
AUSTIN HOUSING FINANCE CORPORATION

and

LIVE MAKE HOUSING PARTNERS LP

LOAN AGREEMENT

Relating to

\$9,000,000

**Austin Housing Finance Corporation
Multifamily Housing Revenue Bonds
(Live Make Apartments)
Series 2023**

Dated as of January 1, 2023

The interest of the Austin Housing Finance Corporation (the “Issuer”) in this Loan Agreement has been assigned (except for “Reserved Rights” defined in this Loan Agreement) pursuant to the Trust Indenture (the “Indenture”) dated as of the date hereof from the Issuer to Wilmington Trust, National Association, as trustee (the “Trustee”), and is subject to the security interest of the Trustee thereunder.

(This Table of Contents is not a part of the Loan Agreement and is only for convenience of reference.)

ARTICLE I DEFINITIONS	2
1.1. Definitions.....	2
1.2. Rules of Construction.	2
1.3. Uses of Phrases.	3
ARTICLE II REPRESENTATIONS, COVENANTS AND WARRANTIES.....	3
2.1. Representations, Covenants and Warranties of the Issuer.	3
2.2. Representations, Covenants and Warranties of the Borrower and the General Partner.....	4
2.3. Additional Representations, Warranties and Undertakings of the Borrower and the General Partner.	9
2.4. Tax-Exempt Status of the Bonds.	13
2.5. Notice of Determination of Taxability.....	13
ARTICLE III CONSTRUCTION OF THE PROJECT; ISSUANCE OF THE BONDS	13
3.1. Agreement to Construct the Project.....	13
3.2. Agreement to Issue, Sell and Deliver the Bonds; Deposit of Bond Proceeds.	13
3.3. Disbursements from the Project Fund.....	14
3.4. Furnishing Documents to the Trustee.	14
3.5. Establishment of Completion Date.	14
3.6. Borrower Required to Pay in Event Project Fund Insufficient.	14
3.7. Special Arbitrage Certifications.....	15
3.8. Rebate Calculations and Payments.	15
3.9. Rebate Analyst.	15
ARTICLE IV LOAN PROVISIONS.....	16
4.1. Loan of Proceeds.....	16
4.2. Amounts Payable.	16
4.3. Fees and Expenses.	17
4.4. Obligations of the Borrower Unconditional.	18
4.5. Remarketing of Bonds.	18
ARTICLE V SPECIAL COVENANTS	18
5.1. No Warranty of Condition or Suitability by Issuer.....	18

5.2.	Access to the Project	19
5.3.	Representations and Covenants.	19
5.4.	Further Assurances and Corrective Instruments.	22
5.5.	Issuer and Borrower Representatives.....	22
5.6.	Financing Statements.	22
5.7.	Optional Prepayment.	22
5.8.	Borrower's Obligations Upon Tender of Bonds.	23
5.9.	Option to Terminate.....	23
ARTICLE VI RESTRICTION ON TRANSFER; ASSIGNMENT, SELLING, LEASING; INDEMNIFICATION		23
6.1.	Restriction on Transfer; Removal of General Partner.	23
6.2.	Indemnification by Borrower, Guarantor and General Partner.	26
6.3.	Issuer to Grant Security Interest to Trustee.	29
ARTICLE VII DEFAULTS AND REMEDIES		30
7.1.	Defaults Defined.	30
7.2.	Remedies on Default.....	31
7.3.	No Remedy Exclusive.....	31
7.4.	Agreement to Pay Attorneys' Fees and Expenses.	32
7.5.	No Additional Waiver Implied by One Waiver.....	32
7.6.	Right to Cure.....	32
ARTICLE VIII MISCELLANEOUS		32
8.1.	Term of Agreement.....	32
8.2.	Notices.	32
8.3.	Nonrecourse Liability of Borrower.....	34
8.4.	No Pecuniary Liability of Issuer.	35
8.5.	Binding Effect.	36
8.6.	Severability.	36
8.7.	Amounts Remaining in Funds.	36
8.8.	Amendments, Changes and Modifications.	37
8.9.	Execution in Counterparts.....	37
8.10.	Applicable Law.....	37
8.11.	Captions	37
8.12.	Use of Proceeds of the Bonds	37

EXHIBIT A – LEGAL DESCRIPTION OF LAND
EXHIBIT B – FORM OF PROMISSORY NOTE

LOAN AGREEMENT

This **LOAN AGREEMENT** (as amended, modified or supplemented from time to time, this “Agreement”) made as of January 1, 2023, by and between **AUSTIN HOUSING FINANCE CORPORATION**, a housing finance corporation duly organized and validly existing under the laws of the State of Texas (together with its successors and assigns, the “Issuer”), and **LIVE MAKE HOUSING PARTNERS LP**, a limited partnership, duly organized and validly existing under the laws of the State of Texas (together with its permitted successors and assigns, the “Borrower”);

W I T N E S S E T H:

WHEREAS, the Texas Housing Finance Corporations Act, Chapter 494, Texas Local Government Code, as amended (the “**Act**”), authorizes the Issuer to make loans to private sponsors for the financing, construction, rehabilitation and acquisition of housing projects in the State of Texas for eligible persons and to issue revenue bonds from time to time for such purposes; and

WHEREAS, the Borrower intends to construct certain improvements on the real property located at 1127 Tillery Street, Austin, Texas 78702 in Travis County (the “**Land**”), which Land is more particularly described in Exhibit A attached hereto. On the Land will be constructed a building (the “**Building**”) that will contain sixty-six (66) affordable rental housing units and known as Live Make Apartments (the “**Project**”) together with commercial space.

WHEREAS, the Borrower has requested the Issuer to issue its \$9,000,000 Multifamily Housing Revenue Bonds (Live Make Apartments), Series 2023 (the “**Bonds**”), the proceeds of which will be utilized to make a loan to the Borrower (the “**Loan**”) for purposes of paying a portion of the costs of the demolition, acquisition, construction, equipping, and financing the Project; and

WHEREAS, pursuant to and in accordance with the Act, the Issuer desires to provide funds to finance a portion of the demolition, acquisition, construction, equipping, and financing of the Project and the payment of certain costs of issuance by issuing the Bonds, pursuant to a Trust Indenture by and between the Issuer and Wilmington Trust, National Association, as Trustee, of even date herewith (the “**Indenture**”); and

WHEREAS, the Loan will be evidenced by this Agreement and a promissory note dated the date of delivery of the Bonds and in the form attached hereto as Exhibit B-1, as amended and restated at Funding in the form attached hereto as Exhibit B-2 (the “**Note**”) from the Borrower to the Issuer; and

WHEREAS, to provide and secure amounts to repay to the Loan during the Cash Collateralized Mode, the Borrower has obtained a Construction Loan from Zions Bancorporation, N.A, doing business as Amegy Bank (the “**Lender**”) and has agreed with Lender in a Credit Support and Funding Agreement of even date herewith (the “**Construction Loan Agreement**”) to use proceeds of the Construction Loan to make certain collateral payments to the Trustee for deposit in the Collateral Fund under and as provided for in the Indenture; and

WHEREAS, to provide and secure amounts to repay the Loan during the Permanent Mode, the Borrower has executed this Agreement, the Permanent Mode Deed of Trust and other

documents executed and delivered for the purpose of securing the Loan [GT-is this right, will the permanent deed of trust be entered into before funding? Seems like it would be delivered at conversion to permanent]; and

WHEREAS, the obligations of the Borrower under this Agreement and the Note will be secured by (i) the proceeds of the Bonds deposited in the Project Fund created pursuant to Section 4.1 of the Indenture; and (ii) the Trust Estate (as defined in the Indenture); and

WHEREAS, the Issuer has expressly determined and hereby confirms that the issuance of the Bonds will accomplish a valid public purpose of the Issuer by enabling the Issuer to require the Borrower to comply with the provisions of this Agreement with respect to the Project and the Tax Regulatory Agreement, dated as of the same date as this Agreement; and

WHEREAS, the demolition, acquisition, construction, equipping, and financing of the Project will be financed in part with proceeds of the Bonds; and

WHEREAS, the parties hereto, intending to be legally bound hereby, and for and in consideration of the premises and the mutual covenants hereinafter contained, do hereby covenant, agree and bind themselves as follows; provided, that any obligation of the Issuer created by or arising out of this Agreement shall never constitute a debt or a pledge of the faith and credit, but shall be payable solely out of the Trust Estate (as defined in the Indenture), anything herein contained to the contrary by implication or otherwise notwithstanding:

ARTICLE I DEFINITIONS

1.1. Definitions.

All capitalized, undefined terms used herein shall have the same meanings as used in Article I of the Indenture.

1.2. Rules of Construction.

The words “hereof,” “herein,” “hereunder,” “hereto,” “Agreement,” and other words of similar import refer to this Agreement in its entirety.

The term “including” shall mean “including, but not limited to.”

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

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

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 shall include any successor or predecessor provisions of law or regulations, to the extent the same shall apply to the Bonds.

“Reasonable” in the context of fees and expenses shall mean those fees and expenses charged by nationally recognized Bond Counsel firms; *provided, however*, that all costs and fees awarded by a court are not subject to the “reasonable” standard.

1.3. *Uses of Phrases.*

Any percentage of Bonds, specified herein for any purpose, is to be figured on the unpaid principal amount thereof then Outstanding. All references herein to specific sections of the Code refer to such sections of the Code and all successor or replacement provisions thereto.

ARTICLE II REPRESENTATIONS, COVENANTS AND WARRANTIES

2.1. *Representations, Covenants and Warranties of the Issuer.*

The Issuer represents, covenants and warrants that:

(a) The Issuer is a corporate body and an instrumentality of the State of Texas. Under the provisions of the Act, the Issuer is authorized to enter into this Agreement and the Indenture and the transactions contemplated hereunder and thereunder and to carry out its obligations hereunder and thereunder. By proper action of its Board of Directors, the Issuer has been duly authorized to execute and deliver the Issuer Documents and to issue and sell the Bonds.

(b) The Issuer covenants that it will not pledge the amounts derived from this Agreement other than as contemplated by the Indenture.

(c) The Issuer hereby finds and determines that financing the Project by the issuance of the Bonds will achieve the public purposes of the Act.

(d) No member or director of the Issuer, nor any other official or employee of the Issuer, has any interest, financial, employment or other, in the Borrower, the Project or in the transactions contemplated hereby.

(e) There is no action, suit, proceeding, inquiry or investigation pending or, to the knowledge of the Issuer, threatened against the Issuer by or before any court, governmental agency or public board or body, which (i) affects or questions the existence or the title to office of any member of the Issuer; (ii) affects or seeks to prohibit, restrain or enjoin the execution and delivery of any of the Issuer Documents, or the issuance, execution or delivery of the Bonds; (iii) affects or questions the validity or enforceability of any of the Issuer Documents or the Bonds; (iv) questions the exclusion from gross income for federal income taxation of interest on the Bonds; or (v) questions the power or authority of the Issuer to perform its obligations under any of the Issuer Documents or the Bonds or to carry out the transactions contemplated by any of the Issuer Documents or the Bonds.

(f) The Issuer makes no representation or warranty, express or implied, that the proceeds of the Bonds will be sufficient to finance the construction and equipping of the Project or that the Project will be adequate or sufficient for the Borrower's intended purposes.

