered into by the Borrower in connection with the Project Facilities, including all amendments thereto;

(v) all correspondence, if any, relating to the Bonds from the Trustee, the Issuer, the Securities and Exchange Commission, the Internal Revenue Service or any state or local securities regulatory body or taxing authority or any securities rating agency; and (vi) all documentation, if any, relating to governmental grants, subsidies or loans or any other loans, lines of credit or other subordinate financing relating to the Borrower or the Project Facilities, whether or not secured by the Project Facilities. Each of the representations and warranties on the Borrower's part made in the Bond Documents to which the Borrower is a party remain true and correct in all material respects and no Default exists under any covenants on the Borrower's part to perform under the Bond Documents to which the Borrower is a party.

Section 5.17 Illegal Activity. No portion of any of the Project Facilities has been or will be acquired, constructed, fixtured, equipped or furnished with proceeds of any illegal activity conducted by the Borrower.

Section 5.18 Executive Order 13224. Neither the Borrower, the General Partner nor any Person holding any legal or beneficial interest whatsoever in any of those entities is included in, owned by, controlled by, acting for or on behalf of, providing assistance, support, sponsorship, or services of any kind to, or otherwise associated with any of the persons or entities referred to or described in Executive Order 13224 — Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism, as amended. It shall constitute an Event of Default hereunder if the foregoing representation and warranty shall ever become false.

Section 5.19 No Broker. The Borrower has used no broker in connection with the execution hereof and the transactions contemplated hereby.

Section 5.20 Oil and Gas Representations. The Borrower represents that: (i) to the best of the Borrower's knowledge, no drilling of any kind is currently taking place on the Project Facilities, (ii) except as set forth in the Title Report, there is no drilling under any lease taking place on the Project Facilities, (iii) there are no wells within the Project Facilities, and (iv) it has no knowledge of any violations of any applicable laws, ordinances and regulations of any Governmental Authority with respect to any drilling activity under any of the leases named in the Title Report.

## **ARTICLE 6 GENERAL COVENANTS**

So long as any amount is due and owing hereunder, the Borrower covenants and agrees, except to the extent the Controlling Person shall otherwise consent in writing to perform and comply with each of the following covenants:

Section 6.1 Conduct of Business; Maintenance of Existence; Mergers. The Borrower and the General Partner will (i) engage solely in the business of financing, constructing, owning and operating the Project Facilities, and activities incident thereto, (ii) preserve and maintain in full force and effect its existence as a limited partnership or limited liability company, as applicable, under the Legal Requirements of the state of its organization, and its rights and privileges and its qualification to do business in the State, (iii) not dissolve or otherwise dispose of all or substantially all of its assets, (iv) not consolidate with or merge into another entity or permit one or more other entities to consolidate with or merge into it, and (v) not amend any provision of its certificate of limited partnership or certificate of formation, or its partnership agreement or operating agreement, as applicable, relating to its purpose, management or operation any way which would affect the timing or amount of capital contributions, except as adjusted pursuant to the original terms thereof, or the conditions to the payment thereof, without the prior written consent of the Controlling Person. Notwithstanding the foregoing, the Borrower may

amend its partnership agreement in order to effectuate a Permitted Transfer, as such term is defined in the Indenture.

Section 6.2 Compliance with Legal Requirements; Payment of Impositions. The Borrower will comply with all Legal Requirements applicable to the Borrower or the Project Facilities. The Borrower will pay all Impositions and insurance premiums when due and will make the applicable deposits required by Section 8.2 of this Agreement for such purposes.

Section 6.3 Maintenance of Governmental Authorizations. The Borrower shall timely obtain any Governmental Actions required for the construction of the Project Facilities not obtained prior to the Issue Date and shall provide copies thereof to the Controlling Person, the Majority Owner Representative and the Trustee upon receipt. The Borrower will maintain in full force and effect all of its Governmental Actions and qualifications necessary for the conduct of its business as it is presently being conducted and the ownership, construction and operation of the Project Facilities as they are presently being operated and as contemplated by the terms of the Bond Documents. The Borrower will promptly furnish copies of all reports and correspondence relating to a loss or proposed revocation of any such qualification to the Controlling Person and the Majority Owner Representative.

Section 6.4 Maintenance of Insurance.

(a) The Borrower shall, at its sole cost and expense, maintain or cause to be maintained the insurance required under the [Reimbursement Agreement] [Construction Disbursement Agreement].

(b) All insurance required by this Section 6.4 shall be produced and maintained in financially sound and generally recognized responsible insurance companies selected by the entity required to procure the same and authorized to write such insurance in the State. Such insurance may be written with deductible amounts comparable to those on similar policies carried by other companies engaged in businesses similar in size, character and other respects to those in which the procuring entity is engaged. All property and casualty insurance policies required by Section 6.4(a) hereof shall contain a standard non-contributory mortgagee clause showing the interest of the Trustee as first mortgagee and shall provide for payment to the Trustee of the net proceeds of insurance resulting from any claim for loss or damage thereunder. All policies of insurance required by Section 6.4(a) hereof shall provide for at least thirty (30) days' prior written notice of the restriction, cancellation or modification thereof to the Trustee, with a copy to the Majority Owner Representative. The policy evidencing liability insurance required by Section 6.4(a) hereof shall name the Issuer, the Majority Owner Representative and the Trustee as additional named insureds. The Borrower acknowledges that a security interest in the policies of property and casualty insurance required by Section 6.4(a) and the net proceeds thereof is being granted to the Trustee pursuant to the Mortgage. Upon request of the Trustee, the Borrower will assign and deliver (which assignment shall be deemed to be automatic and to have occurred upon the occurrence of an Event of Default hereunder) to the Trustee, the policies of property and casualty insurance required under Section 6.4(a), so and in such manner and form that the Trustee shall at all times, upon such request and until the payment in full of the Bonds, have and hold said policies and the net proceeds thereof as collateral and further security under the Mortgage for application as provided in the Mortgage. The policies under Section 6.4(a) hereof shall contain appropriate waivers of subrogation.

(c) Copies of the policy or certificate (or binder) of insurance required by Section 6.4(a) hereof shall be delivered to the Trustee, with a copy to the Majority Owner Representative on or before the Issue Date. The Borrower shall deliver to the Issuer and the Trustee before the first (1<sup>st</sup>) Business Day of each calendar year thereafter a certificate dated not earlier than the immediately preceding month reciting that there is in full force and effect insurance of the types and in the amounts

required by this Section 6.4. Prior to the expiration of each such policy, the Borrower shall furnish the Trustee, with a copy to the Majority Owner Representative, with evidence that such policy has been renewed or replaced or is no longer required by this Agreement. The Borrower shall provide such further information with respect to the insurance coverage required by this Agreement as the Controlling Person or the Majority Owner Representative may, from time to time, reasonably require.

(d) The net proceeds of the property and casualty insurance carried pursuant to the provisions of Section 6.4(a) hereof shall be applied as provided in the Mortgage and the net proceeds of the liability insurance required by Section 6.4(a) hereof shall be applied, with the prior written consent of the Controlling Person, toward extinguishment or satisfaction of the liability with respect to which such insurance proceeds may be paid.

Section 6.5 Compliance with Other Contracts and Bond Documents. The Borrower will comply with all of its covenants and agreements under the Bond Documents, the Ground Lease and the Series A Loan Documents to which it is a party, and each of such covenants is incorporated herein by reference as if fully set forth herein. The Borrower acknowledges that the Indenture imposes certain obligations upon the Borrower and the Borrower agrees to discharge such obligations as if they were fully set forth herein (notwithstanding that the Borrower is not a party to the Indenture). The Borrower shall comply in all material respects with, or cause to be complied with, all requirements and conditions of all Material Contracts and insurance policies which relate to the Borrower or the Project Facilities.

Section 6.6 Maintenance of Project Facilities. The Borrower will, at its sole expense and as one of the Expenses (including use of the funds on deposit in the Accounts, in accordance with the terms of the Indenture and the Replacement Reserve Agreement), (i) maintain and preserve the Project Facilities in good working order and repair, fit for the purposes for which they were originally erected; (ii) enforce the terms of the Ground Lease; (iii) not permit, commit or suffer any waste or abandonment of the Project Facilities; (iv) not use (and use reasonable efforts to not permit tenants to use) the Project Facilities for any unlawful purpose and use reasonable efforts to not permit any nuisance to exist thereon; (v) promptly make such repairs or replacements (structural or nonstructural, foreseen or unforeseen) as are required for the proper operation, repair and maintenance of the Project Facilities in an economical and efficient manner and consistent with customary and prudent practices, standards and procedures applicable to properties of like size and type; (vi) perform all repairs or replacements in a good and workmanlike manner, and in compliance with all applicable Governmental Actions and Legal Requirements; (vii) keep and maintain abutting grounds, sidewalks, roads, parking and landscape areas which may be owned by the Borrower in good and neat order and repair; (viii) not take (or fail to take) any action, which if taken (or not so taken) would increase in any way the risk of fire or other hazard occurring to or affecting the Project Facilities; and (ix) not sell, lease (other than pursuant to residential leases), cause a Sale of or otherwise dispose of any portion of the Project Facilities, except as otherwise permitted hereunder and under the other Bond Documents.

Section 6.7 Inspection Rights.

(a) The Borrower will, upon reasonable prior notice, at any reasonable time and from time to time, permit the Controlling Person, the Trustee, the Issuer, the Majority Owner Representative and the agents or representatives of the Controlling Person, the Trustee, the Issuer and the Majority Owner Representative to examine and copy and make abstracts from the records and books of account of, and visit the properties of, the Borrower, and to discuss the affairs, finances and accounts of the Borrower with the General Partner and the Accountant. Upon reasonable prior notice, and subject to the rights of tenants, the Borrower will permit the Engineering Consultant to inspect, or cause to be inspected, the Project Facilities at any reasonable time or times as the Majority Owner Representative may direct. The

Borrower shall pay or reimburse the Majority Owner Representative on demand for fees and expenses incurred in connection with such inspections.

(b) After the Engineering Consultant shall have inspected, or cause to have been inspected, the Project Facilities, the Engineering Consultant shall send written notice to the Majority Owner Representative notifying the Majority Owner Representative of the nature and extent of capital needs of the Project Facilities, if any, which are, in the Engineering Consultant's professional judgment, necessary to maintain and preserve the Project Facilities in accordance with the standards set forth in Section 6.6 hereof, and which are not addressed in the Annual Budget for the Project Facilities. After considering the Engineering Consultant's recommendation, the Majority Owner Representative shall notify the Borrower of the work which the Engineering Consultant recommends be performed in order to comply with the requirements of Section 6.6 hereof and the time period over which, in its professional judgment, such work should be commenced and completed.

(c) The Borrower shall promptly commence and diligently complete the work recommended by the Engineering Consultant within the time period set forth in the report. If the Borrower fails to complete the work within such time period, the Majority Owner Representative, at the Majority Owner Representative's discretion, may complete such work for and on the Borrower's behalf and may do any act or thing the Majority Owner Representative deems necessary or appropriate to that end. The expenses incurred by the Majority Owner Representative in completing such work shall bear interest at the Default Rate, shall be borne by the Borrower and shall be reimbursed to the Majority Owner Representative immediately upon demand. All work performed by the Borrower shall be performed in a good and workmanlike manner and shall be completely free and clear of any mechanics or materialman's liens and encumbrances and shall be subject to the requirements of Section 6.6 hereof.

Section 6.8 Keeping of Books. The Borrower will keep proper books of record and account, in which full and correct entries shall be made of financial transactions and the assets and operations of the Borrower in accordance with GAAP, and have a complete audit of such books of record and account made by the Accountant for each Fiscal Year.

