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**BORROWER LOAN AGREEMENT**

**by and between**

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

**and**

**AUSTIN LEASED HOUSING ASSOCIATES VI,  
LIMITED PARTNERSHIP,  
As Borrower**

**Dated as of March 1, 2023**

**Relating to:**

**\$36,640,000**

**Austin Housing Finance Corporation  
Multifamily Housing Revenue Note  
(Woodway Square)  
Series 2023A (Tax-Exempt)**

**and**

**\$3,360,000**

**Austin Housing Finance Corporation  
Multifamily Housing Revenue Note  
(Woodway Square)  
Series 2023B (Taxable)**

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The interests of Austin Housing Finance Corporation (the “Governmental Lender”) in this Borrower Loan Agreement (except for certain Reserved Rights described herein) have been pledged and assigned to Deutsche Bank Securities Inc., as tax-exempt funding lender (the “Funding Lender”) and Deutsche Bank AG, New York Branch, as taxable funding lender (the “Taxable Funding Lender”), under that certain Funding Loan Agreement of even date herewith, by and among the Governmental Lender, the Fiscal Agent and the Funding Lender, under which the Funding Lender is originating a loan or loans to the Governmental Lender the proceeds of which are to be used to fund the Borrower Loan made under this Borrower Loan Agreement.

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## **BORROWER LOAN AGREEMENT**

This BORROWER LOAN AGREEMENT (as amended, modified or supplemented from time to time, this "Agreement") made as of March 1, 2023, by and between AUSTIN HOUSING FINANCE CORPORATION, a public nonprofit housing finance corporation, duly organized and validly existing under the laws of the State of Texas (together with its successors and assigns, the "Governmental Lender") and AUSTIN LEASED HOUSING ASSOCIATES VI, LIMITED PARTNERSHIP, a limited partnership duly organized and validly existing under the laws of the State of Texas (together with its permitted successors and assigns, the "Borrower"),

### **WITNESSETH:**

**WHEREAS**, the Governmental Lender is authorized under Chapter 394 of the Texas Local Government Code, as amended (the "Act") to provide financing with respect to one or more projects authorized under the Act for such payments and upon such terms and conditions as the Governmental Lender may deem advisable in accordance with the provisions of the Act; and

**WHEREAS**, the Borrower has applied to the Governmental Lender for a loan or loans (collectively, the "Borrower Loan"), to finance the acquisition, rehabilitation, improvement and equipping of a multifamily residential rental development consisting of a total of 240-units and related personal property and equipment, located in Austin, Travis County, Texas and to be known as "Woodway Square" (the "Project"); and

**WHEREAS**, the Borrower has requested the Governmental Lender to enter into that certain Funding Loan Agreement, of even date herewith (the "Funding Loan Agreement"), among the Governmental Lender, Wilmington Trust, National Association, as fiscal agent (the "Fiscal Agent"), and Deutsche Bank Securities Inc. (the "Funding Lender"), under which the Funding Lender will purchase the Governmental Lender's Multifamily Housing Revenue Note (Woodway Square) Series 2023A (Tax-Exempt) (the "Series A Governmental Lender Note") and Deutsche Bank AG, New York Branch (the "Taxable Funding Lender") under which the Taxable Funding Lender will purchase the Governmental Lender's Multifamily Mortgage Revenue Note (Woodway Square) Series 2023B (Taxable) (the "Series B Governmental Lender Note" and, together with the Series A Governmental Lender Note, the "Governmental Lender Notes"), each issued by the Governmental Lender, the proceeds of which will be loaned under this Borrower Loan Agreement to the Borrower to finance the acquisition, rehabilitation and equipping of the Project; and

**WHEREAS**, the Governmental Lender has determined that the public purposes set forth in the Act will be furthered by the execution and delivery of the Governmental Note (as defined in the Funding Loan Agreement), pursuant to the terms of the Funding Loan Agreement; and

**WHEREAS**, the Governmental Lender will make the Borrower Loan to the Borrower, subject to the terms and conditions of this Agreement and the Funding Loan Agreement, including the terms and conditions hereof and thereof governing the disbursement of advances and the investment earnings thereon, and the Borrower Note will be endorsed, without recourse, by the Governmental Lender to the Fiscal Agent; and

**WHEREAS**, the obligations of the Borrower under this Borrower Loan Agreement are evidenced by the Borrower Note, as defined in the Funding Loan Agreement, and will be secured by the Security established under the Funding Loan Agreement;

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

## **ARTICLE 1 DEFINITIONS**

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

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

## **ARTICLE 2 LOAN AND PROVISIONS FOR REPAYMENT**

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

(a) The Governmental Lender agrees, upon the terms and conditions contained in this Agreement and the Funding Loan Agreement, to lend to the Borrower the proceeds of the Funding Loan received by the Governmental Lender from the Funding Lender. Such proceeds shall be disbursed to or on behalf of the Borrower as provided for in this Agreement and the Funding Loan Agreement. The Borrower’s obligation to repay the Borrower Loan shall be evidenced by the Borrower Note, the form of which is attached hereto as **Exhibit A**. The Governmental Lender hereby appoints the Funding Lender as its agent with full authority and power to act on its behalf to disburse, or cause the Fiscal Agent to disburse, the Borrower Loan for the account of the Governmental Lender, to take certain actions and exercise certain remedies with respect to the Borrower Loan, and for the other purposes set forth in this Borrower Loan Agreement and to do all other acts necessary or incidental to the performance and execution thereof. This appointment is coupled with an interest and is irrevocable except as expressly set forth herein. Accordingly, references to the rights of the Funding Lender to take actions under this Borrower Loan Agreement shall refer to Funding Lender in its role as agent of the Governmental Lender. Further, the Funding Lender may designate the Servicer to fulfill the rights and responsibilities granted by the Governmental Lender to the Funding Lender pursuant to this Section 2.1.

(b) The Borrower hereby agrees to pay the Borrower Note and repay the Borrower Loan made pursuant to this Agreement by paying or causing to be paid to the Fiscal Agent for payment to the Funding Lender in immediately available funds for the account of the Governmental Lender for deposit into the Tax-Exempt Funding Loan Account of the Funding Loan Fund with respect to the Tax-Exempt Governmental Note and the Taxable Funding Loan Account of the Funding Loan Fund with respect to the Taxable Governmental Note] or the Prepayment Fund, as applicable, on the dates and in the amounts set forth in the Debt Service Schedule attached hereto as **Schedule 3**, and any other date that any payment of interest,

premium, if any, or principal is required to be made in respect of the Governmental Note pursuant to the Funding Loan Agreement whether at maturity, upon acceleration or by sinking fund prepayment or mandatory prepayment, until the principal of, premium, if any, and interest on the Governmental Note shall have been fully paid or provision for the payment thereof shall have been made in accordance with the Funding Loan Agreement, a sum which will enable the Fiscal Agent to pay the amount payable on such date as principal of (whether at maturity or upon mandatory prepayment or acceleration or otherwise), premium, if any, and interest on the Governmental Note, as provided in the Funding Loan Agreement. All payments made by the Borrower hereunder or by the Borrower under the other Funding Loan Documents, shall be made irrespective of, and without any deduction for, any set-offs or counterclaims, but such payment shall not constitute a waiver of any such set offs or counterclaims.

(c) It is understood and agreed that the Borrower Note and all payments payable by the Borrower under this Section 2.1 are assigned by the Governmental Lender to Fiscal Agent for the benefit of the Funding Lender. The Borrower consents to such assignment. The Governmental Lender hereby directs the Borrower and the Borrower hereby agrees to pay to the Fiscal Agent, at the address specified in or in accordance with Section 10.1 hereof, all Borrower Loan repayments payable to the Governmental Lender pursuant to the Borrower Note and this subsection.

(d) The Borrower shall have, and is hereby granted, the option to prepay the unpaid principal amount of the Borrower Loan, together with interest thereon to the date of prepayment, but only to the extent set forth in the Borrower Note.

(e) The Servicer shall deliver the Fiscal Agent and the Borrower the Debt Service Schedule on the Closing Date, providing for level debt service with respect to the Borrower Note remaining Outstanding after the Stabilization Date, calculated on the basis of the [Fixed Rate] and a [480]-month amortization schedule with principal payments commencing on the First Principal Payment Date (with all remaining principal payable on the Maturity Date, if applicable).

## Section 2.2 Fees.

(a) On the date of execution and delivery of this Agreement, the Borrower shall pay, or cause to be paid, (i) to the Servicer, an origination fee equal to \$[TBD], (ii) through and until Stabilization, to the Servicer or the Funding Lender, an annual construction loan administration and monitoring fee equal to \$[0.00], and (iii) to the Funding Lender, an investor delivery fee of \$[TBD].

(b) On the Stabilization Date, the Borrower shall pay, or cause to be paid, to the Servicer a stabilization review fee equal to \$[TBD], plus all site inspection travel costs.

(c) The Borrower shall pay (as directed by the Funding Lender) two Business Days before each Loan Payment Date, commencing on the First Interest Payment Date and continuing through Final Completion of the Work in respect of the Project, an amount equal to the costs of the Engineering Consultant incurred by the Servicer or the Funding Lender, as may be applicable, in the prior month in an amount not to exceed \$[TBD] per month (plus travel and reasonable and necessary expenses). If the Borrower fails to requisition such costs, the Funding Lender may direct the Fiscal Agent to disburse such amounts as part of any Advance.

(d) The Borrower shall pay the Governmental Lender Fee and all expenses of the Governmental Lender.

(e) The Borrower shall pay the Fiscal Agent Fee and all expenses of the Fiscal Agent.

(f) The Borrower shall pay any and all special servicing fees or costs in accordance with Section 6.34 hereof.

Section 2.3 Termination and Prepayment.

(a) Notwithstanding anything to the contrary contained in this Agreement or the other Funding Loan Documents, the Servicer's, the Funding Lender's and each Noteowner's rights, interests and remedies hereunder and under the other Funding Loan Documents shall not terminate or expire or be deemed to have been discharged or released until the payment in full of the Borrower Note and the Governmental Note. No such termination, expiration or release shall affect the survival of the indemnification provisions of this Agreement, which provisions shall survive any such termination, expiration or release.

(b) The Borrower Loan (and the [applicable] Borrower Note) may be prepaid by the Borrower, and the Governmental Note shall be correspondingly paid pursuant to Section 3.2 of the Funding Loan Agreement, on any Loan Payment Date on or after the Par Call Date, upon the payment of the principal amount of the Borrower Note plus interest accrued thereon to, but not including, the date of prepayment, as provided in the Borrower Note.

(c) Acceleration of the obligations of the Borrower hereunder upon an Event of Default prior to the Par Call Date, shall constitute an evasion of the prepayment provisions of this Agreement and any tender of payment of an amount necessary to satisfy the entire indebtedness evidenced by this Agreement shall include the Acceleration Premium.

(d) The Borrower shall be required to prepay the Borrower Loan at the times and in the amounts necessary to provide funds for the payment of the mandatory prepayment of the Borrower Note pursuant to Section 7 thereof. In addition, on each Loan Payment Date, the Borrower shall pay to the Fiscal Agent for deposit into the Prepayment Fund the amount set forth for such purpose on Schedule 3 hereto, which amount shall be applied on each Principal Payment Date to the mandatory sinking fund prepayment of the Borrower Note pursuant to Section 7(c) thereof.

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

Section 2.5 Indemnification. THE BORROWER COVENANTS TO DEFEND, INDEMNIFY AND HOLD HARMLESS THE GOVERNMENTAL LENDER, THE FISCAL AGENT, THE FUNDING LENDER, THE SERVICER, AND EACH OF THEIR RESPECTIVE AFFILIATES AND EACH OF THEIR AND THEIR AFFILIATES' RESPECTIVE DIRECTORS, OFFICERS, EMPLOYEES, REPRESENTATIVES AND AGENTS (COLLECTIVELY, THE "INDEMNIFIED PARTIES"), EXCEPT AS LIMITED BELOW, FROM AND AGAINST ANY AND ALL CLAIMS,

DAMAGES, LOSSES, LIABILITIES, COSTS OR EXPENSES (INCLUDING ATTORNEYS' FEES FOR COUNSEL OF EACH OF THE INDEMNIFIED PARTIES' CHOICE) WHATSOEVER WHICH THE INDEMNIFIED PARTIES MAY INCUR (OR WHICH MAY BE CLAIMED AGAINST ANY OF THE INDEMNIFIED PARTIES BY ANY PERSON OR ENTITY WHATSOEVER) BY REASON OF OR IN CONNECTION WITH:

(a) THE GOVERNMENTAL NOTE, THE FUNDING LOAN AGREEMENT, THE BORROWER LOAN AGREEMENT, THE REGULATORY AND LAND USE RESTRICTION AGREEMENT, THE TAX CERTIFICATE OR ANY OF THE OTHER FUNDING LOAN DOCUMENTS, OR THE EXECUTION OR AMENDMENT HEREOF OR THEREOF OR IN CONNECTION WITH THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY, INCLUDING THE DELIVERY, SALE OR RESALE OR PREPAYMENT OF THE GOVERNMENTAL NOTE;

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

(c) THE INVOLVEMENT OF ANY OF THE INDEMNIFIED PARTIES IN ANY LEGAL SUIT, INVESTIGATION, PROCEEDING, INQUIRY OR ACTION AS A CONSEQUENCE, DIRECT OR INDIRECT, OF THE SERVICER OR THE FUNDING LENDER'S ACTIONS TAKEN PURSUANT TO THIS AGREEMENT OR ANY OF THE OTHER FUNDING LOAN DOCUMENTS OR ANY OTHER EVENT OR TRANSACTION CONTEMPLATED BY ANY OF THE FOREGOING;

(d) ANY UNTRUE STATEMENT OR ALLEGED UNTRUE STATEMENT CONTAINED OR INCORPORATED BY REFERENCE IN ANY OFFERING OR REOFFERING MATERIALS PREPARED IN RESPECT OF THE GOVERNMENTAL NOTE, OR ANY SUPPLEMENT OR AMENDMENT THEREOF, OR THE OMISSION OR ALLEGED OMISSION TO STATE THEREIN A MATERIAL FACT NECESSARY TO MAKE SUCH STATEMENTS IN LIGHT OF THE CIRCUMSTANCES IN WHICH THEY ARE OR WERE MADE NOT MISLEADING;

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

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

(g) ANY LIEN (OTHER THAN A PERMITTED ENCUMBRANCE) OR CHARGE UPON PAYMENTS BY THE BORROWER TO THE GOVERNMENTAL LENDER, THE FISCAL AGENT AND/OR THE FUNDING LENDER HEREUNDER, OR ANY TAXES (INCLUDING, WITHOUT LIMITATION, ALL AD VALOREM TAXES AND SALES TAXES), ASSESSMENTS, IMPOSITIONS AND OTHER CHARGES IMPOSED ON THE GOVERNMENTAL LENDER, THE FISCAL AGENT OR THE FUNDING LENDER IN RESPECT OF ANY PORTION OF THE PROJECT;

(h) ANY VIOLATION OR ALLEGED VIOLATION OF ANY APPLICABLE LAW OR REGULATION INCLUDING, WITHOUT LIMITATION, ANY ENVIRONMENTAL LAW OR ANY INSPECTION, REVIEW OR TESTING WITH RESPECT TO, OR THE RELEASE OF ANY TOXIC SUBSTANCE FROM, THE PROJECT OR ANY PART THEREOF;

(i) THE ENFORCEMENT OF, OR ANY ACTION TAKEN BY THE GOVERNMENTAL LENDER, THE FISCAL AGENT, THE FUNDING LENDER OR ANY OTHER INDEMNIFIED PARTY RELATED TO REMEDIES UNDER THIS AGREEMENT, THE FUNDING LOAN AGREEMENT AND THE OTHER FUNDING LOAN DOCUMENTS;

(j) ANY ACTION, SUIT, CLAIM, PROCEEDING, AUDIT, INQUIRY, EXAMINATION, OR INVESTIGATION OF A JUDICIAL, LEGISLATIVE, ADMINISTRATIVE OR REGULATORY NATURE CONCERNING OR RELATED TO INTEREST PAYABLE ON THE TAX-EXEMPT GOVERNMENTAL NOTE NOT BEING EXCLUDABLE FROM GROSS INCOME FOR PURPOSES OF FEDERAL INCOME TAXATION OR EXEMPT FROM STATE INCOME TAXATION;

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

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

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

THE INDEMNIFICATION SET FORTH IN THIS SECTION 2.5 SHALL INCLUDE THE REASONABLE COSTS AND EXPENSES OF DEFENDING ITSELF OR INVESTIGATING ANY CLAIM OF LIABILITY AND OTHER REASONABLE EXPENSES AND ATTORNEYS' FEES INCURRED BY THE INDEMNIFIED PARTIES, PROVIDED THE BORROWER SHALL NOT BE REQUIRED TO INDEMNIFY ANY OF THE INDEMNIFIED PARTIES FOR ANY CLAIMS, DAMAGES, LOSSES, LIABILITIES, COSTS OR EXPENSES TO THE EXTENT, BUT ONLY TO THE EXTENT, CAUSED BY THE WILLFUL MISCONDUCT OR GROSS NEGLIGENCE OF ANY INDEMNIFIED PARTY. THE OBLIGATIONS OF THE BORROWER UNDER THIS SECTION SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT AND THE FUNDING LOAN AGREEMENT. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT OR THE FUNDING LOAN AGREEMENT TO THE CONTRARY, THE BORROWER AGREES (I) NOT TO ASSERT ANY CLAIM OR INSTITUTE ANY ACTION OR SUIT AGAINST THE FISCAL AGENT OR ITS EMPLOYEES ARISING FROM OR IN CONNECTION WITH ANY INVESTMENT OF FUNDS

MADE BY THE FISCAL AGENT IN GOOD FAITH AS DIRECTED BY THE BORROWER, THE SERVICER OR THE FUNDING LENDER, AND (II) TO INDEMNIFY AND HOLD THE FISCAL AGENT AND ITS EMPLOYEES HARMLESS AGAINST ANY LIABILITY, LOSSES, DAMAGES, COSTS, EXPENSES, CAUSES OF ACTION, SUITS, CLAIMS, DEMANDS AND JUDGMENTS OF ANY NATURE ARISING FROM OR IN CONNECTION WITH ANY SUCH INVESTMENT. NOTHING IN THIS SECTION IS INTENDED TO LIMIT THE BORROWER'S OBLIGATIONS CONTAINED IN SECTION 2.1 AND 2.2 HEREOF. AMOUNTS PAYABLE TO THE GOVERNMENTAL LENDER HEREUNDER SHALL BE DUE AND PAYABLE FIVE (5) DAYS AFTER DEMAND AND WILL ACCRUE INTEREST AT THE DEFAULT RATE, COMMENCING WITH THE EXPIRATION OF THE FIVE (5) DAY PERIOD. WHEN THE GOVERNMENTAL LENDER INCURS EXPENSES OR RENDERS SERVICE IN CONNECTION WITH ANY BANKRUPTCY OR INSOLVENCY PROCEEDING, SUCH EXPENSES (INCLUDING THE FEES AND EXPENSES OF ITS COUNSEL) AND THE COMPENSATION FOR SUCH SERVICES ARE INTENDED TO CONSTITUTE EXPENSES OF ADMINISTRATION UNDER ANY BANKRUPTCY LAW OR LAW RELATING TO CREDITORS' RIGHTS GENERALLY. THE OBLIGATIONS OF BORROWER TO THE INDEMNIFIED PARTIES UNDER THIS SECTION SHALL NOT BE SUBJECT TO THE RECOURSE LIMITATIONS OF SECTION 10.13 HEREOF.