2.2. *Representations, Covenants and Warranties of the Borrower and the General Partner.*

The Borrower and the General Partner, as applicable, represent, covenant and warrant that:

(a) Good Standing; Single Purpose Covenants

(1) The Borrower (i) is a limited partnership duly organized and existing in good standing under the laws of the State of Texas, (ii) has the power to own its property and to carry on its business as now being conducted and as contemplated by this Agreement and the Tax Certificate, and (iii) is duly qualified to do business and is in good standing in each jurisdiction in which the character of the properties owned by it therein or in which the transaction of its business makes such qualification necessary, including, but not limited to, the State of Texas. The Borrower's business and purpose have always and shall consist solely of the ownership, development, operation and management of the Project and such other lawful activities as are incidental, necessary or appropriate thereto. The Borrower shall not incur any indebtedness other than Project indebtedness approved by the Issuer, indebtedness required under the Partnership Agreement, indebtedness pursuant Section 2.10 of the Indenture, and normal trade accounts payable in the ordinary course of the Borrower's business and/or advances on account of the Borrower. The Borrower shall not assume or guaranty any other Person's indebtedness or obligations. The Borrower shall not dissolve or liquidate, in whole or in part, consolidate or merge with or into any other entity or convey, transfer or lease its property and assets substantially as an entirety to any entity. The Borrower is not contemplating and shall not institute or consent to any bankruptcy, insolvency or reorganization proceedings with respect to it, consent to the appointment of a receiver or similar official with respect to it, make any assignment for the benefit of its creditors or admit in writing its inability to pay its debts generally as they become due. The Borrower shall: maintain books and records and bank accounts separate from those of any other Person; conduct its business in its own name and use separate stationery, invoices and checks; maintain its assets in such a manner that it is not costly or difficult to segregate and identify such assets; observe all organizational formalities and hold itself out to creditors and the public as a legal entity separate and distinct from any other entity; prepare separate tax returns and financial statements, or if part of a consolidated group, then be shown thereon as a separate member of such group; allocate and charge fairly and reasonably any common employee or overhead shared with affiliates; and transact all business with affiliates on an arm's-length basis and pursuant to enforceable agreements. The Borrower shall not commingle its assets or funds with those of any other Person.

(2) The General Partner (i) is a limited liability company duly organized and existing in good standing under the laws of Texas, (ii) has the power

to own its property and to carry on its business as now being conducted and as contemplated by this Agreement, and the Tax Certificate, and (iii) is duly qualified to do business and is in good standing in each jurisdiction in which the character of the properties owned by it therein or in which the transaction of its business makes such qualification necessary, including, but not limited to, the State of Texas. The General Partner's business and purpose shall consist solely of acting as the general partner of the Borrower. The General Partner shall not incur any indebtedness other than such obligations under the Project documents, the Borrower's Partnership Agreement and related documents, the Borrower's Project indebtedness approved by the Issuer and normal trade accounts payable in the ordinary course of its and the Borrower's business and shall not assume or guaranty any other Person's indebtedness or obligations. The General Partner shall not dissolve or liquidate, in whole or in part, consolidate or merge with or into any other entity or convey, transfer or lease its property and assets substantially as an entirety to any entity. The General Partner shall not, with respect to itself or the Borrower, institute or consent to any bankruptcy, insolvency or reorganization proceedings, consent to the appointment of a receiver or similar official, make or consent to any assignment for the benefit of creditors or admit in writing its or the Borrower's inability to pay debts generally as they become due. The General Partner shall: maintain books and records and bank accounts separate from those of any other Person; conduct its business in its own name and use separate stationery, invoices and checks; maintain its assets in such a manner that it is not costly or difficult to segregate and identify such assets; observe all organizational formalities and hold itself out to creditors and the public as a legal entity separate and distinct from any other entity; prepare separate tax returns and financial statements, or if part of a consolidated group, then be shown thereon as a separate member of such group; allocate and charge fairly and reasonably any common employee or overhead shared with affiliates; and transact all business with affiliates using reasonable and customary terms pursuant to enforceable agreements. The General Partner shall not commingle its assets or funds with those of any other Person.

(b) Authority. The Borrower and the General Partner have full power and authority to (i) execute and deliver the Borrower Documents and (ii) incur the obligations provided for herein and therein, all of which have been duly authorized by all proper and necessary corporate action. All consents or approvals of any public authority which are required as a condition to the validity of this Agreement, the Tax Certificate, the Note, the Bond Purchase Agreement, and the Tax Regulatory Agreement have been obtained.

(c) Binding Agreements. The Borrower Documents have been properly executed by a duly authorized partner or member, as applicable, of the Borrower and the General Partner (as applicable) and constitute valid and legally binding obligations of the Borrower, and are fully enforceable against the Borrower 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.

(d) Litigation. There is no litigation or proceeding pending or, to the knowledge of the Borrower, threatened in writing against the Borrower, the General Partner or the Project before any court or administrative agency which, if determined adversely to the Borrower, will materially adversely affect the Borrower or the Project, or the authority of the Borrower to enter into or perform under the Borrower Documents.

(e) No Events of Default. To the Borrower's knowledge, no event has occurred and no condition exists with respect to the Borrower or the Project that would constitute a Default that is continuing or which, with the lapse of time, if not cured, or with the giving of notice, or both, would become a Default.

(f) Conflicts; Defaults. There is (i) no provision of the Borrower's or General Partner's organizational documents or resolutions of the Borrower and no provision of any existing mortgage, indenture, contract or agreement binding on the Borrower or the General Partner or affecting any of the Borrower's property and (ii) to the Borrower's or General Partner's knowledge, no provision of law or order of court binding upon the Borrower or General Partner or affecting any of the Borrower's property, in either case which would conflict with or in any way prevent the execution, delivery, or performance of the terms of the Borrower Documents, or which would be in default or violated as a result of such execution, delivery or performance. The Borrower is not in material default in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any material agreement or instrument to which it is a party.

(g) Title to Project. The Borrower has or will have on the Closing Date a fee simple interest in the land and buildings constituting the site of the Project free and clear of any liens or encumbrances, other than the liens contemplated by the Construction Loan Documents, Permanent Loan Documents, AHFC Loan Documents, Permitted Encumbrances and Issuer Documents.

(h) Financial Statements. The financial statements of the Borrower and the General Partner delivered to the Issuer are each complete and correct and fairly present in all material respects the financial position of the Borrower and the General Partner and the results of operations as of the dates and for the periods referred to and, with respect to the Borrower and General Partner only, have been prepared in accordance with generally accepted accounting principles applied on a consistent basis throughout the periods involved. There are no liabilities (of the type required to be reflected on balance sheets prepared in accordance with generally accepted accounting principles), direct or indirect, fixed or contingent, of the Borrower or the General Partner as of the date of such financial statements which are not reflected therein or in the notes thereto. There has been no material adverse change in the financial condition or operations of the Borrower or the General Partner since the date of such balance sheet (and to the Borrower's and General Partner's knowledge no such material adverse change is pending or threatened), and none of the Borrower or the General Partner has guaranteed the obligations of, or made any investment in or loans to, any Person except as disclosed in such balance sheet or as provided for in the Documents. The Borrower and General Partner have good and marketable title to all of its properties and assets, including the Property, and all of such properties and assets, including the Property, are free and clear of encumbrances (other than Permitted Encumbrances), except as reflected on such financial statements or in the notes thereto.

(i) Indenture. The Indenture has been submitted to the Borrower for its examination, and the Borrower acknowledges, by execution of this Agreement, that it has reviewed the Indenture, and it hereby approves the Indenture. The Borrower agrees to perform fully and faithfully all the duties and obligations which the Issuer has covenanted and agreed to in the Indenture to cause the Borrower to perform and any duties and obligations which the Borrower or the Issuer is required by the Indenture to perform. The foregoing shall not apply to any duty or undertaking of the Issuer which by its nature cannot be delegated or assigned.

(j) Events Affecting Tax Exemption. The Borrower has not taken or permitted to be taken any action that would impair the exclusion from gross income for federal income tax purposes of the interest payable on the Bonds, and the Borrower has never been advised that the interest is or will be subject to inclusion in gross income. As of the Closing Date, the Borrower is in compliance with all requirements contained in the Tax Certificate, and the representations set forth in the Tax Certificate pertaining to the Borrower and the Project are true and accurate in all material respects. Notwithstanding the above, if the Borrower becomes aware of any situation, event or condition which would result in the interest on the Bonds being included in gross income for federal income tax purposes, the Borrower shall promptly give written notice thereof to the Issuer and the Trustee.

(k) Compliance with Laws. The Project is of the type authorized and permitted by the Act and will, from the Closing Date forward, be operated in compliance with the provisions of the Act and the provisions of the Code applicable thereto. The Borrower will use due diligence to cause the Project to be operated in accordance with the Act and all other applicable laws, rulings, regulations and ordinances of Texas and the departments, agencies and political subdivisions thereof. The Borrower has obtained or will cause to be timely obtained all requisite approvals of the State of Texas and of other federal and local governmental bodies required for the operation of the Project.

(l) No Material Misstatements. The representations and warranties of the Borrower and the General Partner contained in the Borrower Documents (including, without limitation, any information furnished by the Borrower in connection with the preparation of any materials related to the issuance or delivery of the Bonds on the Closing Date), contain no material misstatement of fact or omit to state a material fact necessary to make the statements contained therein, in light of the circumstances under which they were made, not misleading. The representations and warranties of the Borrower and the statements, information and descriptions contained in the Borrower's closing certificates, as of the Closing Date, are true, correct and complete in all material respects, do not contain any untrue statement or misleading statement of material fact, and do not omit to state a material fact necessary to make the certifications, representations, warranties, statements, information and descriptions contained therein, in light of the circumstances under which they were made, not misleading. The estimates and assumptions contained in this Agreement and in any certificate of the Borrower delivered as of the Closing Date are reasonable and based on the most accurate information available to the Borrower.

(m) Interest of Member or Agent of Issuer. To the knowledge of the Borrower, no member or agent of the Issuer has been or is in any manner interested, directly or indirectly, in that Person's own name or in the name of any other Persons, in the loan of the bond proceeds, the Bonds, the Documents, the Borrower or the Project, in any contract for property or materials to be

furnished or used in connection with the Project, or in any aspect of the transactions contemplated by the Documents.

(n) Arbitrage Bonds. No money on deposit or to be deposited in any fund or account in connection with the Bonds, whether or not such money was or is to be derived from other sources, has been or will be used by or under the direction of the Borrower in any manner which would cause the Bonds to be “arbitrage bonds” within the meaning of Section 148 of the Code.

(o) No Purchase of Bonds. The Borrower will not purchase, pursuant to a formal or informal arrangement, the Bonds or other obligations of the Issuer in an amount related to the amount of the Loan.

(p) Tax Returns. The Borrower has filed or caused to be filed all required federal, state and local tax returns and has paid all taxes as shown on such returns as such taxes have become due. No claims have been assessed and are unpaid with respect to such taxes.

(q) No Reliance on Issuer. The Borrower acknowledges, represents and warrants that it understands the nature and structure of the transactions relating to the financing of the Project; that it is familiar with the provisions of all of the documents and instruments relating to such financing to which it or the Issuer is a party or of which it is a beneficiary; that it understands the risks inherent in such transactions, including without limitation the risk of loss of the Project; and that it has not relied on the Issuer for any guidance or expertise in analyzing the financial or other consequences of such financing transactions or otherwise relied on the Issuer in any manner except to issue the Bonds.

(r) Fees. The Borrower shall pay all fees as provided under the Note and in this Agreement, including the Issuer’s Fee.

(s) Place of Business of Borrower. The Borrower has a place of business in the Texas.

(t) Name of Borrower and General Partner. The Borrower filed a Certificate of Limited Partnership with the State of Texas and since its date of filing has done business only under the name of Live Make Housing Partners LP. The General Partner is Tillery Street Housing, LLC, a Texas limited liability company.

(u) Governmental Requirements. To the Borrower’s knowledge, no violation of any Governmental Requirement exists with respect to the Project, the Borrower, or any other asset of the Borrower, the Project conforms in all material respects with all applicable zoning, planning, building and environmental laws, ordinances and regulations of Governmental Authorities having jurisdiction over the Project, all necessary utilities are available or will be available to the Project, and the Borrower has obtained or will obtain all requisite zoning approvals necessary with respect to the Project.

(v) Condemnation. No condemnation, eminent domain or similar proceeding is pending, or to the knowledge of the Borrower, threatened in writing, with respect to the Project or any portion thereof.

(w) Governmental Approvals. The Borrower has obtained, or will obtain and has maintained as currently in full force and effect, or will be in full force and effect, all consents, and permits, licenses, accreditations, certifications and other approvals (governmental or otherwise) that:

(i) would constitute a condition precedent to, or the absence of which would materially adversely affect, the enforceability of and the performance by the Borrower of its obligations hereunder; and

(ii) are necessary for the acquisition, construction, financing and operation of the Project.

