

TRUST INDENTURE

By and Between

AUSTIN HOUSING FINANCE CORPORATION

and

**WILMINGTON TRUST, NATIONAL ASSOCIATION,
as Trustee**

Dated as of January 1, 2023

**\$9,000,000
Austin Housing Finance Corporation
Multifamily Housing Revenue Bonds
(Live Make Apartments),
Series 2023**

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TRUST INDENTURE

THIS TRUST INDENTURE is entered into as of January 1, 2023 (this “**Indenture**”), by and between the **AUSTIN HOUSING FINANCE CORPORATION**, a housing finance corporation duly organized and existing under the laws of the State of Texas (the “**Issuer**”), and **WILMINGTON TRUST, NATIONAL ASSOCIATION**, a national banking association, duly organized and existing under the laws of the United States and authorized to conduct business in the State of Texas, with its designated corporate office located in Wilmington, Delaware, as trustee (together with any successor trustee thereunder, the “**Trustee**”).

RECITALS

Certain of the terms and words used in these Recitals, and in the following Granting Clauses and Agreements, are defined in Section 1.01 of this Indenture.

The Issuer has been created and organized pursuant to and in accordance with the provisions of the Texas Housing Finance Corporations Act, Chapter 394, Texas Local Government Code, as amended (the “*Act*”), for the purpose, among others, of issuing its revenue bonds to finance the cost of residential ownership and development that will provide decent, safe, and sanitary housing at affordable pricing; and

Live Make Housing Partners LP a Texas limited partnership (the “**Borrower**”) intends to construct certain improvements on the Land which will include a building (the “**Building**”) that will contain sixty-six (66) affordable rental housing units and known as Live Make Apartments (the “**Project**”).

Pursuant to, and in accordance with the Act, the Issuer has determined to issue and sell its \$9,000,000 Austin Housing Finance Corporation Multifamily Housing Revenue Bonds (Live Make Apartments) Series 2023 (the “**Bonds**”), and use the proceeds thereof to make a loan to the Borrower, upon the terms and conditions of a loan agreement dated as of the same date as this Indenture between the Issuer and the Borrower (the “**Loan Agreement**”) and a promissory note dated the Closing Date from the Borrower to the Issuer in the original principal amount of \$9,000,000 in the form attached as **Exhibit B-1** to the Loan Agreement and as amended and restated at Funding in the form attached as **Exhibit B-2** to the Loan Agreement (the “**Note**”), for the purpose of paying a portion of the costs of the demolition, acquisition, construction, equipping, and financing the Project; and

The Borrower has delivered the Note to the Issuer, evidencing the Borrower’s obligation to repay the Loan. The Issuer has made the Loan to the Borrower, subject to the terms and conditions of the Loan Agreement and this Indenture, including the terms and conditions thereof and hereof governing the disbursement of advances and the investment earnings thereon; and

As security for the Bonds, the Issuer intends to assign to the Trustee the Note, the security therefor and all of the Issuer’s rights under the Loan Agreement (other than the Reserved Rights of the Issuer); and

To provide and secure amounts to repay to the Issuer the Loan during the period starting on the Closing Date and ending on the Funding Date (the “**Cash Collateralized Mode**”), the

Borrower has obtained a taxable construction loan (the “**Construction Loan**”) from Amegy Bank (the “**Construction Lender**”) and caused the Construction Lender to make certain payments to the Trustee under this Indenture for the benefit of the Issuer; and

To provide and secure amounts to repay the Issuer the Loan during period starting on the Funding Date and ending on the Maturity Date (the “**Permanent Mode**”), the Borrower has executed the Loan Agreement, a Permanent Deed of Trust and other documents executed and delivered for the purpose of securing the Loan during the Permanent Mode; and

The obligations of the Borrower under the Loan Agreement and the Note will be secured by (i) the proceeds of the Bonds deposited in the Project Fund created pursuant to Section 4.01 of this Indenture; and (ii) the Trust Estate; and

The Trustee has agreed to accept the trusts herein created upon the terms set forth herein; and

The issuance, sale and delivery of the Bonds and the execution and delivery of this Indenture and the Loan Agreement have been in all respects duly and validly authorized in accordance with the Act.

AGREEMENTS

NOW, THEREFORE, in consideration of the premises and the acceptance by the Trustee of the trusts hereby created and of the purchase and acceptance of any or all of the Bonds issued and sold by the Issuer from time to time under this Indenture by those who shall hold the same from time to time, and of the sum of one dollar, lawful money of the United States of America, duly paid to the Issuer by the Trustee at or before the execution and delivery of these presents, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, in order to secure the payment of the principal of and interest on the Bonds according to their tenor and effect and the performance and observance by the Issuer of all the covenants expressed or implied herein and in the Bonds and the payment and performance of all other of the Issuer’s Obligations, the Issuer does hereby grant, bargain, sell, convey, pledge and assign, without recourse, unto the Trustee and unto its successors in trust forever, and grants to the Trustee and to its successors in trust, a security interest in, the following (such property being herein referred to as the “**Trust Estate**”):

I.

All right, title and interest of the Issuer in and to all Revenues, derived or to be derived by the Issuer or the Trustee for the account of the Issuer under the terms of this Indenture and the Loan Agreement (other than the Reserved Rights of the Issuer), together with all other Revenues received by the Trustee for the account of the Issuer arising out of or on account of the Trust Estate;

II.

All right, title and interest of the Issuer in and to the Note (other than the Reserved Rights of the Issuer) including all payments and proceeds with respect thereto or replacement thereof;

III.

All moneys (including Collateral Payments) which are at any time or from time to time on deposit in any fund or account created under this Indenture (excluding funds in the Costs of Issuance Fund and the Rebate Fund);

IV.

All right, title and interest of the Issuer in and to, and remedies under, the Loan Agreement;
and

V.

All funds, moneys and securities and any and all other rights and interests in property, including the Permanent Deed of Trust, 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 Bonds by the Issuer or by anyone on its behalf or with its written consent to the Trustee, 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;

PROVIDED, HOWEVER, that there shall be excluded from the granting clauses of this Indenture all the Reserved Rights of the Issuer, including all amounts paid or collected by the Issuer in connection therewith, and all amounts on deposit in the Rebate Fund, which shall be held for the sole benefit of the United States of America;

TO HAVE AND TO HOLD all the same with all privileges and appurtenances hereby conveyed and assigned, or agreed or intended so to be, to the Trustee and its successors in trust forever.

IN TRUST NEVERTHELESS, upon the terms and trusts herein set forth, for the equal and proportionate benefit, security and protection of all Holders from time to time of the Bonds issued under and secured by this Indenture without privilege, priority or distinction as to the lien or otherwise of any of the Bonds over any of the other Bonds.

PROVIDED, HOWEVER, that if the Issuer shall well and truly pay, or cause to be paid, the principal of the Bonds issued hereunder, and interest due or to become due thereon, at the times and in the manner mentioned in the Bonds, according to the true intent and meaning thereof, and shall cause the payments to be made into the Bond Fund as required under Article VIII hereof or by depositing with the Trustee the entire amount due or to become due thereon, and shall well and truly keep, perform and observe all of the covenants and conditions pursuant to the terms of this Indenture and all other of the Issuer's Obligations to be kept, performed and observed by it, the Rebate Amount shall be paid in full and shall pay or cause to be paid to the Trustee all sums of money due or to become due to it in accordance with the terms and provisions hereof, then upon

such final payment, as further provided in Section 8.01 hereof, and the termination of the Loan Agreement, this Indenture and the rights hereby granted shall cease, terminate and be void; otherwise, this Indenture shall remain in full force and effect.

AND IT IS EXPRESSLY DECLARED that all Bonds issued and secured hereunder are to be issued, authenticated and delivered and all such property, moneys, revenues and receipts hereby pledged are to be dealt with and disposed of under, upon and subject to the terms, conditions, stipulations, covenants, agreements, trusts, uses and purposes as hereinafter expressed, and the Issuer has agreed and covenanted and does hereby agree and covenant with the Trustee and with the respective holders from time to time of the Bonds, or any part thereof, as follows:

ARTICLE I

DEFINITIONS AND CONSTRUCTION

Section 1.01 Definitions. Certain terms used in this Indenture are defined in the Loan Agreement and when and if used herein, such terms shall have the meanings given to them by the Loan Agreement unless the context clearly indicates otherwise. In addition, when used in this Indenture, the following terms shall have the meanings given to them in this Section unless the context clearly indicates otherwise:

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

“Additions” means any and all alterations, additions, accessions and improvements to property, substitutions therefor, and renewals and replacements thereof.

“Additional Interest” means, beginning after the Funding Date, as determined by the Servicer, an amount equal to the excess of (i) the amount of interest an Owner (other than an Owner who is a “substantial user” of the Project or a “related person” to a “substantial user,” as defined in Section 147(a) of the Code) would have received during the period of time commencing on the date that the interest on the Bonds becomes subject to federal income taxation to the earlier of the date of the payment of the Bonds or the date on which the Bonds are redeemed pursuant to Section 4.01(c) following a Determination of Taxability (excluding from such period any time in which the tax on such interest is uncollectible) at a per annum rate equal to the Taxable Rate, over (ii) the aggregate amount of interest received by an Owner for such period.

“Affiliate” of any specified Person means any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person. For purposes of this definition, “control” when used with respect to any specified Person means the power to direct the policies of such Person, directly or indirectly, whether through the power to appoint and remove its directors, the ownership of voting securities, by contract, or otherwise; and the terms “controlling” and “controlled” have meanings correlative to the foregoing.

“Agreement” or “Loan Agreement” means the Loan Agreement dated as of the same date as this Indenture, between the Issuer and the Borrower and any and all Supplements thereto.

“AHFC Loan” means, collectively, (a) the construction and permanent loan from the Austin Housing Finance Corporation (in that capacity, **“AHFC”**) to Borrower in the amount of \$6,320,000.00, and (b) the predevelopment loan from AHFC to Borrower in the amount of \$297,000.002, which was fully funded before the Closing Date and will remain a construction and permanent source.

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

“Authorized Denomination” means, (1) during the Cash Collateralized Mode, \$5,000 or any integral multiple of \$5,000 in excess thereof, and (2) during the Permanent Mode, \$100,000, or any integral multiple of \$5,000 in excess thereof.

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

“Bond Counsel” means Naman, Howell, Smith & Lee, P.L.L.C., or such replacement which shall be a nationally recognized bond counsel who is under contract to provide such services to the Issuer.

“Bond Fund” means the Bond Fund created in Section 4.01 of this Indenture.

“Bond Payment Date” means each Interest Payment Date and any other date interest or principal on the Bonds are due, whether at maturity, upon redemption, Mandatory Tender or acceleration or otherwise.

“Bond Purchase Agreement” means (1) the Initial Bond Purchase Agreement, and (2) the Forward Bond Purchase Agreement.

“Bond Year” has the meaning as set forth in the Tax Certificate.

“Bondholder” or “Holder of the Bonds” or “Holder” or “Owner of the Bonds” or “Owner” when used with respect to any Bond, means the person or persons in whose name such Bond is registered as the owner thereof on the books of the Issuer maintained at the Trust Office for that purpose.

“Bonds” means the Multifamily Housing Revenue Bonds (Live Make Apartments) Series 2023 in the amount of \$9,000,000, of the Issuer issued, authenticated and delivered under this Trust Indenture, which are identified as such in Section 2.01(a) hereof.

“Book-Entry Form” or “Book-Entry System” means a form or system, as applicable, under which (i) the ownership of beneficial interests in the Bonds may be transferred only through a book entry and (ii) physical bond certificates in fully registered form are registered only in the name of a Securities Depository or its nominee as holder, with the physical bond certificates “immobilized” in the custody of the Securities Depository.

“Borrower” means Live Make Housing Partners LP, a Texas limited partnership organized and existing under the laws of the State of Texas, its successors and assigns.

“Borrower Documents” means the Loan Agreement, the Note, the Tax Certificate, the Tax Regulatory Agreement, the Funding Agreement, the Bond Purchase Agreement, the Construction Loan Documents, the Permanent Loan Documents, the Partnership Agreement, the Continuing Disclosure Agreement, the Remarketing Agreement and any and all documents, agreements or instruments executed by the Borrower in connection with the Loan evidenced by the Loan Agreement.

“Borrower Representative” means a person at the time designated and authorized to act on behalf of the Borrower by a written certificate furnished to the Issuer and the Trustee containing the specimen signature of such person and signed on behalf of the Borrower by one of its officers, which certificate may designate an alternate or alternates.

“Borrower’s Obligations” means the obligations of the Borrower under the Loan Agreement, the Note, and the other Borrower Documents to (a) pay the principal of, and interest on the Note, when and as the same shall become due and payable (whether at the stated maturity thereof, on any payment date or by acceleration of maturity or otherwise), (b) pay all other amounts required by the Loan Agreement, the Note, and the other Borrower Documents to be paid by the Borrower to the Issuer, as and when the same shall become due and payable, and (c) timely perform, observe and comply with all of the terms, covenants, conditions, stipulations, and agreements, express or implied, which the Borrower is required by the Loan Agreement, the Note, the Tax Regulatory Agreement, and any of the other Borrower Documents, to perform or observe.

“Business Day” or “business day” means a day, other than a Saturday or Sunday, on which (a) banks located in New York, New York, or in the city in which the Trustee or the Underwriter is located, are not required or authorized by law or executive order to close for business, and (b) the New York Stock Exchange is not closed.

“Capital Improvements Reserve and Security Agreement” means that certain Capital Reserve and Security Agreement dated as of even date herewith by and among the Borrower, the Trustee and the Permanent Lender.

“Cash Collateralized Mode” means the period starting on the Closing Date and ending on the Funding Date.

“Cash Flow Projection” means a cash flow projection prepared by an independent firm of certified public accountants, a financial advisory firm, a law firm or other independent third party qualified and experienced in the preparation of cash flow projections for structured finance transactions similar to the Bonds, designated by the Borrower and acceptable to the Underwriter and the Rating Agency, establishing, to the satisfaction of the Underwriter and the Rating Agency, the sufficiency of (a) the amount on deposit in the Project Fund and the Collateral Fund, (b) projected investment income to accrue on amounts on deposit in the Project Fund and Collateral Fund during the applicable period and (c) any additional Eligible Funds delivered to the Trustee by or on behalf of the Borrower to pay interest and principal on the Bonds and the administrative expenses, in each instance, when due and payable, including, but not limited to, any cash flow

projection prepared in connection with (i) the initial issuance and delivery of the Bonds, (ii) the optional redemption of the Bonds pursuant to Section 3.01(iv), (iii) a proposed remarketing of the Bonds, as provided in Section 3.07, and (iv) the sale or other disposition of the Trustee of Eligible Investments prior to maturity at a price below par, as described in Section 6.02.

“Closing Date” means the date of initial delivery of the Bonds in exchange for the purchase price thereof.

“Code” means the Internal Revenue Code of 1986, including applicable final, temporary and proposed regulations and revenue rulings applicable thereto.

“Collateral Fund” means the Collateral Fund created in Section 4.01 hereof.

“Collateral Payments” means Eligible Funds to be paid by or on behalf of the Borrower, to the Trustee for deposit into the Collateral Fund pursuant to Section 4.06 of the Loan Agreement and Section 4.13 hereof as a prerequisite to the disbursement of money held in the Project Fund.

“Completion Certificate” means a certificate submitted by the Borrower Representative to the Issuer and the Trustee as provided in Section 3.05 of the Loan Agreement.

“Completion Date” shall mean date “Substantial Completion” under and for purposes of the Construction Loan Agreement shall have occurred.

“Condemnation” means any taking of title, of use, or of any other property interest under the exercise of the power of eminent domain, by any governmental body or by any person acting under Governmental Authority.

“Confirmation of Rating” means a written confirmation, obtained prior to the event or action under scrutiny, from the Rating Agency to the effect that, following the proposed action or event under scrutiny at the time such confirmation is sought, the rating of the Rating Agency with respect to all Bonds then Outstanding and then rated by the Rating Agency will not be downgraded, suspended, qualified or withdrawn as a result of such action or event.

“Construction Deed of Trust” means the Multifamily Leasehold Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing, dated January __, 2023, granted by the Owner with respect to the Project to Natalie Garza, as trustee under the deed of trust thereunder for the benefit of the Construction Lender, as the same may be amended, modified or supplemented from time to time

“Construction Draw Date” means the date on which a disbursement from the Project Fund shall be made to pay construction costs of the Project (which shall be the same as a Disbursement Date under and as defined in the Funding Agreement).

“Construction Draw Schedule” means the schedule of the disbursement of the proceeds of the Construction Loan agreed to between Construction Lender and Borrower before Closing Date.

“Construction Lender” means Zions Bancorporation, N.A., doing business as Amegy Bank, or its successors and assigns.

“Construction Loan” means the taxable construction loan, in the amount of \$8,580,000.00 from the Construction Lender to the Borrower pursuant to the Construction Loan Agreement.

“Construction Loan Agreement” means the Credit Support and Funding Agreement dated as of even date with this Indenture, between the Borrower and the Construction Lender, as the same may be supplemented, amended or modified.

“Construction Loan Documents” means the Construction Deed of Trust, the Construction Loan Agreement, the construction note, and all other documents required by the Construction Lender in connection with or as security for the Construction Loan.

“Construction Loan Repayment Fund” means the fund established pursuant to Section 4.12 of this Indenture.

“Contract Rate” has the meaning set forth in the Permanent Loan Agreement.

“Costs” with respect to the Project shall be deemed to include all items permitted to be financed under the provisions of the Code and the Act.

“Costs of Issuance” means all fees, costs and expenses payable or reimbursable directly or indirectly by the Issuer or the Borrower and related to the authorization, issuance and sale of the Bonds.

“Costs of Issuance Deposit” means the deposit in the amount of \$[REDACTED] which is to be funded by the Borrower into the Costs of Issuance Fund pursuant to Section 4.01 of this Indenture.

“Costs of Issuance Fund” means the Costs of Issuance Fund created pursuant to Section 4.01 of this Indenture.

“Deed of Trust” shall mean (i) the Construction Deed of Trust, (ii) the Permanent Loan Deed of Trust, and (iii) the Delivery Assurance Fee Deed of Trust, Assignment, Security Agreement and Fixture Filing, dated as of January 1, 2023, executed by the Borrower in favor of the Permanent Lender.

“Default” means any Default under the Loan Agreement as specified in and defined by Section 7.01 thereof.

“Designated Office” of the Trustee, the Lender, the Issuer or the Underwriter means, respectively, the office of the Trustee, the Lender, the Issuer or the Underwriter at the respective Notice Address set forth in this Section 1.01 or at such other address as may be specified in writing by the Trustee, the Lender, the Issuer or the Underwriter, as applicable, as provided in Section 12.06 hereof.

“Determination of Taxability” means (a) a final decree or judgment of any Federal court or a final action of the Internal Revenue Service determining that interest paid or payable on any Bond is or was includable in the gross income of a Holder of the Bonds for Federal income tax purposes (other than an Holder who is a “substantial user” or “related person” to a “substantial user” within the meaning of Section 147(a) of the Code); or (b) the enactment of federal legislation that would cause interest on the Bonds to be includable in gross income for federal income tax purposes; provided, that no such decree, judgment, or action under (a) will be considered final for this purpose unless the Borrower has been given written notice and, if it is so desired and is legally allowed, has been afforded the opportunity to contest the same, either directly or in the name of any Holder of a Bond, and until the conclusion of any appellate review, if sought.

“Documents” means and shall include (without limitation), with respect to the Bonds, this Indenture, the Loan Agreement, the Note, the Tax Regulatory Agreement, the Tax Certificate, the Permanent Loan Documents and any and all other documents which the Issuer, the Borrower or any other party or parties or their representatives, have executed and delivered, or may hereafter execute and deliver, to evidence or secure the Issuer’s Obligations or the Borrower’s Obligations, or any part thereof, or in connection therewith, and any and all Supplements thereto, but excluding the Construction Loan Documents.

“Effective Gross Income” means gross potential rent (including proceeds of rent loss insurance), due but unpaid rental subsidy and other income collected from the residential units at the Project, less a vacancy rate. For restricted units, the Servicer will underwrite gross potential rent at the lower of restricted (other than for units receiving project-based operating subsidy), actual or market rent levels. Unrestricted units will be underwritten at the lower of market or actual rent levels. Gross potential rent will be reduced by any current, existing or future tenant rent concessions. Other income shall be on a reoccurring or stabilized basis including income collected from garbage, parking, laundry, telephone, cable, or data provider fees, clubhouse revenues, pet and late fees, as determined by the Servicer in its discretion. Other income shall not include interest income, commercial income, tenant deposits and other non-residential related income.

“Eligible Funds” means, as of any date of determination, any of:

- (a) The proceeds of the Bonds (including any additional amount paid by the Underwriter to the Trustee as the purchase price of the Bonds);
- (b) Money received by the Trustee representing advances to the Borrower of proceeds of the Construction Loan, Permanent Loan and proceeds of the AHFC Loan;
- (c) Money received by the Trustee from the Underwriter for deposit to the Negative Arbitrage Account or to the Collateral Fund;
- (d) Remarketing proceeds of the Bonds (including any additional amount paid to the Trustee as the purchase or remarketing price by the Underwriter or Remarketing Agent) received from the Remarketing Agent or any purchaser of Bonds (other than funds provided by the Borrower, the Issuer or any Affiliate of either the Borrower or the Issuer);

(e) Any other amounts for which the Trustee has received an Opinion of Counsel (which opinion may assume that no Holder or Beneficial Owner of Bonds is an “insider” within the meaning of the Bankruptcy Code) to the effect that (A) the use of such amounts to make payments on the Bonds would not violate Section 362(a) of the Bankruptcy Code or that relief from the automatic stay provisions of such Section 362(a) would be available from the bankruptcy court and (B) payments of such amounts to Holders would not be avoidable as preferential payments under Section 547 or 550 of the Bankruptcy Code should the Issuer or the Borrower become a debtor in proceedings commenced under the Bankruptcy Code;

(f) The proceeds of draws by the Trustee on any letter of credit provided to the Trustee for the benefit of the Borrower;

(g) Any payments made by the Borrower and held by the Trustee for a continuous period of 123 days, provided that no Act of Bankruptcy has occurred during such period; and

(h) Investment income derived from the investment of the money described in (a) through (g) above.

“Eligible Investments” means, subject to the provisions of Section 6.01, any of the following investments that mature (or are redeemable at the option of the Trustee without penalty) at such time or times as to enable timely disbursements to be made from the fund in which such investment is held or allocated in accordance with the terms of this Indenture:

(1) Governmental Obligations; and

(2) to the extent permitted in Section 6.01 hereof, shares or units in any money market mutual fund rated “Aaa-mf” by Moody’s Investor’s Service, Inc. (or if Moody’s Investor’s Services, Inc. is not the Rating Agency or a new rating scale is implemented, the equivalent rating category given by the Rating Agency for that general category of security) at the time of purchase and whose investment portfolio consists solely of Government Obligations including, without limitation, any mutual fund for which the Trustee or an affiliate of the Trustee serves as investment manager, advisor, administrator, shareholder, servicing agent and/or custodian or subcustodian.

Eligible Investments shall not include the following: (1) any investment with a final maturity or any agreement with a term ending later than the earlier of (i) the current Mandatory Tender Date in effect at the time of investment or (ii) the Maturity Date and (2) any investment which may be prepaid or called at a price less than its purchase price prior to stated maturity.

“Encumbrance” means any mortgage, pledge, lien, security interest, charge or other encumbrance, including but not limited to (i) any covenant or agreement restricting, regulating or otherwise affecting the use of, and binding on and running with, the Land or the Property and (ii) utility easements or service agreement which benefit the Property and which do not encroach upon the Improvements.

“Event of Default” or “Default” means, when used in this Indenture, those events of default or defaults specified in Section 9.01 hereof and, when used in the Loan Agreement, those events of default or defaults specified in Section 7.01 thereof.

“Executive Director” means the Executive Director/CEO of the Issuer.

“Exempt Disbursement” means any disbursement of Bond proceeds from the Project Fund for immediate transfer by the Trustee for deposit to the Collateral Fund.

“Expense Fund” means the Expense Fund created pursuant to Section 4.01 hereof.

“Extension Payment” means the amount due, if any, in connection with the change or extension of the Mandatory Tender Date pursuant to Section 3.08 hereof, and (a) which shall be determined by a Cash Flow Projection approved in writing by the Rating Agency and (b) must consist of Eligible Funds.

“Force Majeure” means, to the extent the Project is materially adversely affected, fire, earthquake, major flooding, any other condition causing the area within which the Project is located to be declared a federal disaster area, other acts of nature, strike, lockout, acts of public enemy, riot, insurrection, emergency affecting the sale or transportation of materials or supplies needed to construct the Project, or any similar condition not in the control of the Borrower or Contractor.

“Forward Bond Purchase Agreement” means the Forward Bond Purchase Agreement dated [_____, 2023], among the Issuer, the Trustee, the Borrower and Permanent Lender.

“Funding” means the funding by the Permanent Lender on the Funding Date as provided for in the Forward Bond Purchase Agreement.

“Funding Agreement” means the Funding Agreement dated as of January __, 2023, among Borrower, Construction Lender, and Trustee.

“Funding Conditions” has the meaning assigned to the term Conditions to Conversion in the Forward Bond Purchase Agreement.

“Funding Date” has the meaning assigned to the term “Conversion Date” in the Forward Bond Purchase Agreement, and shall be the date that the Bonds convert from the Cash Collateralized Mode to the Permanent Mode.

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

“General Partner” means Tillery Street Housing, LLC, a Texas limited liability company.

“Governmental Authority” means any federal, District or local governmental or quasi-governmental entity, including, without limitation, any agency, department, commission, board, bureau, administration, service, or other instrumentality of any governmental entity.

“Governmental Obligations” means direct obligations of the United States of America (including obligations issued or held in book-entry form on the books of the Department of Treasury), and obligations on which the full and timely payment of principal and interest is unconditionally guaranteed by the United States of America.

“Governmental Requirements” means all laws, ordinances, orders, rules or regulations of all Governmental Authorities applicable to the Project, the Issuer, the Borrower or any of the Borrower’s assets or other properties, including without limitation, laws, ordinances, orders, rules and regulations relating to securities or other public disclosures, zoning, licenses, permits, subdivision, building, safety, health, and fire protection and all environmental laws.

“Improvements” means all structures or buildings now or hereafter erected or placed on the Land, including, without limitation, the Project, and all Additions thereto.

“Indenture” means this Trust Indenture, dated as of January 1, 2023, between the Issuer and the Trustee, and any and all Supplements thereto.

“Independent” means any person not an employee or officer of the Borrower or its affiliates.

“Initial Bond Purchase Agreement” means the Initial Bond Purchase Agreement dated [_____, 2023], among the Issuer, the Borrower and Underwriter.

“Initial Deposit” means Eligible Funds in the amount of \$_____.00 to be deposited in the Negative Arbitrage Account of the Bond Fund on the Closing Date.

“Initial Interest Rate” means ____%.

“Initial Mandatory Tender Date” means _____.

“Initial Remarketing Date” means the Initial Mandatory Tender Date, but only if the conditions for remarketing the Bonds on such date as provided in Section 3.07 hereof are satisfied.

“Interest Payment Date” means (1) during the Cash Collateralized Mode, (a) November 1 and May 1 of each year beginning _____, (b) each Redemption Date, and (c) each Mandatory Tender Date and (2) during the Permanent Mode commencing on the tenth (10th) day of the second month following the Funding Date and on the tenth (10th) day of each calendar month thereafter up to and including the tenth (10th) day of the month immediately prior to the Permanent Loan Maturity Date, all as further described in the Permanent Loan Agreement.

“Interest Period” means, initially, the period from the Closing Date to and including the first Interest Payment Date, and thereafter, the period commencing on each succeeding Interest Payment Date and ending on the last day of the month preceding the next Interest Payment Date.

“Interest Rate” means, as applicable, the Initial Interest Rate (to but not including the Initial Mandatory Tender Date), the applicable Remarketing Rate and the Permanent Rate.

“Interest Rate for Advances” means the rate per annum which is ____ percent plus that interest rate announced by the Trustee in its lending capacity as a bank as its “Prime Rate” or its “Base Rate”.

“Investor Sponsor” means Redstone Equity Partners, and its successors or assigns.

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

“Issuer Documents” means the Loan Agreement, the Indenture, the Tax Regulatory Agreement, the Bond Purchase Agreement, the Tax Certificate and any and all documents, agreements or instruments executed by the Issuer in connection with the Loan evidenced by the Loan Agreement.

“Issuer’s Fee” means the annual prorated amount payable November 1 of each year beginning November 1, 2020 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 November 1 of each year, (b) \$12 times the number of units in the Project, and (c) \$1,200 per year; provided that the fee due for years 2023 and 2024 shall be paid on the Closing Date. If the Bonds are redeemed in whole on or before 2037, the Issuer shall be paid fifteen years of such annual fee less any amounts paid as Issuer Fees prior to such redemption.