THE INDEMNIFICATION PROVISIONS OF THIS SECTION 2.5 ARE EXPRESSLY INTENDED TO BE ENFORCEABLE REGARDLESS OF WHETHER THE BORROWER ALLEGES OR PROVES THE SOLE, CONCURRENT, CONTRIBUTORY OR COMPARATIVE NEGLIGENCE OF THE INDEMNIFIED PARTIES.

Section 2.6 Amounts Remaining on Deposit Upon Payment of the Governmental Note. After payment in full of the principal of, premium, if any, and interest on the Governmental Note and upon payment of amounts payable to the United States pursuant to any rebate requirement and the payment of any other amounts owed hereunder or under the Funding Loan Agreement, all amounts on deposit with the Fiscal Agent or the Funding Lender pursuant to the Funding Loan Agreement, this Agreement or any other Funding Loan Document shall be paid by the Fiscal Agent or the Funding Lender, as applicable, to the Borrower.

### **ARTICLE 3 SECURITY**

Section 3.1 Mortgage and Other Funding Loan Documents. To further secure the Borrower's Obligations under this Agreement, the Borrower shall, at its sole expense, execute and deliver, or cause to be executed and delivered (and where required, duly record), the Mortgage and each of the other Funding Loan Documents.

Section 3.2 Financing Statements. The Borrower shall file, or cause to be filed, on or before the Closing Date, such financing statements and continuation statements, and perform such other acts, under the Uniform Commercial Code of the State or other applicable Legal Requirements as are necessary or advisable to perfect and maintain perfection of the Governmental Lender's, the Fiscal Agent's and/or the Funding Lender's security interests under this Agreement, the Funding Loan Agreement, the Mortgage and the other Funding Loan Documents. The Borrower hereby authorizes the Fiscal Agent, the Funding Lender or the Servicer, without the signature of the Borrower, to file continuation statements, and perform such other acts, under the Uniform Commercial Code of the State or other applicable Legal Requirements as are necessary or advisable to perfect and maintain perfection of the Governmental Lender's, the Fiscal Agent's and/or the Funding Lender's security interests under this Agreement, the Funding Loan Agreement, the Mortgage and the other Funding Loan Documents. The Borrower will pay upon demand the costs of filing

the foregoing financing or continuation statements and the Financing Statements required under the Funding Loan Agreement in such public offices as the Servicer may designate.

Section 3.3 Internal Revenue Service Examination. The Borrower acknowledges that in the event of an examination of the Tax-Exempt Governmental Note by the Internal Revenue Service (the “Service”) to determine compliance of the Tax-Exempt Governmental Note with the provisions of the Code as they relate to tax-exempt obligations, the Governmental Lender is likely to be treated as the “taxpayer” in such examination. The Borrower agrees, upon notification by the Governmental Lender, that the Borrower (a) will respond to any inquiries from the Service in connection with such examination, and (b) upon request of the Governmental Lender, will reimburse the Governmental Lender for all expense incurred by the Governmental Lender in connection with such examination of the Tax-Exempt Governmental Note by the Service, or will directly pay the costs of any such examination. The Governmental Lender covenants that it will promptly notify the Borrower and the Fiscal Agent of any inquiry or examination by the Service relating to the Tax-Exempt Governmental Note and will cooperate with the Borrower, at the Borrower’s sole expense, in connection with any such inquiry or examination. The Borrower understands and agrees that the interests of the Governmental Lender and the Borrower in any such examination may differ and that the existence of the examination may be subject to public disclosure by the Governmental Lender under the open records laws of the State.

#### **ARTICLE 4**

#### **REPRESENTATIONS OF GOVERNMENTAL LENDER**

Section 4.1 Representations by the Governmental Lender. The Governmental Lender represents and warrants to the Borrower, the Funding Lender and the Noteowners from time to time of the Governmental Note as follows:

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

(b) The Governmental Lender has all requisite power, authority and legal right to execute and deliver the Funding Loan Documents to which it is a party and all other instruments and documents to be executed and delivered by the Governmental Lender pursuant thereto, to perform and observe the provisions thereof and to carry out the transactions contemplated by the Funding Loan Documents. All action on the part of the Governmental Lender which is required for the execution, delivery, performance and observance by the Governmental Lender of the Funding Loan Documents has been duly authorized and effectively taken, and such execution, delivery, performance and observation by the Governmental Lender do not contravene applicable law or any contractual restriction binding on or affecting the Governmental Lender.

(c) The Governmental Lender has duly approved the delivery of the Governmental Note and the loan of the proceeds thereof to the Borrower for the acquisition and renovation of the Project; and all authorizations, approvals, or other action by any Governmental Authority which would constitute a condition precedent to the performance by the Governmental Lender of the obligations under the Funding Loan Documents to which the Governmental Lender is a party have been obtained.

(d) This Agreement is, and each other Funding Loan Document to which the Governmental Lender is a party when delivered will be, legal, valid and binding special obligations of the Governmental Lender enforceable against the Governmental Lender in accordance with its

terms except as the enforceability thereof may be limited by bankruptcy, insolvency or similar laws affecting the enforcement of creditors' rights generally.

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

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

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

(h) In connection with the Governmental Lender's actions with regard to the authorization, execution and delivery of the Governmental Note, the Governmental Lender has complied in all material respects with all provisions of the laws of the State, including the Act, provided that no representation is made as to compliance with any state securities or "blue sky" laws.

(i) The Governmental Lender has not assigned or pledged and will not assign or pledge its interest in this Agreement for any purpose other than to secure the Governmental Note under the Funding Loan Agreement. The Governmental Note constitutes the only note, bond or other obligation of the Governmental Lender in any manner payable from the revenues to be derived from this Agreement, and except for the Governmental Note, no note, bond or other obligation has been or will be issued or delivered on the basis of this Agreement.

(j) The Governmental Lender is not in default under any of the provisions of the laws of the State, which default would affect the delivery, validity or enforceability of the Governmental Note or the transactions contemplated by this Agreement or the Funding Loan Agreement.

(k) The Governmental Lender covenants and agrees that it will take or cause to be taken all required actions that is within its control to preserve the exclusion from gross income for federal income tax purposes of interest on the Tax-Exempt Governmental Note. All of the amounts received upon the sale of the Tax-Exempt Governmental Note shall be allocated to, and shall be used, for the purpose of financing the aggregate basis of land and building costs within the meaning of Section 42(h)(4)(B) of the Code. To the extent within the reasonable control of the Governmental Lender, and provided that the Governmental Lender shall be under no duty to enforce compliance, the amounts received upon the delivery of the Governmental Note and interest and other investment earnings on those amounts shall be allocated and used for financing Project Costs of each building and related land in the Project so that the aggregate basis of each such

building and related land, within the meaning of Section 42(h)(4) of the Code, shall be financed fifty percent (50%) or more from those amounts.

(l) No member of the Governmental Lender, nor any other official or employee of the Governmental Lender, has any interest (financial, employment or other) in the Borrower, in the Project or in the transactions contemplated hereby, by the other Funding Loan Documents or by the Funding Loan Agreement.

(m) The Governmental Lender used no broker in connection with the execution hereof and the transactions contemplated hereby.

Section 4.2 No Liability of Governmental Lender; No Charge Against Governmental Lender's Credit. ANY OBLIGATION OF THE GOVERNMENTAL LENDER CREATED BY, ARISING OUT OF, OR ENTERED INTO IN CONTEMPLATION OF THIS AGREEMENT, INCLUDING THE PAYMENT OF THE PRINCIPAL OF, PREMIUM IF ANY, AND INTEREST ON THE GOVERNMENTAL NOTE, SHALL NOT IMPOSE OR CONSTITUTE A DEBT OR PECUNIARY LIABILITY UPON THE GOVERNMENTAL LENDER, THE STATE OR ANY POLITICAL SUBDIVISION THEREOF OR CONSTITUTE A CHARGE UPON THE GENERAL CREDIT OR TAXING POWERS OF ANY OF THE FOREGOING. ANY SUCH OBLIGATION SHALL BE PAYABLE SOLELY OUT OF THE PLEDGED REVENUES AND ANY OTHER MONEYS DERIVED HEREUNDER AND UNDER THE FUNDING LOAN AGREEMENT, EXCEPT (AS PROVIDED IN THE FUNDING LOAN AGREEMENT AND IN THIS AGREEMENT) TO THE EXTENT IT SHALL BE PAID OUT OF MONEYS ATTRIBUTABLE TO THE PROCEEDS OF THE GOVERNMENTAL NOTE OR THE INCOME FROM THE TEMPORARY INVESTMENT THEREOF. NO RECOURSE SHALL BE HAD FOR THE PAYMENT OF THE PRINCIPAL OF, PREMIUM, IF ANY, OR INTEREST ON ANY OF THE GOVERNMENTAL NOTE OR FOR ANY CLAIM BASED THEREON OR UPON ANY OBLIGATION, COVENANT OR AGREEMENT OF THE GOVERNMENTAL LENDER HEREUNDER AGAINST ANY PAST, PRESENT OR FUTURE TRUSTEE, OFFICER, MEMBER, EMPLOYEE OR AGENT OF THE GOVERNMENTAL LENDER, WHETHER DIRECTLY OR INDIRECTLY, AND ALL SUCH LIABILITY OF ANY SUCH INDIVIDUAL AS SUCH IS EXPRESSLY WAIVED AND RELEASED AS A CONDITION OF AND IN CONSIDERATION FOR THE EXECUTION OF THIS AGREEMENT, THE MAKING OF THE LOAN OF THE PROCEEDS OF THE GOVERNMENTAL NOTE TO THE BORROWER, AND THE EXECUTION AND DELIVERY OF THE GOVERNMENTAL NOTE.

Section 4.3 Nonrecourse Obligation of the Governmental Lender. All obligations of the Governmental Lender hereunder and under the other Funding Loan Documents are special, limited obligations payable solely from funds made available to the Governmental Lender hereunder or the other Funding Loan Documents, and no recourse shall be had to the Governmental Lender or to any employees, agents or members of the Governmental Lender in satisfaction of any amounts due or liabilities incurred pursuant to the Governmental Lender's delivery of the Governmental Note and related actions, inactions or transactions.

## **ARTICLE 5 REPRESENTATIONS AND WARRANTIES OF THE BORROWER**

The Borrower represents and warrants to and for the benefit of the Governmental Lender, the Funding Lender, the Servicer and the Noteowners from time to time of the Governmental Note as follows:

Section 5.1 Existence. The Borrower is a limited partnership, duly organized, validly existing and in good standing under the Legal Requirements of the state of its organization and is duly qualified to

do business in the State. The Borrower has furnished to the Governmental Lender, the Funding Lender and the Servicer true and complete copies of its Partnership Agreement and its certificate of limited partnership. The Borrower owns and will own no other assets other than the Project. The Borrower and the Managing Member have been, are and will be engaged solely in the business of acquiring, renovating, equipping, financing, owning, leasing, managing and operating the Project and activities incident thereto. The General Partner of the Borrower is OTM Woodway Square GP, LLC, a limited liability company, duly organized, validly existing and in good standing under the laws of the state of its organization and is duly qualified to do business in the State. The General Partner has furnished to the Governmental Lender, the Funding Lender and the Servicer true and complete copies of its certificate of formation. The General Partner has and will have no other assets other than its partnership interests in the Borrower.

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

Section 5.3 Governmental Authorizations and Other Approvals. The Borrower and the General Partner have all necessary Governmental Actions and qualifications, and have complied with all applicable Legal Requirements necessary to conduct their business as it is presently conducted and to own, operate and renovate the Project in accordance with the provisions of the Funding Loan Documents. Except as set forth on Schedule 6 hereto, the Borrower has obtained all Governmental Actions from such Governmental Authorities which are a necessary precondition to renovate, own and operate the Project and all such Governmental Actions were duly issued and have not been revoked, are in full force and effect and are not subject to any pending judicial or administrative proceedings, the period for judicial or administrative appeal or review having expired and no petition for administrative or judicial appeal or review having been filed. The Project (upon completion of renovation) of the Project as contemplated in the Plans and Specifications) will comply with all Governmental Actions and Legal Requirements, including all zoning restrictions (including without limitation, use density, setbacks, parking and other similar requirements) or the Borrower has a valid variance for or exemption from such requirements.

All Governmental Actions obtained by the Borrower prior to the Closing Date are listed and described on Schedule 6 hereto and have been validly issued and have not been terminated or revoked, and are in full force and effect. With respect to any Governmental Actions not yet obtained, the steps listed on Schedule 6 are all the steps needed to obtain such Governmental Actions and the Borrower knows of no reason that such Governmental Actions will not be timely obtained in the ordinary course of business and as needed in connection with the renovation or operation of the Project.

No such Governmental Action will terminate, or become void or voidable or terminable, upon any sale, transfer or other disposition of the Project including any transfer pursuant to foreclosure sale under the Mortgage.

Section 5.4 Validity and Binding Effect. This Agreement and the other Funding Loan Documents and the Subordinate Debt Documents to which the Borrower is a party are the legal, valid and

binding obligations of the Borrower, enforceable against it in accordance with their respective terms, subject to the application by a court of general principles of equity and to the effect of any applicable bankruptcy, insolvency, reorganization, moratorium or similar Legal Requirement affecting creditors' rights generally.

Section 5.5 No Litigation. Except as disclosed on Schedule 1 attached hereto, there is no pending action or proceeding, including eminent domain proceedings, before any Governmental Authority or arbitrator against or involving the Borrower, the General Partner or to the Borrower's knowledge after due inquiry, the Project and, to the best knowledge of the Borrower and the General Partner, there is no threatened action or proceeding, including eminent domain proceedings, affecting the Borrower or the General Partner before any Governmental Authority or arbitrator which, in any case, might materially and adversely affect (i) the business, operations, assets, condition (financial or otherwise) or prospects of the Borrower or the General Partner, (ii) the validity or enforceability of this Agreement, the Governmental Note, [the Subordinate Debt Documents] or the Funding Loan Documents, (iii) the renovation, operation or ownership of the Project, or (iv) the exclusion from gross income of interest on the Tax-Exempt Governmental Note for purposes of federal income taxation [or (v) the exemption of the Project from ad valorem real estate taxation under the applicable laws of the State].

Section 5.6 No Violations. The Borrower and the General Partner are in compliance with, and not in breach of or default under (a) any applicable Governmental Actions or Legal Requirements with respect to the Project of any Governmental Authority having jurisdiction, or (b) the Funding Loan Documents, the Subordinate Debt Documents or any other credit agreement, indenture, mortgage, agreement or other instrument to which it is a party or otherwise subject. No event has occurred and is continuing which, with the passage of time or the giving of notice or both, would constitute an event of default under any such instrument. The Borrower is not in violation, nor is there any notice or other record of any violation of any Legal Requirements, restrictive covenants or other restrictions applicable to any of the Project. All tax returns (federal, state and local) required to be filed by or on behalf of the Borrower, if any prior to the Closing Date, have been timely filed, and all taxes shown thereon to be due, including interest and penalties, except such, if any, as are being actively contested by the Borrower in good faith, have been paid or adequate reserves have been made for the payment thereof which reserves, if any, are reflected in the audited financial statements described therein. The Borrower enjoys, or will enjoy upon Final Completion, the peaceful and undisturbed possession of the Project subject to the terms of the Ground Lease.