2.3. *Additional Representations, Warranties and Undertakings of the Borrower and the General Partner.*

The Borrower and the General Partner, as applicable, make the following additional representations as the basis for their covenants and agreements herein:

(a) The execution and delivery of the Borrower Documents, and the consummation of the transactions herein and therein contemplated, including the application of the proceeds of the Bonds as so contemplated, will not conflict with, or constitute a breach of, or default by it under its formation and governance documents, or any statute, indenture, mortgage, deed of trust, lease, note, loan agreement or other agreement or instrument to which it is a party or by which it or its properties are bound, and will not constitute a violation of any order, rule or regulation of any court or governmental agency or body having jurisdiction over it or any of its activities or properties. Additionally, the Borrower is not in breach, default or violation of any statute, indenture, mortgage, deed of trust, note, loan agreement or other agreement or instrument which would allow the obligee or obligees thereof to take any action which would preclude performance under the Borrower Documents by the Borrower.

(b) There are no actions, suits or proceedings of any type whatsoever pending or, to its knowledge, threatened in writing against or affecting it or its assets, properties or operations which, if determined adversely to it or its interests, could have a material adverse effect upon its financial condition, assets, properties or operations and it is not in default with respect to any order or decree of any court or any order, regulation or decree of any federal, state, municipal or governmental agency, which default would materially and adversely affect its financial condition, assets, properties or operations, or the completion of the construction of the Project.

(c) Neither any information, exhibit or report furnished to the Issuer by the Borrower in connection with the negotiation of the Borrower Documents nor any of the foregoing representations contains any untrue statement of a material fact, or omits to state a material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading.

(d) The Borrower shall have the right, without creating a Default hereunder, to contest the validity or amount of any lawful claims against the Borrower or the Property in good faith by timely and appropriate proceedings at its sole cost and expense, *provided that* (i) the Borrower shall give the Servicer, the Issuer and the Trustee written notice of its intention to contest

such claims, (ii) the Borrower shall diligently prosecute such claims, (iii) the Borrower shall at all times effectively stay or prevent the imposition of any lien against the Property as a result of such lawful claims and the enforcement of such claim until resolution of the contest, or, to the extent any lien is imposed as a result of any such lawful claim, shall immediately bond off such lien, (iv) the Borrower's ability to pay and perform the Borrower's Obligations or the security for the Borrower's Obligations is not, in the reasonable discretion of the Servicer and the Issuer materially impaired during the period of contest, and (v) the Borrower shall establish reasonable reserves or obtain bonding for such liabilities being contested if the Servicer reasonably determines, after consulting with the Issuer, such reserves or bonding to be necessary. If clauses (i) through (v) are not satisfied, the Borrower shall promptly pay and discharge such claims, and the failure to so pay such claims shall constitute a Default under this Agreement.

(e) The Borrower shall maintain the insurance required as required by the Lender and such other insurance with insurance companies on such of its properties, in such amounts and against such risks, as is customarily maintained by similar businesses operating in the same vicinity, and shall provide evidence of such insurance to the Trustee, the Issuer, and the Servicer as provided in a reasonably requested. Such insurance shall name the Issuer, the Servicer and the Trustee as additional insureds and as loss payees, as their interest may appear.

(f) The Borrower shall maintain in good standing its existence as a limited partnership under the laws of the State of Texas. The General Partner shall maintain in good standing its existence as a limited liability company under the laws of the State of Texas.

(g) The Project shall at all times after the Completion Date operate and maintain 66 rental units and the Borrower shall not at any time convert any of the rental units in the Project into non-residential space.

(h) The Borrower shall not cause or permit the Property to be used to generate, manufacture, refine, transport, treat, store, handle, dispose, transfer, produce or process Hazardous Materials in violation of Governmental Requirements, except for amounts of substances which are customarily used in the construction or operation of a multifamily residential rental project, and then only in compliance with applicable Governmental Requirements; nor shall the Borrower cause or permit, as a result of any intentional or unintentional act or omission on the part of the Borrower or any tenant or occupant, a release of Hazardous Materials onto the Property or the Project or, in the case of the Borrower, onto any other property. The Borrower shall comply with and ensure compliance by all tenants and occupants with all applicable Governmental Requirements concerning Hazardous Materials, whenever and by whoever triggered, and shall obtain and comply with, and shall ensure that all tenants and subtenants obtain and comply with any and all approvals, registrations or permits required thereunder. The Borrower shall conduct all remedial, removal, and other actions necessary to clean up and remove all Hazardous Materials on, from or affecting the Land or the Project in accordance with, and as may be necessary to comply with all applicable Governmental Requirements.

(i) The Borrower shall comply with all restrictive covenants affecting the Land, the Property and the Project, including, without limitation, the Tax Regulatory Agreement.

(j) The Borrower and the General Partner shall promptly notify the Trustee, the Issuer, and the Servicer in writing, with a full description, of all threatened (in writing) or pending litigation of which the Borrower or the General Partner receives written notice, and of all proceedings before any court or any Governmental Authority in which the Borrower or the General Partner is a party or of which the Borrower or the General Partner receives written notice, which if adversely determined, would materially adversely affect the conduct of the business of the Borrower or the General Partner, the condition (financial or otherwise) of the Borrower or in any manner materially adversely affecting the Property, including, but not limited to, tax deficiencies and any prospective Condemnation, change of zoning or other action affecting the Property or the Project. The Borrower shall provide prior written notice to the Servicer and the Issuer, prior to entering into a settlement in any litigation or proceedings involving (i) a recovery, or an uninsured payment, by the Borrower in excess of \$25,000, so long as (A) any payment under \$25,000 is not made from the revenues of the Project, and (B) all other payments in excess of \$25,000 are approved by the Servicer and the Issuer, such approval not to be unreasonably withheld (ii) a change in the Permitted Use of the Property, (iii) the inclusion in Gross Income of interest on the Bonds, or (iv) the creation of a lien on the Property.

(k) The Borrower shall be solely responsible for, and shall promptly make all disclosures and file or cause to be filed by the Issuer all reports required by all applicable federal and state securities laws in connection with the Bonds, the Loan and the Project, including, if applicable, SEC Rule 15c2-12 and any similar or successor rules hereinafter made applicable to the Bonds, and will provide the Trustee and the Issuer with all information necessary for the Trustee or the Issuer, as applicable, to make any such required disclosures or file such reports. The Servicer shall be provided with a copy of each disclosure or report filed by the Borrower or the Issuer pursuant to the provisions of this paragraph (k).

(l) The Borrower shall keep and maintain the Property and each part thereof in good condition, working order and repair, and make all necessary or appropriate repairs, replacements and renewals thereto so that each part thereof shall at all times be in good condition, fit and proper for the respective purposes for which it was originally intended, erected or installed and to ensure that the security for the Bonds and the Loan shall not be impaired. The Borrower shall not use or occupy the Property or knowingly permit the same to be used or occupied in any manner which would cause structural injury to the Project or which would cause the value or the usefulness of the Property or any part thereof to diminish (ordinary wear and tear for its business excepted), or which would constitute a public or private nuisance or waste. Upon the written demand of the Servicer, the Borrower shall commence and proceed promptly and diligently to maintain and repair the Project in good condition, working order and repair and to correct any structural injuries or defects in the Project. In the event the Borrower fails to maintain and repair the Property or to correct structural injuries or defects in accordance with the terms of this subsection, the Servicer shall have the right to enter onto the Property in order to take any and all actions deemed necessary by the Servicer to so maintain and repair the Property, and all sums expended by the Servicer in connection therewith shall be payable by the Borrower with interest, on demand.

(m) [Reserved.]

(n) The Borrower shall not, without the prior written consent of the Servicer and the Issuer, create, assume or suffer to exist any other indebtedness or liability for the debts or obligations of any other Person except the Construction Loan, the AHFC Loan, and the Permanent Loan (and during the Cash Collateralized Mode, all other indebtedness and obligations expressly permitted by the Construction Loan Agreement) .

(o) The Borrower shall not enter into any agreement, contract or undertaking containing any provision which would be violated or breached by the performance by the Borrower of any obligations hereunder or under any other Document.

(p) The Borrower shall deliver to the Servicer, the Issuer and the Trustee, on demand by either or both, as applicable, any contracts, bills of sale, statements, receipted vouchers or agreements, under which the Borrower claims title to any materials, fixtures or articles incorporated in the Project or subject to the lien of this Agreement or the Deed of Trust.

(q) With the exception of all of the Project Documents entered into on the Closing Date, and service contracts that are cancellable on not more than thirty (30) days' notice, the Borrower shall not, without the Issuer's and the Servicer's prior written consent, enter into any contracts or agreements relating to the Property or the operation thereof which (A) would bind a successor owner of the Property, or (B) would bind and run with the Property.

(r) (Reserved)

(s) The Borrower agrees to provide to the Issuer or the Trustee, as applicable, all information necessary to enable the Issuer or the Trustee, as applicable, to complete and file all forms and reports required by the laws of the State and the provisions of the Code in connection with the Project and the Bonds.

(t) At all times during the term of the Loan, the Borrower shall comply, and take all necessary steps to ensure compliance, with all requirements of Section 42 of the Code and all rules and regulations promulgated pursuant thereto by the Federal government or the applicable tax credit housing agency relating to the Section 42 low-income housing tax credits, including, but not limited to, all restrictive covenants and agreements with the applicable tax credit housing agency.

(u) At all times during the term of the Loan, the Borrower and the General Partner warrant and represent that neither it nor any person or entity who holds any direct or indirect interest in the Borrower or the General Partner, the Project or the proceeds of the Loan described herein, or is in any way affiliated with or will benefit from any of the above, (i) is described in, covered by, or specially designated pursuant to or affiliated with any person or entity described in, covered by, or specially designated pursuant to "Executive Order 13224 Blocking Terrorist Property and a Summary of the Terrorism Sanctions Regulations (Title 31, Part 595 of the U.S. Code of Federal Regulations), Terrorism List Governments Sanctions Regulations (Title 31, Part 596 of the U.S. Code of Federal Regulations), and Foreign Terrorist Organizations Sanctions Regulations (Title 31, Part 597 of U.S. Code of Federal Regulations)" ("**Executive Order 13224**"), or any other list or designation promulgated by the United States of America or any department or agency thereof of persons or entities transactions with which are blocked or

prohibited by any statute, regulation or governmental order and (ii) is not, and shall not become a person or entity with whom any individual or entity is restricted from doing business with under the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Public Law 107-56, as amended from time to time (the “**USA Patriot Act**”) or Executive Order 13224, and any regulations promulgated pursuant thereto.

(v) The Borrower shall pay all actual, out of pocket fees, costs and expenses required to be paid by the Borrower under the terms of this Agreement.

All representations of the Borrower contained herein and in any certificate or other instrument delivered by the Borrower pursuant to the Borrower Documents or in connection with the transaction contemplated thereby, shall survive the execution and delivery thereof and the issuance, sale and delivery of the Bonds.

2.4. *Tax-Exempt Status of the Bonds.*

Excluding any representations made therein by or on behalf of another party thereto, the Borrower hereby represents, warrants and agrees that the Tax Certificate executed and delivered by the Borrower concurrently with the issuance and delivery of the Bonds is true, accurate and complete in all material respects as of the date on which executed and delivered.

2.5. *Notice of Determination of Taxability.*

Promptly after the Borrower first becomes aware of any investigation relating to the tax status of the Bonds, or a Determination of Taxability, the Borrower shall give written notice thereof to the Issuer, the Permanent Lender and the Trustee at the address of each party listed in Article I of the Indenture.

ARTICLE III CONSTRUCTION OF THE PROJECT; ISSUANCE OF THE BONDS

3.1. *Agreement to Construct the Project.*

The Borrower agrees to make all contracts and do all things necessary for the construction of the Project to ensure the Funding Conditions are satisfied by the Funding Deadline. The Borrower further agrees that it will construct the Project with all reasonable dispatch and use its best efforts to cause construction of the Project to be completed by the Bank’s Required Completion Date (as defined in the Construction Loan Agreement); but if for any reason such construction is not completed by said Bank’s Required Completion Date there shall be no resulting liability on the part of the Borrower or the Issuer and no diminution in or postponement of the payments required in Section 4.2 hereof to be paid by the Borrower.