“Issuer’s Obligations” means the obligations of the Issuer under the Bonds, this Indenture, and the other Documents to (a) pay the principal of and interest on the Bonds (including supplemental interest), when and as the same shall become due and payable (whether at the stated maturity thereof, or by acceleration of maturity or after notice of prepayment or otherwise) and, (b) timely perform, observe and comply with all of the terms, covenants, conditions, stipulations, and agreements, express or implied, which the Issuer is required, by the Bonds, this Indenture, or any of the other Documents, to perform and observe.

“Land” shall mean the parcel of real property located in Travis County, on which the Project is located, as more particularly described in the recitals of the Loan Agreement.

“Lender” means (1) during the Cash Collateralized Mode, the Construction Lender and (2) during the Permanent Mode, the Permanent Lender.

“Limited Partner” means RSEP Holdings, LLC, a Delaware limited liability company.

“Loan” means the loan by the Issuer to Borrower in the principal amount of \$9,000,000 made by the Issuer to the Borrower evidenced by the Note, described in the Loan Agreement and made in connection with the issuance of the Bonds.

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

“Loan Payments” means the amounts required to be paid by the Borrower in repayment of the Loan pursuant to the provisions of the Note and Section 4.01 of the Loan Agreement.

“Local Time” means Central time (daylight or standard, as applicable) in the State of Texas.

“Majority Owner” means, during the Permanent Mode, the Person who owns at least fifty-one percent (51%) in aggregate principal amount of Outstanding Bonds, or, if no single person owns at least fifty-one percent (51%) in aggregate principal amount of Outstanding Bonds, the person who is designated in writing to exercise the powers of “Servicer” and “Majority Owner” hereunder by persons who collectively own at least fifty-one percent (51%) in aggregate principal amount of Outstanding Bonds.

“Mandatory Tender Date” means (a) the Initial Mandatory Tender Date, (b) the Funding Date, and (c) if the Bonds Outstanding on such date or on any subsequent Mandatory Tender Date are remarketed pursuant to Section 3.07 for a Remarketing Period that does not extend to the final maturity of the Bonds, the day after the last day of the Remarketing Period.

“Maturity Date” means _____.

“Maximum Interest Rate” means the interest rate equal to the lesser of: (a) 12% per annum, or (b) the maximum interest rate per annum permitted by applicable Texas law.

“Moody’s” means Moody’s Investors Service, Inc., a Delaware corporation, and its successors and assigns, or if it shall for any reason no longer perform the functions of a securities rating agency, then any other nationally recognized rating agency designated by the Borrower and acceptable to the Remarketing Agent.

“Negative Arbitrage Account” means the Negative Arbitrage Account within the Bond Fund created in Section 4.01 hereof.

“Net Cash Flow” means, for any period, the amount, if any, by which (a) Effective Gross Income during such period exceeds (b) the sum of (i) Operating Expenses for such period, and (ii) all principal and interest due under the Documents for such period.

“Net Proceeds” means when used with respect to any Condemnation awards or insurance proceeds allocable to the Property, the gross proceeds from Condemnation or insurance remaining after payment of all expenses (including reasonable attorneys’ fees) incurred in the collection of such gross proceeds.

“Note” means the Promissory Note dated the Closing Date from the Borrower to the Issuer in substantially the form attached as **Exhibit B-1** to the Loan Agreement, as amended and restated at Funding in the form attached as **Exhibit B-2** to the Loan Agreement, and any amendments, Supplements or modifications thereto, which Note has been assigned by the Issuer to the Trustee.

“Notice Address” means, unless otherwise designated pursuant to Section 12.06 hereof:

(a) As to the Issuer:

Austin Housing Finance Corporation
1000 E. 11th Street
Austin, Texas 78702
Attn: Program Manager
Telephone: 512-974-3192

With a copy to:

McCall, Parkhurst & Horton L.L.P.
717 N. Harwood, Suite 900
Dallas, Texas 75201
Attn: Mark Malveaux
Telephone: 214-754-9221
Email: mmalveaux@mphlegal.com

(b) As to the Trustee:

Wilmington Trust, National Association
15950 North Dallas Parkway, Suite 550
Dallas, TX 75248
Attention: Corporate Trust Department
Facsimile: (972) 385-0844

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.
Email: blount@namanhowell.com

(c) As to the Borrower:

LIVE MAKE HOUSING PARTNERS LP
c/o MRE Capital, LLC
10777 Barkley Street, Suite 140
Overland Park, Kansas 66211
Attn: Jake Mooney
Telephone: (913) 638-2500
Email: jmooney@mrecapital.com
Attn: Daniel Sailler
Telephone: (913) 231-8400
Email: dsailler@mrecapital.com

With a copy to:

Citrine Development, LLC

Attn: Teresa Bowyer
Telephone: (806) 543-8645
Email: citrinedev@gmail.com

- (d) As to the Construction Lender:

Amegy Bank
4576 Research Forest Drive
The Woodlands, Texas 77381
Attention: Ray Miller
Email: ray.miller@amegybank.com

With a copy to:

Greenberg Traurig LLP
1000 Louisiana Street, Suite 6700
Houston, Texas 77002
Attention: Wayne Yaffee
Email: wayne.yaffee@gtlaw.com

- (e) As to the Permanent Lender:

Cedar Rapids Bank & Trust
2144 E. Republic Road, Suite F200
Springfield, MO 65804
Attention: _____
Mortgage Loan No.: _____

With a copy to:

Winthrop & Weinstein, P.A.
225 South Sixth Street, Suite 3500
Minneapolis, MN 55402-4629
Attention: _____
Mortgage Loan No.: _____

- (f) [As to the Remarketing Agent:

Stifel, Nicolaus & Company, Incorporated
Lakeview Center, Suite 400
2660 East Chase Lane
Montgomery, Alabama 36117
Attention: John B. Rucker, III
Telephone: (334) 834-5100
Facsimile: (334) 269-0902]

[With copies to:

Tiber Hudson LLC
1900 M Street, N.W., 4th Floor
Washington, DC 20036
Attention: Kent Neumann
Telephone Number: (202) 973-0107]

(g) As to the Rating Agency:

Moody's Investors Service, Inc.
World Trade Center
250 Greenwich Street, 23rd Floor
New York, New York 10007
Attention: Public Finance Department –
Municipal Structured Products Group

“Official Statement” means the Official Statement dated _____, 2023 relating to the Bonds during the Cash Collateralized Mode.

“Operating Expenses” means, in the aggregate, for any period, all current expenses of the ownership, operation and maintenance of the Project for such period, as determined on an accrual basis, including but not limited to all deposits to the reserves established under this Indenture, but excluding, however, (a) all principal and interest due under the Documents (b) any expenses for repairs or improvements which have been approved by the Servicer and which have been or will be paid from amounts on deposit in the reserves established under the Documents, (c) the Issuer's Fee, the Trustee's Ongoing Fee and the other fees of the Servicer, the Issuer and the Trustee payable by the Borrower under the terms of the Documents, and (d) depreciation, amortization and other non-cash expenses with respect to such period.

“Opinion of Counsel” means an opinion from an attorney or firm of attorneys, acceptable to the Trustee, with experience in the matters to be covered in the opinion.

“Optional Redemption Date” means (i) during the Cash Collateralized Mode, on or after _____; and (ii) during the Permanent Mode, only as permitted pursuant to the Permanent Loan Agreement.

“Outstanding,” “outstanding” or “Bonds Outstanding” when used with respect to the Bonds means any Bonds theretofore authenticated and delivered under this Indenture, except:

(a) Bonds theretofore canceled by the Trustee or theretofore delivered to the Trustee for cancellation;

(b) Bonds for the payment of which moneys or obligations shall have been theretofore deposited with the Trustee in accordance with Article VIII; or

(c) Bonds in exchange for or in lieu of which other Bonds have been authenticated and delivered under this Indenture.

“Partnership Agreement” means the agreement among the General Partner, the Class B Limited Partner, the Limited Partner and the Special Limited Partner, dated [REDACTED].

“Permanent Lender” means Cedar Rapids Bank & Trust, a Missouri corporation or its successors and assigns.

“Permanent Loan” means the loan from the Permanent Lender to the Borrower pursuant to the Permanent Loan Agreement.

“Permanent Loan Agreement” means the Permanent Loan Agreement, dated as of _____, 2023, between the Borrower and the Permanent Lender.

“Permanent Loan Documents” shall have the meaning assigned to such term in the Permanent Loan Agreement.

“Permanent Mode” means the period starting on the Funding Date and ending on the Permanent Loan Maturity Date (as defined in the Permanent Loan Agreement).

“Permanent Mode Deed of Trust” means the Deed of Trust, Assignment, Security Agreement and Fixture Filing, dated the Funding Date, executed by the Borrower in favor of the Issuer and assigned to the Trustee as security for the Bonds during the Permanent Mode.

“Permanent Rate” means, during the Permanent Mode an interest rate of [REDACTED %].

“Permitted Encumbrances” means (a) any matters set forth in any policy of title insurance issued to the Construction Lender and insuring the Construction Lender’s interest in the Project which are acceptable to the Construction Lender, Issuer and Permanent Lender as of the date hereof, (b) the Encumbrances and interests of the Deeds of Trust, (c) any other Encumbrance approved in writing by the Construction Lender, the Permanent Lender and the Issuer; provided, however that the consent of the Construction Lender shall not be required during the Permanent Phase, (d) the Tax Regulatory Agreement, (e) liens for property taxes not delinquent or being contested in good faith and by appropriate proceedings, (f) granting liens or other security interests in favor of the Issuer, Trustee, Construction Lender, Permanent Lender, or AHFC, and (g) any agreements, restrictions and covenants existing and required in connection with any tax-exempt bond financing, tax abatement, LRSP and/or Section 42 of the Internal Revenue Code.

“Permitted Transfers” means any of the following, subject to the laws of the State of Texas as then in effect at the time of such Permitted Transfer (all such terms used in this definition and not otherwise defined in this Indenture shall have the meanings as set forth in the Tax Regulatory Agreement):

(a) a Transfer to which, prior to the Funding Date, the Construction Lender, and on and following the Funding Date, the Permanent Lender has consented;

- (b) prior to the Funding Date, a Transfer which satisfies the following subparagraphs A through C: (A) that is either: (i) by the Limited Partner or the Special Limited Partner of all or a portion of its partnership interest in the Borrower directly or indirectly only to another entity which is Controlled by the Investor Sponsor or an Affiliate of the Limited Partner or the Special Limited Partner, (ii) by a partner or member of the Limited Partner or Special Limited Partner of its partnership or membership interest in the Limited Partner or Special Limited Partner provided that, immediately after the Transfer, the general partner or managing member of the Limited Partner is the Investor Sponsor or an Affiliate of the Investor Sponsor, or (iii) the pledge and encumbrance of the interests of the Limited Partner or the Special Limited Partner to or for the benefit of any financial institution which enables the Limited Partner to make its capital contributions to the Borrower as well as the taking of such interests by such financial institution and their admission as a partner in the Borrower; (B) the partners or members owning not less than seventy-five percent (75%) of the ownership interest in the Limited Partner are Financial Institutions or Publicly Held Corporations with a rating of BBB- or better by Standard & Poor's or Baa3 or better by Moody's Investor Service, Inc., or wholly owned subsidiaries of such entities or otherwise approved by the Construction Lender in writing, and (C) the Construction Lender has received at least fifteen (15) days advance written notice of the Transfer (which notice shall include the identity of the transferee and its owners) and Construction Lender shall have received any additional information with respect to the Transfer as reasonably requested by the Construction Lender.
- (c) after the Funding Date, a Transfer which is permitted under Section 8.3 of the Permanent Loan Agreement.
- (d) provided the Lender has received information with respect to the Transfer in advance thereof, including the identity of the substitute general partner or managing member and any other information reasonably requested by the Lender, the removal of the General Partner for cause as set forth under Section 8.12 of the Partnership Agreement so long as any substitute general partner or managing member is an Affiliate of the Investor Sponsor;
- (e) a Transfer that occurs by devise, descent or by operation of law upon the death of a natural person;
- (f) the grant of leasehold interest in an individual dwelling unit for a term of two years or less not containing an option to purchase;
- (g) a Transfer of obsolete or worn out personal property or fixtures that are contemporaneously replaced by items of equal or better function and quality, which are free of liens, encumbrances and security interests other than those created by the Documents otherwise consented to by the Lender;

- (h) other than Permitted Encumbrances, the grant of an easement, servitude or restrictive covenant provided that, before the grant, the Lender has determined that the easement, servitude or restrictive covenant will not materially affect the operation or value of the Project or the Lender's interest in the Project and the Borrower pays to the Lender, within ten (10) days of demand, all costs and expenses incurred by the Lender in connection with reviewing the Borrower's request;
- (i) the creation of a tax lien or mechanic's lien or judgment lien against the Project which is bonded off, released of record or otherwise remediated to the Lender's satisfaction within sixty (60) days of the date of creation;
- (j) the execution, delivery and recordation of documents required in order to exercise the buyout option by and between the General Partner, or one or more of its affiliates, and the Limited Partner or its Affiliate as set forth in the Partnership Agreement, provided that the same is subject, subordinate and inferior to the liens and security interests of the Documents and that the exercise of any rights thereunder shall be subject to the Documents;
- (k) the transfer of all or a portion of the Class B Limited Partner's interest in the Borrower to the Limited Partner;
- (l) the transfer of the Commercial Unit to the Commercial Unit Owner;
- (m) the Right of First Refusal Agreement between the Borrower and UPO Community Development Corporation, or its affiliate; and
- (n) any Permitted Encumbrances.

"Person" shall include an individual, association, unincorporated organization, corporation, partnership, joint venture, trust, or government or agency or political subdivision or public body thereof.

"Prepayment Fee" means, during the Permanent Mode as described in the Permanent Loan Agreement.

"Project" has the meaning described in the recitals.

"Project Fund" means the Project Fund created in Section 4.01 hereof.

"Qualified Project Costs" means any expenditures which (a) are incurred not more than 60 days prior to the date on which the issuer first declared its "official intent" (within the meaning of Treasury Regulation Section 1.150-2) with respect to the Project (other than preliminary expenditures with respect to the Project in an amount not exceeding 20% of the aggregate principal amount of the Bonds); (b) are made exclusively to provide facilities and improvements that constitute part of a "qualified residential rental project" within the meaning of Section 142(d) of the Code; and (c) are properly chargeable to the Project's capital account under general federal income tax principles or that would be so chargeable with a proper election or but for a proper

election by the Borrower to deduct such expenditure. However, “Qualified Project Costs” do not include (i) issuance costs of the Bonds (within the meaning of Section 147(g) of the Code) or (ii) any fee, charge or profit payable to the Borrower or a “related person” (within the meaning of Section 144(a)(3) of the Code). As used herein, the term “preliminary expenditures” includes architectural, engineering, surveying, soil testing and similar costs that were incurred prior to the commencement of construction of the Project, but does not include land acquisition, site preparation and similar costs incident to commencement of construction of the Project.

“Rating Agency” means any national rating agency then maintaining a rating on the Bonds, and initially means Moody’s.

“Rating Category” means one of the generic rating categories of the Rating Agency.

“Rebate Amount” means the amount, if any, which is to be paid to the United States of America pursuant to the Section 148(f) of the Code and Section 4.07 hereof.

“Rebate Analyst” means a certified public accountant, financial analyst or attorney, or any firm of the foregoing, or a financial institution (which may include the Trustee) experienced in making the arbitrage and rebate calculations required pursuant to Section 148 of the Code and selected by the Issuer at the expense of the Borrower to calculate the Rebate Amount or, in the event that the Issuer fails to so select a Rebate Analyst and the Borrower fails to pay such fee one month prior to any date on which calculations are required to be made, any qualified person retained by the Trustee to calculate the Rebate Amount. The initial Rebate Analyst will be Tiber Hudson LLC.

“Rebate Analyst Fee” means the fee of the Rebate Analyst in an amount not less than \$500.00 which shall be paid annually by the Borrower for at least five years from moneys other than from the Trust Estate.

“Rebate Fund” means the Rebate Fund created in Section 4.01 hereof.

“Record Date” means the 15th day of the month preceding the date on which interest is due and payable.

“Redemption Date” means any date hereunder on which the Bonds are to be redeemed, including (a) the Maturity Date, (b) the date of acceleration of the Bonds, (c) pursuant to Sections 3.01 and 3.05 hereof or (d) as set forth in the Permanent Loan Agreement.

“Remarketing Agent” means Stifel, Nicolaus & Company, Incorporated, or any successor as Remarketing Agent designated in accordance with Section 10.24.

“Remarketing Agent’s Fee” means the fee of the Remarketing Agent for its remarketing services.

“Remarketing Agreement” means the Remarketing Agreement, dated as of January 1, 2023 by and between the Borrower and the Remarketing Agent, as amended, supplemented or restated from time to time, or any agreement entered into in substitution therefor.

“Remarketing Date” means the Initial Remarketing Date and, if the Bonds Outstanding on such date or on any subsequent Remarketing Date are remarketed pursuant to Section 3.07 for a Remarketing Period that does not extend to the final maturity of the Bonds, the day after the last day of the Remarketing Period.

“Remarketing Expenses” means the costs and expenses incurred by the Trustee and its counsel, the Remarketing Agent and its counsel, the Issuer and its counsel, and Bond Counsel in connection with the remarketing of the Bonds, including bond printing and registration costs, costs of funds advanced by the Remarketing Agent, registration and filing fees, rating agency fees and other costs and expenses incurred in connection with or properly attributable to the remarketing of Bonds as certified to the Trustee by the Remarketing Agent in writing.

“Remarketing Notice Parties” means the Borrower, the Issuer, the Trustee, the Remarketing Agent and the Lender.

“Remarketing Period” means the period beginning on a Remarketing Date and ending on the last day of the term for which Bonds are remarketed pursuant to Section 3.07 or the final Maturity Date of the Bonds, as applicable.

“Remarketing Proceeds Account” means the Remarketing Proceeds Account of the Bond Fund created in Section 4.01 hereof.

“Remarketing Rate” means the interest rate or rates established pursuant to Section 2.01 and borne by the Bonds then Outstanding from and including each Remarketing Date to, but not including, the next succeeding Remarketing Date or the Funding Date, as applicable.

“Requisition” means the request on the form attached hereto as Exhibit E to make a disbursement from the Project Fund on a Construction Draw Date in the manner provided pursuant to Section 5.02 hereof.

“Reserved Rights of the Issuer” means the rights of the Issuer consisting of: (a) all rights which the Issuer and its officers, directors, members, officials, agents or employees may have under this Indenture, the Loan Agreement and other Documents to indemnification by the Borrower and by any other persons and to payments for expenses incurred by the Issuer itself, or its officers, directors, officials, agents or employees; (b) the right of the Issuer to give and receive notices, reports or other information, make determinations and grant approvals hereunder and under the Documents; (c) the right of the Issuer to give and receive its fees and expenses pursuant to the Loan Agreement and the Tax Regulatory Agreement; (d) all rights of the Issuer to enforce the representations, warranties, covenants and agreements of the Borrower pertaining in any manner or way, directly or indirectly to the requirements of the Act or any requirements imposed by the Issuer with respect to the Project, or necessary to assure that interest on the Bonds is excluded from gross income for federal income tax purposes, as are set forth in any of the Documents or in any other certificate or agreement executed by the Borrower; (e) all rights of the Issuer in connection with any amendment to or modification of the Documents; and (f) all enforcement remedies with respect to the foregoing.

“Revenues” means (a) the Loan Payments, (b) the Collateral Payments, (c) all other money received or to be received by the Trustee in respect of repayment of the Loan, including without

limitation, all money and investments in the Bond Fund, (d) any money and investments in the Project Fund and the Collateral Fund, and (e) all income and profit from the investment of the foregoing money. The term “*Revenues*” does not include any money or investments in the Rebate Fund, amounts paid as fees, reimbursement for expenses or for indemnification of the Issuer and the Trustee, or amounts paid to or collected by the Issuer in connection with any Reserved Rights of the Issuer.

“**Securities Depository**” means the Depository Trust Company, its successors and assigns, or any other securities depository for the Bonds designated by the Issuer or the Borrower to the Trustee in writing.

“**Servicer**” means, during the Permanent Mode, the Permanent Lender, or, if the Permanent Lender appoints a separate entity to be the servicer, such servicer. During any other times as no servicer has been appointed pursuant to Section 7.11 hereof, all references herein and in the Loan Documents to the Servicer shall be deemed to refer to the Majority Owner.

“**Servicing Agreement**” means any servicing agreement entered into between the Majority Owner and the Servicer, as the same may be amended, modified or supplemented from time to time.

“**Special Limited Partner**” means Red Stone Equity Manager, LLC, a Delaware limited liability company, and its successors or assigns.

“**Special Funds**” means, collectively, the Bond Fund, the Project Fund and the Collateral Fund, and any accounts therein.

“**Supplement**” or “**Supplements**” means any and all extensions, renewals, modifications, amendments, supplements and substitutions.

“**Syndication Proceeds**” means the equity contribution in the aggregate amount of \$7,526,829 to be advanced to the Borrower by the Limited Partner and the Special Limited Partner pursuant to and subject to the terms of the Partnership Agreement.

“**Tax Certificate**” means the Tax Certificate and Agreement dated the Closing Date by and among the Issuer, the Borrower and the Trustee.

“**Tax Regulatory Agreement**” means the Tax Regulatory Agreement dated as of the same date as this Indenture by and among the Issuer, the Trustee and the Borrower relating to the Bonds, and any and all modifications thereof, amendments and Supplements thereto and substitutions therefor.

“**Taxable Rate**” means after Funding, a rate of interest per annum equal to 1.20 times the Contract Rate on the Series 2023 Bonds.

“**Termination Date**” means the date on which the principal of, premium (if any) and interest on the Bonds and the Note have been paid in full, and all of the Borrower’s Obligations and the Issuer’s Obligations are fully satisfied unless an Act of Bankruptcy shall occur within ninety-one (91) days thereafter, in which event the Termination Date shall not be deemed to occur

until the Issuer, the Trustee or the Holders (as the case may be) is or are conclusively entitled (whether by final adjudication or otherwise) to retain such payment.

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

“Trustee” or “Corporate Trustee” means Wilmington Trust, National Association, a national banking association, organized and existing under the laws of the United States and authorized to conduct business in the State of Texas, with a corporate trust office in Wilmington, Missouri and its successor or successors in the trust created by this Indenture.

“Trustee’s Ongoing Fee” means (i) the Trustee’s initial fee of \$6,500, payable on the Closing Date from moneys in the Costs of Issuance Fund pursuant to Section 4.08 hereof and (ii) the Trustee’s ongoing fee of \$4,500, payable on each January 1, beginning on January 1, 2024, which shall be paid by the Borrower from moneys other than from the Trust Estate.

“Trust Estate” has the meaning given such term in the Granting Clauses of this Trust Indenture.

“Trust Office” means the trust office of the Trustee located at the address set forth in Article I hereof or such other office designated by the Trustee from time to time, or such other offices as may be specified in writing to the Issuer by the Trustee.

“Undelivered Bond” means any Bond that is required under this Indenture to be delivered to the Remarketing Agent or the Trustee for purchase on a Mandatory Tender Date but that has not been received on the date such Bond is required to be so delivered.

“Underwriter” means Stifel, Nicolaus & Company, Incorporated, or any successor.

Section 1.02 Rules of Construction. The words “hereof,” “herein,” “hereunder,” “hereto,” and other words of similar import refer to this Indenture in its entirety.

The terms “agree” and “agreements” contained herein are intended to include and mean “covenant” and “covenants.”

References to Articles, Sections, and other subdivisions of this Indenture are to the designated Articles, Sections, and other subdivisions of this Indenture.

The headings of this Indenture are for convenience only and shall not define or limit the provisions hereof.

All references made (a) in the neuter, masculine or feminine gender shall be deemed to have been made in all such genders, and (b) in the singular or plural number shall be deemed to have been made, respectively, in the plural or singular number as well.

Any reference to particular sections or subsections of the Code and applicable Income Tax Regulations shall include any successor provisions of law or regulations, to the extent the same shall apply to the Bonds.

Any reference to a Bond or to the Bonds shall include each portion in the minimum authorized denomination of any registered bond having a denomination greater than the minimum authorized denomination.

Whenever the Lender is required to give its consent or approval to any matter, whether stated as “consent,” “written consent,” “prior written consent,” “approval,” “written approval,” “prior written approval” or otherwise, the giving of such consent or approval by the Lender shall be in its sole and complete discretion.

Whenever the Lender shall have any right or option to exercise any discretion, to determine any matter, to accept any presentation or to approve or consent to any matter, such exercise, determination, acceptance, approval or consent shall, without exception, be in the Lender’s sole and absolute discretion.

Section 1.03 *Determinations.* The Executive Director hereby determines that the issuance of the Bonds under this Indenture is necessary to achieve a valid public purpose of the Issuer under the Act: to increase the housing supply for families of limited income, to alleviate the shortage of adequate safe and sanitary housing of families of low and moderate income and to promote community development.

The Issuer is issuing the Bonds with the intent and expectation that the income from the Bonds will be generally excludable from the Bondholder’s gross income under the Code as determined by the Issuer and pursuant to an opinion of Bond Counsel (subject to customary limitations).

ARTICLE II

CREATION OF BONDS; DETAILS OF THE BONDS

Section 2.01 *Authorization and Terms of Bonds.*

(a) *Authorization of Bonds.* The Issuer hereby authorizes for issuance under this Indenture, bonds in the original aggregate principal amount of \$9,000,000, which shall be designated “Austin Housing Finance Corporation Multifamily Housing Revenue Bonds (Live Make Apartments) Series 2023” shall be in Authorized Denominations, and shall be dated the Closing Date to be issued as hereinafter provided.

(b) *Registered Form; Numbering.* The Bonds shall be issuable only as fully registered Bonds in authorized denominations, substantially in the form, appropriately completed,

attached hereto as **Exhibit A-1** and made a part hereof. The Bonds shall be lettered “R,” and shall be numbered separately from “1” consecutively upward.

(c) *Date, Denominations, Dates from Which Interest Payable, Interest Rate and Maturity.* The Bonds shall be dated the Closing Date, shall be issued in Authorized Denominations, and shall bear interest on the principal amount Outstanding from the most recent date to which interest has been paid or duly provided for or, if no interest has been paid or provided for, from their date of initial delivery, payable on each Interest Payment Date. The Bonds shall bear interest for each Interest Period at the Interest Rate all as more specifically set forth hereinafter. Interest on the Bonds shall be calculated on the basis of a 360-day year consisting of twelve 30-day months. The Bonds shall mature on the Maturity Date, subject to prior redemption as set forth in Section 3.01 hereof and subject to Mandatory Tender for purchase as set forth in Section 3.05 hereof.

(d) *Initial Interest Rate.* During the Cash Collateralized Mode, the interest rate on the Bonds shall be the Initial Interest Rate. On the Initial Mandatory Tender Date, the Bonds shall be subject to Mandatory Tender pursuant to Section 3.06 hereof. If insufficient funds are available to pay the purchase price on the Bonds following such Mandatory Tender on the Initial Mandatory Tender Date, the Bonds shall accrue interest at the Maximum Interest Rate until funds are available for payment of the purchase price, with interest being paid monthly on the first Business Day of each month.

(e) *Establishment of Remarketing Rate.* The Remarketing Agent shall establish the interest rate on the Bonds Outstanding for each Remarketing Period at the Remarketing Rate in accordance with this Section 2.01. Not less than ten (10) Business Days preceding each Remarketing Date, the Remarketing Agent, taking into consideration prevailing market conditions, shall, using its best professional judgment, determine the minimum rate(s) of interest which, if borne by the Bonds then Outstanding for the Remarketing Period specified by the Remarketing Agent at the direction of the Borrower as provided in Section 3.07 hereof. The rate of interest determined in accordance with the previous sentence shall be the Remarketing Rate for the specified Remarketing Period; provided that if the rate of interest so determined for such period would exceed the Maximum Interest Rate, the Bonds Outstanding shall be remarketed for the longest Remarketing Period for which the minimum rate of interest that would enable such Bonds to be remarketed at a price equal to 100% of the principal amount of such Bonds that would not exceed the Maximum Interest Rate. Notwithstanding the foregoing, if the rate of interest so determined for any Remarketing Period would exceed the Maximum Interest Rate, the Bonds Outstanding shall not be remarketed.

(f) *Notice of Remarketing Rate.* The Remarketing Agent shall, upon determination of the Remarketing Rate and Remarketing Period, immediately (and in no event later than the Business Day following the day on which the Remarketing Agent makes its determination of the Remarketing Rate and the Remarketing Period) give notice of its determination by telephone or telecopy, promptly confirmed in writing, to the Trustee, the Issuer and the Borrower. The determination of the Remarketing Rate and the Remarketing Period shall be conclusive and binding upon the Trustee, the Issuer, the Borrower and the Holders for the purposes of this Indenture.

(g) *Permanent Interest Rate* During the Permanent Mode, the Bonds shall bear interest at the Permanent Rate. Provided the Trustee receives notice pursuant to Section 3.09 of this Indenture, the Trustee shall provide notice by first-class mail, postage prepaid, to all Owners (with a copy to the Issuer and the Borrower) at their addresses shown on the bond register stating that the interest rate on the Bonds will be converted to the Permanent Rate effective on the Funding Date. Failure to mail any such notice or any defect in the mailing thereof in respect of any Bond shall not affect the validity of the conversion of the interest rate with respect to any Bond.

