

**FUNDING LOAN AGREEMENT**

**among**

**JPMORGAN CHASE BANK, N.A.,  
as Initial Funding Lender**

**AUSTIN HOUSING FINANCE CORPORATION,  
as Governmental Lender**

**and**

**BOKF, NA,  
as Fiscal Agent**

**Relating to**

**Nightingale at Goodnight Ranch Apartments  
Austin, Texas**

**Original Funding Loan Principal Amount: \$\_\_\_\_\_**

**Dated as of March 1, 2018**

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## FUNDING LOAN AGREEMENT

THIS FUNDING LOAN AGREEMENT (this “Funding Loan Agreement”), is made and entered into as of March 1, 2018, by and among JPMORGAN CHASE BANK, N.A., a national banking association (the “Initial Funding Lender”), the AUSTIN HOUSING FINANCE CORPORATION (the “Governmental Lender”), a housing finance corporation organized and existing under the laws of the State of Texas (the “State”), and BOKF, NA, a national banking association, organized and operating under the laws of the United States of America, having a corporate trust office in Fort Worth, Texas, as Fiscal Agent (the “Fiscal Agent”). Capitalized terms are defined in Section 1.01 of this Funding Loan Agreement.

### RECITALS

WHEREAS, pursuant to Chapter 394, as amended, Texas Local Government Code (collectively, the “Act”) and the Project Loan Agreement dated as of March 1, 2018 (the “Project Loan Agreement”) by and among the Governmental Lender, the Fiscal Agent and Austin DMA Housing III, LLC, a limited liability company duly organized and existing under the laws of the State of Texas (the “Borrower”), the Governmental Lender is agreeing to make a mortgage loan to the Borrower in the original principal amount of \$\_\_\_\_\_ (the “Project Loan”) to provide for the financing of the construction and equipping of a 174-unit low-income multifamily rental housing development located at the southwest quadrant of 5900 Merle Drive in Austin, Texas, which will be known as Nightingale at Goodnight Ranch Apartments (the “Project”); and

WHEREAS, the Governmental Lender is making the Project Loan to the Borrower with the proceeds received from the separate loan made to the Governmental Lender pursuant to this Funding Loan Agreement in the original principal amount of \$\_\_\_\_\_ (the “Funding Loan” and together with the Project Loan, the “Loans”). The Funding Loan is being originated and funded by the Initial Funding Lender hereunder and is evidenced by the Multifamily Note dated the Delivery Date in the form attached hereto as Exhibit A (together with all riders and addenda thereto, the “Governmental Note”) delivered by the Governmental Lender to the Initial Funding Lender; and

WHEREAS, the Initial Funding Lender, pursuant to the terms and subject to the conditions of this Funding Loan Agreement, the Construction Phase Financing Agreement, and the Construction Disbursement Agreement, has agreed to originate and fund the Funding Loan to the Governmental Lender, which proceeds of the Funding Loan will be used by the Governmental Lender to fund the Project Loan to the Borrower pursuant to the Project Loan Agreement. The Fiscal Agent and the Initial Funding Lender will administer the Loans during the Construction Phase in accordance with the Construction Phase Financing Agreement and the other Financing Documents; and

WHEREAS, the Borrower has agreed to use the proceeds of the Project Loan to finance the construction and equipping of the Project and to pay certain closing costs with respect to the Loans; and

WHEREAS, the Borrower’s repayment obligations in respect of the Project Loan will be evidenced by a Project Note dated as of the Delivery Date (together with all riders and

modifications thereto, the “Project Note”) delivered to the Governmental Lender, which Project Note will be endorsed (without recourse) by the Governmental Lender to the Fiscal Agent as security for the Funding Loan; and

WHEREAS, to secure the Borrower’s obligations under the Project Note, the Borrower will execute and deliver to the Governmental Lender a Multifamily Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing (Leasehold) dated as of the date hereof (the “Security Instrument”) with respect to the Project, which Security Instrument will be assigned by the Governmental Lender to the Fiscal Agent as security for the Funding Loan; and

WHEREAS, the Federal Home Loan Mortgage Corporation, a shareholder-owned government-sponsored enterprise (“**Freddie Mac**”) has entered into a commitment with Bellwether Enterprise Real Estate Capital, LLC (the “**Freddie Mac Seller/Servicer**”) dated \_\_\_\_\_, 2018 (the “**Freddie Mac Commitment**”), whereby Freddie Mac has committed, subject to the satisfaction of the Conditions to Conversion set forth in the Construction Phase Financing Agreement on or before the Forward Commitment Maturity Date, to facilitate the financing of the Project in the Permanent Phase by purchasing the Funding Loan from the Freddie Mac Seller/Servicer following the Conversion Date; and

WHEREAS, if the Conditions to Conversion are satisfied on or before the Forward Commitment Maturity Date as provided for in the Freddie Mac Commitment and the Construction Phase Financing Agreement, including, without limitation, that the outstanding principal balance of the Project Loan is paid down to the Actual Project Loan Amount, the Project Loan will convert from the Construction Phase to the Permanent Phase on the Conversion Date and, on such Conversion Date, the Initial Funding Lender shall deliver, and the Freddie Mac Seller/Servicer shall purchase, the Funding Loan, as evidenced by the Governmental Note. If the Conditions to Conversion are not satisfied on or before the Forward Commitment Maturity Date, the Project Loan will not convert from the Construction Phase to the Permanent Phase, and neither the Freddie Mac Seller/Servicer nor Freddie Mac will have any obligation with respect to the purchase of the Funding Loan and the Initial Funding Lender will remain the owner of the Funding Loan as the holder of the Governmental Note; and

WHEREAS, as a Condition to Conversion, the Project Note and the Security Instrument are required to be amended and restated and the Borrower is required to enter into a Continuing Covenant Agreement with the Freddie Mac Seller/Servicer (the “**Freddie Mac Continuing Covenant Agreement**”), in each case pursuant to the forms attached to the Construction Phase Financing Agreement; and

WHEREAS, if the Conditions to Conversion are satisfied and the Funding Loan is purchased by the Freddie Mac Seller/Servicer on the Conversion Date as set forth above, the Freddie Mac Seller/Servicer shall deliver the Funding Loan to Freddie Mac for purchase pursuant to the terms of the Freddie Mac Commitment and the Guide (such date of purchase by Freddie Mac being referred to as the “**Freddie Mac Purchase Date**”); and

WHEREAS, upon the occurrence of the Freddie Mac Purchase Date, the Freddie Mac Seller/Servicer will assign to Freddie Mac all of its rights and interest in the Funding Loan, the Governmental Note, this Funding Loan Agreement, the Freddie Mac Continuing Covenant



Agreement and the other Financing Documents. Bellwether Enterprise Real Estate Capital, LLC will act as Servicer for the Loans on behalf of Freddie Mac, as Funding Lender, on and after the Freddie Mac Purchase Date; and

WHEREAS, the Governmental Lender has determined that all things necessary to incur the Funding Loan and to execute and deliver the Governmental Note, when executed by the Governmental Lender and authenticated by the Fiscal Agent and issued in accordance with this Funding Loan Agreement, the valid, binding and legal obligation of the Governmental Lender and to constitute this Funding Loan Agreement a valid lien on the properties, interests, revenues and payments herein pledged to the payment of the principal of, Prepayment Premium, if any, and interest on, the Governmental Note, have been duly taken, and the creation, execution and delivery of this Funding Loan Agreement and the execution and delivery of the Governmental Note, subject to the terms of this Funding Loan Agreement, have been duly authorized by the Governmental Lender; and

WHEREAS, the Fiscal Agent has the power and authority to enter into this Funding Loan Agreement, including corporate trust powers to accept the trusts hereunder and to accept and assume its other responsibilities hereunder as Fiscal Agent as evidenced by its execution of this Funding Loan Agreement.

NOW, THEREFORE, in consideration of the premises and of the origination and funding of the Funding Loan by the Funding Lender, and for other good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto agree as follows:

## ARTICLE I

### DEFINITIONS

**Section 1.01 Definitions.** The terms used in this Funding Loan Agreement (except as herein otherwise expressly provided or unless the context otherwise requires) for all purposes of this Funding Loan Agreement and of any amendment or supplement hereto shall have the respective meanings specified below. Terms used herein not otherwise defined shall have the respective meanings set forth in the Project Loan Agreement.

“*Act*” means Chapter 394, as amended, Texas Local Government Code.

“*Actual Project Loan Amount*” has the meaning set forth in the Construction Phase Financing Agreement.

“*Administration Fund*” means the Administration Fund established by the Fiscal Agent pursuant to Section 4.01 hereof.

“*Assignment*” means the Assignment of Security Instrument dated as of the date hereof by the Governmental Lender assigning its interest in the Security Instrument to the Fiscal Agent.

“*Authorized Officer*” means (a) when used with respect to the Governmental Lender, the President, Vice President, Treasurer or Secretary of the Governmental Lender and such additional Person or Persons, if any, duly designated by the Governmental Lender in writing to act on its

behalf, (b) when used with respect to the Borrower, any officer, manager, or member of the general partner of the Borrower and such additional Person or Persons, if any, duly designated by the Borrower in writing to act on its behalf, (c) when used with respect to the Fiscal Agent, any authorized signatory of the Fiscal Agent, or any Person who is authorized in writing to take the action in question on behalf of the Fiscal Agent, (d) when used with respect to the Servicer, any Person or Persons duly designated by the Servicer in writing to act on its behalf, and (e) when used with respect to the Funding Lender Representative, any Person who is authorized in writing to take the action in question on behalf of the Funding Lender Representative.

*“Bankruptcy Code”* means Title 11 of the United States Code entitled “Bankruptcy,” as now and hereafter in effect, or any successor federal statute.

*“Bond Counsel”* means (a) on the Delivery Date, the law firm or law firms delivering the approving opinion(s) with respect to the Governmental Note, or (b) any other firm of attorneys selected by the Governmental Lender that is experienced in matters relating to the issuance of obligations by states and their political subdivisions that is listed as municipal bond attorneys in The Bond Buyer’s Municipal Marketplace and is acceptable to the Funding Lender Representative.

*“Borrower”* means Austin DMA Housing III, LLC, a limited liability company duly organized and existing under the laws of the State of Texas, or any of its permitted successors or assigns, as owner of the Project.

*“Borrower Equity Account”* means the Borrower Equity Account of the Project Loan Fund established by the Fiscal Agent as the Initial Funding Lender pursuant to Section 2.11 hereof. The Borrower Equity Account shall be comprised of the following subaccounts: (i) the LIHTC Subaccount, (ii) the Gap Loan Subaccount, and (iii) the Net Operating Income Subaccount.

*“Business Day”* means any day other than (a) a Saturday or a Sunday, or (b) a day on which (i) banking institutions in the City of New York or in the city in which the Principal Office of the Fiscal Agent is located are authorized or obligated by law or executive order to be closed or (ii) the New York Stock Exchange is closed.

*“Casualty Proceeds”* when used with respect to any insurance or condemnation award, means the proceeds from the insurance or condemnation award with respect to which that term is used remaining after payment of all reasonable expenses incurred in the collection of such insurance proceeds or condemnation award, including reasonable attorneys’ fees.

*“Certificate of the Governmental Lender”* and *“Request of the Governmental Lender”* mean, respectively, a written certificate or request signed in the name of the Governmental Lender by an Authorized Officer of the Governmental Lender or such other Person as may be designated and authorized to sign for the Governmental Lender. Any such instrument and supporting opinions or representations, if any, may, but need not, be combined in a single instrument with any other instrument, opinion or representation, and the two or more so combined shall be read and construed as a single instrument.

*“Code”* means the Internal Revenue Code of 1986, as in effect on the Delivery Date or (except as otherwise referenced herein) as it may be amended to apply to obligations issued on the

Delivery Date, together with applicable Regulations and applicable public guidance published thereunder.

“*Comptroller*” means the Comptroller of Public Accounts of the State of Texas.

“*Conditions to Conversion*” has the meaning given to that term in the Construction Phase Financing Agreement.

“*Construction Disbursement Agreement*” means the Construction Disbursement Agreement dated as of the date hereof by and between the Borrower and the Initial Funding Lender, as the same may be amended, modified or supplemented from time to time.

“*Construction Phase*” means the construction phase of the Project Loan, which time period shall commence on the Delivery Date and remain in effect to, but not including, the Conversion Date.

“*Construction Phase Financing Agreement*” means the Construction Phase Financing Agreement dated as of the date hereof by and among the Initial Funding Lender, Freddie Mac, and the Freddie Mac Seller/Servicer, and acknowledged and agreed to by the Borrower, as the same may be amended, modified or supplemented from time to time.

“*Continuing Covenant Agreement*” means (i) prior to the Conversion Date, the Construction Disbursement Agreement, and (ii) from and after the Conversion Date, the Freddie Mac Continuing Covenant Agreement.

“*Conversion*” means conversion of the Project Loan from the Construction Phase to the Permanent Phase on the Conversion Date.

“*Conversion Date*” means the date the Freddie Mac Seller/Servicer purchases the Funding Loan from the Initial Funding Lender upon the satisfaction of the Conditions to Conversion, as such Conversion Date is specified by the Freddie Mac Seller/Servicer in the Notice of Conversion, which date shall be at least ten (10) days following the date on which the Notice of Conversion is delivered.

“*Cost*,” “*Costs*” or “*Costs of the Project*” means costs paid with respect to the Project that (i) are properly chargeable to capital account (or would be so chargeable with a proper election by the Borrower or but for a proper election by the Borrower to deduct such costs) in accordance with general federal income tax principles and in accordance with Section 1.103-8(a)(1) of the Regulations, (ii) are paid with respect to a qualified residential rental project or projects within the meaning of Section 142(d) of the Code, (iii) are paid after the earlier of (A) 60 days prior to the date of a resolution of the Governmental Lender to reimburse costs of the Project with proceeds of the Loans or (B) the Delivery Date, and (iv) if the Costs of the Project were previously paid and are to be reimbursed with proceeds of the Loans such costs were (A) Costs of Issuance of the Governmental Note, (B) preliminary capital expenditures (within the meaning of Section 1.150-2(f)(2)) of the Regulations with respect to the Project (such as architectural, engineering and soil testing services) incurred before commencement of acquisition or construction of the Project that do not exceed twenty percent (20%) of the issue price of the Governmental Note (as defined in Section 1.148-1) of the Regulations, or (C) were capital expenditures with respect to the Project

that are reimbursed no later than eighteen (18) months after the later of the date the expenditure was paid or the date the Project is placed in service (but no later than three (3) years after the expenditure is paid); provided however, that if any portion of the Project is being constructed or developed by the Borrower or an affiliate (whether as a developer, a general contractor or a subcontractor), “Cost,” “Costs” or “Costs of the Project” shall include only (a) the actual out-of-pocket costs incurred by the Borrower or such affiliate in developing or constructing the Project (or any portion thereof), (b) any reasonable fees for supervisory services actually rendered by the Borrower or such affiliate (but excluding any profit component) and (c) any overhead expenses incurred by the Borrower or such affiliate which are directly attributable to the work performed on the Project, and shall not include, for example, intercompany profits resulting from members of an affiliated group (within the meaning of Section 1504 of the Code) participating in the acquisition, construction or development of the Project or payments received by such affiliate due to early completion of the Project (or any portion thereof).

“*Cost of Issuance Fund*” means the Cost of Issuance Fund established by the Fiscal Agent pursuant to Section 4.01 hereof.

“*Costs of Issuance*” means, as applicable, (i) the fees (excluding ongoing fees), costs and expenses of (a) the Governmental Lender, the Governmental Lender’s counsel and the Governmental Lender’s financial advisor, (b) Bond Counsel, (c) the Fiscal Agent and the Fiscal Agent’s counsel, (d) the Initial Funding Lender and the Initial Funding Lender’s counsel (e) the Freddie Mac Seller/Service and the Freddie Mac Seller/Service’s counsel, (f) Freddie Mac and Freddie Mac’s counsel, and (g) the Borrower’s counsel attributable to the funding of the Loans and the Borrower’s financial advisor, if any, and (ii) all other fees, costs and expenses directly associated with the Funding Loan and the Project Loan, including, without limitation, printing costs, costs of reproducing documents, filing and recording fees.

“*Costs of Issuance Deposit*” means the deposit to be made by the Borrower with the Fiscal Agent on the Delivery Date, which deposit shall equal [\$\_\_\_\_\_] and shall be comprised of sources other than the proceeds of the Project Loan.

“*Default Rate*” means the lower of (i) the Interest Rate otherwise in effect notwithstanding the default, plus four percent (4%) per annum or (ii) the Maximum Interest Rate.

“*Delivery Date*” means March \_\_, 2018, the date of the funding of the Funding Loan and the delivery of the Governmental Note by the Governmental Lender to the Initial Funding Lender.

“*Determination of Taxability*” shall mean, (a) a determination by the Commissioner or any District Director of the Internal Revenue Service, (b) a private ruling or Technical Advice Memorandum issued by the National Office of the Internal Revenue Service in which Governmental Lender and Borrower were afforded the opportunity to participate, (c) a determination by any court of competent jurisdiction, or (d) the enactment of legislation to the effect that interest on the Governmental Note is includable in gross income for federal income tax purposes of the Funding Lender or any former Funding Lender (other than a Funding Lender who is a “substantial user” of the Project or a “related person” to such a “substantial user” (as such terms are defined in Section 147(a) of the Code)); provided, however, that no such Determination of Taxability under clause (a) or (c) shall not be deemed to have occurred if the Governmental

Lender (at the sole expense of the Borrower) or the Borrower is contesting such determination, has elected to contest such determination in good faith and is proceeding with all applicable dispatch to prosecute such contest until the earliest of (i) a final determination from which no appeal may be taken with respect to such determination, (ii) abandonment of such appeal by the Governmental Lender or the Borrower, as the case may be, or (iii) one year from the date of initial determination unless otherwise extended by the Funding Lender.

*“Electronic Notice”* means delivery of notice in a Word format or a Portable Document Format (PDF) by electronic mail to the electronic mail addresses listed in Section 11.04 hereof; provided, that if a sender receives notice that the electronic mail is undeliverable, notice must be sent as otherwise required by Section 11.04 hereof.

*“Equity Investor”* means, collectively, Boston Capital Direct Placement, A Limited Partnership, a Massachusetts limited partnership, its affiliates, successors and/or assigns, the investor member of the Borrower, and BCCC, Inc., a Massachusetts corporation, its affiliates, successors and/or assigns, the special member of the Borrower.

*“Event of Default”* or *“event of default”* means any of those events specified in and defined by the applicable provisions of Article VI hereof to constitute an event of default.

*“Extraordinary Fiscal Agent’s Fees and Expenses”* means all those fees, expenses and disbursements earned or incurred by the Fiscal Agent as described under Section 7.06 hereof for Extraordinary Services, as set forth in a detailed invoice to the Borrower, the Servicer and the Funding Lender Representative.

*“Extraordinary Services”* means and includes, but not by way of limitation, services, actions and things carried out and all expenses incurred by the Fiscal Agent, in respect of or to prevent default under this Funding Loan Agreement or the Project Loan Documents, including any reasonable attorneys’ or agents’ fees and expenses and other litigation costs that are entitled to reimbursement under the terms of the Project Loan Agreement, and other actions taken and carried out by the Fiscal Agent which are not expressly set forth in this Funding Loan Agreement or the Project Loan Documents.

*“Fair Market Value”* means the price at which a willing buyer would purchase the investment from a willing seller in a bona fide, arm’s length transaction (determined as of the date the contract to purchase or sell the investment becomes binding) if the investment is traded on an established securities market (within the meaning of Section 1273 of the Code) and, otherwise, the term *“Fair Market Value”* means the acquisition price in a bona fide arm’s length transaction (as referenced above) if (a) the investment is a certificate of deposit that is acquired in accordance with applicable regulations under the Code, (b) the investment is an agreement with specifically negotiated withdrawal or reinvestment provisions and a specifically negotiated interest rate (for example, a guaranteed investment contract, a forward supply contract or other investment agreement) that is acquired in accordance with applicable regulations under the Code, (c) the investment is a United States Treasury Security--State and Local Government Series that is acquired in accordance with applicable regulations of the United States Bureau of Public Debt, or (d) any commingled investment fund in which the Governmental Lender and related parties do not

own more than a ten percent (10%) beneficial interest therein if the return paid by the fund is without regard to the source of investment.

*“Favorable Opinion of Bond Counsel”* means, with respect to any action the taking of which requires such an opinion, an unqualified opinion of Bond Counsel to the effect that such action will not adversely affect the exclusion of interest on the Governmental Note from gross income for federal income tax purposes (subject to the inclusion of any exceptions contained in the opinion delivered upon the original issuance of the Governmental Note).

*“Financing Documents”* means, collectively, this Funding Loan Agreement, the Governmental Note, the Tax Regulatory Agreement, the Tax Certificates, the Project Loan Documents and all other documents or instruments evidencing, securing or relating to the Loans.

*“Fiscal Agent”* means BOKF, NA, a national banking association, and its successors hereunder.

*“Forward Commitment Maturity Date”* means March 1, 2020, subject to extension by Freddie Mac as provided in the Construction Phase Financing Agreement.

*“Freddie Mac”* means the Federal Home Loan Mortgage Corporation, a shareholder-owned government-sponsored enterprise organized and existing under the laws of the United States of America, and its successors and assigns.

*“Freddie Mac Commitment”* means the commitment from Freddie Mac to the Freddie Mac Seller/Servicer pursuant to which Freddie Mac has agreed to purchase the Funding Loan following the Conversion Date, subject to the terms and conditions set forth therein, as such commitment may be amended, modified or supplemented from time to time.

*“Freddie Mac Continuing Covenant Agreement”* means the Continuing Covenant Agreement to be delivered on the Conversion Date in the form attached to the Construction Phase Financing Agreement by and between the Borrower and the Freddie Mac Seller/Servicer, as the same may be amended, modified or supplemented from time to time.

*“Freddie Mac Purchase Date”* means the date on which Freddie Mac purchases the Funding Loan from the Freddie Mac Seller/Servicer upon satisfaction of the conditions set forth in the Construction Phase Financing Agreement and the Freddie Mac Commitment.

*“Freddie Mac Seller/Servicer”* means Bellwether Enterprise Real Estate Capital, LLC, as Freddie Mac’s seller/servicer under the Freddie Mac Commitment, or any of its successors or assigns under the Freddie Mac Commitment.

*“Funding Lender”* means any Person who is the holder of the Governmental Note.

*“Funding Lender Representative”* means the Funding Lender or any Person designated by the Funding Lender to act on behalf of the Funding Lender as provided in Section 11.05, or an assignee of such Person as provided in Section 11.05. The initial Funding Lender Representative shall be the Initial Funding Lender. The Freddie Mac Seller/Servicer shall become the Funding

Lender Representative upon the occurrence of the Conversion Date, and Freddie Mac shall become the Funding Lender Representative upon the occurrence of the Freddie Mac Purchase Date.

“*Funding Loan*” means the loan in the original principal amount of \$\_\_\_\_\_ made to the Governmental Lender pursuant to this Funding Loan Agreement by the Initial Funding Lender.

“*Funding Loan Amortization Schedule*” means the Funding Loan Amortization Schedule attached as Schedule 1 to the Governmental Note (as may be replaced as provided in Section 2.01(c)).

“*Gap Loan*” means the loan in the aggregate principal amount of \$\_\_\_\_\_ to be made by the Initial Funding Lender, as evidenced by the Gap Financing Note dated as of the Delivery Date from the Borrower to the Initial Funding Lender.

“*Government Obligations*” means investments meeting the requirements of clause (a) or (b) of the definition of “Qualified Investments” herein.

“*Governmental Lender*” means Austin Housing Finance Corporation, a housing finance corporation organized and existing under the laws of the State of Texas.

“*Governmental Lender Annual Fee*” means (i) \$\_\_\_\_\_ on the Note closing date, and (ii) the annual amount payable January 1 of each year beginning January 1, 2019 to the Issuer for its ordinary monitoring fees and expenses under the Indenture in an amount equal to the greatest of (a) .0003 times the amount of Bonds Outstanding on January 1 of each year, (b) \$12 times the number of units in the Project, and (c) \$1,200 per year.

“*Governmental Lender Fee*” means the Governmental Lender’s issuance fee to be paid at closing in the amount of 0.50% of the original principal amount of the Governmental Note.

“*Governmental Note*” means the Multifamily Note dated the Delivery Date, executed by the Governmental Lender and authenticated by the Fiscal Agent in favor of the Initial Funding Lender, in the form attached hereto as Exhibit A, as the same may be amended, restated, supplemented or otherwise modified from time to time, or any mortgage note executed in substitution therefor, as such substitute note may be amended, restated, supplemented or otherwise modified from time to time.