3.2. *Agreement to Issue, Sell and Deliver the Bonds; Deposit of Bond Proceeds.*

In order to provide funds for the payment of the Qualified Project Costs, the Issuer, concurrently with the execution of this Agreement, will issue, sell, and deliver the Bonds and deposit the proceeds thereof with the Trustee, which amounts shall be immediately deposited into the Project Fund.

3.3. *Disbursements from the Project Fund.*

In the Indenture, the Issuer has authorized and directed the Trustee to make disbursements from the Project Fund to pay Qualified Project Costs upon satisfaction of the requirements of the Indenture (which in any event will require corresponding deposits into the Collateral Fund as and when as provided for in the Indenture and the Construction Loan Agreement). The Trustee is directed in the Indenture to make disbursements from the Project Fund as provided in the Indenture, and pursuant to the receipt of a Requisition in substantially the form attached to the Indenture, and the corresponding deposit into the Collateral Fund as and when provided for in the Funding Agreement..

The Borrower's right to request disbursements from the Project Fund is limited to the principal amount of the Loan and, except in the case of an Exempt Disbursement, conditioned upon the deposit of Collateral Payments to the Collateral Fund as set forth in the Indenture.

3.4. *Furnishing Documents to the Trustee.*

The Borrower agrees to cause each such Requisitions to be directed as set forth in the Funding Agreement as may be necessary to effect payments out of the Project Fund in accordance with Section 3.3 hereof.

3.5. *Establishment of Completion Date.*

(a) The Borrower Representative shall evidence completion of the Project by providing the Affidavit of Completion under and as provided for in the Construction Loan Agreement, which shall reflect the date of completion of the Project; and such date shall be *prima facie* evidence of the and the actual date of Completion. The foregoing shall not limit the requirements of the Construction Loan Agreement with respect to the release of the final advance of the Construction Loan for retainage, and the requirements of the Funding Conditions to the Funding.

(b) If at least ninety-five percent (95%) of the proceeds of the Bonds have not been used to pay Qualified Project Costs, any amount (exclusive of amounts retained by the Trustee in the Project Fund for payment of Qualified Project Costs not then due and payable) remaining in the Project Fund shall be transferred by the Trustee into the Bond Fund and used by the Trustee (i) to pay the principal of and interest on the Bonds or (ii) for any other purpose provided that the Trustee is furnished with an opinion of Bond Counsel to the effect that such use is lawful under the Act and will not cause interest on the Bonds to be included in gross income for federal income tax purposes. Until used for one or more of the foregoing purposes, such segregated amount may be invested as permitted by the Indenture provided that prior to any such investment the Trustee is provided with an opinion of Bond Counsel to the effect that such investment will not cause interest on the Bonds to be included in gross income for federal income tax purposes.

3.6. *Borrower Required to Pay in Event Project Fund Insufficient.*

In the event the moneys in the Project Fund are not sufficient to pay the Qualified Project Costs in full, the Borrower agrees to complete the Project and to pay that portion of the Qualified Project Costs in excess of the moneys available therefore in the Project Fund as and when provided

for in the Construction Loan Agreement. The Issuer does not make any warranty, either express or implied, that the moneys paid into the Project Fund and available for payment of the Qualified Project Costs will be sufficient to pay all of the Qualified Project Costs. The Borrower agrees that if after exhaustion of the moneys in the Project Fund, the Borrower should pay any portion of the Qualified Project Costs pursuant to the provisions of this Section, the Borrower shall not be entitled to any reimbursement therefor from the Issuer, the Trustee or the Holders of any of the Bonds, nor shall the Borrower be entitled to any diminution of the amounts payable under this Agreement.

3.7. *Special Arbitrage Certifications.*

The Borrower and the Issuer covenant (i) not to take any action or fail to take any action which would cause the interest on any of the Bonds to be or become includable in the gross income of the Holders for federal income tax purposes and (ii) not to cause or direct any moneys on deposit in any fund or account to be used in a manner that would cause the Bonds to be classified as “arbitrage bonds” within the meaning of Section 148 of the Code. The Borrower certifies and covenants to and for the benefit of the Issuer and the Holders of the Bonds that so long as there are any Bonds Outstanding, moneys on deposit in any fund or account in connection with the Bonds, whether such moneys were derived from the proceeds of the sale of the Bonds or from any other sources, will not be used in a manner that will cause the Bonds to be classified as “arbitrage bonds” within the meaning of Section 148 of the Code.

3.8. *Rebate Calculations and Payments.*

Within thirty (30) days after the end of each fifth Bond Year and within twenty (20) days after payment in full of the Bonds, if necessary, the Borrower shall cause the Rebate Analyst to calculate the Rebate Amount as of the end of that Bond Year or the date of such payment and the Rebate Analyst shall notify the Trustee and the Borrower of that amount. If the amount then on deposit in the Rebate Fund created under the Indenture is less than the Rebate Amount (taking into account the amount or amounts, if any, previously paid to the United States), the Borrower shall, within thirty (30) days after the date of the aforesaid calculation, deposit or cause to be deposited to the credit of the Rebate Fund an amount sufficient to cause the Rebate Fund to contain an amount equal to the Rebate Amount. The obligation of the Borrower to make or cause to be made such payments shall remain in effect and be binding upon the Borrower notwithstanding the release and discharge of the Indenture or the termination of this Agreement. The Borrower shall obtain such records of the computations made pursuant to this Section as are required under Section 148(f) of the Code and shall retain such records for at least six (6) years after the maturity or retirement of the Bonds.

3.9. *Rebate Analyst.*

In accordance with Section 3.8, the Rebate Analyst shall perform any calculations required under Section 4.07 of the Indenture at the sole expense of the Borrower. In the event the Issuer does not select a Rebate Analyst when any such calculation is required, the Borrower, with the consent of the Issuer shall appoint a Rebate Analyst, the expense of which shall be borne by the Borrower, and the Borrower shall give prompt notice in writing to the Trustee of such appointment. The Borrower further covenants that, during the term of the Bonds, in the event the Borrower sells or otherwise disposes of the Project, it will require that the transferee execute a covenant similar

to that in this Section in the sale or other documents concerning the disposition and will require such transferee to include such a covenant in future transfer documents. The special covenants of the Borrower in this Section shall survive the defeasance or payment in full of the Bonds notwithstanding any other provision of this Agreement until the requirements for payment of any Rebate Amount has been fully satisfied.

ARTICLE IV LOAN PROVISIONS

4.1. *Loan of Proceeds.*

The Issuer agrees, upon the terms and conditions contained in this Agreement and the Indenture, to lend to the Borrower the proceeds received by the Issuer from the sale of the Bonds. Such proceeds shall be disbursed to or on behalf of the Borrower as provided in Section 3.3 hereof.

4.2. *Amounts Payable.*

(a) The Borrower hereby covenants and agrees to repay the Loan on or before any date that any payment of interest or principal is required to be made in respect of the Bonds pursuant to the Indenture, until the principal of and interest on the Bonds shall have been fully paid or provision for the payment thereof shall have been made in accordance with the Indenture, in immediately available funds, a sum which, together with any other moneys available for such payment in any account of the Bond Fund, will enable the Trustee to pay the amount payable on such date as principal of (whether at maturity or acceleration or otherwise) interest on the Bonds as provided in the Indenture. Payments by the Trustee of principal and interest on the Bonds from amounts in the Bond Fund shall be credited against the Borrower's obligation to pay principal and interest on the Loan. The Borrower also covenants and agrees to pay any additional amounts that may be due as a result of a Determination of Taxability or in connection with any prepayment of the Bonds permitted under the Permanent Loan Agreement.

It is understood and agreed that all payments of principal and interest payable by the Borrower under subsection (a) of this Section 4.2 are assigned by the Issuer to the Trustee for the benefit of the Holders of the Bonds (excluding amounts on deposit in the Rebate Fund). The Borrower consents to such assignment.

(b) In the event the Borrower should fail to make any of the payments required in this Section 4.2, the item or installment so in default shall continue as an obligation of the Borrower until the amount in default shall have been fully paid, and the Borrower agrees to pay the same with interest thereon, to the extent permitted by law, from the date when such payment was due, at the rate of interest borne by the Bonds.

(c) After Funding, the Borrower shall pay to the Trustee, for deposit into the Revenue Account of the Bond Fund, on the Business Day immediately preceding each Interest Payment Date, an amount equal to the sum of (i) the interest due on the Bonds on such date (after taking into account funds available for such purpose, if any, in the Capitalized Interest Account of the Project Fund), plus (ii) the principal due on the Bonds on such date, including the amount of mandatory redemption payments, if any, required pursuant to Section 4.01 of the Indenture (to the extent of money not already on deposit with the Trustee with respect to such mandatory redemption

payments). Amounts so paid to the Trustee by the Borrower shall be in immediately available funds or shall be such that on the Bond Payment Date they are available funds.

(d) The Borrower understands that the interest rate applicable under the Note and with respect to the Bonds is based upon the assumption that interest income paid on the Bonds will be excludable from the gross income of the Owners under Section 103 of the Code and applicable state law. In the event that an Initial Notification of Taxability shall occur, then the interest rate on the Note and the Bonds, and on all obligations under this Agreement (other than those to which the Alternative Rate applies) shall, effective on the date of such Initial Notification of Taxability, be increased to a rate equal to the Taxable Rate. The Borrower shall, in addition, pay to the Trustee, for deposit into the Revenue Fund, promptly upon demand from the Trustee or the Servicer, an amount equal to the Additional Interest payable on the Bonds. The Borrower shall also indemnify, defend and hold the Owners, Issuer and Trustee (and each of their directors, members, officers and employees) harmless from any penalties, interest expense or other costs, including reasonable attorneys' fees (including all reasonably allocated time and charges of Owners', Issuer's and Trustee's "in-house" and "outside" counsel) and accountants' costs, resulting from any dispute with the Internal Revenue Service concerning the proper tax treatment of the Bonds and any interest payable to any Owner with respect to the Bonds. The obligations of the Borrower under this Section 4.2(d) shall survive termination of this Agreement and the Note and repayment of the Loan. If, following any increase in interest rates pursuant to this Section 4.2(c), a final determination is made, to the satisfaction of the Owners, that interest paid on the Bonds is excludable from the Owners' gross income under Section 103 of the Code and applicable state law, the Owners shall promptly refund to the Borrower any Additional Interest and other additional amounts paid by the Borrower pursuant to this Section 4.2(c).

4.3. *Fees and Expenses.*

At the closing, the Borrower agrees to cause to be deposited the Costs of Issuance Deposit into the Costs of Issuance Fund as required under the Indenture, to pay, from moneys on deposit therein or in the Expense Fund or from other funds, the Issuer's Fee, the Trustee Ongoing Fee, Remarketing Agent's Fee and the Rebate Analyst Fee (including the reasonable fees and expenses of their respective counsel actually incurred) in connection with the issuance of the Bonds and the performance of their duties in connection with the transactions contemplated hereby, including, without limitation, all costs of recording and filing, to the extent such fees and expenses are not otherwise paid from the Expense Fund or the Costs of Issuance Fund in accordance with Section 4.06 or Section 4.08 of the Indenture. All such amounts shall be paid directly to the parties entitled thereto for their own account as and when such amounts become due and payable. The Borrower will also pay any reasonable expenses actually incurred in connection with any redemption or remarketing of the Bonds. Additionally, and without limiting the foregoing, the Borrower agrees to pay to the Issuer, the Trustee or to any payee designated by the Issuer (whether such amounts are due on the Closing date or not), all reasonable costs and expenses incurred by the Issuer for post-closing actions including but not limited to consents, review, and modifications, all reasonable costs and expenses incurred by the Trustee in its administration of the trusts created by the Indenture and in the performance of its duties under the Documents, and all reasonable third-party expenses incurred by the Trustee, the Servicer, or the Issuer in servicing the Loan and the Bonds.

The obligations of the Borrower under this Section shall survive the termination of this Agreement and the payment and performance of all of the other obligations of the Borrower hereunder and under the other Borrower Documents, including the Tax Regulatory Agreement.