(h) *Taxable Rate* After Funding, upon the occurrence of a Determination of Taxability, the amount owed to the Owners will be equal to (i) an additional amount equal to the difference between (A) the amount of interest paid on the Bonds during the taxable period, and (B) the amount of interest at the Taxable Rate that would have been paid on the Bonds during the taxable period had the Bonds borne interest at the Taxable Rate, plus (ii) an amount equal to any interest, penalties on overdue interest and additions to tax owed by the Owners as a result of the occurrence of a Determination of Taxability. This provision shall survive the discharge of this Indenture pursuant to Article VIII hereof.

(i) *Additional Interest.* The Owners of the Bonds shall also be entitled to Additional Interest, which amount, if any, shall be deposited in the Revenue Account of the Bond Fund pursuant to the provisions of Section 4.2(c) of the Loan Agreement.

(j) *Book-Entry Form.* Pursuant to Section 2.11 of this Indenture, during the Cash-Collateralized Mode, the Bonds shall be in Book-Entry Form by issuing a single bond in the amount of \$9,000,000, registered in the name of Cede & Co., as nominee for DTC. In the event DTC discontinues its service with respect to the Bonds and the Book-Entry System is terminated, replacement Bonds shall be issued in Authorized Denominations.

(k) *Medium and Place of Payment.* Principal of and interest on the Bonds shall be payable in lawful money of the United States of America which, at the respective times of payment, is legal tender for the payment of public and private debts, but only from the Revenues and any other monies made available to the Issuer for such purpose. Principal of the Bonds shall be payable at the Trust Office upon presentation and surrender of the Bonds as the same become due, and upon the request of any registered owner of Bonds on the applicable Record Date having an aggregate principal amount of \$1,000,000 or more, such principal shall be paid by wire transfer of immediately available funds from the Trustee to the bank and account number specified by such Owner in writing to the Trustee. Interest on the Bonds shall be payable to the registered Owners of the Bonds by check or draft mailed to such Owners at their addresses as they appear on registration books kept by the Trustee as Bond Registrar, or, upon the request of any registered Owner of Bonds having an aggregate principal amount of \$1,000,000 or more, by wire transfer of immediately available funds from the Trustee to the bank and account number specified by such Owner in writing to the Trustee at least three (3) Business Days prior to the applicable payment date.

(l) *Form of Bonds.* The definitive Bonds, which may be printed, typewritten, photocopied, or otherwise reproduced, including the Trustee's Certificate of Authentication to be endorsed thereon, shall be substantially in the form as set forth in **Exhibit A-1** attached hereto with such appropriate variations, omissions and insertions as permitted or required by this Indenture.

Each Initial Bond, registered by the Comptroller, shall be identical to the form of each Bond attached as **Exhibits A-1**, except that the following paragraph will not appear in the Initial Bonds:

"This Bond shall not be entitled to any benefit under the Trust Indenture or be valid or obligatory for any purpose until the Fiscal Agent shall have executed the Certificate of Authentication appearing hereon."

and the following paragraph shall be added as the second-to-last paragraph to the Initial Bonds:

"THIS BOND SHALL NOT BE VALID OR BECOME OBLIGATORY for any purpose or be entitled to any benefit or security under the Trust Indenture unless the Comptroller's Registration Certificate hereon has been executed by an authorized representative of the Texas Comptroller of Public Accounts by manual signature."

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

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

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

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

Witness my signature and seal of office this _____.

Texas Comptroller of Public Accounts

(SEAL)"

The provisions of **Exhibit A-1** may be rearranged or re-ordered for purposes of the Initial Bonds.

(m) *Payments or Actions to be taken on Saturdays, Sundays and Holidays.* In any case where the date of any action required hereunder to be taken or the date of maturity of interest on or principal of the Bonds, shall not be a Business Day, then payment of interest or principal or the taking of such action need not be made or taken on such date but may be made on the next succeeding Business Day with the same force and effect as if made on the date of maturity or the date such action was to be taken.

Section 2.02 *Source of Payment of Bonds.* The Issuer shall be obligated to pay the principal of and the interest on the Bonds only out of (a) the Revenues pledged for the payment thereof under this Indenture, (b) the amounts held in any fund or account created under this Indenture, other than amounts held in the Rebate Fund and the Costs of Issuance Fund, and (c) from any other moneys held pursuant to the Trust Estate. Nothing in the Bonds or in this Indenture shall be construed as pledging any other funds or assets of the Issuer. All the Bonds to be issued hereunder shall be equally and ratably secured, to the extent provided herein, by this Indenture.

Section 2.03 *Execution of Bonds.* The Bonds shall be executed on behalf of the Issuer by the manual or facsimile signature of an authorized officer of the Issuer, and attested by the manual or facsimile signature of an authorized officer of the Issuer. In case any authorized officer of the Issuer whose signature or a facsimile of whose signature shall appear on any of the Bonds shall cease to be an authorized officer of the Issuer before the Closing Date, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes, the same as if such authorized officer of the Issuer had remained in office until delivery. Furthermore, it shall not be necessary that the same authorized officer of the Issuer sign all of the Bonds that may be issued hereunder at any one time or from time to time.

Section 2.04 *Certificate of Authentication.* Other than the Initial Bond, the Bond shall not be valid or obligatory for any purpose or entitled to any security or benefit under this Indenture unless a certificate of authentication on the Bond, substantially in the form set forth in Exhibit A, shall have been duly executed by an authorized officer of the Trustee; and such executed certificate of authentication upon the Bond shall be conclusive evidence that the Bond has been duly executed, registered, authenticated and delivered under this Indenture..

Section 2.05 *Authentication and Delivery of Bonds.* The Issuer shall execute and deliver to the Trustee, and the Trustee shall authenticate the Bonds and deliver them to the purchaser or purchasers as may be directed by the Issuer as provided in this Section.

Prior to the authentication by the Trustee of the Bonds, there shall have been filed with the Trustee (which may be in electronic form):

(a) A copy, certified by the President or Vice President of the Board of Directors or the Executive Director of the Issuer, of all resolutions adopted and proceedings had by the Issuer relating to the Bonds, authorizing the execution, delivery and performance of this Indenture and the Loan Agreement;

(b) A copy of a fully executed counterpart of this Indenture;

(c) Copies of fully executed counterparts of the Loan Agreement, the Tax Regulatory Agreement, the Tax Certificate and the original, fully executed Note;

(d) An opinion of Bond Counsel with respect to the exclusion from gross income for federal income tax purposes of interest payable on the Bonds;

(e) An Opinion of Counsel addressed to the Issuer and the Trustee, of a law firm or law firms (who may be independent counsel) to the effect that the Bonds and the documents

specifically listed in the definition of Documents have been duly executed and delivered by the parties thereto and constitute valid and binding obligations of such parties, enforceable against such parties in accordance with their respective terms, subject to bankruptcy, insolvency or other laws affecting creditors' rights generally, and with respect to certain remedies which require, or may require, enforcement by a court of equity, such principles of equity as the court having jurisdiction may impose;

(f) A request and authorization signed by an authorized officer of the Issuer authorizing the Trustee to authenticate and to deliver the Bonds to the purchaser or purchasers therein identified upon payment to the Trustee for the account of the Issuer of the amount specified in such request and authorization plus accrued interest, if any, thereon to the date of delivery;

(g) Written evidence that the Bonds have been rated at least "[____]" by the Rating Agency; and

(h) the Initial Deposit.

The proceeds from the sale of the Bonds shall be paid over directly to the Trustee and deposited to the credit of the Project Fund, as provided under Article V hereof.

Section 2.06 *Temporary Bonds.* Until Bonds in definitive form are ready for delivery, the Issuer may execute, and upon its request in writing, the Trustee shall authenticate and deliver in lieu of any thereof, and subject to the same provisions, limitations and conditions, one or more printed, typewritten or photocopied Bonds in temporary form, substantially of the tenor of the Bonds herein described, and with appropriate omissions, variations and insertions. Such Bond or Bonds in temporary form shall be delivered in denominations authorized by this Indenture, may be numbered using the prefix "T" before any number thereon as authorized by this Indenture, and may bear a legend thereon setting forth the terms for the exchange thereof for Bonds in definitive form. Until exchanged for Bonds in definitive form, such Bonds in temporary form shall be entitled to the benefit of this Indenture. The Issuer shall, without unreasonable delay (unless the Holders of the Bonds issued in temporary form agree otherwise), prepare, execute and deliver to the Trustee, and thereupon, upon the presentation and surrender of the Bond or Bonds in temporary form, the Trustee shall authenticate and deliver, in exchange therefor, a Bond or Bonds in a definitive authorized form in Authorized Denominations, of the same maturity or maturities, bearing the same interest rate or rates and for the same aggregate principal amount as the Bond or Bonds in temporary form surrendered. Such exchange shall be made by the Issuer at the Borrower's expense and without making any charge to the Holders of the Bonds therefor.

Section 2.07 *Mutilated, Lost, Stolen or Destroyed Bonds.* In the event any Bond is mutilated, lost, stolen or destroyed, the Issuer may execute and the Trustee may authenticate a new Bond of like date, maturity, interest rate and denomination as that of the Bond mutilated, lost, stolen or destroyed; provided that, in the case of any mutilated Bond, such mutilated Bond shall first be surrendered to the Trustee, and in the case of any lost, stolen or destroyed Bond there shall be first furnished to the Issuer and the Trustee evidence of such loss, theft or destruction satisfactory to the Issuer and the Trustee, together with indemnity satisfactory to them. The Trustee may, with the consent of the Holder, provide to the Holder a typewritten (or

similarly reproduced) Bond certificate in lieu of a printed Bond certificate. In the event any such Bond shall have matured, instead of issuing a duplicate Bond the Trustee may pay the same without surrender thereof. The Issuer and the Trustee may charge the Holder of such Bond their expenses and reasonable fees, if any, in connection with the preparation, execution and authentication of a replacement Bond.

Section 2.08 *Registration, Negotiability, Transfer and Exchange of Bonds.* All of the Bonds issued under this Indenture shall be negotiable, subject to the provisions for registration and transfer contained in this Indenture and in the Bonds. So long as any of the Bonds shall remain outstanding, the Issuer shall maintain and keep at the Trust Office, books for the registration and transfer of Bonds; and, upon presentation thereof for such purpose at such office, the Trustee shall register or cause to be registered therein, and permit to be transferred thereon, under such reasonable regulations as the Issuer or the Trustee may prescribe, any Bond entitled to registration or transfer.

Each Bond shall be transferable only upon the books of the Issuer maintained for such purpose by the Trustee, at the written request of the registered Owner thereof or his attorney duly authorized in writing, upon presentation and surrender thereof, together with a written instrument of transfer satisfactory to the Trustee duly executed by the registered Owner or his attorney duly authorized in writing. Upon the surrender for transfer of any Bond, the Issuer shall issue, and the Trustee shall authenticate, in the name of the transferee, in Authorized Denominations, a new Bond or Bonds without coupons of the same aggregate principal amount, series, maturity and interest rate as the surrendered Bond.

The Issuer and the Trustee may deem and treat the person in whose name any Outstanding registered Bond shall be registered upon the books of the Issuer as the absolute Owner of such Bond, whether such Bond shall be overdue or not, for the purpose of receiving payment of, or on account of, the principal of and interest on such Bond and for all other purposes, and all such payments so made to any such registered Owner or upon his order shall be valid and effectual to satisfy and discharge the liability upon such Bond to the extent of the sum or sums so paid, and neither the Issuer nor the Trustee shall be affected by any notice to the contrary.

If the Bonds are redeemed in part, then upon the presentation and surrender of each Bond, the Trustee shall authenticate and deliver in exchange for such Bond, a new Bond or Bonds of the same series, maturity and interest rate and in any Authorized Denomination, in an aggregate principal amount equal to the unredeemed portion of such Bond or Bonds. Notwithstanding the foregoing, if following the Funding Date, a Bond held by the Permanent Lender is redeemed in part, such partial redemption may be noted on such Bond and the Trustee shall not be obligated to authenticate and deliver any replacement Bond.

For every exchange or transfer of Bonds, whether temporary or definitive, the Issuer or the Trustee may make a charge sufficient to reimburse it for any tax or other governmental charge required to be paid with respect to such exchange or transfer which sum or sums shall be paid by the person requesting such exchange or transfer as a condition precedent to the exercise of the privilege of making such exchange or transfer. Notwithstanding any other provision of this Indenture to the contrary, any expenses of the Issuer or the Trustee incurred in connection therewith (except any applicable tax or other governmental charge) shall be paid by the Borrower

as required by the Loan Agreement. The Issuer shall not be obligated to make any such exchange or transfer of Bonds during the fifteen (15) days next preceding an interest payment date on the Bonds.

Following the Funding Date:

No transfer of a Bond (or any interest therein) shall be made except (i) to the Permanent Lender or any person controlled by or under common management or control with either the Borrower or the Permanent Lender, (ii) to a person whom, based on the transferee's representations, is a "qualified institutional buyer" (as defined in Rule 144A) promulgated under the Securities Act of 1933, as amended (the "**Securities Act**") ("**QIB**") acquiring such Bond for its own account or as a fiduciary, custodian, trustee or agent (in each case, a "**Custodian/Trustee**") for other beneficial holders holding beneficial interests in the Bonds through such Custodian/Trustee (which Custodian/Trustee and such beneficial holders must also be QIBs or Accredited Investors (as hereinafter defined) (but not an individual)) and to whom notice is given that the resale or other transfer is being restricted as provided in this Section 2.08, or (iii) to an "accredited investor" (but not an individual), as defined in Regulation D promulgated under the Securities Act (an "**Accredited Investor**") acquiring such Bond for its own account or as a Custodian/Trustee for other beneficial holders holding beneficial interests in the Bonds through such Custodian/Trustee (which Custodian/Trustee and such beneficial holders must also be an Accredited Investor (but not an individual) or a QIB), and to whom notice is given that the resale or other transfer is being restricted as provided in this Section 2.7, in each case in accordance with any applicable securities laws of any state of the United States or any other jurisdiction. In connection with the initial purchase of Bonds and any proposed transfer, the Purchaser or any transferee, as the case may be, shall furnish to the Trustee and the Issuer (i) either (a) an Investor Letter in the appropriate form set forth in **Exhibit C** or (b) such other certifications or other information as the Issuer may reasonably require to confirm that such transfer is being made pursuant to the provisions of this Section 2.7 and (ii) written confirmation from the purchaser of the Bonds that the Servicing Agreement remains in effect (or that the Servicing Agreement has been assigned to, and assumed by, another Servicer in accordance with the Servicing Agreement, or that another Servicer has agreed to enter into a new servicing agreement with the Trustee in substantially the form of the Servicing Agreement, all without separate charge to the Borrower). The Trustee and the Issuer shall be entitled to rely, without inquiry, on the statements in such Investor Letter, other certifications or other information.

Following the Funding Date, each purchaser of Bonds, by its acceptance thereof, shall be deemed to have acknowledged, represented to and agreed with the Issuer as follows:

(a) It understands and acknowledges that the Bonds may not be offered, sold or otherwise transferred except in compliance with the registration requirements of this Section 2.08.

(b) It is (a) a QIB acquiring the Bonds for its own account or as a Custodian/Trustee for other beneficial holders holding beneficial interests in the Bonds through such Custodian/Trustee (which Custodian/Trustee and such beneficial holders must also be QIBs or an Accredited Investor (but not an individual)), and to whom notice has been given that the resale or other transfer is restricted as provided in this Section 2.7, or (b) an Accredited Investor (but not an individual) acquiring such Bond for its own account or as a Custodian/Trustee for other

beneficial holders holding beneficial interests in the Bonds through such Custodian/Trustee (which Custodian/Trustee and such beneficial holders must also be an Accredited Investor (but not an individual) or a QIB), and to whom notice has been given that the resale or other transfer is restricted as provided in this Section 2.08, in the case of clause (a) and (b) above, in accordance with any applicable securities laws of any state of the United States or any other jurisdiction, or (c) the Permanent Lender or a person controlled by or under common management or control with either the Borrower or the Permanent Lender.

(c) It acknowledges that none of the Issuer, the Trustee or any person representing the Issuer or the Trustee has made any representation to it with respect to the Issuer, the Borrower, the Bonds or the Project upon which it is relying in making its decision to acquire the Bonds or act as Custodian/Trustee. It has had access to such financial and other information concerning the Borrower, the Project and the Bonds as it has deemed necessary in connection with its decision to acquire the Bonds or act as Custodian/Trustee, as applicable, including an opportunity to ask questions of and request information from the Borrower.

(d) It is acquiring the Bonds for its own account, or as a Custodian/Trustee for other beneficial holders holding beneficial interests in the Bonds through such Custodian/Trustee, in each case, not with a view to, or for offer or sale in connection with, any distribution thereof, subject to any requirement of law that the disposition of the Bonds held in such investor account or accounts be at all times within its or their control and subject to its or their ability to resell such Bonds pursuant to this Section 2.7. The purchaser intends to hold and book the Bonds as a loan in its portfolio and acknowledges that the use of the word “Bonds” in the name of the debt instrument is for convenience only and is not intended to indicate that the instrument is a security within the meaning of the Securities Act.

(e) Each purchaser acknowledges that each Bond will contain a legend substantially to the following effect:

THIS SECURITY HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT, OR THE SECURITIES LAWS OF ANY STATE OR OTHER JURISDICTION.

THE HOLDER OF THIS SECURITY BY ITS ACCEPTANCE HEREOF AGREES TO TRANSFER SUCH SECURITY ONLY (A) TO THE PERMANENT LENDER OR ANY PERSON CONTROLLED BY OR UNDER COMMON MANAGEMENT OR CONTROL WITH EITHER THE BORROWER OR THE PERMANENT LENDER, OR (B) TO A PERSON WHO, BASED ON SUCH PERSON’S REPRESENTATIONS, IS A “QIB” AS DEFINED IN RULE 144A PROMULGATED UNDER THE SECURITIES ACT, ACQUIRING THIS SECURITY FOR ITS OWN ACCOUNT OR AS A FIDUCIARY, CUSTODIAN, TRUSTEE OR AGENT FOR OTHER BENEFICIAL HOLDERS HOLDING BENEFICIAL INTERESTS IN THE BONDS THROUGH SUCH FIDUCIARY, CUSTODIAN, TRUSTEE OR AGENT (WHICH FIDUCIARY, CUSTODIAN, TRUSTEE OR AGENT AND SUCH BENEFICIAL HOLDERS MUST ALSO BE QIBS OR ACCREDITED INVESTORS) (BUT NOT AN INDIVIDUAL) AS DEFINED IN REGULATION D PROMULGATED UNDER THE SECURITIES ACT) AND TO WHOM NOTICE IS GIVEN THAT THE SALE OR OTHER TRANSFER IS BEING MADE IN RELIANCE ON RULE 144A OR REGULATION D, AS APPLICABLE, EACH AS PROMULGATED UNDER THE SECURITIES ACT AND PURSUANT TO THE TRANSFER

RESTRICTIONS CONTAINED IN THE INDENTURE, OR (C) TO AN ACCREDITED INVESTOR (BUT NOT AN INDIVIDUAL), ACQUIRING THIS SECURITY FOR ITS OWN ACCOUNT OR AS A FIDUCIARY, CUSTODIAN, TRUSTEE OR AGENT FOR OTHER BENEFICIAL HOLDERS HOLDING BENEFICIAL INTERESTS IN THE BONDS THROUGH SUCH FIDUCIARY, CUSTODIAN, TRUSTEE OR AGENT (WHICH FIDUCIARY, CUSTODIAN, TRUSTEE OR AGENT AND SUCH BENEFICIAL HOLDERS MUST ALSO BE ACCREDITED INVESTORS (BUT NOT AN INDIVIDUAL) OR QIBS), SUBJECT TO THE ISSUER'S AND THE TRUSTEE'S RIGHT PRIOR TO ANY SUCH TRANSFER TO REQUIRE THE DELIVERY OF (I) EITHER (A) AN INVESTOR LETTER IN SUBSTANTIALLY THE FORM SET FORTH IN **EXHIBIT C** TO THE INDENTURE OR (B) SUCH OTHER CERTIFICATIONS OR OTHER INFORMATION AS THE ISSUER AND THE TRUSTEE MAY REASONABLY REQUIRE TO CONFIRM THAT SUCH TRANSFER IS BEING MADE AND (II) WRITTEN CONFIRMATION FROM THE PURCHASER OF THE BONDS THAT THE SERVICING AGREEMENT REMAINS IN EFFECT (OR THAT THE SERVICING AGREEMENT HAS BEEN ASSIGNED TO, AND ASSUMED BY, ANOTHER SERVICER IN ACCORDANCE WITH THE SERVICING AGREEMENT, OR THAT ANOTHER SERVICER HAS AGREED TO ENTER INTO A NEW SERVICING AGREEMENT WITH THE TRUSTEE IN SUBSTANTIALLY THE FORM OF THE SERVICING AGREEMENT, ALL WITHOUT SEPARATE CHARGE TO THE BORROWER).

Section 2.09 *Obligation of Issuer Limited.* The Bonds, together with interest thereon, do not constitute an indebtedness to which the faith and credit of the Issuer are pledged but are limited obligations of the Issuer payable from (a) the Revenues pledged for the payment thereof under this Trust Indenture, (b) the amounts held in any fund or account created under this Trust Indenture, other than amounts held in the Rebate Fund, and (c) from any other moneys held pursuant to the Trust Estate, and shall be a valid claim of the respective Holders thereof only against the Trust Estate, which is hereby assigned for the equal and ratable payment of the Bonds and the interest thereon and shall be used for no other purpose than to pay the principal of and interest on the Bonds, except as may be otherwise expressly authorized in this Indenture.

THE BONDS, THE PRINCIPAL OF AND THE INTEREST THEREON ARE SPECIAL LIMITED OBLIGATIONS OF THE ISSUER PAYABLE SOLELY FROM THE TRUST ESTATE PLEDGED TO SUCH PURPOSES IN THE MANNER AND TO THE EXTENT PROVIDED IN THIS INDENTURE AND NO OTHER REVENUES OR ASSETS OF THE ISSUER. THE BONDS, THE PRINCIPAL OF AND THE INTEREST THEREON DO NOT CONSTITUTE AN INDEBTEDNESS OR OBLIGATION OF THE STATE OF TEXAS, AND NEITHER THE FAITH AND CREDIT NOR THE TAXING POWER OF THE STATE OF TEXAS IS PLEDGED TO THE PAYMENT OF PRINCIPAL OF OR INTEREST ON THE BONDS. THE ISSUER HAS NO TAXING POWER.

Section 2.10 *Cancellation and Destruction of Bonds.* All Bonds which have been surrendered for payment, cancellation or for registration of transfer or exchange pursuant to Section 2.08 shall be cancelled and destroyed by the Trustee and shall not be reissued, and a counterpart of the certificate of destruction evidencing such destruction shall be furnished by the Trustee to the Issuer and, upon written request therefor, to the Borrower. Any Bonds so cancelled may be retained by the Trustee for such period of time as the Trustee may determine and shall be destroyed by the Trustee at the end of such period. Any Bond so cancelled shall

thereafter no longer be considered Outstanding for any purpose of this Indenture or the Loan Agreement.

Section 2.11 *Book-Entry System.* During the Cash Collateralized Mode:

(a) Except as provided in subparagraph (c) of this Section 2.11, the registered owner of all of the Bonds shall be, and the Bonds shall be registered in the name of, Cede & Co. (“Cede”), as nominee of The Depository Trust Company (“DTC”). Payment of semi-annual interest for any Bonds shall be made by transfer of same-day funds to the account of Cede on the interest payment date for the Bonds at the address indicated for Cede in the registration books of the Issuer kept by the Trustee.

(b) The Bonds shall be initially issued in the form of a separate single fully registered bond in the amount of each separately stated maturity of the Bonds. Upon initial issuance, the ownership of such Bonds shall be registered in the registry books of the Issuer kept by the Trustee in the name of Cede, as nominee of DTC. With respect to Bonds registered in the registry books kept by the Trustee in the name of Cede, as nominee of DTC, the Issuer and the Trustee shall have no responsibility or obligation to any participant of DTC (a “**Participant**”) or to any person for whom a Participant acquires an interest in the Bonds (a “**Beneficial Owner**”). Without limiting the immediately preceding sentence, the Issuer and the Trustee shall have no responsibility or obligation with respect to (i) the accuracy of the records of DTC, Cede or any Participant with respect to any ownership interest in the Bonds, (ii) the delivery to any Participant, any Beneficial Owner or any other person, other than DTC, of any notice with respect to the Bonds, or (iii) the payment to any Participant, any Beneficial Owner or any other person, other than DTC, of any amount with respect to the principal of or interest on the Bonds. The Issuer and the Trustee may treat as and deem DTC to be the absolute owner of each Bond for the purpose of payment of the principal of and interest on such Bond, and other matters with respect to such Bond, for the purpose of registering transfers with respect to such Bond, and for all other purposes whatsoever. The Trustee shall pay all principal of and interest on the Bonds only to or upon the order of DTC, and all such payments shall be valid and effective to fully satisfy and discharge the Issuer’s obligations with respect to the principal of and interest on the Bonds to the extent of the sum or sums so paid. Payments of principal may be made without requiring the surrender of the Bonds, and the Issuer and Trustee shall not be liable for the failure of DTC or any successor thereto to properly indicate on the Bonds the payment of such principal. No person other than DTC shall receive a Bond evidencing the obligation of the Issuer to make payments of principal of and interest on the Bonds pursuant to this Indenture. Upon delivery by DTC to the Trustee of written notice to the effect that DTC has determined to substitute a new nominee in place of Cede, and subject to the transfer provisions hereof, the word “Cede” in this Indenture shall refer to such new nominee of DTC.

(c) (i) DTC may determine to discontinue providing its services with respect to the Bonds at any time by giving written notice to the Issuer and discharging its responsibilities with respect thereto under applicable law. Under such circumstances (if there is not a successor securities depository), Bond certificates will be delivered as described in this Indenture.

(ii) The Issuer, in its sole discretion and without the consent of any other person, may terminate the services of DTC with respect to the Bonds if the Issuer determines that: (1) DTC is unable to discharge its responsibilities with respect to the Bonds or (2) a continuation of the

requirement that all of the Outstanding Bonds be registered in the registration books kept by the Trustee in the name of Cede, as nominee of DTC, is not in the best interest of the Beneficial Owners of the Bonds. In the event that no substitute securities depository is found by the Issuer, or restricted registration is no longer in effect, Bond certificates will be delivered as described in this Indenture.

(iii) Upon the termination of the services of DTC with respect to the Bonds pursuant to subparagraph (c)(ii)(2) of this Section 2.11, or upon the discontinuance or termination of the services of DTC with respect to the Bonds pursuant to subparagraph (c)(ii) or subparagraph (c)(ii)(1) of this Section 2.11 after which no substitute securities depository willing to undertake the functions of DTC hereunder can be found which, in the opinion of the Issuer, is willing and able to undertake such functions upon reasonable and customary terms, the Bonds shall no longer be restricted to being registered in the registration books kept by the Trustee in the name of Cede as nominee of DTC, but may be registered in whatever name or names Bondholders transferring or exchanging Bonds shall designate, in accordance with the provisions of this Indenture.

(d) Notwithstanding any other provision of this Indenture to the contrary, so long as any Bond is registered in the name of Cede, as nominee of DTC, all payments with respect to the principal of and interest on such Bond and all notices with respect to such Bond shall be made and given, respectively, to DTC as provided in the applicable Representation Letter of the Issuer addressed to DTC, dated the date of delivery and issuance of the Bonds.

(e) In connection with any notice or other communication to be provided to Bondholders pursuant to this Indenture by the Issuer or the Trustee with respect to any consent or other action to be taken by the Bondholders, the Issuer or the Trustee, as the case may be, shall establish a special record date for such consent or other action and give DTC notice of such special record date not less than 15 calendar days in advance of such special record date to the extent possible.

On the Funding Date the Trustee shall deliver the Bonds, in physical form, in the form described in **Exhibit A-2** and as attached hereto, and which may be registered in whatever name or names Bondholders transferring or exchanging Bonds shall designate, in accordance with the provisions of this Indenture.