“*Guide*” means the Freddie Mac Multifamily Seller/Service Guide, as the same may be amended, modified or supplemented from time to time.

“*Initial Debt Service Deposit*” means an amount equal to the sum of (i) the interest payable on the Funding Loan, and (ii) the ongoing fees payable with respect to the Project Loan (as provided in Section 4.02 of the Project Loan Agreement), in each case for the period commencing on the Delivery Date to but not including the first day of the calendar month immediately succeeding the Delivery Date.

“*Initial Funding Lender*” means JPMorgan Chase Bank, N.A., as initial holder of the Governmental Note.

“*Initial Note*” means the initial Governmental Note registered by the Comptroller and subsequently canceled and replaced by a definitive Governmental Note pursuant to this Funding Loan Agreement.

“*Interest Payment Date*” means (i) the fifth day of each calendar month, commencing April 5, 2018, (ii) the date of any prepayment of the Funding Loan, but only with respect to the portion of the Funding Loan subject to prepayment, and (iii) the Maturity Date.

“*Interest Rate*” means, during the Construction Phase, a fixed rate of interest equal to [two and seventy five hundredths percent (2.75%) per annum], and, during the Permanent Phase, a fixed rate of interest equal to [four percent (4.00%) per annum]; provided in any event, during the continuance of any Event of Default hereunder, the Interest Rate shall be the Default Rate.

“*Investment Income*” means the earnings and profits derived from the investment of money pursuant to Section 4.08 hereof.

“*Loan Payment Fund*” means the Loan Payment Fund established by the Fiscal Agent pursuant to Section 4.01 hereof.

“*Loan Prepayment Fund*” means the Loan Prepayment Fund established by the Fiscal Agent pursuant to Section 4.01 hereof.

“*Maturity Date*” means the maturity date of the Funding Loan set forth in Section 2.01(b) hereof.

“*Maximum Interest Rate*” means the rate of interest which results in the maximum amount of interest allowed by applicable law.

“*Moody’s*” means Moody’s Investors Service, Inc., its successors and assigns, if such successors and assigns continue to perform the services of a securities rating agency.

“*Net Proceeds*” when used with respect to any insurance or condemnation award, means the proceeds from the insurance or condemnation award with respect to which that term is used remaining after payment of all reasonable expenses incurred in the collection of such insurance proceeds or condemnation award, including reasonable attorneys’ fees.

“*Nonpurpose Investment*” means any “investment property,” within the meaning of Section 148(b) of the Code, that is not a purpose investment acquired to carry out the governmental purpose of the Governmental Note.

“*Notes*” means, together, the Project Note and the Governmental Note.

“*Notice of Conversion*” means a written notice to be delivered not less than ten (10) days prior to the Conversion Date by the Freddie Mac Seller/Service to the Governmental Lender, the Fiscal Agent, the Borrower, the Initial Funding Lender and Freddie Mac (i) stating that the Conditions to Conversion have been satisfied on or before the Forward Commitment Maturity Date or, if any Condition to Conversion has not been satisfied on or before the Forward Commitment Maturity Date, stating that such Condition to Conversion has been waived in writing



by Freddie Mac (if a waiver is permitted and is granted by Freddie Mac, in its sole and absolute discretion) on or before the Forward Commitment Maturity Date, (ii) confirming the Conversion Date and (iii) providing for updated amortization schedules for the Project Note and the Governmental Note in the event the Borrower makes a Pre-Conversion Loan Equalization Payment at Conversion.

*“Ordinary Fiscal Agent’s Fees and Expenses”* means the annual administration fee for the Fiscal Agent’s ordinary fees and expenses in rendering its services under this Funding Loan Agreement during each twelve month period, which fee is equal to \$4,500.00 and shall be payable annually in advance on the Delivery Date and each anniversary thereafter.

*“Permanent Phase”* means the permanent phase of the Project Loan, which time period shall commence on the Conversion Date and remain in effect through the remaining term of the Project Loan.

*“Person”* means an individual, a corporation, a partnership, an association, a joint stock company, a joint venture, a trust, an unincorporated association, a limited liability company or a government or any agency or political subdivision thereof, or any other organization or entity (whether governmental or private).

*“Pledged Security”* shall have the meaning given to that term in Section 2.02 hereof.

*“Pre-Conversion Loan Equalization Payment”* means a prepayment of the Project Loan by the Borrower (and corresponding prepayment of the Funding Loan hereunder) prior to the Forward Commitment Maturity Date in order to equalize the principal amount of the Project Loan and the Funding Loan to the Actual Project Loan Amount.

*“Prepayment Premium”* means any premium payable hereunder in connection with a prepayment of the Funding Loan, which premium shall be in an amount equal to (i) during the Construction Phase, the amount of premium payable by the Borrower under Section 10 of the Project Note, and (ii) during the Permanent Phase, the amount of premium payable by the Borrower under Section 10 of the Project Note, in each case in connection with a prepayment of the Project Loan.

*“Principal Office of the Fiscal Agent”* means the office of the Fiscal Agent referenced in Section 11.04(a) hereof, or such other office or offices as the Fiscal Agent may designate in writing from time to time, or the office of any successor Fiscal Agent where it principally conducts its business of serving as Fiscal Agent under indentures pursuant to which municipal or governmental obligations are issued.

*“Project”* means, collectively, the Borrower’s leasehold interest in the land and in the residential rental apartment units, and related fixtures, equipment, furnishings and site improvements to be known as Nightingale at Goodnight Ranch Apartments located in Austin, Texas, including the leasehold interest in the real estate described in the Security Instrument.

*“Project Account”* means the Project Account of the Project Loan Fund established by the Fiscal Agent pursuant to Section 2.11 hereof.

“*Project Loan*” means the loan made by the Governmental Lender to the Borrower pursuant to the Project Loan Agreement in the original principal amount of \$\_\_\_\_\_, as evidenced by the Project Note.

“*Project Loan Agreement*” means the Project Loan Agreement dated as of the date hereof among the Borrower, the Governmental Lender and the Fiscal Agent, as amended, supplemented or restated from time to time.

“*Project Loan Documents*” means the Security Instrument, the Project Note, the Project Loan Agreement, the Tax Regulatory Agreement, the Assignment, the Continuing Covenant Agreement, any Subordination Agreement(s) and any and all other instruments and other documents evidencing, securing, or otherwise relating to the Project Loan or any portion thereof.

“*Project Loan Fund*” means the Project Loan Fund established by the Fiscal Agent pursuant to Section 2.11 hereof.

“*Project Note*” means the Multifamily Note dated the Delivery Date from the Borrower, including all riders and addenda thereto, evidencing the Borrower’s obligation to repay the Project Loan, which Project Note will be delivered to the Governmental Lender and endorsed by the Governmental Lender to the Fiscal Agent as security for the Funding Loan, as the same will be amended and restated into the form attached to the Construction Phase Financing Agreement upon the occurrence of the Conversion Date, as the same may be further amended, restated, supplemented or otherwise modified from time to time, or any note executed in substitution therefor, as such substitute note may be amended, restated, supplemented or otherwise modified from time to time.

“*Qualified Investments*” means any of the following if and to the extent the same are at the time legal for investment of funds of the Governmental Lender: (a) direct and general obligations of the United States of America; (b) obligations of any agency or instrumentality of the United States of America the payment of the principal of and interest on which are unconditionally guaranteed by the full faith and credit of the United States of America; (c) senior debt obligations of Freddie Mac; (d) senior debt obligations of the Federal National Mortgage Association (and known as “Fannie Mae”); (e) demand deposits or time deposits with, or certificates of deposit issued by, the Fiscal Agent or its affiliates or any bank organized under the laws of the United States of America or any state or the District of Columbia which has combined capital, surplus and undivided profits of not less than \$50,000,000; provided that the Fiscal Agent or such other institution has been rated at least “VMIG-1”/”A-1+” by Moody’s or S&P which deposits or certificates are fully insured by the Federal Deposit Insurance Corporation or collateralized pursuant to the requirements of the Office of the Comptroller of the Currency; (f) investment agreements with a bank or any insurance company or other financial institution which has a rating assigned by Moody’s or S&P to its outstanding long-term unsecured debt which is the highest rating (as defined below) for long-term unsecured debt obligations assigned by Moody’s or S&P, and which are approved by the Funding Lender Representative; (g) shares or units in any money market mutual fund rated “Aaa”/”AAA” by Moody’s or S&P (or if a new rating scale is implemented, the equivalent rating category given by the Rating Agency for that general category of security) (including the Federated Treasury Obligations Fund, CUSIP No. 58145C836, to the extent rated “AAAm” by S&P, mutual funds of the Fiscal Agent or its affiliates or for which the

Fiscal Agent or an affiliate thereof serves as investment advisor or provides other services to such mutual fund receives reasonable compensation therefor) registered under the Investment Company Act of 1940, as amended, whose investment portfolio consists solely of (A) direct obligations of the government of the United States of America, or (B) tax exempt obligations; (h)(i) tax-exempt obligations rated in the highest short term rating category by Moody's or S&P, or (ii) shares of a tax-exempt municipal money market mutual fund or other collective investment fund registered under the federal Investment Company Act of 1940, whose shares are registered under the federal Securities Act of 1933, having assets of at least \$100,000,000, and having a rating of "Aaa"/"AAA" by Moody's or S&P (or if a new rating scale is implemented, the equivalent rating category given by the Rating Agency for that general category of security), for which at least 95% of the income paid to the holders on interest in such money market fund will be excludable from gross income under Section 103 of the Code, including money market funds for which the Fiscal Agent or its affiliates receive a fee for investment advisory or other services to the fund; or (i) any other investments approved in writing by the Funding Lender Representative. For purposes of this definition, the "highest rating" shall mean a rating of at least "VMIG-1"/"A-1+" for obligations with less than one year maturity; at least "Aaa"/"VMIG-1"/"AAA"/"A-1+" for obligations with a maturity of one year or greater but less than three years; and at least "Aaa"/"AAA" for obligations with a maturity of three years or greater. Qualified Investments must be limited to instruments that have a predetermined fixed-dollar amount of principal due at maturity that cannot vary or change and interest, if tied to an index, shall be tied to a single interest rate index plus a single fixed spread, if any, and move proportionately with such index.

*"Qualified Project Costs"* has the meaning given to such term in the Tax Regulatory Agreement.

*"Rating Agency"* means Moody's or S&P, as applicable, or any successor rating service thereof.

*"Rebate Analyst"* means a certified public accountant, financial analyst or bond counsel, or any firm of the foregoing, or financial institution (which may include the Fiscal Agent) experienced in making the arbitrage and rebate calculations required pursuant to Section 148 of the Code, selected and retained by the Borrower at the expense of the Borrower, with the prior written consent of the Governmental Lender, to make the rebate computations required under this Funding Loan Agreement and the Project Loan Agreement.

*"Rebate Fund"* means the Rebate Fund established by the Fiscal Agent pursuant to Section 4.01 hereof.

*"Rebate Year"* means each one-year period that ends at the close of business on the day in the calendar year that is selected by Borrower as indicated in the Tax Certificate. The first and last Rebate Years may be short periods. If no day is selected by Borrower before the earlier of the Maturity Date or the date that is five years after the Delivery Date, each Rebate Year ends on each anniversary of the Delivery Date and on the Maturity Date or date of earlier payment in full of the Governmental Note.

“*Regulations*” means, with respect to the Code, the relevant U.S. Treasury regulations and proposed, temporary and final regulations thereunder or any relevant successor provision to such regulations and proposed, temporary and final regulations.

“*Requisition*” means, with respect to the Project Loan Fund, the requisition in the form of **Exhibit E** to this Funding Loan Agreement required to be submitted in connection with disbursements from the Project Account and/or the Borrower Equity Account of the Project Loan Fund, and with respect to the Cost of Issuance Fund, the requisition in the form of **Exhibit D** to this Funding Loan Agreement required to be submitted in connection with disbursements from the Cost of Issuance Fund.

“*Resolution*” means the resolution adopted by the Governmental Lender on \_\_\_\_\_, 2018, authorizing the Funding Loan, the Project Loan and the execution and delivery of the Financing Documents to which it is a party.

“*Responsible Officer*” means any officer of the Fiscal Agent employed within or otherwise having regular responsibility in connection with the corporate trust department of the Fiscal Agent and the trusts created hereunder.

“*Revenue Fund*” means the Revenue Fund established by the Fiscal Agent pursuant to Section 4.01 hereof.

“*Revenues*” means (a) all payments made with respect to the Project Loan pursuant to the Project Loan Agreement, the Project Note or the Security Instrument, including but not limited to all casualty or other insurance benefits and condemnation awards paid in connection therewith and all payments obtained through the exercise of remedies under the Financing Documents, and (b) all money and securities held by the Fiscal Agent in the funds and accounts established pursuant to this Funding Loan Agreement (excluding money or securities designated for deposit into and held in the Cost of Issuance Fund, the Administration Fund and the Rebate Fund), together with all investment earnings thereon.

“*Security Instrument*” means the Multifamily Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing dated as of the date hereof, by the Borrower, granting a first priority mortgage and security interest in the Project to the Governmental Lender to secure the repayment of the Project Loan and related obligations, which Security Instrument has been assigned by the Governmental Lender to the Fiscal Agent pursuant to the Assignment as security for the Funding Loan, as the same will be amended and restated into the form attached to the Construction Phase Financing Agreement upon the occurrence of the Conversion Date, as the same may be further amended, supplemented or restated.

“*S&P*” means Standard & Poor’s Ratings Services, a Standard & Poor’s Financial Services LLC business, and its successors and assigns, if such successors and assigns continue to perform the services of a securities rating agency.

“*Servicer*” means any entity appointed by the Funding Lender Representative to service the Loans and any successor in such capacity as appointed by the Funding Lender Representative pursuant to Section 3.02 of the Project Loan Agreement. During the Construction Phase, the

Servicer shall be the Initial Funding Lender. During the Permanent Phase, the Servicer shall be the Freddie Mac Seller/Servicer.

“*State*” means the State of Texas.

“*Subordinate Loans*” shall have the meaning assigned to that term in the Construction Disbursement Agreement.

“*Subordination Agreement*” means any subordination or intercreditor agreement(s) entered into with respect to any subordinate financing related to the Project, as the same may be amended, supplemented or restated.

“*Tax Certificate*” means, together, the Federal Tax Exemption Certificates, each dated the Delivery Date, executed and delivered by the Governmental Lender and the Borrower.

“*Tax Regulatory Agreement*” means the Regulatory Agreement and Land Use Restriction Agreement dated March 1, 2018, by and among the Governmental Lender, the Fiscal Agent and the Borrower.

“*Transferee Representations Letter*” has the meaning set forth in Section 2.08 hereof.

“*Unassigned Rights*” means (a) all of the Governmental Lender’s right, title and interest in and to all reimbursement, costs, expenses and indemnification, (b) all rights of the Governmental Lender to receive any rebate amount under Section 2.05 of the Project Loan Agreement, (c) all rights of the Governmental Lender to receive notices, reports and other statements and to make any determination and to grant any approval or consent to anything in this Funding Loan Agreement, the Project Loan Agreement, the Tax Regulatory Agreement and the loan documents requiring the determination, consent or approval of the Governmental Lender (but, as to the loan documents, only to the extent of the Governmental Lender’s Reserved Rights, as defined therein), (d) all rights of the Governmental Lender to specifically enforce the representations, warranties, covenants and agreements of the Borrower set forth in the Tax Certificate and in the Tax Regulatory Agreement, (e) any and all rights, remedies and limitations of liability of the Governmental Lender set forth in this Funding Loan Agreement, the Project Loan Agreement, the Tax Regulatory Agreement and the loan documents, as applicable, regarding (1) the negotiability, registration and transfer of the Governmental Note, (2) the loss or destruction of the Governmental Note, (3) the limited liability of the Governmental Lender as provided in the Act, this Funding Loan Agreement, the Project Loan Agreement, the Tax Regulatory Agreement and the loan documents, (4) no liability of the Governmental Lender to third parties, and (5) no warranties of suitability or merchantability by the Governmental Lender, (f) all rights of the Governmental Lender in connection with any amendment to or modification of this Funding Loan Agreement, the Project Loan Agreement, the Tax Regulatory Agreement and the loan documents (but, as to the loan documents, only to the extent of the Governmental Lender’s Unassigned Rights, as defined therein), and (g) any and all limitations of the Governmental Lender’s liability and the Governmental Lender’s disclaimers of warranties set forth in this Funding Loan Agreement, the Tax Regulatory Agreement or the Project Loan Agreement, and the Governmental Lender’s right to inspect and audit the books, records and permits of the Borrower.

“*Window Period*” means the three (3) consecutive month period prior to the Maturity Date.

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

**Section 1.02 *Interpretation.*** The words “hereof,” “herein,” “hereunder,” and other words of similar import refer to this Funding Loan Agreement as a whole and not to any particular Article, Section or other subdivision. Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders. Words importing the singular number shall include the plural number and vice versa unless the context shall

otherwise indicate. All accounting terms not otherwise defined herein have the meanings assigned to them in accordance with generally accepted accounting principles as in effect from time to time. References to Articles, Sections, and other subdivisions of this Funding Loan Agreement are to the designated Articles, Sections and other subdivisions of this Funding Loan Agreement as originally executed. The headings of this Funding Loan Agreement are for convenience only and shall not define or limit the provisions hereof.

(End of Article I)

## ARTICLE II

### THE FUNDING LOAN

#### **Section 2.01   *Terms.***

(a) The Funding Loan shall be originated and funded on the Delivery Date in the original principal amount of \$\_\_\_\_\_ and funded in the amount of \$\_\_\_\_\_ (which amount represents the par amount of the Funding Loan net of the Initial Debt Service Deposit of \$\_\_\_\_\_ and Costs of Issuance of the Funding Lender in the amount of \$\_\_\_\_\_) with such funds provided to the Governmental Lender by the Initial Funding Lender. The proceeds of the Funding Loan shall be deposited and disbursed in accordance with this Funding Loan Agreement. The Funding Loan shall be evidenced by the Governmental Note and shall bear interest and be paid in accordance with the payment terms set forth in the Governmental Note and this Funding Loan Agreement.

(b) The Funding Loan shall bear interest payable on each Interest Payment Date at the Interest Rate and shall mature on \_\_\_\_\_, \_\_\_\_\_, subject to scheduled monthly principal payments as provided in Section 2.01(c) below and optional and mandatory prepayment prior to maturity as provided in Article III hereof. During the Construction Phase, interest on the Funding Loan shall be computed on the basis of a 360-day year consisting of twelve 30-day months. During the Permanent Phase, interest on the Funding Loan shall be computed on the basis of a 360-day year payable for the actual number of days elapsed (including the first day but excluding the last day).

(c) The unpaid principal balance of the Funding Loan shall be paid on the dates and in the amounts set forth on the Funding Loan Amortization Schedule attached as Schedule 1 to the Governmental Note. If the twenty-four (24) month interest only period related to the Project Loan is extended for six (6) months as provided for in the Construction Disbursement Agreement, the Funding Loan Amortization Schedule shall automatically be extended to the first day of the month immediately succeeding the Conversion Date (with the succeeding principal installments remaining consistent with the original schedule but for them occurring on later dates). Additionally, in the event the outstanding amount of the Funding Loan on the Conversion Date is less than the starting principal amount set forth in the initial Funding Loan Amortization Schedule, a new Funding Loan Amortization Schedule will be generated on the Conversion Date at such lesser outstanding principal amount based on the parameters set forth in the Freddie Mac Commitment. In the event the initial Funding Loan Amortization Schedule is modified in accordance with this Section 2.01(c), a replacement Funding Loan Amortization Schedule will be provided by the Freddie Mac Seller/Servicer which will be attached to the Governmental Note on the Conversion Date. All unpaid principal and all accrued and unpaid interest outstanding under the Funding Loan shall be due and payable on the Maturity Date.

(d) Payment of principal of, Prepayment Premium, if any, and interest on the Funding Loan shall be paid by wire transfer in immediately available funds to an account within the United States of America designated by the Funding Lender (unless otherwise directed by the Funding Lender).

(e) Subject to Section 2.12 hereof, on or before the date fixed for payment, money shall be deposited with the Fiscal Agent to pay, and the Fiscal Agent is hereby authorized and directed to apply such money to the payment of, the Funding Loan, together with accrued interest thereon to the date of payment.

(f) In no contingency or event whatsoever shall the aggregate of all amounts deemed interest hereunder and charged or collected pursuant to the terms of this Funding Loan Agreement exceed the highest rate permissible under any law which a court of competent jurisdiction shall, in a final determination, deem applicable hereto. In the event that such court determines the Funding Lender has charged or received interest hereunder in excess of the highest applicable rate, the Funding Lender shall apply, in its sole discretion, and set off such excess interest received by the Funding Lender against other obligations due or to become due under the Financing Documents and such rate shall automatically be reduced to the maximum rate permitted by such law.

**Section 2.02 Pledged Security.** To secure the payment of the principal of, Prepayment Premium, if any, and interest on the Governmental Note according to its tenor and effect, and the performance and observance by the Governmental Lender of all the covenants expressed or implied herein and in the Governmental Note, and the payment and performance of all amounts and obligations by the Borrower under the Continuing Covenant Agreement, the Governmental Lender does hereby grant, bargain, sell, convey, pledge and assign a security interest, unto the Fiscal Agent, and its successors in such capacity and its and their assigns in and to the following (said property being herein referred to as the “*Pledged Security*”) for the benefit of the Funding Lender:

(a) All right, title and interest of the Governmental Lender in and to all Revenues;

(b) All right, title and interest of the Governmental Lender in and to the Project Loan Agreement, the Project Note, the Security Instrument and the other Project Loan Documents (other than the Unassigned Rights), including all extensions and renewals of the terms thereof, if any, including, but without limiting the generality of the foregoing, the present and continuing right to receive, receipt for, collect or make claim for any of the money, income, revenues, issues, profits and other amounts payable or receivable thereunder (including all casualty insurance benefits or condemnation awards), whether payable under the above referenced documents or otherwise, to bring actions and proceedings thereunder or for the enforcement thereof, and to do any and all things which the Governmental Lender or any other Person is or may become entitled to do under said documents; and

(c) Except for funds, money or securities in the Cost of Issuance Fund, the Administration Fund and the Rebate Fund, all funds, money and securities and any and all other rights and interests in property whether tangible or intangible from time to time hereafter by delivery or by writing of any kind, conveyed, mortgaged, pledged, assigned or transferred as and for additional security hereunder for the Funding Loan by the Governmental Lender or by anyone on its behalf or with its written consent to the Fiscal Agent, which is hereby authorized to receive any and all such property at any and all times and to hold and apply the same subject to the terms hereof.



The foregoing notwithstanding, if the Governmental Lender or its successors or assigns shall pay or cause to be paid to the Funding Lender in full the principal, interest and Prepayment Premium, if any, to become due with respect to the Governmental Note at the times and in the manner provided in Article IX hereof, and if the Governmental Lender shall keep, perform and observe, or cause to be kept, performed and observed, all of its covenants, warranties and agreements contained herein, then these presents and the estate and rights hereby granted shall, at the option of the Governmental Lender, cease, terminate and be void, and thereupon the Fiscal Agent shall cancel and discharge the lien of this Funding Loan Agreement and execute and deliver to the Governmental Lender such instruments in writing as shall be requisite to satisfy the lien hereof, and, subject to the provisions of Sections 4.11 and 4.12 hereof and Article IX hereof, reconvey to the Governmental Lender the estate hereby conveyed, and assign and deliver to the Governmental Lender any property at the time subject to the lien of this Funding Loan Agreement which may then be in its possession, except for the Rebate Fund and cash held by the Fiscal Agent for the payment of interest on and principal of the Governmental Note; otherwise this Funding Loan Agreement to be and shall remain in full force and effect.