Section 6.9 Reporting Requirements. The Borrower will furnish or cause to be furnished to the Controlling Person and the Majority Owner Representative the following in form satisfactory to the Controlling Person and the Majority Owner Representative and in such number of copies as the Controlling Person or the Majority Owner Representative may reasonably require:

(a) Financial statements, leasing reports and other information required under the Construction Disbursement Agreement.

(b) Upon receipt thereof by the Borrower, copies of any letter or report with respect to the management, operations or properties of the Borrower submitted to the Borrower by the Accountant in connection with any annual or interim audit of the Borrower's accounts, and a copy of any written response of the Borrower to any such letter or report;

(c) As soon as possible and in any event within fifteen (15) days after receipt of notice thereof, written notice of any pending or threatened litigation, investigation or other proceeding involving the Borrower, the General Partner, the Guarantor or the Project Facilities; (i) which could have a material adverse effect on the operations or financial condition of the Borrower, the General Partner, the Guarantor or the Project Facilities; (ii) wherein the potential damages, in the reasonable judgment of the Borrower based upon the advice of counsel experienced in such matters, are not fully covered by the insurance policies maintained by the Borrower (except for the deductible amounts applicable to such

policies); or (iii) which challenges the exclusion from gross income of interest on the Bonds for purposes of federal income taxation;

(d) As soon as possible, notice of any material adverse change in the operations or financial condition of the Borrower the General Partner, the Guarantor or the Project Facilities;

(e) Upon delivery thereof by the Borrower, copies of any reports, certifications, financial information, compliance documents, rebate information, audits and all other items submitted by or on behalf of the Borrower to the Trustee or the Issuer;

(f) Not later than the Completion Date, the use of proceeds certificate set forth as Schedule 3 hereof and the attachments thereto;

(g) As and when required under the Land Use Restriction Agreement, the monthly compliance certificates, the annual copies of IRS Forms 8703 and other reports and notices required to be delivered under the Land Use Restriction Agreement;

(h) Upon receipt thereof by the Borrower, notice of the cancellation or expiration (without renewal or replacement) of any insurance required to be maintained by this Agreement;

(i) As soon as possible and in any event within fifteen (15) days after the occurrence of an Event of Default, a statement of the General Partner setting forth the details of such Event of Default and the action which the Borrower proposes to take with respect thereto;

(j) Contemporaneously with the delivery to the Trustee copies of any notices, reports or other information provided to the Trustee under the Bond Documents;

(k) Copies of IRS Forms 8609 as issued and received by the Borrower; and

(l) Such other information respecting the operations and properties, financial or otherwise, of the Borrower as the Majority Owner Representative may from time to time reasonably request.

#### Section 6.10 Tax-Exempt Status.

The Borrower covenants to take such action as is required of it so that the Bonds are, and to refrain from any action which would cause the Bonds to not be, obligations described in Section 103 of the Code, the interest on which is not includable in the "gross income" of the holder (other than the income of a "substantial user" of the Project or a "related person" within the meaning of Section 147(a) of the Code) for purposes of federal income taxation. In particular, but not by way of limitation thereof, the Borrower 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 Regulatory and Land Use Restriction 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 at each Project Site 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

(1) 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,

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

(3) 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) Allocation of, and Limitation on Expenditures for the Project. The Issuer and the Borrower covenant to account for the expenditure of sale proceeds and investment earnings to be used for the Project on its books and records by allocating proceeds to expenditures within 18 months of the later of the date that (1) the expenditure is made, or (2) the Project is completed. The foregoing notwithstanding, the Issuer and the Borrower shall not expend sale proceeds or investment earnings thereon more than 60 days after the later of (1) the fifth anniversary of the delivery of the Bonds, or (2) the date the Bonds are retired, unless the Issuer obtains an opinion of nationally-recognized bond counsel that such expenditure will not adversely affect the tax-exempt status of the Bonds. For purposes hereof, the Issuer and the Borrower shall not be obligated to comply with this covenant if it obtains an opinion that such failure to comply will not adversely affect the excludability for federal income tax purposes from gross income of the interest.

#### Section 6.11 Single Purpose Entities.

(a) The Borrower and the General Partner shall (i) not engage in any business or activity, other than the ownership, construction, operation and maintenance of the Project Facilities and activities incidental thereto; and (ii) not acquire, own, hold, lease, operate, manage, maintain, develop or improve any assets other than the Project Facilities and such personal property as may be necessary for

the operation of the Project Facilities and shall conduct and operate its business as presently conducted and operated.

(b) The Borrower and the General Partner shall (i) not maintain its assets in a way difficult to segregate and identify; (ii) ensure that business transactions between the Borrower and any Affiliate of the Borrower or any Affiliate of the General Partner shall be entered into upon terms and conditions that are substantially similar to those that would be available on an arms-length basis with a third Person other than the General Partner, or any respective Affiliate thereof; (iii) not incur or contract to incur any obligations, secured or unsecured, direct or contingent (including guaranteeing any obligation), other than, in the case of the Borrower, the Obligations evidenced by this Agreement and the other Bond Documents, the Reimbursement Documents and the Subordinate Loan Documents; (iv) not make any loans or advances to any third Person (including any Affiliate of the Borrower or the General Partner); (v) do or cause to be done all things necessary to preserve its existence; (vi) not amend, modify or otherwise change its partnership certificate, partnership agreement, articles of incorporation or bylaws without obtaining the prior written consent of the Controlling Person and the Majority Owner Representative except as necessary to effectuate or document Permitted Transfers; (vii) conduct and operate its business as presently conducted and operated; (viii) maintain its books and records and bank accounts separate from those of its Affiliates; (ix) be, and at all times shall hold itself out to the public as, a legal entity separate and distinct from any other Person (including any Affiliate); (x) file its own tax returns; (xi) 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 and in any event not less than that required under State law in order to remain a separate legal entity; (xii) not seek or consent to the dissolution or winding up, in whole or in part, of the Borrower or the General Partner; (xiii) not (A) consent to the dissolution or liquidation in whole or in part of the Borrower, or (B) permit the General Partner to dissolve, or (C) consent to the dissolution or liquidation of the General Partner; (xiv) not commingle the funds and other assets of the Borrower with those of the General Partner, any Affiliate thereof or any other Person; and (xv) not enter into any transaction with an Affiliate without the prior written consent of the Controlling Person and the Majority Owner Representative (it being understood that the Construction Contract and the Development Agreement have been approved by the Controlling Person and the Majority Owner Representative).

#### Section 6.12 Negative Pledge; No Sale.

(a) The Borrower will not create, incur, assume or permit to exist any mortgage, pledge, security interest, encumbrance or other Lien upon the Project Facilities or any property, tangible or intangible, now owned or hereafter acquired (including without limitation property leased to or being acquired by the Borrower under capital leases or installment sale agreements), by the Borrower (the sale with recourse of receivables or any “sale and lease back” of any fixed assets being deemed to be the giving of a lien thereon for money borrowed), other than Permitted Encumbrances.

(b) Other than Permitted Transfers and the making of residential leases, the Borrower shall not sell, assign, transfer, convey or otherwise dispose of the Project Facilities, or any part thereof, or permit or consent to a Sale without in each instance (i) obtaining the express prior written consent of the Controlling Person and the Majority Owner Representative, which consent may be withheld or granted (subject to the payment of such fees and the satisfaction of other conditions as set forth in Section 1.12 of the Mortgage) in the Controlling Person’s and the Majority Owner Representative’s sole and absolute discretion; and (ii) complying with the applicable requirements of the Land Use Restriction Agreement.

Section 6.13 Payment of Indebtedness; Accounts Payable; Restrictions on Indebtedness.

(a) The Borrower will pay, discharge or otherwise satisfy at or before maturity or before they become delinquent, as the case may be, all of the Borrower's Obligations under the Ground Lease, the Bond Documents, the Construction Disbursement Agreement, the Series A Bond Documents and all of its other Obligations, whether now existing or hereafter arising, and comply with all covenants and agreements set forth in agreements evidencing Obligations of the Borrower.

(b) The Borrower shall pay or cause to be paid the Expenses, and capital expenditures and its other accounts payable with respect to and costs of operation and maintenance of the Project Facilities within thirty (30) days of receipt of an invoice therefor, or when the same shall otherwise be due and payable. The Borrower shall make no distribution of funds to its partners unless no Event of Default exists, such distribution is in accordance with the provisions of the Partnership Agreement, and all current accounts payable shall have been paid and funds shall have been set aside for the payment of accounts payable becoming due within thirty (30) days of said distribution.

(c) Without obtaining the prior written consent of the Controlling Person and the Majority Owner Representative, the Borrower will not create, incur, assume, guarantee or be or remain liable for any Obligations other than (i) Indebtedness under the Bond Documents, the Reimbursement Documents and the Series A Bond Documents; and (ii) current liabilities of the Borrower relating to the Project Facilities incurred in the ordinary course of business but not incurred through the borrowing of money or obtaining of credit.

Section 6.14 Environmental Covenants.

(a) The Borrower will cause all activities at the Project Facilities during the term of this Agreement to be conducted in full compliance with all applicable Environmental Laws. The Borrower will obtain all Governmental Actions and will make all notifications, as required by Environmental Laws, and will, at all times, comply with the terms and conditions of any such Governmental Actions or notifications. During the term of this Agreement, if requested by the Controlling Person, the Borrower will provide to the Controlling Person and the Majority Owner Representative copies of (i) applications or other materials submitted to any Governmental Authority in compliance with Environmental Laws, (ii) any notifications submitted to any Person pursuant to Environmental Laws, (iii) any Governmental Action granted pursuant to Environmental Laws, (iv) any record or manifest required to be maintained pursuant to Environmental Laws, and (v) any correspondence, notice of violation, summons, order, complaint or other document received by the Borrower, its lessees, sub-lessees or assigns, pertaining to compliance with any Environmental Laws.

(b) The Borrower will, at all times during the term of this Agreement, cause Hazardous Substances used at the Project Facilities to be handled, used, stored and disposed in accordance with all Environmental Laws and in a manner which will not cause an undue risk of Contamination.

(c) The Borrower will cause all construction of new structures at the Project Facilities during the term of this Agreement to use design features which safeguard against or mitigate the accumulation of radon or radon products in concentrations exceeding the Environmental Protection Agency's recommended threshold of 4.0pCi/L.

(d) The Borrower shall not install or permit to be installed any temporary or permanent tanks for storage of any liquid or gas above or below ground, except after obtaining written permission from the Controlling Person to do so and in compliance with Environmental Laws.

(e) The Borrower shall implement a moisture management and control program (the “Moisture Management Program”) for the Improvements at the Project Facilities to prevent the occurrence of mold, dangerous fungi, bacterial or microbial matter contamination or pathogenic organisms that reproduces through the release of spores or the splitting of cells (collectively, “Mold”), at, on or under the Project Facilities, which Moisture Management Program shall include, at a minimum: (a) periodic inspections of the Improvements at the Project Facilities for Mold, (b) removing or cleaning up any Mold and in a manner consistent with best industry practices and utilizing an experienced remediation contractor acceptable to and approved by the Controlling Person, and (c) in the event that the Mold identified at the Improvements at the Project Facilities cannot be removed or cleaned from any impacted building materials (e.g., porous materials such as carpeting, certain types of ceiling materials, etc.) and/or equipment, removing all such impacted building materials and/or equipment from the Project Facilities, all in accordance with the procedures set forth in the United States Environmental Protection Agency’s (“EPA”) guide entitled “Mold Remediation in Schools and Commercial Buildings”, EPA No. 402-K-01-001, dated March 2001 and in a manner consistent with best industry practices and utilizing an experienced remediation contractor acceptable to and approved by the Controlling Person. The Borrower shall include as part of every residential lease a Mold/Mildew Addendum in the form attached hereto as Exhibit C. The Borrower further covenants and agrees that, in connection with any mold remediation undertaken by or on behalf of the Borrower hereunder, the source (e.g., leaking pipe, water damage, water infiltration, etc.) of any Mold at the Improvements at the Project Facilities shall be promptly identified and corrected to prevent the occurrence or re-occurrence of any Mold.