ARTICLE III

REDEMPTION, MANDATORY TENDER, REMARKETING OF BONDS AND FUNDING

Section 3.01 *Redemption of Bonds.* The Bonds are subject to redemption prior to the Maturity Date as follows:

- i. prior to the Funding Date, the Bonds are subject to mandatory redemption in whole, on the earliest practicable day for which notice of redemption may be given upon the occurrence of any of the following events: (i) the Borrower has not previously elected pursuant to Section 3.06 hereof and Section 3.10 of the Loan Agreement to cause the remarketing of the Bonds, (ii) the conditions to remarketing set forth in Section 3.07(b) or Section 3.07(d) have

not been met by the dates and times set forth therein, or (iii) the proceeds of a remarketing on deposit in the Remarketing Proceeds Account at 11:00 a.m. Local Time on the Mandatory Tender Date are insufficient to pay the purchase price of the Outstanding Bonds on such Mandatory Tender Date. The Bonds shall be redeemed at a redemption price equal to 100% of the principal amount of such Bonds plus accrued interest to the applicable Redemption Date from funds on deposit in, or transferred from, the Bond Fund, the Collateral Fund, and the Project Fund; or

- ii. in part on the Funding Date in an amount necessary to reduce the aggregate principal amount of Outstanding Bonds to an amount in order to achieve compliance with the Funding Conditions; or
- iii. in whole, following receipt by the Trustee of notice from the Servicer stating that an Event of Default has occurred hereunder, under the Loan Agreement, the Permanent Loan Agreement or the Construction Loan Agreement and demanding redemption of the Bonds, on any date selected by the Servicer, specified in a notice in writing delivered to the Borrower; or
- iv. prior to the Funding Date, at the direction of the Issuer at the written request of the Borrower, and with the delivery of a Cash Flow Projection, along with Eligible Funds, if any, set forth in such Cash Flow Projection, in whole or in part on any date on or after the later to occur of (a) the date that the Project is placed in service, as certified in writing by the Borrower to the Trustee, and (b) the Optional Redemption Date, at a redemption price equal to the principal amount of the Bonds to be redeemed, plus accrued interest to the applicable Redemption Date from funds on deposit in, or transferred from, the Bond Fund, the Collateral Fund and, after the Completion Date, the Project Fund; or
- v. after the Funding Date, the Bonds shall not be subject to optional prepayment except as described in the Permanent Loan Agreement.

Section 3.02 *Redemption Price.*

Any Bonds being redeemed on or after Funding and before maturity in accordance with Section 3.01 of this Indenture shall be redeemed at a redemption price equal to the principal amount of the Bonds being redeemed, together with accrued interest to the date of redemption, plus the Prepayment Fee, if redemption is under Section 3.01 (iii), or Additional Interest, if redemption is under Section 3.01(ii).

In the event that the Bonds are redeemed at the direction of the Borrower pursuant to Section 3.01(v) prior to the end of the Qualified Project Period (as defined in, and determined pursuant to, the Tax Regulatory Agreement), then the Borrower shall pay to the Issuer on or before

the date of redemption, the Bond Monitoring Agent Fee (as defined in the Tax Regulatory Agreement) which otherwise would have been payable from the Redemption Date through the end of the Qualified Project Period; provided, however, that such payment shall be subject to the same restrictions and limitations set forth in the immediately preceding paragraph.

Section 3.03 *Partial Redemption of Bonds.*

In the case of a partial redemption of Bonds when Bonds of denominations greater than \$5,000 are then Outstanding, each \$5,000 unit of face value of principal thereof shall be treated as though it were a separate Bond of the denomination of \$5,000. If it is determined that one or more, but not all of the \$5,000 units of face value represented by a Bond are to be called for redemption, then upon notice of redemption of a \$5,000 unit or units, the Holder of that Bond shall surrender the Bond to the Trustee (a) for payment of the redemption price of the \$5,000 unit or units of face value called for redemption (including without limitation, the interest accrued to the date fixed for redemption and any premium), and (b) for issuance, without charge to the Holder thereof, of a new Bond or Bonds of the same series, of any Authorized Denomination in an aggregate principal amount equal to the unmatured and unredeemed portion of, and bearing interest at the same rate and maturing on the same date as, the Bond surrendered.

If less than all of an Outstanding Bond of one maturity in a Book-Entry System is to be called for redemption, the Trustee shall give notice to the Securities Depository or the nominee of the Securities Depository that is the Holder of such Bond, and the selection of the Beneficial Owners of that Bond to be redeemed shall be at the sole discretion of the Securities Depository and its participants.

Section 3.04 *Notice of Redemption.*

Unless waived by any Holder of Bonds to be redeemed, official notice of redemption shall be given by the Trustee on behalf of the Issuer by mailing a copy of an official redemption notice by first class mail, postage prepaid, to the Holder of each Bond to be redeemed, at the address of such Holder shown on the Register at the opening of business on the fifth day prior to such mailing, not less than 20 days nor more than 30 days prior to the date fixed for redemption. A second notice of redemption shall be given, as soon as practicable, by first class mail to the Holder of each Bond which has been so called for redemption (in whole or in part) but has not been presented and surrendered to the Trustee within 60 days following the date fixed for redemption of that Bond.

All official notices of redemption shall be dated and shall state:

- (a) the redemption date,
- (b) the redemption price,
- (c) if less than all Outstanding Bonds are to be redeemed, the identification by designation, letters, numbers or other distinguishing marks (and, in the case of partial redemption, the respective principal amounts) of the Bonds to be redeemed,

- (d) that on the redemption date the redemption price will become due and payable upon each such Bond or portion thereof called for redemption, and that interest thereon shall cease to accrue from and after said date,
- (e) the place where such Bonds are to be surrendered for payment of the redemption price, which place of payment shall be the Designated Office of the Trustee, and
- (f) that the notice of redemption is conditioned upon there being deposited with the Trustee on or prior to the date of redemption money sufficient to pay the redemption price of the Bonds to be redeemed and, in the case of any redemption premium on Bonds, that there be on deposit Eligible Funds sufficient to pay such redemption premium.

Notices of redemption shall be revocable in the event that there is not on deposit with the Trustee prior to the date of redemption money sufficient to pay the redemption price of the Bonds to be redeemed or, in the case of any redemption premium on Bonds, there is not on deposit Eligible Funds sufficient to pay such redemption premium.

If the Bonds are not then held in a Book-Entry System, in addition to the foregoing notice, further notice shall be given by the Trustee as set out below, but no defect in said further notice nor any failure to give all or any portion of such further notice shall in any manner defeat the effectiveness of a call for redemption if notice thereof is given as above prescribed.

(a) Each further notice of redemption given hereunder shall contain the information required above for an official notice of redemption plus (i) the CUSIP numbers of all Bonds being redeemed; (ii) the date of issue of the Bonds as originally issued; (iii) the rate of interest borne by each Bond being redeemed; (iv) the maturity date of each Bond being redeemed; and (v) any other descriptive information deemed necessary in the sole discretion of the Trustee to identify accurately the Bonds being redeemed.

(b) Each further notice of redemption shall be sent at least 15 days before the redemption date by telecopy, registered or certified mail or overnight delivery service to all registered securities depositories then in the business of holding substantial amounts of obligations of types comprising the Bonds and to one or more national information services that disseminate notices of redemption of obligations such as the Bonds.

(c) Upon the payment of the redemption price of Bonds being redeemed, each check or other transfer of funds issued for such purpose shall bear the CUSIP number (if any) identifying, by issue and maturity, the Bonds being redeemed with the proceeds of such check or other transfer.

Failure to receive notice by mailing or any defect in that notice regarding any Bond, however, shall not affect the validity of the proceedings for the redemption of any other Bond.

Notice of any redemption hereunder with respect to Bonds held under a Book-Entry System shall be given by the Trustee only to the Securities Depository, or its nominee, as the Holder of such Bonds. Selection of Beneficial Owners of the Bonds called for redemption is the

responsibility of the Securities Depository and any failure of such Securities Depository to notify the Beneficial Owners of any such notice and its contents or effect will not affect the validity of such notice of any proceedings for the redemption of such Bonds.

Section 3.05 *Payment of Redeemed Bonds.*

Notice having been mailed in the manner provided in Section 3.03 hereof, the Bonds and portions thereof called for redemption shall become due and payable on the redemption date, and upon presentation and surrender thereof at the place or places specified in that notice, shall be paid at the redemption price, including interest accrued to the redemption date.

Upon the payment of the price of Bonds being redeemed or prepaid, each check or other transfer of funds issued for such purpose shall bear the CUSIP number identifying, by issue and maturity, the Bonds being redeemed or prepaid with the proceeds of such check or other transfer.

If money for the redemption of all of the Bonds and portions thereof to be redeemed, together with interest accrued thereon to the redemption date, is held by the Trustee on the redemption date, so as to be available therefor on that date and if notice of redemption has been deposited in the mail as aforesaid, then from and after the redemption date those Bonds and portions thereof called for redemption shall cease to bear interest and no longer shall be considered to be Outstanding hereunder. If such money shall not be so available on the redemption date, or that notice shall not have been deposited in the mail as aforesaid, those Bonds and portions thereof shall continue to bear interest, until they are paid, at the same rate as they would have borne had they not been called for redemption.

All money deposited in the Bond Fund and held by the Trustee for the redemption, purchase or prepayment of particular Bonds shall be held in trust for the account of the Holders thereof and shall be paid to them, respectively, upon presentation and surrender of those Bonds.

Section 3.06 *Mandatory Tender.*

(a) All Outstanding Bonds shall be subject to mandatory tender by the Holders for purchase in whole and not in part on each Mandatory Tender Date. The purchase price for each such Bond shall be payable in lawful money of the United States of America by check or draft, shall equal 100% of the principal amount to be purchased and accrued interest, if any, to the Mandatory Tender Date, and shall be paid in full on the applicable Mandatory Tender Date.

(b) While tendered Bonds are in the custody of the Trustee pending purchase pursuant hereto, the tendering Holders thereof shall be deemed the owners thereof for all purposes, and interest accruing on tendered Bonds through the day preceding the applicable Mandatory Tender Date is to be paid as if such Bonds had not been tendered for purchase.

(c) Notwithstanding anything herein to the contrary, any Bond tendered under this Section 3.05 will not be purchased if such Bond matures or is redeemed on or prior to the applicable Mandatory Tender Date.

(d) The Trustee shall utilize the following sources of payments to pay the tender price of the Bonds not later than 2:30 p.m. Local Time on the Mandatory Tender Date in the

following priority; (i) amounts representing proceeds of remarketed Bonds deposited in the Remarketing Proceeds Account, to pay the principal amount, plus accrued interest, of Bonds tendered for purchase, (ii) amounts on deposit in the Collateral Fund, to pay the principal amount of Bonds tendered for purchase, (iii) amounts on deposit in the Negative Arbitrage Account of the Bond Fund to pay the accrued interest; if any, on Bonds tendered for purchase, (iv) amounts on deposit in the Project Fund to pay the accrued interest, if any, on the Bonds tendered for purchase and (v) any other Eligible Funds available or made available for such purpose at the direction of the Borrower.

(e) Bonds shall be deemed to have been tendered for purposes of this Section 3.05 whether or not the Holders shall have delivered such Undelivered Bonds to the Trustee, and subject to the right of the Holders of such Undelivered Bonds to receive the purchase price of such Bonds and interest accrued thereon to the Mandatory Tender Date, such Undelivered Bonds shall be null and void. If such Undelivered Bonds are to be remarketed, the Trustee shall authenticate and deliver new Bonds in replacement thereof pursuant to the remarketing of such Undelivered Bonds.

(f) With respect to any mandatory tender on the Funding Date, at the written direction of the Borrower, the Trustee shall sell or redeem Eligible Investments on deposit in the Project Fund and Collateral Fund and use the proceeds thereof to purchase the Bonds at the mandatory redemption price along with any deposit of Eligible Funds from the Borrower as described in (vii) below.

(g) In connection with any mandatory tender on the Funding Date, the Trustee is permitted to sell Eligible Investments or redeem Eligible Investments prior to maturity at a price below par only if the Trustee receives a Cash Flow Projection and any Eligible Funds required pursuant to such Cash Flow Projection.

Section 3.07 *Mandatory Tender Notice.*

(a) Not less than 5 days preceding the Funding Date, and 30 days preceding any other Mandatory Tender Date, the Trustee shall give written notice of mandatory tender to the Holders of the Bonds then Outstanding (with a copy to the Borrower, the Limited Partner, and the Remarketing Agent) by first class mail, postage prepaid, at their respective addresses appearing on the Register stating:

(i) the Mandatory Tender Date and that (a) all Outstanding Bonds are subject to mandatory tender for purchase on the Mandatory Tender Date, (b) all Outstanding Bonds must be tendered for purchase no later than 12:00 Noon Local Time on the Mandatory Tender Date and (c) Holders will not have the right to elect to retain their Bonds;

(ii) the address of the Designated Office of the Trustee at which Holders should deliver their Bonds for purchase and the date of the required delivery;

(iii) that all Outstanding Bonds will be purchased on the Mandatory Tender Date at a price equal to the principal amount of the Outstanding Bonds plus interest accrued to the Mandatory Tender Date; and

(iv) any Bonds not tendered will nevertheless be deemed to have been tendered and will cease to bear interest from and after the Mandatory Tender Date.

(b) In the event that any Bond required to be delivered to the Trustee for payment of the purchase price of such Bond shall not have been delivered to the Trustee on or before the 30th day following a Mandatory Tender Date, the Trustee shall mail a second notice to the Holder of the Bond at its address as shown on the Register setting forth the requirements set forth in this Indenture for delivery of the Bond to the Trustee and stating that delivery of the Bond to the Trustee (or compliance with the provisions of this Indenture concerning payment of lost, stolen or destroyed Bonds) must be accomplished as a condition to payment of the purchase price or redemption price applicable to the Bond.

(c) Neither failure to give or receive any notice described in this Section 3.06, nor the lack of timeliness of such notice or any defect in any notice (or in its content) shall affect the validity or sufficiency of any action required or provided for in this Section 3.06.

Section 3.08 *Remarketing of Bonds.*

(a) Notice of Mandatory Tender. No later 11:00 a.m. Local Time on the 35th day prior to each Mandatory Tender Date, the Trustee shall give notice to the Borrower, Limited Partner and the Remarketing Agent by telephone or telecopy, confirmed on the same day in writing, which states the aggregate principal amount of Bonds which are to be tendered or deemed to be tendered pursuant to Section 3.05 hereof.

(b) Preliminary Conditions to Remarketing. No later 11:00 a.m. Local Time on the 15th day prior to the Mandatory Tender Date then in effect, the Borrower may give notice to the Remarketing Notice Parties by telephone or telecopy, confirmed on the same day in writing, that it elects to cause the Bonds to be remarketed. A remarketing of the Bonds shall be permitted only if the following conditions are satisfied no later than the time the foregoing election notice is given:

- (i) Notice by the Borrower to the Remarketing Agent and the Trustee of the Remarketing Period pursuant to Section 4.05 of the Loan Agreement;
- (ii) Delivery to the Trustee and the Remarketing Agent of a preliminary Cash Flow Projection with respect to the proposed Remarketing Period; and
- (iii) The Issuer and the Borrower shall each have notified the Trustee in writing that it has approved as to form and substance any disclosure document or offering materials which, in the Opinion of Counsel to the Remarketing Agent, is necessary to be used in connection with the remarketing of the Outstanding Bonds.

(c) Remarketing. Not less than ten (10) days before each Remarketing Date, the Remarketing Agent shall offer for sale and use its best efforts to sell the Bonds Outstanding on the Remarketing Date at a price equal to 100% of the principal amount of such Bonds plus, if such

Remarketing Date is a date other than an Interest Payment Date, accrued interest on such Bonds from the preceding Interest Payment Date to which interest has been paid. Not less than four (4) Business Days before each Remarketing Date, the Remarketing Agent shall give notice, by telephone or telecopy, promptly confirmed in writing, to the Remarketing Notice Parties specifying the principal amount of Bonds, if any, it has remarketed (including Bonds to be purchased by the Remarketing Agent on the Remarketing Date for its own account), the Remarketing Rate(s) and the Remarketing Period applicable to the Bonds.

The Remarketing Agent shall have the right to remarket any Bond tendered pursuant to Section 3.08 hereof; provided, however, that no such Bond shall be remarketed at a price less than 100% of the principal amount thereof plus accrued interest (if any) without the prior written consent of the Borrower and Limited Partner; and provided, further, that the purchase price of any Bond paid to the tendering Holder allocable to such discount shall be paid with Eligible Funds made available by the Borrower therefor and on deposit with the Trustee prior to the remarketing of such Bonds. The Remarketing Agent shall have the right to purchase any Bond tendered or deemed tendered pursuant to Section 3.05 hereof at 100% of the principal amount thereof, and to thereafter sell such Bond. Any such purchase shall constitute a remarketing hereunder.

The Remarketing Agent shall not remarket any Bond to the Issuer, the Borrower, any guarantor of the Bonds or any person which is an “insider” of the Issuer, Borrower, or any such guarantor within the meaning of the Bankruptcy Code.

(d) Final Conditions to Remarketing.

(i) If, not less than four (4) Business Days preceding the Remarketing Date:

(1) the Remarketing Agent shall have notified the Trustee in writing of the remarketing of the Outstanding Bonds and that the proceeds from the remarketing (including proceeds of remarketing of Outstanding Bonds to be purchased by the Remarketing Agent on the Remarketing Date for its own account) or other funds equal to the amount needed to purchase the remarketed Bonds on the Remarketing Date are expected to be available to the Trustee on the Remarketing Date for deposit into the Remarketing Proceeds Account; and

(2) the Trustee shall have received written notice from the Remarketing Agent that the Remarketing Agent has received a Confirmation of Rating from the Rating Agency, together with a copy of such Confirmation of Rating from the Rating Agency; and

(ii) If, not less than two (2) Business Days preceding the Remarketing Date:

(1) there shall be on deposit with the Trustee provided by the Borrower an amount sufficient to pay the Extension Payment set forth in the Cash Flow Projection for deposit (A) to the Negative Arbitrage Account of the Bond Fund with respect to the payment of interest and principal

during the new Remarketing Period and (B) to the Costs of Issuance Fund with respect to the payment of administrative expenses during the new Remarketing Period; and

(2) there shall either (A) be on deposit with the Trustee provided by the Borrower and in the Costs of Issuance Fund an amount sufficient to pay the estimated Remarketing Expenses as certified in writing to the Trustee by the Borrower for deposit in the Costs of Issuance Fund, or (B) the Remarketing Agent shall have certified in writing to the Trustee that provision for the payment of the estimated Remarketing Expenses shall have been made to the satisfaction of the Remarketing Agent;

then the Trustee shall immediately give notice, by telephone or telecopy, which notice shall be immediately confirmed in writing, to the Remarketing Agent and the Borrower that (a) all conditions precedent to the remarketing of the Outstanding Bonds have been satisfied and (b) the sale and settlement of the Outstanding Bonds is expected to occur on the Remarketing Date. Following the Trustee's notice, the Outstanding Bonds shall be sold to the purchasers identified by the Remarketing Agent for delivery and settlement on the Remarketing Date, and the Trustee shall apply the funds in the Remarketing Proceeds Account of the Bond Fund on the Remarketing Date to payment of the purchase price of the Outstanding Bonds.

(e) If, not less than four (4) Business Days or two (2) Business Days, as applicable, preceding a Remarketing Date, any condition set forth in paragraph (d) of this Section 3.07 has not been satisfied, then, unless the Outstanding Bonds are otherwise purchased on the Remarketing Date, the Remarketing Agent shall not sell any of the Outstanding Bonds on the Remarketing Date.

(f) No later than 11:00 a.m. Local Time on each Remarketing Date, the Remarketing Agent shall pay to the Trustee, in immediately available funds, the proceeds theretofore received by the Remarketing Agent from the remarketing of Bonds tendered for purchase on such Remarketing Date; provided, that the Remarketing Agent may use its best efforts to cause the purchasers of the remarketed Bonds to pay the purchase price plus accrued interest (if any) to the Trustee in immediately available funds. The proceeds from the remarketing of the Bonds shall be segregated from any funds of the Borrower and the Issuer and shall in no case be considered to be or be assets of the Borrower or the Issuer. Funds representing remarketing proceeds received by the Remarketing Agent after 11:00 a.m. Local Time on each Remarketing Date shall be paid to the Trustee as soon as practicable upon such receipt.

(g) On or before the Business Day next preceding each Remarketing Date, the Remarketing Agent, by telephonic advice, shall notify the Trustee of (i) the principal amount of Bonds to be sold by the Remarketing Agent pursuant to Section 3.07 hereof and the purchase price, and, unless the Bonds are then in the Book-Entry System, the names, addresses and social security numbers or other tax identification numbers of the proposed purchasers thereof and (ii) the principal amount of Bonds tendered for purchase on such Remarketing Date which will not be sold by the Remarketing Agent pursuant to Section 3.07 hereof. Such telephonic advice shall be confirmed by written notice delivered or electronically communicated at the same time as the telephonic advice.

Bonds purchased by the Trustee on a Mandatory Tender Date that have been remarketed shall be delivered to the purchasers thereof as directed by the Remarketing Agent. Bonds delivered as provided in this Section shall be registered in the manner directed by the recipient thereof.

Section 3.09 *Funding Notice; Commencement of Permanent Mode.*

(a) Unless otherwise agreed in writing by the Permanent Lender, the Funding Date shall be the date selected by the Permanent Lender, the Borrower and the Issuer as specified in a funding notice, substantially in the form attached hereto as **Exhibit D** (the “Funding Notice”), provided however, that the Funding Notice shall be submitted to the Trustee no later than thirty (30) days prior to the Funding Date. Upon the satisfaction of the conditions set forth in this Section 3.09 and the Funding Notice, the Permanent Mode will commence on the Funding Date.

(b) At such time as the Funding Conditions have been satisfied (or, if not satisfied, such Funding Conditions are waived by the Permanent Lender), the Permanent Lender shall deliver to the Borrower, the Issuer and the Trustee the Funding Notice.

(c) On the Funding Date, the Trustee shall:

(a) Disburse amounts on deposit in the Collateral Fund pursuant to Section 4.13(d);

(b) Upon deposit by the Permanent Lender of Permanent Loan Amount (as defined in the Funding Notice) into the Construction Loan Repayment Fund, register the Bonds to the Permanent Lender in the form attached hereto as **Exhibit A-2** and in the amounts set forth in the Funding Notice, and deliver such Bonds at the direction of the Permanent Lender;

(c) Disburse amounts on deposit in the Construction Loan Repayment Fund pursuant to Section 4.12; and

(d) Redeem the amount of Bonds set forth in the Funding Notice from the amounts on deposit in the Collateral Fund, such that the remaining outstanding principal amount of the Bonds equals the Permanent Loan Amount set forth in the Funding Notice.

(d) [Reserved.]

(e) If Funding has not occurred by the Initial Mandatory Tender Date, then the Series 2023 Bonds shall be subject to mandatory tender pursuant to Section 3.06.

ARTICLE IV

REVENUES AND FUNDS

Section 4.01 *Creation of Funds and Accounts.* The following trust funds and accounts are hereby created by the Issuer and ordered established with the Trustee to be used for the purposes as hereinafter provided in this Indenture:

- (a) the Bond Fund, consisting of:
 - (i) the Negative Arbitrage Account;
 - (ii) the Remarketing Proceeds Account; and
 - (iii) the Revenue Account.
- (b) the Expense Fund;
- (c) the Project Fund, consisting of:
 - (i) the Bond Loan Account;
 - (ii) the Equity Account; and
 - (iii) Construction Loan Account
- (d) the Costs of Issuance Fund;
- (e) the Rebate Fund;
- (f) the Construction Loan Repayment Fund; and
- (g) the Collateral Fund.

The Trustee may create one or more accounts or subaccounts within any fund authorized by this Indenture for the purpose of accounting for funds deposited into or held in each fund or for carrying out any of the requirements of this Indenture. The Trustee may transfer funds between accounts and subaccounts within any fund.

Section 4.02 *Deposits into the Bond Fund; Use of Moneys in Bond Fund.* On the Closing Date, the Trustee shall deposit the Initial Deposit in the Negative Arbitrage Account of the Bond Fund, to be invested pursuant to Section 6.01 hereof. Any Extension Payment received by the Trustee in connection with an extension of the Mandatory Tender Date pursuant to Section 3.07 hereof shall also be deposited in the Negative Arbitrage Account.

The Trustee shall deposit in the Bond Fund all amounts paid by the Borrower pursuant to Section 4.2 of the Loan Agreement.

Prior to the Funding Date moneys in the Bond Fund shall be used solely for the payment of the principal of and interest on the Bonds when due. On any date on which payment of interest on the Bonds is due and payable, after taking into account any amounts on deposit in the Bond Fund, including the Negative Arbitrage Account therein, any available interest earnings in the Collateral Fund and the Project Fund, up to an amount equal to the interest due on the Bonds, shall be transferred on such date to the Bond Fund to make such payment.

Principal on the Bonds, when due and payable, shall be paid (a) in the first instance from the money on deposit in the Bond Fund, (b) next from money on deposit in the Collateral Fund and transferred as necessary to the Bond Fund and (c) thereafter, from money on deposit in the Project Fund and transferred as necessary to the Bond Fund.

Following the Funding Date, all moneys transferred to the Bond Fund shall be transferred to the Revenue Account, and shall be applied to the following items in the following order of priority:

1. on each Interest Payment Date, to the payment of regularly scheduled interest on the Bonds;
2. on each Bond Payment Date, to the payment of the principal of or redemption price of, accrued interest on, and any Prepayment Fee or Additional Interest due with respect to, the Bonds;
3. on the first day of each month (or the next Business Day if such first day of the month is not a Business Day), to the payment of any other amounts then due and owing under the Loan Documents; and
4. on the first day of each month (or the next Business Day if such first day of the month is not a Business Day), to the Borrower or such other party as may be legally entitled thereto.

In the event the amount of the monthly payment received by the Trustee from the Borrower is insufficient to fund in full the deposits required in the foregoing clauses (1) through (4), the Trustee shall provide the Servicer, the Borrower and the Issuer with prompt Notice of such deficiency and then, if directed in writing by the Servicer, the Trustee shall transfer moneys on deposit in such funds and accounts between such funds and accounts as directed by the Servicer so as to allow for payment of such items as are directed by the Servicer, provided, however, in all events the first priority of payments shall be payment of the Issuer Fee, the Trustee's Fee and the fees due and payable to the Rebate Analyst and any Rebate Amount due and owing to the United States. References to unpaid expenses payable to the Trustee or the Issuer shall include any amounts payable to such parties pursuant to any indemnification hereunder or under any of the Documents.

Upon the payment in full of the Bonds and the fees and expenses of the Issuer and the Trustee and the payment of amounts payable to the United States pursuant to Section 5.08 hereof, any amounts remaining in the Revenue Fund (except amounts held for future payment to the United States pursuant to Section 5.08 hereof) shall be paid to the Borrower.

Section 4.03 *Custody of the Bond Fund.* The Bond Fund shall be in the custody of the Trustee but in the name of the Issuer, and the Issuer hereby authorizes and directs the Trustee (a) to withdraw sufficient funds from the Bond Fund to pay the principal of and interest on the Bonds as the same become due and payable, and (b) to make such funds so withdrawn available to the Trustee, as paying agent, for the purpose of paying such principal and interest, which authorization and direction the Trustee accepts.

Section 4.04 *Non-Presentation of Bonds.* Subject to the provisions of Section 10.21 hereof, in the event any Bonds shall not be presented for payment when the principal thereof becomes due, either at maturity or otherwise, if funds sufficient to pay such Bonds shall have been made available to the Trustee for the benefit of the Holder or Holders thereof, all liability of the Issuer to the Holder thereof for the payment of such Bond shall forthwith cease, terminate and be completely discharged, and thereupon it shall be the duty of the Trustee to hold such fund or funds, without liability for interest thereon, for the benefit of the Holder of such Bond, who shall thereafter be restricted exclusively to such fund or funds, for any claim of whatever nature on its part under this Indenture or on, or with respect to, such Bond. Any such Bonds shall cease to bear interest on the specified maturity and such Bonds or portions thereof shall no longer be protected by or subject to the benefit or security of this Indenture and shall not be deemed to be outstanding under the provisions of this Indenture.

Section 4.05 *Payment to Borrower of Excess Moneys in Bond Fund.* Any amounts remaining in the Bond Fund (except for amounts then held by the Trustee for payment of principal, or interest on any of the Bonds) after payment in full of the principal of and interest, on the Bonds and other costs associated with the discharge of the Bonds (or provision for payment thereof having been made as provided in Section 8.01 hereof) and payment in full, or provision for payment, of the final Rebate Amount and payment in full of any outstanding fees and expenses of the Paying Agent, Issuer and Trustee and any other fees and expenses due under the Documents, shall, upon written instruction to the Trustee from the Issuer at the request of Borrower, be deemed to be overpayments by the Borrower under the Loan Agreement and shall be paid to the Borrower upon the expiration or sooner termination of the term of the Loan Agreement.

Section 4.06 *Expense Fund.* The Trustee shall apply moneys on deposit in the Expense Fund solely for the following purposes, on the dates specified below, in the following order of priority:

(a) to the Trustee to pay all amounts required to reimburse the Trustee for all out-of-pocket expenses, fees, costs and other charges, including reasonable counsel fees and taxes (excluding income, value added and single business taxes), reasonably and necessarily incurred by the Trustee in performing its duties as Trustee under this Indenture, to the extent not included in the Trustee's Ongoing Fee; and

(b) to the Issuer to pay all amounts required to reimburse the Issuer for all out-of-pocket expenses, fees, costs and other charges, including reasonable counsel fees and taxes (excluding income, value added and single business taxes), reasonably and necessarily incurred by the Issuer, to the extent not included in the Issuer's Fee

To the extent moneys in the Expense Fund are not sufficient to pay the fees and expenses of the Issuer and the Trustee, such deficiency shall be paid by the Borrower immediately upon written demand.