**Section 2.03 *Limited Obligations.*** (a) THE GOVERNMENTAL NOTE IS A SPECIAL, LIMITED OBLIGATION OF THE GOVERNMENTAL LENDER PAYABLE, AS TO PRINCIPAL, PREMIUM, IF ANY, AND INTEREST SOLELY FROM THE PLEDGED REVENUES AND OTHER FUNDS AND MONEYS AND SECURITY PLEDGED AND ASSIGNED HEREUNDER. THE GOVERNMENTAL NOTE SHALL CONSTITUTE A VALID CLAIM OF THE OWNER OR OWNERS THEREOF AGAINST THE PLEDGED REVENUES AND OTHER FUNDS AND MONEYS AND SECURITY PLEDGED AND ASSIGNED HEREUNDER, WHICH ARE PLEDGED TO SECURE THE PAYMENT OF THE PRINCIPAL OF AND INTEREST ON THE GOVERNMENTAL NOTE, AND WHICH SHALL BE USED FOR NO OTHER PURPOSE EXCEPT AS EXPRESSLY AUTHORIZED IN THIS FUNDING LOAN AGREEMENT. THE GOVERNMENTAL NOTE SHALL NOT BE A DEBT OR INDEBTEDNESS OF THE STATE OR ANY POLITICAL SUBDIVISION THEREOF, AND NEITHER THE STATE NOR ANY POLITICAL SUBDIVISION THEREOF SHALL BE LIABLE THEREON, NOR IN ANY EVENT SHALL THE GOVERNMENTAL NOTE BE PAYABLE OUT OF ANY FUNDS OR PROPERTIES OTHER THAN THOSE OF THE GOVERNMENTAL LENDER PLEDGED UNDER THIS FUNDING LOAN AGREEMENT. THE GOVERNMENTAL NOTE SHALL NOT CONSTITUTE AN INDEBTEDNESS OR A MULTIPLE FISCAL-YEAR FINANCIAL OBLIGATION WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY DEBT LIMITATION OR RESTRICTION. NEITHER THE STATE NOR ANY POLITICAL SUBDIVISION THEREOF (EXCEPT THE GOVERNMENTAL LENDER FROM THE SOURCES IDENTIFIED HEREIN) SHALL BE LIABLE FOR PAYMENT OF THE GOVERNMENTAL NOTE NOR IN ANY EVENT SHALL PRINCIPAL OF, PREMIUM, IF ANY, AND INTEREST ON THE GOVERNMENTAL NOTE BE PAYABLE OUT OF ANY FUNDS OR ASSETS OTHER THAN THOSE PLEDGED TO THAT PURPOSE BY THE GOVERNMENTAL LENDER HEREIN. THE GOVERNMENTAL LENDER HAS NO TAXING POWER.

(b) The Borrower hereby acknowledges that the Governmental Lender's sole source of money to repay the Funding Loan will be provided by the Revenues, together with investment income on certain funds and accounts held by the Fiscal Agent under the Project Loan Agreement, and hereby agrees that if the payments to be made hereunder shall ever prove insufficient to pay

all principal (or prepayment premium) and interest on the Funding Loan as the same shall become due (whether by maturity, prepayment, acceleration or otherwise), then upon notice from the Fiscal Agent, subject to the limitations in Section 4.06 of the Project Loan Agreement, the Borrower shall pay such amounts as are required from time to time to prevent any deficiency or default in the payment of such principal (or prepayment premium) or interest, including, but not limited to, any deficiency caused by acts, omissions, nonfeasance or malfeasance on the part of the Fiscal Agent, the Borrower, the Governmental Lender or any third party, subject to any right of reimbursement from the Fiscal Agent, the Governmental Lender or any such third party, as the case may be, therefor.

**Section 2.04 *Funding Loan Agreement Constitutes Contract.*** In consideration of the origination and funding of the Funding Loan by the Initial Funding Lender, the provisions of this Funding Loan Agreement shall be part of the contract of the Governmental Lender with the Initial Funding Lender and any successors or assigns thereof in such capacity from time to time.

**Section 2.05 *Form and Execution.***

(a) The Governmental Note shall be in substantially the form attached as **Exhibit A**, with such appropriate insertions, omissions, substitutions and other variations as are required or permitted by this Funding Loan Agreement. Except for the Initial Note which shall be numbered I 1, the Governmental Note shall be numbered consecutively from R 1 upwards.

The Initial Note, registered by the Comptroller, shall be identical to the form of Governmental Note attached as **Exhibit A**, except that the following paragraph shall be added as the second-to-last paragraph of the Initial Note and read as follows:

“THIS GOVERNMENTAL NOTE SHALL NOT BE VALID OR BECOME OBLIGATORY for any purpose or be entitled to any benefit or security under the Funding Loan Agreement unless the Comptroller’s Registration Certificate hereon has been executed by an authorized representative of the Texas Comptroller of Public Accounts.”

In lieu of the authentication certificate of the Fiscal Agent, the Initial Note shall contain the following certificate:

**“REGISTRATION CERTIFICATE  
OF COMPTROLLER OF PUBLIC ACCOUNTS**

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

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

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

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Texas Comptroller of Public Accounts

(SEAL)”

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

(b) Each Governmental Note (including the Initial Note) shall be executed on behalf of the Governmental Lender by the manual or facsimile signature of an Authorized Officer of the Governmental Lender, and attested by the manual or facsimile signature of an Authorized Officer of the Governmental Lender, sealed with an impression or a facsimile of the seal of the Governmental Lender. Any facsimile signatures shall have the same force and effect as if said officers had manually signed the Governmental Note. Any reproduction of the official seal of the Governmental Lender on the Governmental Note shall have the same force and effect as if the official seal of the Governmental Lender had been impressed on the Governmental Note.

**Section 2.06 Authentication.** The Governmental Note shall not be valid or obligatory for any purpose or entitled to any security or benefit under this Funding Loan Agreement unless a certificate of authentication on the Governmental Note, substantially in the form set forth in **Exhibit A**, shall have been duly executed by an Authorized Officer of the Fiscal Agent; and such executed certificate of authentication upon the Governmental Note shall be conclusive evidence that the Governmental Note has been duly executed, registered, authenticated and delivered under this Funding Loan Agreement.

Except for the Initial Note, no Governmental Note shall be secured by, or be entitled to any lien, right or benefit under, this Funding Loan Agreement or be valid or obligatory for any purpose, unless there appears on such Governmental Note a certificate of authentication substantially in the form provided for herein, executed by the Fiscal Agent by manual signature, and such certificate upon the definitive Governmental Note shall be conclusive evidence, and the only evidence, that such definitive Governmental Note has been duly authenticated and delivered hereunder.

**Section 2.07 Mutilated, Lost, Stolen or Destroyed Governmental Note.** In the event the Governmental Note is mutilated, lost, stolen or destroyed, the Governmental Lender shall execute and the Fiscal Agent shall authenticate a new Governmental Note substantially in the form set forth in **Exhibit A** in exchange and substitution for and upon cancellation of the mutilated Governmental Note or in lieu of and in substitution for such lost, stolen or destroyed Governmental Note, upon payment by the Funding Lender of any applicable tax or governmental charge and the reasonable expenses and charges of the Governmental Lender and the Fiscal Agent in connection therewith, and in the case where the Governmental Note is lost, stolen or destroyed, the filing with the Fiscal Agent of evidence satisfactory to it that the Governmental Note was lost, stolen or destroyed, and of the ownership thereof, and furnishing the Governmental Lender and the Fiscal Agent with indemnity satisfactory to each of them. In the event where the Governmental Note

shall have matured, instead of delivering a new Governmental Note the Governmental Lender may pay the same without surrender thereof.

**Section 2.08 *Registration; Transfer of Funding Loan; Transferee Representations Letter.***

(a) The Governmental Note shall be fully registered as to principal and interest in the manner and with any additional designation as the Fiscal Agent deems necessary for the purpose of identifying the registered owner thereof. The Governmental Note shall be transferable only on the registration books of the Fiscal Agent. The Fiscal Agent shall maintain books or other records showing the name and date of registration, address and employer identification number of the registered owner of the Governmental Note and any transfers of the Governmental Note as provided herein. The Governmental Note shall initially be registered to the Initial Funding Lender, upon the Conversion Date shall be registered to the Freddie Mac Seller/Servicer, and upon the Freddie Mac Purchase Date, shall be registered to Freddie Mac.

(b) The Fiscal Agent, on behalf of the Governmental Lender, shall provide for the registration of the Governmental Note and the registration of transfers thereof pursuant to Chapter 1203 of the Texas Government Code. In that regard, the Fiscal Agent shall maintain a register, which shall contain a record of every Governmental Note at any time authenticated hereunder, together with the name and address of the holder thereof, the date of authentication, the date of transfer or payment, and such other matters as may be deemed appropriate by the Fiscal Agent or the Governmental Lender. The Governmental Lender, the Fiscal Agent and any agent of the Governmental Lender or the Fiscal Agent may treat the person in whose name the Governmental Note is registered as the owner of the Governmental Note for the purpose of receiving payment of the Governmental Note and for all other purposes whatsoever whether or not the Governmental Note payments are overdue, and, to the extent permitted by law, neither the Governmental Lender, the Fiscal Agent nor any such agent shall be affected by notice to the contrary. The Funding Loan shall initially be registered to the Initial Funding Lender, and upon the Freddie Mac Purchase Date, shall be registered to Freddie Mac.

(c) The Funding Lender shall have the right to sell, assign or otherwise transfer in whole its interest in the Funding Loan or to grant a participation interest in the Funding Loan in a percentage of not less than twenty-five percent (25%) of the outstanding principal amount of the Funding Loan; provided that the Funding Loan may be transferred, or any participation interest therein granted, only to an institutional “accredited investor” (as defined in Rule 501(a)(1), (2), (3), (4), (7) or (8) of Regulation D promulgated under the Securities Act, but excluding entities described in Rule 501(a)(8) that admit equity owners described in Rule 501(a)(5) or Rule 501(a)(6)) (an “Accredited Investor”) or a “qualified institutional buyer” as that term is defined under Rule 144A of the Securities Act (such “Accredited Investor” or “qualified institutional buyer” a “Qualified Transferee”) that delivers, in each case, a letter to the Fiscal Agent substantially in the form attached hereto as **Exhibit C** setting forth certain representations with respect to such Qualified Transferee (the “Transferee Representations Letter”). Notwithstanding the preceding sentence, no Transferee Representations Letter shall be required for the Funding Lender Representative to (i) transfer the Funding Loan to any affiliate or other party related to the Funding Lender that is a Qualified Transferee or (ii) sell or transfer the Funding Loan to a special purpose entity, a trust or a custodial or similar pooling arrangement from which the Funding Loan

or securitized interests therein are not expected to be sold or transferred except to (x) owners or beneficial owners thereof that are Qualified Transferees or (y) in circumstances where secondary market credit enhancement is provided for such securitized interests resulting in a rating thereof of at least “A” or better. In connection with any sale, assignment or transfer of the Funding Loan, the Funding Lender shall give notice of such sale, assignment or transfer to the Fiscal Agent and the Fiscal Agent shall record such sale, assignment or transfer on its books or other records maintained for the registration of transfer of the Governmental Note.

**Section 2.09 [Reserved].**

**Section 2.10 *Funding Loan Closing Conditions; Delivery of Governmental Note.***

Closing of the Funding Loan on the Delivery Date shall be conditioned upon, and the Governmental Lender shall only execute and deliver to the Fiscal Agent, and the Fiscal Agent shall only authenticate the Governmental Note and deliver the Governmental Note to the Initial Funding Lender upon, satisfaction of the following conditions, in the sole discretion of Governmental Lender or the Initial Funding Lender, as applicable:

(a) receipt by the Fiscal Agent, the Initial Funding Lender and the Governmental Lender of executed counterparts of this Funding Loan Agreement, the Project Loan Agreement, the Tax Regulatory Agreement and the Tax Certificate;

(b) receipt by the Fiscal Agent, the Initial Funding Lender and the Governmental Lender of an opinion of Bond Counsel (or reliance letter) to the effect that the Governmental Lender is duly organized and existing under the laws of the State and has duly authorized, executed and delivered this Funding Loan Agreement, the Governmental Note and the other Financing Documents to which it is a party, and such documents are valid and binding special, limited obligations of the Governmental Lender enforceable in accordance with their terms subject to customary exceptions;

(c) the Initial Note registered by the Comptroller and an Opinion of the Attorney General of the State of Texas approving the Governmental Note;

(d) receipt by the Fiscal Agent of the proceeds of the Funding Loan from the original funding thereof by the Initial Funding Lender;

(e) the executed Project Note and an endorsement of the Project Note by the Governmental Lender in favor of the Fiscal Agent;

(f) receipt by the Fiscal Agent of a copy of the executed Security Instrument, the Assignment, the Construction Phase Financing Agreement and the Construction Disbursement Agreement;

(g) receipt by the Fiscal Agent, the Initial Funding Lender and the Governmental Lender of an opinion of counsel to the Borrower subject to customary qualifications and exceptions to the effect that the Borrower is duly organized and validly existing and in good standing under the laws of the state in which it has been organized and in good standing under the laws of each other state in which the Borrower transacts business and has full power and authority to enter into the Financing Documents to which it is a party, that its execution and delivery of and performance

of its covenants in such documents do not contravene law or any provision of any other documents to which it is a party or by which it or such property is bound or affected, and that all such agreements have been duly authorized, executed and delivered by the Borrower, and are legal, valid and binding obligations of the Borrower enforceable against the Borrower in accordance with their respective terms;

(h) receipt by the Fiscal Agent, the Initial Funding Lender and the Governmental Lender a customary approving opinion of Bond Counsel, including but not limited to an opinion to the effect that under existing law, the interest payable on the Governmental Note is excludable from gross income for federal income tax purposes (except with respect to interest on any portion of the Governmental Note during any period while such portion is held by a “substantial user” of the Development or a “related person” to such a “substantial user” within the meaning of Section 147(a) of the Code);

(i) receipt by the Fiscal Agent and the Initial Funding Lender of a certified copy of the Resolution;

(j) receipt by the Fiscal Agent of the written request and authorization to the Fiscal Agent by the Governmental Lender to authenticate and deliver the Governmental Note to the Initial Funding Lender upon funding to the Fiscal Agent of the full amount of the Funding Loan;

(k) receipt by the Fiscal Agent of the amounts specified in Section 2.11 of this Funding Loan Agreement and Section 3.03 of the Project Loan Agreement; and

(l) receipt by the Fiscal Agent and the Governmental Lender of a Transferee Representations Letter from the Initial Funding Lender substantially in the form attached hereto as **Exhibit C**.

***Section 2.11 Establishment of Project Loan Fund; Application of Funding Loan Proceeds and Other Money.***

(a) The Fiscal Agent shall establish at the Initial Funding Lender, maintain and hold in trust and there is hereby established with the Fiscal Agent a Project Loan Fund and therein a Project Account and a Borrower Equity Account. The Borrower Equity Account shall be comprised of the following subaccounts: (i) the LIHTC Subaccount, (ii) the Gap Loan Subaccount, and (iii) the Net Operating Income Subaccount. No amount shall be charged against the Project Loan Fund except as expressly provided in this Section 2.11 and Section 4.02 hereof.

(b) The proceeds of the Funding Loan in the amount of \$\_\_\_\_\_ (which amount represents the par amount of the Funding Loan net of the Initial Debt Service Deposit of \$\_\_\_\_\_ and Costs of Issuance of the Funding Lender in the amount of \$\_\_\_\_\_) shall be delivered by the Initial Funding Lender to the Fiscal Agent on behalf of the Governmental Lender on the Delivery Date. The Fiscal Agent shall deposit such proceeds to the credit of the Project Account of the Project Loan Fund. Amounts in the Project Loan Fund shall be disbursed as provided in subparagraph (d) below, subject to the conditions set forth in Section 3.01 of the Project Loan Agreement. Upon the disbursement of all amounts in the Project Loan Fund, the Fiscal Agent shall close the Project Loan Fund.

(c) The Governmental Lender shall cause the Borrower to deliver from sources other than the Loans, to the Fiscal Agent, on the Delivery Date, (i) the Costs of Issuance Deposit for deposit to the credit of the Cost of Issuance Fund, (ii) the initial deposit of tax credit equity in the amount of \$\_\_\_\_\_ for deposit in the LIHTC Subaccount of the Borrower Equity Account, (iii) the initial deposit of Gap Loan proceeds in the amount of \$\_\_\_\_\_ for deposit in the Gap Loan Subaccount of the Borrower Equity Account, (iv) the initial deposit of net operating income in the amount of \$\_\_\_\_\_ for deposit in the Net Operating Income Subaccount of the Borrower Equity Account, and (v) to the Servicer the Initial Debt Service Deposit. The Fiscal Agent shall also deposit following the Delivery Date (i) in the LIHTC Subaccount of the Borrower Equity Account tax credit equity received from the Borrower, (ii) in the Gap Loan Subaccount of the Borrower Equity Account proceeds of the Gap Loan received from the Initial Funding Lender, and (iii) in the Net Operating Income Subaccount of the Borrower Equity Account net operating income received from the Borrower.

(d) Upon the making of the initial deposits described above in this Section 2.11, the Governmental Lender shall originate the Project Loan pursuant to the Project Loan Agreement and the Fiscal Agent shall make disbursements of amounts in the Project Loan Fund to the Borrower or otherwise as provided in Section 4.02 hereof.

***Section 2.12 Direct Loan Payments to Funding Lender; Servicer Disbursement of Fees.***

(a) CONSTRUCTION PHASE LENDER WILL PAY INTEREST: Notwithstanding any provision in this Funding Loan Agreement to the contrary, during any period that a Servicer is engaged with respect to the Loans, the Governmental Lender and the Fiscal Agent agree that all payments of principal of, Prepayment Premium, if any, and interest on the Funding Loan and all fees due hereunder and under the Project Loan Agreement shall be paid by the Borrower to the Servicer; provided, however, the Fiscal Agent shall be responsible for making the debt service and fee payments (net of interest on the Funding Loan, which will be paid directly by the Initial Funding Lender) out of the Project Loan Fund as and to the extent required under Section 4.02 hereof during the Construction Phase. The Servicer shall remit all payments collected from the Borrower of principal of, Prepayment Premium, if any, and interest on the Funding Loan, together with other amounts due to the Funding Lender, directly to the Funding Lender (without payment through and with notice to the Fiscal Agent) per the instructions of the Funding Lender Representative. The Servicer shall be entitled to retain its Servicing Fee (if any) collected from the Borrower and shall remit the Governmental Lender Annual Fee to the Governmental Lender and shall remit the Ordinary Fiscal Agent's Fees and Expenses to the Fiscal Agent, together with any other amounts due to the Governmental Lender and the Fiscal Agent collected by the Servicer from the Borrower, in each case in accordance with their respective instructions. Any payment made in accordance with the provisions of this Section shall be accompanied by sufficient information to identify the source and proper application of such payment. The Servicer shall promptly notify the Fiscal Agent, the Funding Lender Representative and the Governmental Lender in writing of any failure of the Borrower to make any payment of principal of, Prepayment Premium, if any, and interest on the Funding Loan when due or to pay any fees due hereunder or under the Project Loan Agreement, and the Fiscal Agent and the Governmental Lender shall not be deemed to have any notice of such failure unless it has received such notice in writing.

(b) If the Governmental Note is sold or transferred as provided in Section 2.08, the Funding Lender Representative shall notify the Fiscal Agent and the Borrower in writing of the name and address of the transferee.

(c) So long as payments of principal of, Prepayment Premium, if any, and interest on the Governmental Note and all fees due hereunder and under the Project Loan Agreement are being made to the Servicer in accordance with this Section 2.12 and no Event of Default has occurred of which the Fiscal Agent has been given, or been deemed to have, notice thereof pursuant to this Funding Loan Agreement, the Fiscal Agent shall have no obligations to collect loan payments with respect to the Funding Loan, nor shall it be obligated to collect loan payments or fee payments pursuant to the Project Loan Agreement, except at the express written direction of the Funding Lender Representative; provided, however, the Fiscal Agent shall be responsible for making the debt service and fee payments out of the Project Loan Fund as required under Section 4.02 hereof during the Construction Phase. Notwithstanding the foregoing, the Funding Lender Representative may elect to have the Fiscal Agent collect and remit loan payments and fee payments hereunder and under the Project Loan Agreement upon written notice of such election to the Fiscal Agent, the Borrower and the Governmental Lender.

**Section 2.13 *Conversion.*** If the Notice of Conversion is issued in the timeframe required under the Construction Phase Financing Agreement, Conversion will occur on the Conversion Date indicated in such Notice of Conversion. If the Notice of Conversion is not so issued, Conversion will not occur, and neither the Freddie Mac Seller/Servicer nor Freddie Mac will have any obligations with respect to the purchase of the Funding Loan or otherwise with respect to the Loans or the Project.

(End of Article II)



## ARTICLE III

### REDEMPTION OF THE FUNDING LOAN

#### **Section 3.01** *Redemption of the Funding Loan Prior to Maturity.*

(a) **Optional Prepayment.** The Funding Loan, together with accrued interest thereon, is subject to optional prepayment in whole upon optional prepayment of the Project Loan in accordance with the notice and other prepayment provisions set forth in the Project Note.

(b) **Mandatory Prepayment.** The Funding Loan, together with accrued interest thereon, and together with Prepayment Premium (to the extent payable under the Project Note), is subject to mandatory prepayment on any Business Day, in whole or in part as indicated below, at the earliest practicable date upon the occurrence of any of the following:

(i) in whole or in part, upon the occurrence of a mandatory prepayment of the Project Loan pursuant to the terms of the Project Note and receipt by the Fiscal Agent of a written direction by the Funding Lender Representative that the Funding Loan shall be subject to mandatory prepayment as a result thereof;

(ii) in part, on the Interest Payment Date next following the completion of the construction of the Project, to the extent amounts remaining in the Project Account are transferred to the Loan Prepayment Fund pursuant to Section 4.02(e) hereof;

(iii) in part, in the event the Borrower makes a Pre-Conversion Loan Equalization Payment, or elects to otherwise make a payment to satisfy the Conditions to Conversion to pay the Project Loan down to the Permanent Loan Commitment Amount; or

(iv) in whole, on or after the Forward Commitment Maturity Date, at the written direction of the Initial Funding Lender, if the Notice of Conversion is not issued by the Freddie Mac Seller/Servicer prior to the Forward Commitment Maturity Date.

Notwithstanding anything to the contrary in this Funding Loan Agreement, any prepayment of the Funding Loan in whole or part shall constitute a prepayment of the Governmental Note to the extent of prepayment.

**Section 3.02** *Notice of Prepayment.* Notice of the intended prepayment of the Funding Loan shall be given by the Fiscal Agent by first class mail, postage prepaid, or by Electronic Notice or by overnight delivery service, to the Funding Lender. All such prepayment notices shall be given not less than ten (10) days (not less than thirty (30) days in the case of optional prepayment) nor more than sixty (60) days prior to the date fixed for prepayment. Notices of prepayment shall state (i) the prepayment date, (ii) the prepayment amount, and (iii) the place or places where amounts due upon such prepayment will be payable.

Notice of such prepayment shall also be sent by first class mail, postage prepaid, or by Electronic Notice or by overnight delivery service, to the Servicer, not later than the time of mailing of notices required by the first paragraph above, and in any event no later than

simultaneously with the mailing of notices required by the first paragraph above; provided, that neither failure to receive such notice nor any defect in any notice so mailed shall affect the sufficiency of the proceedings for the prepayment of the Funding Loan.

Notwithstanding the foregoing, in the event the Fiscal Agent is not collecting and remitting loan payments hereunder, the Fiscal Agent shall have no obligation to send prepayment notices pursuant to this Section 3.02. In such event, the Servicer will provide notice of any prepayments to the Fiscal Agent, other than scheduled prepayments pursuant to the Project Note.

(End of Article III)

## ARTICLE IV

### REVENUES AND FUNDS

**Section 4.01 *Pledge of Revenues and Assets; Establishment of Funds.*** The pledge and assignment of and the security interest granted in the Pledged Security pursuant to Section 2.02 hereof shall attach, be perfected and be valid and binding from and after the time of the closing of the Funding Loan and delivery of the Governmental Note by the Fiscal Agent or by any Person authorized by the Fiscal Agent to deliver the Governmental Note. The Pledged Security so pledged and then or thereafter received by the Fiscal Agent shall immediately be subject to the lien of such pledge and security interest without any physical delivery thereof or further act, and the lien of such pledge and security interest shall be valid and binding and prior to the claims of any and all parties having claims of any kind in tort, contract or otherwise against the Governmental Lender irrespective of whether such parties have notice thereof.

In addition to the Project Loan Fund established pursuant to Section 2.11 hereof, the Fiscal Agent shall establish at the Initial Funding Lender, maintain and hold in trust the following funds and accounts, each of which is hereby established and each of which shall be disbursed and applied only as herein authorized:

- (a) Revenue Fund;
- (b) Loan Payment Fund;
- (c) Loan Prepayment Fund;
- (d) Administration Fund;
- (e) Cost of Issuance Fund; and
- (f) Rebate Fund.

The funds and accounts established pursuant to Section 2.11 and this Section 4.01 shall be maintained in the corporate trust department of the Fiscal Agent as segregated trust accounts, separate and identifiable from all other funds held and/or administered by the Fiscal Agent. The Fiscal Agent shall, at the written direction of an Authorized Officer of the Governmental Lender, and may, in its discretion, establish such additional accounts within any Fund, and subaccounts within any of the accounts, as the Governmental Lender or the Fiscal Agent may deem necessary or useful for the purpose of identifying more precisely the sources of payments into and disbursements from that Fund and its accounts, or for the purpose of complying with the requirements of the Code relating to arbitrage, but the establishment of any such account or subaccount shall not alter or modify any of the requirements of this Funding Loan Agreement with respect to a deposit or use of money in the funds established hereunder, or result in commingling of funds not permitted hereunder.