(f) Upon the occurrence of an Event of Default, or if the Controlling Person has reason to believe that there has occurred and is continuing a violation of Environmental Law or that there exists a condition that could give rise to any Governmental Action, the Controlling Person may, at its discretion, commission an investigation at the Borrower’s expense of (i) compliance at the Project Facilities with Environmental Laws, (ii) the presence of Hazardous Substances or Contamination at the Project Facilities, (iii) the presence at the Project Facilities of materials which are described in clause (b) of Section 5.12, (iv) the presence at the Project Facilities of Environmentally Sensitive Areas, (v) the presence at the Project Facilities of radon products, (vi) the presence at the Project Facilities of tanks of the type described in paragraph (e) of Section 5.12 or in paragraph (d) of Section 6.14 above, or (vii) the presence of Mold at the Project Facilities. In connection with any investigation pursuant to this paragraph, the Borrower, and its lessees, sub-lessees and assigns, will comply with any reasonable request for information made by the Controlling Person or its agents in connection with any such investigation. Any response to any such request for information will be full and complete. The Borrower will assist the Controlling Person and its agents to obtain any records pertaining to the Project Facilities or to the Borrower and the lessees, sub-lessees or assigns of the Borrower in connection with an investigation pursuant to this paragraph. The Borrower will permit the Controlling Person and its agents access to all areas of the Project Facilities at reasonable times and in reasonable manners in connection with any investigation pursuant to this paragraph. No investigation commissioned pursuant to this paragraph shall relieve the Borrower from any responsibility for its representations and warranties under Section 5.12 hereof or under the Environmental Indemnity Agreement.

(g) In the event of any Contamination affecting the Project Facilities, whether or not the same originates or emanates from the Project Facilities or any contiguous real estate, or if the Borrower otherwise shall fail to comply with any of the requirements of Environmental Laws, the Controlling Person may, at its election, but without the obligation so to do, give such notices, cause such work to be performed at the Project Facilities and take any and all other actions as the Controlling Person shall deem necessary or advisable in order to remedy said Contamination or cure said failure of compliance and any amounts paid as a result thereof, together with interest thereon at the Default Rate from the date of payment by the Controlling Person, shall be immediately due and payable by the Borrower and until paid shall be added to and become a part of the Indebtedness and shall have the

benefit of the lien hereby created as a part thereof prior to any right, title or interest in or claim upon the Project Facilities attaching or accruing subsequent to the lien of the Mortgage on the Project Facilities.

Section 6.15 Majority Owner Representative. The Borrower acknowledges and agrees that (i) the Majority Owner has the sole and exclusive right to arrange for servicing of the Note and to appoint another person or entity to serve as its representative hereunder, under the other Bond Documents and under the Indenture; (ii) the Majority Owner has appointed JPMorgan Chase Bank, N.A. to serve in the capacity of Majority Owner Representative hereunder, under the other Bond Documents, and under the Indenture; (iii) the Majority Owner Representative shall also serve as the Controlling Person hereunder, under the other Bond Documents and under the Indenture; and (iv) the Majority Owner retains the sole and exclusive right to appoint, remove or replace the Majority Owner Representative, without the consent or approval of the Borrower. The Borrower shall comply with the directions of the Majority Owner Representative made on behalf of the Majority Owner.

Section 6.16 Tax Returns. The General Partner will timely file all tax returns for itself and for the Borrower, pay or cause to be paid when due all taxes imposed on their operations, assets, income or properties, and, upon request, provide to the Controlling Person and the Majority Owner Representative copies of such returns and receipts for payment of such taxes.

Section 6.17 Leases. The Borrower hereby represents that there are no leases or agreements to lease all or any part of the Project Facilities now in effect. Except for the Ground Lease and leases to residential tenants in compliance with the Land Use Restriction Agreement and leases for services associated with residential rental properties (such as laundry and cable lease), the Borrower shall not enter into or become liable under, any leases or agreements to lease all or any part of the Project Facilities without the prior written approval thereof and of the prospective tenant by the Controlling Person and the Majority Owner Representative. Each lease of residential units in the Project Facilities to a residential tenant shall be on a form of lease approved by the Controlling Person and the Majority Owner Representative and shall be in compliance with the requirements of the Land Use Restriction Agreement.

Section 6.18 Further Assurances. The Borrower will promptly and duly execute, acknowledge and deliver from time to time such further instruments and take such further actions as may be reasonably required by the Issuer, the Trustee, the Controlling Person or the Majority Owner Representative to carry out the purposes and provisions of this Agreement and the other Bond Documents, to confirm the priority and/or perfection of any lien, pledge, assignment or security interest created or intended to be created by this Agreement and to assure the Controlling Person and the Majority Owner Representative of the subrogation and security rights in favor of the Trustee for the benefit of the Holders of the Bonds contemplated by this Agreement, by the other Bond Documents and by the Indenture.

Section 6.19 Management Agreement. The Borrower has entered into a property management agreement in a form approved by the Controlling Person and the Majority Owner Representative with the Manager (together with any extension and replacements thereof and as the same may be amended, modified or supplemented from time to time the "Management Agreement"). Under the Management Agreement, the Manager shall provide certain management services and shall be entitled to receive as compensation for those services an amount not in excess of three and one half percent (3.50%) of the gross income received from the Project Facilities on account of rents, service fees, late charges and penalties and other charges received under leases. Any amounts due the Manager in excess of three and one half percent (3.50%) of such gross revenue shall be subordinated to the payment by the Borrower of all principal of and interest due on the Bonds, all Third Party Costs, all required deposits into the Accounts and all other amounts identified in the Consent to Assignment of the Management Agreement. The Borrower shall not replace the Manager for the Project Facilities without the Controlling Person's and the Majority Owner Representative's prior written approval, and except for cause, the Management

Agreement shall not be terminated or modified without the Controlling Person's and the Majority Owner Representative's prior written approval, which shall not be unreasonably withheld, conditioned or delayed. In the event the Manager resigns or is removed, the Borrower shall promptly seek a replacement Manager and submit such Manager and its proposed form of Management Agreement to the Controlling Person and the Majority Owner Representative for approval; if the Borrower has not done so within thirty (30) days of becoming aware of such resignation or removal, the Controlling Person and the Majority Owner Representative may (but shall not be required to) engage a new Manager on terms satisfactory to the Controlling Person and the Majority Owner Representative in their sole discretion and at the expense of the Borrower. The sole and exclusive compensation (exclusive of reimbursement for expenses pursuant to the applicable Management Agreement) paid to manage the Project Facilities under the Management Agreement shall be as described in this Section 6.19. The Borrower shall have no employees whatsoever. The Manager shall execute a consent to the Assignment of the Management Agreement pursuant to which the Manager shall confirm the subordination provisions described above and agree that the Management Agreement shall be terminable by the Controlling Person, with or without cause, on thirty (30) days' notice following and during the existence of an Event of Default.

Section 6.20 Determination of Taxability. Neither the Borrower nor the General Partner shall admit in writing to the Issuer or the Trustee or to any Governmental Authority that interest on the Bonds has become includable in gross income for purposes of federal income taxation without first providing reasonable advance notice to the Issuer, the Controlling Person and the Majority Owner Representative and permitting the Controlling Person and the Majority Owner Representative, at their sole discretion and at their expense, to contest such conclusion. Promptly after the Borrower first becomes aware of any Determination of Taxability or an event that could trigger a Determination of Taxability, the Borrower shall give written notice thereof to the Issuer, the Trustee, the Controlling Person, the Majority Owner Representative and the Majority Owner.

Section 6.21 List of Bondholders. Upon the written request of the Controlling Person or the Majority Owner Representative, the Borrower shall exercise any right it may have under the Indenture to request a list of Bondholders and shall deliver such list to the Controlling Person or the Majority Owner Representative, as the case may be. Any costs associated with obtaining the list of Bondholders at the Controlling Person's or the Majority Owner Representative's request shall be paid by the requesting party.

Section 6.22 Use of Proceeds. The Borrower agrees that the proceeds of the Bonds will be allocated exclusively to pay Project Costs and that, for the greatest possible number of buildings, the Bonds proceeds will be allocated to the Project Facilities and the land on which the Project Facilities are located, so that the Project Facilities and the land on which it is located will have been financed fifty percent (50%) or more by the proceeds of the Bonds for the purpose of complying with Section 42(h)(4)(B) of the Code. Upon Final Completion, the Borrower will deliver a use of proceeds certificate in the form attached hereto as Schedule 3, accompanied by a schedule showing how proceeds of the Bonds and the Series 2017A Bonds were spent.

Section 6.23 Compliance With Anti-Terrorism Regulations. Neither the Borrower, the General Partner nor any Person holding any legal or beneficial interest whatsoever in the Borrower shall at any time during the Term be described in, covered by or specially designated pursuant to or be affiliated with any Person described in, covered by or specially designated pursuant to Executive Order 13224 — Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism, as amended, or any similar list issued by OFAC or any other department or agency of the United States of America. Notwithstanding the foregoing, the Borrower and the General Partner hereby each confirm that if it becomes aware or receives any notice of any violation of the foregoing covenant and agreement (an "OFAC Violation"), the Borrower or the General Partner, as

applicable, will immediately (i) give notice to the Controlling Person and the Majority Owner Representative of such OFAC Violation, and (ii) comply with all Legal Requirements applicable to such OFAC Violation, including, without limitation, Executive Order 13224; the International Emergency Economic Powers Act, 50 U.S.C. Sections 1701-06; the Iraqi Sanctions Act, Pub. L. 101-5 13, 104 Stat. 2047-55; the United Nations Participation Act, 22 U.S.C. Section 287c; the Antiterrorism and Effective Death Penalty Act, (enacting 8 U.S.C. Section 219, 18 U.S.C. Section 2332d, and 18 U.S.C. Section 2339b); the International Security and Development Cooperation Act, 22 U.S.C. Section 2349 aa-9; the Terrorism Sanctions Regulations, 31 C.F.R. Part 595; the Terrorism List Governments Sanctions Regulations, 31 C.F.R. Part 596; and the Foreign Terrorist Organizations Sanctions Regulations, 31 C.F.R. Part 597 (collectively, the “Anti-Terrorism Regulations”), and the Borrower and the General Partner hereby authorize and consent to the Controlling Person’s taking any and all reasonable steps the Controlling Person deems necessary, in its sole discretion, to comply with all Legal Requirements applicable to any such OFAC Violation, including the requirements of the Anti-Terrorism Regulations. Notwithstanding anything to the contrary in this Section, the Borrower shall not be deemed to be in violation of the covenants and agreements set forth in the first sentence of this Section if the Borrower timely complies with all requirements imposed by the foregoing sentence and all requirements of the Antiterrorism Regulations and all other applicable Legal Requirements relating to such OFAC Violation.

Section 6.24 Adoption of Capital and Operating Budgets.