Section 4.07 *Rebate Fund; Rebate Amount.*

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

(b) The Trustee shall deposit or transfer to the credit of the account of the Rebate Fund each amount delivered to the Trustee by the Borrower for deposit thereto and each amount directed by the Borrower in writing to be transferred thereto. The Trustee shall credit all earnings and debit all losses from the investment of money held for the account of the Rebate Fund to such fund.

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

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

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

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

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

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

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

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

Section 4.08 *Costs of Issuance Fund.* On the Closing Date, the Trustee shall deposit the Costs of Issuance Deposit in the Costs of Issuance Fund to pay costs of issuance from amounts available therein upon the written direction of the Issuer, which costs of issuance shall not exceed the amounts set forth in a certificate of the Issuer. Any funds remaining in the Costs of Issuance Fund more than one hundred eighty (180) days after the Closing Date, and not specifically committed to the payment of Costs of Issuance, shall be transferred for deposit to the Equity Account of the Project Fund to the extent such funds are not Bond Proceeds or otherwise restricted funds. If such remaining funds are Bond Proceeds or otherwise restricted, such funds shall be deposited by the Trustee into the Bond Fund.

Section 4.09 *[Reserved.]*

Section 4.10 *[Reserved.]*

Section 4.11 *[Reserved]*

Section 4.12 *Construction Loan Repayment Fund*

The Trustee shall establish and maintain a separate fund to be known as the “Construction Loan Repayment Fund”. On or before the Funding Date, the Borrower shall cause the amount set forth in the Funding Notice to be deposited in the Construction Loan Repayment Fund. On or before the Funding Date the Permanent Lender shall cause the Permanent Loan Amount as set forth in the Funding Notice to be deposited in the Construction Loan Repayment Fund. On the Funding Date all funds in the Construction Loan Repayment Fund shall be applied by the Trustee towards the repayment of the Construction Loan at the direction of the Construction Lender.

Section 4.13 *Collateral Fund.*

The Trustee shall establish and maintain a separate fund to be known as the “Collateral Fund” as set forth below, provided however, that the Trustee will close the Collateral Fund following the Funding Date:

(a) The Trustee shall deposit in the Collateral Fund all Collateral Payments received pursuant to Section 4.6 of the Loan Agreement, all Exempt Disbursements and any other Eligible Funds received by the Trustee for deposit into the Collateral Fund. Except in the case of an Exempt Disbursement, Section 4.6 of the Loan Agreement, with respect to each Requisition made on the Project Fund, the Borrower shall cause the Construction Lender, the Limited Partner, and AHFC to make Collateral Payments in an aggregate amount equal to the amount to be funded under that Requisition to the Trustee for deposit into the Collateral Fund, which in any event shall be a prerequisite to the disbursement of, the amount of Bond proceeds on deposit in the Project Fund to be disbursed by the Trustee to pay Qualified Project Costs.

(b) Each deposit into the Collateral Fund shall constitute an irrevocable deposit solely for the benefit of the Holders, subject to the provisions hereof.

(c) The Trustee shall transfer money in the Collateral Fund as follows: (i) on the Funding Date, to the Bond Fund in an amount necessary to cause the partial redemption of the Bonds in the amount specified in the Funding Notice, such that the outstanding principal amount

of the Bonds equals the Permanent Loan Amount set forth in the Funding Notice, (ii) on a Mandatory Tender Date other than the Funding Date, to the Bond Fund, the amount necessary to pay the purchase price of the Bonds, to the extent amounts on deposit in the Remarketing Proceeds Account and the Negative Arbitrage Account of the Bond Fund are insufficient therefor; and (iii) on any Redemption Date, to the Bond Fund the amount, together with amounts on deposit in the Bond Fund, necessary to pay the principal and interest due on the Bonds on such date.

(d) Amounts on deposit in the Collateral Fund in excess of the amount required to pay interest and principal of the Bonds shall be transferred to the Construction Loan Account of the Project Fund held under this Indenture.

(e) The Bonds shall not be, and shall not be deemed to be, paid or prepaid by reason of any deposit into the Collateral Fund unless and until the amount on deposit in the Collateral Fund is transferred to the Bond Fund and applied to the payment of the principal of any of the Bonds or the principal component of the redemption price of any of the Bonds, all as provided in this Indenture.

ARTICLE V

CUSTODY AND APPLICATION OF PROJECT FUND

Section 5.01 *Custody and Application of Bond Proceeds.* The proceeds received upon the issuance and sale of the Bonds shall be deposited in the Bond Loan Account of the Project Fund and invested by the Trustee as set forth in Section 6.01 of this Indenture.

Section 5.02 *Custody and Application of Borrower Equity.* The Syndication Proceeds received pursuant to the Partnership Agreement shall be deposited in the Equity Account of the Project Fund. On the Closing Date, the Equity Account shall be funded in an amount of \$1,434,203 from sources other than Bond proceeds.

Section 5.03 *Custody and Application of Construction Loan Funds.* The proceeds of the Construction Loan in excess of the amount required to fund the Collateral Fund pursuant to 4.13(e) shall be deposited in the Construction Loan Account of the Project Fund and invested by the Trustee as set forth in Section 6.01 of this Indenture. For the avoidance of doubt, funds drawn from the Construction Loan Account shall solely be used to pay Qualified Project Costs pursuant to Section 5.04 of this Indenture

Section 5.04 *Procedure for Making Disbursements from Project Fund.* Upon the deposit of Collateral Payments in the Collateral Fund, if required and as provided in Section 4.13 hereof, the Trustee shall disburse the Bond proceeds on deposit in the Project Fund on a Construction Draw Date solely to pay Qualified Project Costs and only upon the receipt by the Trustee of (1) a request or requests therefor, upon requisition forms approved by the Issuer in substantially the form attached hereto as **Exhibit E**. Each requisition shall evidence disbursements from (i) the Project Fund or (ii) the Costs of Issuance Fund. Except in the case of an Exempt Disbursement, the Trustee shall not disburse money from the Project Fund, other than to pay interest and principal on the Bonds, unless and until Collateral Payments or other Eligible Funds in an amount equal to or greater than the requested disbursement amount have been deposited in the Collateral Fund. To the extent money on deposit in the Project Fund is

invested in Eligible Investments yet to mature at the time of any such requested and permitted disbursement hereunder, the Trustee is hereby authorized to exchange an amount of such Eligible Investments in the Project Fund for a like amount of Collateral Payments on deposit in the Collateral Fund and then disburse such amounts from the Project Fund to pay Qualified Project Costs without the need to sell or terminate such Eligible Investments prior to their stated maturity date. Prior to making any disbursement from the Project Fund (except to make necessary interest payments), the Trustee shall determine that the aggregate account balance in (a) the Collateral Fund and (b) the Project Fund (less the requested disbursement amount) is at least equal to the then-Outstanding principal amount of the Bonds.

To the extent money is not otherwise available to the Trustee, including money on deposit in the Bond Fund or the Collateral Fund, the Trustee shall transfer from the Project Fund to the Bond Fund sufficient money to make the necessary interest and principal payments, if any, on each Interest Payment Date without further written direction.

All disbursements from the Project Fund will be made by the Trustee directly to the Borrower by deposit into a designated account of Borrower located at the Construction Lender, as provided for in the Construction Loan Agreement, as and when provided for in the Funding Agreement, and shall not be made more frequently than once per month, unless approved by the Construction Lender, in its sole discretion.

The Trustee and the Issuer shall not in any event be responsible or liable to any person (other than the Borrower, but only in the case of the Trustee and only in the event of a failure by the Trustee to make disbursements following request for disbursements in accordance with the Documents, when such failure is within the Trustee's control, and after notice of such failure and a 3-day opportunity to cure such failure) for the disbursement of, or failure to disburse, moneys from the Project Fund, or any part thereof, and no contractor, subcontractor or material or equipment supplier shall have any right or claim against the Trustee or the Issuer under this Indenture.

If for any reason the Trustee is not able to disburse a corresponding amount of Bond proceeds immediately following receipt of funds from the entity making such collateral deposit into the Collateral Fund, the Trustee shall promptly transfer such funds back to the Lender and not deposit the same into the Collateral Fund.

Section 5.05 *Trustee May Rely on Requisitions and Certifications.* In making any such disbursement from the Project Fund, the Trustee may rely, without investigation or inquiry, on any requisition request or confirmations delivered to it pursuant to Section 5.04, and the Trustee shall be relieved of all liability with respect to making such payments in accordance with such requests and confirmations.

Section 5.06 *Completion of Project.* The completion of the Project and the payment of all costs and expenses incident thereto shall be evidenced for the Project by the filing with the Trustee of (a) the certificate of the Borrower Representative required by the provisions of Section 3.05 of the Loan Agreement and (b) a certificate signed by the Borrower Representative stating that all obligations and costs in connection with the Project and payable out of the Project Fund have been paid and discharged except for amounts retained by the Trustee for the payment

of costs of the Project not then due and payable or then in dispute as provided in the Loan Agreement; provided, however, that no amounts necessary to pay principal and interest on the Bonds at maturity, shall be held by the Trustee in the Project Fund beyond such Maturity Date. Additionally, the Borrower has agreed pursuant to Section 3.6 of the Loan Agreement that in the event that there are insufficient moneys available in the Project Fund to pay the Qualified Project Costs, the Borrower will complete the Project and pay the portion of the Qualified Project Costs in excess of the moneys available therefore in the Project Fund.

Section 5.07 *Disposition of Moneys in Bond Loan Account After Completion of Project.* Subject to the proviso in Section 5.06 hereof, as soon as practicable after the date of the certificate referred to in clause (b) of Section 5.06 hereof, any balance remaining in the Bond Loan Account of the Project Fund (other than the amounts retained by the Trustee referred to in Section 5.06 hereof) shall be deposited into the Bond Fund and used to pay principal of the Bonds when due. To the extent any moneys from any payments made by the Borrower pursuant to the Loan Agreement remain in the Project Fund or Bond Fund after there are no Bonds Outstanding and payment in full, or provision for payment, of the final Rebate Amount and any remaining Trustee Fees, such moneys may be paid directly to the Borrower to the extent such funds are not proceeds of the Bonds or otherwise restricted funds. If such remaining funds are proceeds of the Bonds or otherwise restricted, such funds shall be deposited by the Trustee into the Bond Fund (or remain in Bond Fund if already deposited therein).

Notwithstanding the provisions of this Section or any other provision herein set forth, none of the moneys in the Project Fund will be disbursed for or be used to pay any cost, or to reimburse the Issuer or the Borrower for any cost, which is not permitted by the Act, the Code, the Loan Agreement or this Indenture.

Further, notwithstanding the foregoing or anything else herein to the contrary, prior to the Funding Date, the sole recourse and remedy available to the Holders and the Issuer during the continuance of an Event of Default shall be to the amounts then on deposit in the Collateral Fund.

Section 5.08 *Disposition of Moneys in Equity Account After Funding.*

On the Funding Date, amounts remaining on deposit in the Equity Account shall be transferred by the Trustee to or at the direction of the Issuer (not to be unreasonably, withheld conditioned or delayed) to the Borrower for application to any unpaid developer fees due and owing with respect to the Project.

Notwithstanding the provisions of this Section or any other provision herein set forth, none of the moneys in the Project Fund will be disbursed for or be used to pay any cost, or to reimburse the Issuer or the Borrower for any cost, which is not permitted by the Act, the Code, the Loan Agreement or this Indenture.

ARTICLE VI

INVESTMENT OF FUNDS AND ACCOUNTS

Section 6.01 *Investment of Bond Fund, Project Fund, and Collateral Fund.* Money in all funds or accounts including the Bond Fund, Project Fund, and Collateral Fund shall be

invested and reinvested by the Trustee, and at all times held in Eligible Investments at the written direction of the Borrower as approved by the Issuer. In the absence of written direction of the Borrower, any moneys held under this Indenture shall be invested in the Wilmington Treasury Administrative Class CUSIP 97181C480. The Trustee shall have no discretion for investing funds or advising any parties on investing funds. Neither the Issuer nor the Trustee shall incur any liability in connection with any action as contemplated by this Section 6.01 so long as each acts in good faith, or, with respect to the Trustee, upon written instructions from an Authorized Borrower Representative or in accordance with this Indenture. The parties acknowledge that the Trustee is not providing investment supervision, recommendations or advice.

At no time shall the Borrower direct that (a) any funds constituting gross proceeds of the Bonds be used in any manner as would constitute failure of compliance with Section 148 of the Code or (b) any funds be held other than in Eligible Investments.

Investments of money in the Bond Fund, Project Fund, and the Collateral Fund shall mature or be redeemable at the times and in the amounts necessary to provide money to pay any amounts due on the Bonds as they become due on each Interest Payment Date or at stated maturity or on a Mandatory Tender Date. In addition, investment of money in the Project Fund shall mature or be redeemable at the times and in the amounts as may be necessary to make anticipated payments from the Project Fund. Any investment in the Bond Fund, the Project Fund or the Collateral Fund that are not classified as Eligible Investments shall be invested in Governmental Obligations.

The Trustee shall sell or redeem investments credited to the Bond Fund to produce sufficient money applicable hereunder to and at times required for the purposes of paying any amounts due on the Bonds, and shall do so without necessity for any order on behalf of the Issuer or the Borrower and without restriction by reason of any order. An investment made from money credited to an applicable fund or account shall constitute part of that respective fund or account. All investment earnings from amounts on deposit in the Project Fund and the Collateral Fund shall be credited to and become part of the Bond Fund. All gains resulting from the sale of, or income from, any investment made from amounts on deposit in the Project Fund and the Collateral Fund shall be credited to and become part of the Bond Fund. Notwithstanding anything herein to the contrary, earnings received by the Trustee with respect to Governmental Obligations purchased for the purpose of paying Bond Service Charges shall be held uninvested.

Any investments may be purchased from or sold to the Trustee, or any bank, trust company or savings and loan association which is an affiliate or subsidiary of the Trustee; *provided* that all such investments must be Eligible Investments.

The Trustee shall not be liable for losses on investments made in compliance with the provisions of this Indenture.

If the Trustee is required to sell or otherwise dispose of any Eligible Investments prior to maturity at a price below par in connection with a mandatory tender prior to the Initial Mandatory Tender Date, the Borrower shall, at the Borrower's expense, deliver to the Trustee (i) a Cash Flow Projection and (ii) Eligible Funds in the amount set forth in such Cash Flow Projection, if any.

Although each of the Issuer and the Borrower recognizes that it may obtain a broker confirmation or written statement containing comparable information at no additional cost, each of the Issuer and the Borrower hereby agrees that confirmations of Eligible Investments are not required to be issued by the Trustee for each month in which a monthly statement is rendered. No statement need be rendered for any fund or account if no activity occurred in such fund or account during such month. The Trustee may conclusively rely upon the Borrower's and Issuer's written instructions as to both the suitability and legality of the directed investments.

Section 6.02 *Investment of Rebate Fund.* Any moneys held as part of the Rebate Fund, and not immediately required for the purposes of the Rebate Fund, shall be invested or reinvested by the Trustee, at the written direction of the Borrower Representative and with the prior written approval of the Issuer, in Governmental Obligations or in any money market or short term investment fund investing in or consisting solely of and secured by Governmental Obligations, including any such fund maintained by the Trustee or an affiliate thereof having maturities consonant with the need for funds as estimated by the Borrower. In the absence of written direction to the Trustee as provided herein, the Trustee shall hold any moneys in the Rebate Fund uninvested.

Section 6.03 *Accounting for Termination of Investments; No Arbitrage.* In the event the moneys in the Project Fund or the Bond Fund are invested in any investment agreement at any time or for any reason fails to satisfy the requirements of Section 6.01, the Trustee shall, at the written direction of the Borrower and the Issuer, terminate any such investment agreement, and the proceeds received from such termination, shall be credited to the Project Fund or the Bond Fund, respectively.

Subject to Section 6.01 hereof, all investment earnings on moneys or any investment held in any fund or account created hereunder shall be credited to the respective fund or account hereunder and used for the purposes thereof.

If the Issuer is of the opinion, upon receipt of advice of Bond Counsel, that it is necessary to restrict or limit the yield on the investment of any moneys, securities or other obligations paid to or held by the Trustee hereunder in order to comply with the provisions of the Documents intended to prevent any Bonds from being considered "arbitrage bonds" within the meaning of Section 148 of the Code, an authorized officer of the Issuer may give written notice to the Trustee and the Borrower to such effect (together with appropriate written instructions), in which event the Trustee will take such action as it is instructed in such written notice to restrict or limit the yield on such investment so as to comply with Section 148 of the Code.

Section 6.04 *Trustee's Own Bond or Investment Department.* The Trustee may make any and all investments permitted under Section 6.01 or 6.02 through its own bond or investment department or that of any affiliate.

Section 6.05 *Moneys to be Held in Trust.* Subject to Section 4.07, all moneys required to be deposited with or paid to the Trustee for account of the Bond Fund or the Project Fund under any provision of this Indenture shall be held by the Trustee in trust, and shall, while held by the Trustee, constitute part of the Trust Estate and be subject to the lien and claim created by this Indenture.

The Trustee, acting in its capacity as Trustee and not as sponsor, advisor or manager in connection with any investments hereunder, shall not be liable for any loss arising from investments made in accordance with this Section, or for any loss resulting from the redemption or sale of any such investments as authorized by this Section.

ARTICLE VII

GENERAL COVENANTS

Section 7.01 *Payment of Bonds.* Each and every covenant made in this Indenture, including all covenants made in the several sections of this Article, is predicated upon the condition that any obligation for the payment of money incurred by the Issuer shall be payable solely (a) from Revenues, which are specifically assigned to secure the payment of the Bonds in the manner and to the extent specified in this Indenture, (b) from the moneys held in the funds and accounts created under this Indenture, except for amounts held in the Costs of Issuance Fund and the Rebate Fund, and (c) from any other moneys held pursuant to the Trust Estate. Nothing in the Bonds or in this Indenture shall be construed as pledging any other funds or assets of the Issuer.

The Issuer covenants that it will promptly pay, as provided herein, the principal of and interest on the Bonds from the Trust Estate at the place, on the date and in the manner provided herein and in the Bonds.

The Revenues are to be remitted by the Borrower directly to the Trustee for the account of the Issuer and constitute a part of the Trust Estate and are subject to the lien and claim created by this Indenture. Such amounts, in addition to the amounts held in the Project Fund, are to be sufficient in amount at all times to pay the principal of and interest on the Bonds. The entire amount of Revenues (exclusive of the Reserved Rights of the Issuer) are assigned to secure the payment of the principal of and interest on the Bonds.

Section 7.02 *Performance of Covenants.* The Issuer covenants that it will faithfully perform at all times any and all covenants, undertakings, stipulations and provisions contained in this Indenture, in any and every Bond executed, authenticated and delivered hereunder and in all proceedings pertaining thereto, subject, however to the limitations set forth in Section 2.09. The Issuer covenants that it is duly authorized under the laws of the State of Texas to issue the Bonds, to enter into this Indenture and the Loan Agreement and to assign the Revenues, and that, upon issuance, authentication, and delivery, the Bonds are and will be valid and enforceable limited obligations of the Issuer according to the import thereof.

Section 7.03 *Maintenance of Existence; Compliance with Laws.* The Issuer will use all reasonable efforts to (i) maintain its corporate existence or to assure the assumption of its obligations under this Indenture by any public body succeeding to its powers under the Act, and (ii) comply with all valid material acts, rules, regulations, orders and directions of any legislative, executive, administrative or judicial body applicable to this Indenture and the Loan Agreement.

Section 7.04 *Enforcement of Borrower's Obligations.* So long as any of the Bonds are Outstanding, the Issuer will cooperate with the Trustee in enforcing the obligations of the

Borrower to pay, or cause to be paid, all the payments and other costs and charges payable pursuant to the Loan Agreement. Nothing contained in this Section or in any other section of this Indenture shall be deemed to modify the provisions of the Act and Section 2.09 hereof or require that the Issuer expend any of its own funds or assets to enforce the obligations of the Borrower under the Documents.

Section 7.05 *Further Assurances, Instruments and Actions.* The Issuer will from time to time execute and deliver such further instruments, conveyances, assignments and transfers and take such further actions as may be reasonable and as may be required to better assure, convey, grant, assign or confirm the Trust Estate and all other rights, revenues or funds pledged, assigned or intended to be so pledged or assigned hereunder for the benefit of the owners of the Bonds; provided, however, that no such instruments or actions shall pledge the credit or taxing power of the State of Texas, the Issuer or any other political subdivision of the State of Texas, or create or give rise to any monetary obligation or liability of the Issuer.

Section 7.06 *Priority of Pledge.* The Issuer covenants and agrees that it will not create any lien or claim upon the Revenues other than the liens and claims hereby created. Except for the assignment to the Trustee, the Issuer will not sell, lease or otherwise dispose of or encumber any of the Revenues, and will cooperate in causing to be discharged or satisfied any lien or charge on any part of the Trust Estate.

Section 7.07 *Books and Documents Open to Inspection.* The Issuer covenants and agrees that all books and documents in its possession relating to the Bonds, the Project, and the moneys, revenues and receipts derived from the Project, if any, that shall at any time be in its possession, shall, within a reasonable time of a request by the Trustee, the Rating Agency, or the Borrower, be open to inspection during the Issuer's regular business hours by such accountants or other agents as the Trustee or the Borrower may from time to time designate.

Section 7.08 *Borrower to Indemnify and Hold Issuer and Trustee Harmless from Liability.* The Borrower has agreed to indemnify and hold the Issuer and the Trustee harmless from and against liability arising out of claims as defined and as provided in Sections 6.2 and 7.4 of the Loan Agreement.

Section 7.09 *Tax-Exempt Status of Bonds.* The Issuer and the Trustee each agrees that it will not (a) take any action, (b) fail to take any action, or (c) make any use of the Project or the proceeds of the Bonds, which it knows would cause the interest on any of the Bonds to be or become includible in the gross income of the owners thereof for federal income tax purposes (except for minimum or preference tax purposes or other indirect taxation). In connection with the foregoing, the Issuer and the Trustee may rely upon the advice of Bond Counsel. The Issuer and Trustee shall not have liability or responsibility to the extent they follow the terms of this Indenture or the advice of Counsel, including Bond Counsel.

ARTICLE VIII

DISCHARGE

Section 8.01 *Discharge of Lien.* If and when the Bonds secured hereby shall become due and payable in accordance with their terms as provided in this Indenture, or otherwise, and

the whole amount of the principal and the interest so due and payable upon all of the Bonds, together with all other amounts payable hereunder by the Issuer and all fees and expenses of the Trustee and the Issuer, shall be paid, or provision shall have been made for the payment of the same, then the right, title and interest of the Trustee in and to the Trust Estate and all covenants, agreements and other obligations of the Issuer to the Bondholders shall thereupon cease, terminate and become void and be discharged and satisfied. In such event, upon request of the Issuer and subject to the provisions of Section 5.05 hereof, the Trustee shall turn over to the Borrower, so long as there shall have occurred no Event of Default which is uncured and continuing, any surplus in the Bond Fund and all balances remaining in any other fund created under this Indenture and shall assign and transfer to the Borrower all other property then held by the Trustee under this Indenture and shall execute such documents as may be reasonably required by the Issuer.

If and when the Trustee shall hold sufficient moneys hereunder, as verified to the Trustee in writing by an Independent public accounting firm of national reputation or other firm similarly experienced in performing such computations, to provide for payment of the whole amount of the principal and interest due and payable and thereafter to become due and payable upon all the Bonds, together with all other amounts (exclusive of amounts in the Rebate Fund) payable or which may thereafter become payable hereunder by the Issuer, notwithstanding that all the Bonds have not yet become due and payable and that consequently the right, title and interest of the Trustee in and to the Trust Estate shall not have ceased, terminated and become void pursuant to the foregoing provisions of this Section 8.01, the Trustee, on demand of the Issuer but subject to the provisions of Section 5.05 hereof, shall turn over to the Borrower, so long as there shall have occurred no Event of Default which is uncured and continuing, or to such person, body or authority as may be entitled to receive the same, any surplus in the Bond Fund in excess of the amount sufficient to pay the whole amount of the principal and interest due and payable and thereafter to become due and payable upon all Bonds together with all other amounts payable or which may thereafter become payable hereunder by the Issuer.

All Outstanding Bonds shall, prior to the maturity thereof, be deemed to have been paid within the meaning and with the effect expressed above if (a) there shall have been deposited with the Trustee (as verified to the Trustee in writing by an Independent public accounting firm of national reputation or other firm similarly experienced in performing such computations either (i) moneys in an amount which shall be sufficient, or (ii) Governmental Obligations which are not subject to redemption prior to maturity, the principal of and the interest on which when due will provide moneys which, together with the moneys, if any, deposited with the Trustee at the same time, shall be sufficient, to pay when due the principal and interest due and to become due on such Bonds on the maturity date thereof, and (b) the Issuer shall have given the Trustee, in form satisfactory to it irrevocable instructions to give, as soon as practicable, a notice to the Holders of such Bonds and the Rating Agency that the deposit required by (a) above has been made with the Trustee and that such Bonds are deemed to have been paid in accordance with this Section and stating such date upon which moneys are to be available for the payment of the principal and interest on such Bonds.

Neither the securities nor moneys deposited with the Trustee pursuant to this Section nor principal or interest payments on any such securities shall be withdrawn or used for any purpose other than, and shall be held in trust for, the payment of the principal and interest, on such Bonds;

provided that any cash received from such principal or interest payments on such securities deposited with the Trustee, if not then needed for such purpose, shall, to the extent practicable, be reinvested in Governmental Obligations (including any short term investment fund rated “Aaa” or “P-1” by the Rating Agency and secured by and investing solely in Governmental Obligations) maturing at times and in amounts sufficient to pay when due the principal and interest to become due on such Bonds on and prior to such maturity dates thereof, as the case may be, and interest earned from such reinvestment shall be paid over to the Borrower, as received by the Trustee, free and clear of any trust, lien or pledge.

The release of the obligations of the Issuer under this Section 8.01 shall be without prejudice to the right of the Trustee provided in Section 10.04 to be paid reasonable compensation for all services rendered by it hereunder and all its reasonable expenses, charges and other disbursements and those of its attorneys, agents and employees, incurred on and about the Issuer of the trust hereby created and the performance of its powers and duties hereunder, and shall not affect the obligations of the Borrower to make the payments required by the Loan Agreement or the Note.

ARTICLE IX

DEFAULTS AND REMEDIES

Section 9.01 *Events of Default and Acceleration.* If any of the following events occur, it is hereby defined as and declared to be and constitute an “Event of Default”:

(a) During the Cash Collateralized Mode, the failure to pay any installment of interest on any Bond payable hereunder within five (5) calendar days after the Borrower’s receipt of notice of the amount due and payable; or

(b) During the Permanent Mode, the failure to pay any installment of principal and interest as provided in the Permanent Loan Agreement; or

(c) the principal of any Bond is not paid or the redemption price of any Bond on the date on which the same becomes due, whether at the stated maturity thereof, by call for redemption, acceleration or otherwise; or

(d) an Event of Default occurs under the Loan Agreement; or

(e) the Issuer fails to duly and promptly perform, comply with, or observe any covenant, condition, agreement or provision (other than as specified in (i), (ii) or (iii) of this Section 9.01) contained in the Bonds or in this Indenture on the part of the Issuer to be performed, and such failure shall continue for a period of 90 days after written notice specifying such failure and requiring the same to be remedied shall have been given to the Issuer and the Borrower by the Trustee, which notice may be given by the Trustee in its discretion and shall be given at the written request of the Holders of not less than 100% in principal amount of the Bonds then Outstanding; provided, however, that if such default be such that it is correctable but cannot be corrected within 90 days, it shall not be an Event of Default if the Issuer or the Borrower is taking appropriate corrective action to cure such failure and if such failure will not impair the security for the Loan or the Bonds.

If any Loan payment required under the Loan Agreement to avoid a default under (i) or (ii) of this Section shall not have been received at the close of business on the last business day preceding the day on which payment must be made to avoid a default under such (i) or (ii), the Trustee shall use commercially reasonable efforts to give telephonic notice of such default to the Borrower, which telephonic notice shall be confirmed by telegraphic or written notice to the Borrower. If any other default shall occur under the provisions of this Section, the Trustee shall, within five days after having actual knowledge of such default, use its best efforts to give written notice of such default to the Issuer, the Borrower and the Holders of the Bonds. A default or an Event of Default specified in (i) through (v) above shall occur even though the Trustee fails to give the notice required by this paragraph, the giving of such notice being intended solely to aid in the enforcement of the rights of Bondholders and not in limitation of such rights.

Upon the occurrence of any Event of Default hereunder, the Trustee shall, upon the written consent of the Holders of the majority in aggregate principal amount of the Bonds then Outstanding, declare by a notice in writing delivered to the Borrower and the Issuer, the principal of all Bonds (if not then due and payable), and the interest thereon, to be due and payable immediately. Upon such declaration, the principal and interest on the Bonds shall become and be due and payable immediately. Interest on the Bonds shall accrue to the date determined by the Trustee for the tender of payment to the Holders pursuant to that declaration; provided, that interest on any unpaid principal of Bonds shall continue to accrue from the date determined by the Trustee for the tender of payment to the Holders of those Bonds.]