#### **Section 4.02 *Project Loan Fund.***

(a) Deposit. The Fiscal Agent shall deposit the proceeds of the Funding Loan into the Project Account of the Project Loan Fund as provided in Section 2.11(b) hereof. The Fiscal Agent shall deposit the amounts set forth in Section 2.11(c) hereof into the applicable subaccounts of the Borrower Equity Account of the Project Loan Fund, as well as any additional amounts delivered from time to time to the Fiscal Agent and directed by the Borrower or Servicer to be deposited therein (excluding any proceeds of the Governmental Note), as provided in Section 2.11(c) hereof.

(b) Disbursements. Amounts on deposit in the Project Loan Fund shall be disbursed from time to time by the Fiscal Agent for the purpose of paying Costs of the Project. In addition, amounts in the Project Loan Fund shall be transferred to the Loan Prepayment Fund, the Rebate Fund and the Borrower at the times and in the manner provided in subsection (e) of this Section 4.02.

(c) Transfers and Requisitions. The Fiscal Agent shall make disbursements from the respective accounts of the Project Loan Fund for purposes described in subsection (b) of this Section 4.02 only upon the receipt of Requisitions signed by an Authorized Officer of the Borrower and countersigned by an Authorized Officer of the Servicer (signifying the consent to the Requisition by the Servicer, which shall be countersigned subject to and in accordance with the terms and conditions of the Construction Disbursement Agreement), and solely with respect to disbursements from the Gap Loan Subaccount of the Borrower Equity Account, countersigned by the Initial Funding Lender. The Fiscal Agent shall have no right or duty to determine whether any requested disbursement from the Project Loan Fund complies with the terms, conditions and provisions of the Construction Disbursement Agreement or the Freddie Mac Continuing Covenant Agreement. The countersignature of the Authorized Officer of the Servicer on a Requisition shall be deemed a certification and, insofar as the Fiscal Agent and the Governmental Lender are concerned, constitute conclusive evidence, that all of the terms, conditions and requirements of the Construction Disbursement Agreement applicable to such disbursement have been fully satisfied or waived. The Fiscal Agent shall, immediately upon each receipt of a completed Requisition signed by an Authorized Officer of the Borrower and countersigned by an Authorized Officer of the Servicer (and countersigned by the Initial Funding Lender with respect to a disbursement from the Gap Loan Subaccount of the Borrower Equity Account), initiate procedures with the provider of a Qualified Investment to make withdrawals as necessary to fund the Requisition.

Notwithstanding anything to the contrary contained herein, no signature of an Authorized Officer of the Borrower shall be required during any period in which an Event of Default has occurred and is then continuing under the Loans or any Financing Document (notice of which default has been given in writing by the Funding Lender Representative or the Servicer to the Fiscal Agent and the Governmental Lender, and the Fiscal Agent shall be entitled to conclusively rely on any such written notice as to the occurrence and continuation of such a default).

(d) If a Requisition signed by an Authorized Officer of the Borrower and countersigned by an Authorized Officer of the Servicer (and countersigned by the Initial Funding Lender with respect to a disbursement from the Gap Loan Subaccount of the Borrower Equity Account) or (as permitted hereunder) solely by an Authorized Officer of the Servicer, is received by the Fiscal Agent, the requested disbursement shall be paid by the Fiscal Agent as soon as practicable, but in no event later than three (3) Business Days following receipt thereof by the Fiscal Agent. Upon

final disbursement of all amounts on deposit in the Project Loan Fund, including all interest accrued therein, the Fiscal Agent shall close the Project Loan Fund.

(e) Immediately prior to any mandatory prepayment of the Funding Loan pursuant to Section 3.01(b)(i) hereof, any amount then remaining in the Project Loan Fund shall, at the written direction of the Funding Lender Representative, be transferred to the Loan Prepayment Fund to pay amounts due on the Funding Loan, if any. In addition, any amount remaining in the Project Account of the Project Loan Fund following completion of the construction of the Project in accordance with the Construction Disbursement Agreement, evidenced by an instrument signed by the Funding Lender Representative or the Servicer, shall be transferred to the Loan Prepayment Fund and used to prepay the Funding Loan in accordance with Section 3.01(b)(ii) hereof, unless the Fiscal Agent receives an opinion of Bond Counsel (which shall also be addressed to the Funding Lender Representative) to the effect that a use of such money for other than prepayment of the Funding Loan will not adversely affect the tax exempt status of the Governmental Note; provided, that any amounts in the Project Account of the Project Loan Fund in excess of the amount needed to fund the related prepayment of the Funding Loan shall be transferred to the Rebate Fund. In the event there are funds remaining in the Borrower Equity Account following completion of the construction of the Project in accordance with the Construction Disbursement Agreement and the Conversion Date has occurred, and provided no default by the Borrower exists under this Funding Loan Agreement or any Project Loan Document, such funds shall be promptly paid by the Fiscal Agent to the Borrower at the written direction of the Funding Lender Representative or the Servicer.

(f) Amounts on deposit in the Project Loan Fund shall be invested as provided in Section 4.08 hereof. All Investment Income on amounts on deposit in the Project Loan Fund shall be retained in and credited to and become a part of the amounts on deposit in the Project Loan Fund, and shall constitute part of any transfers required by subsection (b) or (e) of this Section 4.02.

#### **Section 4.03 *Application of Revenues.***

(a) All Revenues received by the Fiscal Agent shall be deposited by the Fiscal Agent, promptly upon receipt thereof, to the Revenue Fund, except (i) the proceeds of the Funding Loan received by the Fiscal Agent on the Delivery Date, which shall be applied in accordance with the provisions of Section 2.11 hereof; (ii) as otherwise specifically provided in subsection (c) of this Section 4.03 with respect to certain deposits into the Loan Prepayment Fund; (iii) with respect to Investment Income to the extent required under the terms hereof to be retained in the funds and accounts to which they are attributable; and (iv) with respect to amounts required to be transferred between funds and accounts as provided in this Article IV.

(b) Subject to Section 2.12 hereof, on each Interest Payment Date or any other date on which payment of principal of or interest on the Funding Loan becomes due and payable, the Fiscal Agent, out of money in the Revenue Fund, shall credit the following amounts to the following funds, but in the order and within the limitations hereinafter indicated with respect thereto, as follows:

**FIRST:** to the Loan Payment Fund, an amount equal to the principal of and interest due on the Funding Loan on such date (including scheduled principal pursuant to the Funding Loan Amortization Schedule); and

**SECOND:** to the Loan Prepayment Fund, an amount equal to the principal and interest due on the Funding Loan on such date with respect to a mandatory prepayment of all or a portion of the Funding Loan pursuant to Section 3.01(b) hereof (other any extraordinary mandatory prepayment as described in Section 4.03(c)(i) or (iii) below).

(c) Promptly upon receipt, the Fiscal Agent shall deposit directly to the Loan Prepayment Fund (i) Net Casualty Proceeds representing casualty insurance proceeds or condemnation awards paid as a prepayment of the Project Loan, such amount to be applied to provide for the extraordinary mandatory prepayment of all or a portion of the Funding Loan pursuant to Section 3.01(b)(i) hereof; (ii) funds paid to the Fiscal Agent to be applied to the optional prepayment of all or a portion of the Funding Loan pursuant to Section 3.01(a); and (iii) amounts transferred to the Loan Prepayment Fund from the Project Loan Fund pursuant to Section 4.02(e) hereof.

(d) Subject to Section 2.12 hereof, should the amount in the Loan Payment Fund be insufficient to pay the amount due on the Funding Loan on any given Interest Payment Date, the Fiscal Agent shall credit to the Loan Payment Fund the amount of such deficiency by charging the following funds and accounts in the following order of priority: (1) the Revenue Fund; and (2) the Loan Prepayment Fund, except no such charge to the Loan Prepayment Fund shall be made from money to be used to effect a prepayment for which notice of prepayment has been provided for hereunder.

**Section 4.04 *Application of Loan Payment Fund.*** Subject to Section 2.12 hereof, the Fiscal Agent shall charge the Loan Payment Fund, on each Interest Payment Date, an amount equal to the unpaid interest and principal due on the Funding Loan on such Interest Payment Date as provided in Section 4.03(a) and (b), and shall cause the same to be applied to the payment of such interest and principal when due. Any money remaining in the Loan Payment Fund on any Interest Payment Date after application as provided in the preceding sentence may, to the extent there shall exist any deficiency in the Loan Prepayment Fund to prepay the Funding Loan if called for prepayment on such Interest Payment Date, be transferred to the Loan Prepayment Fund to be applied for such purpose.

Any Investment Income on amounts on deposit in the Loan Payment Fund shall be deposited by the Fiscal Agent upon receipt thereof in the Revenue Fund.

No amount shall be charged against the Loan Payment Fund except as expressly provided in this Article IV and in Section 6.05 hereof.

**Section 4.05 *Application of Loan Prepayment Fund.*** Any money credited to the Loan Prepayment Fund shall be applied as set forth in Sections 4.03(b) and 4.03(c) hereof; provided, however, that to the extent any money credited to the Loan Prepayment Fund is in excess of the amount necessary to effect the prepayments described in Sections 4.03(b) and 4.03(c) hereof it shall be applied to make up any deficiency in the Loan Payment Fund on any Interest Payment

Date, to the extent money then available in accordance with Section 4.03(d) hereof in the Revenue Fund is insufficient to make up such deficiency; provided that no money to be used to effect a prepayment for which a conditional notice of prepayment, the conditions of which have been satisfied, or an unconditional notice of prepayment has been provided shall be so transferred to the Loan Payment Fund.

On or before each Interest Payment Date, any Investment Income on amounts on deposit in the Loan Prepayment Fund shall be credited by the Fiscal Agent to the Revenue Fund.

No amount shall be charged against the Loan Prepayment Fund except as expressly provided in this Article IV and in Section 6.05 hereof.

**Section 4.06 Administration Fund.** Subject to Section 2.12 hereof, the Fiscal Agent shall deposit into the Administration Fund, promptly upon receipt thereof, all amounts received from the Servicer (or the Borrower if no Servicer exists for the Loans) designated for deposit into such fund. Amounts in the Administration Fund shall be withdrawn or maintained, as appropriate, by the Fiscal Agent and used **FIRST**, to pay to the Fiscal Agent when due the Ordinary Fiscal Agent's Fees and Expenses and to pay to the Governmental Lender when due the Governmental Lender Annual Fee; **SECOND**, to pay when due the reasonable fees and expenses of a Rebate Analyst in connection with the computations relating to arbitrage rebate required under this Funding Loan Agreement and the Project Loan Agreement, upon receipt of an invoice from the Rebate Analyst; **THIRD**, to pay to the Fiscal Agent any Extraordinary Fiscal Agent's Fees and Expenses due and payable from time to time, as set forth in an invoice submitted to the Borrower and the Servicer; **FOURTH**, to pay to the Governmental Lender any extraordinary expenses it may incur in connection with the Loans or this Funding Loan Agreement from time to time, as set forth in an invoice submitted to the Fiscal Agent and the Servicer; **FIFTH**, to pay to the Funding Lender Representative any unpaid amounts due under the Continuing Covenant Agreement, as certified in writing by the Funding Lender Representative to the Fiscal Agent; **SIXTH**, to make up any deficiency in the Loan Prepayment Fund on any prepayment date of the Funding Loan, to the extent money then available in accordance with Section 4.03(d) hereof in the Loan Prepayment Fund is insufficient to prepay the Funding Loan scheduled for prepayment on such prepayment date; and **SEVENTH**, to transfer any remaining balance after application as aforesaid to the Revenue Fund.

In the event that the amounts on deposit in the Administration Fund are not equal to the amounts payable from the Administration Fund as provided in the preceding paragraph on any date on which such amounts are due and payable, the Fiscal Agent shall give notice to the Borrower and the Servicer of such deficiency and of the amount of such deficiency and request payment within two (2) Business Days to the Fiscal Agent of the amount of such deficiency. Upon payment by the Borrower or the Servicer of such deficiency, the amounts for which such deficiency was requested shall be paid by the Fiscal Agent.

On or before each Interest Payment Date, any Investment Income on amounts on deposit in the Administration Fund not needed to pay the foregoing amounts shall be credited by the Fiscal Agent to the Revenue Fund.

No amount shall be charged against the Administration Fund except as expressly provided in this Article IV and Section 6.05 hereof.

**Section 4.07 [Reserved].**

**Section 4.08 *Investment of Funds.*** The money held by the Fiscal Agent shall constitute trust funds for the purposes hereof. Any money attributable to each of the funds and accounts hereunder shall be, except as otherwise expressly provided herein, invested by the Fiscal Agent, at the written direction of the Borrower (or, in the case of the Rebate Fund, as provided in Section 5.07(b)), in Qualified Investments which mature or shall be subject to prepayment or withdrawal at par without penalty on or prior to the earlier of (i) six months from the date of investment and (ii) the date such money is needed; provided, that if the Fiscal Agent shall have entered into any investment agreement requiring investment of money in any fund or account hereunder in accordance with such investment agreement and if such investment agreement constitutes a Qualified Investment, such money shall be invested in accordance with such requirements. In the absence of written direction from the Borrower, the Fiscal Agent shall invest amounts on deposit in the funds and accounts established under this Funding Loan Agreement in investments of the type described in clause (g) of the definition of Qualified Investments. The Fiscal Agent will have no duty or obligation to determine if a Qualified Investment is permitted by applicable law. Such investments may be made through the investment or securities department of the Fiscal Agent. The Fiscal Agent is authorized to implement its cash investment system to assure cash on hand is invested. The Fiscal Agent may purchase from or sell to itself or an affiliate, as principal or agent, securities herein authorized. The Fiscal Agent shall be entitled to assume, absent receipt by the Fiscal Agent of written notice to the contrary, that any investment which at the time of purchase is a Qualified Investment remains a Qualified Investment thereafter.

Qualified Investments representing an investment of money attributable to any fund or account shall be deemed at all times to be a part of said fund or account, and, except as otherwise may be provided expressly in other Sections hereof, the interest thereon and any profit arising on the sale thereof shall be credited to the Revenue Fund, and any loss resulting on the sale thereof shall be charged against the Revenue Fund. Such investments shall be sold at the best price obtainable (at least par) whenever it shall be necessary so to do in order to provide money to make any transfer, withdrawal, payment or disbursement from said fund or account. In the case of any required transfer of money to another such fund or account, such investments may be transferred to that fund or account in lieu of the required money if permitted hereby as an investment of money in that fund or account. The Fiscal Agent shall not be liable or responsible for any loss resulting from any investment made in accordance herewith.

The Governmental Lender acknowledges that to the extent that regulations of the Comptroller of the Currency or other applicable regulatory agency grant the Governmental Lender the right to receive brokerage confirmations of the security transactions as they occur, to the extent permitted by law, the Governmental Lender specifically waives compliance with 12 C.F.R. 12 and hereby notifies the Fiscal Agent hereunder, that no brokerage confirmations need be sent relating to the security transactions as they occur.

In computing for any purpose hereunder the amount in any fund or account on any date, obligations so purchased shall be valued at Fair Market Value.



**Section 4.09 [Reserved].**

**Section 4.10 Accounting Records.** The Fiscal Agent shall maintain accurate books and records for all funds and accounts established hereunder.

**Section 4.11 Amounts Remaining in Funds.** After full payment of the Funding Loan (or provision for payment thereof having been made in accordance with Section 9.01 hereof) and full payment of the fees, charges and expenses of the Governmental Lender, the Fiscal Agent, the Rebate Analyst, the Funding Lender and the Servicer and other amounts required to be paid hereunder or under any Project Loan Document, including, but not limited to, the Continuing Covenant Agreement (as certified in writing to the Fiscal Agent by the Governmental Lender with respect to amounts due to the Governmental Lender and by the Funding Lender Representative or the Servicer on its behalf with respect to amounts owed under the Continuing Covenant Agreement and by the Rebate Analyst with respect to amounts due to the Rebate Analyst), any amounts remaining in any fund or account hereunder other than the Rebate Fund shall be paid to the Borrower.

**Section 4.12 Rebate Fund; Compliance with Tax Certificate.**

(a) The Fiscal Agent shall maintain the Rebate Fund, for the benefit of all persons who are or have at any time been owners of the Governmental Note, at all times prior to the final payment to the United States of America of the amounts described in Subsection (c) of this Section which fund shall not be part of the trust estate established hereunder. The money deposited to the Rebate Fund, together with all investments thereof and investment income therefrom, shall be held in trust separately and apart from the other funds held under the Funding Loan Agreement and applied solely as provided in this Section, unless in the Opinion of Tax Counsel failure to make such application will not adversely affect any exclusion from gross income of interest on the Governmental Note under the Code.

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

(c) (i) Within 30 days after each Computation Date, the Fiscal Agent, on behalf of the Governmental Lender, shall withdraw from the Rebate Fund and pay to the United States of America the appropriate portion of the Rebate Amount (determined by the Rebate Analyst on behalf of the Borrower) in the installments, to the place and in the manner required by section 148(f) of the Code, the Regulations, and rulings thereunder as instructed by the Borrower or its legal counsel and as provided in subsection (iii) below. The Fiscal Agent shall have no obligation to pay any amounts required to be rebated pursuant to this Section other than from moneys held in the Funds created under this Funding Loan Agreement or from other moneys provided to it by the Borrower.

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

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

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

(e) The Fiscal Agent may conclusively rely on the information provided, instructions of and forms prepared by the Borrower or the Rebate Analyst with regard to any actions to be taken by it, including payments to be made, pursuant to this Section and shall have no liability for any consequences of any failure of the Borrower to supply accurate or sufficient instructions or to compute correctly any payment due pursuant to this Section. The Fiscal Agent shall have no responsibility or duty to perform any rebate calculation or to expend its own funds to make any rebate payments.

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

(g) Notwithstanding any provision of the Note documents or Funding Loan Documents, the Fiscal Agent shall not be liable or responsible for any method of calculation, or any calculation or determination which may be required in connection with or for the purpose of complying with Section 148 of the Code or any successor statute or any regulation, ruling, or other judicial or administrative interpretation thereof, including, without limitation, the calculation of amounts required to be paid the United States of America or the determination of the maximum amount which may be invested in Nonpurpose Investments having a higher yield than the yield on the Governmental Note, in connection with any such investments. The method of calculation, calculation and determination required by section 148 of the Code shall be accomplished by a Rebate Analyst engaged by the Borrower. The Fiscal Agent shall not be liable or responsible for the negligence or misconduct of the Rebate Analyst. The Fiscal Agent shall not be liable or responsible for monitoring the compliance by the Borrower or the Governmental Lender of any of

the requirements of Section 148 of the Code or any applicable regulation, ruling, or other judicial or administrative interpretation thereof (except for the administrative functions described in this Section and in this Funding Loan Agreement), it being acknowledged and agreed that the sole obligation of the Fiscal Agent in this regard shall be (i) to invest the moneys received by the Fiscal Agent pursuant to the written instructions of the Borrower in the specific investments identified by the Borrower or, in the absence of such identification, to make investments as otherwise provided herein and to disburse said moneys in accordance with the terms of this Funding Loan Agreement and (ii) to follow instructions contained in this Section and in this Funding Loan Agreement. The Fiscal Agent shall not be liable for the Governmental Note becoming “arbitrage bonds” within the meaning of the Code, as a result of investments it makes in compliance with the instructions it receives or pursuant to or in compliance with the terms of this Funding Loan Agreement.

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

**Section 4.13 *Cost of Issuance Fund.*** The Fiscal Agent shall use money on deposit to the credit of the Cost of Issuance Fund to pay the Costs of Issuance on the Delivery Date or as soon as practicable thereafter in accordance with a Requisition in the form of **Exhibit D** to be given to the Fiscal Agent by the Borrower on the Delivery Date, along with appropriate invoices for such expenses. Amounts in the Cost of Issuance Fund funded with proceeds of the Funding Loan, if any, shall be expended prior to the application of the Costs of Issuance Deposit. Investment Income on amounts on deposit in the Cost of Issuance Fund shall be retained in such fund. Amounts remaining on deposit in the Cost of Issuance Fund six (6) months after the Delivery Date shall (i) if such amounts derive from proceeds of the Funding Loan, be transferred to the Project Account of the Project Loan Fund and (ii) if such amounts derive from any other source, be transferred to the Borrower. Upon such final disbursement, the Fiscal Agent shall close the Cost of Issuance Fund.

**Section 4.14 *Reports From the Fiscal Agent.*** The Fiscal Agent shall, on or before the fifteenth (15th) day of each month, file with the Funding Lender Representative, the Servicer, the Governmental Lender (at its written request) and the Borrower a statement setting forth in respect of the preceding calendar month:

- (i) the amount withdrawn or transferred by it, and the amount deposited within or on account of each fund and account held by it under the provisions of this Funding Loan Agreement, including the amount of investment income on each fund and account;
- (ii) the amount on deposit with it at the end of such month to the credit of each fund and account;
- (iii) (iii) a brief description of all obligations held by it as an investment of money in each such fund and account; and
- (iv) any other information which the Funding Lender Representative or the Governmental Lender may reasonably request and to which the Fiscal Agent has access in the ordinary course of its operations.

Upon the written request of the Funding Lender, the Fiscal Agent, at the cost of the Borrower, shall provide a copy of such statement to Funding Lender. All records and files pertaining to the Pledged Security shall be open at all reasonable times to the inspection of the Governmental Lender and the Funding Lender Representative or the Servicer and their agents and representatives upon reasonable prior notice during normal business hours.

(End of Article IV)

## ARTICLE V

### GENERAL COVENANTS AND REPRESENTATIONS

**Section 5.01 *Payment of Principal and Interest.*** The Governmental Lender covenants that it will promptly pay or cause to be paid, but only from the sources identified herein, sufficient amounts to provide for the payment of the principal of, Prepayment Premium, if any, and interest on the Funding Loan at the place, on the dates and in the manner provided herein and in the Governmental Note, according to the true intent and meaning thereof.

**Section 5.02 *Performance of Covenants.*** The Governmental Lender covenants that it will faithfully perform at all times any and all of its covenants, undertakings, stipulations and provisions contained in this Funding Loan Agreement, in the Governmental Note and in all proceedings pertaining thereto.

**Section 5.03 *Instruments of Further Assurance.*** The Governmental Lender covenants that it will do, execute, acknowledge and deliver or cause to be done, executed, acknowledged and delivered, such supplements hereto, and such further acts, instruments and transfers as may be reasonably required for the better assuring, transferring, conveying, pledging, assigning and confirming unto the Fiscal Agent all and singular its interest in the property herein described and the revenues, receipts and other amounts pledged hereby to the payment of the principal of, Prepayment Premium, if any, and interest on the Funding Loan. Any and all interest in property hereafter acquired which is of any kind or nature herein provided to be and become subject to the lien hereof shall and without any further conveyance, assignment or act on the part of the Governmental Lender or the Fiscal Agent, become and be subject to the lien of this Funding Loan Agreement as fully and completely as though specifically described herein, but nothing in this sentence contained shall be deemed to modify or change the obligations of the Governmental Lender under this Section 5.03. The Governmental Lender covenants and agrees that, except as herein otherwise expressly provided, it has not and will not sell, convey, mortgage, encumber or otherwise dispose of any part of its interest in the Pledged Security or the revenues or receipts therefrom.

The Governmental Lender will promptly notify the Fiscal Agent, the Funding Lender Representative and the Servicer in writing of the occurrence of any of the following:

- (i) the submission of any claim or the initiation of any legal process, litigation or administrative or judicial investigation against the Governmental Lender with respect to the Loans;

(ii) any change in the location of the Governmental Lender's principal office or any change in the location of the Governmental Lender's books and records relating to the transactions contemplated hereby;

(iii) the occurrence of any default or Event of Default of which the Governmental Lender has actual knowledge;

(iv) the commencement of any proceedings or any proceedings instituted by or against the Governmental Lender in any federal, state or local court or before any governmental body or agency, or before any arbitration board, relating to the Notes; or

(v) the commencement of any proceedings by or against the Governmental Lender under any applicable bankruptcy, reorganization, liquidation, rehabilitation, insolvency or other similar law now or hereafter in effect or of any proceeding in which a receiver, liquidator, conservator, trustee or similar official shall have been, or may be, appointed or requested for the Governmental Lender or any of its assets relating to the Loans.

**Section 5.04 *Inspection of Project Books.*** The Governmental Lender covenants and agrees that all books and documents in its possession relating to the Project shall, upon reasonable prior notice, during normal business hours, be open to inspection and copying by such accountants or other agents as the Fiscal Agent or the Funding Lender Representative may from time to time reasonably designate.