4.4. *Obligations of the Borrower Unconditional.*

The obligations of the Borrower to make the payments required under this Agreement, and to perform and observe the other agreements on its part contained herein shall be absolute and unconditional, irrespective of any defense or any right of notice, setoff, recoupment or counterclaim it might otherwise have against the Issuer, the Trustee or any other Person. Subject to termination as provided herein, the Borrower (i) will not suspend or discontinue, or permit the suspension or discontinuance of, any payments provided for under this Agreement, (ii) will perform and observe all of its other agreements contained in this Agreement and (iii) will not terminate this Agreement for any cause including, without limiting the generality of the foregoing, any acts or circumstances that may constitute failure of consideration, eviction or constructive eviction, destruction of or damage to the Project, commercial frustration of purpose, or change in the tax or other laws or administrative rulings of or administrative actions by the United States of America or the State of Texas or any political subdivision of either, any failure of the Issuer to perform and observe any agreement, whether express or implied, or any duty, liability, or obligation arising out of or connected with this Agreement, whether express or implied, or any failure of the Trustee to perform and observe any agreement, whether express or implied, or any duty, liability or obligation arising out of or connected with the Indenture, whether express or implied.

4.5. *Remarketing of Bonds.*

The Borrower is hereby granted the right to (i) request a remarketing of the Bonds in the manner and to the extent set forth in Section 3.07 of the Indenture and (ii) with the written consent of the Remarketing Agent (which consent shall not be unreasonably withheld), designate the length of the Remarketing Period and the related Mandatory Tender Date in the manner and to the extent set forth in Sections 3.05 and 3.07 of the Indenture. Notice of any such Remarketing Period and the related Mandatory Tender Date also shall be delivered to the Trustee not later than 30 days prior to the Mandatory Tender Date.

**ARTICLE V
SPECIAL COVENANTS**

5.1. *No Warranty of Condition or Suitability by Issuer.*

THE ISSUER MAKES NO WARRANTY, EITHER EXPRESS OR IMPLIED, AND SPECIFICALLY DISCLAIMS ANY WARRANTY AS TO THE PROJECT OR THE CONDITION THEREOF, OR THAT THE PROJECT WILL BE SUITABLE FOR THE PURPOSES OR NEEDS OF THE BORROWER. THE ISSUER MAKES NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, AND SPECIFICALLY DISCLAIMS ANY WARRANTY THAT THE BORROWER WILL HAVE QUIET AND PEACEFUL POSSESSION OF THE PROJECT. THE ISSUER MAKES NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, AND SPECIFICALLY DISCLAIMS ANY WARRANTY WITH RESPECT TO THE MERCHANTABILITY, CONDITION OR WORKMANSHIP OF ANY PART OF THE PROJECT OR ITS SUITABILITY FOR THE BORROWER'S PURPOSES.

5.2. *Access to the Project.*

The Borrower agrees that the Issuer, the Trustee and their duly authorized agents, attorneys, experts, engineers, accountants and representatives shall have the right to inspect the Project and the construction thereof at all reasonable times. The Borrower acknowledges that the Issuer shall monitor the construction of the Project. The Issuer, the Trustee and their duly authorized agents shall also be permitted, at all reasonable times, to examine the books, accounts, contracts, documents, and other papers of the Borrower with respect to the Project which shall all be maintained by the Borrower in reasonable condition and for audit.

5.3. Representations and Covenants. The Borrower represents, warrants and covenants as follows:

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

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

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

A. assuring that at all times within the Qualified Project Period that forty percent (40%) of the residential units in the Project Facilities will be occupied by persons whose income is sixty percent (60%) or less of area median gross income;

B. obtaining annually from each tenant of a residential unit described in clause (A) above, a certification of income to currently determine income compliance with the foregoing; and

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

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

(iv) to refrain from using any portion of the proceeds of the Bonds, directly or indirectly, to acquire or to replace funds which were used, directly or indirectly, to acquire investment property (as defined in Section 148(b)(2) of the Code) which produces a materially higher yield than the yield on the Bonds over the term of the Bonds, other than investment property acquired with:

A. proceeds of the Bonds invested for a reasonable temporary period equal to three (3) years or less until such proceeds are needed for the purpose for which the Bonds are issued;

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

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

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

(vi) to use no more than two percent (2%) of the gross proceeds of the Bonds for the payment of costs of issuance;

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

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

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

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

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

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

(d) The Issuer and the Borrower covenant that the Borrower’s interest in the property constituting the Project Facilities will not be sold or otherwise disposed in a transaction resulting in the receipt by the Issuer and the Borrower of cash or other compensation, unless (i) the Bonds are retired, or (ii) the Issuer and the Borrower obtain Favorable Opinion of Bond Counsel with respect to such sale or other disposition.

(e) The Issuer and the Borrower covenant to account for the expenditure of sale proceeds and investment earnings to be used for the Project Facilities on the Borrower’s books and records by allocating proceeds to expenditures within eighteen (18) months of the later of the date that (i) the expenditure is made, or (ii) the Project Facilities are completed. The foregoing notwithstanding, the Issuer and the Borrower shall not expend sale proceeds or investment earnings thereon more than sixty (60) days after the later of (1) the fifth (5th) anniversary of the delivery of the Bonds, or (2) the date the Bonds are retired, unless the Issuer obtains a Favorable Opinion of Bond Counsel with respect to such expenditure. For purposes hereof, the Issuer and

the Borrower shall not be obligated to comply with this covenant if they shall obtain a Favorable Opinion of Bond Counsel with respect to the failure to comply with such covenant.

(f) The Borrower (i) has designated the officers of the sole member of the General Partner as the person who will contact the Issuer in the event of any change of use of any portion of the Project (“change of use”) within fifteen (15) days of such change in use event, and (ii) will provide, within sixty (60) days of the applicable date, a rebate report or a letter (prepared by a CPA, nationally recognized rebate consultant or bond counsel) attesting that one is not required.

(g) The Issuer has designated the program manager as the person who (i) will receive notice by the person described in the preceding paragraph of any change of use of the Project and who will determine, upon consultation with Bond Counsel, whether to take a remedial action or any other remedy available at law to ensure that the exclusion from gross income of interest on the Bonds for federal income tax purposes is preserved following such change of use, and (ii) will receive the aforementioned rebate report or letter attesting that such report is not required.

5.4. *Further Assurances and Corrective Instruments.*

The Issuer and the Borrower agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for carrying out the expressed intention of this Agreement.

5.5. *Issuer and Borrower Representatives.*

Whenever under the provisions of this Agreement the approval of the Issuer or the Borrower is required or the Issuer or the Borrower is required to take some action at the request of the other, such approval or such request shall be given in writing both for the Issuer by an authorized representative of the Issuer and for the Borrower by a Borrower Representative. The Trustee shall be authorized to act on any such approval or request pursuant to the Indenture.

5.6. *Financing Statements.*

The Borrower shall, or shall cause to be executed and filed any and all financing statements, or any amendments thereof or continuation statements thereto, to perfect the security interests granted in the Indenture, in the manner prescribed in the Indenture. The Borrower shall pay all costs of filing such instruments and any fees and expenses (including reasonable attorney’s fees) associated therewith.

5.7. *Optional Prepayment.*

The Note may be prepaid by the Borrower in whole or in part during the Cash Collateralized Mode on an Optional Redemption Date without penalty and during the Permanent Mode pursuant to the Permanent Loan Agreement. In order to prepay the Note, the Borrower shall give the Trustee written notice at least thirty (30) days prior to the prepayment date (or such shorter

period as may be acceptable to the Trustee) to effect an optional redemption of the Bonds pursuant to Section 3.01 of the Indenture.

5.8. *Borrower's Obligations Upon Tender of Bonds.*

If any tendered Bond is not remarketed on any Mandatory Tender Date and a sufficient amount is not available in the Collateral Fund, the Negative Arbitrage Account of the Bond Fund, or the Project Fund as provided in Section 3.05(e) of the Indenture for the purpose of paying the purchase price of such Bond, the Borrower will cause to be paid to the Trustee by the applicable times provided in the Indenture, an amount equal to the amount by which the principal amount of all Bonds tendered and not remarketed, together with interest accrued to the Mandatory Tender Date, exceeds the amount otherwise available pursuant to Section 3.05(e) of the Indenture.

5.9. *Option to Terminate.*

The Borrower shall have the option to cancel or terminate this Agreement at any time when (a) the Indenture shall have been released in accordance with its provisions, and (b) sufficient money or security acceptable to the Issuer and the Trustee are on deposit with the Trustee to meet all Loan Payments due or to become due through the date on which the last of the Bonds is then scheduled to be retired or redeemed. Such option shall be exercised by the Borrower, giving the Issuer and the Trustee five (5) days' notice in writing of such cancellation or termination and such cancellation or termination shall become effective at the end of such notice period. The provisions of this Section shall not be deemed to permit a prepayment of the Note other than in accordance with its terms.

**ARTICLE VI
RESTRICTION ON TRANSFER; ASSIGNMENT, SELLING, LEASING;
INDEMNIFICATION**

6.1. *Restriction on Transfer; Removal of General Partner.*

(a) Except as otherwise provided for herein and in any event during the Cash Collateralized Mode, subject to and as provided for in the Construction Loan Agreement, the Borrower will not, directly or indirectly, by operation of law or otherwise, sell, assign, grant a deed of trust, pledge, hypothecate, transfer or otherwise dispose of the Project or any interest in the Project, and will not encumber, alienate, hypothecate, grant a security interest in or grant any other ownership or control interest whatsoever in the Project, in the leases or in the rents, issues and profits therefrom.

(b) No interest in the Borrower and no ownership interest in the General Partner may be sold, conveyed, transferred, assigned, pledged or otherwise transferred, in whole or in part, directly or indirectly, by operation of law or otherwise other than the transfer of membership interests after the parties have paid all installments of the equity contribution required to be delivered to the Trustee pursuant to the Operating Agreement. During the Cash Collateralized Mode, the terms and provisions in the Construction Loan Agreement with respect to the foregoing in this subsection shall govern and control.

(c) Notwithstanding anything contained in the subsections above and subject to subsection (l) hereof, each of the following transactions are hereby deemed to be expressly permitted hereunder:

(i) Issuance of membership interests in the Borrower equal to 99.99% of the profits, losses, credits, distributions and other interests in the Borrower to the Investor Member;

(ii) The transfer by the Investor Member of the membership interests in the Borrower to any other entity which is an Affiliate of the Investor Member or which is controlled by or under common control with the Investor Member or an Affiliate;

(iii) The transfer by the Investor Member of the membership interests in the Borrower to any other entity which is not an Affiliate of the Investor Member or which is not controlled by the Investor Member with the prior written consent of the Issuer in its sole and absolute discretion, after thirty (30) days written notice to the Issuer of the intent to transfer;

(iv) The pledge and encumbrance of the interests of the Investor Member to or for the benefit of any financial institution which enables the Investor Member to make its capital contributions to the Borrower and any subsequent realization by any such lender upon the interests of the Investor Member in the Borrower;

(v) Following the occurrence of an Event of Default or in accordance with Subparagraph (k) of this Section, the removal of the General Partner by the Investor Member pursuant to the terms of the Operating Agreement of the Borrower and the replacement of the General Partner with the Investor Member or an Affiliate of the Investor Member;

(vi) A change in the beneficial ownership of the Investor Member, so long as each such entity remains controlled or under common control with Enterprise Community Asset Management, Inc. or an Affiliate thereof; and

(vii) The Borrower may amend the Operating Agreement to effect the transfers and removals permitted under this paragraph (e).

Except as otherwise provided, the Borrower shall provide written notice to the Issuer and the Trustee of any transfer or amendment pursuant to this paragraph (e) at least fifteen (15) days prior to such transfer.

(d) The Borrower will not become a party to any merger or consolidation, or agree to effect any asset acquisition or stock acquisition.

(e) The Borrower will not convert the ownership of the Project into condominium or cooperative housing corporation form of ownership other than a limited equity cooperative that is a qualified cooperative housing corporation as defined in Section 143(k)(9) of the Code.

(f) The Borrower will not seek the dissolution or winding up, in whole or in part, of the Borrower or voluntarily file, or consent to the filing of, a petition for bankruptcy, reorganization, or assignment for the benefit of creditors or similar proceedings.

(g) The Borrower will not enter into any arrangement, directly or indirectly, whereby the Borrower shall sell or transfer any property owned by it in order then or thereafter to lease such property or lease other property that the Borrower intends to use for substantially the same purpose as the property being sold or transferred without the prior written consent of the Issuer in its sole and absolute discretion.