(a) On or before December 1 of each Fiscal Year commencing December 1, 2018, the Borrower shall submit to the Controlling Person for approval a proposed capital and operating budget with respect to the Project Facilities to be effective for the next following Fiscal Year (the “Proposed Budget”). The Controlling Person shall have the right to approve or disapprove any Proposed Budget, which approval shall not be unreasonably withheld or delayed. Third party costs not within the Borrower’s control and costs associated with remediation of emergency conditions shall be permitted variances to the Annual Budget. If any Proposed Budget is not disapproved by the Controlling Person within thirty (30) days following submission by the Borrower, such budget shall be deemed approved. If any budget is disapproved, the Borrower shall thereafter consult with the Controlling Person in an effort to achieve a mutually acceptable Annual Budget for an additional thirty (30) days. To the extent the proposed operating budget is disapproved, the operating budget for the previous Fiscal Year shall remain in effect increased by five percent (5%) over the previous Fiscal Year (except for costs of utilities, Impositions and insurance and other third-party costs or cost associated with remediation of emergency conditions which shall be permitted variances to the Proposed Budget) until the parties resolve their differences. In addition to, and not in limitation of the foregoing, each Annual Budget may be revised from time to time with approval of Controlling Person to reflect changes to Expenses and proposed Capital Expenditures set forth in the then-current Annual Budget.

(b) Without limiting the generality that each Proposed Budget must be approved by the Controlling Person, each Proposed Budget:

- (i) shall be prepared on the basis of sound accounting practices consistently applied;
- (ii) shall reflect all amounts projected to be deposited in the Replacement Reserve Fund and the projected revenues and Expenses of the Project Facilities;
- (iii) shall reflect all projected Capital Expenditures which are reasonably expected to be made in connection with the Project Facilities during the Fiscal Year covered by such Proposed Budget; and

(iv) shall be in such form as is reasonably acceptable to the Controlling Person and containing such other information as reasonably may be requested by the Controlling Person.

Section 6.25 Borrower's Approval of Indenture. The Borrower understands that the Issuer will, pursuant to the Indenture and as security for the payment of the principal of, premium, if any, and the interest on the Bonds, assign and pledge to the Trustee, and create a security interest in favor of the Trustee in certain of its rights, title and interest in and to this Agreement (including all payments hereunder) reserving, however, the Reserved Rights; and the Borrower hereby agrees and consents to such assignment and pledge. The Borrower acknowledges that it has received a copy of the Indenture for its examination and review. By its execution of this Agreement, the Borrower acknowledges that it has approved, has agreed to and is bound by the applicable provisions of the Indenture. The Borrower agrees that the Trustee shall be entitled to enforce and to benefit from the terms and conditions of this Agreement that relate to it notwithstanding the fact that it is not a signatory hereto.

Section 6.26 Conditions Precedent; Payment of Certain Fees, Deposits and Expenses. On the date of execution and delivery hereof, (a) the Issuer shall have received, in immediately available funds, the amount equal to the fees set forth in Section 2.2(a) hereof, (b) the Majority Owner Representative shall have received, in immediately available funds, the amount equal to the fees of the Engineering Consultant set forth in Section 2.2(b) hereof incurred as of the date of the execution and delivery hereof, and (c) the Trustee shall have received the deposits required to be made in the Accounts on such date pursuant to Article 8 hereof.

Section 6.27 Additional Conditions Precedent. The rights of the Borrower to draw the initial advance of funds from the Project Fund shall be subject to the conditions precedent set forth in the Reimbursement Agreement.

Section 6.28 Reserved.

Section 6.29 Construction of Improvements. The Borrower shall construct the Project Facilities in a true, thorough and workmanlike manner and substantially in accordance with the Plans and Specifications and in compliance with all applicable Governmental Actions and Legal Requirements. The Borrower shall provide, at the Borrower's expense all manner of materials, labor, implements and cartage of every description for the due completion of construction of the Project Facilities. The Borrower shall take all necessary steps to assure that commencement of construction of the Project Facilities shall begin within thirty (30) days following the Issue Date, shall proceed continuously and diligently and in a commercially reasonable manner, and shall be completed lien free in a timely manner substantially in accordance with the Plans and Specifications and in all instances in compliance with all applicable Governmental Actions and Legal Requirements, on or before the Completion Date, subject to delays caused by a Force Majeure, but not beyond the deadline for Final Completion.

Section 6.30 Evidence of Payment of Costs. If requested by the Controlling Person, the Borrower shall furnish, before each advance agreed to be made and on completion of construction, all receipted bills, certificates, affidavits, conditional releases of lien and other documents which may be reasonably required by the Controlling Person, as evidence of full payment for all labor and materials incident to the construction of the Project Facilities for each requested draw with copies of unconditional releases of lien from each prior draw and will promptly secure the release of the Project Facilities from all liens by payment thereof or transfer to bond or other security.

Section 6.31 Correction of Deficiencies in Improvements. The Borrower agrees that it will correct any work performed and replace any materials that do not comply with the Plans and



Specifications in any material respect. In the event of any dispute between the Borrower and the Controlling Person with respect to the interpretation and meaning of the Plans and Specifications, the same shall be determined by an independent engineer selected by the Borrower from the list of engineers approved by Controlling Person.

Section 6.32 Sufficiency of Loan Proceeds. If, for any reason, the Controlling Person shall, in the reasonable exercise of the Controlling Person's judgment, determine that the combined total of (i) the remaining proceeds of the Loan, and (ii) any other sums on deposit by the Borrower with the Trustee and the capital contributions from Borrower's partners are insufficient to complete construction of the Project Facilities, the Controlling Person may require the Borrower to deposit with the Trustee for deposit into the Project Fund, within ten (10) days after written request by the Controlling Person, the projected deficiency with the Trustee, and such deposit shall be first disbursed in the same manner as the Loan is to be disbursed as provided herein before any further disbursements of the proceeds of the Loan shall be made.

Section 6.33 Use of Loan Proceeds. All labor and materials contracted for and in connection with the construction of the Project Facilities shall be used and employed solely for the Improvements and in said construction and only in accordance with the Plans and Specifications. Moneys disbursed from Accounts held under the Indenture to or for the account of the Borrower shall constitute a trust fund in the hands of the Borrower or other payee and shall be used solely by such payee for the payment of the Qualified Project Costs and for no other purpose unless another use is specifically provided for in this Agreement or consented to in writing by the Controlling Person. Nothing in this Section 6.33 shall be deemed to impose a trust on the undisbursed portion of the Loan or any other amounts held under the Indenture or to impose any duty on the Controlling Person with respect thereto. Upon Final Completion, the Borrower shall deliver a use of proceeds certificate in the form attached hereto as Schedule 6, accompanied by a schedule showing how proceeds of the Loan and the loan proceeds of the Series A Bonds were spent.

Section 6.34 Non-discrimination. 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 Facilities or in connection with the employment or application for employment of persons for the operation or management for the Project Facilities.

## **ARTICLE 7 DEFAULTS AND REMEDIES**

Section 7.1 Defaults. Each of the following shall constitute an event of default hereunder ("Event of Default"):

(a) Failure by the Borrower to pay any amount required to be paid by the Borrower under this Agreement, the Note or any of the other Bond Documents when the same shall become due and payable;

(b) Failure by the Borrower to perform or comply with any of the terms or conditions contained in Section 6.1, 6.11 or 6.12 hereof;

(c) Other than as described in any other subsection of this Section 7.1, Failure by the Borrower to perform or comply with any of the terms or conditions contained in this Agreement and any of the other Bond Documents to which the Borrower is a party and continuation of such failure for thirty (30) days after written notice from the Trustee or the Controlling Person to the Borrower, or such longer period to which the Controlling Person may agree in the case of a default not curable by the exercise of

due diligence within such thirty (30) day period, if the Borrower, the General Partner or the Tax Credit Investor shall have commenced a cure of such default within such thirty (30) day period and shall be diligently pursuing such cure as quickly as reasonably possible;

(d) Any of the representations or warranties of the Borrower set forth in this Agreement, any of the other Bond Documents or any other document furnished to the Issuer, the Trustee, the Controlling Person, the Majority Owner Representative or the Majority Owner pursuant to the terms hereof proves to have been false or misleading in any material respect when made;

(e) Any provision of this Agreement or any of the other Bond Documents to which the Borrower, the General Partner or any Guarantor is a party for any reason ceases to be valid and binding on the Borrower the General Partner or any Guarantor, or is declared to be null and void, or is violative of any applicable Legal Requirement relating to a maximum amount of interest permitted to be contracted for, charged or received, or the validity or enforceability thereof is contested by the Borrower, the General Partner or any Guarantor or any Governmental Authority, or the Borrower, the General Partner or any Guarantor denies that it has any or further liability or obligation under this Agreement or any of the Bond Documents to which the Borrower, the General Partner or any Guarantor is a party;

(f) The occurrence of an Event of Default as defined in the Indenture, the other Bond Documents or the Series A Bond Documents or an act or event (or failure to act or non-occurrence of an act) which, with the passage of time, the giving of notice or both, would constitute an Event of Default under and as defined in the Indenture, the other Bond Documents or the Series A Bond Documents;

(g) The Borrower, any Guarantor or the General Partner (i) applies for or consents to the appointment of a receiver, trustee, liquidator or custodian or the like of the Borrower, any Guarantor or the General Partner, as applicable, or of property of any such party or (ii) admits in writing the inability of the Borrower, any Guarantor or the General Partner to pay its debts generally as they become due, or (iii) makes a general assignment for the benefit of creditors, (iv) is adjudicated bankrupt or insolvent, (v) commences a voluntary case under the Bankruptcy Code or files a voluntary petition or answer seeking reorganization, an arrangement with creditors or an order for relief or seeking to take advantage of any insolvency law or files an answer admitting the material allegations of a petition filed against the Borrower, any Guarantor or the General Partner in any bankruptcy, reorganization or insolvency proceeding, or action of the Borrower, any Guarantor or the General Partner is taken for the purpose of effecting any of the foregoing, or (vi) has instituted against it, without the application, approval or consent of the Borrower, any Guarantor or the General Partner, as applicable, a proceeding in any court of competent jurisdiction, under any Legal Requirements relating to bankruptcy, insolvency, reorganization or relief of debtors, seeking in respect of the Borrower, any Guarantor or the General Partner an order for relief or an adjudication in bankruptcy, reorganization, dissolution, winding up or liquidation, a composition or arrangement with creditors, a readjustment of debts, the appointment of a trustee, receiver, liquidator or custodian or the like of the Borrower, any Guarantor or the General Partner or of all or any substantial part of the assets of such party or other like relief in respect thereof under any Legal Requirements relating to bankruptcy or insolvency law, and, if such proceeding is being contested by the Borrower, such Guarantor or the General Partner, as applicable, in good faith, the same (A) results in the entry of an order for relief or any such adjudication or appointment or (B) remains undismissed and undischarged for a period of ninety (90) days;

(h) The Borrower fails to maintain in full force and effect any insurance required pursuant to this Agreement;

(i) The Project Facilities suffer a loss by fire or other casualty and such loss is not fully insured and any deficiency in the amount of insurance proceeds paid with respect to such loss is not posted with the Trustee within thirty (30) days of the determination of such deficiency;

(j) The Project Facilities fail (i) to achieve Final Completion on or before the Completion Date, or (ii) to achieve Stabilization on or before the Stabilization Date;

(k) Any litigation or administrative proceeding ensues, and is not dismissed within thirty (30) days, involving the Borrower, the General Partner, any Guarantor or any instrument, contract or document delivered by the Borrower to the Controlling Person or the Trustee in compliance with this Agreement, and the adverse result of such litigation or proceeding would have, in the Controlling Person's reasonable opinion, a materially adverse effect on the Borrower's, the General Partner's or any Guarantor's ability to pay its obligations and comply with the covenants under this Agreement or any of the other Bond Documents;

(l) Any one or more judgments or orders are entered against the Borrower, any Guarantor or the General Partner, and (1) continue unsatisfied and unstayed for thirty (30) days or (2) a judgment lien on any property of the Borrower is recorded in respect thereof and is not stayed pending appeal by a bond or other arrangement given or obtained by the Borrower, such Guarantor or the General Partner on terms which do not violate any of the Borrower's covenants under this Agreement; and

(m) Failure by the Borrower (1) to make any payment or payments in respect of any Obligation or Indebtedness (unless a bona fide dispute exists as to whether such payment is due), when such payment or payments are due and payable (after the lapse of any applicable grace period), (2) to perform any other obligation or covenant under any such obligation or obligations, or (3) to pay or perform any obligation or covenant under any Material Contract, any of which (x) results in the acceleration of such Obligation or Indebtedness or enables the holder or holders of such Obligation or Indebtedness or any person acting on behalf of such holder or holders to accelerate the maturity of such obligation or (y) would have, in the Controlling Person's reasonable opinion, a materially adverse effect on the Borrower's ability to pay its obligations and comply with the covenants under this Agreement or any of the other Bond Documents.