**Section 5.05 *No Modification of Security; Additional Indebtedness.*** The Governmental Lender covenants to and for the benefit of the Funding Lender that it will not, without the prior written consent of the Funding Lender Representative, take any of the following actions:

(i) alter, modify or cancel, or agree to consent to alter, modify or cancel any agreement to which the Governmental Lender is a party, or which has been assigned to the Governmental Lender, and which relates to or affects the security for the Loans or the payment of any amount owed under the Financing Documents; or

(ii) create or suffer to be created any lien upon the Pledged Security or any part thereof other than the lien created hereby and by the Security Instrument, and by liens securing any of the Subordinate Loans (to the extent made subordinate to the lien of the Security Instrument).

**Section 5.06 *Damage, Destruction or Condemnation.*** Net Proceeds resulting from casualty to or condemnation of the Project shall be applied as provided in the Continuing Covenant Agreement and, to the extent consistent therewith, Section 3.01(b)(i) hereof.

**Section 5.07 *Tax Covenants.***

(a) *Governmental Lender's Covenants.* The Governmental Lender covenants to and for the benefit of the Funding Lender that it will:

(i) neither make or use nor cause to be made or used any investment or other use of the proceeds of the Funding Loan or the money and investments held in the funds and accounts in any manner which would cause the Governmental Note to be an “arbitrage bond” under Section 148 of the Code and the Regulations issued under Section 148 of the Code or which would otherwise cause the interest payable on the Governmental Note to be includable in gross income for federal income tax purposes;

(ii) enforce or cause to be enforced all obligations of the Borrower under the Tax Regulatory Agreement in accordance with its terms and seek to cause the Borrower to correct any violation of the Tax Regulatory Agreement within a reasonable period after it first discovers or becomes aware of any such violation;

(iii) not take or cause to be taken any other action or actions, or fail to take any action or actions, if the same would cause the interest payable on the Governmental Note to be includable in gross income for federal income tax purposes;

(iv) at all times do and perform all acts and things permitted by law and necessary or desirable in order to assure that interest paid by the Governmental Lender on the Funding Loan will be excluded from the gross income for federal income tax purposes, of the Funding Lender pursuant to the Code, except in the event where the Funding Lender is a “substantial user” of the facilities financed with the Loans or a “related person” within the meaning of the Code; and

(v) not take any action or permit or suffer any action to be taken if the result of the same would be to cause the Governmental Note to be “federally guaranteed” within the meaning of Section 149(b) of the Code and the Regulations.

In furtherance of the covenants in this Section 5.07, the Governmental Lender and the Borrower shall execute, deliver and comply with the provisions of the Tax Certificate, which is by this reference incorporated into this Funding Loan Agreement and made a part of this Funding Loan Agreement as if set forth in this Funding Loan Agreement in full, and by its acceptance of this Funding Loan Agreement the Fiscal Agent acknowledges receipt of the Tax Certificate and acknowledges its incorporation into this Funding Loan Agreement by this reference and agrees to comply with the terms specifically applicable to it.

(b) *Fiscal Agent’s Covenants.* The Fiscal Agent agrees that it will invest funds held under this Funding Loan Agreement, as directed by the Borrower, in accordance with the covenants and terms of this Funding Loan Agreement and the Tax Certificate (this covenant shall extend through the term of the Funding Loan, to all funds and accounts created under this Funding Loan Agreement and all money on deposit to the credit of any such fund or account). The Fiscal Agent covenants to and for the benefit of the Funding Lender that, notwithstanding any other provisions of this Funding Loan Agreement or of any other Financing Document, it will not knowingly make or cause to be made any investment or other use of the money in the funds or accounts created hereunder which would cause the Governmental Note to be classified as an “arbitrage bond” within the meaning of Sections 103(b) and 148 of the Code or would cause the interest on the Governmental Note to be includable in gross income for federal income tax purposes; provided that, absent negligence or intentional misconduct the Fiscal Agent shall be

deemed to have complied with such requirements and shall have no liability to the extent it follows the written directions of the Borrower, the Governmental Lender, the Funding Lender Representative, Bond Counsel or the Rebate Analyst. This covenant shall extend, throughout the term of the Funding Loan, to all funds created under this Funding Loan Agreement and all money on deposit to the credit of any such fund. Pursuant to this covenant, with respect to the investments of the funds and accounts under this Funding Loan Agreement, the Fiscal Agent obligates itself to comply throughout the term of the Funding Loan with the requirements of Sections 103(b) and 148 of the Code; provided that the Fiscal Agent shall be deemed to have complied with such requirements and shall have no liability, absent negligence or intentional misconduct to the extent it follows the written directions of the Borrower, the Governmental Lender, Bond Counsel or the Rebate Analyst. The Fiscal Agent further covenants that should the Governmental Lender or the Borrower file with the Fiscal Agent (it being understood that neither the Governmental Lender nor the Borrower has an obligation to so file), or should the Fiscal Agent receive, an opinion of Bond Counsel to the effect that any proposed investment or other use of proceeds of the Funding Loan would cause the Governmental Note to become an "arbitrage bond," then the Fiscal Agent will comply with any written instructions of the Governmental Lender, the Borrower, the Funding Lender Representative or Bond Counsel regarding such investment (which shall, in any event, be a Qualified Investment) or use so as to prevent the Governmental Note from becoming an "arbitrage bond," and the Fiscal Agent will bear no liability to the Governmental Lender, the Borrower, the Funding Lender or the Funding Lender Representative for investments made in accordance with such instructions.

**Section 5.08 *Representations and Warranties of the Governmental Lender.*** The Governmental Lender hereby represents and warrants as follows:

(a) The Governmental Lender is a nonprofit corporation duly organized, validly existing and in good standing under the laws of the State.

(b) The Governmental Lender has all necessary power and authority to issue the Governmental Note and to execute and deliver this Funding Loan Agreement, the Project Loan Agreement and the other Financing Documents to which it is a party, and to perform its duties and discharge its obligations hereunder and thereunder.

(c) The revenues and assets pledged for the repayment of the Funding Loan are and will be free and clear of any pledge, lien or encumbrance prior to, or equal with, the pledge created by this Funding Loan Agreement, and all action on the part of the Governmental Lender to that end has been duly and validly taken.

(d) The Financing Documents to which the Governmental Lender is a party have been validly authorized, executed and delivered by the Governmental Lender, and assuming due authorization, execution and delivery by the other parties thereto, constitute valid and binding obligations of the Governmental Lender, enforceable against the Governmental Lender in accordance with their respective terms, except as enforceability may be limited by bankruptcy, insolvency, moratorium or other laws affecting creditors' rights generally and the application of equitable principles.

**Section 5.09      *Program Investment.*** The proceeds of the Note are to be used to finance the Project. With respect to the Note:

(a) At least 95 percent of all obligations acquired with the proceeds of the Note, by amount of cost outstanding, will be evidences of loans to a substantial number of persons representing the general public, loans to exempt persons, or loans to provide housing and related facilities, or any combination of the foregoing.

(b) At least 95 percent of all amounts received by the Governmental Lender with respect to the Note will be used for one or more of the following purposes: to make loans to provide housing, to pay the principal or interest or otherwise to service the debt on the Note; to reimburse the Governmental Lender or to pay for administrative costs of issuing such obligations; or to redeem or retire such Note of the Governmental Lender at the next earliest possible date of redemption.

(c) Any person or any related party, as defined in section 1.150-1 of the Treasury Regulations, as amended, from whom the Governmental Lender may acquire obligations, shall not, pursuant to an arrangement, formal or informal, purchase the Governmental Lender's Note in an amount related to the amount of the obligations to be acquired from such person by the Governmental Lender.

(d) The Governmental Lender does not waive the right to treat the Loan Agreement as a program investment

(End of Article V)



## ARTICLE VI

### DEFAULT PROVISIONS AND REMEDIES OF FISCAL AGENT AND FUNDING LENDER

**Section 6.01 *Events of Default.*** Each of the following shall be an event of default with respect to the Funding Loan (an “Event of Default”) under this Funding Loan Agreement:

(a) failure to pay the principal of, Prepayment Premium, if any, or interest on the Funding Loan when due, whether on an Interest Payment Date, at the stated maturity thereof, by proceedings for prepayment thereof, by acceleration or otherwise; or

(b) failure to observe the covenants set forth in Section 5.05 hereof; or

(c) failure to observe or perform any of the covenants, agreements or conditions on the part of the Governmental Lender (other than those set forth in Sections 5.01 and 5.05 hereof) set forth in this Funding Loan Agreement or in the Governmental Note and the continuance thereof for a period of thirty (30) days (or such longer period, if any, as is specified herein for particular defaults) after written notice thereof to the Governmental Lender from the Fiscal Agent or the Funding Lender Representative specifying such default and requiring the same to be remedied; provided that if such default cannot be cured within such thirty (30) day period through the exercise of diligence and the Governmental Lender commences the required cure within such thirty (30) day period and continues the cure with diligence and the Governmental Lender reasonably anticipates that the default could be cured within sixty (60) days, the Governmental Lender shall have sixty (60) days following receipt of such notice to effect the cure; or

(d) receipt by the Fiscal Agent of written notice from the Funding Lender Representative of the occurrence of an “Event of Default” under the Project Loan Agreement or the Continuing Covenant Agreement.

The Fiscal Agent will promptly notify the Governmental Lender, the Servicer and the Funding Lender Representative after a Responsible Officer obtains written knowledge of the occurrence of an Event of Default.

### **Section 6.02 *Acceleration; Other Remedies Upon Event of Default.***

Upon the occurrence of an Event of Default, the Fiscal Agent shall, upon the written request of the Funding Lender Representative, by notice in writing delivered to the Governmental Lender, declare the principal of the Funding Loan, as evidenced by the Governmental Note, and the interest accrued thereon immediately due and payable, and interest shall continue to accrue thereon until such amounts are paid.

At any time after the Funding Loan shall have been so declared due and payable, and before any judgment or decree for the payment of the money due shall have been obtained or entered, the Fiscal Agent may, but only if directed in writing by the Funding Lender Representative, by written notice to the Governmental Lender and the Fiscal Agent, rescind and annul such declaration and its consequences if the Governmental Lender or the Borrower shall pay to or deposit with the Fiscal Agent a sum sufficient to pay all principal on the Funding Loan then due (other than solely

by reason of such declaration) and all unpaid installments of interest (if any) on the Funding Loan then due, with interest at the rate borne by the Governmental Note on such overdue principal and (to the extent legally enforceable) on such overdue installments of interest, and the reasonable fees and expenses of the Fiscal Agent (including its counsel) shall have been made good or cured or adequate provision shall have been made therefor, and all outstanding amounts then due and unpaid under the Financing Documents (collectively, the "Cure Amount") shall have been paid in full, and all other defaults hereunder shall have been made good or cured or waived in writing by the Funding Lender Representative; but no such rescission and annulment shall extend to or shall affect any subsequent default, nor shall it impair or exhaust any right or power consequent thereon.

Upon the occurrence and during the continuance of an Event of Default, the Fiscal Agent in its own name and as trustee of an express trust, on behalf and for the benefit and protection of the Funding Lender, may also proceed to protect and enforce any rights of the Fiscal Agent and, to the full extent that the Funding Lender itself might do, the rights of the Funding Lender under the laws of the State or under this Funding Loan Agreement by such of the following remedies as the Fiscal Agent shall deem most effectual to protect and enforce such rights; provided that, the Fiscal Agent may undertake any such remedy only upon the receipt of the prior written consent of the Funding Lender Representative (which consent may be given in the sole discretion of the Funding Lender Representative):

- (i) by mandamus or other suit, action or proceeding at law or in equity, to enforce the payment of the principal of, Prepayment Premium, if any, or interest on the Funding Loan and to require the Governmental Lender to carry out any covenants or agreements with or for the benefit of the Funding Lender and to perform its duties under the Act, this Funding Loan Agreement, the Project Loan Agreement or the Tax Regulatory Agreement (as applicable) to the extent permitted under the applicable provisions thereof;
- (ii) by pursuing any available remedies under the Project Loan Agreement, the Tax Regulatory Agreement or any other Financing Document;
- (iii) by realizing or causing to be realized through sale or otherwise upon the security pledged hereunder; and
- (iv) by action or suit in equity enjoin any acts or things that may be unlawful or in violation of the rights of the Funding Lender and execute any other papers and documents and do and perform any and all such acts and things as may be necessary or advisable in the opinion of the Fiscal Agent in order to have the claim of the Funding Lender against the Governmental Lender allowed in any bankruptcy or other proceeding.

No remedy by the terms of this Funding Loan Agreement conferred upon or reserved to the Fiscal Agent or to the Funding Lender is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative and shall be in addition to any other remedy given to the Fiscal Agent or the Funding Lender hereunder or under the Project Loan Agreement, the Tax Regulatory Agreement, the Continuing Covenant Agreement or any other Financing Document, as applicable, or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any Event of Default shall impair any such right or power or shall be construed to be a waiver of any such Event of Default or

acquiescence therein, and every such right and power may be exercised from time to time and as often as may be deemed expedient. No waiver of any Event of Default hereunder, whether by the Fiscal Agent or the Funding Lender, shall extend to or shall affect any subsequent default or event of default or shall impair any rights or remedies consequent thereto.

Upon the occurrence and during the continuance of an Event of Default under Section 6.01(c) hereof, the Borrower and the Equity Investor shall have the same rights to notice and cure as those conferred upon the Governmental Lender pursuant to Section 6.01(c) and this Section 6.02.

**Section 6.03 *Funding Lender Representative Control of Proceedings.*** If an Event of Default has occurred and is continuing, notwithstanding anything to the contrary herein, the Funding Lender Representative shall have the sole and exclusive right at any time to direct the time, method and place of conducting all proceedings to be taken in connection with the enforcement of the terms and conditions of this Funding Loan Agreement, or for the appointment of a receiver or any other proceedings hereunder, in accordance with the provisions of law and of this Funding Loan Agreement. In addition, the Funding Lender Representative shall have the sole and exclusive right at any time to directly enforce all rights and remedies hereunder and under the other Financing Documents with or without the involvement of the Fiscal Agent or the Governmental Lender (and in connection therewith the Fiscal Agent shall transfer or assign to the Funding Lender Representative all of its interest in the Pledged Security at the request of the Funding Lender Representative). In no event shall the exercise of any of the foregoing rights result in an acceleration of the Funding Loan without the express direction of the Funding Lender Representative.

**Section 6.04 *Waiver by Governmental Lender.*** Upon the occurrence of an Event of Default, to the extent that such right may then lawfully be waived, neither the Governmental Lender nor anyone claiming through or under it shall set up, claim or seek to take advantage of any appraisal, valuation, stay, extension or prepayment laws now or hereinafter in force, in order to prevent or hinder the enforcement of this Funding Loan Agreement; and the Governmental Lender, for itself and all who may claim through or under it, hereby waives, to the extent that it lawfully may do so, the benefit of all such laws and all right of appraisal and prepayment to which it may be entitled under the laws of the State and the United States of America.

**Section 6.05 *Application of Money After Default.*** All money collected by the Fiscal Agent at any time pursuant to this Article shall, except to the extent, if any, otherwise directed by a court of competent jurisdiction, be credited by the Fiscal Agent to the Revenue Fund. Such money so credited to the Revenue Fund and all other money from time to time credited to the Revenue Fund shall at all times be held, transferred, withdrawn and applied as prescribed by the provisions of Article IV hereof and this Section 6.05.

In the event that at any time the money credited to the Revenue Fund, the Loan Payment Fund and the Loan Prepayment Fund available for the payment of interest or principal then due with respect to the Governmental Note shall be insufficient for such payment, such money shall be applied as follows and in the following order of priority:

(a) For payment of all amounts due to the Fiscal Agent incurred in performance of its duties under this Funding Loan Agreement, including, without limitation, the payment of all reasonable fees and expenses of the Fiscal Agent incurred in exercising any remedies under this Funding Loan Agreement.

(b) To the extent directed in writing by the Funding Lender Representative, to the reimbursement of any unreimbursed advances made by or on behalf of the Funding Lender pursuant to the Continuing Covenant Agreement or the Security Instrument.

(c) Unless the full principal amount of the Funding Loan shall have become or have been declared due and payable:

**FIRST**: to the Funding Lender, all installments of interest then due on the Funding Loan in the order of the maturity of such installments; and

**SECOND**: to the Funding Lender, unpaid principal of and Prepayment Premium, if any, on the Funding Loan which shall have become due, whether at maturity or by call for prepayment, in the order in which they became due and payable.

(d) If the full principal amount of the Governmental Note shall have become or have been declared due and payable, to the Funding Lender for the payment of the principal of, Prepayment Premium, if any, and interest then due and unpaid on the Funding Loan without preference or priority of principal over interest or of interest over principal, or of any installment of interest over any other installment of interest.

**Section 6.06 *Remedies Not Exclusive*.** No right or remedy conferred upon or reserved to the Fiscal Agent, the Funding Lender or the Funding Lender Representative by the terms of this Funding Loan Agreement is intended to be exclusive of any other right or remedy, but each and every such remedy shall be cumulative and shall be in addition to every other right or remedy given to the Fiscal Agent, the Funding Lender or the Funding Lender Representative under this Funding Loan Agreement or existing at law or in equity or by statute (including the Act).

**Section 6.07 *Fiscal Agent May Enforce Rights Without Governmental Note*.** All rights of action and claims, including the right to file proof of claims, under this Funding Loan Agreement may be prosecuted and enforced by the Fiscal Agent at the written direction of the Funding Lender Representative without the possession of the Governmental Note or the production thereof in any trial or other proceedings relating thereto. Subject to the rights of the Funding Lender Representative to direct proceedings hereunder, any such suit or proceeding instituted by the Fiscal Agent shall be brought in its name as Fiscal Agent without the necessity of joining as plaintiffs or defendants any Funding Lender, and any recovery or judgment shall be for the benefit as provided herein of the Funding Lender.

**Section 6.08 *[RESERVED]*.**

**Section 6.09 *Termination of Proceedings*.** In case the Fiscal Agent (at the direction of the Funding Lender Representative) or the Funding Lender Representative shall have proceeded to enforce any right under this Funding Loan Agreement by the appointment of a receiver, by entry or otherwise, and such proceedings shall have been discontinued or abandoned for any reason, or

shall have been determined adversely, then and in every such case the Governmental Lender, the Fiscal Agent, the Funding Lender Representative, the Borrower and the Funding Lender shall be restored to their former positions and rights hereunder with respect to the Pledged Security herein conveyed, and all rights, remedies and powers of the Fiscal Agent and the Funding Lender Representative shall continue as if no such proceedings had been taken.

**Section 6.10 *Waivers of Events of Default.*** The Fiscal Agent shall waive any Event of Default hereunder and its consequences and rescind any declaration of maturity of principal of and interest on the Funding Loan upon the written direction of the Funding Lender Representative. In case of any such waiver or rescission, or in case any proceeding taken by the Fiscal Agent on account of any such Event of Default shall have been discontinued or abandoned or determined adversely, then and in every such case the Governmental Lender, the Fiscal Agent, the Borrower, the Servicer, the Funding Lender Representative and the Funding Lender shall be restored to their former positions and rights hereunder, respectively, but no such waiver or rescission shall extend to any subsequent or other default, or impair any right consequent thereto.

**Section 6.11 *Interest on Unpaid Amounts and Default Rate for Nonpayment.*** In the event that principal of or interest payable on the Funding Loan is not paid when due, there shall be payable on the amount not timely paid, on each Interest Payment Date, interest at the Default Rate, to the extent permitted by law. Interest on the Funding Loan shall accrue at the Default Rate until the unpaid amount, together with interest thereon, shall have been paid in full.

**Section 6.12 *Assignment of Project Loan; Remedies Under the Project Loan.***

(a) The Funding Lender Representative shall have the right, with respect to the Project Loan, in its sole and absolute discretion, without directing the Fiscal Agent to effect an acceleration of the Funding Loan, to instruct the Fiscal Agent in writing to assign the Project Note, the Security Instrument and the other Financing Documents to the Funding Lender Representative, in which event the Fiscal Agent shall (a) endorse and deliver the Project Note to the Funding Lender Representative and assign (in recordable form) the Security Instrument, (b) execute and deliver to the Funding Lender Representative all documents prepared by the Funding Lender Representative necessary to assign (in recordable form) all other Project Loan Documents to the Funding Lender Representative and (c) execute all such documents prepared by the Funding Lender Representative as are necessary to legally and validly effectuate the assignments provided for in the preceding clauses (a) and (b). The Fiscal Agent's assignments to the Funding Lender Representative pursuant to this Section 6.12 shall be without recourse or warranty except that the Fiscal Agent shall represent and warrant in connection therewith (A) that the Fiscal Agent has not previously endorsed or assigned any such documents or instruments and (B) that the Fiscal Agent has the corporate authority to endorse and assign such documents and instruments and such endorsements and assignments have been duly authorized.

(b) The Funding Lender Representative shall have the right, in its own name or on behalf of the Governmental Lender or the Fiscal Agent, to declare any default and exercise any remedies under the Project Loan Agreement, the Project Note or the Security Instrument, whether or not the Governmental Note has been accelerated or declared due and payable by reason of an Event of Default or the occurrence of a mandatory prepayment.

**Section 6.13 Substitution.** Upon receipt of written notice from the Funding Lender Representative and the approval of the Governmental Lender as and to the extent permitted under the Tax Regulatory Agreement, the Fiscal Agent shall exchange the Project Note and the Security Instrument for a new Project Note and Security Instrument, evidencing and securing a new loan (the “New Project Loan”), which may be executed by a person other than the Borrower (the “New Borrower”), provided that if the Fiscal Agent, the Funding Lender or a nominee of the Fiscal Agent or the Funding Lender has acquired the Project through foreclosure, by accepting a deed in lieu of foreclosure or by comparable conversion of the Project, no approval from the Governmental Lender of such exchange shall be required. Prior to accepting a New Project Loan, the Fiscal Agent shall have received (i) written evidence that the New Borrower shall have executed and recorded a document substantially in the form of the Tax Regulatory Agreement (or executed and recorded an assumption of all of the Borrower’s obligations under the Tax Regulatory Agreement) and that the Financing Documents have been modified as necessary to be applicable to the New Project Loan, and (ii) a Favorable Opinion of Bond Counsel, with respect to the effect that such exchange and modification, in and of itself, shall not affect the exclusion, from gross income, for federal income tax purposes of the interest payable on the Governmental Note.

(End of Article VI)

## ARTICLE VII

### CONCERNING THE FISCAL AGENT

**Section 7.01 *Standard of Care.*** The Fiscal Agent, prior to an Event of Default as defined in Section 6.01 hereof and after the curing or waiver of all such events which may have occurred, shall perform such duties and only such duties as are specifically set forth in this Funding Loan Agreement. The Fiscal Agent, during the existence of any such Event of Default (which shall not have been cured or waived), shall exercise such rights and powers vested in it by this Funding Loan Agreement and use the same degree of care and skill in its exercise as a prudent Person would exercise or use under similar circumstances in the conduct of such Person's own affairs.

No provision of this Funding Loan Agreement shall be construed to relieve the Fiscal Agent from liability for its breach of trust, own negligence or willful misconduct, except that:

(a) prior to an Event of Default hereunder, and after the curing or waiver of all such Events of Default which may have occurred:

(i) the duties and obligations of the Fiscal Agent shall be determined solely by the express provisions of this Funding Loan Agreement, and the Fiscal Agent shall not be liable except with regard to the performance of such duties and obligations as are specifically set forth in this Funding Loan Agreement; and

(ii) in the absence of bad faith on the part of the Fiscal Agent, the Fiscal Agent may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon any certificate or opinion furnished to the Fiscal Agent by the Person or Persons authorized to furnish the same;

(b) at all times, regardless of whether or not any such Event of Default shall exist:

(i) the Fiscal Agent shall not be liable for any error of judgment made in good faith by an officer or employee of the Fiscal Agent except for willful misconduct or negligence by the officer or employee of the Fiscal Agent as the case may be; and

(ii) the Fiscal Agent shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the Funding Lender Representative relating to the time, method and place of conducting any proceeding for any remedy available to the Fiscal Agent, or exercising any trust or power conferred upon the Fiscal Agent under this Funding Loan Agreement.