(h) The Borrower will not take any action that would adversely affect the exclusion of interest on the Bonds from gross income, for purposes of federal income taxation nor omit or fail to take any action required to maintain the exclusion of interest on the Bonds from gross income, for purposes of federal income taxation.

(i) This Agreement may not be sold, transferred or otherwise disposed of by the Borrower without the prior written consent of the Issuer (which consent shall be within the reasonable discretion of the Issuer), subject to each of the following conditions:

(i) No such assignment will relieve the Borrower from primary liability for any of its obligations hereunder (unless the Issuer agrees in writing to release the Borrower) and in the event of any such assignment, the Borrower will continue to remain primarily liable for payment of its obligations hereunder and for performance and observance of the other covenants and agreements on its part herein provided.

(ii) No such assignment will, in the opinion of Bond Counsel (all such expenses related to such opinion shall be paid by the Borrower), impair the excludability of interest on the Bonds from gross income for purposes of federal income taxation.

(iii) The assignee will assume in writing the obligations of the Borrower hereunder to the extent of the interest assigned in a form acceptable to the Issuer (the “**Assumption Agreement**”).

(iv) Prior to any such assignment, the Borrower will, furnish or cause to be furnished to the Issuer and the Trustee an executed original of the Assumption Agreement.

(j) The Borrower shall maintain its existence, not dissolve or sell, transfer or otherwise dispose of all or substantially all of its assets and not consolidate with or merge into another entity or permit one or more other entities to consolidate with or merge into it; *provided* that it may do so if the surviving, resulting or transferee entity is other than the Borrower, it assumes in writing all of the obligations of the Borrower under the Borrower Documents and Construction Loan Documents and it has a net worth equal to or greater than that of the Borrower immediately prior to such consolidation, merger, sale or transfer. The Borrower shall not permit one or more other entities to consolidate with or merge into it; or take any action or allow any action to be taken to terminate the existence of the Borrower except as provided herein. No sale, assignment or transfer of title to the Project, except as may be otherwise required by the Mortgage Lender, shall be made unless (a) the Mortgage Lender consents to such assignment or transfer, (b) the transferee or assignee, as the case may be, assumes all the duties of the Borrower under the

Borrower Documents and Construction Loan Documents, *provided* that such assumption may contain an exculpation of the assignee from personal liability with respect to any obligation hereunder, except the Borrower's obligation to indemnify the Issuer and the Trustee and reimburse the Issuer and the Trustee for the fees and expenses of the Issuer and the Trustee, and (c) no Event of Default as certified in writing to the Issuer and the Trustee by the Borrower shall have occurred and be continuing under the Indenture or this Agreement. The Issuer shall consent to any such assignment or transfer if (i) the Mortgage Lender notifies it in writing that the aforesaid condition (a) is satisfied, (ii) the Issuer and the Trustee receives an Opinion of Bond Counsel to the effect that such transfer or assignment would not adversely affect the federal tax status of the Bonds, and (iii) the Trustee receives written confirmation from the Rating Agency that such transfer or assignment will not result in a withdrawal or reduction in any rating on the Outstanding Bonds by the Rating Agency (if the Bonds are then rated by the Rating Agency). Upon the assumption of the duties of the Borrower by an assignee as provided herein, the outgoing Borrower shall be released from all executory obligations so assumed; *provided, however*, the Borrower shall not be released from its obligation to pay or reimburse the fees and expenses of the Issuer and the Trustee and to indemnify the Trustee and the Issuer without the express written consent of the Trustee and the Issuer, as applicable, which consent shall not be unreasonably withheld. Nothing contained in this Section shall be construed to supersede any provisions regarding assignment and transfer of the Project contained in the Construction Loan Documents.

Nothing contained in this Section shall be construed to supersede any provisions regarding assignment and transfer of the Project contained in the Construction Loan Documents. During the Cash Collateralized Mode, the Construction Loan Agreement and the Construction Loan Documents shall govern and control the covenants and terms of this Section, including, without limitation, (a) the removal of the General Partner of the Borrower in accordance with the Borrower Documents and Construction Loan Documents and the replacement thereof with the Investor Member or any of its Affiliates, (b) the transfer of ownership interests in the Investor Member, (c) upon the expiration of the tax credit compliance period, the transfer of the interests of the Investor Member in the Borrower to the Borrower's General Partner or any of its Affiliates, and (d) any amendment to the Borrower Documents or Construction Loan Documents to memorialize the transfers or removal described above. The parties agree that this section shall control to the extent of any conflict in any Borrower Documents or Construction Loan Documents.

6.2. *Indemnification by Borrower, Guarantor and General Partner.*

(a) The Borrower and the Managing Member (the “**Indemnitors**”) hereby agree to indemnify and save harmless the Issuer and the Trustee from and against all liabilities, obligations, suits, actions, claims, judgments, demands, damages, penalties, fines, assessments, losses, expenses, fees (including all fees of attorneys, auditors, and consultants), taxes (including rebate to the United States) but exclusive of income taxes on fees earned by the Trustee, contributions, and costs of every kind and nature (including litigation and court costs, amounts paid in settlement by or with the approval of the Borrower and amounts paid to discharge judgments) (collectively, “**Claims**”) incurred by, asserted or imposed against an Indemnified Party (hereinafter defined), the Indemnitors or any other person directly or indirectly resulting from or arising out of or relating to (but excluding such Claims to the extent liability is finally adjudicated by a court of competent jurisdiction to have directly resulted from the willful misconduct of the Issuer or the gross negligence or willful misconduct of the Trustee):

- (i) the issuance, offering, sale, delivery or remarketing of the Bonds;
- (ii) the design, construction, installation, operation, use, occupancy, maintenance, repair, management or ownership of the Project;
- (iii) the enforcement of (a) the provisions of this Agreement, the other Borrower Documents and Construction Loan Documents and any other document executed by the Borrower in connection with issuance of the Bonds and the making of the Loan and (b) the obligations of the Borrower imposed hereby or thereby;
- (iv) any untruthful, misleading or inaccurate information supplied by the Borrower relating to the Project, the Borrower, the Project manager or to the terms of financing relating to the Project, including, but not limited to, any breach of any representation or warranty of the Borrower set forth in the Borrower Documents and Construction Loan Documents or any certificate delivered pursuant thereto, and any representation, or warranty of the Borrower, or any information provided by the Borrower that contains or contained any untrue or misleading statement of fact or omits or omitted to state any material fact necessary to make the statements made therein not misleading in light of the circumstances under which they were made;
- (v) any breach or alleged breach (except in the case of a breach alleged by the Issuer or the Trustee and such alleged breach is not found by a court of competent jurisdiction) by the Borrower of the covenants contained herein;
- (vi) any injury to or death of any person or damage to property in or upon the Project or growing out of or connected with the repair, management, ownership, operation, use, non-use, maintenance, construction, design, installation, condition or occupancy of the Project or any part thereof, including any and all acts or operations relating to any construction, operation, use, non-use, design, management, ownership, condition, occupancy, maintenance, installation or repair performed by the Borrower in connection with the Project;
- (vii) violation or breach of any agreement, covenant, representation, warranty or condition of this Agreement (except in the case of a breach alleged by the Issuer or the Trustee and such alleged breach is not found by a court of competent jurisdiction) or the Note, except by the Issuer or the Trustee;
- (viii) any Determination of Taxability with respect to the Bonds, including, but not limited to, the fees and expenses of the Issuer or the Trustee and their counsel with respect to such Determination of Taxability in responding to any inquiry or audit by the Internal Revenue Service;
- (ix) the deposit, storage, disposal, burial, dumping, injecting, spilling, leaking, or other placement or release in on or from the Project of Hazardous Materials or the violation or alleged violation of any Hazardous Materials Law or official interpretation thereof in connection with the Project or the land on which it is located arising out of or as a result of events prior to the later of the full and final payment of the Bonds or the date of a transfer by the Borrower of all of its interests in the Project, as applicable;

(x) all expenses reasonably incurred in the investigation of, preparation for or defense of any litigation, proceeding or investigation of any nature whatsoever related to the Project or the Bonds, commenced or threatened against the Project or an Indemnified Party;

(xi) any action, suit, claim, demand or proceeding contesting or affecting title to the Project;

(xii) any suit, action, administrative proceeding, enforcement action, or governmental or private action of any kind whatsoever commenced against the Project or an Indemnified Party that might adversely affect the validity or enforceability of the Bonds, the Borrower Documents and Construction Loan Documents, or the performance by the Borrower or by any Indemnified Party of their respective obligations under the Borrower Documents and Construction Loan Documents, the Indenture or any other document executed in connection therewith by the Borrower or any Indemnified Party; and

(xiii) information provided by the Borrower or required and failed to be furnished by the Borrower relating to the Borrower or the Project, including, without limitation, information provided by the Borrower for inclusion in the preliminary or final Official Statement or any other offering document used in connection with the sale of the Bonds, any information furnished, or required and failed to be furnished, by the Borrower in accordance with Rule 15c2-12 under the Securities Exchange Act of 1934, as amended (if applicable), any information furnished by the Borrower for, and included in, or used as a basis for preparation of, any certifications, information statements or reports furnished by the Issuer, any other information or certification obtained from the Borrower to assure the exclusion of the interest on the Bonds from gross income of the Holders thereof for federal income tax purposes, and the transactions contemplated by the Indenture, the Bonds, and the Borrower Documents and Construction Loan Documents and the carrying out by the Borrower of any of the transactions contemplated by the Bonds, the Indenture and the Borrower Documents and Construction Loan Documents.

All references to the Issuer and the Trustee in this Section shall be deemed to include all their respective past, present, and future officers, directors, members, employees, commissioners, and agents and their permitted successors and assigns (also referred to herein as “**Indemnified Parties**”).

(b) The Indemnitors shall indemnify and save each Indemnified Party harmless from any such Claims (but excluding such Claims to the extent liability is finally adjudicated by a court of competent jurisdiction to have directly resulted from the willful misconduct of the Issuer or the gross negligence or willful misconduct of the Trustee) and upon notice from such Indemnified Party, the Indemnitors shall defend them or either of them in any such action or proceeding as provided below.

(c) Any Indemnified Party, after receipt of notice of the existence of a Claim in respect of which indemnity hereunder may be sought or of the commencement of any action against an Indemnified Party in respect of which indemnity hereunder may be sought, shall notify the Indemnitors in writing of the existence of such Claim or

commencement of such action. The Indemnitors shall undertake promptly to defend, at their sole cost and expense, any and all Claims against an Indemnified Party in connection with any of the matters indemnified against in this Section. In the event that any action or proceeding is brought against any Indemnified Party with respect to which indemnity may be sought under this Agreement, the Indemnitors, upon receipt by either of written notice from the Indemnified Party, shall assume the investigation and defense of the Claims, including the employment of counsel selected by the Indemnitors, subject to the approval of the Indemnified Party in such party's sole discretion. The Indemnitors shall pay all expenses related to the action or proceeding, with full power to litigate, compromise or settle the same, *provided* that the Issuer and the Trustee, as appropriate, shall have the right to review and approve or disapprove any such compromise or settlement. If (i) an Indemnified Party determines that a potential conflict of interest exists or may arise as a result of any of the Indemnitors assuming the investigation and defense of any claims, (ii) an Indemnified Party shall have been advised by counsel that there may be legal defenses available to it which are different from or additional to those available to the Indemnitors, or that a conflict exists that could affect the zealous defense of such Claims by the Indemnitors, (iii) the Indemnitors shall not have assigned the defense of such action and employed counsel therefor satisfactory to the Indemnified Party within a reasonable time after notice of commencement of such action, such Indemnified Party shall have the right to employ separate counsel in any such action or proceeding and participate in the investigation and defense of the action or proceeding, and the Indemnitors shall pay the fees and expenses of such separate counsel.