Notwithstanding the foregoing, if any Event of Default described in paragraphs (g), (k) or (l) of Section 7.1 is caused solely by the action of a Guarantor, then so long as no other Default or Event of Default exists under the Bond Documents, the Controlling Person shall not direct the Trustee to declare an Event of Default or pursue remedies hereunder for a period of an additional thirty (30) days, during which period the Borrower or the Tax Credit Investor shall have the option to cure such Event of Default to the satisfaction of the Controlling Person and Majority Owner Representative, or to provide a replacement guarantor, which replacement guarantor shall be acceptable to the Controlling Person and the Majority Owner Representative in their sole discretion.

Section 7.2 Remedies. If an Event of Default has occurred and is continuing uncured, the Trustee, subject to the provisions of the Intercreditor Agreement and the Indenture, shall:

(a) Acting solely at the written direction of the Majority Owner Representative, declare the principal of all Bonds then Outstanding and the interest accrued thereon to be due and payable; and

(b) Acting solely at the written direction of the Majority Owner Representative, declare the Borrower's obligations hereunder, under the Note and under the other Bond Documents to be, whereupon the same shall become, immediately due and payable, provided, no such declaration shall be

required, and acceleration shall be automatic, upon occurrence of an event set forth in Section 7.1(g) hereof; and

(c) **[Reserved].**

(d) Acting solely at the written direction of the Controlling Person, enter upon the Project Facilities and take possession thereof, together with the Improvements in the course of construction or completed, and all of the Borrower's materials, supplies, tools, equipment and construction facilities and appliances located thereon, and proceed either in the name of the Trustee or in the name of the Borrower as the attorney-in-fact of the Borrower (which authority is coupled with an interest and is irrevocable by the Borrower) as the Controlling Person shall elect, to complete the construction of the Improvements at the cost and expense of the Borrower; if the Controlling Person elects to complete or cause the construction of the Improvements to be so completed, it may do so according to the terms of the Plans and Specifications and the Controlling Person shall deem expedient or necessary, and the Trustee may enforce or cancel all contracts entered into as aforesaid or make other contracts which in the Controlling Person's reasonable opinion may seem advisable, and the Borrower shall be liable, under this Agreement or under the Note or any other note given by it pursuant to the provisions hereof, to pay the Trustee upon demand any amount or amounts expended by the Trustee or its representatives for such performance, together with any costs, charges or expenses incident thereto or otherwise incurred or expended by the Trustee or its representatives on behalf of the Borrower in connection with the Improvements, and the amounts so expended shall bear interest at the default rate specified in the Note, and shall be considered part of the indebtedness evidenced by the Note and secured by the Mortgage; and

(e) Acting solely at the written direction of the Controlling Person, (1) enter upon or take possession of the Project Facilities and call upon or employ suppliers, agents, managers, maintenance personnel, security guards, architects, engineers and inspectors to complete, manage or operate the Project Facilities or to protect the Project Facilities from injury; (2) pay out additional sums (which sums shall be immediately due and payable by the Borrower to the Trustee) and use any property of the Borrower associated with the Project Facilities, or any property of the Borrower in which the Trustee has or obtains an interest for application to or as a reserve for payment of any or all of the following with respect to the protection, management, operation or maintenance of the Project Facilities or the protection of the Trustee's interest therein, and in such connection deliver or disburse the same to such entities in such amounts and with such preferences and priorities as the Controlling Person in its sole discretion shall determine, either with or without vouchers or orders executed by any of the Borrower: (A) all sums due from the Borrower to the Trustee; (B) premiums and costs of title and any other insurance; (C) leasing fees and brokerage or sales commissions; (D) fees, costs and expenses of the Trustee and its counsel in connection with the enforcement and performance of this Agreement, the other Bond Documents and the other documents contemplated hereby; (E) any taxes (including federal, state and local taxes) or other governmental charges; (F) any sums required to indemnify and hold the Trustee harmless from any act or omission of the Trustee (except such as are grossly negligent or due to its willful misconduct) under Section 2.5 hereof, the other Bond Documents or any other document; (G) architectural and engineering costs or any sums due to contractors, subcontractors, mechanics or materialmen for work or services actually furnished on or for the Project Facilities; (H) claims of any Governmental Authority for any required withholding of taxes on wages payable or paid by any of the Borrower; and (I) other costs and expenses which are required to complete, manage or operate the Project Facilities or to protect the Project Facilities from injury or maintain the Trustee's security position before the rights of all others; (3) place additional encumbrances upon the Project Facilities; and (4) employ leasing and sales agents and negotiate and execute leases, sales contracts and financing undertakings in connection with all or any part of the Project Facilities; and

(f) Acting solely at the written direction of the Controlling Person, subject to all Legal Requirements, require the Borrower to transfer all security deposits to the Trustee; and

(g) Acting solely at the written direction of the Controlling Person, exercise, or cause to be exercised, any and all such remedies as it may have under this Agreement, the other Bond Documents or at law or in equity.

The Trustee shall not take any action upon the occurrence of an Event of Default unless such action is at the written direction of the Controlling Person, except any action under Section 6.2 of the Indenture and Sections 7.2(a) and 7.2(b) of this Agreement upon the written direction of the Majority Owner and otherwise in accordance with the Intercreditor Agreement.

Before taking any action required hereunder which may require the Trustee to incur costs, expend its own funds or expose it to risk, the Trustee may require security or indemnification satisfactory to it for the reimbursement of all costs, expenses or liabilities it incurs in connection with such action.

Section 7.3 No Waivers; Consents. No waiver of, or consent with respect to, any provision of this Agreement shall in any event be effective unless the same shall be in writing and signed by the Trustee at the direction of the Controlling Person (or by the Issuer if the same relates to Reserved Rights), and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which it was given.

Section 7.4 No Waiver; Remedies Cumulative. No failure on the part of the Issuer, the Trustee, the Controlling Person or any Bondholder to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof; and no single or partial exercise of any right hereunder shall preclude any other or further exercise thereof or the exercise of any other right. The remedies herein provided are cumulative and not exclusive of any remedies available under any other document or at law or in equity.

Section 7.5 Set-Off. Upon the occurrence and during the continuation of an Event of Default hereunder (provided that the Trustee and Controlling Person shall have no obligation to accept a cure of any Event of Default), the Trustee is hereby authorized at any time and from time to time without notice to the Borrower or the General Partner (any such notice being expressly waived by the Borrower and the General Partner) and, to the fullest extent permitted by applicable Legal Requirements, to set off and to apply any and all balances, credits, deposits (general or special, time or demand, provisional or final), accounts or moneys at any time held (including any amounts in the Accounts except for the Rebate Fund and the Tax and Insurance Escrow Fund) and other indebtedness at any time owing by the Issuer to or for the account of the Borrower against any and all of the obligations of the Borrower now or hereafter existing under this Agreement, the Bond Documents or any other agreement or instrument delivered by the Borrower to the Issuer in connection therewith, whether or not the Issuer shall have made any demand hereunder or thereunder and although such obligations may be contingent or unmatured. The rights of the Issuer under this Section are in addition to other rights and remedies (including, without limitation, other rights of set-off) which the Issuer may have.

Section 7.6 Issuer and Borrower to Give Notice of Default. The Issuer and the Borrower severally covenant that they will, at the expense of the Borrower, promptly give to the Trustee, the Controlling Person, the Majority Owner Representative, the Tax Credit Investor and to the Class B LP, and to each other written notice of the occurrence of any Event of Default under this Agreement, and any act, event or circumstance which, with the passage of time, or notice, or both, would constitute such an Event of Default of which they shall have actual knowledge or written notice, but the Issuer shall not be liable for failing to give such notice.

Section 7.7 Cure by Limited Partners. Notwithstanding anything to the contrary contained herein, the Issuer hereby agrees that any timely cure of any default made or tendered by the Tax Credit Investor and/or Special Limited Partner and/or the Class B LP shall be deemed to be a cure by the Borrower, and shall be accepted or rejected on the same basis as if made or tendered by the Borrower; provided, however, that neither the Tax Credit Investor, Special Limited Partner nor the Class B LP shall have any obligation or duty to take any action to cure any default or to cause any default to be cured.

Section 7.8 Default Rate; Acceleration Premium. In the event there shall have occurred an acceleration of the obligations of the Borrower hereunder following an Event of Default on or before [\_\_\_\_], 2018, any tender of payment of an amount necessary to satisfy the indebtedness evidenced by this Agreement shall include the acceleration premium set forth in Section 2.3(c) hereof. In addition, in the event that principal or interest payable hereunder is not paid when due, there shall be payable on the amount not timely paid, interest at the Default Rate until the unpaid amount, together with interest thereon, shall have been paid in full.

Section 7.9 Reserved Rights; Regulatory Agreement Defaults.

(a) Notwithstanding anything to the contrary contained herein, the Issuer may enforce its Reserved Rights under the Bond Documents and exercise the permitted remedies with respect thereto against the Borrower, subject to the provisions of subparagraph (c) below and subject to the Intercreditor Agreement.

(b) If there shall have occurred and be then continuing an event of default under the Land Use Restriction Agreement which would, in the reasonable judgment of the Issuer or the Trustee, jeopardize the exclusion from gross income of interest on the Bonds (a “Regulatory Agreement Default”) and such Regulatory Agreement Default remains uncured or unwaived for a period of sixty (60) days after the Borrower, the Controlling Person and the Majority Owner Representative receive written notice from the Trustee or the Issuer stating that a Regulatory Agreement Default has occurred and specifying the nature of such default, then, if authorized by the Bond Documents, the Issuer and the Trustee may, without the Controlling Person’s or the Majority Owner Representative’s consent, exercise the remedy of pursuing specific performance of the Bond Documents on account of such default, unless:

(i) The Issuer and the Trustee, prior to the end of such sixty (60) day period, are provided with an Opinion of Bond Counsel to the effect that the failure to cure such default will not have an adverse effect on the exclusion from gross income for federal income tax purposes of interest on the Bonds (which opinion may be requested and obtained by the Controlling Person or the Majority Owner Representative);

(ii) The Majority Owner Representative, the Controlling Person or the Borrower institutes action to cure such Regulatory Agreement Default within such sixty (60) day period and diligently pursues such action thereafter until such Regulatory Agreement Default is cured; or

(iii) If such Regulatory Agreement Default is not reasonably curable by the Majority Owner Representative or the Controlling Person without the Trustee’s first securing possession of the Project Facilities and/or operational control of the Borrower, the Majority Owner Representative or the Controlling Person (subject to extension during any stay on account of the bankruptcy of the Borrower) (x) instructs the Trustee, subject to the terms of the Indenture, to institute, within such sixty (60) day period, proceedings or other action for the purposes of obtaining such possession or control pursuant to the Bond Documents; (y) thereafter instructs the Trustee, pursuant to the terms of the Indenture, to pursue diligently such proceedings until such

possession or control is obtained; and (z) diligently pursues action to cure such default after the Trustee or other designee of the Majority Owner Representative or the Controlling Person obtains possession or control of the Project Facilities, until such default is cured; provided, however, that any extension, pursuant to paragraph (ii) above, of the period within which a Regulatory Agreement Default must be cured shall only be effective if and to the extent that, in the Opinion of Bond Counsel provided to the Trustee, such extension will not adversely affect the exclusion from gross income for federal income tax purposes of interest on the Bonds; and provided further, that the Trustee, upon five (5) Business Days' prior written notice to the Majority Owner Representative and the Controlling Person following any such Regulatory Agreement Default, may reduce the 60-day period provided above to such shorter period of time as is specified in such notice (but in no event less than fifteen (15) Business Days), but only if the Trustee, the Majority Owner Representative and the Controlling Person shall have been provided with an Opinion of Bond Counsel to the effect that such reduction of such period is necessary to preserve the exclusion from gross income for federal income tax purposes of interest on the Bonds.