**Section 7.02 *Reliance Upon Documents.*** Except as otherwise provided in Section 7.01 hereof:

(a) the Fiscal Agent may rely upon the authenticity or truth of the statements and the correctness of the opinions expressed in, and shall be protected in acting upon any resolution, certificate, statement, instrument, opinion, report, notice, notarial seal, stamp, acknowledgment, verification, request, consent, order, bond, or other paper or document of the proper party or

parties, including any Electronic Notice as permitted hereunder or under the Project Loan Agreement;

(b) any notice, request, direction, election, order or demand of the Governmental Lender mentioned herein shall be sufficiently evidenced by an instrument signed in the name of the Governmental Lender by an Authorized Officer of the Governmental Lender (unless other evidence in respect thereof be herein specifically prescribed), and any resolution of the Governmental Lender may be evidenced to the Fiscal Agent by a copy of such resolution duly certified by an Authorized Officer of the Governmental Lender;

(c) any notice, request, certificate, statement, requisition, direction, election, order or demand of the Borrower mentioned herein shall be sufficiently evidenced by an instrument purporting to be signed in the name of the Borrower by any Authorized Officer of the Borrower (unless other evidence in respect thereof be herein specifically prescribed), and any resolution or certification of the Borrower may be evidenced to the Fiscal Agent by a copy of such resolution duly certified by a secretary or other authorized representative of the Borrower;

(d) any notice, request, certificate, statement, requisition, direction, election, order or demand of the Servicer mentioned herein shall be sufficiently evidenced by an instrument signed in the name of the Servicer by an Authorized Officer of the Servicer (unless other evidence in respect thereof be herein specifically prescribed);

(e) any notice, request, direction, election, order or demand of the Funding Lender Representative mentioned herein shall be sufficiently evidenced by an instrument purporting to be signed in the name of the Funding Lender Representative by any Authorized Officer of the Funding Lender Representative (unless other evidence in respect thereof be herein specifically prescribed);

(f) [Intentionally Omitted];

(g) [Intentionally Omitted];

(h) in the administration of the trusts of this Funding Loan Agreement, the Fiscal Agent may execute any of the trusts or powers hereby granted directly or through its agents, receivers or attorneys, and the Fiscal Agent may consult with counsel (who may be counsel for the Governmental Lender, the Servicer or the Funding Lender Representative) and the opinion or advice of such counsel shall be full and complete authorization and protection in respect of any action taken or permitted by it hereunder in good faith and in accordance with the opinion of such counsel;

(i) whenever in the administration of the trusts of this Funding Loan Agreement, the Fiscal Agent shall deem it necessary or desirable that a matter be proved or established prior to taking or permitting any action hereunder, such matters (unless other evidence in respect thereof be herein specifically prescribed), may in the absence of negligence or willful misconduct on the part of the Fiscal Agent, be deemed to be conclusively proved and established by a certificate of an officer or authorized agent of the Governmental Lender or the Borrower and such certificate shall in the absence of bad faith on the part of the Fiscal Agent be full warrant to the Fiscal Agent for any action taken or permitted by it under the provisions of this Funding Loan Agreement, but



in its discretion the Fiscal Agent may in lieu thereof accept other evidence of such matter or may require such further or additional evidence as it may deem reasonable;

(j) the recitals herein and in the Governmental Note (except the Fiscal Agent's certificate of authentication thereon) shall not be considered as made by or imposing any obligation or liability upon the Fiscal Agent. The Fiscal Agent makes no representations as to the value or condition of the Pledged Security or any part thereof, or as to the title of the Governmental Lender or the Borrower to the Pledged Security, or as to the security of this Funding Loan Agreement, or of the Governmental Note issued hereunder, and the Fiscal Agent shall incur no liability or responsibility in respect of any of such matters;

(k) the Fiscal Agent shall not be personally liable for debts contracted or liability for damages incurred in the management or operation of the Pledged Security except for its own willful misconduct or negligence; and every provision of this Funding Loan Agreement relating to the conduct or affecting the liability of or affording protection to the Fiscal Agent shall be subject to the provisions of this Section 7.02(k);

(l) the Fiscal Agent shall not be required to ascertain or inquire as to the performance or observance of any of the covenants or agreements (except to the extent they obligate the Fiscal Agent) herein or in any contracts or securities assigned or conveyed to or pledged with the Fiscal Agent hereunder, except Events of Default that are evident under Section 6.01(a) hereof. The Fiscal Agent shall not be required to take notice or be deemed to have notice or actual knowledge of any default or Event of Default specified in Section 6.01 hereof (except defaults under Section 6.01(a) hereof to the extent they are collecting loan payments hereunder) unless the Responsible Officer shall receive from the Governmental Lender or the Funding Lender Representative written notice stating that a default or Event of Default has occurred and specifying the same, and in the absence of such notice the Fiscal Agent may conclusively assume that there is no such default. Every provision contained in this Funding Loan Agreement or related instruments or in any such contract or security wherein the duty of the Fiscal Agent depends on the occurrence and continuance of such default shall be subject to the provisions of this Section 7.02(l);

(m) the Fiscal Agent shall be under no duty to confirm or verify any financial or other statements or reports or certificates furnished pursuant to any provisions hereof, except to the extent such statement or reports are furnished by or under the direction of the Fiscal Agent, and shall be under no other duty in respect of the same except to retain the same in its files and permit the inspection of the same at reasonable times by the Funding Lender; and

(n) the Fiscal Agent shall be under no obligation to exercise those rights or powers vested in it by this Funding Loan Agreement, other than such rights and powers which it shall be obliged to exercise in the ordinary course of its Fiscal Agent under the terms and provisions of this Funding Loan Agreement and as required by law, at the request or direction of the Funding Lender Representative pursuant to Section 6.03 hereof, unless the Funding Lender Representative shall have offered to the Fiscal Agent reasonable security or indemnity against the costs, expenses and liabilities which might be incurred by it in the compliance with such request or direction.

None of the provisions contained in this Funding Loan Agreement shall require the Fiscal Agent to expend or risk its own funds or otherwise incur personal financial liability in the performance of any of its duties or in the exercise of any of its rights or powers.

The Fiscal Agent is authorized and directed to execute in its capacity as Fiscal Agent, the Project Loan Agreement and the Tax Regulatory Agreement and shall have no responsibility or liability with respect to any information, statement or recital in any offering memorandum or other disclosure material prepared or distributed with respect to the delivery of the Governmental Note.

The Fiscal Agent or any of its affiliates may act as advisor or sponsor with respect to any Qualified Investments.

The Fiscal Agent agrees to accept and act upon Electronic Notice of written instructions and/or directions pursuant to this Funding Loan Agreement received and signed by Authorized Officers.

Any resolution, certification, notice, request, direction, election, order or demand delivered to the Fiscal Agent pursuant to this Section 7.02 shall remain in effect until the Fiscal Agent receives written notice to the contrary from the party that delivered such instrument accompanied by revised information for such party.

The Fiscal Agent shall have no responsibility for the value of any collateral or with respect to the perfection or priority of any security interest in any collateral except as otherwise provided in Section 7.17 hereof.

**Section 7.03 *Use of Proceeds.*** The Fiscal Agent shall not be accountable for the use or application of the Governmental Note authenticated or delivered hereunder or of the proceeds of the Funding Loan except as provided herein.

**Section 7.04 *[Reserved]*.**

**Section 7.05 *Trust Imposed.*** All money received by the Fiscal Agent shall, until used or applied as herein provided, be held in trust for the purposes for which it was received.

**Section 7.06 *Compensation of Fiscal Agent.*** The Fiscal Agent shall be entitled to its Ordinary Fiscal Agent's Fees and Expenses in connection with the services rendered by it in the execution of the trusts hereby created and in the exercise and performance of any of the powers and duties of the Fiscal Agent hereunder or under any Financing Document to the extent money is available therefor, in accordance with Section 4.06 hereof, exclusive of Extraordinary Services. The Fiscal Agent shall be entitled to Extraordinary Fiscal Agent's Fees and Expenses in connection with any Extraordinary Services performed consistent with the duties hereunder or under any of the Financing Documents; provided the Fiscal Agent shall not incur any Extraordinary Fiscal Agent's Fees and Expenses without the consent of the Funding Lender Representative. If any property, other than cash, shall at any time be held by the Fiscal Agent subject to this Funding Loan Agreement, or any supplement hereto, as security for the Funding Loan, the Fiscal Agent, if and to the extent authorized by a receivership, bankruptcy, or other court of competent jurisdiction or by the instrument subjecting such property to the provisions of this Funding Loan Agreement as such security for the Funding Loan, shall be entitled to make advances for the purpose of

preserving such property or of discharging tax liens or other liens or encumbrances thereon. Payment to the Fiscal Agent for its services and reimbursement to the Fiscal Agent for its expenses, disbursements, liabilities and advances, shall be limited to the sources described in the Project Loan Agreement and in Sections 4.06, 4.11 and 6.05 hereof. The Governmental Lender shall have no liability for Fiscal Agent's fees, costs or expenses.

THE BORROWER SHALL INDEMNIFY AND HOLD HARMLESS THE FISCAL AGENT AND ITS OFFICERS, DIRECTORS, OFFICIALS, EMPLOYEES, AGENTS, RECEIVERS, ATTORNEYS, ACCOUNTANTS, ADVISORS, CONSULTANTS AND SERVANTS, PAST, PRESENT OR FUTURE, FROM AND AGAINST (A) ANY AND ALL CLAIMS BY OR ON BEHALF OF ANY PERSON ARISING FROM ANY CAUSE WHATSOEVER IN CONNECTION WITH THIS FUNDING LOAN AGREEMENT OR TRANSACTIONS CONTEMPLATED HEREBY, THE PROJECT, OR THE DELIVERY OF THE GOVERNMENTAL NOTE OR THE LOANS; (B) ANY AND ALL CLAIMS ARISING FROM ANY ACT OR OMISSION OF THE BORROWER OR ANY OF ITS AGENTS, CONTRACTORS, SERVANTS, EMPLOYEES OR LICENSEES IN CONNECTION WITH THE PROJECT, OR THE DELIVERY OF THE GOVERNMENTAL NOTE OR THE LOANS; AND (C) ALL COSTS, COUNSEL FEES, EXPENSES OR LIABILITIES INCURRED IN CONNECTION WITH ANY SUCH CLAIM OR PROCEEDING BROUGHT THEREON; EXCEPT THAT THE BORROWER SHALL NOT BE REQUIRED TO INDEMNIFY ANY PERSON FOR DAMAGES FOUND BY A COURT OF COMPETENT JURISDICTION IN A FINAL JUDGMENT TO BE CAUSED BY THE NEGLIGENCE, WILLFUL MISCONDUCT OR UNLAWFUL ACTS OF SUCH PERSON OR WHICH ARISE FROM EVENTS OCCURRING AFTER THE BORROWER CEASES TO OWN THE PROJECT. IN THE EVENT THAT ANY ACTION OR PROCEEDING IS BROUGHT OR CLAIM MADE AGAINST THE FISCAL AGENT, OR ANY OF ITS OFFICERS, DIRECTORS, OFFICIALS, EMPLOYEES, AGENTS, RECEIVERS, ATTORNEYS, ACCOUNTANTS, ADVISORS, CONSULTANTS OR SERVANTS, WITH RESPECT TO WHICH INDEMNITY MAY BE SOUGHT HEREUNDER, THE BORROWER, UPON WRITTEN NOTICE THEREOF FROM THE INDEMNIFIED PARTY, SHALL ASSUME THE INVESTIGATION AND DEFENSE THEREOF, INCLUDING THE EMPLOYMENT OF COUNSEL AND THE PAYMENT OF ALL EXPENSES. THE INDEMNIFIED PARTY SHALL HAVE THE RIGHT TO APPROVE A SETTLEMENT TO WHICH IT IS A PARTY AND TO EMPLOY SEPARATE COUNSEL IN ANY SUCH ACTION OR PROCEEDINGS AND TO PARTICIPATE IN THE INVESTIGATION AND DEFENSE THEREOF, AND THE BORROWER SHALL PAY THE REASONABLE FEES AND EXPENSES OF SUCH SEPARATE COUNSEL. THE PROVISIONS OF THIS SECTION 7.06 SHALL SURVIVE THE TERMINATION OF THIS FUNDING LOAN AGREEMENT AND THE RESIGNATION OR REMOVAL OF THE FISCAL AGENT.

**Section 7.07 *Qualifications of Fiscal Agent.*** There shall at all times be a Fiscal Agent hereunder which shall be an association or a corporation organized and doing business under the laws of the United States of America or any state thereof, authorized under such laws to exercise corporate trust powers. Any successor Fiscal Agent shall have a combined capital and surplus of at least \$50,000,000 (or shall be a wholly-owned subsidiary of an association or corporation that has such combined capital and surplus), and be subject to supervision or examination by federal or state authority, or shall have been appointed by a court of competent jurisdiction pursuant to

Section 7.09 hereof. If such association or corporation publishes reports of condition at least annually, pursuant to law or to the requirements of any supervising or examining authority referred to above, then for the purposes of this Section 7.07, the combined capital and surplus of such association or corporation shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. In case at any time the Fiscal Agent shall cease to be eligible in accordance with the provisions of this Section 7.07 and another association or corporation is eligible, the Fiscal Agent shall resign immediately in the manner and with the effect specified in Section 7.09 hereof.

**Section 7.08 *Merger of Fiscal Agent.*** Any association or corporation into which the Fiscal Agent may be converted or merged, or with which it may be consolidated, or to which it may sell or transfer its corporate trust business and assets as a whole or substantially as a whole, or any association or corporation resulting from any such conversion, sale, merger, consolidation or transfer to which it is a party shall, ipso facto, be and become successor Fiscal Agent hereunder and vested with all the title to the whole property or Pledged Security and all the trusts, powers, discretions, immunities, privileges and all other matters as was its predecessor, without the execution or filing of any instruments or any further act, deed or conveyance on the part of any of the parties hereto, anything herein to the contrary notwithstanding, and shall also be and become successor Fiscal Agent in respect of the legal interest of the Fiscal Agent in the Loans.

**Section 7.09 *Resignation by the Fiscal Agent.*** The Fiscal Agent may at any time resign from the trusts hereby created by giving written notice to the Governmental Lender, the Borrower, the Servicer and the Funding Lender Representative. Such notice to the Governmental Lender, the Borrower, the Servicer and the Funding Lender Representative may be served personally or sent by certified mail or overnight delivery service. The resignation of the Fiscal Agent shall not be effective until a successor Fiscal Agent has been appointed as provided herein and such successor Fiscal Agent shall have agreed in writing to be bound by the duties and obligations of the Fiscal Agent hereunder.

**Section 7.10 *Removal of the Fiscal Agent.*** The Fiscal Agent may be removed at any time, either with or without cause, with the consent of the Funding Lender Representative (which consent of the Funding Lender Representative shall not be unreasonably withheld), by a written instrument signed by the Governmental Lender and delivered to the Fiscal Agent, the Servicer and the Borrower. The Fiscal Agent may also be removed by a written instrument signed by the Funding Lender Representative and delivered to the Fiscal Agent, the Servicer, the Governmental Lender and the Borrower. In each case written notice of such removal shall be given to the Servicer, the Borrower and to the Funding Lender. Any such removal shall take effect on the day specified in such written instrument(s), but the Fiscal Agent shall not be discharged from the trusts hereby created until a successor Fiscal Agent has been appointed and has accepted such appointment and has agreed in writing to be bound by the duties and obligations of the Fiscal Agent hereunder.

**Section 7.11 *Appointment of Successor Fiscal Agent.***

(a) In case at any time the Fiscal Agent shall resign or be removed, or be dissolved, or shall be in course of dissolution or liquidation, or otherwise become incapable of acting hereunder, or shall be adjudged a bankrupt or insolvent, or if a receiver of the Fiscal Agent or of its property

shall be appointed, or if a public supervisory office shall take charge or control of the Fiscal Agent or of its property or affairs, a vacancy shall forthwith and ipso facto be created in the office of such Fiscal Agent hereunder, and the Governmental Lender, with the written consent of the Funding Lender Representative, shall promptly appoint a successor Fiscal Agent. Any such appointment shall be made by a written instrument executed by an Authorized Officer of the Governmental Lender. If the Governmental Lender fails to appoint a successor Fiscal Agent within ten (10) days following the resignation or removal of the Fiscal Agent pursuant to Section 7.09 or Section 7.10 hereunder, as applicable, the Funding Lender Representative may appoint a successor Fiscal Agent.

(b) If, in a proper case, no appointment of a successor Fiscal Agent shall be made pursuant to subsection (a) of this Section 7.11 within sixty (60) days following delivery of all required notices of resignation given pursuant to Section 7.09 hereof or of removal of the Fiscal Agent pursuant to Section 7.10 hereof, the retiring Fiscal Agent may apply to any court of competent jurisdiction to appoint a successor Fiscal Agent. The court may thereupon, after such notice, if any, as such court may deem proper and prescribe, appoint a successor Fiscal Agent.

**Section 7.12 *Concerning Any Successor Fiscal Agent.*** Every successor Fiscal Agent appointed hereunder shall execute, acknowledge and deliver to its predecessor and also to the Governmental Lender a written instrument accepting such appointment hereunder, and thereupon such successor, without any further act, deed or conveyance, shall become fully vested with all the Pledged Security and the rights, powers, trusts, duties and obligations of its predecessor; but such predecessor shall, nevertheless, on the written request of the Governmental Lender, the Borrower or the Funding Lender Representative, or of its successor, and upon payment of all amounts due such predecessor, including but not limited to fees and expenses of counsel, execute and deliver such instruments as may be appropriate to transfer to such successor Fiscal Agent all the Pledged Security and the rights, powers and trusts of such predecessor hereunder; and every predecessor Fiscal Agent shall deliver all securities and money held by it as Fiscal Agent hereunder to its successor. Should any instrument in writing from the Governmental Lender be required by a successor Fiscal Agent for more fully and certainly vesting in such successor the Pledged Security and all rights, powers and duties hereby vested or intended to be vested in the predecessor, any and all such instruments in writing shall, on request, be executed, acknowledged and delivered by the Governmental Lender. The resignation of any Fiscal Agent and the instrument or instruments removing any Fiscal Agent and appointing a successor hereunder, together with all other instruments provided for in this Article, shall be filed and/or recorded by the successor Fiscal Agent in each recording office where this Funding Loan Agreement shall have been filed and/or recorded. Each successor Fiscal Agent shall mail notice by first class mail, postage prepaid, at least once within 30 days of such appointment, to the Funding Lender.

**Section 7.13 *Successor Fiscal Agent.*** In the event of a change in the office of Fiscal Agent, the predecessor Fiscal Agent which shall have resigned or shall have been removed shall cease to be Fiscal Agent with respect to the Governmental Note, and the successor Fiscal Agent shall become such Fiscal Agent.

**Section 7.14 *Appointment of Co-Fiscal Agent or Separate Fiscal Agent.*** It is the intent of the Governmental Lender and the Fiscal Agent that there shall be no violation of any law of any jurisdiction (including particularly the laws of the State) denying or restricting the right of banking

corporations or associations to transact business as Fiscal Agent in such jurisdiction. It is recognized that in case of litigation under or connected with this Funding Loan Agreement, the Project Loan Agreement or any of the other Financing Documents, and, in particular, in case of the enforcement of any remedies on default, or in case the Fiscal Agent deems that by reason of any present or future law of any jurisdiction it may not exercise any of the powers, rights or remedies herein or therein granted to the Fiscal Agent or hold title to the properties in trust, as herein granted, or take any other action which may be desirable or necessary in connection therewith, it may be necessary that the Fiscal Agent, with the consent of the Governmental Lender and the Funding Lender Representative, appoint an additional individual or institution as a co-fiscal agent or separate fiscal agent.

In the event that the Fiscal Agent appoints an additional individual or institution as a co-fiscal agent or separate fiscal agent, in the event of the incapacity or lack of authority of the Fiscal Agent, by reason of any present or future law of any jurisdiction, to exercise any of the rights, powers, trusts and remedies granted to the Fiscal Agent herein or to hold title to the Pledged Security or to take any other action that may be necessary or desirable in connection therewith, each and every remedy, power, right, obligation, claim, demand, cause of action, immunity, estate, title, interest and lien expressed or intended by this Funding Loan Agreement to be imposed upon, exercised by or vested in or conveyed to the Fiscal Agent with respect thereto shall be imposed upon, exercisable by and vest in such separate fiscal agent or co-fiscal agent, but only to the extent necessary to enable such co-fiscal agent or separate fiscal agent to exercise such powers, rights, trusts and remedies, and every covenant and obligation necessary to the exercise thereof by such co-fiscal agent or separate fiscal agent shall run to and be enforceable by either of them, subject to the remaining provisions of this Section 7.14. Such co-fiscal agent or separate fiscal agent shall deliver an instrument in writing acknowledging and accepting its appointment hereunder to the Governmental Lender and the Fiscal Agent.

Should any instrument in writing from the Governmental Lender be required by the co-fiscal agent or separate fiscal agent so appointed by the Fiscal Agent for more fully and certainly vesting in and confirming to him or it such properties, rights, powers, trusts, duties and obligations, any and all such instruments in writing shall, on request, be executed, acknowledged and delivered by the Governmental Lender, the Fiscal Agent and the Borrower. If the Governmental Lender shall fail to deliver the same within thirty (30) days of such request, the Fiscal Agent is hereby appointed attorney-in-fact for the Governmental Lender to execute, acknowledge and deliver such instruments in the Governmental Lender's name and stead. In case any co-fiscal agent or separate fiscal agent, or a successor to either, shall die, become incapable of acting, resign or be removed, all the estates, properties, rights, powers, trusts, duties and obligations of such co-fiscal agent or separate fiscal agent, so far as permitted by law, shall vest in and be exercised by the Fiscal Agent until the appointment of a new Fiscal Agent or successor to such co-fiscal agent or separate fiscal agent.

Every co-fiscal agent or separate fiscal agent shall, to the extent permitted by law, but to such extent only, be appointed subject to the following terms, namely:

(a) the Governmental Note shall be authenticated and delivered, and all rights, powers, trusts, duties and obligations by this Funding Loan Agreement conferred upon the Fiscal Agent in

respect of the custody, control or management of money, papers, securities and other personal property shall be exercised solely by the Fiscal Agent;

(b) all rights, powers, trusts, duties and obligations conferred or imposed upon the Fiscal Agent shall be conferred or imposed upon or exercised or performed by the Fiscal Agent, or by the Fiscal Agent and such co- fiscal agent, or separate fiscal agent jointly, as shall be provided in the instrument appointing such co- fiscal agent or separate fiscal agent, except to the extent that under the law of any jurisdiction in which any particular act or acts are to be performed the Fiscal Agent shall be incompetent or unqualified to perform such act or acts, in which event such act or acts shall be performed by such co- fiscal agent or separate fiscal agent;

(c) any request in writing by the Fiscal Agent to any co- fiscal agent or separate fiscal agent to take or to refrain from taking any action hereunder shall be sufficient warrant for the taking or the refraining from taking of such action by such co- fiscal agent or separate fiscal agent;

(d) any co- fiscal agent or separate fiscal agent to the extent permitted by law shall delegate to the Fiscal Agent the exercise of any right, power, trust, duty or obligation, discretionary or otherwise;

(e) the Fiscal Agent at any time by an instrument in writing with the concurrence of the Governmental Lender evidenced by a certified resolution may accept the resignation of or remove any co- fiscal agent or separate fiscal agent appointed under this Section 7.14 and in case an Event of Default shall have occurred and be continuing, the Fiscal Agent shall have power to accept the resignation of or remove any such co- fiscal agent or separate fiscal agent without the concurrence of the Governmental Lender, and upon the request of the Fiscal Agent, the Governmental Lender shall join with the Fiscal Agent in the execution, delivery and performance of all instruments and agreements necessary or proper to effectuate such resignation or removal. A successor to any co- fiscal agent or separate fiscal agent so resigned or removed may be appointed in the manner provided in this Section 7.14;

(f) no Fiscal Agent or co- fiscal agent hereunder shall be personally liable by reason of any act or omission of any other Fiscal Agent hereunder;

(g) any demand, request, direction, appointment, removal, notice, consent, waiver or other action in writing executed by the Funding Lender Representative and delivered to the Fiscal Agent shall be deemed to have been delivered to each such co- fiscal agent or separate fiscal agent; and

(h) any money, papers, securities or other items of personal property received by any such co- fiscal agent or separate fiscal agent hereunder shall forthwith, so far as may be permitted by law, be turned over to the Fiscal Agent.

The total compensation of the Fiscal Agent and any co fiscal agent or separate fiscal agent shall be as, and may not exceed the amount, provided in Section 7.06 hereof.

**Section 7.15 *Notice of Certain Events.*** The Fiscal Agent shall give written notice to the Governmental Lender, the Servicer and the Funding Lender Representative of any failure by the

Borrower to comply with the terms of the Tax Regulatory Agreement or any Determination of Taxability of which a Responsible Officer has actual knowledge.