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

Section 5.8 Title to Properties; Liens and Encumbrances. The Borrower has a leasehold interest in the real property on which the Project will be constructed pursuant to the Ground Lease and is the fee simple owner of the Improvements thereon, free and clear of all liens or encumbrances except for

the Permitted Encumbrances. All such real property, fixtures and equipment necessary to the conduct of the business of the Borrower and the operation of the Project are and will be in reasonable working order and are suitable for the purposes for which they are and will be used. There exist no liens, encumbrances or other charges against the Project (including without limitation statutory and other liens of mechanics, workers, contractors, subcontractors, suppliers, taxing authorities and others), except Permitted Encumbrances.

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

Section 5.10 Financial Information.

(a) All of the financial information furnished to the Funding Lender and the Servicer with respect to the Borrower, the General Partner and, to the best of the Borrower's knowledge, the Guarantor, in connection with this Agreement (i) is complete and correct in all material respects as of the date hereof; and (ii) accurately presents the financial condition of such party as of the date hereof. None of the Borrower, the General Partner or, to the best of the Borrower's knowledge, the Guarantor, has any material liability or contingent liability not disclosed to both the Funding Lender and the Servicer in writing; and

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

Section 5.11 ERISA. No employee pension plan maintained by the Borrower or the General Partner or any ERISA Affiliate which is subject to Part 3 of Title I of the Employee Retirement Income Security Act of 1974, as amended ("ERISA") has an accumulated funding deficiency (as defined in Section 302(a) of ERISA), no reportable event (as defined in Section 4043 of ERISA) has occurred with respect to any employee pension plan maintained for employees of the Borrower or any ERISA Affiliate and covered by Title IV of ERISA, no liability has been asserted against the Borrower, the General Partner or any ERISA Affiliate by the Pension Benefit Guaranty Corporation ("PBGC") or by a trustee appointed pursuant to Section 4042(b) or (c) of ERISA, and no lien has been attached and no person has threatened to attach a lien to any of the Borrower's, the General Partner's or any ERISA Affiliate's property as a result of failure to comply with ERISA or as a result of the termination of any employee pension plan covered by Title IV of ERISA. Each employee pension plan (as defined in Section 3(2) of ERISA) maintained for employees of the Borrower, the General Partner or any ERISA Affiliate which is intended to be qualified under Section 401 (a) of the Code, including all amendments to such plan or to any trust agreement, group annuity or insurance contract or other governing instrument, is the subject of a favorable determination by the Internal Revenue Service with respect to its qualification under Section 401(a) of the Code. With respect to any multi-employer pension plan (as defined in Section 3(37) of ERISA) to which the Borrower, the General Partner or any ERISA Affiliate is or has been required to contribute after September 25, 1980, (i) no withdrawal liability (within the meaning of Section 4201 of ERISA) has been incurred by the Borrower, the General Partner or any ERISA Affiliate, (ii) no withdrawal liability has been asserted against the Borrower, the General Partner or any ERISA Affiliate by a sponsor or an agent of a sponsor of any such multi-employer plan, (iii) no such multi-employer pension plan is in reorganization (as defined in Section 4241(a) of ERISA), and (iv) neither the Borrower, the General Partner nor any ERISA Affiliate has any unfulfilled obligation to contribute to any such multi-employer pension plan. As used in this Agreement,

“ERISA Affiliate” means (i) any corporation included with the Borrower or the General Partner in a controlled group of corporations within the meaning of Section 414(b) of the Code, (ii) any trade or business (whether or not incorporated or for-profit) which is under common control with the Borrower, or the General Partner within the meaning of Section 414(c) of the Code, (iii) any member of an affiliated service group of which the Borrower, or the General Partner is a member within the meaning of Section 414(m) of the Code, and (iv) any other entity treated as being under common control with the Borrower or the General Partner under Section 414(o) of the Code.

Section 5.12 Environmental Representations. Except as set forth on the Environmental Audit delivered to the Funding Lender and the Servicer (a) the Borrower has no knowledge of any activity at the Project, or any storage, treatment or disposal of any Hazardous Substances connected with any activity at the Project, which has been conducted, or is being conducted, in violation of any Environmental Law; (b) the Borrower has no knowledge of any of the following which could give rise to material liabilities, material costs for remediation or a material adverse change in the business, operations, assets or condition (financial or otherwise) of the Borrower: (i) Contamination present at the Project, (ii) polychlorinated biphenyls present at the Project, (iii) asbestos or materials containing asbestos present at the Project, (iv) urea formaldehyde foam insulation present at the Project, or (v) lead-based paint at the Project; (c) no portion of the Project constitutes an Environmentally Sensitive Area; (d) the Borrower has no knowledge of any investigation of the Project for the presence of radon; (e) no tanks presently or formerly used for the storage of any liquid or gas above or below ground are present at any of the Project; (f) no condition, activity or conduct exists on or in connection with the Project which constitutes a violation of Environmental Laws; (g) no notice has been issued by any Governmental Authority to the Borrower or the General Partner identifying the Borrower or the General Partner as a potentially responsible party under any Environmental Laws; (h) there exists no investigation, action, proceeding or claim by any Governmental Authority or by any third party which could result in any liability, penalty, sanctions or judgment under any Environmental Laws with respect to the Project; and (i) the Borrower is not required to obtain any permit or approval from any Governmental Authority or need notify any Governmental Authority pursuant to any Environmental Law with regard to the renovation of the Project.

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

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

Section 5.15 Full Disclosure. This Agreement, the exhibits hereto and the other documents, certificates, opinions, schedules and statements furnished to the Funding Lender and the Servicer by or on behalf of the Borrower, the Guarantor, or the General Partner in connection with the transactions contemplated hereby or by the Funding Loan Documents, do not contain any untrue statement of a material fact with respect to the Borrower, the Guarantor or the General Partner or the Project and do not omit to

state a material fact with respect to the Borrower, the Guarantor or the General Partner or the Project necessary in order to make the statements contained therein not misleading in light of the circumstances under which they were made. There is no fact known to the Borrower, the Guarantor or the General Partner which materially adversely affects or in the future may adversely affect the business, operations, properties, assets or financial condition of the Borrower, the Guarantor or the General Partner which has not been set forth in this Agreement or in the other documents, certificates, opinions, schedules and statements furnished to the Funding Lender and the Servicer on behalf of any such party before the date of execution and delivery of this Agreement in connection with the transactions contemplated hereby.

Section 5.16 Funding Loan Documents. The Borrower has provided both the Funding Lender and the Servicer with true, correct and complete copies of: (i) all documents executed by the Borrower, the Guarantor or the General Partner in connection with the Governmental Note, including all amendments thereto and compliance reports filed thereunder; (ii) all management and service contracts entered into by the Borrower in connection with the Project, including all amendments thereto; (iii) all material correspondence, if any, relating to the Governmental Note from the Governmental Lender, the Securities and Exchange Commission, the Internal Revenue Service or any state or local securities regulatory body or taxing authority or any securities rating agency; and (iv) all documentation, if any, relating to governmental grants, subsidies or loans or any other loans, lines of credit or other subordinate financing (including, without limitation, the Subordinate Debt) relating to the Borrower or the Project, whether or not secured by the Project. Each of the representations and warranties on the Borrower's part made in the Funding Loan Documents to which the Borrower is a party remain true and correct in all material respects and no Default exists under any covenants on the Borrower's part to perform under the Funding Loan Documents to which the Borrower is a party.

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

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

Section 5.19 No Broker. Other than as previously disclosed in writing to the Funding Lender and the Servicer, the Borrower has used no broker in connection with the execution hereof and the transactions contemplated hereby.

Section 5.20 Construction Contract; Architect's Agreement. The Construction Contract and the Architect's Agreement are each in full force and effect, and the parties thereto are in full compliance with their respective obligations thereunder. The Work to be performed by the Contractor under the Construction Contract is the Work called for by the Plans and Specifications, and all Work required to complete the Improvements in accordance with the Plans and Specifications is provided for under the Construction Contract.

Section 5.21 Development Budget. The Development Budget attached hereto as Schedule 4 accurately reflects, as of the date of the execution and delivery of this Agreement: (i) all anticipated costs of implementing and completing the Work within the Plans and Specifications and (ii) anticipated uses by source allocations for the purpose of complying with Section 142(a) of the Code.

Section 5.22 Plans and Specifications. The Borrower has furnished the Servicer and the Funding Lender with true and complete sets of the Plans and Specifications. The Plans and Specifications so furnished to the Servicer and the Funding Lender comply with all Legal Requirements, all Governmental Actions, and all restrictions, covenants and easements affecting the Project, and have been approved by the Tax Credit Investor and such Governmental Authority as is required for the renovation of the Project.

Section 5.23 Survey. The survey for the Project delivered to the Funding Lender and the Servicer does not fail to reflect any material matter of survey affecting the Project or the title thereto.

Section 5.24 Flood Plain. No part of the Project is located in an area identified by the Federal Emergency Management Agency as an area having special flood hazard or to the extent any part of the Project is an area identified as an area having special flood hazard, flood insurance in an amount equal to 100% of the appraised insurable value of the Project has been obtained by the Borrower.

Section 5.25 Requisition. Each Requisition submitted to the Funding Lender and the Servicer shall constitute an affirmation that the representations and warranties of the Borrower contained in this Agreement and in the other Funding Loan Documents remain true and correct as of the date thereof unless otherwise noted in writing; and unless the Funding Lender and the Servicer is notified to the contrary, in writing, prior to the requested date of the advance under such Requisition, shall constitute an affirmation that the same remain true and correct on the date of such advance.

Section 5.26 [Rent Roll]. To the Borrower's actual knowledge, the rent roll dated \_\_\_\_\_, 20\_\_\_\_, provided to the Servicer, is a true, correct and complete rent roll for the Project (the "Rent Roll"), which includes all leases affecting the Project. Except as set forth on the Rent Roll, to the Borrower's actual knowledge: (i) each lease is in full force and effect; (ii) the tenants under the leases have accepted possession of and are in occupancy of all of their respective demised Project, have commenced the payment of rent under such leases, and there are no offsets, claims, or defenses to the enforcement thereof; (iii) all rents due and payable under the leases have been paid and no portion thereof has been paid for any period more than thirty (30) days in advance; (iv) the rent payable under each lease is the amount of fixed rent set forth in the Rent Roll, and there is no claim or basis for a claim by tenant thereunder for an adjustment to the rent; (v) no tenant has made any claim against the landlord under the leases (except as disclosed in writing to Servicer) which remains outstanding, there are no defaults on the part of the landlord under any lease, and no event has occurred which, with the giving of notice or passage of time, or both, would constitute such a default; and (vi) to the Borrower's best knowledge, there is not present a material default by the tenant under any lease. The Borrower will hold any security deposits under the leases in a non-commingled bank account in the name of the Borrower and meeting the requirements of applicable laws. None of the leases contains any option to purchase or right of first refusal to purchase the Project or any part thereof. Neither the leases nor the Rents have been assigned or pledged to any Person and no Person has any interest therein except the tenants thereunder.]

## **ARTICLE 6 GENERAL COVENANTS**

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

Section 6.1 Conduct of Business; Maintenance of Existence; Mergers. The Borrower and the General Partner will (i) engage solely in the business of financing, renovating, owning, leasing and operating the Project, and activities incident thereto, (ii) preserve and maintain in full force and effect its existence as a limited partnership or limited liability company, as applicable, under the Legal Requirements

of the state of its organization, and its rights and privileges and its qualification to do business in the State, (iii) not dissolve or otherwise dispose of all or substantially all of its assets, (iv) except for Permitted Transfers, not consolidate with or merge into another entity or permit one or more other entities to consolidate with or merge into it, (v) not amend any provision of its certificate of limited partnership, certificate of formation, articles of incorporation, or its Partnership Agreement, bylaws, as applicable, relating to its purpose, management or operation without the prior written consent of the Servicer (on behalf of the Funding Lender), and (vi) promptly and diligently enforce its rights under the Partnership Agreement and cause the Tax Credit Investor to make its capital contributions as and when required under the Partnership Agreement. Notwithstanding the foregoing, the Borrower may amend the Partnership Agreement in order to effectuate a Permitted Transfer

Section 6.2 Compliance with Legal Requirements; Payment of Impositions. The Borrower will comply with all Legal Requirements applicable to the Borrower or the Project. The Borrower will pay all Impositions and insurance premiums when due and will make the applicable deposits required by Section 8.2 of this Agreement for such purposes. The Borrower shall make commercially reasonable efforts to direct that copies of all regular Impositions and insurance premiums shall be sent directly by the Governmental Authority or insurer, as applicable, to the Servicer.

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

Section 6.4 Maintenance of Insurance.

(a) At all times throughout the term hereof, the Borrower shall, at its sole cost and expense, maintain or cause to be maintained insurance against such risks and for such amounts as required by the Funding Lender for facilities of the type and size of the Project, as such requirements may be modified by the Funding Lender from time to time, and shall pay, as the same become due and payable, all premiums with respect thereto. The initial insurance requirements shall include, but not necessarily be limited to, the requirements set forth on Schedule 12 hereto.

(b) All insurance required by this Section 6.4 shall be produced and maintained in financially sound and generally recognized responsible insurance companies selected by the entity required to procure the same and authorized to write such insurance in the State. Such insurance may be written with deductible amounts comparable to those on similar policies carried by other companies engaged in businesses similar in size, character and other respects to those in which the procuring entity is engaged. All property and casualty insurance policies required by Section 6.4(a) hereof shall contain a standard non-contributory mortgagee clause showing the interest of the Fiscal Agent as first mortgagee and shall provide for payment to the Fiscal Agent of the net proceeds of insurance resulting from any claim for loss or damage thereunder. All policies of insurance required by Section 6.4(a) hereof shall provide for at least ten (10) days' prior written notice of cancellation due to non-payment of renewal premium and thirty (30) days' prior written notice of the restriction, cancellation for any other reason besides non-payment of renewal premium, or modification thereof to the Fiscal Agent, with a copy to the Funding Lender and the Servicer. The Fiscal Agent shall not be required to take any action upon such receipt of such a notice, unless it receives written directions from the Funding Lender. The policy evidencing liability insurance required by Section 6.4(a) hereof shall name the Governmental Lender, the Servicer, the Funding Lender and the Fiscal Agent as

additional named insureds. The Borrower acknowledges that a security interest in the policies of property and casualty insurance required by Section 6.4(a) and the net proceeds thereof is being granted to the Fiscal Agent pursuant to the Mortgage. Upon request of the Funding Lender, the Borrower will assign and deliver (which assignment shall be deemed to be automatic and to have occurred upon the occurrence of an Event of Default hereunder) to the Fiscal Agent, the policies of property and casualty insurance required under Section 6.4(a), so and in such manner and form that the Funding Lender shall at all times, upon such request and until the payment in full of the Governmental Note, have and hold said policies and the net proceeds thereof as collateral and further security under the Mortgage for application as provided in the Mortgage. The policies under Section 6.4(a) hereof shall contain appropriate waivers of subrogation.

(c) Copies of the policy or certificate (or binder) of insurance required by Section 6.4(a) hereof shall be delivered to the Funding Lender and the Servicer, with a copy of the certificate to the Fiscal Agent on or before the Closing Date. The Borrower shall deliver to the Fiscal Agent and the Servicer, before the first (1<sup>st</sup>) Business Day of each calendar year thereafter, a certificate dated not earlier than the immediately preceding month reciting that there is in full force and effect insurance of the types and in the amounts required by this Section 6.4. The Fiscal Agent shall be entitled to rely on these certificates as to the compliance with the insurance requirements without further inquiry. Prior to the expiration of each such policy, the Borrower shall furnish the Fiscal Agent, with copies to the Funding Lender and the Servicer, with evidence that such policy has been renewed or replaced or is no longer required by this Agreement. The Borrower shall provide such further information with respect to the insurance coverage required by this Agreement as the Funding Lender and/or the Servicer may, from time to time, reasonably require.

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

(e) The Borrower covenants and agrees to provide immediate written notice of any casualty or loss regarding the Project to the Servicer.

Section 6.5 Compliance with Other Contracts and Funding Loan Documents. The Borrower will comply with all of its covenants and agreements under the Funding Loan Documents to which it is a party, as the same may hereafter be amended or supplemented from time to time, and each of such covenants is incorporated herein by reference as if fully set forth herein. The Borrower acknowledges that the Funding Loan Agreement imposes certain obligations upon the Borrower and the Borrower agrees to discharge such obligations as if they were fully set forth herein (notwithstanding that the Borrower is not a party to the Funding Loan Agreement). The Borrower shall comply with all of its covenants and agreements under the Subordinate Debt Documents. The Borrower shall comply in all material respects with, or cause to be complied with, all requirements and conditions of all Material Contracts and insurance policies which relate to the Borrower or the Project.

Section 6.6 Maintenance of Project. The Borrower will, at its sole expense and as one of the Expenses (including use of the funds on deposit in the Accounts, in accordance with the terms of the Funding Loan Agreement and the Replacement Reserve Agreement), (i) maintain and preserve the Project in good working order and repair, fit for the purposes for which they were originally erected; (ii) not permit, commit or suffer any waste or abandonment of the Project; (iii) not use (and use reasonable efforts to not permit tenants to use) the Project for any unlawful purpose and use reasonable efforts to not permit any nuisance to exist thereon; (iv) promptly make such repairs or replacements (structural or nonstructural, foreseen or unforeseen) as are required for the proper operation, repair and maintenance of the Project in an economical and efficient manner and consistent with customary and prudent practices, standards and

procedures applicable to properties of like size and type; (v) perform all repairs or replacements in a good and workmanlike manner, and in compliance with all applicable Governmental Actions and Legal Requirements; (vi) keep and maintain abutting grounds, sidewalks, roads, parking and landscape areas which may be owned by the Borrower in good and neat order and repair; (vii) not take (or fail to take) any action, which if taken (or not so taken) would increase in any way the risk of fire or other hazard occurring to or affecting the Project; and (viii) not sell, lease (other than pursuant to residential leases), cause a Sale of or otherwise dispose of any portion of the Project, except as otherwise permitted hereunder and under the other Funding Loan Documents.