Section 9.02 *Trustee to Enforce Rights of Issuer.* Only in accordance with the provisions of this Indenture, the Trustee, as the assignee of all the right, title and interest of the Issuer in and to each of the documents constituting a part of the Trust Estate (except the Reserved Rights of the Issuer), may enforce the rights granted to the Issuer pursuant to such documents. In the enforcement of any rights or remedies under such documents, no provision of such documents shall require, and none shall be construed to require, that the Trustee post a bond or establish any surety of any kind as a condition precedent to exercising any such rights or remedies.

Section 9.03 *Remedies in Addition to Acceleration.* Upon the happening of any Event of Default, then and in every such case the Trustee in its discretion may, and upon the written request of the Majority Owner and receipt of satisfactory indemnity shall (in addition to its right or duty to accelerate as provided in Section 9.01):

(a) by mandamus, or other suit, action or proceeding at law or in equity, enforce all rights of the Bondholders, and require the Issuer or the Borrower to carry out any agreements with or for the benefit of the Bondholders and to perform its or their duties under the Act and the Documents;

(b) bring suit upon the Bonds; or

(c) by action or suit in equity enjoin any acts or things which may be unlawful or in violation of the rights of the Bondholders.

Section 9.04 *Termination of Proceedings.* In case any proceeding taken by the Trustee on account of any default or Event of Default shall have been discontinued or abandoned for any reason, or shall have been determined adversely to the Trustee, then and in every such case, the Issuer, the Trustee, the Bondholders, and the Borrower shall be restored to their former positions and rights hereunder, respectively, and all rights, remedies and powers of the Trustee shall continue as though no such proceeding had been taken.

Section 9.05 *Right of Bondholders to Direct Proceedings.* Prior to Funding, no Holder of any of the Bonds shall have any right to institute any suit, action or proceeding in equity or at law for the execution of any trust hereunder, or any other remedy hereunder or on the Bonds, unless such Holder previously shall have given to the Trustee written notice of an Event of Default as hereinabove provided and unless also the Holders of not less than 51% in principal amount of the Bonds then outstanding shall have made written request of the Trustee to do so, after the right to exercise such powers or rights of action, as the case may be, shall have accrued, and shall have afforded the Trustee a reasonable opportunity either to proceed to exercise the powers hereinabove granted, or to institute such action, suit or proceeding in its or their name; nor unless there also shall have been offered to the Trustee security and satisfactory indemnity against the costs, expenses and liabilities to be incurred therein or thereby, and the Trustee shall not have complied with such request within a reasonable time; and such notification, request and offer of indemnity are hereby declared in every such case, at the option of the Trustee, to be conditions precedent to the execution of the trusts of this Indenture or for any other remedy hereunder; it being understood and intended that no one or more Holders of the Bonds hereby secured shall have any right in any manner whatever by its or their action to affect, disturb or prejudice the security of this Indenture, or to enforce any right hereunder or under the Bonds, except in the manner herein provided and for the equal benefit of all Holders of Outstanding Bonds. For purposes of the foregoing sentence, the Trustee shall be deemed to have failed to act within a reasonable time if it fails to take action within 60 days after receipt of notice and compliance with the foregoing terms and conditions, whereupon, the Holders of 51% aggregate principal amount of the Bonds may take such action in the place of the Trustee. Nothing this Indenture contained shall, however, affect or impair the right of any Holder of Bonds to enforce the payment of the principal of and interest on any Bond at and after the maturity thereof, or the obligation of the Issuer to pay the principal of and interest, on each of the Bonds issued hereunder to the respective Holders of the Bonds at the time, place, from the source and in the manner herein and in such Bonds expressed.

Section 9.06 *Right of Servicer to Direct Proceedings.* On or following the Funding Date, if an Event of Default under this Indenture shall have occurred and be continuing, notwithstanding anything in this Indenture to the contrary, the Servicer, after notice to the Issuer, shall have the right, at any time, by an instrument in writing executed and delivered to the Trustee, to direct the method and place of conducting any proceedings to be taken in connection with the enforcement of the terms and conditions of this Indenture or any other proceedings under this Indenture, provided that such direction is in accordance with law and the provisions of this Indenture; provided further that nothing in this Section 9.05 shall impair the right of the Trustee in its discretion to take any other action under this Indenture which it may deem proper and in the best interests of the Holders and which is not inconsistent with such direction by the Servicer. Notwithstanding the foregoing, the Servicer shall not bring any proceeding to enforce this Indenture or its remedies under this Indenture, to which it names the

Issuer as a party, in any jurisdiction outside the State of Texas without the Issuer's prior written consent.

Section 9.07 Remedies Vested in Trustee. All rights of action under this Indenture or under any of the Bonds secured hereby which are enforceable by the Trustee may be enforced by it without the possession of any of the Bonds, or the production thereof at the trial or other proceedings relative thereto, and any such suit, action or proceeding instituted by the Trustee shall be brought in its name for the equal and ratable benefit of the Holders of the Bonds, subject to the provisions of this Indenture.

Section 9.08 Remedies Non-Exclusive and Cumulative. No remedy herein conferred upon or reserved to the Trustee or to the Holders of the Bonds is intended to be exclusive of any other remedy or remedies, and each and every such remedy shall be cumulative, and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute.

Section 9.09 Delays or Omissions by Trustee. No delay or omission of the Trustee or of any Holder of the Bonds to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver of any such default, or any acquiescence therein; and every power and remedy given by this Article IX to the Trustee and to the Holders of the Bonds, respectively, may be exercised from time to time and as often as may be deemed expedient.

Section 9.10 Application of Moneys. All moneys received by the Trustee pursuant to any right given or action taken under the provisions of this Article IX shall, after payment of the costs and expenses of the proceedings resulting in the collection of such moneys and of the fees, expenses and advances incurred or made by the Trustee and the Issuer with respect thereto, be deposited in the Bond Fund and all moneys so deposited in the Bond Fund during the continuance of an Event of Default (other than moneys for the payment of Bonds which have matured or otherwise become payable prior to such Event of Default or for the payment of interest due prior to such Event of Default, which moneys shall continue to be held for such payments) shall be applied as follows:

(a) Unless the principal of all the Bonds shall have become or shall have been declared due and payable, all such moneys shall be applied:

First - To the payment to the persons entitled thereto of all installments of interest then due on the Bonds, in the direct order of the maturity of the installments of such interest and, if the amounts available shall not be sufficient to pay in full any particular installment, then to the payment ratably, according to the amounts due on such installment, to the persons entitled thereto, without any discrimination or privilege;

Second - To the payment to the persons entitled thereto of the unpaid principal, on any of the Bonds, which shall have become due (other than Bonds which have matured or otherwise become payable prior to such Event of Default and moneys for the payment of which are held in the Bond

Fund or otherwise held by the Trustee), with interest on such principal from the respective dates upon which the same became due and, if the amount available shall not be sufficient to pay in full the amount of principal, and the interest due on any particular date, then to the payment ratably, according to the amount of principal due on such date, to the persons entitled thereto, without any discrimination or privilege;

Third - To the payment to the persons entitled thereto of all other of the Issuer's Obligations and the Borrower's Obligations, and, if the amount available shall not be sufficient to pay such Obligations in full, then to the payment ratably, according to the amounts then due, to the persons entitled thereto without discrimination or privilege; and

Fourth - The remainder, if any, shall be paid over to the Borrower, its successors or assigns, or whomever may be lawfully entitled to receive the same, or as a court of competent jurisdiction may direct.

(b) If the principal of all the Bonds shall have become or shall have been declared due and payable, all such moneys shall be applied to the payment of the principal of and interest and premium then due and unpaid upon the Bonds, without preference or priority of principal over interest or of interest over principal, or of any installment of interest over any other installment of interest, or of any Bond over any other Bond, ratably, according to the amounts due respectively for principal and interest to the persons entitled thereto without any discrimination or privilege. Any remaining funds shall be applied in accordance with the paragraphs designated "*Third*" and "*Fourth*" of subsection (i) above.

Whenever moneys are to be applied pursuant to the provisions of this Section, such moneys shall be applied at such times, and from time to time, as the Trustee shall determine, having due regard to the amount of such moneys available for application and the likelihood of additional moneys becoming available for such application in the future. Whenever the Trustee shall apply such funds, it shall fix the date (which shall be an interest payment date unless it shall deem another date more suitable) upon which such application is to be made, and upon such date interest on the amounts or principal to be paid on such dates shall cease to accrue. The Trustee shall give such notice as it may deem appropriate of the deposit with it of any such moneys and of the fixing of any such date, and shall not be required to make payment to the Holder of any Bond until such Bond shall be presented to the Trustee for appropriate endorsement or for cancellation if fully paid.

Section 9.11 Severability of Remedies. It is the purpose and intention of this Article to provide rights and remedies to the Trustee and Bondholders which may be lawfully granted under the provisions of the Act, but should any right or remedy herein granted be held to be unlawful, the Trustee and the Bondholders shall be entitled, as above set forth, to every other right and remedy provided in this Indenture and by law.

ARTICLE X

THE TRUSTEE AND REMARKETING AGENT

Section 10.01 *Acceptance of Trusts.* The Trustee hereby accepts the duties and obligations as Trustee as expressly provided under this Indenture, and no implied covenants or obligations shall be read into this Indenture against the Trustee. These duties shall be deemed purely ministerial in nature, and the Trustee shall not be liable except in connection with its performance of such duties. The Trustee shall not be liable for any acts or omissions, except for such losses, damages or expenses which have been finally adjudicated by a court of competent jurisdiction to have directly resulted from the Trustee's negligence or willful misconduct.

Section 10.02 *Trustee Not Responsible for Recitals, Statements and Representations.* Except as otherwise expressly provided herein, any representations or warranties by the Issuer in this Indenture or in the Bonds contained shall be taken and construed as made by and on the part of the Issuer, and not by the Trustee, and the Trustee does not assume, and shall not have, any responsibility or obligation for the correctness of any thereof.

Except for information, if any, provided by the Trustee concerning the Trustee, the Trustee shall have no responsibility for any information in any Official Statement or other disclosure material distributed with respect to the Bonds, and the Trustee shall have no responsibility for compliance with any state or federal securities laws in connection with the Bonds.

Section 10.03 *Action by Trustee Through and Reliance Upon Others.* The Trustee may execute any of the trusts or powers hereof and perform the duties required of it hereunder by or through attorneys, agents, receivers or employees and shall not be liable or responsible for the acts or omissions of any such attorney, agent, receiver or employee appointed with due care. The Trustee shall be entitled to rely on advice of counsel concerning all matters of trust and its duties hereunder, and the written advice or opinion of such counsel shall be full and complete authorization and protection for any action taken or omitted by it in good faith and in accordance with such advice or opinion. The Trustee may in all cases pay such reasonable compensation to all such attorneys, agents, receivers and employees as may be reasonably employed in connection with the trusts hereof, such compensation to be paid as described under Section 10.04 hereof. The Trustee shall not be liable for any acts or omissions, the exercise of any discretion or power under this Indenture or for anything whatever in connection with the trust, except only for losses, damages or expenses which have been finally adjudicated by a court of competent jurisdiction to have directly resulted from the negligence or willful misconduct with respect to its responsibilities hereunder.

Except for fraud and willful misconduct, no personal recourse may be taken, directly or indirectly, against any officer, director, employee or agent of the Trustee with respect to the obligations of the Trustee under this Indenture or any certificate or other writing delivered in connection therewith. The Trustee's immunities and protections from liability and its right to indemnification in connection with the performance of its duties and functions under this Indenture shall extend to the Trustee's officers, directors, agents and employees.

The Trustee's immunities and protections from liability and its right to payment of compensation and indemnification in connection with performance of its duties and functions under this Indenture shall survive the Trustee's resignation or removal, discharge of this Indenture, and the final payment of the Bonds.

Section 10.04 *Fees and Expenses of Trustee.* The Trustee shall be entitled to payment and/or reimbursement of such fees as the Trustee, the Issuer and the Borrower shall agree upon, or in the absence of such agreement, to payment and/or reimbursement of reasonable fees, for its services rendered hereunder, and all advances, counsel fees and other expenses reasonably and necessarily made or incurred by the Trustee in connection with such services, in an amount that is no less than the Trustee's Fees. Any amounts payable to the Trustee pursuant to this Section 10.04 shall be payable upon demand and shall bear interest from the date of demand therefor at the Interest Rate for Advances.

Section 10.05 *Trustee's Obligations to Take or Have Notice of Default.* The Trustee shall not be required to take notice, or to be deemed to have notice, of any events, information or Event of Default under this Indenture other than a default under Section 9.01(a) or Section 9.01(b) hereof, unless specifically notified in writing of such default by the Issuer or by the Holders of not less than 25% in principal amount of the Bonds then Outstanding. The Trustee may, however, at any time, in its discretion, require of the Issuer information and advice as to the performance of any of the covenants, conditions and agreements contained herein.

Section 10.06 *Duties of Trustee.* (a) If an Event of Default has occurred and is continuing, the Trustee shall exercise its rights and powers and use the same degree of care and skill in their exercise as a prudent person would exercise or use under the circumstances in the conduct of such person's own affairs. Such standard is not considered a fiduciary standard, nor shall the Trustee be considered a fiduciary in the performance of its duties hereunder.

(b) Except during the continuance of an Event of Default,

(1) The Trustee need perform only those duties that are specifically set forth in this Indenture, these duties shall be deemed purely ministerial in nature, and the Trustee shall not be liable except for the performance of such duties and no others and no implied covenants or obligations will be read into this Indenture against the Trustee, and

(2) The Trustee may request, at the expense of Borrower, and conclusively rely, as to the truth of the statements and the correctness of the opinions expressed, upon certificates or opinions furnished to the Trustee and conforming to the requirements of this Indenture. However, the Trustee shall examine those certificates and opinions to determine whether they conform on their face to the requirements of this Indenture.

(c) The Trustee may not be relieved from liability for its own negligent action, its own negligent failure to act or its own willful misconduct, except that

(i) This paragraph does not limit the effect of paragraph (b) of this Section,

- (ii) The Trustee shall not be liable for any action taken or error of judgment made in good faith by any one of its officer, agents or employees, unless it is proved that the Trustee was negligent in ascertaining the pertinent facts,
- (iii) The Trustee shall not be liable with respect to any action it takes or omits to take in good faith in accordance with a direction received by it in accordance with this Indenture, and
- (iv) No provision of this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder or in the exercise of any of its rights or powers.
- (v) The Trustee shall have no responsibilities (except as expressly set forth herein) as to the validity, sufficiency, value, genuineness, ownership or transferability of the Trust Estate, written instructions, or any other documents in connection therewith, and will not be regarded as making nor be required to make, any representations thereto.
- (vi) The Trustee shall not be liable for any amount in excess of the value of the Trust Estate.
- (vii) In no event shall the Trustee be responsible or liable for special, indirect, punitive, incidental or consequential loss or damage of any kind whatsoever (including, but not limited to, loss of profit) irrespective of whether the Trustee has been advised of the likelihood of such loss or damage and regardless of the form of action.
- (viii) The Trustee shall not be responsible or liable for any failure or delay in the performance of its obligations under this Indenture arising out of or caused, directly or indirectly, by circumstances beyond its control, including without limitation, any act or provision of future law or regulation or governmental authority; acts of God; earthquakes; fires; floods; wars; terrorism; civil or military disturbances; sabotage; epidemics; riots; interruptions, loss or malfunctions of utilities, computer (hardware or software) or communications service; accidents; labor disputes; acts of civil or military authority or governmental actions; or the unavailability of the Federal Reserve Bank wire or telex or other wire or communication facility; it being understood that the Trustee shall use its best efforts to resume performance as soon as practicable under the circumstances.

(d) The Trustee may refuse to perform any duty or exercise any right or power unless it receives security or indemnity satisfactory to it against any cost, loss, liability or expense, but the Trustee shall not require indemnity as a condition to making any payments on the Bonds, or declaring the principal of and interest on the Bonds to be due immediately hereunder.

(e) The Trustee's immunities and protections from liability and its right to indemnification in connection with the performance of its duties under this Indenture shall extend to the Trustee's officers, directors, agents, attorneys and employees. Such immunities and protections and right to indemnification, together with the Trustee's right to compensation, shall survive the Trustee's resignation or removal, the defeasance or discharge of this Indenture and final payment of the Bonds.

(f) Except as otherwise provided in this Article, the Trustee shall be under no obligation to take any action in respect of any default or otherwise, or toward the execution or enforcement of any of the trusts hereby created, or to institute, appear in or defend any suit or other proceeding in connection therewith, unless requested in writing to do so by the Holders of not less than 51% in principal amount of the Bonds then Outstanding, and if in its opinion such action may tend to involve it in expense or liability, unless furnished, from time to time as often as it may require, with security and satisfactory indemnity. The foregoing provisions are intended only for the protection of the Trustee, and shall not affect any discretion or power given by any provision of this Indenture to the Trustee to take action in respect of any default without such notice or request from the Bondholders, or without such security or indemnity.

(g) The permissive rights of the Trustee to do things enumerated in this Indenture shall not be construed as a duty and, with respect to such permissive rights, the Trustee shall not be answerable for other than its negligence or willful misconduct.

(h) In the event that any portion of the Trust Estate shall be attached, garnished or levied upon by any court order, or the delivery thereof shall be stayed or enjoined by an order of a court, or any order, judgment or decree shall be made or entered by any court order affecting the Trust Estate, the Trustee is hereby expressly authorized, in its reasonable discretion, to respond as it deems appropriate or to comply with all writs, orders or decrees so entered or issued, or which it is advised by legal counsel of its own choosing is binding upon it, whether with or without jurisdiction. In the event that the Trustee obeys or complies in good faith with any such writ, order or decree, it shall not be liable to any of the parties or to any other Person, firm or corporation, should, by reason of such compliance notwithstanding, such writ, order or decree be subsequently reversed, modified, annulled, set aside or vacated.

(i) Other than as specifically provided herein, neither the Trustee nor any of its directors, officers, employees, agents or affiliates shall be responsible for nor have any duty to monitor the performance or any action of the Borrower or Issuer, or any of their directors, members, officers, agents, affiliates or employees, nor shall it have any liability in connection with the malfeasance or nonfeasance by such party. The Trustee may assume performance by all such Persons of their respective obligations, unless the Trustee has knowledge or is deemed to have knowledge otherwise. Except as provided in the Documents to which it is a party, the Trustee shall have no enforcement or notification obligations relating to breaches of representations or warranties of any other person.

(j) The Trustee shall have no duty to know or inquire as to the performance or nonperformance of any provision of any other agreement, instrument, or document other than this Indenture and any other document to which it is a party.

(k) The Trustee shall neither be responsible for, nor chargeable with, knowledge of the terms and conditions of any other agreement, instrument, or document other than this Indenture and any other document to which it is a party, whether or not an original or a copy of such agreement has been provided to the Trustee.

(l) The Trustee shall be entitled to request and receive written instructions from the Borrower, Issuer or any other Person and shall have no responsibility or liability for any losses or damages of any nature that may arise from any action taken or not taken by the Trustee in accordance with such written direction.

Every provision of this Indenture that in any way relates to the Trustee is subject to paragraphs (a) through (l) of this Section.

Section 10.07 Trustee May Make Advances to Effect Performance. If the Issuer shall fail to perform any of the covenants or agreements contained in this Indenture other than the covenants or agreements in respect of the payment of the principal of and interest on the Bonds, the Trustee may, in its absolute discretion and without notice to the Bondholders, at any time and from time to time, make advances to effect performance of the same on behalf of the Issuer, but the Trustee shall be under no obligation so to do; and any and all moneys paid or advanced by the Trustee for any such purposes, together with interest thereon at the Interest Rate for Advances, shall be a claim in favor of the Trustee upon the Trust Estate prior to the claim of the Bonds; but no such advance shall operate to relieve the Issuer from any default hereunder.

Section 10.08 Trustee May Rely Upon Instruments. The Trustee may, at the expense of the Borrower, request, rely on and act in accordance with officer's certificates and/or an Opinion of Counsel, and shall incur no liability and shall be fully protected in acting or refraining from acting in accordance with such officer's certificates and/or Opinion of Counsel. The Trustee may conclusively rely upon, shall be protected in acting or refraining from acting on, and shall be under no duty to make any investigation or inquiry as to any statements contained or matters referred to in any resolution, indenture, notice, telegram, request, consent, waiver, certificate, statement, instrument, opinion, affidavit, voucher, bond, debenture, note, requisition, order or decree of a court of competent jurisdiction, judgment or other paper or document which it shall in good faith believe to be genuine and to have been passed or signed by the proper board, body or person or to have been prepared and furnished pursuant to any of the provisions of this Indenture or the Documents, but may accept and rely upon the same as conclusive evidence of the truth and accuracy of such statements, and shall be protected and shall incur no liability in acting or proceeding in good faith in reliance thereon. The Trustee shall not be bound to recognize any person as a Holder of any Bond or to take any action at his request unless such Bond shall be deposited with the Trustee or satisfactory evidence of the ownership of such Bond shall be furnished to the Trustee.

Section 10.09 Trustee May Own and Deal in Bonds and Deal With Issuer and Borrower. The Trustee or its affiliates may in good faith buy, sell, own, hold and deal in any of the Bonds issued hereunder and secured by this Indenture, and may join in any action which any Bondholder may be entitled to take with like effect as if the Trustee were not a party to this Indenture. The Trustee, either as principal or agent, may also engage in or be interested in any financial or other transaction with the Issuer or the Borrower or any related entity, and may act

as depository, trustee, or agent for any committee or body of Holders of the Bonds secured hereby or other obligations of the Issuer as freely as if it were not Trustee hereunder.

Section 10.10 *Financial Liability of the Trustee.* No provision of this Indenture will require the Trustee to expend or risk its own funds or otherwise incur or risk any financial liability in the performance of any of its duties under this Indenture, or in the exercise of any of its rights or powers if it will have reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it.

Except as may otherwise be provided in this Indenture, prior to taking or omitting to take an action hereunder or related to the Bonds, the Trustee will have the right to request or demand at the cost of the Borrower, in respect to the taking of any action hereunder or related to the Bonds or omitting to take any action, any showings, certificates, opinions (including Opinions of Counsel), appraisals or other information, or corporate action or evidence thereof, that the Trustee deems desirable for the purpose of establishing the right of the Trustee to take or omit to take such action.

Section 10.11 *Trustee May Construe Ambiguous or Inconsistent Provisions.* The Trustee may construe any of the provisions of this Indenture insofar as the same may appear to be ambiguous or inconsistent with any other provisions hereof, and any construction of any such provisions hereof by the Trustee in good faith shall be binding upon the Bondholders and the Trustee shall bear no liability therefor.

Section 10.12 *Resignation of Trustee.* The Trustee may at any time resign and be discharged of the duties and obligations created by this Indenture by giving not less than 30 days written notice to the Issuer specifying the date when such resignation shall take effect and such resignation shall take effect upon the day specified in such notice unless previously a successor shall have been appointed, in which event such resignation shall take effect immediately on the appointment of such successor, provided that such resignation shall not take effect unless and until a successor shall have been appointed.

Section 10.13 *Removal of Trustee.* The Trustee shall be removed by the Issuer upon thirty (30) days notice if at any time so requested by an instrument or concurrent instruments in writing, filed with the Trustee and the Issuer, and signed by the Holders of a majority in principal amount of the Bonds then Outstanding or their attorney-in-fact duly authorized, excluding any Bonds held by or for the account of the Issuer. The Issuer may also remove the Trustee at any time, except during the existence of any Event of Default as defined in Section 9.01 hereof, for cause or breach of trust or for acting or proceeding in violation of, or failing to act or proceed in accordance with any provision of this Indenture with respect to the duties and obligations of the Trustee by filing with the Trustee an instrument signed by an authorized officer of the Issuer. A copy of each such instrument providing for any such removal shall be delivered by the Issuer to any Bondholder who shall have filed his name and address with the Issuer.

Section 10.14 *Appointment of Successor Trustee.* In case at any time the Trustee shall resign or shall be removed or shall become incapable of acting, or shall be adjudged bankrupt or insolvent, or if a receiver, liquidator or conservator of the Trustee, or of its property, shall be

appointed, or if any public officer shall take charge or control of the Trustee, or of its property or affairs, the Issuer covenants and agrees that it will thereupon appoint a successor Trustee.

If in a proper case no appointment of a successor Trustee shall be made pursuant to the foregoing provision of this Section within 45 days after the Trustee shall have given to the Issuer written notice, as provided in Section 10.12 or after a vacancy in the office of the Trustee shall have occurred by reason of its inability to act, the Trustee, the Borrower or the Holder of any Bond may apply to any court of competent jurisdiction to appoint a successor Trustee. Said court may thereupon, after such notice, if any, as such court may deem proper, prescribe and appoint a successor Trustee.

Any Trustee appointed under the provision of this Section 10.14 in succession to the Trustee shall be a bank or trust company or national banking association with trust powers, having a combined capital, surplus and undivided profits of at least \$50,000,000 if there be such a bank or trust company or national bank association willing and able to accept the office on reasonable and customary terms and authorized by law to perform all the duties imposed upon it by this Indenture.

Section 10.15 *Appointment of Successor Trustee by Court.* In case at any time the Trustee shall resign and no appointment of a successor Trustee shall be made pursuant to the foregoing provisions of this Article prior to the date specified in the notice of resignation as the date when such resignation shall take effect, the retiring Trustee may forthwith apply to a court of competent jurisdiction for the appointment of a successor Trustee. If no appointment of a successor Trustee shall be made pursuant to the foregoing provisions of this Article within six months after a vacancy shall have occurred in the office of Trustee, the Holder of any Bond may apply to any court of competent jurisdiction to appoint a successor Trustee. Such court may thereupon, after such notice, if any, as it may deem proper, prescribe and appoint a successor Trustee.

Section 10.16 *Acceptance of Trust by Successor Trustee.* Any successor Trustee appointed hereunder shall execute, acknowledge and deliver to the Issuer and the Rating Agency an instrument accepting such appointment hereunder, and thereupon such successor Trustee, without further act, deed or conveyance, shall become duly vested with all the estates, property, rights, powers, trust, duties and obligations of its predecessor in the trust hereunder, with like effect as if originally named Trustee herein. Upon request of such Trustee, the Trustee ceasing to act and the Issuer shall execute and deliver an instrument transferring to such successor Trustee all the estates, property, rights, powers and trusts hereunder of the Trustee so ceasing to act, and the Trustee so ceasing to act shall pay over to the successor Trustee all moneys and other assets at the time held by it hereunder.

Section 10.17 *Merger or Consolidation of Trustee With Another Corporation.* Any corporation into which any Trustee hereunder may be merged or with which it may be consolidated, or any corporation resulting from any merger or consolidation to which any Trustee hereunder shall be a party, or to which it may sell or transfer its corporate trust business and assets as a whole or substantially as a whole, shall be the successor Trustee under this Indenture without the execution or filing of any paper or any further act on the part of the parties hereto, anything herein to the contrary notwithstanding.

Section 10.18 *Notice of an Event of Default.* Notwithstanding anything herein to the contrary, upon the occurrence of an Event of Default actually known to the Trustee, the Trustee shall within 30 days give written notice thereof to the Issuer, to the Rating Agency, and to each Bondholder at its last address appearing upon the registration books of the Issuer kept by the Trustee unless such Event of Default shall have been cured before the giving of such notice.

Section 10.19 *Trustee May Intervene.* In any judicial proceeding to which the Issuer is a party and which, in the opinion of the Trustee and its counsel, has a substantial bearing on the interests of Holders of the Bonds, the Trustee may intervene on behalf of the Holders of the Bonds and shall, upon receipt of satisfactory indemnity do so if requested in writing by the Holders of not less than 51% in principal amount of Bonds then outstanding, if such intervention is permitted by the court having jurisdiction in the premises.

Section 10.20 *Unclaimed Moneys.* Anything in this Indenture to the contrary notwithstanding, any moneys held by the Trustee in trust for the payment and discharge of any Bonds which remain unclaimed for a period up to six months, prior to the date when such moneys would escheat under applicable law and after the date when such Bonds have become due and payable either at their stated maturity dates, if such moneys were held by the Trustee at such date, or for a period up to six months prior to the date when such moneys would escheat under applicable law if deposited with the Trustee after such date when all Bonds became due and payable, shall be paid by the Trustee to the Issuer as its absolute property and free from trust, and the Trustee shall thereupon be released and discharged. Thereafter, any person having a claim against any such moneys shall look solely to the Issuer for payment of the same.

Section 10.21 *Appointment of Co-Trustee.* It is the purpose of this Indenture that there shall be no violation of any law of any jurisdiction (including particularly the law of the State of Texas) denying or restricting the right of banking corporations or associations to transact business as a trustee in such jurisdiction. It is recognized that in case of litigation under this Indenture or the Loan Agreement, and in particular in case of the enforcement thereof on default, or in the case the Trustee 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 granted to the Trustee or hold title to the properties, in trust, as herein granted, or take any action which may be desirable or necessary in connection therewith, it may be necessary that the Trustee appoint an additional individual or institution as a separate or co-trustee. The following provisions of this Section are adopted to these ends.