**Section 7.16** *[Reserved]*.

**Section 7.17** *Filing of Financing Statements*. The Fiscal Agent shall, at the expense of the Borrower, file or record or cause to be filed or recorded all UCC continuation statements for the purpose of continuing without lapse the effectiveness of those financing statements which have been filed on or approximately on the Delivery Date in connection with the security for the Funding Loan pursuant to the authority of the UCC. Upon the filing of any such continuation statement the Fiscal Agent shall immediately notify the Governmental Lender, the Borrower, the Funding Lender Representative and the Servicer that the same has been done. If direction is given by the Servicer or the Funding Lender Representative, the Fiscal Agent shall file all continuation statements in accordance with such directions.

**Section 7.18** *USA Patriot Act Requirements of the Fiscal Agent*. To help the government of the United States of America fight the funding of terrorism and money laundering activities, federal law requires all financial institutions to obtain, verify, and record information that identifies each person who opens an account. For a non-individual Person such as a business entity, a charity, a trust, or other legal entity, the Fiscal Agent may request documentation to verify such Person's formation and existence as a legal entity. The Fiscal Agent may also request financial statements, licenses, identification and authorization documents from individuals claiming authority to represent such Person or other relevant documentation.

(End of Article VII)



## ARTICLE VIII

### AMENDMENTS OF CERTAIN DOCUMENTS

**Section 8.01 *Amendments to this Funding Loan Agreement.*** Any of the terms of this Funding Loan Agreement and the Governmental Note may be amended or waived only by an instrument signed by the Fiscal Agent and the Governmental Lender, and with the prior written consent of the Funding Lender Representative.

**Section 8.02 *Amendments to Financing Documents Require Consent of Funding Lender Representative.*** Neither the Governmental Lender nor the Fiscal Agent shall consent to any amendment, change or modification of any Financing Document without the prior written consent of the Funding Lender Representative.

**Section 8.03 *Favorable Opinion of Bond Counsel Required.*** No amendment to this Funding Loan Agreement, the Governmental Note, the Project Loan Agreement, the Project Note, the Security Instrument or the Tax Regulatory Agreement shall become effective unless and until (i) the Funding Lender Representative shall have consented to the same in writing in its sole discretion and (ii) the Funding Lender Representative, the Governmental Lender and the Fiscal Agent shall have received, at the expense of the Borrower, (A) a Favorable Opinion of Bond Counsel and (B) an opinion of counsel acceptable to the Funding Lender Representative to the effect that any such proposed such amendment, change or modification is authorized and complies with the provisions of this Funding Loan Agreement and is a legal, valid and binding obligation of the parties thereto, subject to normal exceptions relating to bankruptcy, insolvency and equitable principles limitations.

(End of Article VIII)

## ARTICLE IX

### SATISFACTION AND DISCHARGE OF FUNDING LOAN AGREEMENT

**Section 9.01 *Discharge of Lien.*** If the Governmental Lender shall pay or cause to be paid to the Funding Lender the principal, interest and Prepayment Premium, if any, to become due with respect to the Funding Loan at the times and in the manner stipulated herein and in the Governmental Note, in any one or more of the following ways:

(a) by the payment of all unpaid principal of (including Prepayment Premium, if any) and interest on the Funding Loan; or

(b) after the Conversion Date (or, if the Conversion Date does not occur, the latest date on which Conversion was permitted to occur under the Construction Phase Financing Agreement) and prior to the Window Period, by the deposit to the account of the Fiscal Agent, in trust, of money or securities in the necessary amount to pay the principal, Prepayment Premium and interest to the Maturity Date; or

(c) by the delivery of the Governmental Note by the Funding Lender to the Fiscal Agent for cancellation;

and shall have paid all amounts due and owing under the other Financing Documents, and shall have paid all fees and expenses of and any other amounts due to the Fiscal Agent, the Servicer and the Rebate Analyst, and if the Governmental Lender shall keep, perform and observe all and singular the covenants and promises in the Governmental Note and in this Funding Loan Agreement expressed as to be kept, performed and observed by it or on its part, then these presents and the estates and rights hereby granted shall cease, determine and be void, and thereupon the Fiscal Agent shall cancel and discharge the lien of this Funding Loan Agreement and execute and deliver to the Governmental Lender such instruments in writing as shall be requisite to satisfy the lien hereof, and reconvey to the Governmental Lender the estate hereby conveyed, and assign and deliver to the Governmental Lender any interest in property at the time subject to the lien of this Funding Loan Agreement which may then be in its possession, except amounts held by the Fiscal Agent for the payment of principal of, interest and Prepayment Premium, if any, on the Governmental Note, the payment of any amounts owed to the United States of America pursuant to Section 4.12 hereof.

After the Conversion Date (or, if the Conversion Date does not occur, the latest date on which Conversion was permitted to occur under the Construction Phase Financing Agreement) and prior to the Window Period and subject to the satisfaction of the conditions set forth in Section 4.04(c) of the Project Loan Agreement, the Funding Loan shall, prior to the Maturity Date, be deemed to have been paid within the meaning and with the effect expressed in the first paragraph of this Section 9.01 based on a deposit of moneys or securities with the Fiscal Agent pursuant to Section 9.01(b) if, under circumstances which do not cause interest on the Governmental Note to become includable in the holders' gross income for purposes of federal income taxation, the following conditions shall have been fulfilled: (a) there shall be on deposit with the Fiscal Agent either money or noncallable and nonprepayable direct obligations of the United States of America (or other defeasance securities constituting Qualified Investments

approved in writing by the Funding Lender Representative) in an amount, together with anticipated earnings thereon (but not including any reinvestment of such earnings), which will be sufficient to pay, when due, the principal and interest due and to become due on the Funding Loan up to and on the Maturity Date; (b) the Fiscal Agent shall have received a verification report of a firm of certified public accountants or financial analyst reasonably acceptable to the Fiscal Agent and the Funding Lender Representative as to the adequacy of the amounts or securities so deposited to fully pay the Funding Loan; (c) the Fiscal Agent and the Funding Lender Representative shall have received a written opinion of nationally recognized counsel experienced in bankruptcy matters to the effect that if the Borrower, any general partner, member or guarantor of the Borrower, or the Governmental Lender were to become a debtor in a proceeding under the Bankruptcy Code (x) payment of such money to the Funding Lender would not constitute a voidable preference under Section 547 of the Bankruptcy Code and (y) the automatic stay provisions of Section 362(a) of the Bankruptcy Code would not prevent application of such money to the payment of the Funding Loan; (d) the Fiscal Agent and the Funding Lender Representative shall have received an opinion of Bond Counsel to the effect that the defeasance of the Funding Loan is in accordance with the provisions of the Funding Loan Agreement and that such defeasance will not adversely affect the exclusion of interest on the Governmental Note from gross income for federal income tax purposes; and (e) the Fiscal Agent shall have received written confirmation that all fees, expenses or reimbursement of any advances due to the Funding Lender and the Servicer under the Financing Documents have been fully paid.

**Section 9.02 *Discharge of Liability on Funding Loan.*** Upon the deposit with the Fiscal Agent, in trust, at or before maturity, of money or securities in the necessary amount (as provided in Section 9.01 above) to pay or prepay the Funding Loan (whether upon or prior to their maturity or the prepayment date of the Funding Loan) provided that, if the Funding Loan is to be prepaid prior to the maturity thereof, notice of such prepayment shall have been given as provided in Article III or provision satisfactory to the Fiscal Agent shall have been made for the giving of such notice, all liability of the Governmental Lender in respect of the Funding Loan shall cease, terminate and be completely discharged, except only that thereafter the Funding Lender shall be entitled to payment by the Governmental Lender, and the Governmental Lender shall remain liable for such payment, but only out of the money or securities deposited with the Fiscal Agent as aforesaid for their payment, subject, however, to the provisions of Section 9.03 hereof.

**Section 9.03 *Payment of Funding Loan After Discharge of Funding Loan Agreement.*** Notwithstanding any provisions of this Funding Loan Agreement, and subject to applicable unclaimed property laws of the State, any money deposited with the Fiscal Agent or any paying agent in trust for the payment of the principal of, interest or premium on the Governmental Note remaining unclaimed after the maturity or earlier payment date: to the extent permitted by applicable law, shall be paid to the Governmental Lender, whereupon all liability of the Governmental Lender and the Fiscal Agent with respect to such money shall cease, and the Funding Lender shall thereafter look solely to the Borrower for payment of any amounts then due. All money held by the Fiscal Agent and subject to this Section 9.03 shall be held uninvested and without liability for interest thereon.

(End of Article IX)

## ARTICLE X

### INTENTIONALLY OMITTED

## ARTICLE XI

### MISCELLANEOUS

**Section 11.01 *Servicing of the Loans.*** The Funding Lender Representative may appoint a Servicer (which may be the Funding Lender Representative if the Funding Lender Representative elects to service the Loans) to service the Loans as provided in Section 3.02 of the Project Loan Agreement.

**Section 11.02 *Limitation of Rights.*** With the exception of rights herein expressly conferred, nothing expressed or to be implied from this Funding Loan Agreement or the Governmental Note is intended or shall be construed to give to any Person other than the Parties hereto, the Funding Lender, the Funding Lender Representative, the Servicer and the Borrower, any legal or equitable right, remedy or claim under or in respect to this Funding Loan Agreement or any covenants, conditions and provisions hereof.

**Section 11.03 *Construction of Conflicts; Severability.*** Notwithstanding anything provided herein, or in any of the documents referred to herein, in the event that any contracts or other documents executed by the Borrower or any other arrangements agreed to by the Borrower in order to finance or refinance the Project with the proceeds of the Funding Loan, the interest on which is excluded from gross income for federal income tax purposes under Section 103(a) of the Code are inconsistent with the Project Loan Documents, then the Project Loan Documents shall be controlling in all respects. If any provision of this Funding Loan Agreement shall be held or deemed to be, or shall in fact be inoperative or unenforceable as applied in any particular case in any jurisdiction or jurisdictions or in all jurisdictions, or in all cases because it conflicts with any other provision or provisions hereof or any constitution, statute, rule of law or public policy, or for any other reason, such circumstances shall not have the effect of rendering the provision in question inoperative or unenforceable in any other case or circumstance, or of rendering any other provision or provisions herein contained invalid, inoperative, or unenforceable to any extent whatever.

The invalidity of any one or more phrases, sentences, clauses or sections in this Funding Loan Agreement contained, shall not affect the remaining portions of this Funding Loan Agreement, or any part thereof.

**Section 11.04 *Notices.***

(a) Whenever in this Funding Loan Agreement the giving of notice by mail or otherwise is required, the giving of such notice may be waived in writing by the Person entitled to receive such notice and in any such case the giving or receipt of such notice shall not be a condition precedent to the validity of any action taken in reliance upon such waiver.

Any notice, request, complaint, demand, communication or other paper required or permitted to be delivered to the Governmental Lender, the Fiscal Agent, the Funding Lender Representative,

the Borrower or the Servicer shall be sufficiently given and shall be deemed given (unless another form of notice shall be specifically set forth herein) on the Business Day following the date on which such notice or other communication shall have been delivered to a national overnight delivery service (receipt of which to be evidenced by a signed receipt from such overnight delivery service) addressed to the appropriate party at the addresses set forth below or as may be required or permitted by this Funding Loan Agreement by Electronic Notice. The Governmental Lender, the Fiscal Agent, the Funding Lender Representative, the Borrower or the Servicer may, by notice given as provided in this paragraph, designate any further or different address to which subsequent notices or other communication shall be sent.

The Governmental Lender: Austin Housing Finance Corporation  
1000 East 11<sup>th</sup> Street, 2<sup>nd</sup> Floor  
Austin, Texas 78702  
Attn: David Potter  
Telephone: (512) 974-3192

With copies to:

Greenberg Traurig LLP  
2101 L Street, N.W., Suite 1000  
Washington, DC 20037  
Attn: Bill Gehrig  
Telephone: (202) 331-3170

and to:

McCall, Parkhurst & Horton L.L.P.  
717 N. Harwood Street, Ninth Floor  
Dallas, Texas 75201  
Attn: Mark A. Malveaux  
Telephone: (214) 754-9224

The Fiscal Agent: BOKF, NA  
801 Cherry Street  
Suite 3325, Unit 27  
Fort Worth, Texas 76102  
Attn: Corporate Trust Department  
Telephone: 817-348-5797

With a copy to:

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

The Borrower:

Austin DMA Housing III, LLC  
c/o AHFC Nightingale Non-Profit Corporation  
1000 East 11<sup>th</sup> Street, 2<sup>nd</sup> Floor  
Austin, Texas 78702  
Attn: Mandy deMayo  
Telephone: (512) \_\_\_\_\_

With copies to:

DMA Development Company, LLC  
4101 Parkstone Heights Drive, Suite 310  
Austin, Texas 78746

and to:

Greenburg Traurig, LLP  
2102 L Street, N.W.  
Washington D.C. 20037  
Attn: William L. Gehrig  
Telephone: (202) 331 – 3170

and to:

Coats | Rose  
901 S. MoPac Expressway  
Building 1, Suite 500  
Austin, Texas 78746  
Attn: Scott Marks  
Telephone: (512) 684-3843

and to:

Boston Capital  
1 Boston Place  
Boston, MA 02108  
Attn: Asset Management (Nightingale at  
Goodnight Ranch)  
Telephone: (617) 624-8900

and to:

Holland & Knight  
10 Saint James Avenue, 11<sup>th</sup> Floor  
Boston, MA 02116  
Attn: Kristen Cassetta

Telephone: (617) 854-1454

Funding Lender  
Representative  
(as of Freddie Mac Purchase  
Date):

Federal Home Loan Mortgage Corporation  
8100 Jones Branch Drive, MS B4P  
McLean, Virginia 22102  
Attention: Multifamily Operations – Loan  
Accounting  
Email: mfla@freddiemac.com  
Telephone: (703) 714-4177

With a copy to;

Federal Home Loan Mortgage Corporation  
8200 Jones Branch Drive, MS 210  
McLean, Virginia 22102  
Attention: Managing Associate General Counsel –  
Multifamily Legal Division  
Email: joshua\_schonfeld@freddiemac.com  
Telephone: (703) 903-2000

Initial Funding Lender  
and Servicer:

JPMorgan Chase Bank, N.A.  
Community Development Group  
221 West 6<sup>th</sup> Street, Floor 2  
Austin, Texas 78701  
Attn: David H. Saling  
Telephone: (512) 479-2218

With a copy to:

Bellwether Enterprise Real Estate Capital, LLC  
511 North Akard Street, Suite 1508  
Dallas, Texas 75201  
Attn: Kevin Bowen  
Telephone: (214) 295-3828

A duplicate copy of each notice or other communication given hereunder by any party to the Servicer shall also be given to the Funding Lender Representative and by any party to the Funding Lender Representative to the Servicer.

The Fiscal Agent agrees to accept and act upon Electronic Notice of written instructions and/or directions pursuant to this Funding Loan Agreement submitted by Authorized Officers.

(b) The Fiscal Agent shall provide to the Funding Lender Representative and the Servicer (i) prompt notice of the occurrence of any Event of Default pursuant to Section 6.01 hereof and (ii) any written information or other written communication received by the Fiscal Agent hereunder within ten (10) Business Days of receiving a written request from the Funding Lender Representative and the Servicer for any such information or other communication.

### **Section 11.05 *Funding Lender Representative.***

(a) The Initial Funding Lender is the initial Funding Lender Representative with respect to the Governmental Note. Upon the Conversion Date, the Freddie Mac Seller/Servicer shall become the Funding Lender Representative and upon the Freddie Mac Purchase Date, Freddie Mac shall become the Funding Lender Representative. The Funding Lender Representative shall be entitled to all the rights and privileges of the Funding Lender hereunder and under the other Financing Documents.

(b) The Funding Lender Representative may provide written notice to the Fiscal Agent designating particular individuals or Persons authorized to execute any consent, waiver, approval, direction or other instrument on behalf of the Funding Lender Representative, and such notice may be amended or rescinded by the Funding Lender Representative at any time by subsequent written notice. The Funding Lender Representative may be removed and a successor appointed by a written notice in the form of **Exhibit B** hereto given by the Funding Lender to the Fiscal Agent, the Governmental Lender, the Servicer and the Borrower. The removal and reappointment shall be effective immediately upon receipt of such notice by the Fiscal Agent. The Funding Lender may appoint any Person to act as Funding Lender Representative, including, without limitation, the Servicer. If, for any reason, a Funding Lender Representative resigns by written notice provided to the Fiscal Agent, the Funding Lender, the Governmental Lender, the Servicer and the Borrower, all references to Funding Lender Representative herein and in the other Financing Documents shall be deemed to refer to the Funding Lender until a successor Funding Lender Representative is appointed by the Funding Lender.

(c) Whenever pursuant to this Funding Loan Agreement or any other Financing Document, the Funding Lender Representative exercises any right given to it to approve or disapprove, any arrangement or term hereof, the decision of the Funding Lender Representative to approve or disapprove or to decide whether arrangements or terms are acceptable or not acceptable shall be in the sole discretion of the Funding Lender Representative, except as otherwise specifically indicated.

(d) Each Funding Lender, by their purchase or other acquisition of the Funding Loan, shall be deemed to have acknowledged and agreed to the provisions of this Funding Loan Agreement and the other Financing Documents with respect to the Funding Lender Representative and the rights and privileges thereof, including but not limited to the right to control all remedies in respect of the Governmental Note and the Loans.

**Section 11.06 *Payments Due on Non-Business Days.*** In any case where a date of payment with respect to the Funding Loan shall be a day other than a Business Day, then such payment need not be made on such date but may be made on the next succeeding Business Day with the same force and effect as if made on such date, and no interest shall accrue for the period after such date provided that payment is made on such next succeeding Business Day.

**Section 11.07 *Counterparts.*** This Funding Loan Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.



**Section 11.08 *Laws Governing Funding Loan Agreement.*** The effect and meanings of this Funding Loan Agreement and the rights of all parties hereunder shall be governed by, and construed according to, the internal laws of the State without regard to conflicts of laws principles.

**Section 11.09 *No Recourse.*** No recourse under or upon any obligation, covenant or agreement contained in this Funding Loan Agreement or in the Governmental Note shall be had against any member, officer, commissioner, director or employee (past, present or future) of the Governmental Lender, either directly or through the Governmental Lender or its governing body or otherwise, for the payment for or to the Governmental Lender or any receiver thereof, or for or to the Funding Lender, or otherwise, of any sum that may be due and unpaid by the Governmental Lender or its governing body upon the Governmental Note. Any and all personal liability of every nature whether at common law or in equity or by statute or by constitution or otherwise of any such member, officer, commissioner, director or employee, as such, to respond by reason of any act of omission on his/her part or otherwise, for the payment for or to the Funding Lender or otherwise of any sum that may remain due and unpaid with respect to the Funding Loan hereby secured is, by the acceptance hereof, expressly waived and released as a condition of and in consideration for the execution of this Funding Loan Agreement and the delivery of the Governmental Note.

**Section 11.10 *Successors and Assigns.*** All the covenants and representations contained in this Funding Loan Agreement by or on behalf of the parties hereto shall bind and inure to the benefit of their successors and assigns, whether so expressed or not.

(End of Article XI)

[Signature Pages Follow]

**IN WITNESS WHEREOF**, the Governmental Lender, the Initial Funding Lender and the Fiscal Agent have caused this Funding Loan Agreement to be executed and delivered by duly authorized officers thereof as of the day and year first written above.

AUSTIN HOUSING FINANCE CORPORATION

By: \_\_\_\_\_  
Rosie Truelove, Treasurer

Attest:

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

JPMORGAN CHASE BANK, N.A., a national  
banking association

By: \_\_\_\_\_  
David H. Saling  
Authorized Representative

**BOKF, NA**, as Fiscal Agent

By: \_\_\_\_\_  
Pamela M. Black, Senior Vice President

**EXHIBIT A**

**FORM OF GOVERNMENTAL NOTE**

**THIS GOVERNMENTAL NOTE IS SUBJECT TO  
CERTAIN RESTRICTIONS ON TRANSFER AS SET FORTH IN THE  
FUNDING LOAN AGREEMENT.**

**AUSTIN HOUSING FINANCE CORPORATION  
MULTIFAMILY HOUSING GOVERNMENTAL REVENUE NOTE  
(NIGHTINGALE AT GOODNIGHT RANCH APARTMENTS)  
SERIES 2018**

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

No. \_\_\_\_

**INTEREST RATE**

Prior to the Conversion Date  
at [2.75%] per annum; on and  
after the Conversion Date at  
[4.00%] per annum

**DATED DATE**

March \_\_, 2018

**MATURITY DATE**

\_\_\_\_\_,  
\_\_\_\_\_

FOR VALUE RECEIVED, the undersigned, Austin Housing Finance Corporation (the “**Obligor**”), promises to pay (but solely from the sources and in the manner provided for in the Funding Loan Agreement referenced below) to the order of JPMORGAN CHASE BANK, N.A., and its assigns, subject to Section 2.08(b) of the Funding Loan Agreement (as hereafter defined) (the “**Funding Lender**”), and its assigns, the principal sum of [\_\_\_\_\_] AND NO/100 Dollars (\$ \_\_\_\_\_), on \_\_\_\_\_, \_\_\_\_\_ (the “**Maturity Date**”), or earlier as provided herein, together with interest thereon at the rates, at the times, and in the amounts provided below, but solely from Pledged Security available for such purpose.

This Multifamily Revenue Note (this “**Note**”) is being delivered pursuant to that certain Funding Loan Agreement dated as of March 1, 2018 (together with any and all amendments, modifications, supplements and restatements, the “**Funding Loan Agreement**”), among the Funding Lender, the Obligor and BOKF, NA, (the “**Fiscal Agent**”), pursuant to which the Obligor has incurred a loan in the original principal amount of \$ \_\_\_\_\_ (the “**Funding Loan**”), and this Note is entitled to the benefits of the Funding Loan Agreement and is subject to the terms, conditions and provisions thereof. The Obligor is using the proceeds of the Funding Loan to make a loan to Austin DMA Housing III, LLC (the “**Borrower**”) pursuant to the Project Loan Agreement dated as of March 1, 2018 (the “**Project Loan Agreement**”), among the Obligor, the Borrower and the Fiscal Agent.

THIS NOTE IS BEING ISSUED UNDER THE PROVISIONS OF THE TEXAS HOUSING FINANCE CORPORATION ACT, CHAPTER 394, TEXAS LOCAL GOVERNMENT CODE, AS AMENDED. THIS NOTE AND THE ISSUE OF WHICH IT FORMS A PART ARE NOT GENERAL OBLIGATIONS OF THE OBLIGOR, BUT ARE

LIMITED OBLIGATIONS PAYABLE SOLELY FROM THE MONEYS AND PROPERTIES  
PLEDGED FOR PAYMENT THEREOF.

1. **Defined Terms.** As used in this Note, (i) the term “Funding Lender” means the holder of this Note, and (ii) the term “Indebtedness” means the principal of, premium, if any, and interest on or any other amounts due at any time under this Note or the Funding Loan Agreement. “Event of Default” and other capitalized terms used but not defined in this Note shall have the meanings given to such term in the Funding Loan Agreement.

2. **Payments of Principal and Interest.** The Obligor shall pay (but solely from the sources and in the manner provided for in the Funding Loan Agreement) on the first calendar day of each month commencing May 5, 2018, interest as it accrues on this Note at the rates set forth above (or such higher rate of interest borne by the Funding Loan upon any default) (the “**Interest Rate**”) on the outstanding principal balance of this Note, and shall also pay interest on this Note at the applicable interest rate set forth above, on the date of any optional or mandatory prepayment or acceleration of all or part of the Funding Loan pursuant to the Funding Loan Agreement, in an amount equal to the accrued and unpaid interest to the date of prepayment on the portion of this Note subject to prepayment (each such date for payment an “**Interest Payment Date**”). If the date for payment of principal of, premium, if any, or interest on this Note shall be a day which is not a Business Day, then the date for such payment shall be the next succeeding day which is a Business Day, and payment on such later date shall have the same force and effect as if made on the nominal date of payment.

The Obligor shall pay (but solely from the sources and in the manner provided for in the Funding Loan Agreement) the outstanding principal of this Note in full on \_\_\_\_\_, \_\_\_\_ (the “**Maturity Date**”) and in monthly installments on each date set forth on the Funding Loan Amortization Schedule attached as Schedule 1 hereto in an amount equal to the corresponding amounts set forth thereon, or at such earlier times and in such amounts as may be required, in the event of an optional or mandatory prepayment or acceleration of the Funding Loan pursuant to the Funding Loan Agreement. The outstanding principal hereof is subject to acceleration at the time or times and under the terms and conditions, and with notice, if any, as provided under the Funding Loan Agreement.

3. **Prepayment; Prepayment Premium.** This Note is subject to prepayment as specified in the Funding Loan Agreement. Prepayment Premium shall be payable as specified in the Funding Loan Agreement.