(c) In the event of a default in respect of Reserved Rights or a Regulatory Agreement Default which remains uncured after written notice thereof to the Borrower, the Controlling Person and the Majority Owner Representative, nothing in this Section 7.9 shall restrict or in any way limit the right of the Issuer or the Trustee to take any action for specific performance available under the Land Use Restriction Agreement or at law or in equity in order to enforce the terms of the Land Use Restriction Agreement or to enforce Reserved Rights hereunder, so long as neither the Issuer nor the Trustee takes any action (i) to declare the outstanding balance of the Bonds or the Bond Documents to be due on account of such default, (ii) to have a receiver appointed in respect of the Project Facilities, (iii) to foreclose any liens upon or security interests or to enforce any other similar remedy against any of the property described in the Mortgage, or (iv) to enforce any other similar remedy which would cause such liens or security interests to be discharged or materially impaired thereby.

## **ARTICLE 8 DEPOSITS TO FUNDS**

Section 8.1     [Reserved].

Section 8.2     [Reserved].

Section 8.3     Deposits to Redemption Fund. The Borrower shall pay to the Trustee for deposit in the Redemption Fund all amounts required to redeem the Bonds pursuant to Section 2.12(a) and Section 2.12(b) of the Indenture on or before the Interest Payment Date specified in the notice of the Controlling Person as provided in Section 2.12 of the Indenture. The Borrower shall also pay to the Trustee for deposit in the Redemption Fund all other amounts required to redeem Bonds pursuant to Section 2.12 of the Indenture, as provided therein.

Section 8.4     [Reserved].

Section 8.5     Investment. Funds in the Accounts shall be invested in Permitted Investments upon the written direction of the Borrower. Earnings on the Funds and Accounts hereunder shall be held or disbursed as set forth in Article IV of the Indenture. The Trustee shall have the right to invest or withdraw any deposited funds or to direct the liquidation of any investments held in order to pay the amounts required under this Agreement and the other Bond Documents. The Trustee shall not be liable for any loss sustained as a result of any liquidation of any collateral prior to its maturity. Any income or gain realized on such investments shall be credited to and become part of the respective Account and reinvested and applied as provided in the Indenture.

Section 8.6 Security Interest in Accounts. The Borrower hereby assigns and pledges to the Issuer, and grants the Issuer a security interest in, as additional collateral security for the Borrower's obligations to the Issuer hereunder (and the Borrower acknowledges and agrees that the Issuer shall have a continuing security interest in) all of the Borrower's right, title and interest, if any, in all Accounts, all cash, cash equivalents, instruments, investments and other securities at any time held in the Accounts, all proceeds of the foregoing, and all of the Borrower's rights associated with such Accounts, if any. The Issuer hereby directs the Trustee to hold all moneys in the Accounts from time to time as agent and bailee of the Issuer.

Section 8.7 Reports. The Trustee shall provide to the Borrower detailed monthly reports on or before the fifth (5<sup>th</sup>) day of the month following the month to which such report relates showing receipts, disbursements, balances and investments of each Account. Within ten (10) days of a written request of the Borrower to such effect, the Trustee shall deliver to the Borrower an accounting of receipts, disbursements and balances in one or more of the Accounts as necessary and appropriate to assist the Borrower in complying with its covenants to calculate and pay any rebate amount or yield reduction payments due and owing to the United States of America with respect to the Bonds.

Section 8.8 No Liability of Trustee. In performing any of its duties hereunder, the Trustee shall not incur any liability to anyone for any damages, losses or expenses, except for its gross negligence, bad faith or willful misconduct; and the Trustee shall not incur any liability with respect to any action taken or omitted in good faith in the performance of its duties and responsibilities under this Agreement.

## **ARTICLE 9 MISCELLANEOUS**

Section 9.1 Notices. All notices and other communications provided for hereunder shall be in writing and sent by facsimile and by reputable overnight mail service or private delivery service addressed as follows:

To the Borrower:	Villages at Fiskville, LP c/o LDG Development, LLC 1305 E. 6 <sup>th</sup> Street Austin, Texas 78702 Attention: Justin Hartz
With copies to:	Coats Rose, P.C. 9 Greenway Plaza, Suite 1100 Houston, Texas 77046-0307 Attention: Barry Palmer
And:	Adams Law Group 6004 Brownsboro Park Boulevard, Suite A Louisville, Kentucky 40207 Attention: Robert W. Adams III
And:	The Tax Credit Investor
If to the Issuer:	Austin Housing Finance Corporation 1000 East 11 <sup>th</sup> Street, 2 <sup>nd</sup> Floor Austin, Texas 78702 Attention: Neighborhood Development



Program Manager

With copies to: McCall Parkhurst & Horton LLP  
717 North Harwood, Suite 900  
Dallas, Texas 75201  
Attention: Mark Malveaux

If to the Trustee: BOKF, NA  
801 Cherry Street, Suite 3325  
Unit 27  
Fort Worth, Texas 76102  
Attention: Corporate Trust Department

If to the Majority Owner: At the address set forth on the Register  
maintained by the Trustee

If to the Majority Owner Representative: JPMorgan Chase Bank, N.A.  
Community Development Banking  
50 South Main Street, 3<sup>rd</sup> Floor  
Mail Code: OH2-5164  
Akron, Ohio 44308-1824  
Attention: Chet Shedloski, Vice President

With a copy to: JPMorgan Chase Bank, N.A.  
Legal Department  
4 New York Plaza, 21<sup>st</sup> Floor  
Mail Code: NY1-E089  
New York, New York 10004-2413  
Attention: Michael R. Zients, Executive Director  
And Assistant General Counsel

If to Tax Credit Investor: Garnet LIHTC Fund XLVII, LLC  
c/o AEGON USA Realty Advisors, LLC  
Mail Drop 5553  
4333 Edgewood Road NE  
Cedar Rapids, Iowa 52499  
Attention: LIHTC Reporting

With a copy to: Holland & Knight LLP  
10 Saint James Avenue, 11th Floor  
Boston, Massachusetts 02116  
Attention: Jonathan Sirois

If to the Special Limited Partner: Transamerica Affordable Housing, Inc.  
c/o AEGON USA Realty Advisors, LLC  
Mail Drop 5553  
4333 Edgewood Road NE  
Cedar Rapids, Iowa 52499  
Attention: LIHTC Reporting

With a copy to:

Holland & Knight LLP  
10 Saint James Avenue, 11th Floor  
Boston, Massachusetts 02116  
Attention: Jonathan Sirois

If to the Class B LP:

Villages at Fiskville SLP, LLC  
c/o LDG Development, LLC  
1305 E. 6<sup>th</sup> Street, #13  
Austin, Texas 78702  
Attention: Rochelle Gilbert

With a copy to:

Coats Rose, P.C.  
Barton Oaks Plaza  
901 South MoPac Expressway  
Building 1, Suite 500  
Austin, Texas 78746  
Attention: William D. Walter, Jr.

The above parties may change the address to which notices to it are to be sent by written notice given to the other persons listed in this Section. All notices shall, when sent as aforesaid, be effective when received.

Section 9.2 Successors and Assigns; Third Party Beneficiaries. This Agreement shall inure to the benefit of and shall be binding upon the parties hereto and their respective successors and assigns, including, without limitation, the Trustee. The Controlling Person, the Majority Owner Representative and the Majority Owner are express third party beneficiaries of this Agreement and the rights of the Trustee (as assignee of the Issuer) hereunder, with full rights of enforcement thereof. The Borrower may not assign its interests in or its rights, duties or obligations under this Agreement without the prior written consent of the Controlling Person and the Majority Owner Representative. The Borrower and the Issuer intend that no person other than the parties hereto, the Majority Owner, the Controlling Person, the Majority Owner Representative and their respective successors and assigns as permitted hereunder, shall have any claim or interest under this Agreement or right of action hereon or hereunder.

Section 9.3 Survival of Covenants. All covenants made by the Borrower herein and in any document delivered pursuant hereto shall survive the issuance, delivery and sale of the Bonds, the delivery of this Agreement and the payment of any amounts under the Bond Documents.

Section 9.4 Counterparts; Electronic Signature. The execution hereof by each party hereto shall constitute a contract between them for the uses and purposes herein set forth, and this Agreement may be executed in any number of counterparts, with each executed counterpart constituting an original and all counterparts together constituting one agreement. To the fullest extent permitted by applicable law, facsimile or electronically transmitted signatures shall be treated as original signatures for all purposes hereunder.

Section 9.5 Costs, Expenses and Taxes. The Borrower agrees to pay on the Issue Date and thereafter within thirty (30) days after demand, all reasonable costs and expenses of the Issuer, the Trustee, the Controlling Person, the Majority Owner Representative and the Majority Owner in connection with the preparation, execution, delivery and administration of this Agreement, the other Bond Documents and any other documents that may be delivered in connection with this Agreement or the other Bond Documents or any amendments or supplements thereto, including, without limitation, the fees and expenses of the Engineering Consultant, the cost of an annual appraisal (but only upon the occurrence

and during the continuation of an Event of Default) of the Project Facilities by an appraiser selected by the Controlling Person, and the reasonable fees and expenses of counsel for the Majority Owner, the Majority Owner Representative and the Controlling Person with respect thereto and with respect to advising the Majority Owner, the Majority Owner Representative and the Controlling Person as to their respective rights and responsibilities under this Agreement, the other Bond Documents and such other documents, and all costs and expenses, if any, (including, without limitation, reasonable counsel fees and expenses of the Controlling Person, the Majority Owner Representative and the Majority Owner) in connection with the enforcement of this Agreement, the other Bond Documents and such other documents.

Section 9.6     Severability; Interest Limitation. If any provision hereof is found by a court of competent jurisdiction to be prohibited or unenforceable in any jurisdiction, it shall be ineffective as to such jurisdiction only to the extent of such prohibition or unenforceability, and such prohibition or unenforceability shall not invalidate the balance of such provision as to such jurisdiction to the extent it is not prohibited or unenforceable, nor invalidate such provision in any other jurisdiction, nor invalidate the other provisions hereof, all of which shall be liberally construed in favor of the Issuer in order to effect the provisions of this Agreement. Notwithstanding anything to the contrary herein contained, the total liability of the Borrower for payment of interest pursuant hereto shall not exceed the maximum amount, if any, of such interest permitted by applicable Legal Requirements to be contracted for, charged or received, and if any payments by the Borrower to the Trustee include interest in excess of such a maximum amount, the Trustee shall apply such excess to the reduction of the unpaid principal amount due pursuant hereto, or if none is due, such excess shall be refunded to the Borrower; provided that, to the extent permitted by applicable Legal Requirements, in the event the interest is not collected, is applied to principal or is refunded pursuant to this sentence and interest thereafter payable pursuant hereto shall be less than such maximum amount, then such interest thereafter so payable shall be increased up to such maximum amount to the extent necessary to recover the amount of interest, if any, theretofore uncollected, applied to principal or refunded pursuant to this sentence. Any such application or refund shall not cure or waive any Event of Default. In determining whether or not any interest payable under this Agreement exceeds the highest rate permitted by applicable Legal Requirements, any non-principal payment (except payments specifically stated in this Agreement to be “interest”) shall be deemed, to the extent permitted by applicable Legal Requirements, to be an expense, fee, premium or penalty rather than interest.