(d) Notwithstanding the fact that it is the intention of the parties hereto that the Issuer shall not incur any pecuniary liability by reason of the terms of this Agreement or the Note or the undertakings required of the Issuer hereunder, by reason of the issuance of the Bonds, the execution of the Indenture or the performance of any act requested of the Issuer by the Borrower, including all claims arising in connection with the violation of any statutes or regulation pertaining to the foregoing; nevertheless, if the Issuer should incur any such pecuniary liability, then in such event the Indemnitors shall indemnify and hold the Issuer harmless against all such claims (but excluding such Claims arising from the willful misconduct of the Issuer) whatsoever, by or on behalf of any person, firm or corporation or other legal entity arising out of the same or lack of any offering statement in connection with the sale, resale or remarketing of the Bonds and all costs and expenses incurred in connection with any such claim or in connection with any action or proceeding brought thereon, and upon notice from the Issuer, the Borrower shall defend the Issuer in any such action or proceeding.

Failure of an Indemnified Party to provide notification to the Indemnitors required under this Section shall not operate as a waiver of the Indemnitors' indemnification obligations in this Section.

The obligations of the Indemnitors under this Section are joint and several, and are in addition to and shall not be limited by the provisions of Section 8.3 hereof and shall survive the termination of this Agreement.

6.3. *Issuer to Grant Security Interest to Trustee.*

The parties hereto agree that pursuant to the Indenture, the Issuer shall assign to the Trustee, in order to secure payment of the Bonds, all of the Issuer's right, title and interest in and to this Agreement and the Note, except for Reserved Rights of the Issuer.

ARTICLE VII DEFAULTS AND REMEDIES

7.1. *Defaults Defined.*

The following shall be "Defaults" under this Agreement and the term "Default" shall mean, whenever it is used in this Agreement, the occurrence of any one or more of the following events and continuation thereof beyond all applicable grace or cure periods:

(a) Failure by the Borrower to pay any amount required to be paid under subsection (a) or (b) of Section 4.2 hereof when the same are due and payable.

(b) Failure by the Borrower to observe and perform any covenant, condition or agreement on its part to be observed or performed herein other than as referred to in subsection (a) of this Section or failure by the Borrower to observe and perform any covenant, condition or agreement on its part to be observed or performed in the Tax Certificate, for a period of 60 days after written notice, specifying such failure and requesting that it be remedied, will have been given to the Borrower by the Issuer or the Trustee; provided, with respect to any such failure covered by this subsection (b), no event of default will be deemed to have occurred so long as a course of action adequate to remedy such failure will have been commenced within such 60 day period and will thereafter be diligently prosecuted to completion and the failure will be remedied thereby.

(c) The dissolution or liquidation of the Borrower, or the voluntary initiation by the Borrower of any proceeding under any federal or state law relating to bankruptcy, insolvency, arrangement, reorganization, readjustment of debt or any other form of debtor relief, or the initiation against the Borrower of any such proceeding which shall remain undismissed for sixty (60) days, or failure by the Borrower to promptly have discharged any execution, garnishment or attachment of such consequence as would impair the ability of the Borrower to carry on its operations at the Project, or assignment by the Borrower for the benefit of creditors, or the entry by the Borrower into an agreement of composition with its creditors or the failure generally by the Borrower to pay its debts as they become due.

(d) The occurrence of a Default under the Indenture or, if after the Funding Date, any Permanent Loan Document.

The provisions of subsection (b) of this Section are subject to the following limitation: if by reason of Force Majeure it is impossible for the Borrower in whole or in part, despite its best efforts, to carry out any of its agreements contained herein (other than its obligations contained in Article IV hereof), the Borrower shall not be deemed in Default during the continuance of such inability. Such Force Majeure event does not affect any obligations of the Borrower other than the timing of performance of such obligations. The Borrower agrees, however, to use its best efforts to remedy with all reasonable dispatch the cause or causes preventing the Borrower from carrying out its agreement. The settlement of strikes and other industrial disturbances shall be entirely within the discretion of the Borrower and the Borrower shall not be required to settle

strikes, lockouts and other industrial disturbances by acceding to the demands of the opposing party or parties when such course is in the judgment of the Borrower unfavorable to the Borrower.

7.2. Remedies on Default.

Whenever any Default referred to in Section 7.1 hereof shall have happened and be continuing beyond the expiration of any applicable cure period, the Trustee, as the assignee of the Issuer's rights hereunder, in its sole discretion may take (but only with the approval of the Servicer and after Notice to the Issuer), and upon written direction of the Servicer and Notice to the Issuer shall take, or the Issuer (in the event the Trustee fails to act) may take, one or any combination of the following remedial steps:

(a) If the Trustee has declared the Bonds immediately due and payable pursuant to Section 9.01 of the Indenture, by written notice to the Borrower, declare an amount equal to all amounts then due and payable on the Bonds, whether by acceleration of maturity (as provided in the Indenture) or otherwise, to be immediately due and payable, whereupon the same shall become immediately due and payable; and

(b) Take whatever action at law or in equity may appear necessary or desirable to collect the amounts then due and thereafter to become due, or to enforce performance and observance of any obligation, agreement or covenant of the Borrower under this Agreement, the Note, the Tax Regulatory Agreement or any other Document in the event of default thereunder (including without limitation foreclosure of the Deed of Trust). Notwithstanding the foregoing, prior to the Funding Date, the exclusive remedy of the Issuer (a Trustee) shall be to use proceeds in the Collateral Fund to pay the Loan (if and to the extent permitted by the Indenture).

Any amounts collected pursuant to action taken under this Section (including amounts in the Collateral Fund) shall be paid into the Bond Fund and applied in accordance with the provisions of the Indenture.

7.3. No Remedy Exclusive.

Subject to Section 9.01 of the Indenture and Section 7.2(b), no remedy herein conferred upon or reserved to the Issuer or the Trustee is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law, in equity or by statute. No delay or omission to exercise any right or power accruing upon any Default shall impair any such right or power nor shall it be construed to be a waiver thereof, but any such right or power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Issuer or the Trustee to exercise any remedy reserved to it in this Article, it shall not be necessary to give any notice, other than such notice as may be required in this Article and the Indenture. Such rights and remedies as are given the Issuer hereunder shall also extend to the Trustee, and the Trustee and the Holders of the Bonds, subject to the provisions of the Indenture, including, but not limited to the Reserved Rights of the Issuer, shall be entitled to the benefit of all covenants and agreements herein contained.

7.4. *Agreement to Pay Attorneys' Fees and Expenses.*

In the event the Borrower should default under any of the provisions of this Agreement or under the Note and the Issuer and/or Trustee should employ attorneys or incur other expenses for the collection of payments required hereunder or under the Note, or the enforcement of performance or observance of any obligation or agreement on the part of the Borrower contained herein or in the Note, the Borrower agrees that it will on demand therefor pay to the Issuer and the Trustee, as the case may be, the fees and expenses of such attorneys and such other expenses so incurred by the Issuer and/or the Trustee. This Section 7.4 will continue in full force and effect notwithstanding the full payment of the obligations under the Agreement or the termination of this Agreement for any reason.

7.5. *No Additional Waiver Implied by One Waiver.*

In the event any agreement contained in this Agreement should be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

7.6. *Right to Cure.*

Notwithstanding anything herein to the contrary, if the Borrower shall, for whatever reason, at any time fail to pay any amount or perform any act which it is obligated to pay or perform and, as a result a default or event of default occurs or may occur, the Lender, the Limited Partner and the Special Limited Partner shall have the right, but not the obligation, to perform such act or pay such amount on behalf of the Borrower and thereby cure or prevent such default or event of default, provided such default or event of default is cured within any applicable cure period or grace period provided herein to the Borrower.

**ARTICLE VIII
MISCELLANEOUS**

8.1. *Term of Agreement.*

This Agreement shall remain in full force and effect from the date hereof until such time as all of the Bonds and all amounts payable hereunder and under the Indenture shall have been fully paid or provision made for such payments, whichever is later, provided, that all representations and certificates of the Borrower and the General Partner as to matters affecting the tax-exempt status of the Bonds, and the provisions of Sections 3.8, 6.2, and 7.4 shall survive termination of this Agreement.

8.2. *Notices.*

All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when delivered or mailed by registered mail, postage prepaid, addressed each party's Notice Address. A duplicate copy of each notice, certificate or other communication given hereunder by the Issuer or the Borrower shall also be given to the Trustee. The Issuer, the Borrower, and the Trustee may, by written notice given hereunder, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent.

With regard to copies of all notices which are sent to Borrower under the terms of the Loan Documents, the Issuer shall send a copy to the Limited Partner as follows:

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 Sailer
Telephone: (913) 231-8400
Email: dsailer@mrecapital.com

With a copy to: Citrine Development, LLC

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

If 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
Attention: Mark Malveaux
Telephone: 214-754-9221
Email: mmalveaux@mphlegal.com

If to the Trustee: Wilmington Trust, National Association
15950 North Dallas Parkway
Suite 550
Dallas, Texas 75248
Attention: Corporate Trust Department
Facsimile: (888) 316-6238

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

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

If to the Controlling Person: _____

If to the Permanent Lender, at the following addresses:

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.: _____

If to the Tax Credit Investor: _____

8.3. *Nonrecourse Liability of Borrower.*

(a) General Rule. The liability of the Borrower and the General Partner under this Agreement during the Cash Collateralized Mode shall be limited to the Project Fund. During the Permanent Mode the liability of all principal and interest due under the Note shall be only against the Project, and the rents, issues and profits thereof, and any other security for the Borrower's Obligations, and not against the Borrower, any direct or indirect member, partner, officer or director of the Borrower or the General Partner, or any successor or assign of the Borrower, any direct or indirect member, shareholder, manager, officer or director of the Borrower or the General Partner.. The Issuer and the Trustee shall look respectively thereto or to such other security as may from time to time be given or have been given for payment of the Bonds, and any judgment rendered against the Borrower or the General Partner under this Agreement shall be limited as described above and any other security including the Guaranty so given for satisfaction thereof; and (ii) no deficiency or other personal judgment shall be sought or rendered against the Borrower or the General Partner or their respective successors, transferees or assigns, in any action or proceeding arising out of this Agreement, or any judgment, order or decree rendered pursuant to any such action or proceeding; provided, however, that nothing herein shall limit the Issuer's or the Trustee's ability to exercise any right or remedy with respect to any property pledged or granted to the Issuer or any Trustee under this Agreement, or both, or to exercise any right against the Borrower or the General Partner, on account of any claim for fraud and deceit. Notwithstanding anything herein to the contrary, nothing in this Section shall limit the rights of indemnification against the Borrower and the General Partner pursuant to Sections 6.2 and 8.5 hereof. Furthermore, notwithstanding anything to the contrary, the Borrower and the General Partner shall be fully liable for: (1) amounts payable to the Issuer constituting Reserved Rights of the Issuer, (2) any amount due and owing as a result of any calculation or determination which may be required in connection with the Bonds for the purpose of complying with Section 148 of the Code (including rebate liability) or any applicable Treasury regulation, and (3) the indemnification and the payment obligations to the Issuer under Sections 6.2, 7.4 and 8.5 hereof.

(b) No Application to Guaranty or Indemnification Obligations. Nothing in this Section 9.3 shall be deemed to limit in any way whatsoever (i) the liability of the Guarantor under the Guaranty or the Environmental Guaranty, which shall be recourse obligations of the Guarantor, or (ii) any obligation of the Borrower, the Guarantor, or the General Partner to indemnify the Issuer, the Holders, the Servicer, any Indemnified Party (as defined herein) or the Trustee under the terms of this Agreement or any of the other Documents, including indemnification for environmental liability, each of which shall be recourse obligations of the Borrower, the Guarantor, and the General Partner. In connection with each of the Guaranty, for any period of time in which the Guarantor or its affiliate does not have a membership interest in the Borrower, the Issuer agrees that it shall timely provide to the Guarantor notice of its intent to enforce the Guaranty or Environmental Guaranty, as applicable, against the Guarantor pursuant to the terms thereof; provided, however, that the Issuer's failure to provide such notice to the Guarantor shall in no way impair the Issuer's exercise of any rights and remedies under the Guaranty, the Environmental Guaranty or this Agreement.

The limit on the Borrower's and the General Partner's liability set forth in this Section shall not, however, be construed, and is not intended to in any way, to constitute a release, in whole or in part, of the indebtedness evidenced by this Agreement or a release, in whole or in part, or an impairment of the security interest, or in case of any default or enforcing any other right of the Issuer under this Agreement or to alter, limit or affect the liability of any Person or party who may now or hereafter or prior hereto guarantee, or pledge, grant or assign its assets or collateral as security for, the obligations of the Borrower under this Agreement.