4. **Forbearance.** Any forbearance by the Funding Lender in exercising any right or remedy under this Note or any other document evidencing or securing the Funding Loan or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of that or any other right or remedy. The acceptance by the Funding Lender of any payment after the due date of such payment, or in an amount which is less than the required payment, shall not be a waiver of the Funding Lender’s right to require prompt payment when due of all other payments or to exercise any right or remedy with respect to any failure to make prompt payment. Enforcement by the Funding Lender of any security for the obligations under this Note shall not constitute an election by the Funding Lender of remedies so as to preclude the exercise of any other right or remedy available to the Funding Lender.

5. **Waivers.** Except as otherwise expressly provided in the Funding Loan Agreement and the Project Loan Agreement, presentment, demand, notice of dishonor, protest, notice of acceleration, notice of intent to demand or accelerate payment or maturity, presentment for payment, notice of nonpayment, grace and diligence in collecting the Indebtedness are waived by the Obligor and all endorsers and guarantors of this Note and all other third-party obligors.

6. **Loan Charges.** Neither this Note nor any of the other Financing Documents will be construed to create a contract for the use, forbearance, or detention of money requiring payment of interest at a rate greater than the rate of interest which results in the maximum amount of interest allowed by applicable law (the “**Maximum Interest Rate**”). If any applicable law limiting the amount of interest or other charges permitted to be collected from Obligor in connection with the Funding Loan is interpreted so that any interest or other charge provided for in any Financing Document, whether considered separately or together with other charges provided for in any other Financing Document, violates that law, and Obligor is entitled to the benefit of that law, that interest or charge is hereby reduced to the extent necessary to eliminate that violation. The amounts, if any, previously paid to Funding Lender in excess of the permitted amounts will be applied by Funding Lender to reduce the unpaid principal balance of this Note. For the purpose of determining whether any applicable law limiting the amount of interest or other charges permitted to be collected from Obligor has been violated, all indebtedness that constitutes interest, as well as all other charges made in connection with the indebtedness that constitute interest, will be deemed to be allocated and spread ratably over the stated term of this Note. Unless otherwise required by applicable law, such allocation and spreading will be effected in such a manner that the rate of interest so computed is uniform throughout the stated term of this Note.

7. **Governing Law.** This Note shall be governed by the internal law of the State of Texas.

8. **Captions.** The captions of the paragraphs of this Note are for convenience only and shall be disregarded in construing this Note.

9. **Address for Payment.** All payments due under this Note shall be payable at the principal office of the Funding Lender as designated by the Funding Lender in writing to the Fiscal Agent and the Servicer.

10. **Default Rate.** So long as (a) any monthly installment under this Note remains past due, or (b) any other Event of Default has occurred and is continuing, interest under this Note shall accrue on the unpaid principal balance from the earlier of the due date of the first unpaid monthly installment or the occurrence of such other Event of Default, as applicable, at a rate (the “**Default Rate**”) equal to the lesser of (i) the Interest Rate, as applicable, otherwise in effect notwithstanding the default plus four percent (4%) per annum or (ii) the Maximum Interest Rate. If the unpaid principal balance and all accrued interest are not paid in full on the Maturity Date, the unpaid principal balance and all accrued interest shall bear interest from the Maturity Date at the lesser of the Default Rate or the Maximum Interest Rate.

11. **Limited Obligation. THIS NOTE IS A SPECIAL, LIMITED OBLIGATION OF THE GOVERNMENTAL LENDER PAYABLE, AS TO PRINCIPAL, PREMIUM, IF ANY, AND INTEREST SOLELY FROM THE PLEDGED REVENUES AND OTHER**

**FUNDS AND MONEYS AND SECURITY PLEDGED AND ASSIGNED UNDER THE FUNDING LOAN AGREEMENT. THIS NOTE SHALL CONSTITUTE A VALID CLAIM OF THE OWNER OR OWNERS THEREOF AGAINST THE PLEDGED REVENUES AND OTHER FUNDS AND MONEYS AND SECURITY PLEDGED AND ASSIGNED UNDER THE FUNDING LOAN AGREEMENT, WHICH ARE PLEDGED TO SECURE THE PAYMENT OF THE PRINCIPAL OF AND INTEREST ON THIS NOTE, AND WHICH SHALL BE USED FOR NO OTHER PURPOSE EXCEPT AS EXPRESSLY AUTHORIZED IN THE FUNDING LOAN AGREEMENT. THIS NOTE SHALL NOT BE A DEBT OR INDEBTEDNESS OF THE STATE OR ANY POLITICAL SUBDIVISION THEREOF, AND NEITHER THE STATE NOR ANY POLITICAL SUBDIVISION THEREOF SHALL BE LIABLE THEREON, NOR IN ANY EVENT SHALL THIS NOTE BE PAYABLE OUT OF ANY FUNDS OR PROPERTIES OTHER THAN THOSE OF THE GOVERNMENTAL LENDER PLEDGED UNDER THE FUNDING LOAN AGREEMENT. THIS NOTE SHALL NOT CONSTITUTE AN INDEBTEDNESS OR A MULTIPLE FISCAL-YEAR FINANCIAL OBLIGATION WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY DEBT LIMITATION OR RESTRICTION. NEITHER THE STATE NOR ANY POLITICAL SUBDIVISION THEREOF (EXCEPT THE GOVERNMENTAL LENDER FROM THE SOURCES IDENTIFIED IN THE FUNDING LOAN AGREEMENT) SHALL BE LIABLE FOR PAYMENT OF THIS NOTE NOR IN ANY EVENT SHALL PRINCIPAL OF, PREMIUM, IF ANY, AND INTEREST ON THIS NOTE BE PAYABLE OUT OF ANY FUNDS OR ASSETS OTHER THAN THOSE PLEDGED TO THAT PURPOSE BY THE GOVERNMENTAL LENDER UNDER THE FUNDING LOAN AGREEMENT. THE GOVERNMENTAL LENDER HAS NO TAXING POWER.**

**NO DIRECTOR, OFFICER, AGENT, EMPLOYEE OR ATTORNEY OF THE OBLIGOR, INCLUDING ANY PERSON EXECUTING THE FUNDING LOAN AGREEMENT OR THIS NOTE, SHALL BE LIABLE PERSONALLY ON THIS NOTE OR FOR ANY REASON RELATING TO THE ISSUANCE OF THIS NOTE. NO RECOURSE SHALL BE HAD FOR THE PAYMENT OF THE PRINCIPAL OF OR THE INTEREST ON THIS NOTE, OR FOR ANY CLAIM BASED ON THIS NOTE, OR OTHERWISE IN RESPECT OF THIS NOTE, OR BASED ON OR IN RESPECT OF THE FUNDING LOAN AGREEMENT OR ANY SUPPLEMENTS AND AMENDMENTS THERETO, AGAINST ANY MEMBER, COMMISSIONER, OFFICER, EMPLOYEE OR AGENT, AS SUCH, OF THE OBLIGOR OR ANY SUCCESSOR, WHETHER BY VIRTUE OF ANY CONSTITUTION, STATUTE OR RULE OF LAW, OR BY THE ENFORCEMENT OF ANY ASSESSMENT OR PENALTY OR OTHERWISE, ALL SUCH LIABILITY BEING, BY THE ACCEPTANCE OF THIS NOTE AND AS PART OF THE CONSIDERATION FOR THE ISSUE OF THIS NOTE, EXPRESSLY WAIVED AND RELEASED.**

**12. Funding Loan Agreement Controlling.** The terms of this Note are subject in all respects to the terms of the Funding Loan Agreement. If there is a conflict between the provisions of this Note and the Funding Loan Agreement, the Funding Loan Agreement shall control. IN WITNESS WHEREOF, the Austin Housing Finance Corporation has caused this Note to be executed in its name by the manual or facsimile signature of its Chair and its corporate seal (or a



facsimile thereof) to be impressed or imprinted hereon and attested by the manual or facsimile signature of its Executive Director.

[Signature page follows]

IN WITNESS WHEREOF, the Obligor has caused this Note to be duly executed by the manual or facsimile signature of its authorized representative and attested by the manual or facsimile signature of its authorized representative.

**AUSTIN HOUSING FINANCE  
CORPORATION**

By \_\_\_\_\_  
Rose Truelove, Treasurer

**ATTEST:**

By \_\_\_\_\_  
Secretary

## **CERTIFICATE OF AUTHENTICATION**

This Note is issued under the provisions of and described in the within-mentioned Funding Loan Agreement.

Date of Authentication: \_\_\_\_\_

**BOKF, NA**

By \_\_\_\_\_  
Pamela M. Black, Senior Vice President

## EXHIBIT B

### FORM OF NOTICE OF APPOINTMENT OF FUNDING LENDER REPRESENTATIVE

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

AUSTIN DMA HOUSING III, LLC  
c/o AHFC Nightingale Non-Profit Corporation  
1000 East 11<sup>th</sup> Street, 2<sup>nd</sup> Floor  
Austin, Texas 78702

AUSTIN HOUSING FINANCE CORPORATION  
1000 East 11<sup>th</sup> Street, 2<sup>nd</sup> Floor  
Austin, Texas 78702  
Attn: David Potter

JPMORGAN CHASE BANK, N.A.  
221 West Sixth Street, First Floor  
Austin, Texas 78767

Re: Nightingale at Goodnight Ranch Apartments

Ladies and Gentlemen:

The undersigned is the holder (the “**Funding Lender**”) of the Multifamily Note dated March \_\_, 2018 (the “**Governmental Note**”) delivered pursuant to the Funding Loan Agreement dated as of March 1, 2018 (the “**Funding Loan Agreement**”), among JPMorgan Chase Bank, N.A., in its capacity as Initial Funding Lender (the “**Initial Funding Lender**”), Austin Housing Finance Corporation (the “**Governmental Lender**”) and BOKF, NA, (the “**Fiscal Agent**”). Pursuant to Section 11.05 of the Funding Loan Agreement, you are hereby notified that, effective immediately upon receipt of this notice by the Fiscal Agent, the Funding Lender Representative appointed under Section 11.05 of the Funding Loan Agreement shall be \_\_\_\_\_. [The person or entity previously appointed as Funding Lender Representative shall upon the effectiveness of this notice no longer have any further rights or obligations as Funding Lender Representative.]

The following individual or individuals shall have the authority to execute any consent, waiver, approval, direction or other instrument on behalf of the Funding Lender Representative and the signature(s) set forth next to his/her (their) name(s) is (are) his/her (their) true and correct signature(s).

NAME

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SIGNATURE

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Additional individuals may be given such authority by written notice to you from the Funding Lender Representative or from the Funding Lender.

This notice is dated as of the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

**JPMORGAN CHASE BANK, N.A.**, a national  
banking association

By: \_\_\_\_\_  
David H. Saling, Authorized Representative

## EXHIBIT C

### FORM OF TRANSFEEE REPRESENTATIONS LETTER

[To be prepared on letterhead of transferee]

[Date]

AUSTIN HOUSING FINANCE CORPORATION  
1000 East 11<sup>th</sup> Street, 2<sup>nd</sup> Floor  
Austin, Texas 78702  
Attn: David Potter

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

**Re:** Nightingale at Goodnight Ranch Apartments

Ladies and Gentlemen:

The undersigned (the “Funding Lender”) hereby acknowledges receipt of the Multifamily Note dated March \_\_, 2018 (the “Governmental Note”) delivered pursuant to the Funding Loan Agreement dated as of March 1, 2018 (the “Funding Loan Agreement”), among JPMorgan Chase Bank, N.A., in its capacity as Initial Funding Lender (the “Initial Funding Lender”), the Austin Housing Finance Corporation (the “Governmental Lender”) and BOKF, NA, (the “Fiscal Agent”). Capitalized terms used herein and not otherwise defined have the meanings given to such terms in the Funding Loan Agreement.

In connection with the [origination/purchase] of the Funding Loan by the Funding Lender, the Funding Lender hereby makes the following representations upon which you may rely:

1. The Funding Lender has authority to [originate/purchase] the Funding Loan and to execute this letter, and any other instruments and documents required to be executed by the Funding Lender in connection with the [origination/purchase] of the Funding Loan.

2. The Funding Lender is an “accredited investor” under Regulation D of the Securities Act of 1933 (the “Act”) or a “qualified institutional buyer” under Rule 144(a) of said Act (such “accredited investor” or “qualified institutional buyer”, a “Qualified Transferee”), and therefore, has sufficient knowledge and experience in financial and business matters, including purchase and ownership of municipal and other tax-exempt obligations, to be able to evaluate the risks and merits of the investment represented by the Funding Loan.

3. The Funding Lender acknowledges that it is [originating/purchasing] the Funding Loan for investment for its own account and not with a present view toward resale or the distribution thereof (except as set forth below), in that it does not now intend to resell or otherwise dispose of all or any part of its interests in the Funding Loan (except as set forth below); provided,

however, that the Funding Lender may, notwithstanding the foregoing and the terms of Paragraph 4 below, (i) transfer the Funding Loan to any affiliate or other party related to the Funding Lender that is a Qualified Transferee or (ii) sell or transfer the Funding Loan to a special purpose entity, a trust or a custodial or similar pooling arrangement from which the Funding Loan or securitized interests therein are not expected to be sold except to (x) owners or beneficial owners thereof that are Qualified Transferees or (y) in circumstances where secondary market credit enhancement is provided for such securitized interests resulting in a rating thereof of at least “A” or better [INSERT FOR SELLER/SERVICER PURCHASER LETTER:: provided, further, however, the Funding Lender has originated and funded the Funding Loan with the expectation that the Funding Loan will be sold to the Federal Home Loan Mortgage Corporation (“Freddie Mac”) pursuant to the commitment dated \_\_\_\_\_, 2018 (the “Freddie Mac Commitment”)].

4. In addition to the right to sell or transfer the Funding Loan as set forth in Paragraph 3 above, the Funding Lender further acknowledges its right to sell or transfer the Funding Loan, subject, as required under the Funding Loan Agreement, to the delivery to the Fiscal Agent of a transferee representations letter from the transferee to substantially the same effect as this Transferee Representations Letter or in such other form authorized by the Funding Loan Agreement with no revisions except as may be approved in writing by the Governmental Lender.

5. The Funding Lender understands that the Governmental Note is not registered under the Act and that such registration is not legally required as of the date hereof; and further understands that the Governmental Note (a) is not being registered or otherwise qualified for sale under the “Blue Sky” laws and regulations of any state, (b) will not be listed in any stock or other securities exchange, (c) will not carry a rating from any rating service and (d) will be delivered in a form which may not be readily marketable.

6. The Funding Lender understands that (a) the Funding Loan is not secured by any pledge of any moneys received or to be received from taxation by the State of Texas or any political subdivision thereof and that the Governmental Lender has no taxing power, (b) the Funding Loan does not and will not represent or constitute a general obligation or a pledge of the faith and credit of the Governmental Lender, the State of Texas or any political subdivision thereof; and (c) the liability of the Governmental Lender with respect to the Funding Loan is limited to the Pledged Security as set forth in the Funding Loan Agreement.

7. The Funding Lender has either been supplied with or been given access to information, including financial statements and other financial information, which it considers necessary to make an informed decision in connection with the [origination/purchase] of the Funding Loan. The Funding Lender has not relied upon the Governmental Lender for any information in connection with its purchase of the Funding Loan.

8. The Funding Lender has made its own inquiry and analysis with respect to the Funding Loan and the security therefor, and other material factors affecting the security and payment of the Funding Loan. The Funding Lender is aware that the business of the Borrower involves certain economic variables and risks that could adversely affect the security for the Funding Loan.

All agreements, representations and warranties made herein shall survive the execution and delivery of this letter agreement and, notwithstanding any investigation heretofore or hereafter, shall continue in full force and effect.

**JPMORGAN CHASE BANK, N.A.**, a national  
banking association

By: \_\_\_\_\_  
David H. Saling, Authorized Representative



## EXHIBIT D

### COSTS OF ISSUANCE REQUISITION (Cost of Issuance Fund)

BOKF, NA, as Fiscal Agent

Re: Nightingale at Goodnight Ranch Apartments

Fiscal Agent:

You are requested to disburse funds from the Cost of Issuance Fund pursuant to Section 4.13 of the Funding Loan Agreement in the amount(s), to the person(s) and for the purpose(s) set forth in this requisition (the “**Requisition**”). The terms used in this requisition shall have the meaning given to those terms in the Funding Loan Agreement (the “**Funding Loan Agreement**”), dated as of March 1, 2018, by and among JPMorgan Chase Bank, N.A., in its capacity as Initial Funding Lender (the “**Initial Funding Lender**”), Austin Housing Finance Corporation and BOKF, NA, doing business as Bank of Texas, as Fiscal Agent, securing the Multifamily Mortgage Revenue Note (Funding Loan) dated March \_\_\_, 2018 (the “**Governmental Note**”).

REQUISITION NO.:

PAYMENT DUE TO:

AMOUNT TO BE DISBURSED: \$

The Borrower has attached hereto a copy of each Payee’s Form W-9 or Form W-8, as applicable (unless previously provided). The Borrower further acknowledges the Fiscal Agent cannot process such disbursement request until the Fiscal Agent is in receipt of a valid Form W-9 or Form W-8, as applicable, in accordance with Internal Revenue Service regulations and the Foreign Account Tax Compliance Act.

The undersigned, on behalf of Austin DMA Housing III, LLC, a limited liability company duly organized and existing under the laws of the State of Texas (the “**Borrower**”), certifies that:

(a) the expenditures for which money is requisitioned by this Requisition represent proper charges against the Cost of Issuance Fund, have not been included in any previous requisition and are set forth in the Schedule attached to this Requisition, with invoices attached for any sums for which reimbursement is requested;

(b) the money requisitioned is not greater than those necessary to meet obligations due and payable or to reimburse the applicable party for funds actually advanced for Costs of Issuance; and

(c) after taking into account the proposed disbursement, no more than two percent of the sales proceeds of the Governmental Note will have been disbursed for Cost of Issuance.

Attached to this Requisition is a Schedule, together with copies of invoices or bills of sale covering all items for which payment is being requested.

Date of Requisition: \_\_\_\_\_

AUSTIN DMA HOUSING III, LLC,  
a Texas limited liability company

By: AHFC Nightingale Non-Profit Corporation,  
a Texas nonprofit corporation, its  
managing member

By: \_\_\_\_\_  
Rosie Truelove, Vice President

## EXHIBIT E

### PROJECT LOAN FUND REQUISITION (Project Loan Fund)

BOKF, NA, as Fiscal Agent

Re: Nightingale at Goodnight Ranch Apartments

Fiscal Agent:

You are requested to disburse funds from the Cost of Issuance Fund pursuant to Section 4.13 of the Funding Loan Agreement in the amount(s), to the person(s) and for the purpose(s) set forth in this Requisition (the “**Requisition**”). The terms used in this requisition shall have the meaning given to those terms in the Funding Loan Agreement (the “**Funding Loan Agreement**”), dated as of March 1, 2018, by and among JPMorgan Chase Bank, N.A., in its capacity as Initial Funding Lender (the “**Initial Funding Lender**”), Austin Housing Finance Corporation and BOKF, NA, doing business as Bank of Texas, as Fiscal Agent, securing the Multifamily Mortgage Revenue Note (Funding Loan) dated March \_\_, 2018 (the “**Governmental Note**”).

REQUISITION NO.:

PAYMENT DUE TO:

AMOUNT(S) TO BE DISBURSED:

\$\_\_\_\_\_ from the Project Account

\$\_\_\_\_\_ from the LIHTC Subaccount of the Borrower Equity Account

\$\_\_\_\_\_ from the Gap Loan Subaccount of the Borrower Equity Account

\$\_\_\_\_\_ from the Net Operating Income Subaccount of the Borrower Equity Account

The Borrower has attached hereto a copy of each Payee’s Form W-9 or Form W-8, as applicable (unless previously provided). The Borrower further acknowledges the Fiscal Agent cannot process such disbursement request until the Fiscal Agent is in receipt of a valid Form W-9 or Form W-8, as applicable, in accordance with Internal Revenue Service regulations and the Foreign Account Tax Compliance Act.

Included in the attached Schedule is the requisition for the disbursement of proceeds of the Austin Housing Finance Corporation Multifamily Housing Governmental Revenue Note (Nightingale at Goodnight Ranch Apartments) Series 2018 to be made on or about the date of the requested disbursement of funds pursuant to this Requisition.

The undersigned Borrower hereby represents and warrants that the following information and certifications provided in connection with this Requisition are true and correct as of the date

hereof and authorizes Servicer to submit this Requisition to the Fiscal Agent on behalf of Borrower:

1. Purposes for which disbursement is requested are specified in the **attached Schedule**.
2. Party or parties to whom the disbursements shall be made are specified in the **attached Schedule** (may be the undersigned in the case of reimbursement for advances and payments made or cost incurred for work done by the undersigned); provided, that no reimbursement shall be made for advances and payments made prior to \_\_\_\_\_, 20\_\_).
3. The undersigned certifies that to the Fiscal Agent, and for the benefit of the Governmental Lender, that:
  - a. the conditions precedent to disbursement set forth in the Construction Disbursement Agreement have been satisfied;
  - b. the disbursement requested pursuant to this Requisition will be used solely to pay a cost or costs allowable under the Funding Loan Agreement and the Construction Disbursement Agreement;
  - c. none of the items for which disbursement is requested pursuant to this Requisition has formed the basis for any disbursement previously made from the Project Loan Fund or under the Gap Loan and all such items have been properly recorded in Borrower's books and are set forth on the Schedule attached hereto, along with paid invoices attached for any sum for which reimbursement is requested and invoices or bills of sales for all other items;
  - d. all labor and materials for which disbursements have been requested have been incorporated into the Project in accordance with reasonable and standard building practices, the Construction Disbursement Agreement and all applicable laws, ordinances, rules and regulations of any governmental authority having jurisdiction over the Project;
  - e. the materials, supplies and equipment furnished or installed for the Improvements are not subject to any lien or security interest or that the funds to be disbursed pursuant to this Requisition are to be used to satisfy any such lien or security interest;
  - f. all of the funds being requisitioned are being used in compliance with all tax covenants set forth in the Funding Loan Agreement, the Project Loan Agreement, the Tax Regulatory Agreement, the Tax Certificates, and the documents related to the Gap Loan (the "Gap Loan Documents") including that none of the proceeds of the Funding Loan or the Gap Loan (including investment earnings thereon) will be used to provide an airplane, a skybox or any other private luxury box, any facility primarily used for gambling,

health club facility or any store the principal business of which is the sale of alcoholic beverages for consumption off premises;

g. the Borrower's representations, warranties and expectations set forth in the Borrower's Tax Certificate are reaffirmed and restated, and have been continuously complied with since the execution of the Project Loan Agreement, and the same are true, correct and complete on the date hereof;

h. with respect to amounts from the Project Account, not less than 95% of the sum of:

(A) the amounts requisitioned by this Requisition; plus

(B) all amounts previously requisitioned and disbursed from the Project Account of the Project Loan Fund;

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

i. Borrower is not in default under the Project Loan Agreement, the Construction Disbursement Agreement or any other Project Loan Document to which it is a party and nothing has occurred to the knowledge of Borrower that would prevent the performance of its obligations under such documents;

j. no amounts being requisitioned hereby will be used to pay, or reimburse, any Costs of Issuance incurred in connection with the delivery of the Governmental Note; and

k. Funds deposited with Borrower for further disbursement to third parties shall be paid to such third parties by check dated the date of such deposit and Borrower reasonably expects such funds will be disbursed from its account within five Business Days of such deposit.

[Following items may not be required for Initial Disbursement]

4. Estimated costs of completing the uncompleted Repairs (as defined in the Continuing Covenant Agreement) as of the date of this Requisition: \_\_\_\_\_.

5. Percent of the Repairs completed as of the date this request: \_\_\_\_\_%

IN WITNESS WHEREOF, the undersigned has executed this Requisition as of the day and date first above written.

Date: \_\_\_\_\_

AUSTIN DMA HOUSING III, LLC,  
a Texas limited liability company

By: AHFC Nightingale Non-Profit Corporation, a  
Texas nonprofit corporation, its managing  
member

By: \_\_\_\_\_  
Rosie Truelove, Vice President

**APPROVED:**

**JPMORGAN CHASE BANK, N.A.**, a national  
banking association

By: \_\_\_\_\_  
Name: David H. Saling  
Title: Authorized Representative

**APPROVED WITH RESPECT TO DISBURSEMENTS FROM THE GAP LOAN  
SUBACCOUNT OF THE BORROWER EQUITY ACCOUNT:**

**JPMORGAN CHASE BANK, N.A.**, a national  
banking association

By: \_\_\_\_\_  
Name: David H. Saling  
Title: Authorized Representative