#### Section 6.7      Inspection Rights.

(a)      The Borrower will, upon reasonable prior notice, at any reasonable time and from time to time, permit the Servicer, the Funding Lender, the Governmental Lender, and the agents or representatives of the Servicer, the Funding Lender and the Governmental Lender, to examine and copy and make abstracts from the records and books of account of, and visit the properties of, the Borrower, and to discuss the affairs, finances and accounts of the Borrower with the General Partner and the Accountant. Upon reasonable prior notice, and subject to the rights of tenants, the Borrower will permit the Engineering Consultant to inspect, or cause to be inspected, the Project at any reasonable time or times as the Funding Lender may direct. The Borrower shall pay or reimburse the Funding Lender and the Servicer on demand for reasonable fees and expenses incurred in connection with such inspections.

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

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

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

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

(a) As soon as available and in any event within forty-five (45) days after the close of each fiscal quarter of each Fiscal Year of the Borrower:

(1) unaudited financial statements for the Borrower and the Project, including a balance sheet and related statement of income as of the end of such fiscal quarter and for such fiscal quarter and the current Fiscal Year to the end of such fiscal quarter, which shall be internally prepared and presented on a consistent basis; and

(2) a certificate signed by an Authorized Person stating that, except as disclosed in such certificate, (i) during such fiscal quarter the Borrower has observed and performed all of its covenants and agreements set forth in this Agreement and the other Funding Loan Documents (including the rules qualifying the interest payable on the Tax-Exempt Governmental Note for federal tax exemption pursuant to Section 142(d) of the Code and the regulations issued thereunder), except as disclosed in such certificate, (ii) if the Project have received a tax credit allocation, during such fiscal quarter the Project have complied with the requirements of Section 42 of the Code and the regulations issued thereunder, and (iii) no Event of Default has occurred or exists.

(b) As soon as available and in any event within one hundred twenty (120) days after the close of each Fiscal Year of the Borrower:

(1) audited financial statements for the Borrower, on a consolidated basis, including a balance sheet and related statements of income and changes in financial position as of the end of such Fiscal Year and for such Fiscal Year, which shall be prepared and reported on without qualification by the Accountant in accordance with GAAP, and shall fairly present the financial condition of the Borrower and the Project as of the end of such Fiscal Year;

(2) a certificate signed by an Authorized Person stating that (i) during such Fiscal Year the Borrower has observed and performed all of its covenants and agreements set forth in this Agreement and the other Funding Loan Documents, except as disclosed in such certificate, and (ii) no Default or Event of Default has occurred or exists, except as disclosed in such certificate; and

(3) an occupancy report stating as of the last day of the month prior to the date of delivery thereof, with respect to each lease of all or any part of the Project, the tenant's name, the date thereof, the premises demised, the term, the rent, the security deposits, any advance rent payments in excess of one month and any defaults by the tenant or the Borrower in respect thereof (including, without limitation, the amounts of arrearages).

(c) As soon as possible and in any event within twenty-five (25) days after the end of each calendar month, operating statements of the Project certified by an Authorized Person and containing itemized information regarding all items of expense and income as well as occupancy reports, a rent roll and, if required by the Funding Lender or the Servicer, other reports such as reports on concessions, security deposits and advance rents, all in such detail as may be required by the Funding Lender or the Servicer;

(d) From and after the Completion Date, monthly, an occupancy report for the Project;

(e) Upon receipt thereof by the Borrower, copies of any letter or report with respect to the management, operations or properties of the Borrower submitted to the Borrower by the

Accountant in connection with any annual or interim audit of the Borrower's accounts, and a copy of any written response of the Borrower to any such letter or report;

(f) As soon as possible and in any event within five (5) Business Days after receipt of notice thereof, written notice of any pending or threatened litigation, investigation or other proceeding involving the Borrower, the General Partner, the Guarantor or the Project; (i) which could have a material adverse effect on the operations or financial condition of the Borrower, the General Partner, the Guarantor or the Project; (ii) wherein the potential damages, in the reasonable judgment of the Borrower based upon the advice of counsel experienced in such matters, are not fully covered by the insurance policies maintained by the Borrower (except for the deductible amounts applicable to such policies); or (iii) which challenges the exclusion from gross income of interest on the Tax-Exempt Governmental Note for purposes of federal income taxation;

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

(h) Following delivery thereof by the Borrower, copies of any reports, certifications, financial information, compliance documents, rebate information, audits and all other items submitted by or on behalf of the Borrower will be provided to the Servicer, the Funding Lender and the Governmental Lender (but only if requested);

(i) Not later than the Completion Date, the Completion Certificate and the Use of Proceeds Certificate set forth as Schedules 8 and 9 hereof;

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

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

(l) Not later than forty-five (45) days after the Stabilization Date, a stabilization certificate in the form set forth on Schedule 10 hereto;

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

(n) Contemporaneously with the delivery to the Funding Lender or the Fiscal Agent copies of any notices, reports or other information provided to the Funding Lender or the Fiscal Agent under the Funding Loan Documents;

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

(p) As soon as possible, notice of any violation of the terms and conditions of the Ground Lease and a copy of any notice it receives from the landlord under the Ground Lease;

(q) Upon receipt thereof, copies of all real estate tax bills and insurance bills;

(r) Promptly following filing thereof, all tax returns of the Borrower and the General Partner; and

(s) Such other information respecting the operations and properties, financial or otherwise, of the Borrower as the Funding Lender or the Servicer may from time to time reasonably request.

Section 6.10 Tax Covenants. The Borrower covenants to take such action as is required of it so that the Series A Governmental Lender Note are, and to refrain from any action which would cause the Series A Governmental Lender Note to not be, obligations described in Section 103 of the Code, the interest on which is not includable in the "gross income" of the holder (other than the income of a "substantial user" of the Project or a "related person" within the meaning of Section 147(a) of the Tax Code) for purposes of federal income taxation. In particular, but not by way of limitation thereof, the Borrower covenants as follows:

(a) to take such action to ensure that the Series A Governmental Lender Note are "exempt facility bonds", as defined in Section 142(a) of the Code, at least 95 percent of the proceeds of which are used to provide "qualified residential rental projects" (within the meaning of said Section 142(a)(7) of the Code) or property functionally related and subordinate to such facilities;

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

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

(d) obtaining annually from each tenant of a residential unit described in subsection (1) above, a certification of income to currently determine income compliance with the foregoing; and

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

(f) to refrain from taking any action that would result in the Series A Governmental Lender Note being "federally guaranteed" within the meaning of Section 149(b) of the Code;

(g) to refrain from using any portion of the proceeds of the Series A Governmental Lender Note, 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 Governmental Lender Notes over the term of the Series A Governmental Lender Note, other than investment property acquired with:

(1) proceeds of the Series A Governmental Lender Note invested for a reasonable temporary period equal to 3 years or less until such proceeds are needed for the purpose for which the Series A Governmental Lender Note are issued;

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

(3) amounts deposited in any reasonably required reserve or replacement fund to the extent such amounts do not exceed 10 percent of the stated principal amount (or, in the case of Series A Governmental Lender Note issued at a discount), the issue price of the Series A Governmental Lender Note.

(h) to otherwise restrict the use of the proceeds of the Series A Governmental Lender Note or amounts treated as proceeds of the Series A Governmental Lender Note, as may be necessary, to satisfy the requirements of Section 148 of the Code (relating to arbitrage);

(i) to use no more than two percent of the gross proceeds of the Series A Governmental Lender Note for the payment of costs of issuance;

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

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

(l) to immediately remit to the Fiscal Agent for deposit in the Rebate Fund any deficiency with respect to the Rebate Amount as required by the Funding Loan Agreement;

(m) to provide to the Fiscal Agent, at such time as required by the Fiscal Agent, all information required by the Fiscal Agent with respect to Nonpurpose Investments not held in any fund under the Funding Loan Agreement; and

(n) to take such action to assure, the Project to be as described in the "Applications of Private Activity Bonds" submitted by the Governmental Lender on behalf of the Borrower to the Texas Bond Review Board in order to receive an allocation of state volume cap as required by Section 146 of the Code.

(o) The Governmental Lender agrees to submit such closing documents for the Series A Governmental Lender Note, 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 Series A Governmental Lender Note under Section 146 of the Code.

(p) The Governmental Lender and Borrower understand that the term "proceeds" includes "disposition proceeds" as defined in the Regulations and, in the case of refunding Notes, Transferred Proceeds (if any) and proceeds of the refunded Notes expended prior to the date of issuance of the Series A Governmental Lender Note. It is the understanding of the Governmental Lender and the Borrower that the covenants contained in this Borrower Loan 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 Series A Governmental Lender Note, the Governmental Lender and the Borrower will not be required to comply with any covenant contained herein to the extent that such failure to comply, in the opinion of nationally-recognized bond counsel, will not adversely affect the exemption from federal income taxation of interest on the Series A Governmental Lender Note under Section 103 of the Code. In the event that the Code is changed or regulations or rulings are hereafter promulgated, which impose additional requirements which are applicable to the Series A Governmental Lender Note, the Governmental Lender and the Borrower each agrees to comply with the additional requirements to the extent necessary, in the opinion of nationally recognized bond counsel, to preserve the exemption from federal income taxation of interest on the Series A Governmental Lender Note under Section 103 of the Code. In furtherance of such intention, the Governmental Lender hereby authorizes and directs the authorized Governmental Lender representative to execute any documents, certificates or reports required by the Code and to make such elections, on behalf of the Governmental Lender, which

may be permitted by the Code as are consistent with the purpose for the issuance of the Series A Governmental Lender Note.

(q) The Governmental Lender and the Borrower covenant that the property constituting the Project will not be sold or otherwise disposed in a transaction resulting in the receipt by the Governmental Lender and the Borrower of cash or other compensation, unless (i) the Series A Governmental Lender Note are retired or (ii) the Governmental Lender and the Borrower obtain an opinion of nationally-recognized bond counsel that such sale or other disposition will not adversely affect the tax-exempt status of the Governmental Lender Note.

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

(s) Disposition of Project. The Governmental Lender and the Borrower covenant that the property constituting the Project will not be sold or otherwise disposed in a transaction resulting in the receipt by the Governmental Lender and the Borrower of cash or other compensation, unless the Governmental Lender and the Borrower obtain an opinion of nationally recognized bond counsel that such sale or other disposition will not adversely affect the tax-exempt status of the Series A Governmental Lender Note.

(t) 90% Test. Substantially all (at least 90%) of the Units will be rented to Eligible Tenants and the Borrower will not rent or lease any Unit to a person not an Eligible Tenant if such rental would cause less than 90% of the Units to be rented to Eligible Tenants.

(u) Annual Report. The Borrower shall, to the extent permitted by applicable law, provide to the Governmental Lender (no later than March 1), the information required for the Governmental Lender to complete its annual report to the Texas Department of Housing and Community Affairs as required by Section 394.027 of the Act.

#### Section 6.11 Single Purpose Entities.

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

(b) The Borrower and the General Partner shall (i) not maintain its assets in a way difficult to segregate and identify; (ii) ensure that business transactions between the Borrower and any Affiliate of the Borrower or any Affiliate of the General Partner shall be entered into upon terms and conditions that are substantially similar to those that would be available on an arms-length basis with a third Person other than

the General Partner, or any respective Affiliate thereof; (iii) not incur or contract to incur any obligations, secured or unsecured, direct or contingent (including guaranteeing any obligation), other than, in the case of the Borrower, the Obligations evidenced by this Agreement and the other Funding Loan Documents and the Subordinate Debt Documents, or unsecured loans or guaranty payments made by the partners of the Borrower or the Guarantor pursuant to the Partnership Agreement, or unsecured trade payables or the Developer Fee; (iv) not make any loans or advances to any third Person (including any Affiliate of the Borrower or the General Partner), except as otherwise permitted under this Agreement or the Funding Loan Documents; (v) do or cause to be done all things necessary to preserve its existence; (vi) not amend, modify or otherwise change its partnership certificate, Partnership Agreement, articles of incorporation or bylaws without obtaining the prior written consent of the Funding Lender, except as necessary to effectuate or document Permitted Transfers; (vii) conduct and operate its business as presently conducted and operated; (viii) maintain its books and records and bank accounts separate from those of its Affiliates; (ix) be, and at all times shall hold itself out to the public as, a legal entity separate and distinct from any other Person (including any Affiliate); (x) file its own tax returns; (xi) maintain adequate capital for the normal obligations reasonably foreseeable in a business of its size and character and in light of its contemplated business operations and in any event not less than that required under State law in order to remain a separate legal entity; (xii) not seek or consent to the dissolution or winding up, in whole or in part, of the Borrower or the General Partner; (xiii) not (A) consent to the dissolution or liquidation in whole or in part of the Borrower, or (B) permit the General Partner to dissolve, or (C) consent to the dissolution or liquidation of the General Partner; (xiv) not commingle the funds and other assets of the Borrower with those of the General Partner, any Affiliate thereof or any other Person; and (xv) not enter into any transaction with an Affiliate without the prior written consent of the Funding Lender (it being understood that the Construction Contract, the Management Agreement and the Development Agreement have been approved by the Funding Lender) or as expressly permitted pursuant under the Funding Loan Documents.

Section 6.12 Negative Pledge; No Sale.

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

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

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

(a) The Borrower will pay, discharge or otherwise satisfy at or before maturity or before they become delinquent, as the case may be, all of the Borrower’s Indebtedness under the Funding Loan Documents, the Subordinate Debt Documents and all of its other Obligations, whether now existing or hereafter arising, and comply with all covenants and agreements set forth in agreements evidencing Obligations of the Borrower.

(b) The Borrower shall pay or cause to be paid the Expenses, and capital expenditures and its other accounts payable with respect to and costs of operation and maintenance of the Project within thirty (30) days of receipt of an invoice therefor, or when the same shall otherwise be due and payable. The Borrower shall make no distribution of funds to its partners unless no uncured Default or Event of Default exists, such distribution is in accordance with the provisions of the Partnership Agreement, and all current accounts payable shall have been paid and funds shall have been set aside for the payment of accounts payable becoming due within thirty (30) days of said distribution. In addition, the Borrower shall not make any payment to the General Partner or to any managers, officers or directors thereof, prior to the required monthly payment of the Borrower's Indebtedness under the Funding Loan Documents, the funding of any required reserves under the Funding Loan Documents and the payment of any of its other Obligations then due and payable.

(c) Without obtaining the prior written consent of the Funding Lender, the Borrower will not create, incur, assume, guarantee or be or remain liable for any indebtedness or Obligations other than (i) Indebtedness under the Funding Loan Documents; (ii) Indebtedness in respect of the Subordinate Debt; (iii) current liabilities of the Borrower relating to the Project incurred in the ordinary course of business but not incurred through the borrowing of money or obtaining of credit; and (iv) any unsecured loans or guaranteed payments from partners or their Affiliates or the Guarantor pursuant to the Partnership Agreement.

#### Section 6.14 Environmental Covenants.

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

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

(c) The Borrower will perform radon sampling at the Project in accordance with Freddie Mac's protocols as required to achieve "Final Completion" to confirm that indoor radon levels are below the United States Environmental Protection Agency's ("EPA") recommended threshold of 4.0 picoCuries per liter (pCi/L). The results thereof shall be provided to the Funding Lender and the Servicer. If sampling reveals that radon levels are above 4.0 pCi/L, then the Borrower shall mitigate or take other acceptable actions to bring the levels below the EPA's recommended threshold. Such actions may include, but are not limited to, adjustments to ventilation systems or similar actions as required by a qualified radon mitigation consultant. The Borrower will cause all renovation of existing structures and construction of new structures at the Project during the term of this Agreement to use design features which safeguard against or mitigate the accumulation of radon or radon products in concentrations exceeding the EPA's recommended threshold of 4.0pCi/L.

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

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

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

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

due and payable by the Borrower and until paid shall be added to and become a part of the Indebtedness and shall have the benefit of the lien hereby created as a part thereof prior to any right, title or interest in or claim upon the Project attaching or accruing subsequent to the lien of the Mortgage on the Project.

Section 6.15 Servicer. The Borrower acknowledges and agrees that (i) the Funding Lender has the sole and exclusive right to arrange for servicing of the Borrower Loan and to appoint another person or entity to serve as its representative hereunder, under the other Funding Loan Documents and under the Funding Loan Agreement; (ii) the Funding Lender has appointed KeyBank National Association to serve in the capacity of Servicer hereunder, under the other Funding Loan Documents and under the Funding Loan Agreement; and (iii) the Funding Lender retains the sole and exclusive right to appoint, remove or replace the Servicer, without the consent or approval of the Borrower. The Borrower shall comply with directions of the Funding Lender and the Servicer as set forth more particularly herein.

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

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

Section 6.18 Further Assurances. The Borrower will promptly and duly execute, acknowledge and deliver from time to time such further instruments and take such further actions as may be reasonably required by the Governmental Lender, the Funding Lender or the Servicer to carry out the purposes and provisions of this Agreement and the other Funding Loan Documents, to confirm the priority and/or perfection of any lien, pledge, assignment or security interest created or intended to be created by this Agreement and to assure the Funding Lender of the subrogation and security rights in favor of the Funding Lender (or the Fiscal Agent for the benefit of the Funding Lender) for the benefit of the Noteowners of the Governmental Note contemplated by this Agreement, by the other Funding Loan Documents and by the Funding Loan Agreement. The Borrower shall obtain any approvals required under the Ground Lease and the Subordinate Debt Documents in connection with any of the foregoing.