Notwithstanding the foregoing, the provisions of this Section shall be null and void and have no force and effect to the extent of any loss suffered by the Issuer, the Trustee, any Owner or any beneficiary of or the trustee under the Deed of Trust as a result of the Borrower's: (a) committing any act of fraud; (b) misapplication of any condemnation award or casualty insurance proceeds; (c) failure to apply the revenues of the Project in the manner and for the purposes provided in the Issuer Documents, whether before or after a Default; or (d) violation of any environmental laws. Nothing herein shall be deemed to prohibit the naming of the Borrower in an action to realize upon the remedies provided herein either at law or in equity, subject to the foregoing limitation against a personal money judgment or deficiency decree against the Borrower, the General Partner or their heirs, personal representatives, successors and assigns, or to prohibit the naming of any person in any action to realize upon the remedies provided in the General Partner Documents, the Guarantor Documents or any other guaranty given in favor of the Issuer, the Trustee or the Servicer.

The provisions of this Section shall survive the termination of this Agreement.

8.4. *No Pecuniary Liability of Issuer.*

No agreements or provisions contained in this Agreement or any agreement, covenant or undertaking by the Issuer contained in any document executed by the Issuer in connection with the Project or any property of the Borrower financed, directly or indirectly, out of proceeds of the Bonds or the issuance, sale and delivery of the Bonds will give rise to any pecuniary liability of the Issuer (including tax and rebate liability) or its past, present or future officers, directors, employees, commissioners, agents or members of its governing body and their successors and

assigns or constitute a charge against the Issuer's general credit, or obligate the Issuer financially in any way, except with respect to the Trust Estate. No failure of the Issuer to comply with any terms, covenants or agreements in this Agreement or in any document executed by the Issuer in connection with the Bonds will subject the Issuer or its past, present or future officers, directors, employees, commissioners, agents and members of its governing body and their successors and assigns to any pecuniary charge or liability except to the extent that the same can be paid or recovered from the Trust Estate. Without limiting the requirement to perform its duties or exercise its rights and powers under this Agreement upon receipt of appropriate indemnity or payment, none of the provisions of this Agreement or the Indenture will require the Issuer to expend or risk its own funds or otherwise to incur financial liability in the performance of any of its duties or in the exercise of any of its rights or powers under this Agreement. Nothing in this Agreement will preclude a proper party in interest from seeking and obtaining, to the extent permitted by law, specific performance against the Issuer for any failure to comply with any term, condition, covenant or agreement in this Agreement or in the Indenture; provided that no costs, expenses or other monetary relief will be recoverable from the Issuer except as may be payable from the funds available under this Agreement or made available under the Indenture by the Borrower and pledged to the payment of the Bonds.

No covenant, agreement or obligation contained herein or in any other financing instrument executed in connection with the Project or the making of the Loan shall be deemed to be a covenant, agreement or obligation of any past, present or future director, officer, employee, commissioner, or agent of the Issuer in his or her individual capacity so long as he or she does not act in bad faith, and no such director, officer, employee, commissioner or agent of the Issuer in his or her individual capacity shall be subject to any liability under any agreement to which the Issuer is a party or with respect to any other action taken by him or her so long as he or she does not act in bad faith.

8.5. *Binding Effect.*

This Agreement shall inure to the benefit of and shall be binding upon the Issuer, the Borrower, the Trustee, the Holders of Bonds and their respective successors and assigns.

8.6. *Severability.*

In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

8.7. *Amounts Remaining in Funds.*

Subject to the provisions of the Indenture, it is agreed by the parties hereto that any amounts remaining in any account of the Bond Fund, the Project Fund, the Collateral Fund or any other fund (other than the Rebate Fund) created under the Indenture upon expiration or earlier termination of this Agreement, as provided in this Agreement, after payment in full of the Bonds (or provision for payment thereof having been made in accordance with the provisions of the Indenture) and the fees and expenses of the Trustee and the Issuer in accordance with the Indenture,

shall belong to and be paid to the Borrower by the Trustee so long as those remaining amounts do not constitute Bond Proceeds.

8.8. *Amendments, Changes and Modifications.*

Subsequent to the issuance of the Bonds and prior to their payment in full (or provision for the payment thereof having been made in accordance with the provisions of the Indenture), and except as otherwise herein expressly provided, this Agreement may not be effectively amended, changed, modified, altered or terminated without the written consent of the Trustee, in accordance with the provisions of the Indenture.

8.9. *Execution in Counterparts.*

This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

8.10. *Applicable Law.*

This Agreement shall be governed by and construed in accordance with the laws of the State of Texas.

8.11. *Captions*

The captions and headings in this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions or Sections of this Agreement.

8.12. *Use of Proceeds of the Bonds*

Notwithstanding anything contained in any of the documents executed in connection with the issuance of Bonds to the contrary, all of the proceeds of the Bonds shall, for federal income tax purposes, be (i) allocated on a pro rata basis to each building in the Project and the land on which such building is located and (ii) used exclusively to pay costs of the acquisition or construction of the Project which are includible in the aggregate basis of any building and the land on which the building is located (“**Eligible Costs**”) in a manner such that each building satisfies the requirements of Section 42(h)(4)(B) of the Code. No proceeds of the Bonds will be deemed or considered to have been used to pay any of the costs of the issuance of Bonds or to fund any reserve accounts other than a Project Fund to be used to pay Eligible Costs.

[Remainder of Page Intentionally Left Blank]

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

AUSTIN HOUSING FINANCE CORPORATION

By: _____
Name: Rosie Truelove
Title: Treasurer

[SIGNATURE PAGE TO LOAN AGREEMENT]

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

[SIGNATURE PAGE TO LOAN AGREEMENT]

The General Partner hereby agrees to comply with the representations set forth in Article II and the obligations set forth in Section 6.2, Section 8.5, Section 8.6 and Section 9.3 of this Agreement.

TILLERY STREET HOUSING, LLC,
a Texas limited liability company

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

By: _____
Jacob Mooney, Manager

By: _____
Daniel Sailer, III, Manager

[SIGNATURE PAGE TO LOAN AGREEMENT]

EXHIBIT A

DESCRIPTION OF THE LAND

The project will be an approximately 66-unit affordable senior housing development to be located at 1127 Tillery Street, Austin, Texas 78702.

EXHIBIT B

FORM OF PROMISSORY NOTE

PROMISSORY NOTE

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

\$[_____]

[_____]

FOR VALUE RECEIVED, LIVE MAKE HOUSING PARTNERS LP, a Texas limited partnership (the “Borrower”), promises to pay to the AUSTIN HOUSING FINANCE CORPORATION (the “Issuer”), or its order, the principal sum of _____ (\$[_____]) (the “Loan”) or so much of that sum as may be advanced by the Issuer under the Loan Agreement of even date herewith executed between the Borrower and the Issuer (the “Loan Agreement”) with interest payable as set forth below.

Borrower promises to pay to the Issuer the principal sum of this Note, together with interest at a rate of ____% per annum (the “Initial Interest Rate”), and all assessments, taxes and premiums as follows:

One business day preceding each January 1 and July 1 of each year, beginning on the business day preceding _____ to and including the business day preceding _____ (the “Initial Mandatory Tender Date”), the Borrower shall pay to the Issuer interest on the outstanding principal balance of the Loan at the Initial Interest Rate and thereafter at the Remarketing Rate (as defined in the Indenture) for each subsequent Remarketing Period (as defined in the Indenture).

(a) The entire principal balance of the Note, plus any accrued but unpaid interest to and including the Maturity Date, shall be due and payable one business day preceding the Maturity Date.

(b) Payments made by Wilmington Trust, National Association (the “Trustee”), as trustee for the Issuer’s Multifamily Housing Revenue Bonds (Live Make Apartments), Series 2023 (the “Bonds”) to the holders of the Bonds, from funds available under the Trust Indenture for the Bonds dated as of January 1, 2023 (the “Indenture”), will be credited against the Borrower’s obligation to pay interest and principal under this Note. The Borrower shall be obligated to pay any deficiency between amounts due under this Note and amounts paid to bondholders by the Trustee pursuant to the Indenture.

(c) If any installment of interest, principal, or any other payment due under this Note is not paid within five (5) days from receiving notice that such installment or payment is due,

the Borrower promises to pay to the Issuer a “late charge” equal to 5% of the aggregate monthly payment required by this Note.

(d) This Note is secured by the proceeds of the Bonds deposited into the Bond Fund, Project Fund, and Collateral Fund created pursuant to Section 4.01 of the Indenture, and (ii) the Trust Estate (as defined in the Indenture).

(e) Upon a Default, as defined in the Indenture, the unpaid principal, together with all accrued interest thereon, and all other sums due and payable shall, at the option of the holder of this Note, become immediately due and payable. Failure to exercise this option shall not constitute a waiver of the right to exercise this option in the event of any subsequent default.

(f) As to this Note and any other documents or instruments evidencing or securing the Loan (the “Loan Documents”), the Borrower and all guarantors, if any, severally waive all applicable exemption rights, whether under any state constitution, homestead laws or otherwise, and also severally waive valuation and appraisal, presentment, protest and demand, notice of protest, demand and dishonor and nonpayment of this Note, and expressly agree that the maturity of this Note, or any payment under this Note, may be extended from time to time without in any way affecting the liability of the Borrower and all guarantors.

(g) All payments due under this Note shall be made during regular business hours at the Designated Office (as defined in the Indenture) of the Trustee or at any other place that the Issuer may designate in writing, and shall be made in coin or currency of the United States of America which at the time of payment is legal tender for the payment of public or private debts.

(h) The Borrower represents and warrants that it is a limited partnership within the meaning set forth in the _____, as amended (the “____ Code”) and further represents and warrants that the Loan evidenced by this Note was made and transacted solely for the purpose of carrying on or acquiring a business or commercial enterprise within the meaning of the _____ Code.

(i) Neither the Borrower nor any direct or indirect partner, member, shareholder, officer, director, employee, agent or any of their respective affiliates of the Borrower shall have any personal liability for principal or interest payments or any other payments due under this Note, except as provided in Section 8.3 of the Loan Agreement.

(j) The Borrower hereby acknowledges that, pursuant to the Indenture, the Issuer is assigning to the Trustee all of the Issuer’s right, title, and interest in and to this Note and the Loan Agreement, exclusive of the Reserved Rights of the Issuer, to be held under the Indenture as part of the Trust Estate. Such assignment is being made as security for the payment of the Bonds of the Issuer. All of the terms, conditions and provisions of the Indenture are, by this reference thereto, incorporated herein as part of this Note.

(k) This Note shall be amended and restated if and when the Funding Date occurs in the form of note attached as Exhibit B-2 to the Loan Agreement (all as defined in the Indenture).

Notwithstanding any other provision contained in this Note, it is agreed that the execution of this Note shall impose no personal liability on the maker hereof for payment of the indebtedness evidenced hereby and in the event of a default, the holder of this Note will not seek or obtain any deficiency or personal judgment against the maker hereof except such judgment or decree as may be necessary to foreclose and bar its interest in the property.

[Signature page follows]

IN WITNESS WHEREOF, the Borrower has caused this Note to be executed and delivered on its behalf on the date first written above.

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

ASSIGNMENT

The **AUSTIN HOUSING FINANCE CORPORATION** (the “Issuer”), hereby irrevocably assigns, without recourse, the foregoing Note (exclusive of the Reserved Rights of the Issuer) to Wilmington Trust, National Association, as trustee (the “Trustee”), under a Trust Indenture dated as of January 1, 2023 (the “Indenture”), with the Issuer and hereby directs **LIVE MAKE HOUSING PARTNERS LP** to make all payments of principal of, and interest thereon directly to the Trustee at its designated office in Wilmington, Missouri, or at such other place as the Trustee may direct in writing. Such assignment is made as security for the payment of the Issuer’s \$9,000,000 Multifamily Housing Revenue Bonds (Live Make Apartments) Series 2023, issued pursuant to the Indenture.

AUSTIN HOUSING FINANCE CORPORATION

By: _____

Name: Rosie Truelove

Title: Treasurer

Dated: _____

Exhibit B-2

Form of Amended and Restated Promissory Note

[To be provided]