Section 9.7     Conflicts. Insofar as possible the provisions of this Agreement shall be deemed complementary to the terms of the other Bond Documents, but in the event of conflict the terms hereof shall control to the extent such are enforceable under applicable Legal Requirements.

Section 9.8     Complete Agreement. Taken together with the other Bond Documents and the other instruments and documents delivered in compliance herewith, this Agreement is a complete memorandum of the agreement of the Borrower, the General Partner, the Guarantor, the Trustee, the Issuer, the Controlling Person, the Majority Owner Representative and the Holders from time to time of the Bonds, with respect to the subject matter hereof.

Section 9.9     Consent to Jurisdiction; Venue; Waiver of Jury Trial. The parties hereby irrevocably (i) agree that any suit, action or other legal proceeding arising out of or relating to this Agreement or the other Bond Documents may be brought in any federal court located in Tarrant County, Texas and consents to the jurisdiction of such court in any such suit, action or proceeding; (ii) agree that any suit, action or other legal proceeding relating to the Bond Documents shall be brought solely in a federal or state court located in Tarrant County, Texas and (ii) waive any objection which it may have to the laying of venue of any such suit, action or proceeding in any such court and any claim that any such suit, action or proceeding has been brought in an inconvenient forum. The parties hereby irrevocably

consent to the service of any and all process in any such suit, action or proceeding by mailing of copies of such process to such party at its address provided under or pursuant to Section 9.1 hereof. The parties agree that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by applicable legal requirements. All mailings under this Section shall be by certified or registered mail, return receipt requested. Nothing in this Section shall affect the right of the Controlling Person, the Majority Owner Representative and the Majority Owner to serve legal process in any other manner permitted by applicable Legal Requirements. **THE PARTIES HERETO HEREBY WAIVE THE RIGHT TO TRIAL BY JURY IN ANY ACTION ARISING HEREUNDER OR UNDER THIS AGREEMENT, ANY OF THE OTHER BOND DOCUMENTS OR OTHERWISE IN CONNECTION HEREWITH.**

Section 9.10 Governing Law. This Agreement shall be governed by, and construed in accordance with, the Legal Requirements of the State without reference to its principles of conflicts of law.

Section 9.11 Headings. Section headings in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose.

Section 9.12 Sale of Bonds and Secondary Market Transaction.

(a) At the Controlling Person or Majority Owner Representative's request (to the extent not already required to be provided by the Borrower under this Agreement), the Borrower shall use reasonable efforts to satisfy the market standards to which the Controlling Person or Majority Owner Representative customarily adheres or which may be reasonably required in the marketplace or by the Controlling Person or Majority Owner Representative in connection with one or more sales or assignments of all or a portion of the Bonds or participations therein or securitizations of single or multi-class securities (the "Securities") secured by or evidencing ownership interests in all or a portion of the Bonds (each such sale, assignment and/or securitization, a "Secondary Market Transaction"); provided that neither the Borrower nor the Issuer shall incur any third party or other out-of-pocket costs and expenses in connection with a Secondary Market Transaction, including the costs associated with the delivery of any Provided Information or any opinion required in connection therewith, and all such costs including, without limitation, any costs associated with receiving a rating on the Bonds, shall be paid by the Controlling Person or Majority Owner Representative, and shall not materially modify Borrower's rights or obligations. Without limiting the generality of the foregoing, the Borrower and the Issuer, as applicable, shall, so long as the Loan is still outstanding:

(i) (1) provide reasonable financial and other information with respect to the Bonds, and with respect to the Project Facilities, the Borrower, the General Partner, the Manager or the contractor of the Project Facilities, (2) provide financial statements, audited, if available, relating to the Project Facilities with customary disclaimers for any forward looking statements or lack of audit, and (3) at the expense of the Controlling Person or Majority Owner Representative, perform or permit or cause to be performed or permitted such site inspection, appraisals, surveys, market studies, environmental reviews and reports (Phase I's and, if appropriate, Phase II's), engineering reports, termite and other insect infestation reports and other due diligence investigations of the Project Facilities, as may be reasonably requested from time to time by the Controlling Person or Majority Owner Representative or the Rating Agencies or as may be necessary or appropriate in connection with a Secondary Market Transaction or Exchange Act requirements (the items provided to the Controlling Person or Majority Owner Representative pursuant to this paragraph (i) being called the "Provided Information"), together, if customary, with appropriate verification of and/or consents to the Provided Information through letters of

auditors or opinions of counsel of independent attorneys acceptable to the Controlling Person or Majority Owner Representative and the Rating Agencies;

(ii) make such representations and warranties as of the closing date of any Secondary Market Transaction with respect to the Project Facilities, the Borrower and the Bond Documents reasonably acceptable to the Controlling Person or Majority Owner Representative, consistent with the facts covered by such representations and warranties as they exist on the date thereof; and

(iii) execute such amendments to the Bond Documents to accommodate such Secondary Market Transaction so long as such amendment does not affect the material economic terms of the Bond Documents and is not otherwise adverse to such party in its reasonable discretion.

(b) The Borrower understands that certain of the Provided Information and the required records may be included in disclosure documents in connection with a Secondary Market Transaction, including a prospectus or private placement memorandum (each, a “Secondary Market Disclosure Document”), or provided or made available to investors or prospective investors in the Securities, the Rating Agencies and service providers or other parties relating to the Secondary Market Transaction. In the event that the Secondary Market Disclosure Document is required to be revised, the Borrower shall cooperate, subject to Section 9.12(c) hereof, with the Controlling Person and Majority Owner Representative in updating the Provided Information or required records for inclusion or summary in the Secondary Market Disclosure Document or for other use reasonably required in connection with a Secondary Market Transaction by providing all current information pertaining to the Borrower and the Project Facilities necessary to keep the Secondary Market Disclosure Document accurate and complete in all material respects with respect to such matters. The Borrower hereby consents to any and all such disclosures of such information.

(c) In connection with a Secondary Market Disclosure Document, the Borrower shall provide, or in the case of a Borrower-engaged third party such as the Manager, cause it to provide, information reasonably requested by the Majority Owner Representative pertaining to the Borrower, the Project Facilities or such third party (and portions of any other sections reasonably requested by the Majority Owner Representative pertaining to the Borrower, the Project Facilities or the third party). The Borrower shall, if requested by the Controlling Person or the Majority Owner Representative, certify in writing that the Borrower has carefully examined those portions of such Secondary Market Disclosure Document, pertaining to the Borrower, the Project Facilities or the third party, and such portions (and portions of any other sections reasonably requested and pertaining to the Borrower, the Project Facilities or the third party) do not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; provided that the Borrower shall not be required to make any representations or warranties regarding any Provided Information obtained from a third party except with respect to information it provided to such third parties. Furthermore, the Borrower hereby indemnifies the Majority Owner Representative, the Controlling Person, the Majority Owner, the Trustee, the Issuer and the underwriter group initially underwriting the purchase of the Bonds (the “Underwriter Group”) for any liabilities to which any such parties may become subject to the extent such liabilities arise out of or are based upon the use of the Provided Information in a Secondary Market Disclosure Document.

(d) In connection with filings under the Exchange Act or the Securities Act, the Borrower shall (i) defend and indemnify Majority Owner Representative, the Controlling Person, the Majority Owner, the Trustee, the Issuer, its members, and the Underwriter Group for any liabilities to which Majority Owner Representative, the Controlling Person, the Majority Owner, the Trustee or the

Underwriter Group may become subject insofar as such liabilities arise out of or are based upon the omission or alleged omission by the Borrower to state in the Provided Information of a material fact required to be stated in the Provided Information in order to make the statements in the Provided Information, in the light of the circumstances under which they were made not misleading, and (ii) reimburse the Controlling Person, the Majority Owner, the Majority Owner Representative, the Underwriter Group and other indemnified parties listed above for any legal or other expenses reasonably incurred by the Controlling Person, the Majority Owner, the Majority Owner Representative or the Underwriter Group in connection with defending or investigating the liabilities; provided that the Borrower shall not provide any indemnification regarding any Provided Information obtained from unrelated third parties except with respect to information it provided to such parties.

(e) Promptly after receipt by an indemnified party under this Section 9.12 of notice of the commencement of any action for which a claim for indemnification is to be made against the Borrower, such indemnified party shall notify the Borrower in writing of such commencement, but the omission to so notify the Borrower will not relieve the Borrower from any liability that it may have to any indemnified party hereunder except to the extent that failure to notify causes prejudice to the Borrower. In the event that any action is brought against any indemnified party, and it notifies the Borrower of the commencement thereof, the Borrower will be entitled, jointly with any other indemnifying party, to participate therein and, to the extent that it (or they) may elect by Written Notice delivered to the indemnified party promptly after receiving the aforesaid notice of commencement, to assume the defense thereof with counsel selected by the Borrower and reasonably satisfactory to such indemnified party in its sole discretion. After notice from the Borrower to such indemnified party under this Section 9.12 and provided that the Borrower duly provides the defense and indemnity herein described including payment of all required fees, expenses and liabilities, the Borrower shall not be responsible for any legal or other expenses subsequently incurred by such indemnified party in connection with the defense thereof other than reasonable costs of investigation. No indemnified party shall settle or compromise any claim for which the Borrower may be liable hereunder without the prior Written Consent of the Borrower.

(f) In order to provide for just and equitable contribution in circumstances in which the indemnity agreement provided for in this Section 9.12 is for any reason held to be unenforceable by an indemnified party in respect of any liabilities (or action in respect thereof) referred to therein which would otherwise be indemnifiable under this Section 9.12, the Borrower shall contribute to the amount paid or payable by the indemnified party as a result of such liabilities (or action in respect thereof); provided, however, that no Person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any Person not guilty of such fraudulent misrepresentation. In determining the amount of contribution to which the respective parties are entitled, the following factors shall be considered: (i) the indemnified parties and the Borrower's relative knowledge and access to information concerning the matter with respect to which the claim was asserted; (ii) the opportunity to correct and prevent any statement or omission; and (iii) any other equitable considerations appropriate in the circumstances. The parties hereto hereby agree that it may not be equitable if the amount of such contribution were determined by pro rata or per capita allocation.

Section 9.13 Recourse. The obligations of the Borrower hereunder shall be fully recourse obligations.

Section 9.14 Publicity. The Borrower hereby authorizes the Controlling Person, the Majority Owner Representative or the Majority Owner and their respective affiliates, without further notice or consent, to use the Borrower's and its affiliates' name(s), logo(s) and photographs related to the Project Facilities 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 Controlling Person, the Majority Owner Representative or the Majority Owner also may discuss at a high level the types of services and solutions the Controlling Person, the Majority Owner Representative or the Majority Owner has provided the Borrower. This authorization shall remain in effect unless the Borrower notifies the Controlling Person and the Majority Owner Representative in writing in accordance with the notice provisions set forth herein that such authorization is revoked. The Controlling Person, the Majority Owner Representative or the Majority Owner shall also have the right to publicize its involvement in the financing of the Project Facilities, including the right to maintain a sign indicating such involvement at a location at the Project Facilities reasonably acceptable to the Borrower and the Controlling Person or the Majority Owner Representative, as applicable.