Section 6.19 Management Agreement. The Borrower has entered into a property management agreement in a form approved by the Servicer with the Manager (together with any extension and replacements thereof and as the same may be amended, modified or supplemented from time to time the "Management Agreement"). Under the Management Agreement, the Manager shall provide certain management services and shall be entitled to receive as compensation for those services an amount not in excess of the Underwritten Management Fee. Any amounts due the Manager [in excess of the Underwritten Management Fee] shall be subordinated to the payment by the Borrower of all principal of, premium, if any, and interest due on the Governmental Note, all Third Party Costs, all required deposits into the Accounts and all other amounts identified in the Assignment of the Management Agreement and all payments due under the Ground Lease. The Borrower shall not replace the Manager for the Project without the Servicer's prior written approval, and, except for cause, the Management Agreement shall not be terminated or modified without the Servicer's prior written approval, which in each case shall not be unreasonably withheld, conditioned or delayed. In the event the Manager resigns or is removed, the

Borrower shall promptly seek a replacement Manager and submit such Manager and its proposed form of Management Agreement to the Servicer for approval; if the Borrower has not done so within thirty (30) days of becoming aware of such resignation or removal, the Servicer may (but shall not be required to) engage a new Manager on terms satisfactory to the Servicer in its sole discretion and at the expense of the Borrower. The sole and exclusive compensation (exclusive of reimbursement for expenses pursuant to the applicable Management Agreement) paid to manage the Project under the Management Agreement shall be as described in this Section 6.19. The Borrower shall have no employees whatsoever. The Manager shall execute a consent to the Assignment of the Management Agreement pursuant to which the Manager shall confirm the subordination provisions described above and agree that the Management Agreement shall be terminable by the Servicer, with or without cause, on thirty (30) days' notice following and during the existence of an Event of Default. All approvals and actions of the Servicer taken with respect to the Manager or the Management Agreement under this Section 6.19 shall be on behalf of the Funding Lender.

Section 6.20 Determination of Taxability. Neither the Borrower nor the General Partner nor any of their Affiliates shall admit in writing to the Governmental Lender or to any Governmental Authority that interest on the Tax-Exempt Governmental Note has become includable in gross income for purposes of federal income taxation without first providing reasonable advance notice to the Governmental Lender, the Servicer and the Funding Lender and permitting the Funding Lender, in its sole discretion, to contest such conclusion at the expense of the Borrower and the General Partner. Promptly after the Borrower first becomes aware of any Determination of Taxability or an event that could trigger a Determination of Taxability, the Borrower shall give written notice thereof to the Governmental Lender, the Servicer and the Funding Lender.

Section 6.21 Provision of Annual Reports; Reporting of Material Events.

(a) The Borrower shall, not later than 150 days after the end of the Borrower's fiscal year, commencing within 150 days following the end of the Borrower's current fiscal year, provide to the MSRB a report (the "Annual Report") containing financial information and operating data with respect to the Project for the prior fiscal year including the name, address, number of units, number of units occupied as of the report date, average occupancy of the Project, revenues, operating expenses, net operating income, debt service on the Borrower Loan and net operating income after debt service. The Annual Report may, but is not required to, include the Borrower's audited financial statements.

(b) Any or all of the items listed above may be included by specific reference to other documents, including official statements of debt issues with respect to which the Borrower or any affiliate is an "obligated person" (as defined by Rule 15c2-12(b)(5) adopted by the Securities and Exchange Commission under the Securities Exchange Act of 1934, as the same may be amended from time to time (the "Rule")), which have been filed with the Funding Lender, the MSRB or the Securities and Exchange Commission. The Borrower shall clearly identify each such other document so included by reference.

(c) In each case, the Annual Report may be submitted as a single document or as separate documents comprising a package, and may cross-reference other information as provided in this section; provided, that the financial statements of the Borrower may be submitted separately from the balance of the Annual Report and later than the date required above for the filing of the Annual Report if they are not available by that date. If the Borrower's fiscal year changes, it shall give notice of such change in the same manner as for a Material Event this Section.

(d) This Section shall govern the giving of notices of the occurrence of any of the following events (each, a "Material Event"):

- (1) Principal and interest payment delinquencies;

- (2) Non-payment related defaults, if material;
- (3) Unscheduled draws on debt service reserves reflecting financial difficulty;
- (4) Unscheduled draws on credit enhancements reflecting financial difficulty;
- (5) Substitution of credit or liquidity providers, or their failure to perform;
- (6) adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices or determinations with respect to the tax-exempt status of interest paid on the Tax-Exempt Governmental Note, or other Listed Events affecting the tax-exempt status of interest paid on the Tax-Exempt Governmental Note;
- (7) Modifications to rights of any interest in the Funding Loan, if material;
- (8) optional, contingent or unscheduled prepayments of the Borrower Loan or Funding Loan, if material, and tender offers;
- (9) Defeasances;
- (10) release, substitution or sale of property securing repayment of the Borrower Loan or the Funding Loan, if material;
- (11) Rating changes;
- (12) bankruptcy, insolvency, receivership or similar event of the Borrower. For purposes of this clause (xii), any such event shall be considered to have occurred when any of the following occur: the appointment of a receiver, fiscal agent or similar officer for the Borrower in a proceeding under the U.S. Bankruptcy Code or in any other proceeding under state or federal law in which a court or Governmental Authority has assumed jurisdiction over substantially all of the assets or business of the Borrower, or if such jurisdiction has been assumed by leaving the existing governing body and officials or officers in possession but subject to the supervision and orders of a court or Governmental Authority, or the entry of an order confirming a plan of reorganization, arrangement or liquidation by a court or Governmental Authority having supervision or jurisdiction over substantially all of the assets or business of the Borrower;
- (13) the consummation of a merger, consolidation, or acquisition involving the Borrower or the sale of all or substantially all of the assets of the Borrower, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material;
- (14) appointment of a successor or additional trustee or paying agent or the change of the name of a trustee or paying agent, if material;
- (15) Incurrence of a financial obligation of the Borrower or obligated person, if material, or agreement to covenants, events of default, remedies, priority rights or other similar terms of a financial obligation of the Borrower or obligated person, any of which affect security holders, if material; and

(16) Default, event of acceleration, termination event, modification of terms or other similar events under the terms of the financial obligation of the Borrower or obligated person, any of which reflect financial difficulties.

(e) Whenever the Borrower obtains knowledge of the occurrence of a potential Material Event, the Borrower shall, within five (5) Business Days of obtaining such knowledge and in any event no more than eight (8) Business Days after the occurrence of such event, determine if such event is in fact a Material Event that would be required by the Rule to be disclosed.

(f) If the Borrower has determined that a Material Event is required to be disclosed then the Borrower shall prepare a written notice describing the Material Event and provide the same to the Funding Lender no more than ten (10) Business Days after the occurrence of the Material Event.

Section 6.22 Use of Proceeds. The Borrower agrees that the proceeds of the Tax-Exempt Governmental Note will be allocated exclusively to pay Project Costs and that, for the greatest possible number of buildings, the proceeds of the Tax-Exempt Governmental Note will be allocated to the Project and the land on which the Project are located, so that the Project and the land on which it is located will have been financed fifty percent (50%) or more by the proceeds of the Tax-Exempt Governmental Note for the purpose of complying with Section 42(h)(4)(B) of the Code.

Section 6.23 Compliance With Anti-Terrorism Regulations. Neither the Borrower, the General Partner nor any Person holding any legal or beneficial interest whatsoever in the Borrower shall at any time while the Governmental Note is outstanding be described in, covered by or specially designated pursuant to or be affiliated with any Person described in, covered by or specially designated pursuant to Executive Order 13224 —Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism, as amended, or any similar list issued by OFAC or any other department or agency of the United States of America. Notwithstanding the foregoing, the Borrower and the General Partner hereby each confirm that if it becomes aware or receives any notice of any violation of the foregoing covenant and agreement (an “OFAC Violation”), the Borrower or the General Partner, as applicable, will immediately (i) give notice to the Funding Lender and the Servicer of such OFAC Violation, and (ii) comply with all Legal Requirements applicable to such OFAC Violation, including, without limitation, Executive Order 13224; the International Emergency Economic Powers Act, 50 U.S.C. Sections 1701-06; the Iraqi Sanctions Act, Pub. L. 101-5 13, 104 Stat. 2047-55; the United Nations Participation Act, 22 U.S.C. Section 287c; the Antiterrorism and Effective Death Penalty Act, (enacting 8 U.S.C. Section 219, 18 U.S.C. Section 2332d, and 18 U.S.C. Section 2339b); the International Security and Development Cooperation Act, 22 U.S.C. Section 2349 aa-9; the Terrorism Sanctions Regulations, 31 C.F.R. Part 595; the Terrorism List Governments Sanctions Regulations, 31 C.F.R. Part 596; and the Foreign Terrorist Organizations Sanctions Regulations, 31 C.F.R. Part 597 (collectively, the “Anti-Terrorism Regulations”), and the Borrower and the General Partner hereby authorize and consent to the Funding Lender’s taking any and all reasonable steps the Funding Lender deems necessary, in its sole discretion, to comply with all Legal Requirements applicable to any such OFAC Violation, including the requirements of the Anti-Terrorism Regulations. Notwithstanding anything to the contrary in this Section, the Borrower shall not be deemed to be in violation of the covenants and agreements set forth in the first sentence of this Section if the Borrower timely complies with all requirements imposed by the foregoing sentence and all requirements of the Antiterrorism Regulations and all other applicable Legal Requirements relating to such OFAC Violation.

Section 6.24 Adoption of Capital and Operating Budgets.

(a) On or before December 1 of each Fiscal Year following Final Completion, the Borrower shall submit to the Servicer for approval a proposed capital and operating budget with respect to the Project to be effective for the next following Fiscal Year (the “Proposed Budget”). The Servicer shall have the

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

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

- (i) shall be prepared on the basis of sound accounting practices consistently applied;
- (ii) shall reflect all amounts projected to be deposited in the Replacement Reserve Fund and the projected revenues and Expenses of the Project;
- (iii) shall reflect all projected Capital Expenditures which are reasonably expected to be made in connection with the Project during the Fiscal Year covered by such Proposed Budget; and
- (iv) shall be in such form as is reasonably acceptable to the Servicer and containing such other information as reasonably may be requested by Funding Lender or the Servicer.

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

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

Section 6.27 Additional Conditions Precedent. The rights of the Borrower to draw the initial advance of funds from the Project Fund under this Agreement shall be subject to the conditions precedent set forth in Section 9.12 hereof and on Part A of Schedule 7 hereof.

Section 6.28 No Amendments. The Borrower shall not amend, modify or otherwise change the Ground Lease or the Subordinate Debt Documents without the prior written consent of the Funding Lender.

Section 6.29 Renovation of Improvements. The Borrower shall renovate, or cause to be renovated, the Project in a true, thorough and workmanlike manner and substantially in accordance with the Plans and Specifications and in compliance with all applicable Governmental Actions and Legal Requirements. The Borrower shall provide, at the Borrower's expense all manner of materials, labor, implements and cartage of every description for the due completion of the renovation of the Project. The Borrower shall take all necessary steps to assure that commencement of the renovation] of the Project shall begin within thirty (30) days following the Closing Date, shall proceed continuously and diligently and in a commercially reasonable manner, and shall be completed lien free in a timely manner substantially in accordance with the Plans and Specifications and in all instances in compliance with all applicable Governmental Actions and Legal Requirements, on or before the Completion Date, subject to delays caused by a Force Majeure. Borrower covenants and agrees that: a) the maximum number of units at the Project which shall be unavailable for leasing due to performance of the Work shall not exceed 240-units at any one time, b) any tenant that is required to vacate such tenant's unit due to and during the performance of the Work shall not be displaced from such unit for more than [ ] days and c) the Borrower shall provide such tenant reasonable accommodation during such period.

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

Section 6.31 Correction of Deficiencies in Improvements. The Borrower agrees that it will correct any work performed and replace any materials that do not comply with the Plans and Specifications and any change orders in any material respect. In the event of any dispute between the Borrower and the Funding Lender with respect to the interpretation and meaning of the Plans and Specifications, the same shall be determined by an independent engineer selected by the Borrower from the list of engineers approved by the Funding Lender.

Section 6.32 Loan Rebalancing. If, for any reason, the Servicer shall, in the reasonable exercise of the Servicer's judgment, determine that the combined total of (i) the remaining proceeds of the Funding Loan, (ii) the capital contributions from Borrower's partners; (iii) any other source of funds shown in the Development Budget attached hereto; and (iv) any other sums deposited by the Borrower with the Fiscal Agent are insufficient to complete renovation of the Project, all of the following sums: (x) all remaining costs of renovation, marketing, ownership, maintenance and leasing of the Project; and (y) all remaining interest and all other remaining sums which may accrue or be payable under the Funding Loan Documents, then the Servicer may require the Borrower to deposit with the Fiscal Agent for deposit into the Project Fund, within ten (10) days after written request by the Servicer, the projected deficiency, and such deposit shall be first disbursed in the same manner as the Borrower Loan is to be disbursed as provided herein before any further disbursements of the proceeds of the Borrower Loan shall be made. Notwithstanding the foregoing, if, at any time, the Servicer determines, in the Servicer's reasonable discretion, that it is unlikely that the Borrower will receive all or a portion of the sources of funds shown on the Development

Budget (other than the Borrower Loan proceeds), the Servicer may exclude such amount from its determination of whether the Borrower Loan is “in balance” as provided above.

Section 6.33 Use of Loan Proceeds. All labor and materials contracted for and in connection with the renovation of the Project shall be used and employed solely for the Improvements and in said construction and only in accordance with the Plans and Specifications. Moneys disbursed from Accounts held under the Funding Loan Agreement to or for the account of the Borrower shall constitute a trust fund in the hands of the Borrower or other payee and shall be used solely by such payee for the payment of the Qualified Project Costs and for no other purpose unless another use is specifically provided for in this Agreement or consented to in writing by the Servicer. Nothing in this paragraph shall be deemed to impose a trust on the undisbursed portion of the Borrower Loan or any other amounts held under the Funding Loan Agreement or to impose any duty on the Servicer with respect thereto.

Section 6.34 Special Servicing Costs. In accordance with industry standards, the Servicer, as servicer of the Borrower Loan, may charge the Borrower additional servicing fees and costs for special servicing requests. The Borrower shall pay as and when due all such special servicing fees or costs.

Section 6.35 Non-discrimination. The Borrower shall not discriminate on the basis of race, creed, color, sex, age or national origin in the lease, use or occupancy of the Project or in connection with the employment or application for employment of persons for the operation or management for the Project.

Section 6.36 Drilling at Property. The Borrower shall not consent to any drilling and/or mining operations on the Project property without the prior written consent of the Funding Lender.

Section 6.37 Payment and Performance Bonds. The Borrower shall furnish to Servicer and shall maintain in effect through Final Completion such Payment and Performance Bonds with respect to the Contractor, or if the Contractor does not obtain such Payment and Performance Bonds, such Payment and Performance Bonds shall be obtained with respect to each contractor that enters into a Major Contract; provided, however, that if Payment and Performance Bonds have been provided by any contractor under a Major Contract in accordance with the terms hereof, any subcontractor of such contractor shall not be required to post any Payment and Performance Bonds in respect of such subcontract. The Borrower shall take such action and require such performance as the Funding Lender deems necessary under the Payment and Performance Bonds. In the event that any payments under any Payment and Performance Bonds are issued jointly to the Borrower and the Funding Lender or the Borrower and the Servicer, the Borrower shall endorse any such jointly issued payments to the order of the Funding Lender or the Servicer, as applicable, as determined by the Servicer in its discretion, promptly upon the Funding Lender’s demand. Notwithstanding the foregoing, provided no Default or Event of Default exists, the Borrower may request that the Funding Lender consent in writing to the release of the Payment and Performance Bonds following the achievement of Final Completion.