In the event that the Trustee appoints an additional individual or institution as a separate or co-trustee, each and every remedy, power, right, claim, demand, cause of action, immunity, estate, title, interest and lien expressed or intended by this Indenture to be exercised by or vested in or conveyed to the Trustee with respect thereto shall be exercisable by and vest in such separate or co-trustee but only to the extent necessary to enable such separate or co-trustee to exercise such powers, rights and remedies, and every covenant and obligation necessary to the exercise thereof by such separate or co-trustee shall run to and be enforceable by either of them. Neither the Trustee or any co-trustee shall be responsible or liable for the misconduct or negligence of the other.

Approval in writing from the Issuer shall be required prior to the appointment of the separate or co-trustee by the Trustee. All such instruments in writing shall, on request, be executed,

acknowledged and delivered by the Issuer at the expense of the Borrower. In case any separate or co-trustee 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 separate or co-trustee, so far as permitted by law and so approved by the Issuer, shall vest in and be exercised by the Trustee until the appointment of a successor to such separate or co-trustee.

Section 10.22 *The Remarketing Agent.*

The Remarketing Agent identified in Section 1.01 hereof shall serve as the Remarketing Agent for the Bonds. The Remarketing Agent shall designate to the Trustee its Designated Office and signify its acceptance of the duties and obligations imposed upon it hereunder by a written instrument of acceptance delivered to the Issuer, the Borrower and the Trustee. In addition, the Remarketing Agent will agree particularly to:

- (a) keep such records relating to its computations of interest rates for the Bonds as shall be consistent with prudent industry practice and to make such records available for inspection by the Issuer, the Trustee and the Borrower at all reasonable times; and
- (b) perform all of its functions and duties under this Indenture.

The Remarketing Agent shall be entitled to advice of legal counsel on any matter relating to the Remarketing Agent's obligations hereunder and shall be entitled to act upon the opinion of such counsel in the exercise of reasonable care in fulfilling such obligations.

The Remarketing Agent shall be entitled to appoint additional co-Remarketing Agents to assist in the performance of the Remarketing Agent's obligations under this Indenture, and any such appointment shall be effective without any action by the Issuer or the Borrower being necessary; provided that any such co-Remarketing Agent, shall have a capitalization of at least \$5,000,000, or shall have a line of credit with a commercial bank in the amount of at least \$5,000,000, shall be in conformity with all standards and requirements of the Municipal Securities Rulemaking Board and the Securities and Exchange Commission, and shall be authorized by law to perform all the duties imposed upon it by this Indenture. The Remarketing Agent shall take responsibility for any co-Remarketing Agent it appoints.

Section 10.23 *Qualification of Remarketing Agent.*

The Remarketing Agent shall be a member in good standing of the Financial Industry Regulatory Authority having a capitalization of at least \$5,000,000, or shall have a line of credit with a commercial bank in the amount of at least \$5,000,000, and shall be authorized by law to perform all the duties imposed upon it by this Indenture. Subject to the terms of the Remarketing Agreement, the Remarketing Agent may at any time resign and be discharged of the duties and obligations created by this Indenture by giving at least 30 days' notice of such resignation to the Issuer, the Borrower, Limited Partner and the Trustee. The Remarketing Agent may be removed, with prior notice to the Issuer, at any time by the Borrower, with at least 30 days' notice of such removal to the Remarketing Agent.

Upon any resignation or removal of the Remarketing Agent, the departing Remarketing Agent shall pay over, assign and deliver any money and Bonds held by it in such capacity to its successor.

The Trustee, within 30 days of the resignation or removal of the Remarketing Agent or the appointment of a successor Remarketing Agent, shall give notice thereof by registered or certified mail to the Rating Agency (if the Bonds are then rated) and to the Holders of the Bonds.

Section 10.24 *Notices to Rating Agency and Remarketing Notice Parties.* The Trustee shall notify the Rating Agency and the Remarketing Notice Parties of (a) the occurrence of an Event of Default of which the Trustee has actual notice, (b) the occurrence of any monetary or other material default under the Loan of which the Trustee has actual notice, (c) any change in the identity of the Trustee, (d) any amendments, modifications, supplements or changes to this Indenture, the Loan Agreement, the Note or the Bonds, including any extension of principal or modification of interest or redemption premium due on any of the Bonds, in each case only in the event the Trustee has actual notice, (e) any change or proposed change in the structure or identity of the Borrower of which the Trustee has actual knowledge, (f) any change or notification of proposed change of the Mandatory Tender Date or Remarketing Date, (g) any partial prepayment of the Loan or the giving of notice of the call for redemption of any Bonds, (h) any change in the investment of funds subject to the lien of this Indenture other than in Eligible Investments, (i) any defeasance or acceleration of the Bonds hereunder, or (j) any change in the Remarketing Agent or Lender of which its Trustee has actual knowledge.

Section 10.25 *Financing Statements.* Pursuant to Section 5.6 of the Loan Agreement, the Borrower shall perfect, or shall cause to be perfected any security interest created hereunder by the filing of financing statements which fully comply with the State of Texas Uniform Commercial Code—Secured Transactions, in the Secretary of State in the State of Texas. Notwithstanding the foregoing, the Trustee shall file all necessary continuation statements with respect to any such original financing statements of which a legible copy showing the date and place of filing, is delivered to the Trustee, at the expense of the Borrower within the time prescribed by the State of Texas Uniform Commercial Code—Secured Transactions.

ARTICLE XI

MODIFICATION OF INDENTURE AND OTHER DOCUMENTS

Section 11.01 *Limitation on Amendments to this Indenture.* This Indenture shall not be modified or amended in any respect except as provided in accordance with and subject to the provisions of this Article and only by a written instrument executed by each of the parties hereto.

Section 11.02 *Amendments to Indenture and Loan Agreement Not Requiring Consent of Bondholders.*

(a) The Issuer and the Trustee may, from time to time prior to the Funding Date, without the consent of Bondholders, enter into agreements supplemental to this Indenture and the Loan Agreement as follows:

- (i) to specify and determine any matters and things relative to Bonds which shall not materially adversely affect the interest of the Bondholders;

- (ii) to cure any formal defect, omission or ambiguity in this Indenture or the Loan Agreement if such action does not materially adversely affect the rights of the Bondholders;
- (iii) to grant to or confer upon the Trustee for the benefit of the Bondholders any additional rights, remedies, powers, authority or security which may lawfully be granted or conferred and which are not contrary to or inconsistent with this Indenture as heretofore in effect;
- (iv) to add to the covenants and agreements of the Issuer in this Indenture or the Loan Agreement other covenants and agreements to be observed by the Issuer which are not contrary to or inconsistent with this Indenture or the Loan Agreement as theretofore in effect;
- (v) to add to the limitations and restrictions in this Indenture or the Loan Agreement, other limitations and restrictions to be observed by the Issuer which are not contrary to or inconsistent with this Indenture or the Loan Agreement as theretofore in effect;
- (vi) to confirm, as further assurance, any pledge under and the subjection to any claim, lien or pledge created, or to be created by, this Indenture, of the Revenues or of any other moneys, securities or funds; or
- (vii) to modify, amend or supplement this Indenture or the Loan Agreement in any respect which, in the judgment of the Trustee, is not materially adverse to the interests of the owners of the Bonds.

(b) Before the Issuer shall enter into any agreement supplemental to this Indenture pursuant to this Section, there shall have been filed with the Trustee an opinion of Bond Counsel stating that such supplemental indenture is authorized or permitted by this Indenture and complies with its terms, and that upon adoption it will be valid and binding upon the Issuer in accordance with its terms. The opinion of Bond Counsel filed with the Trustee shall also state that the effectiveness of the supplemental indenture will not adversely affect the exclusion of interest on the Bonds from gross income for federal income tax purposes. The Trustee and the Issuer shall be entitled to rely upon any such opinion of Bond Counsel.

(c) The Trustee shall send written notice to the Borrower and the Rating Agency of any amendment to this Indenture or the Loan Agreement.

Notwithstanding the foregoing, on or after Funding there shall be no amendments of any kind to this Indenture without the written consent of the Majority Owner. Further prior to the Funding Date, no amendment shall be made to this Indenture or to the Loan Agreement with respect to the process for funding and approving a Requisition made on the Bonds without the prior written consent of the Construction Lender (and such amendment made without such consent of the Construction Lender, shall not be effective).

Section 11.03 *Amendments to Indenture Requiring Consent of Bondholders.*

(a) Subject to the terms and provisions contained in this Section and not otherwise, prior to the Funding Date, the Holders of not less than 66 2/3% in aggregate principal amount of the Bonds then outstanding, and following the Funding Date, the Servicer at the written direction of the Holders of not less than 66 2/3% in aggregate principal amount of the Bonds then outstanding, shall have the right, from time to time, to consent to and approve the execution and delivery by the Issuer and the Trustee of any agreement supplemental to this Indenture as shall be deemed necessary or desirable by the Issuer and the Trustee for the purposes of modifying, altering, amending, adding to or rescinding any of the terms or provisions contained in this Indenture; provided, however, that, unless approved in writing by, prior to the Funding Date, the Holders of all of the Bonds then Outstanding, and following the Funding Date, the Servicer at the written direction of the Holders of all the Bonds then Outstanding, nothing herein contained shall permit, or be construed as permitting, (i) a change in the terms of maturity of the principal of or the interest on any Outstanding Bond, or a reduction in the principal amount of any Outstanding Bond or the rate of interest thereon, or (ii) the creation of a claim or lien upon, or a pledge or assignment of, the Trust Estate ranking prior to or on a parity with the claim, lien, assignment or pledge created by this Indenture, or the release of the Trust Estate or any part thereof (except to the extent permitted pursuant to the Documents), or (iii) a preference or priority of any Bond or Bonds over any other Bond or Bonds, or (iv) a reduction in the aggregate principal amount of the Bonds required for any action or consent by Bondholders set forth in this Indenture, including (without limitation) that required for consent to such supplemental indentures. This Section shall not limit or otherwise affect the ability of the Issuer to enter into agreements supplemental to this Indenture without the consent of the Bondholders pursuant to Section 11.02 hereof.

(b) If at any time the Issuer and the Trustee shall determine to enter into any supplemental indenture for any of the purposes of this Section, the Trustee shall cause written notice of the proposed supplemental indenture to be given to the Servicer (if any) and all Holders of the Bonds; provided, however, that failure to give such notice or any defect therein, shall not affect the validity of any proceedings pursuant hereto. Such notice shall briefly set forth the nature of the proposed supplemental indenture and shall state that a copy thereof is on file at the Trust Office for inspection by all Bondholders.

(c) Within 120 days after the date of giving such notice, the Issuer and the Trustee may enter into such supplemental indenture in substantially the form described in such notice only if there shall have first been filed with the Issuer (i) the written consents of Holders of not less than 66 2/3% in aggregate principal amount of the Bonds then outstanding (or 100% if required hereunder) and (ii) an opinion of counsel stating that (1) such supplemental indenture is authorized or permitted by this Indenture and complies with its terms, and that upon adoption it will be valid and binding upon the Issuer in accordance with its terms and (2) the effectiveness of the supplemental indenture will not affect the exemption from federal income taxes of the interest on the Bonds.

(d) If the Holders of not less than the percentage of Bonds required by this Section shall have consented to and approved the supplemental indenture as herein provided, no Holder of any Bond shall have any right to object to such supplemental indenture, or to object to any of the terms and provisions contained therein or the operation thereof, or in any manner to

question the propriety thereof, or to enjoin or restrain the Issuer or the Trustee from entering into the same or from taking any action pursuant to the provisions thereof.

(e) Upon the effectiveness of any supplemental indenture entered into pursuant to the provisions of this Section, this Indenture shall be, and be deemed to be, modified and amended in accordance therewith, and the respective rights, duties and obligations under this Indenture of the Issuer, the Trustee and all Holders of Bonds then outstanding shall thereafter be determined, exercised and enforced under this Indenture subject in all respects to such modifications and amendments.

(f) The Trustee shall send written notice to the Rating Agency of any amendment to this Indenture.

Section 11.04 *Supplemental Indentures Part of Indenture.* Any supplemental indenture entered into in accordance with the provisions of this Article shall thereafter form a part of this Indenture and all the terms and conditions contained in any such supplemental indenture as to any provision authorized to be contained therein shall be and shall be deemed to be a part of the terms and conditions of this Indenture for any and all such purposes.

Section 11.05 *Required Consent.* Notwithstanding anything herein to the contrary, the Trustee shall not be required to enter into or consent to any supplemental indenture or any amendment of any other Document that would adversely affect the rights, obligations, powers, privileges, indemnities, immunities or other security provided the Trustee herein or therein, except to the extent necessary, as set forth in an opinion of Bond Counsel, to preserve the exclusion of interest on the Bonds from gross income for federal income tax purposes.

Section 11.06 *Amendments to Documents Requiring Consent of Bondholders.* Except as provided in Section 11.02 of this Indenture, the Issuer and the Trustee shall not consent to any amendment, change or modification of the Documents without the giving of notice and the written approval or consent of the Holders of the Bonds at the time Outstanding given and procured as provided in Section 11.03 hereof; provided, however, no such separate approval or consent shall be required in connection with the issuance of refunding bonds if any required consent of the required number of Holders to the issuance thereof shall have been previously obtained. If at any time the Issuer and the Borrower shall request the consent of the Trustee to any such proposed amendment, change or modification, the Trustee shall cause notice of such proposed amendment, change, or modification to be given in the same manner as provided by Section 11.03 hereof with respect to supplemental indentures. Such notice shall briefly set forth the nature of such proposed amendment, change or modification and shall state that copies of the instrument embodying the same are on file at the Trust Office for inspection by all Bondholders.

ARTICLE XII

MISCELLANEOUS

Section 12.01 *Issuer's Successors.* In the event of the dissolution of the Issuer, all the covenants, stipulations, promises and agreements in this Indenture contained by or on behalf of, or for the benefit of, the Issuer, shall bind or inure to the benefit of the successors of the Issuer

from time to time and any entity, officer, board, commission, agency or instrumentality to whom or to which any power or duty of the Issuer shall be transferred.

Section 12.02 *Indenture for Benefit of Issuer, Trustee and Bondholders.* Except as herein otherwise specifically provided, nothing in this Indenture expressed or implied is intended or shall be construed to confer upon any person, other than the Issuer, the Trustee and the Holders of the Bonds, any right, remedy or claim under or by reason of this Indenture, this Indenture being intended to be for the sole and exclusive benefit of the Issuer and the Trustee and the Holders of the Bonds; provided that this Indenture shall also be for the benefit of the Borrower and the Issuer, and the Borrower and the Issuer shall be deemed to be third-party beneficiaries of and in connection with those matters in which the terms of this Indenture fairly construed are indicative that they are for the benefit of the Borrower.

Section 12.03 *Severability.* In case any one or more of the provisions of this Indenture or of the Bonds for any reason, is held to be illegal or invalid such illegality or invalidity shall not affect any other provisions of this Indenture or the Bonds, and this Indenture and the Bonds shall be construed and enforced to the end that the transactions contemplated hereby be effected and the obligations contemplated hereby be enforced as if such illegal or invalid provisions had not been contained therein.

Section 12.04 *Officials of Issuer Not Liable.* No personal recourse may be taken, directly or indirectly, against any past, present or future officer, director, employee or agent of the Issuer with respect to the obligations of the Issuer under this Indenture or any certificate or other writing delivered in connection therewith. The Issuer's immunities and protections from liability and its right to indemnification in connection with the performance of its duties and functions under this Indenture shall extend to the Issuer's past, present and future officers, directors, employees and agents.

Section 12.05 *Governing Law; Jurisdiction; Waiver of Jury Trial.* The laws of the State of Texas shall govern the construction of this Indenture and of all Bonds issued hereunder. The parties hereby (i) irrevocably submit to the exclusive jurisdiction of any federal or state court sitting in Texas, (ii) waive any objection to laying of venue in any such action or proceeding in such courts, and (iii) waive any objection that such courts are an inconvenient forum or do not have jurisdiction over any party. To the extent permitted by State law, each of the parties hereto hereby waives the right to trial by jury with respect to any litigation directly or indirectly arising out of, under or in connection with this Indenture.

Section 12.06 *Notices; Publication of Notice.*

(a) All notices, advice, certifications or other communications hereunder between the Issuer and the Trustee shall be sufficiently given and shall be deemed given when delivered by hand or overnight courier, or mailed by certified or registered mail, postage prepaid, return receipt requested, or transmitted by electronic means (including, without limitation, facsimile transmission) addressed to the appropriate Notice Address. The Issuer or the Trustee may, by notice given hereunder, designate any further or different addresses to which subsequent notices, advice, certifications or other communications shall be sent. Notices to persons other than

the Issuer or the Trustee (such as, for example, notices to owners of Bonds) shall be governed by the other applicable provisions of this Indenture.

(b) Whenever the Issuer or the Trustee is required or permitted to give or publish notice of any event or occurrence under this Indenture, such notice shall be given or published in such manner and by such means as the Issuer or the Trustee, as the case may be, shall determine to be appropriate. Such publication may be by (but is not limited to) any of the following means: (1) publication in one or more newspapers or trade journals selected by the Issuer or the Trustee, as the case may be; (2) publication by or through one or more financial information reporting services; (3) delivery to one or more “nationally recognized municipal securities information repositories” (as such terms is defined in Securities and Exchange Commission Rule 15c2-12) or any successor repository or entity fulfilling a substantially similar or like role; or (4) by mailing a copy of such notice by first class mail, postage prepaid, to the person entitled to receive the notice at such person’s address as shown on the records of the Issuer or the Trustee.

Section 12.07 Trustee as Paying Agent and Bond Registrar. The Trustee is hereby designated and agrees to act as paying agent and Bond registrar for and in respect to the Bonds.

Section 12.08 Execution of Instruments by Bondholders and Proof of Ownership of Bonds. Any request, direction, consent or other instrument in writing required or permitted by this Indenture to be signed or executed by Bondholders may be in any number of concurrent instruments of similar tenor and may be signed or executed by such Bondholders in person or by agent appointed by an instrument in writing. Proof of the execution of any such instrument and of the ownership of the Bonds shall be sufficient for any purpose of this Indenture and shall be conclusive in favor of the Trustee with regard to any action taken by it under such instrument if made in the following manner:

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

(b) The ownership of Bonds shall be conclusively proved by the registration books kept under the provisions of Section 2.08 of this Indenture.

Nothing contained in this Article shall be construed as limiting the Trustee to such proof, it being intended that the Trustee may accept any other evidence of the matters herein stated which to it may seem sufficient. Any request or consent of the Holder of any Bond shall bind every future Holder of the same Bond in respect of anything done by the Trustee pursuant to such request or consent.

Section 12.09 Counterparts. This Indenture may be simultaneously executed in several counterparts, each of which shall be an original, but all of which shall constitute but one and the same instrument. The exchange of copies of this Indenture and of signature pages by facsimile or PDF transmission shall constitute effective execution and delivery of this Indenture as to the parties hereto, and may be used in lieu of the original Indenture for all purposes.

Signatures of the parties hereto transmitted by facsimile or PDF shall be deemed to be their original signatures for all purposes.

Section 12.10 U.S.A. Patriot Act Requirements of the Trustee. 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 Trustee may request documentation to verify such Person's formation and existence as a legal entity and the identity of the owners or controlling persons thereof. The Trustee may also request financial statements, licenses, identification and authorization documents from individuals claiming authority to represent such Person or other relevant documentation.

Section 12.11 Dispute Resolution. If any conflict, disagreement or dispute arises between, among, or involving any of the parties hereto concerning the meaning or validity of any provision hereunder or concerning any other matter relating to this Indenture or the Loan Agreement, or the Trustee is in doubt as to the action to be taken hereunder, the Trustee may, at its option, after sending written notice of the same to the Issuer, Servicer and Borrower, refuse to act until such time as it (a) receives a final non-appealable order of a court of competent jurisdiction directing it as to such matter or (b) receives a written instruction, executed by each of the parties involved in such disagreement or dispute, in a form reasonably acceptable to the Trustee, directing it as to such matter. The Trustee will be entitled to act on any such written instruction or final, non-appealable order of a court of competent jurisdiction without further question, inquiry or consent. The Trustee may file an interpleader action in a state or federal court, and upon the filing thereof, the Trustee will be relieved of all liability as to the assets deposited with the court and will be entitled to recover reasonable and documented out-of-pocket attorneys' fees, expenses and other costs incurred in commencing and maintaining any such interpleader action.

[Remainder of page intentionally left blank.]

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

AUSTIN HOUSING FINANCE CORPORATION

By: _____
Name: Rosie Truelove
Title: Treasurer

**WILMINGTON TRUST, NATIONAL
ASSOCIATION, as Trustee**

By: _____
Name: Paul Briggs
Title: Vice President

CONSENT AND AGREEMENT OF BORROWER

For and in consideration of the issuance of the Bonds by the Issuer, the Borrower consents to and approves this Indenture in all respects. In addition, the Borrower agrees that whenever this Indenture by its terms imposes any duty or obligation on the Borrower, such duty or obligation shall be binding upon the Borrower to the same extent as if the Borrower were an express party to this Indenture, and the Borrower agrees to carry out and perform its duties and obligations thereunder.

LIVE MAKE HOUSING PARTNERS LP,
a Texas limited partnership

By: TILLERY STREET HOUSING, LLC,
a Texas limited liability company,
its general partner

MRE CAPITAL INVESTMENTS, LLC,
a Missouri limited liability company,
its manager

By: _____
Jacob Mooney, Manager

By: _____
Daniel Sailer, III, Manager

EXHIBIT A-1

FORM OF SERIES 2023 BONDS

No. R - ____

\$[_____]

**AUSTIN HOUSING FINANCE CORPORATION
MULTIFAMILY HOUSING REVENUE BONDS
(LIVE MAKE APARTMENTS)
SERIES 2023**

THE BONDS, THE PRINCIPAL OF AND THE INTEREST THEREON ARE SPECIAL LIMITED OBLIGATIONS OF THE ISSUER PAYABLE SOLELY FROM THE REVENUES AND ASSETS OF THE ISSUER PLEDGED TO SUCH PURPOSES IN THE MANNER AND TO THE EXTENT PROVIDED IN THE INDENTURE AND NO OTHER REVENUES OR ASSETS OF THE ISSUER. THE BONDS, THE PRINCIPAL OF AND THE INTEREST THEREON DO NOT CONSTITUTE AN INDEBTEDNESS OR OBLIGATION OF THE STATE OF TEXAS, AND NEITHER THE FAITH AND CREDIT NOR THE TAXING POWER OF THE STATE OF TEXAS IS PLEDGED TO THE PAYMENT OF PRINCIPAL OF OR INTEREST ON THE BONDS. THE ISSUER HAS NO TAXING POWER.

DATED DATE	INTEREST RATE	MATURITY DATE	CUSIP NUMBER
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_____, 2023

As stated below

**REGISTERED
OWNER:**

CEDE & CO.

**PRINCIPAL
AMOUNT:**

_____ (\$[_____])

INITIAL MANDATORY TENDER DATE:

FOR VALUE RECEIVED, AUSTIN HOUSING FINANCE CORPORATION, (together with its successors and assigns, the “Issuer”), a housing finance corporation, duly organized and existing under the laws of the State of Texas (the “Issuer”), hereby promises to pay (but only out of the Trust Estate pledged therefor) to the registered owner identified above, or its successor or registered assignee or legal representative, unless previously called for redemption, the principal amount set forth above, on the Maturity Date identified above, in lawful money of the United States of America which on the date of payment is legal tender for the payment of public and private debts, upon the presentation and surrender of this Bond at the corporate trust office of Wilmington Trust, National Association, as trustee, or its successor in trust (the “Trustee”), and to pay interest thereon (but only out of the Revenues) to the registered owner hereof from the Dated Date identified above to, but not including the Initial Mandatory Tender Date identified, at the Interest Rate per annum identified below (subject to adjustment or change as herein provided) and thereafter at the Remarketing Rate (as defined in the Indenture) for each subsequent Remarketing Period (as defined in the Indenture), payable at the times and in the manner hereinafter set forth. Principal hereof shall be payable, upon the request of any registered holder of Bonds on the applicable Record Date having an aggregate principal amount of \$1,000,000 or more, by wire transfer of immediately available funds from the Trustee to the bank and account number specified by such holder to the Trustee in writing. All interest hereon shall be paid by check or draft mailed by the Trustee to the registered owner hereof at his address as it appears on the registration books of the Issuer, or, upon the request of any registered holder of Bonds having an aggregate principal amount of \$1,000,000 or more, by wire transfer of immediately available funds from the Trustee to the bank and account number provided by such registered owner to the Trustee in writing, such interest being payable on each Interest Payment Date.

This Bond is one of an issue of the \$9,000,000 Austin Housing Finance Corporation Multifamily Housing Revenue Bonds (Live Make Apartments) Series 2023 (the “Bonds”), of like date and tenor, except as to number and denomination, issued under and pursuant to the Constitution and laws of the Texas Housing Finance Corporations Act, Chapter 394, Texas Local Government Code, as amended (the “Act”), for the purpose of financing or providing financial assistance for a portion of the costs of the acquisition, construction, equipping and financing by Live Make Housing Partners LP, a Texas limited partnership (the “Borrower”) of a multi-family rental housing project, which will consists of approximately 66 units in one building within Austin, Texas and known as Live Make Apartments (the “Project”). The proceeds of the Bonds are being lent to the Borrower by the Issuer under a Loan Agreement dated as of January 1, 2023 between the Borrower and the Issuer (the “Loan Agreement”) and evidenced by a Promissory Note dated January __, 2023 from the Borrower to the Issuer (the “Note”).

The Bonds are issued under a Trust Indenture dated as of January 1, 2023 between the Issuer and the Trustee (the “Trust Indenture”), and, to the extent provided therein, are, together with all other Bonds that may be issued thereunder, equally and ratably secured and entitled to the protection given by the Trust Indenture. Pursuant to the Trust Indenture, the Issuer has assigned to the Trustee (among other things) the Revenues. Pursuant to the Note and the Loan Agreement, payments sufficient for the prompt payment when due of the principal of and interest on the Bonds are to be paid by the Borrower to the Trustee for the account of the Issuer. The obligations of the Borrower under the Note and the Loan Agreement are secured by the proceeds of the Bonds deposited into the Project Fund created pursuant to Section 4.01 of the Trust Indenture.

Reference is made to the Trust Indenture, the Note, and the Loan Agreement and to all amendments and supplements thereto for a description of the property pledged and assigned and the provisions, among others, with respect to the nature and extent of the security, the rights, duties and other obligations of the Issuer and the Trustee, the terms on which the Bonds are issued and secured, the rights of the holders of the Bonds and provisions for defeasance of such rights. Capitalized terms used herein have the same meaning as set forth in the Trust Indenture. The terms and conditions set forth herein concerning payment and other rights and remedies of the owners of the Bonds are descriptive only and are subject in all cases to the terms and conditions as set forth in the Trust Indenture.

This Bond is negotiable and is transferable, as provided in the Trust Indenture, only upon the books of the Issuer kept at the office of the Trustee, by the registered owner hereof in person or by his duly authorized attorney, and may be exchanged for new Bonds of the same aggregate principal amount of authorized denominations, maturity and interest rate, in registered form, but only upon presentation and surrender of this Bond, all in the manner and subject to the limitations and conditions provided in the Trust Indenture. The Issuer and the Trustee may deem and treat the person in whose name this Bond is registered as the absolute owner hereof for all purposes; and neither the Issuer nor the Trustee shall be affected by any notice to the contrary.

Interest Rates: This Bond shall bear interest at the applicable rate provided below. On each Interest Payment Date, interest accrued through the day immediately preceding such Interest Payment Date shall be payable. While this Bond bears interest at the Initial Interest Rate, interest on this Series 2023 Bond shall be computed on the basis of a _____. While this Bond bears interest at the Taxable Rate, interest on this Bond shall be computed on the basis of a year of 365 or 366 days, as applicable, and actual days elapsed.

Initial Interest Rate. Commencing on the Dated Date and ending on (and including) the earlier of the day before (i) the Funding Date or (ii) the date of redemption prior to maturity, this Bond shall bear interest at a fixed rate of ____% (the “**Initial Interest Rate**”).

Taxable Rate. If a Determination of Taxability occurs, this Bond shall bear interest from the date of the Determination of Taxability at the Taxable Rate, and the Owner shall also be paid Additional Interest and any additional amounts owed, as provided in the Indenture.

The Bonds are issuable in the form of registered Bonds without coupons in denominations of \$5,000 each or any integral multiple of \$5,000 in excess thereof.

Prior to the Funding Date, the Bonds are subject to redemption and tender prior to their stated maturity as follows:

The Bonds are subject to mandatory redemption in whole, on the earliest practicable day for which notice of redemption may be given upon the occurrence of any of the following events: (i) the Borrower has not previously elected pursuant to the Trust Indenture and the Loan Agreement to cause the remarketing of the Bonds, (ii) the conditions to remarketing set forth in the Trust Indenture have not been met by the dates and times set forth therein, or (iii) the proceeds of a remarketing on deposit in the Remarketing Proceeds Account at 11:00 a.m. Local Time on the Mandatory Tender Date are insufficient to pay the purchase price of the Outstanding Bonds on

such Mandatory Tender Date. The Bonds shall be redeemed at a redemption price equal to 100% of the principal amount of such Bonds plus accrued interest to the applicable Redemption Date.