Section 9.15 Determinations by Majority Owner Representative and Controlling Person. Subject to specific provisions in this Agreement to the contrary, in any instance under this Agreement where the consent or approval of the Controlling Person or the Majority Owner Representative may be given or is required, or where any determination, judgment or decision is to be rendered by the Controlling Person or the Majority Owner Representative under this Agreement, the granting, withholding or denial of such consent or approval and the rendering of such determination, judgment or decision shall be made or exercised by the Controlling Person or the Majority Owner Representative (or its designated representative) at its sole and absolute reasonable discretion.

Section 9.16 Intercreditor Agreement. The terms and conditions of this Agreement and the exercise of rights and remedies by the Trustee, the Majority Owner, the Majority Owner Representative and the Controlling Person hereunder shall be subject in all respects to the terms and conditions of the Intercreditor Agreement.

IN WITNESS WHEREOF, the Issuer and the Borrower have caused this Agreement to be duly executed and delivered on the day and year first above written.

**AUSTIN HOUSING FINANCE CORPORATION**

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

Name:

Title:



**VILLAGES AT FISKVILLE, LP,**  
a Texas limited partnership

By: Villages at Fiskville GP, LLC,  
a Texas limited liability company,  
its general partner

By: \_\_\_\_\_  
Name:  
Title:

**EXHIBIT A**  
**SUBORDINATE PROMISSORY NOTE**

AFTER THE ENDORSEMENT AS HEREON PROVIDED AND PLEDGE OF THIS NOTE, THIS NOTE MAY NOT BE ASSIGNED, PLEDGED, ENDORSED OR OTHERWISE TRANSFERRED EXCEPT TO AN ASSIGNEE OR SUCCESSOR OF THE TRUSTEE IN ACCORDANCE WITH THE INDENTURE, BOTH REFERRED TO HEREIN.

\$3,500,000

March \_\_, 2017

FOR VALUE RECEIVED, Villages at Fiskville, LP, a limited partnership duly formed and validly existing under the laws of the State of Texas (the "Borrower"), by this promissory note hereby promises to pay to the order of the Austin Housing Finance Corporation (the "Issuer") the principal sum of Three Million Five Hundred Thousand Dollars (\$3,500,000.00), together with interest on the unpaid principal amount hereof, from the Issue Date (as defined in the Indenture referenced below) until paid in full, at a rate per annum equal to the rate of interest borne by the Bonds (as hereinafter defined), and acceleration premium, if any, on the Bonds. All such payments of principal, interest and acceleration premium, if any, shall be made in funds which shall be immediately available on the due date of such payments and in lawful money of the United States of America at the principal corporate trust office of BOKF, NA, 801 Cherry Street, Suite 3325, Unit 27, Fort Worth, Texas 76102, or its successor as trustee under the Indenture (the "Trustee").

The principal amount and interest shall be payable on the dates and in the amounts set that principal and redemption price of, and interest on the Bonds, and the acceleration premium, if any, are payable, subject to prepayment as provided in the Indenture and the Agreement.

This subordinate promissory note is the "Note" attached as Exhibit A to the Loan Agreement, dated as of [\_\_\_\_], 2017 (as the same may be amended, modified or supplemented from time to time, the "Agreement") between the Borrower and the Issuer, the terms, conditions and provisions of which are hereby incorporated by reference.

This Note and the payments required to be made hereunder are irrevocably assigned, without recourse, representation or warranty, and pledged to the Trustee under the Indenture of Trust, dated as of [\_\_\_\_], 2017 (as the same may be amended, modified or supplemented from time to time, the "Indenture"), by and between the Issuer and the Trustee, and such payments will be made directly to the Trustee for the account of the Issuer pursuant to such assignment. Such assignment is made as security for the payment of \$3,500,000.00 in aggregate principal amount of the Issuer's Subordinate Multifamily Housing Revenue Bonds (Villages at Fiskville Apartments), Series 2017B (the "Bonds"), issued by the Issuer pursuant to the Indenture. All the terms, conditions and provisions of the Indenture and the Bonds are hereby incorporated as a part of this Note.

Under certain circumstances, the Borrower may at its option and may be required to, prepay all or any part of the amount due on this Note, together with accrued interest thereon, as provided in the Agreement.

Presentation, demand, protest and notice of dishonor are hereby expressly waived by the Borrower.

The Borrower hereby promises to pay reasonable costs of collection and reasonable attorneys' fees in case of an Event of Default on this Note, as set forth in the Agreement.

This Note shall be governed by, and construed in accordance with, the laws of the State of Texas, without regard to conflict of laws principles.

All agreements between Borrower and Issuer, whether now existing or hereafter arising and whether written or oral, are hereby limited so that in no contingency or event whatsoever, whether by reason of demand or acceleration of the maturity hereof or otherwise, shall the interest contracted for, charged, received, paid or agreed to be paid to Issuer exceed interest computed at the Maximum Rate (as defined below). If, from any circumstance whatsoever, interest would otherwise be payable to Issuer in excess of interest computed at the Maximum Rate, the interest payable to Issuer shall be reduced to interest computed at the Maximum Rate; and if from any circumstance Issuer shall ever receive anything of value deemed interest by applicable law in excess of interest computed at the Maximum Rate, an amount equal to any excessive interest shall be applied to the reduction of the principal hereof and not to the payment of interest, or if such excessive interest exceeds the unpaid balance of principal hereof, such excess shall be refunded to the Borrower. All interest paid or agreed to be paid to Issuer shall, to the extent permitted by applicable law, be amortized, prorated, allocated, and spread throughout the full period until payment in full of the principal (including the period of any renewal or extension hereof) so that the interest hereon for such full period shall not exceed interest computed at the Maximum Rate. This section shall control all agreements between Borrower and Issuer, and any successive holder of this Note. The term "Maximum Rate" shall mean the highest lawful rate of interest applicable to the loan transaction evidenced by this Note taking into account whichever of applicable federal law or Texas law permits the higher rate of interest, and after also taking into consideration all compensation deemed interest under applicable law.

**VILLAGES AT FISKVILLE, LP,**  
a Texas limited partnership

By: Villages at Fiskville GP, LLC,  
a Texas limited liability company,  
its general partner

By: \_\_\_\_\_  
Name:  
Title:

**ENDORSEMENT**

Pay to the order of BOKF, NA, without recourse, as Trustee under the Indenture referred to in the within mentioned Agreement, as security for the Bonds issued under such Indenture. This endorsement is given without any warranty as to the authority or genuineness of the signature of the maker of the Note.

**AUSTIN HOUSING FINANCE CORPORATION**

By: \_\_\_\_\_  
Name  
Title

Dated: March \_\_, 2017

**EXHIBIT B**  
**LEGAL DESCRIPTION OF PROPERTY**

**EXHIBIT C**  
**MOLD/MILDEW ADDENDUM**

This Mold and Mildew Addendum (the "Addendum") dated \_\_\_\_\_, 20\_\_ is attached to and made a part of the lease dated \_\_\_\_\_, 20\_\_ (the "Lease") by and between Villages at Fiskville, LP ("Lessor") and \_\_\_\_\_ ("Resident") for unit number \_\_\_\_\_ (the "Unit") in Villages at Fiskville Apartments.

Resident acknowledges that it is necessary for Resident to provide appropriate climate control, keep the Unit clean, and take other measures to retard and prevent mold and mildew from accumulating in the Unit. Resident agrees to clean and dust the Unit on a regular basis and to remove visible moisture accumulation on windows, walls and other surfaces as soon as reasonably possible. Resident agrees not to block or cover any of the heating, ventilation or air- conditioning ducts in the Unit. Resident also agrees to immediately report to the management office: (i) any evidence of a water leak or excessive moisture in the Unit, as well as in any storage room, garage or other common area; (ii) any evidence of mold- or mildew-like growth that cannot be removed by simply applying a common household cleaner and wiping the area; (iii) any failure or malfunction in the heating, ventilation or air conditioning system in the Unit; and (iv) any inoperable doors or windows. Resident further agrees that Resident shall be responsible for damage to the Unit and Resident's property as well as personal injury to Resident and Occupants resulting from Resident's failure to comply with the terms of this Addendum.

A default under the terms of this Addendum shall be deemed a material default under the terms of the Lease, and Lessor shall be entitled to exercise all rights and remedies at law or in equity. Except as specifically stated herein, all other terms and conditions of the Lease shall remain unchanged. In the event of any conflict between the terms of this Addendum and the terms of the Lease, the terms of this Addendum shall control. Any term that is capitalized but not defined in this Addendum that is capitalized and defined in the Lease shall have the same meaning for purposes of this Addendum as it has for purposes of the Lease.

Resident or Residents:  
(all Residents must sign here)

\_\_\_\_\_  
Resident's Signature

\_\_\_\_\_  
Resident's Name

\_\_\_\_\_  
Resident's Unit No.

Lessor:

VILLAGES AT FISKVILLE, LP, a  
Texas limited partnership

By: Villages at Fiskville GP, LLC,  
a Texas limited liability company,  
its general partner

By: \_\_\_\_\_  
Name:  
Title:

**SCHEDULE 1**  
**SCHEDULE OF LITIGATION**

**SCHEDULE 2**  
**SCHEDULE OF OBLIGATIONS AND MATERIAL CONTRACTS**

1. Bond Documents
2. Series A Bond Documents
3. Amended and Restated Agreement of Limited Partnership of the Borrower
4. Development Agreement
5. Management Agreement
6. Construction Contract
7. Architect's agreement between Borrower and Architect
8. Construction management agreement between Borrower and Architect
9. Ground Lease



**SCHEDULE 3**  
**FORM OF USE OF PROCEEDS CERTIFICATE**

\_\_\_\_\_, 20\_\_

BOKF, NA  
801 Cherry Street, Suite 3325  
Unit 27  
Fort Worth, Texas 76102  
Attention: Corporate Trust Department

JPMorgan Chase Bank, N.A., as Majority Owner Representative  
Community Development Banking  
50 South Main Street, 3<sup>rd</sup> Floor  
Mail Code: OH2-5164  
Akron, Ohio 44308-1824  
Attention: Chet Shedloski, Vice President

Re: Villages at Fiskville (the "Project Facilities")

Ladies and Gentlemen:

The undersigned, being the owner of the Project Facilities hereby certifies to BOKF, NA, as trustee (the "Trustee") and JPMorgan Chase Bank, N.A., as Majority Owner Representative, acting on behalf of the Majority Owner of the bonds issued in connection with the Project Facilities (the "Majority Owner Representative") that no less than 95% of the Net Proceeds of the Bonds has been spent for Qualified Project Costs of the Project Facilities as required by Section 142(a) of the Internal Revenue Code. Attached hereto is a schedule of expenditures showing all costs of the Project Facilities, the amounts expended for each category of cost, the source of funds therefor, and a calculation of the percentage of the net proceeds of the Bonds expended in compliance with the requirements of the Internal Revenue Code. Capitalized terms used herein and not defined shall have the meanings ascribed to such terms in the Indenture of Trust dated as of [\_\_\_\_], 2017 between the Trustee and the Austin Housing Finance Corporation.

WITNESS WHEREOF, the undersigned has duly executed this Use of Proceeds Compliance Certificate as of the day and year first above written.

VILLAGES AT FISKVILLE, LP,  
a Texas limited partnership

By: Villages at Fiskville GP, LLC,  
a Texas limited liability company,  
its general partner

By: \_\_\_\_\_  
Name:  
Title:

## **Schedule of Attachments to Use of Proceeds Compliance Certificate**

Evidence of Use of Proceeds