## **ARTICLE 7 DEFAULTS AND REMEDIES**

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

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

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

(c) Other than as described in any other subsection of this Section 7.1, failure by the Borrower to perform or comply with any of the terms or conditions contained in this Agreement and any of the other Funding Loan Documents to which the Borrower is a party, and continuation of such failure for thirty (30) days after written notice from the Funding Lender or the Servicer to the Borrower, or such longer period to which the Servicer may agree in the case of a default not curable by the exercise of due diligence within such thirty (30) day period, if the Borrower, the General Partner or the Tax Credit Investor shall have commenced a cure of such default within such thirty (30) day period and shall be diligently pursuing such cure as quickly as reasonably possible;

(d) Any of the representations or warranties of the Borrower set forth in this Agreement, any of the other Funding Loan Documents or any other document furnished to the Governmental Lender, the Funding Lender, the Servicer or the Fiscal Agent pursuant to the terms hereof proves to have been false or misleading in any material respect when made;

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

(f) The occurrence of an Event of Default as defined in the Funding Loan Agreement, the other Funding Loan Documents, the Subordinate Debt Documents, the Ground Lease or an act or event (or failure to act or non-occurrence of an act) which, with the passage of time, the giving of notice or both, would constitute an Event of Default under the Funding Loan Agreement or the other Funding Loan Documents, the Ground Lease, or the Subordinate Debt Documents; [or the occurrence of a breach under the [HAP Contract] which causes, or, with the giving of notice, the passage of time, or both, would cause HUD to terminate the payments thereunder;]

(g) The Borrower, any Guarantor or the General Partner (i) applies for or consents to the appointment of a receiver, trustee, liquidator or custodian or the like of the Borrower, any Guarantor or the General Partner, as applicable, or of property of any such party or (ii) admits in writing the inability of the Borrower, any Guarantor or the General Partner to pay its debts generally as they become due, or (iii) makes a general assignment for the benefit of creditors, (iv) is adjudicated bankrupt or insolvent, (v) commences a voluntary case under the Bankruptcy Code or files a voluntary petition or answer seeking reorganization, an arrangement with creditors or an order for relief or seeking to take advantage of any insolvency law or files an answer admitting the material allegations of a petition filed against the Borrower, any Guarantor or the General Partner in any bankruptcy, reorganization or insolvency proceeding, or action of the Borrower, any Guarantor or the General Partner is taken for the purpose of effecting any of the foregoing, or (vi) has instituted against it, without the application, approval or consent of the Borrower, any Guarantor or the General Partner, as applicable, a proceeding in any court of competent jurisdiction, under any Legal Requirements relating to bankruptcy, insolvency, reorganization or relief of debtors, seeking in respect of the Borrower, any Guarantor or the General Partner an order for

relief or an adjudication in bankruptcy, reorganization, dissolution, winding up or liquidation, a composition or arrangement with creditors, a readjustment of debts, the appointment of a trustee, receiver, liquidator or custodian or the like of the Borrower, any Guarantor or the General Partner or of all or any substantial part of the assets of such party or other like relief in respect thereof under any Legal Requirements relating to bankruptcy or insolvency law, and, if such proceeding is being contested by the Borrower, such Guarantor or the General Partner, as applicable, in good faith, the same (A) results in the entry of an order for relief or any such adjudication or appointment or (B) remains undismissed and undischarged for a period of ninety (90) days;

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

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

(j) The Project fail to achieve (i) Final Completion on or before the Completion Date (as may be extended), or (ii) Stabilization on or before the Stabilization Date (as may be extended) [, or (iii) to obtain and maintain the exemption from ad valorem real estate taxation under the applicable laws of the State];

(k) Any litigation or administrative proceeding ensues, and is not dismissed within sixty (60) days, involving the Borrower, the General Partner, any Guarantor or any instrument, contract or document delivered by the Borrower to the Servicer, the Funding Lender or the Fiscal Agent in compliance with this Agreement, and the adverse result of such litigation or proceeding would have, in the Servicer's reasonable opinion, a materially adverse effect on the Borrower's, the General Partner's or any Guarantor's ability to pay its obligations and comply with the covenants under this Agreement or any of the other Funding Loan Documents;

(l) Failure by the Borrower to cause a prepayment of the Borrower Loan as required in accordance with Section 7(b)(iii) of the Tax-Exempt Borrower Note or Section 7(b)(vii) of the Taxable Borrower Note;

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

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

(o) renovation of the Improvements shall have been discontinued for thirty (30) consecutive working days for any reason whatsoever, except (i) for Force Majeure, and (ii) any other reason as the Servicer shall deem reasonable;

(p) If at any time the Borrower shall have been unable for a period of forty-five (45) days to meet the requirements for an Advance under this Agreement, regardless of whether the Borrower has requested an Advance that has not been funded;

(q) The Contractor shall have defaulted under the Construction Contract, which default the Servicer, in its sole opinion, shall deem to be substantial, and the Borrower, upon ten (10) Business Days written notice from the Funding Lender or the Servicer, shall have failed to exercise any right or remedy to which it shall be entitled; and

(r) The Improvements have not been completed in accordance with the Plans and Specifications by the Completion Date, as extended pursuant to the provisions herein.

Notwithstanding the foregoing, if any Event of Default described in paragraphs (g), (k) or (m) of this Section 7.1 is caused solely by the action of a Guarantor, then so long as no other Default or Event of Default exists under the Funding Loan Documents, the Servicer or the Funding Lender, as applicable, shall not declare an Event of Default or pursue remedies hereunder for a period of an additional thirty (30) days, during which period the Borrower or the Tax Credit Investor shall have the option to cure such Event of Default to the satisfaction of the Funding Lender, or to provide a replacement guarantor, which replacement guarantor shall be acceptable to the Funding Lender in its sole discretion.

Section 7.2 Remedies. If an Event of Default has occurred and is continuing uncured, the Funding Lender, or the Servicer or the Fiscal Agent (acting solely at the written direction of the Funding Lender or the Servicer) on behalf of the Funding Lender, may:

(a) Declare the principal of the Governmental Note then outstanding and the interest accrued thereon to be due and payable; and

(b) Declare the Borrower's obligations hereunder, under the Borrower Note and under the other Funding Loan Documents to be, whereupon the same shall become, immediately due and payable, provided, no such declaration shall be required, and, except as provided in the last paragraph of Section 7.1 hereof, acceleration shall be automatic, upon occurrence of an event set forth in Section 7.1(g) hereof; and

(c) Enter upon the Project and take possession thereof, together with the Improvements in the course of renovation or completed, and all of the Borrower's materials, supplies, tools, equipment and construction facilities and appliances located thereon, and proceed either in the name of the Funding Lender or in the name of the Borrower as the attorney-in-fact of the Borrower (which authority is coupled with an interest and is irrevocable by the Borrower) as the Funding Lender shall elect, to complete the renovation of the Improvements at the cost and expense of the Borrower; if the Funding Lender elects to complete or cause the renovation of the Improvements to be so completed, it may do so according to the terms of the Plans and Specifications and as the Funding Lender shall deem expedient or necessary, and the Funding Lender may enforce or cancel all contracts entered into as aforesaid or make other contracts which in the Funding Lender's reasonable opinion may seem advisable, and the Borrower shall be liable, under this Agreement and under the Borrower Note or any other note given by it pursuant to the provisions hereof, to pay the Funding Lender upon demand any amount or amounts expended by the Funding Lender or its representatives for such performance, together with any costs, charges or

expenses incident thereto or otherwise incurred or expended by the Funding Lender or its representatives on behalf of the Borrower in connection with the Improvements, and the amounts so expended shall bear interest at the default rate specified in the Borrower Note, and shall be considered part of the indebtedness evidenced by the Borrower Note and secured by the Mortgage; and

(d) In the event the Contractor shall have defaulted as aforesaid or an Event of Default with respect to the Construction Contract shall have occurred, and the Contractor has no surety, the Servicer shall proceed to negotiate or invite bidding to procure, within an additional thirty (30) days, a successor Contractor to complete the Improvements under a performance bond and labor and material payment bond approved by the Servicer in the full amount of the new contract price; if the Contractor has a surety, but the surety refuses or fails to commence completion of the Improvements within thirty (30) days after notice from the Borrower to do so, the Servicer shall proceed, within ten (10) days, to negotiate or invite bidding as herein provided or to take action against the surety; and

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

(f) Subject to all Legal Requirements, require the Borrower to transfer all security deposits to the Fiscal Agent; and

(g) Exercise, or cause to be exercised, any and all such remedies as it may have under this Agreement, the other Funding Loan Documents or at law or in equity.

The Fiscal Agent shall not take any action upon the occurrence of an Event of Default hereunder or under any other Funding Loan Documents to which it is a party unless such action is at the written direction of the Servicer. To the extent applicable, before taking any action required hereunder which may require the Fiscal Agent to incur costs, expend its own funds or expose it to risk, the Fiscal Agent may require security or indemnification satisfactory to it for the reimbursement of all costs, expenses or liabilities it incurs in connection with such action.

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

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

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

Section 7.6 Governmental Lender and Borrower to Give Notice of Default. The Governmental Lender and the Borrower severally covenant that they will, at the expense of the Borrower, promptly give to the Funding Lender, the Servicer, the Fiscal Agent and the Tax Credit Investor and to each other written notice of the occurrence of any Default or Event of Default under this Agreement, and any act, event or circumstance which, with the passage of time, or notice, or both, would constitute such a Default or Event of Default of which they shall have actual knowledge or written notice, but the Governmental Lender shall not be liable for failing to give such notice.

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

Section 7.8 Default Rate; Acceleration Premium. In the event there shall have occurred an acceleration of the obligations of the Borrower hereunder following an Event of Default on or before the Par Call Date, any tender of payment of an amount necessary to satisfy the indebtedness evidenced by this Agreement shall include the Acceleration Premium. In addition, in the event that principal or interest payable hereunder is not paid when due, there shall be payable on the amount not timely paid, interest at the Default Rate until the unpaid amount, together with interest thereon, shall have been paid in full.

Section 7.9 Reserved Rights; Regulatory Agreement Defaults.

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

(b) If there shall have occurred and be then continuing an event of default under the Regulatory and Land Use Restriction Agreement which would, in the reasonable judgment of the Governmental Lender or the Funding Lender, jeopardize the exclusion from gross income of interest on the Tax-Exempt Governmental Note (a "Regulatory Agreement Default") and such Regulatory Agreement Default remains uncured or unwaived for a period of sixty (60) days after the Borrower, the Funding Lender and the Servicer receive written notice from the Funding Lender or the Governmental Lender stating that a Regulatory Agreement Default has occurred and specifying the nature of such default, then, if authorized by the Funding Loan Documents, the Funding Lender or the Governmental Lender may, without the consent of the Servicer or the Funding Lender, exercise the remedy of pursuing specific performance of the Funding Loan Documents on account of such default, unless:

(i) The Governmental Lender and the Funding Lender, prior to the end of such sixty (60) day period, are provided with an Approving Opinion of Tax Counsel to the effect that the failure to cure such default will not have an adverse effect on the exclusion from gross income for federal income tax purposes of interest on the Tax-Exempt Governmental Note (which opinion may be requested and obtained by the Servicer or the Funding Lender);

(ii) The Funding Lender or the Borrower institutes action to cure such Regulatory Agreement Default within such sixty (60) day period and diligently pursues such action thereafter until such Regulatory Agreement Default is cured; or

(iii) If such Regulatory Agreement Default is not reasonably curable by the Funding Lender without the Funding Lender's first securing possession of the Project and/or operational control of the Borrower, and the Funding Lender (subject to extension during any stay on account of the bankruptcy of the Borrower) (x) subject to the terms of the Funding Loan Agreement, institutes, within such sixty (60) day period, proceedings or other action for the purposes of obtaining such possession or control pursuant to the Funding Loan Documents; (y) pursues diligently such proceedings until such possession or control is obtained; and (z) diligently pursues action to cure such default after the Funding Lender or other designee of the Funding Lender obtains possession or control of the Project, until such default is cured; provided, however, that any extension, pursuant to paragraph (ii) above, of the period within which a Regulatory Agreement Default must be cured shall only be effective if and to the extent that, in the Approving Opinion of Tax Counsel provided to the Funding Lender, such extension will not adversely affect the exclusion from gross income for federal income tax purposes of interest on the Tax-Exempt Governmental Note; and provided further, that the Funding Lender, following any such Regulatory Agreement Default, may reduce the 60-day period provided above to such shorter period of time as is specified in such notice (but in no event less than fifteen (15) Business Days), but only if the Funding Lender shall have been provided with an Approving Opinion of Tax Counsel to the effect that such

reduction of such period is necessary to preserve the exclusion from gross income for federal income tax purposes of interest on the Tax-Exempt Governmental Note.

(c) In the event of a default in respect of Reserved Rights or a Regulatory Agreement Default which remains uncured after written notice thereof to the Borrower, the Funding Lender and the Servicer, nothing in this Section 7.9 shall restrict or in any way limit the right of the Governmental Lender to take any action for specific performance available under the Regulatory and Land Use Restriction Agreement or at law or in equity in order to enforce the terms of the Regulatory and Land Use Restriction Agreement or to enforce Reserved Rights hereunder, so long as the Governmental Lender does not take any action (i) to declare the outstanding balance of the Governmental Note or the Borrower Loan to be due on account of such default, (ii) to have a receiver appointed in respect of the Project, (iii) to foreclose any liens upon or security interests or to enforce any other similar remedy against any of the property described in the Mortgage, or (iv) to enforce any other similar remedy which would cause such liens or security interests to be discharged or materially impaired thereby.

## **ARTICLE 8 DEPOSITS**

Section 8.1 Deposits to and Disbursements from the Replacement Reserve Fund. Pursuant to the Replacement Reserve Agreement, the Borrower shall pay or cause to be paid to the Fiscal Agent, for deposit into the Replacement Reserve Fund established by the Funding Loan Agreement, the amounts described in the Replacement Reserve Agreement. The sums contained in the Replacement Reserve Fund from time to time, shall be maintained, disbursed, and applied as provided in the Replacement Reserve Agreement and pursuant to Section 4.5(d) of the Funding Loan Agreement.

### **Section 8.2 Deposits to Tax and Insurance Escrow Fund.**

(a) As a condition of Stabilization, the Borrower shall pay, or cause to be paid, to the Fiscal Agent, to be deposited in the Tax and Insurance Escrow Fund, an amount which, when added to an amount equal to the sum of:

(i) the product of the Impositions component of the Monthly Tax and Insurance Amount for the Project and the number of months from and including the Stabilization Date, until and including the month in which occurs the date that the Impositions on the Project are due and payable before penalty; and

(ii) the product of the insurance component of the Monthly Tax and Insurance Amount and the number of months from and including the Stabilization Date, until and including the month in which occurs the date that the annual insurance premiums for the insurance on the Project required hereunder are due and payable will be sufficient to pay in full the Impositions and insurance premiums for the Project when the same become due and payable before penalty.

(b) Thereafter, on the Business Day prior to the first Business Day of each month commencing the month following the Stabilization Date, and each month thereafter, the Borrower shall pay, or cause to be paid, to the Fiscal an amount equal to the Monthly Tax and Insurance Amount for the Project to be deposited in the Tax and Insurance Escrow Fund.

### **Section 8.3 Deposits to Prepayment Fund.**

(a) On the first Business Day prior to the first of each month, commencing [\_\_\_\_], until the date on which the Governmental Note is no longer Outstanding, the Borrower shall pay to the Fiscal

Agent the monthly principal amount shown in the Debt Service Schedule attached hereto as Schedule 3 for deposit into the Prepayment Fund pursuant to Section 4.5(a) of the Funding Loan Agreement.

(b) Notwithstanding the foregoing, in the event that the Stabilization Date is extended in accordance with the provisions of the Funding Loan Agreement, the Servicer shall provide the Borrower and the Fiscal Agent with a revised Debt Service Schedule and the required principal payments into the Prepayment Fund as described in subsection (a) above shall commence in accordance with such revised Debt Service Schedule.

(c) Following any permitted partial prepayment of the Borrower Note (other than pursuant to Section 7(c) of the Borrower Note), the Funding Lender (or the Servicer on behalf of the Funding Lender) shall adjust the monthly amount due pursuant to this provision to account for such partial prepayment of the Borrower Note and shall provide the Borrower and the Fiscal Agent with a revised Debt Service Schedule. The Borrower shall also pay to the Fiscal Agent for deposit in the Prepayment Fund all amounts required to prepay the Tax-Exempt Borrower Note pursuant to Section 7(b)(vi) of the Borrower Note on or before the Loan Payment Date specified in the notice of the Funding Lender as provided in Section 7(b)(vi) of the Borrower Note. The Borrower shall also pay to the Fiscal Agent for deposit in the Prepayment Fund all other amounts required to prepay the Borrower Note pursuant to Section 7 of the Borrower Note, as provided therein.

Section 8.4 Deposits to Operating Reserve Fund. The Borrower shall pay or cause to be paid to the Fiscal Agent, to be deposited in the Operating Reserve Fund, a sum equal to the Operating Reserve Fund Requirement, which may happen simultaneously with the achievement of Stabilization. Following any disbursement, payment or transfer of moneys from the Operating Reserve Fund, the Borrower shall replenish the Operating Reserve Fund monthly, from and to the extent of revenue from the operation of the Project available after payment of Expenses, capital expenditures and amounts then due and owing under the Funding Loan Documents, and prior to the payment of any distributions to the Borrower's partners, until such time as the balance on deposit in the Operating Reserve Fund equals the Operating Reserve Fund Requirement. Amounts on deposit in the Operating Reserve Fund shall be applied as set forth in Section 4.5(e) of the Funding Loan Agreement and in accordance with Section [\_\_\_\_] of the Partnership Agreement.

Section 8.5 [Reserved].

Section 8.6 Investment. Funds in the Accounts shall be invested in Permitted Investments by the Fiscal Agent upon the direction of the Borrower with the prior written consent of the Funding Lender, as set forth in Section 4.7 of the Funding Loan Agreement. Earnings on the Accounts hereunder shall be held or disbursed as set forth in Article IV of the Funding Loan Agreement. The Fiscal Agent shall have the right to invest or withdraw any deposited funds or to direct the liquidation of any investments held in order to pay the amounts required under this Agreement and the other Funding Loan Documents. The Fiscal Agent shall not be liable for any loss sustained as a result of any liquidation of any collateral prior to its maturity. Any income or gain realized on such investments shall be credited to and become part of the respective Account and reinvested and applied as provided in the Funding Loan Agreement. Provided that an Event of Default does not exist and is continuing, the Borrower from time to time may request the Funding Lender to consent to the disbursement to or upon the order of the Borrower of the investment income previously credited to the Accounts, which consent by the Funding Lender shall not be unreasonably withheld or delayed.

Section 8.7 Security Interest in Accounts. The Borrower hereby assigns and pledges to the Governmental Lender, and grants the Governmental Lender a security interest in, as additional collateral security for the Borrower's obligations to the Governmental Lender hereunder (and the Borrower acknowledges and agrees that the Governmental Lender shall have a continuing security interest in) all of

the Borrower's right, title and interest, if any, in all Accounts, all cash, cash equivalents, instruments, investments and other securities at any time held in the Accounts, all proceeds of the foregoing, and all of the Borrower's rights associated with such Accounts, if any. The Governmental Lender hereby directs the Fiscal Agent to hold all moneys in the Accounts from time to time as agent and bailee of the Governmental Lender.