Prior to the Funding Date, the Bonds are subject to optional redemption prior to their maturity, at the direction of the Issuer at the written request of the Borrower, in whole or in part on any date on or after the later to occur of (a) the date that the Project is placed in service, as certified in writing by the Borrower to the Trustee, and (b) the Optional Redemption Date (as defined in the Trust Indenture), at a redemption price equal to the principal amount of the Bonds to be redeemed, plus accrued interest to the applicable Redemption Date from funds on deposit in, or transferred from, the Bond Fund, the Collateral Fund and, after the Completion Date, the Project Fund. After the Funding Date, the Bonds are subject to optional redemption as permitted pursuant to the Permanent Loan Agreement.

The Bonds are subject to mandatory tender in whole on each Mandatory Tender Date. Holders will not have the right to elect to retain their Bonds. Upon presentation and surrender of the Bonds by the Holder on the date fixed for tender, the Holder shall be paid the principal amount of the Bonds to be tendered, plus accrued interest on such Bonds to the tender date.

The Holder of this Bond shall have no right to enforce the provisions of the Trust Indenture, or to institute action to enforce the covenants therein, or to take any action with respect to any default under the Trust Indenture, or to institute, appear in or defend any suit or other proceeding with respect thereto, except as provided in the Trust Indenture. The Trustee shall treat the registered owner of this Bond as the person exclusively entitled to payment of principal and interest, and the exercise of all rights and powers of the owner of this Bond.

All acts, conditions and things required by the statutes of the State of Texas, the Act and the Trust Indenture to exist, to have happened and to have been performed precedent to and in the issuance of this Bond, do exist, have happened and have been performed.

In any case where the date of maturity of or interest on this Bond shall be, in the city wherein the corporate trust office of the Trustee is located, a Saturday, a Sunday or legal holiday, or a day on which banking institutions are authorized by law to close, then payment of interest or principal need not be made on such date but may be made on the next succeeding business day not a Saturday, a Sunday or a legal holiday or day upon which banking institutions are authorized by law to close with the same force and effect as if made on the date of maturity.

This Bond shall not be entitled to any benefit under the Trust Indenture, or be valid or become obligatory for any purpose, until the Trustee shall have executed the Certificate of Authentication appearing hereon.

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

AUSTIN HOUSING FINANCE CORPORATION

By: _____
Name: Rosie Truelove
Title: Treasurer

Attest:

By: _____
Name: Myrna Rios
Title: Secretary

**REGISTRATION CERTIFICATE OF
COMPTROLLER OF PUBLIC ACCOUNTS**

OFFICE OF THE COMPTROLLER OF
PUBLIC ACCOUNTS
THE STATE OF TEXAS

§
§
§

REGISTER NO. _____

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

Witness my signature and seal of office this _____.

Texas Comptroller of Public Accounts

(SEAL)

FORM OF CERTIFICATE OF AUTHENTICATION

This Bond is one of the Bonds described in the within-mentioned Indenture and issued under the provisions of the within mentioned Indenture.

WILMINGTON TRUST, NATIONAL
ASSOCIATION, as Trustee

By _____
Authorized Signature

Date of Authentication: _____, 2023

Date from which interest is payable: _____

FORM OF ASSIGNMENT

FOR VALUE RECEIVED, the undersigned hereby sells, assigns, and transfers unto

(Please Print or Type Name and Address of Assignee)

Social Security or Taxpayer Identification Number: _____

the within bond and all rights thereunder, and hereby irrevocably constitutes and appoints

Attorney to transfer the said bond on the books of the within-named Issuer maintained by the
Trustee for the registration thereof, with full power of substitution in the premises.

Notice: The signature to this assignment
must correspond with the name as it appears
on the face of the within bond in every
particular, without alteration or enlargement
or any change whatever. The signature must
be guaranteed.

Signature guaranteed by:

[Bank, Trust Company or Firm]

Authorized Signature

(Signature(s) must be guaranteed by a broker or other financial institution which is a participant in
the Securities Transfer Agent's Medallion Program (STAMP, SEMP, MSP)).

EXHIBIT A-2

FORM OF SERIES 2023 BONDS

No. R - ____

\$[_____]

**AUSTIN HOUSING FINANCE CORPORATION
MULTIFAMILY HOUSING REVENUE BONDS
(LIVE MAKE APARTMENTS)
SERIES 2023**

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

THE HOLDER OF THIS SECURITY BY ITS ACCEPTANCE HEREOF AGREES TO TRANSFER SUCH SECURITY ONLY (A) TO THE PERMANENT LENDER OR ANY PERSON CONTROLLED BY OR UNDER COMMON MANAGEMENT OR CONTROL WITH EITHER THE BORROWER OR THE PERMANENT LENDER, OR (B) TO A PERSON WHO, BASED ON SUCH PERSON'S REPRESENTATIONS, IS A "QIB" AS DEFINED IN RULE 144A PROMULGATED UNDER THE SECURITIES ACT, ACQUIRING THIS SECURITY FOR ITS OWN ACCOUNT OR AS A FIDUCIARY, CUSTODIAN, TRUSTEE OR AGENT FOR OTHER BENEFICIAL HOLDERS HOLDING BENEFICIAL INTERESTS IN THE BONDS THROUGH SUCH FIDUCIARY, CUSTODIAN, TRUSTEE OR AGENT (WHICH FIDUCIARY, CUSTODIAN, TRUSTEE OR AGENT AND SUCH BENEFICIAL HOLDERS MUST ALSO BE QIBS OR ACCREDITED INVESTORS) (BUT NOT AN INDIVIDUAL) AS DEFINED IN REGULATION D PROMULGATED UNDER THE SECURITIES ACT) AND TO WHOM NOTICE IS GIVEN THAT THE SALE OR OTHER TRANSFER IS BEING MADE IN RELIANCE ON RULE 144A OR REGULATION D, AS APPLICABLE, EACH AS PROMULGATED UNDER THE SECURITIES ACT AND PURSUANT TO THE TRANSFER RESTRICTIONS CONTAINED IN THE INDENTURE, OR (C) TO AN ACCREDITED INVESTOR (BUT NOT AN INDIVIDUAL), ACQUIRING THIS SECURITY FOR ITS OWN ACCOUNT OR AS A FIDUCIARY, CUSTODIAN, TRUSTEE OR AGENT FOR OTHER BENEFICIAL HOLDERS HOLDING BENEFICIAL INTERESTS IN THE BONDS THROUGH SUCH FIDUCIARY, CUSTODIAN, TRUSTEE OR AGENT (WHICH FIDUCIARY, CUSTODIAN, TRUSTEE OR AGENT AND SUCH BENEFICIAL HOLDERS MUST ALSO

BE ACCREDITED INVESTORS (BUT NOT AN INDIVIDUAL) OR QIBS), SUBJECT TO THE ISSUER'S AND THE TRUSTEE'S RIGHT PRIOR TO ANY SUCH TRANSFER TO REQUIRE THE DELIVERY OF (I) EITHER (A) AN INVESTOR LETTER IN SUBSTANTIALLY THE FORM SET FORTH IN EXHIBIT C TO THE INDENTURE OR (B) SUCH OTHER CERTIFICATIONS OR OTHER INFORMATION AS THE ISSUER AND THE TRUSTEE MAY REASONABLY REQUIRE TO CONFIRM THAT SUCH TRANSFER IS BEING MADE AND (II) WRITTEN CONFIRMATION FROM THE PURCHASER OF THE BONDS THAT THE SERVICING AGREEMENT REMAINS IN EFFECT (OR THAT THE SERVICING AGREEMENT HAS BEEN ASSIGNED TO, AND ASSUMED BY, ANOTHER SERVICER IN ACCORDANCE WITH THE SERVICING AGREEMENT, OR THAT ANOTHER SERVICER HAS AGREED TO ENTER INTO A NEW SERVICING AGREEMENT WITH THE TRUSTEE IN SUBSTANTIALLY THE FORM OF THE SERVICING AGREEMENT, ALL WITHOUT SEPARATE CHARGE TO THE BORROWER).

DATED DATE INTEREST RATE MATURITY DATE CUSIP NUMBER

As stated below _____

**REGISTERED
OWNER:**

**PRINCIPAL
AMOUNT:** _____ (\$[_____])

INITIAL MANDATORY TENDER DATE: _____

FOR VALUE RECEIVED, the **AUSTIN HOUSING FINANCE CORPORATION**, (together with its successors and assigns, the "Issuer"), a housing finance corporation, duly organized and existing under the laws of the State of Texas (the "Issuer"), hereby promises to pay (but only out of the Trust Estate pledged therefor) to the registered owner identified above, or its successor or registered assignee or legal representative, unless previously called for redemption, the principal amount set forth above, on the Maturity Date identified above, in lawful money of the United States of America which on the date of payment is legal tender for the payment of public and private debts, upon the presentation and surrender of this Bond at the corporate trust office of Wilmington Trust, National Association, as trustee, or its successor in trust (the "Trustee"), and to pay interest thereon (but only out of the Revenues) to the registered owner hereof from the Dated Date identified above to the Maturity Date at the Interest Rate per annum identified below (subject to adjustment or change as herein provided), payable at the times and in the manner hereinafter set forth. Principal hereof shall be payable, upon the request of any registered holder of Bonds on the applicable Record Date having an aggregate principal amount of \$1,000,000 or more, by wire transfer of immediately available funds from the Trustee to the bank and account number specified by such holder to the Trustee in writing. All interest hereon shall be paid by check or draft mailed by the Trustee to the registered owner hereof at his address

as it appears on the registration books of the Issuer, or, upon the request of any registered holder of Bonds having an aggregate principal amount of \$1,000,000 or more, by wire transfer of immediately available funds from the Trustee to the bank and account number provided by such registered owner to the Trustee in writing, such interest being payable on each Interest Payment Date.

This Bond is one of an issue of the \$9,000,000 Austin Housing Finance Corporation Multifamily Housing Revenue Bonds (Live Make Apartments) Series 2023 (the “Bonds”), of like date and tenor, except as to number and denomination, issued under and pursuant to the Constitution and laws of the Texas Housing Finance Corporations Act, Chapter 394, Texas Local Government Code, as amended (the “Act”), for the purpose of financing or providing financial assistance for a portion of the costs of the acquisition, construction, equipping and financing by Live Make Housing Partners LP, a Texas limited partnership (the “Borrower”) of a multi-family rental housing project, which will consists of approximately 66 units in one building within the State of Texas and known as the Live Make Apartments (the “Project”). The proceeds of the Bonds are being lent to the Borrower by the Issuer under a Loan Agreement dated as of January 1, 2023 between the Borrower and the Issuer (the “Loan Agreement”) and evidenced by a Promissory Note dated January 1, 2023 from the Borrower to the Issuer (the “Note”).

The Bonds are issued under a Trust Indenture dated as of January 1, 2023 between the Issuer and the Trustee (the “Trust Indenture”), and, to the extent provided therein, are, together with all other Bonds that may be issued thereunder, equally and ratably secured and entitled to the protection given by the Trust Indenture. Pursuant to the Trust Indenture, the Issuer has assigned to the Trustee (among other things) the Revenues. Pursuant to the Note and the Loan Agreement, payments sufficient for the prompt payment when due of the principal of and interest on the Bonds are to be paid by the Borrower to the Trustee for the account of the Issuer. The obligations of the Borrower under the Note and the Loan Agreement are secured by the proceeds of the Bonds deposited into the Project Fund created pursuant to Section 4.01 of the Trust Indenture.

Reference is made to the Trust Indenture, the Note, and the Loan Agreement and to all amendments and supplements thereto for a description of the property pledged and assigned and the provisions, among others, with respect to the nature and extent of the security, the rights, duties and other obligations of the Issuer and the Trustee, the terms on which the Bonds are issued and secured, the rights of the holders of the Bonds and provisions for defeasance of such rights. Capitalized terms used herein have the same meaning as set forth in the Trust Indenture. The terms and conditions set forth herein concerning payment and other rights and remedies of the owners of the Bonds are descriptive only and are subject in all cases to the terms and conditions as set forth in the Trust Indenture.

This Bond is negotiable and is transferable, as provided in the Trust Indenture, only upon the books of the Issuer kept at the office of the Trustee, by the registered owner hereof in person or by his duly authorized attorney, and may be exchanged for new Bonds of the same aggregate principal amount of authorized denominations, maturity and interest rate, in registered form, but only upon presentation and surrender of this Bond, all in the manner and subject to the limitations and conditions provided in the Trust Indenture. The Issuer and the Trustee may deem and treat the person in whose name this Bond is registered as the absolute owner hereof for all purposes; and neither the Issuer nor the Trustee shall be affected by any notice to the contrary.

Interest Rates: This Bond shall bear interest at the applicable rate provided below. On each Interest Payment Date, interest accrued through the day immediately preceding such Interest Payment Date shall be payable. While this Bond bears the Permanent Rate, interest on the Bonds shall be calculated on a 30/360 basis. While this Bond bears interest at the Taxable Rate, interest on this Bond shall be computed on the basis of a year of 365 or 366 days, as applicable, and actual days elapsed.

Permanent Rate. Commencing on the Dated date and until the earlier of the day before (i) the Maturity Date, or (ii) the date of redemption prior to maturity, this Bond shall bear interest at a fixed rate per annum of ____% (the “Permanent Rate”).

Taxable Rate. If a Determination of Taxability occurs, this Bond shall bear interest from the date of the Determination of Taxability at the Taxable Rate, and the Owner shall also be paid Additional Interest and any additional amounts owed, as provided in the Indenture.

The Bonds are issuable in the form of registered Bonds without coupons in denominations of \$5,000 each or any integral multiple of \$5,000 in excess thereof.

On or following the Funding Date the Bonds are subject to optional and mandatory redemption prior to maturity as a whole or in part at such time or times, under such circumstances, at such redemption prices and in such manner as is set forth in the Indenture.

The amount of any partial redemption, and the date on which the same is actually made, shall be noted by the Trustee on its records maintained at the Principal Corporate Trust Office of the Trustee and, if presented to the Trustee for notation (with due endorsement for transfer or accompanied by a written instrument of transfer in form satisfactory to the Trustee), on **Schedule A** attached hereto, but the failure to so note any such partial redemption shall not affect the validity of any payment actually received by the Holder of such Bond.

Except as otherwise stated in the Indenture, the redemption price of any redemption (whether by optional or mandatory redemption) shall be an amount equal to 100% of the principal amount to be redeemed, plus all unpaid interest to the date of redemption, plus a premium in certain instances described in the Indenture.

This Bond shall be registered on the books of the Trustee to be kept for that purpose by the Trustee. This Bond shall be transferable only upon such books (which transfer shall be similarly noted on the registration table attached hereto as **Schedule B** and made a part hereof) held by the Trustee. This Bond may be transferred upon presentation hereof at the Principal Corporate Trust Office of the Trustee, with a written instrument of transfer satisfactory to the Trustee, duly executed by the Holder hereof or its duly authorized attorney. The Trustee shall promptly send written notice of any transfers of this Bond to the Issuer and to the Borrower. Such transfers shall be without charge to the Holder hereof, but any taxes or other governmental charges required to be paid with respect to the same shall be paid by the Holder requesting such transfer as a condition precedent to the exercise of such privilege.

This Bond is negotiable and is transferable, as provided in the Indenture, only upon the books of the Issuer kept at the office of the Trustee, by the registered owner hereof in person or by his duly authorized attorney, and may be exchanged for new Bonds of the same aggregate principal

amount of authorized denominations, maturity and interest rate, in registered form, but only upon presentation and surrender of this Bond, all in the manner and subject to the limitations and conditions provided in the Indenture.

The Holder of this Bond shall have no right to enforce the provisions of the Trust Indenture, or to institute action to enforce the covenants therein, or to take any action with respect to any default under the Trust Indenture, or to institute, appear in or defend any suit or other proceeding with respect thereto, except as provided in the Trust Indenture. The Trustee shall treat the registered owner of this Bond as the person exclusively entitled to payment of principal and interest, and the exercise of all rights and powers of the owner of this Bond.

All acts, conditions and things required by the statutes of the State of Texas, the Act and the Trust Indenture to exist, to have happened and to have been performed precedent to and in the issuance of this Bond, do exist, have happened and have been performed.

In any case where the date of maturity of or interest on this Bond shall be, in the city wherein the corporate trust office of the Trustee is located, a Saturday, a Sunday or legal holiday, or a day on which banking institutions are authorized by law to close, then payment of interest or principal need not be made on such date but may be made on the next succeeding business day not a Saturday, a Sunday or a legal holiday or day upon which banking institutions are authorized by law to close with the same force and effect as if made on the date of maturity.

This Bond shall not be entitled to any benefit under the Trust Indenture, or be valid or become obligatory for any purpose, until the Trustee shall have executed the Certificate of Authentication appearing hereon.

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

AUSTIN HOUSING FINANCE CORPORATION

By: _____
Name: Rosie Truelove
Title: Treasurer

Attest:

By: _____
Name: Myrna Rios
Title: Secretary

**REGISTRATION CERTIFICATE OF
COMPTROLLER OF PUBLIC ACCOUNTS**

OFFICE OF THE COMPTROLLER OF
PUBLIC ACCOUNTS
THE STATE OF TEXAS

§
§
§

REGISTER NO. _____

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

Witness my signature and seal of office this _____.

Texas Comptroller of Public Accounts

(SEAL)

FORM OF CERTIFICATE OF AUTHENTICATION

This Bond is one of the Bonds described in the Trust Indenture referred to in this Bond.

WILMINGTON TRUST, NATIONAL
ASSOCIATION, as Trustee

By _____
Authorized Signature

Date of Authentication: _____, 2023

Date from which interest is payable: _____

FORM OF ASSIGNMENT

FOR VALUE RECEIVED, the undersigned hereby sells, assigns, and transfers unto

(Please Print or Type Name and Address of Assignee)

Social Security or Taxpayer Identification Number: _____

the within bond and all rights thereunder, and hereby irrevocably constitutes and appoints

Attorney to transfer the said bond on the books of the within-named Issuer maintained by the
Trustee for the registration thereof, with full power of substitution in the premises.

Notice: The signature to this assignment
must correspond with the name as it appears
on the face of the within bond in every
particular, without alteration or enlargement
or any change whatever. The signature must
be guaranteed.

Signature guaranteed by:

[Bank, Trust Company or Firm]

Authorized Signature

(Signature(s) must be guaranteed by a broker or other financial institution which is a participant in
the Securities Transfer Agent's Medallion Program (STAMP, SEMP, MSP)).

SCHEDULE A

\$9,000,000

**AUSTIN HOUSING FINANCE CORPORATION
MULTIFAMILY HOUSING MORTGAGE REVENUE BONDS
(LIVE MAKE APARTMENTS)
SERIES 2023**

REDEMPTION SCHEDULE

DATE OF REDEMPTION

AMOUNT OF REDEMPTION

SCHEDULE B

\$[_____]

**AUSTIN HOUSING FINANCE CORPORATION
MULTIFAMILY HOUSING MORTGAGE REVENUE BONDS
(LIVE MAKE APARTMENTS)
SERIES 2023**

Transfer of Bond

The transfer of this Bond may be registered only by the registered owner in person or by its duly authorized officer or attorney upon presentation hereof to the Bond Registrar, who shall make note thereof in the books kept for such purpose and in the registration blank below.

Date of
Registration

Name of
Registered Owner

Signature of
Bond Registrar

EXHIBIT B
FORM OF AMORTIZATION SCHEDULE

EXHIBIT C
FORM OF INVESTOR LETTER

[Date]

Austin Housing Finance Corporation
Austin, Texas

Wilmington Trust, National Association
Dallas, Texas

RE: AUSTIN HOUSING FINANCE CORPORATION
MULTIFAMILY HOUSING MORTGAGE REVENUE BONDS
(LIVE MAKE APARTMENTS)
SERIES 2023

Ladies and Gentlemen:

The undersigned (the “Purchaser” or “Custodian/Trustee” as applicable) hereby acknowledges receipt of the \$[_____] in aggregate principal amount of the above-referenced bonds (the “Bonds”).

The undersigned acknowledges that the Bonds were issued for the purpose of paying a portion of the costs of the demolition, acquisition, construction, equipping, and financing of a multi-family rental housing project, which will consist of approximately 66 units within the Austin, Texas and known as Live Make Apartments (the “Project”), as more particularly described in that certain Loan and Financing Agreement, dated as of [_____, 2023], by and between the Austin Housing Finance Corporation (the “Issuer”) and Live Make Housing Partners LP, a Texas Limited Partnership (the “Borrower”). The undersigned further acknowledges that the Bonds are secured by a Trust Indenture, dated as of [_____, 2023] (the “Indenture”), between the Issuer and Wilmington Trust, National Association, as trustee (the “Trustee”), which creates a security interest in the trust estate described therein (the “Trust Estate”) for the benefit of the Owners of the Bonds.

In connection with the acquisition of the Bonds by the Purchaser, the Purchaser hereby makes the following representations upon which you may rely:

1. The Purchaser has the authority to acquire the Bonds and to execute this letter and any other instruments and documents required to be executed by the Purchaser in connection with the acquisition of the Bonds.

2. [The undersigned is a custodian/trustee/fiduciary/agent (a “Custodian/Trustee”) acting as a custodian/trustee/fiduciary/agent under a custody agreement/trust agreement (a “Custodial Agreement”) for beneficial holders holding beneficial interests in the Bonds and the

undersigned is and each such beneficial holder is] [The Purchaser is] an “accredited investor” (but not an individual) under Regulation D promulgated under the Securities Act of 1933, as amended (the “Securities Act”) or a “qualified institutional buyer” under Rule 144A promulgated under the Securities Act.

3. The Bonds are being acquired [by the Custodian/Trustee under the custody agreement/trust agreement described above as a Custodian/Trustee for other beneficial holders holding beneficial interests in the Bonds through such Custodian/Trustee] [by the Purchaser for its own account] and not with a present view to, or for offer or resale in connection with, any distribution of the Bonds, and [the Purchaser intends to hold the Bonds for its own account][the Custodian/Trustee intends to hold the Bonds pursuant to the custody agreement/trust arrangement described above] and for an indefinite period of time. [The Purchaser intends to hold and book the Bonds as a loan in its portfolio and acknowledges that the use of the word “Bonds” in the name of the debt instrument is for convenience only and is not intended to indicate that the instrument is a security within the meaning of the Securities Act.] [The Purchaser][The Custodian/Trustee] understands that it may need to bear the risks of this investment for an indefinite time, since any sale prior to maturity may not be possible and understands and acknowledges that the Bonds may not be offered, sold or otherwise transferred except in compliance with the registration and transfer requirements of the Indenture.

4. [The Purchaser][The Custodian/Trustee] understands that the Bonds are not registered under the Securities Act and that such registration is not legally required as of the date hereof; and further understands that the Bonds (a) are not being registered or otherwise qualified for sale under the “Blue Sky” laws and regulations of any state, including the State of Texas, (b) will not be listed in any stock or other securities exchange, (c) will not carry a rating from any rating service, (d) will not be credit enhanced, and (e) will be delivered in a form which will not be readily marketable.

5. [The Purchaser][The Custodian/Trustee] understands that (a) the Bonds are 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 Issuer has no taxing power, (b) the Bonds do not and will not represent or constitute a general obligation or a pledge of the faith and credit of the Issuer, the State of Texas or any political subdivision thereof; and (c) the liability of the Issuer with respect to the Bonds is limited solely to the Trust Estate as set forth in the Indenture.

6. [The Purchaser][The Custodian/Trustee] hereby acknowledges that none of the Issuer, the Trustee or any person representing the Issuer or the Trustee has made any representation to it with respect to the Issuer, the Borrower, the Bonds or the Project upon which it is relying in making its decision to [acquire the Bonds for its own account][act as Custodian/Trustee]. It has had access to such financial and other information concerning the Borrower, the Project and the Bonds as it has deemed necessary in connection with its decision [to acquire the Bonds for its own account] [to act as Custodian/Trustee] including an opportunity to ask questions of and request information from the Borrower.

7. [The Purchaser has made][The Custodian/Trustee has made or has had the opportunity to make] its own inquiry and analysis with respect to the Bonds and the security therefor, and other material factors affecting the security and payment of the Bonds. [The

Purchaser][the Custodian/Trustee] is aware that the business of the Borrower involves certain economic variables and risks that could adversely affect the security for the Bonds.

8. [The Purchaser][The Custodian/Trustee] acknowledges that the Bonds are subject to restrictions on transferability as set forth on the face of the Bond and in the Indenture and that the Purchaser has the right to sell and transfer the Bonds, but only in accordance with the terms of the Indenture, subject to the delivery to the Trustee of an Investor Letter from the transferee in substantially the form attached to the Indenture as Exhibit H, with no revisions except as may be approved in writing by the Issuer.

9. [The Purchaser][The Custodian/Trustee] hereby acknowledges that it is deemed to have acknowledged, represented and agreed with the Issuer as to those representations set forth in Section 2.08 of the Indenture and that such representations and acknowledgments are incorporated herein by reference.

Capitalized terms used herein and not otherwise defined have the meanings given to such terms in the Indenture.

Very truly yours,

[PURCHASER][CUSTODIAN/TRUSTEE/
FIDUCIARY/AGENT]

By: _____
Name:
Title:

EXHIBIT D

FORM OF FUNDING NOTICE

PROJECT NAME: LIVE MAKE APARTMENTS
PROJECT LOCATION: AUSTIN, TEXAS
AGGREGATE BOND
AMOUNT: \$[_____]
ISSUER: AUSTIN HOUSING FINANCE CORPORATION
TRUSTEE: WILMINGTON TRUST, NATIONAL ASSOCIATION
BORROWER: LIVE MAKE HOUSING PARTNERS LP

The Permanent Lender hereby acknowledges that all Funding Conditions have been satisfied or waived by the Permanent Lender, and therefore, the loan shall be converted to the Permanent Mode.

1. The Permanent Loan Amount is \$_____.
2. The Redemption Amount is \$_____.
3. The Borrower Collateral Loan Repayment Account contribution is \$_____.
3. The Funding Date will occur on _____.
4. The Loan Equalization Payment due is \$_____. If applicable, the Loan Equalization Payment shall be paid by the Borrower to the Trustee not less than two (2) Business Days prior to the Conversion Date.
5. If applicable, a revised Amortization Schedule for the Permanent Loan Amount is attached.

PERMANENT LENDER

CEDAR RAPIDS BANK & TRUST,
a Missouri corporation

By: _____
Name: _____
Title: Managing Director

EXHIBIT E
FORM OF REQUISITION CERTIFICATE

_____ Fund

Wilmington Trust, National Association
15950 North Dallas Parkway
Suite 550
Dallas, Texas 75248
Attention: Stephen McPherson

Re: \$9,000,000 Austin Housing Finance Corporation
 Multifamily Housing Mortgage Revenue Bonds
 (Live Make Apartments) Series 2023

Ladies and Gentlemen:

You are requested to withdraw and disburse funds from the _____ Fund pursuant to Section ____ of the Indenture and Section ____ of the Loan Agreement in the amount(s), to the person(s) and for the purpose(s) set forth in this requisition (the “**Requisition**”). The terms used in this Requisition shall have the meanings given to those terms in the Trust Indenture (the “Indenture”), dated as of January 1, 2023, by and between Austin Housing Finance Corporation, as Issuer, and Wilmington Trust, National Association, as Trustee, securing the above-referenced Bonds or in the Regulatory Agreement (as defined in the Indenture).

1. REQUISITION NO.: _____
2. PAYMENT DUE TO: See **Schedule I** attached hereto
3. AMOUNT OF DRAW REQUESTED (before retainage withheld): \$
 LESS RETAINAGE: \$
 AMOUNT TO BE DISBURSED: \$
4. The amount requested to be disbursed pursuant to this Requisition will be used to pay or reimburse the Borrower for those Project Costs detailed in **Schedule I** attached to this Requisition.
5. The undersigned Borrower certifies that:
 - (i) the amounts included in 3 above were made or incurred or financed and were necessary for the Project and were made or incurred in accordance with the construction contracts, plans, and specifications heretofore in effect;
 - (ii) the amount paid or to be paid, as set forth in this Requisition, represents a part of the funds due and payable for Project Costs and such funds were not paid in advance of the time, if any, fixed for payment and such funds are due in accordance with the terms of any contracts applicable to the Project and in accordance with usual and customary practice under existing conditions;
 - (iii) the expenditures for which amounts are requisitioned represent proper charges against the _____ Fund, have not been included in any previous requisition, have been properly recorded on the Borrower’s books and are set forth in **Schedule I** attached hereto;

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

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

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

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

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

(B) all amounts previously requisitioned and disbursed from the Project Fund allocable to Bonds have been or will be applied by the Borrower to pay Qualified Project Costs;

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

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

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

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

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

LIVE MAKE PARTNERS, LP,
a Texas limited partnership

By: Tillery Street Housing, LLC, a Texas limited
liability company, its general partner

By: MRE Capital Investments, LLC,
a Missouri limited liability company,
its manager

By:
Name: _____
Title: _____

Approved this _____ day of _____, 202_.

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

“Construction Lender”

ZIONS BANCORPORATION, N.A., a national banking association, doing business as Amegy Bank

By:

Name: _____

Title: _____