Section 8.8 Reports. The Fiscal Agent shall provide to the Borrower detailed monthly reports on or before the fifth (5<sup>th</sup>) day of the month following the month to which such report relates showing receipts, disbursements, balances and investments of each Account. Within ten (10) days of a written request of the Borrower to such effect, the Fiscal Agent shall deliver to the Borrower an accounting of receipts, disbursements and balances in one or more of the Accounts as necessary and appropriate to assist the Borrower in complying with its covenants to calculate and pay any rebate amount or yield reduction payments due and owing to the United States of America with respect to the Tax-Exempt Governmental Note. Such reports and accountings shall be provided by the Fiscal Agent's portfolio system.

Section 8.9 No Liability of Fiscal Agent. In performing any of its duties hereunder, the Fiscal Agent shall not incur any liability to anyone for any damages, losses or expenses, except for its gross negligence, bad faith or willful misconduct; and the Fiscal Agent shall not incur any liability with respect to any action taken or omitted in good faith in the performance of its duties and responsibilities under this Agreement.

## **ARTICLE 9 RENOVATION AND FUNDING OF ADVANCES**

Section 9.1 Renovation of Project; Final Completion. The Borrower shall commence performance of the Work in respect of the Improvements no later than thirty (30) days' after the Closing Date, and shall achieve Final Completion of such Work in accordance with the Plans and Specifications on or before the Completion Date; [provided, however, that at the request of the Borrower and with the prior written approval of the Servicer, the Stabilization Date may be extended for an additional six (6) months, upon delivery of an extension fee equal to [TBD]% of the outstanding principal amount of the Governmental Note to the Servicer and such other information as the Funding Lender or the Servicer may request].

### **Section 9.2 Making The Advances**

(a) At such time as the Borrower desires to obtain an advance from the Project Fund, an Authorized Person shall complete, execute and deliver a Requisition to the Servicer for its review and then the Servicer shall forward all complete Requisitions to the Funding Lender for approval; no Requisition shall be delivered to the Fiscal Agent until it has been approved by the Funding Lender, and each advance by the Fiscal Agent of the amounts in the Project Fund shall be subject to the prior approval of the Requisition by the Funding Lender. The Funding Lender shall endeavor to approve or object to any Requisition within ten (10) Business Days of its receipt of all additional information required in connection with such Requisition and shall endeavor to provide specific information concerning the nature of any objection it may have.

(b) Each fully-completed Requisition shall be submitted to the Servicer at least fifteen (15) Business Days prior to the date of the requested Advance, and no more frequently than once each month (excluding the month in which the initial advance is requested). The Borrower shall open and maintain a checking account with a financial institution reasonably satisfactory to the Servicer. Except as otherwise provided for herein, the Servicer, on behalf of the Borrower, shall direct the Fiscal Agent to deposit the proceeds of each Requisition into such account.

Section 9.3 Advances to Contractors; to Others. At its option during the existence of any Event of Default or Default, the Servicer may make, or direct the Fiscal Agent (with notice to the Borrower) to make, any or all advances: (a) for costs incurred under any construction contract directly to a contractor, subcontractor or vendor, (b) through the Title Company, or (c) to any Person to whom the Servicer in good faith determines payment is due.

Section 9.4 Requisition. Each Requisition shall be in the form set forth in **Exhibit B** hereto, shall be signed on behalf of the Borrower by an Authorized Person, shall be subject to approval by the Funding Lender prior to payment and shall state with respect to each disbursement to be made: (a) the number of the Requisition; (b) the amount to be disbursed; (c) that each obligation therein for which such disbursement is being requested has been properly incurred and has not been the basis for any previous disbursement; and (d) that the expenditure of such disbursement, when added to all previous disbursements, will result in not less than (i) ninety-five percent (95%) of all disbursements of the Tax-Exempt Governmental Note having been used to pay or reimburse the Borrower for Qualified Project Costs, and (ii) one hundred percent (100%) of all disbursements have been used to pay or reimburse the Borrower for Project Costs.

Section 9.5 Project Costs. The Development Budget reflects the purposes and the amounts for which funds to be advanced by the Fiscal Agent from the Project Fund are to be used. Subject to Section 9.7 hereof, the Funding Lender shall not be required to approve any Requisition requiring disbursement of funds from the Project Fund for any item of Work in an amount exceeding the amount specified for any item in the Development Budget. The Borrower acknowledges and agrees, subject to Section 9.7 hereof, in no event will the Funding Lender approve any Advance in an amount exceeding (a) the total cost (as determined by the Funding Lender) of the labor, materials, fixtures, machinery and equipment completed, approved and incorporated into the Project prior to the date of such Requisition, less (b) Retainage (if required) less (c) the total amount of any advances previously made by the Fiscal Agent from the Project Fund for such costs.

Section 9.6 Retainage. The Servicer (on behalf of the Funding Lender) shall approve disbursement of Retainage upon completion of the Work or category of Work by the contractor or subcontractor under the contract for which the Retainage was held. No advance of funds from the Project Fund shall be approved unless all Work done at the date the Requisition for such advance is submitted is done in a good and workmanlike manner and without defects, as confirmed by the report of the Engineering Consultant.

Section 9.7 Contingency Reserve. The amount allocated to “contingency” in the Development Budget is not intended to be disbursed without, and will only be disbursed upon, the prior approval of the Servicer (on behalf of the Funding Lender). The disbursement of a portion of the contingency reserve shall in no way prejudice the Servicer (on behalf of the Funding Lender) from directing the Fiscal Agent to withhold disbursement of any further portion of the contingency reserve.

Section 9.8 Stored Materials. The Servicer shall approve Requisitions for funds for materials, furnishings, fixtures, machinery or equipment not yet incorporated into the Improvements, provided that any such disbursement shall be subject to and shall be contingent upon the Funding Lender and the Servicer receiving satisfactory evidence that:

(a) such materials are components in a form ready for incorporation into the Improvements and shall be so incorporated within a period of thirty (30) days; and

(b) such materials are stored at the Project, or at such other site as the Servicer shall approve, and are insured and protected against theft and damage.

#### Section 9.9 Cost Overruns and Savings.

(a) If the Borrower becomes aware of any change in the costs of the Work which will increase or decrease the projection of the costs reflected on the Development Budget by less than \$100,000, the Borrower shall immediately notify the Servicer in writing and promptly submit to the Servicer for its approval of a revised Development Budget. If the Borrower becomes aware of any change in the costs of the Work which will increase or decrease the projection of the costs reflected on the Development Budget by \$100,000 or more, the Borrower shall immediately notify the Funding Lender and the Servicer in writing and promptly submit to the Funding Lender for its approval of a revised Development Budget. If the Funding Lender otherwise becomes aware of any such change in costs of the Work, the Funding Lender shall have the right to prepare and to authorize disbursements on the basis of a revised Development Budget.

(b) If the revised Development Budget indicates an increase in costs of the Work for the Project (in excess of the aggregate contingency amount and savings), no further Requisitions for the Work at the Project will be approved by the Funding Lender unless and until the Borrower has deposited with the Fiscal Agent any required funds necessary to cause the amount remaining on deposit in the Project Fund and demonstrated that any Required Equity Funds yet to be deposited with the Fiscal Agent (prior to, or upon Final Completion) will be sufficient to complete fully the renovation of the Improvements in accordance with the Plans and Specifications to the extent applicable, and to pay all other projected costs in connection with the Work.

(c) If the revised Development Budget indicates a decrease in costs of the Work for the Project, no savings may be reallocated by the Borrower unless and until the Borrower has furnished the Funding Lender, the Servicer and the Engineering Consultant with evidence satisfactory to them that the labor performed and materials supplied in connection with such line item of costs have been satisfactorily completed and paid for in full. At such time, such savings may be reallocated by the Borrower, with the consent of the Servicer (on behalf of the Funding Lender), to other line items.

(d) The Governmental Lender does not make any warranty, either express or implied, that the moneys paid into the Project Fund and available for payment of the Project Costs will be sufficient to pay all of the Project Costs. The Borrower agrees that if after exhaustion of the moneys in the Project Fund, the Borrower should pay any portion of the Project Costs as required herein, the Borrower shall not be entitled to any reimbursement therefor from the Governmental Lender, nor shall the Borrower be entitled to any diminution of the amounts payable under this Agreement or under the Borrower Note.

#### Section 9.10 Right to Retain the Engineering Consultant.

(a) The Servicer may engage at the Borrower's cost and expense, the Engineering Consultant to perform various services on behalf of the Funding Lender or the Servicer, including, without limitation, to make periodic inspections for the purpose of assuring that renovation of the Improvements to date is in accordance with the Plans and Specifications, to advise the Funding Lender of the anticipated cost of and time for completion of renovation of the Improvements and to review all construction contracts and subcontracts.

(b) The reasonable fees of the Engineering Consultant during the performance of the renovation shall be paid by the Borrower in accordance with Section 2.2(c) hereof.

(c) Neither the Funding Lender, the Servicer nor the Engineering Consultant shall have any liability to the Borrower on account of (i) the services performed by the Engineering Consultant, (ii) any neglect or failure on the part of the Engineering Consultant to properly perform its services, or (iii) any approval by the Engineering Consultant of renovation of the Improvements. Neither the Funding Lender,

the Servicer nor the Engineering Consultant assumes any obligation to the Borrower, the General Partner or any other Person concerning the quality of the Work performed or the absence of defects from the Improvements.

Section 9.11 Inspections. The Borrower agrees to provide and cause to be provided to the Funding Lender, the Servicer and the Engineering Consultant and their authorized agents, at all times, facilities commonly made available by responsible general contractors for the inspection of the Improvements, and to afford full and free access to the Funding Lender, the Servicer and the Engineering Consultant and their authorized agents to all plans, drawings and records with respect to the renovation of the Improvements. The Borrower further agrees to promptly send to the Funding Lender and the Servicer copies of all construction inspection reports made by the Borrower's Architect or engineer.

Section 9.12 Initial Advance. The right of the Borrower to draw the initial Advance on the Closing Date shall be subject to the satisfaction of the following conditions precedent:

- (a) The Borrower shall have delivered the items listed on Part A of Schedule 7 attached hereto;
- (b) The Borrower shall have delivered evidence as to the obtaining of all approvals, permits and licenses which are then required, if any, or necessary for the renovation of the Improvements at the Project, together with copies of all such approvals, permits and licenses or evidence that no such permits or licenses are required;
- (c) The Borrower shall have delivered copies of the Borrower's contracts with the Architect, and the Contractor, duly executed by the parties thereto, and to the extent applicable, a list of all subcontractors and materialmen who have been or, to the extent identified by the Borrower, will be, supplying labor or materials for the construction of the Project;
- (d) The Borrower shall have delivered to the Servicer two (2) complete sets of the Plans and Specifications, together with evidence of their approval by all Governmental Authorities having jurisdiction;
- (e) The Borrower shall have delivered Payment and Performance Bonds in respect of the Construction Contract;
- (f) The Servicer shall have received a report or written confirmation from the Engineering Consultant that (a) the Engineering Consultant has reviewed the Plans and Specifications identified on Schedule 5, (b) the Construction Contract satisfactorily provides for the construction or renovation of the Project, and (c) in the opinion of the Engineering Consultant construction or renovation of the Project can be completed on or before the Completion Date for an amount not greater than the amount allocated for such purpose on the Development Budget;
- (g) The Borrower shall have delivered to the Servicer evidence as to:
  - (1) the methods of access to and egress from the Project, and nearby or adjoining public ways, meeting the reasonable requirements of the Project and the status of completion of any required improvements to such access;
  - (2) the availability of water supply and storm and sanitary sewer facilities meeting the reasonable requirements of the Project;

(3) the availability of all other required utilities, in location and capacity sufficient to meet the reasonable needs of the Project; and

(4) the obtaining of all Governmental Actions which are required, necessary or desirable for the construction of the Improvements and the access thereto, together with copies of all such Governmental Actions as listed on Schedule 6;

(h) The initial net equity installment of the Borrower's Required Equity Funds (\$[TBD]) shall have been delivered to the Fiscal Agent or the Title Company and the other deposits required under the Closing Memorandum shall have been made; and

(i) The Funding Lender, the Servicer and the Borrower shall have executed or approved the Closing Memorandum in form and substance satisfactory to the Funding Lender and, if any portion of the initial Advance shall be for hard costs of construction, a completed Requisition as described in Section 9.13(d)(i) hereof and the Engineering Consultant approval described in Section 9.13(d)(iii) hereof.

Section 9.13 Subsequent Advances. The right of the Borrower to draw any subsequent advances of funds from the Project Fund shall be subject to the satisfaction of the following conditions:

(a) The Borrower shall have delivered the items listed on Part B of Schedule 7 attached hereto.

(b) If the Improvements shall have been materially injured or damaged by fire, explosion, accident, flood or other casualty, such Improvements are able to be and are diligently being restored in accordance with the terms of the Mortgage;

(c) There shall not be a continuing Event of Default or a Default;

(d) The Servicer shall have received:

(1) a completed Requisition in the form set forth on Exhibit B hereto, accompanied by the certificates, applications, invoices and other materials required thereby;

(2) a "date down" endorsement to the Title Policy indicating no change in the state of title not approved by the Funding Lender; and

(3) approval of the portion of the Requisition applicable to the Work for such Advance by the Engineering Consultant, accompanied by a certificate or report from the Engineering Consultant to the effect that in its opinion, based on site observations and submissions by the Contractor, the Work for which the advance is requested to the date thereof was performed in a good and workmanlike manner and stating that the remaining non-disbursed portion of the Governmental Loan proceeds and other available funds and funds projected to be deposited in the Project Fund established under the Funding Loan Agreement is adequate to complete the renovation of the Improvements in accordance with the Plans and Specifications;

(e) Notwithstanding anything to the contrary set forth in this Agreement, no sums shall be disbursed until the Borrower has delivered a waiver or full or partial release of liens from all

contractors, subcontractors, materialmen or others who may be entitled to a lien, as permitted by law for the work for which payment is requested;

(f) The Funding Lender or the Servicer may withhold or refuse to approve any Requisition hereunder if any mechanic's lien is filed or notice of intention to record or file a mechanic's lien has been filed or given;

(g) In addition to the conditions set forth in this Section 9.13, the Servicer's obligation to approve any Requisition for Retainage shall be subject to receipt by the Funding Lender and the Servicer of the Engineering Consultant's certification of completion as to the Work performed under any contract or subcontract for which the Retainage will be disbursed;

(h) All installments of Required Equity Funds then due and payable pursuant to the Partnership Agreement shall have been deposited with the Fiscal Agent;

(i) If at any time during the construction of the Project, the Servicer shall in its sole discretion determine that the remaining undisbursed portion of the Project Fund, any other sums previously deposited by the Borrower with the Fiscal Agent, and any Required Equity Funds scheduled to be deposited with the Fiscal Agent, prior to, or upon, Final Completion (other than Required Equity Funds which have not been deposited due to a default by the Borrower under the applicable provisions of the Partnership Agreement), is or will be insufficient to complete fully the renovation of the Improvements in accordance with the Scope of Work, and to pay all other projected costs in connection with the Work, the Borrower will, within seven (7) days after written notice of such determination from the Servicer deposit with the Fiscal Agent (for deposit into the Equity Account of the Project Fund) such sums of money in cash as the Servicer may reasonably require, in an amount sufficient to remedy the condition described in such notice, and sufficient to pay any liens for labor and materials alleged to be due and payable at the time in connection with the Improvements (to the extent not already bonded over or reserved for), and, at the Funding Lender's or the Servicer's option, shall not be obligated to authorize any further advances of the amounts held in the Project Fund by the Fiscal Agent until the provisions of this Section 9.13(i) have been fully complied with;

(j) No Material Change Order shall have been made without the written approval of the Funding Lender; and

(k) Within five (5) days after receiving notice from the Servicer (or the Engineering Consultant), the Borrower will commence or cause to be commenced the removal of all materials, whether worked or unworked, and all portions of the construction which the Servicer (or the Engineering Consultant) may identify as failing in a substantial way to conform with the Plans and Specifications, and will prosecute diligently or cause to be prosecuted diligently such removal. The Borrower further agrees to make good all portions of the construction and other materials damaged by such removal.

Section 9.14 Effect of Approval. Approval of any Requisition by the Funding Lender shall not constitute an approval or acceptance of the Work or materials, nor shall such approval give rise to any liability or responsibility relating to: (i) the quality of the Work, the quantity of the Work, the rate of progress in completion of the Work, or the sufficiency of materials or labor being supplied in connection therewith; and (ii) any errors, omissions, inconsistencies or other defects of any nature in the Plans and Specifications. Any inspection of the Work that the Funding Lender, the Servicer or the Engineering Consultant may choose to make, whether through any consulting engineer or architect, agent or employee or officer, during the progress of the Work shall be for the Funding Lender's and the Servicer's information

and under no circumstances will they be deemed to have been made for the purpose of supervising or superintending the Work, or for the information or protection of any right or interest of any person or entity other than the Funding Lender.

## **ARTICLE 10 MISCELLANEOUS**

Section 10.1 Notices. All notices and other communications provided for hereunder shall be in writing and sent as provided in Section 9.4 of the Funding Loan Agreement.

Section 10.2 Successors and Assigns; Third Party Beneficiaries. This Agreement shall inure to the benefit of and shall be binding upon the parties hereto and their respective successors and assigns, including, without limitation, the Fiscal Agent (as assignee of the Governmental Lender). The Servicer, the Funding Lender, and the Noteowners are express third party beneficiaries of this Agreement and the rights of the Fiscal Agent hereunder, with full rights of enforcement thereof. The Borrower may not assign its interests in or its rights, duties or obligations under this Agreement without the prior written consent of the Funding Lender. The Borrower and the Governmental Lender intend that no person other than the parties hereto, the Funding Lender, the Servicer and the Noteowners from time to time and their respective successors and assigns as permitted hereunder, shall have any claim or interest under this Agreement or right of action hereon or hereunder.

Section 10.3 Survival of Covenants. All covenants made by the Borrower herein and in any document delivered pursuant hereto shall survive the execution and delivery of the Governmental Note, the delivery of this Agreement and the payment of any amounts under the Funding Loan Documents.

Section 10.4 Counterparts; Electronic Signature. The execution hereof by each party hereto shall constitute a contract between them for the uses and purposes herein set forth, and this Agreement may be executed in any number of counterparts, with each executed counterpart constituting an original and all counterparts together constituting one agreement. To the fullest extent permitted by applicable law, facsimile or electronically transmitted signatures shall be treated as original signatures for all purposes hereunder.

Section 10.5 Costs, Expenses and Taxes. The Borrower agrees to pay on the Closing Date and thereafter within thirty (30) days after demand, all reasonable costs and expenses of the Governmental Lender, the Fiscal Agent, the Servicer and the Funding Lender in connection with the preparation, execution, delivery and administration of this Agreement, the other Funding Loan Documents and any other documents that may be delivered in connection with this Agreement or the other Funding Loan Documents or any amendments or supplements thereto, including, without limitation, the fees and expenses of the Engineering Consultant, the cost of an annual appraisal (but only upon the occurrence and during the continuation of an Event of Default) of the Project by an appraiser selected by the Servicer, and the reasonable fees and expenses of counsel for the Funding Lender and the Servicer with respect thereto and with respect to advising the Funding Lender and the Servicer as to their respective rights and responsibilities under this Agreement, the other Funding Loan Documents and such other documents, and all costs and expenses, if any, (including, without limitation, reasonable counsel fees and expenses of the Servicer and the Funding Lender) in connection with the enforcement of this Agreement, the other Funding Loan Documents and such other documents.

Section 10.6 Severability; Interest Limitation. If any provision hereof is found by a court of competent jurisdiction to be prohibited or unenforceable in any jurisdiction, it shall be ineffective as to such jurisdiction only to the extent of such prohibition or unenforceability, and such prohibition or unenforceability shall not invalidate the balance of such provision as to such jurisdiction to the extent it is

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

Section 10.7 Conflicts. Insofar as possible the provisions of this Agreement shall be deemed complementary to the terms of the other Funding Loan Documents, but in the event of conflict the terms hereof shall control to the extent such are enforceable under applicable Legal Requirements.

Section 10.8 Complete Agreement. Taken together with the other Funding Loan Documents and the other instruments and documents delivered in compliance herewith, this Agreement is a complete memorandum of the agreement of the Borrower, the General Partner, the Guarantor, the Servicer, the Funding Lender, the Fiscal Agent, the Governmental Lender and the Noteowners from time to time of the Governmental Note, with respect to the subject matter hereof.

Section 10.9 Consent to Jurisdiction; Venue; Waiver of Jury Trial. The parties hereby irrevocably (i) agree that any suit, action or other legal proceeding arising out of or relating to this Agreement or the other Funding Loan Documents may be brought in any federal court located in the State and consents to the jurisdiction of such court in any such suit, action or proceeding; (ii) agree that any suit, action or other legal proceeding relating to the Funding Loan Documents shall be brought solely in a federal or state court located in the State and (iii) waive any objection which it may have to the laying of venue of any such suit, action or proceeding in any such court and any claim that any such suit, action or proceeding has been brought in an inconvenient forum. The parties hereby irrevocably consent to the service of any and all process in any such suit, action or proceeding by mailing of copies of such process to such party at its address provided under or pursuant to Section 10.1 hereof. The parties agree that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by applicable Legal Requirements. All mailings under this Section shall be by certified or registered mail, return receipt requested. Nothing in this Section shall affect the right of the Servicer and the Funding Lender to serve legal process in any other manner permitted by applicable Legal Requirements. **THE PARTIES HERETO HEREBY WAIVE THE RIGHT TO TRIAL BY JURY IN ANY ACTION ARISING UNDER THIS AGREEMENT, ANY OF THE OTHER FUNDING LOAN DOCUMENTS OR OTHERWISE IN CONNECTION HEREWITH.**

Section 10.10 Governing Law. This Agreement shall be governed by, and construed in accordance with, the Legal Requirements of the State without reference to its principles of conflicts of law.

Section 10.11 Headings. Section headings in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose.

Section 10.12 Sale of Governmental Note and Secondary Market Transaction.

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

(i) (1) provide reasonable financial and other information with respect to the Governmental Note, and with respect to the Project, the Borrower, the General Partner, the Manager or the Contractor, (2) provide financial statements, audited, if available, relating to the Project with customary disclaimers for any forward looking statements or lack of audit, and (3) at the expense of the Funding Lender, perform or permit or cause to be performed or permitted such site inspection, appraisals, surveys, market studies, environmental reviews and reports (Phase I's and, if appropriate, Phase II's), engineering reports, termite and other insect infestation reports and other due diligence investigations of the Project, the Borrower, General Partner, Guarantor, Manager, Contractor and other third parties in connection with the Governmental Note, as may be reasonably requested from time to time by the Funding Lender or the Rating Agencies or as may be necessary or appropriate in connection with a Secondary Market Transaction or Exchange Act requirements (the items provided to the Funding Lender pursuant to this paragraph (i) and the other information provided pursuant to this Agreement and the other Funding Loan Documents used in connection with a Secondary Market Transaction being called the "Provided Information"), together, if customary, with appropriate verification of and/or consents to the Provided Information through letters of auditors or opinions of counsel of independent attorneys acceptable to the Funding Lender and the Rating Agencies;

(ii) make such representations and warranties as of the closing date of any Secondary Market Transaction with respect to the Project, the Borrower, General Partner, Guarantor, Manager, Contractor or other third parties and the Funding Loan Documents reasonably acceptable to the Funding Lender, consistent with the facts covered by such representations and warranties as they exist on the date thereof, including a "bringdown" of the representations and warranties contained in the Funding Loan Documents as of the date thereof and a representation that no default or event of default has occurred and is continuing; and

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

(b) The Borrower understands that certain of the Provided Information and the required records may be included in disclosure documents in connection with a Secondary Market Transaction, including a prospectus or private placement memorandum (each, a "Secondary Market Disclosure

Document”), or provided or made available to investors or prospective investors in the Securities, the Rating Agencies and service providers or other parties relating to the Secondary Market Transaction. In the event that the Secondary Market Disclosure Document is required to be revised, the Borrower shall cooperate, subject to Section 10.12(c) hereof, with the Funding Lender in updating the Provided Information or required records for inclusion or summary in the Secondary Market Disclosure Document or for other use reasonably required in connection with a Secondary Market Transaction by providing all current information pertaining to the Borrower and the Project necessary to keep the Secondary Market Disclosure Document accurate and complete in all material respects with respect to such matters. The Borrower hereby consents to any and all such disclosures of such information.

(c) In connection with a Secondary Market Disclosure Document, the Borrower, General Partner or Guarantor shall provide, or in the case of a Borrower-engaged third party such as the Manager, cause it to provide, information reasonably requested by the Funding Lender pertaining to the Borrower, General Partner or Guarantor, the Project or such third party (and portions of any other sections reasonably requested by the Servicer or the Funding Lender pertaining to the Borrower, General Partner or Guarantor, the Project or the third party). The Borrower shall, if requested by the Funding Lender, certify in writing that the Borrower has carefully examined those portions of such Secondary Market Disclosure Document, pertaining to the Borrower, General Partner or Guarantor, the Project or the third party, and such portions (and portions of any other sections reasonably requested and pertaining to the Borrower, the Project or the third party) do not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; provided that the Borrower shall not be required to make any representations or warranties regarding any Provided Information obtained from a third party except with respect to information it provided to such third parties; provided further that the Borrower will be required to cause such third parties to provide similar certification with respect to any information not so certified by the Borrower. Furthermore, the Borrower hereby indemnifies the Funding Lender, the Servicer, the Governmental Lender and the underwriter group for any securities, and their affiliates, officers, directors, partners, members, agents, attorneys and servicers (collectively, the “Underwriter Group”) for any liabilities to which any such parties may become subject to the extent such liabilities arise out of or are based upon the use of the Provided Information in a Secondary Market Disclosure Document.

(d) In connection with filings under the Exchange Act or the Securities Act, the Borrower shall (i) defend and indemnify the Servicer, the Funding Lender, the Governmental Lender, its members, and the Underwriter Group for any liabilities to which the Funding Lender, the Servicer, the Governmental Lender or the Underwriter Group may become subject insofar as such liabilities arise out of or are based upon the omission or alleged omission by the Borrower to state in the Provided Information of a material fact required to be stated in the Provided Information in order to make the statements in the Provided Information, in the light of the circumstances under which they were made not misleading, and (ii) reimburse the Servicer, the Funding Lender, the Underwriter Group and the other indemnified parties listed above for any legal or other expenses reasonably incurred by the Servicer, the Funding Lender or the Underwriter Group in connection with defending or investigating the liabilities; provided that the Borrower shall not provide any indemnification regarding any Provided Information obtained from unrelated third parties except with respect to information it provided to such parties, but shall require such third parties to provide such indemnification with respect to information they certify.

(e) Promptly after receipt by an indemnified party under this Section 10.12 of notice of the commencement of any action for which a claim for indemnification is to be made against the Borrower, such indemnified party shall notify the Borrower in writing of such commencement, but the omission to so notify the Borrower will not relieve the Borrower from any liability that it may have to any indemnified party hereunder except to the extent that failure to notify causes prejudice to the Borrower. In the event that any action is brought against any indemnified party, and it notifies the Borrower of the commencement

thereof, the Borrower will be entitled, jointly with any other indemnifying party, to participate therein and, to the extent that it (or they) may elect by written notice delivered to the indemnified party promptly after receiving the aforesaid notice of commencement, to assume the defense thereof with counsel selected by the Borrower and reasonably satisfactory to such indemnified party in its sole discretion. After notice from the Borrower to such indemnified party under this Section 10.12 and provided that the Borrower duly provides the defense and indemnity herein described, including payment of all required fees, expenses and liabilities, the Borrower shall not be responsible for any legal or other expenses subsequently incurred by such indemnified party in connection with the defense thereof other than reasonable costs of investigation. No indemnified party shall settle or compromise any claim for which the Borrower may be liable hereunder without the prior Written Consent of the Borrower.

(f) In order to provide for just and equitable contribution in circumstances in which the indemnity agreement provided for in this Section 10.12 is for any reason held to be unenforceable by an indemnified party in respect of any liabilities (or action in respect thereof) referred to therein which would otherwise be indemnifiable under this Section 10.12, the Borrower shall contribute to the amount paid or payable by the indemnified party as a result of such liabilities (or action in respect thereof); provided, however, that no Person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any Person not guilty of such fraudulent misrepresentation. In determining the amount of contribution to which the respective parties are entitled, the following factors shall be considered: (i) the indemnified parties and the Borrower's relative knowledge and access to information concerning the matter with respect to which the claim was asserted; (ii) the opportunity to correct and prevent any statement or omission; and (iii) any other equitable considerations appropriate in the circumstances. The parties hereto hereby agree that it may not be equitable if the amount of such contribution were determined by pro rata or per capita allocation.

#### Section 10.13 Nonrecourse.

(a) Notwithstanding anything to the contrary contained in this Agreement (other than Sections 10.13(b) through (e) hereof) or the other Funding Loan Documents, the Governmental Lender agrees that, in connection with the exercise of any rights or remedies available to the Governmental Lender under this Agreement or any of the other Funding Loan Documents (other than the Environmental Indemnity and the other guaranty agreements of the Guarantors), the Governmental Lender shall look solely to the enforcement of the lien and security interests created by this Agreement and the other Funding Loan Documents and to the collateral and other security held by the Funding Lender or the Fiscal Agent and all assets of the Borrower.

(b) Notwithstanding the preceding subsection, the Borrower and the Guarantor shall have full recourse and personal liability for, and be subject to, judgments and deficiency decrees arising from and to the extent of any loss or damage suffered or incurred by the Governmental Lender, the Funding Lender, the Servicer, the Fiscal Agent or the Noteowners as a result of the occurrence of any of the following events:

(i) the Borrower fails to pay to the Fiscal Agent upon demand after an Event of Default all Rents to which the Fiscal Agent is entitled under Section 2 of the Mortgage and the amount of all security deposits collected by the Borrower from tenants then in residence. However, the Borrower and the Guarantor will not be personally liable for any failure described in this Section 10.13(b)(i) if the Borrower is unable to pay to the Fiscal Agent all Rents and security deposits as required by the Mortgage because of a valid order issued in a bankruptcy, receivership, or similar judicial proceeding;

(ii) the Borrower fails to apply all insurance proceeds or casualty or condemnation proceeds as required by the Funding Loan Documents. However, the Borrower and the Guarantor

will not be personally liable for any failure described in this Section 10.13(b)(ii) if the Borrower is unable to apply insurance or casualty or condemnation proceeds as required by the Funding Loan Documents because of a valid order issued in a bankruptcy, receivership, or similar judicial proceeding;

(iii) if an Event of Default has occurred and is continuing, the Borrower fails to deliver all books and records relating to the Project or its operation in accordance with the provisions of Section 6.8 or 6.9 of this Agreement;

(iv) the Borrower engages in any willful act of material waste of the Project;

(v) the Borrower or the General Partner fails to comply with any provision of Section 6.11(b) hereof;

(vi) the occurrence of any of the following transfers:

(A) any Person that is not an Affiliate creates a mechanic's lien or other involuntary lien or encumbrance against the Project and the Borrower has not complied with the provisions of this Agreement;

(B) a transfer of property by devise, descent or operation of law occurs upon the death of a natural person in violation of the requirements set forth in the Funding Loan Documents;

(C) the Borrower grants an easement that does not meet the requirements set forth in the Funding Loan Documents; or

(D) the Borrower executes a Lease that does not meet the requirements set forth in the Funding Loan Documents;

(vii) any act of fraud or willful misconduct or any criminal act of the Borrower, the General Partner or the Guarantor;

(viii) the Borrower's misappropriation of funds or other Collateral;

(ix) the Borrower fails to pay the fees and expenses pursuant to Section 2.2 hereof or the compensation of the Fiscal Agent pursuant to Section 7.2 of the Funding Loan Agreement;

(x) the Borrower fails to cause the Project to be in compliance with any applicable Governmental Authority accessibility findings or requirements; or

(xi) any litigation or other legal proceeding related to the Obligations filed by any of the Borrower, Guarantor, or any of their Affiliates, or any other action of any such Person that delays, opposes, impedes, hinders, enjoins or otherwise interferes with or frustrates the efforts of Funding Lender to exercise any rights and remedies available to Funding Lender provided herein or in the other Funding Loan Documents.

(c) The Borrower and the Guarantor shall have full recourse and personal liability for all of the Indebtedness (and the limitation on liability in the first sentence of Section 10.13(a) hereof shall be null and void) as a result of the occurrence of any of the following:

- (i) a violation of Section 6.11(a) or 6.13(c) hereof;
- (ii) the Borrower or Guarantor fails to cure for thirty (30) days after the giving to it by the Funding Lender of written notice to comply with Section 6.12(b) hereof;
- (iii) the Borrower's taking any action which adversely affects the exclusion from gross income of interest on the Tax-Exempt Governmental Note for federal income tax purposes, or the Borrower's omitting or failing to take any action required to maintain the exclusion from gross income of interest on the Tax-Exempt Governmental Note for federal income tax purposes;
- (iv) the Borrower or the General Partner fails to comply with any provision of Section 6.11(b) hereof and a court of competent jurisdiction holds or determines that such failure or combination of failures is the basis, in whole or in part, for the substantive consolidation of the assets and liabilities of the Borrower or the General Partner with the assets and liabilities of a debtor pursuant to Title 11 of the Bankruptcy Code;
- (v) a transfer that is an Event of Default under Section 7.1 hereof occurs (other than a transfer described in Section 10.13(b)(vi)(B) above, for which Borrower will have personal liability for any loss or damage); provided, however, that Borrower will not have any personal liability for a transfer consisting solely of the involuntary removal or involuntary withdrawal of the General Partner;
- (vi) there was fraud or written material misrepresentation by the Borrower or any officer, director, partner, member or employee of the Borrower in connection with the application for or creation of the Indebtedness or there is fraud in connection with any request for any action or consent by the Governmental Lender, the Funding Lender, the Servicer or the Noteowners;
- (vii) the Borrower or the General Partner voluntarily files for bankruptcy protection under the Bankruptcy Code;
- (viii) the Borrower or the General Partner voluntarily becomes subject to any reorganization, receivership, insolvency proceeding, or other similar proceeding pursuant to any other federal or state law affecting debtor and creditor rights;
- (ix) the Project or any part of the Project becomes an asset in a voluntary bankruptcy or becomes subject to any voluntary reorganization, receivership, insolvency proceeding, or other similar voluntary proceeding pursuant to any other federal or state law affecting debtor and creditor rights;
- (x) an order of relief is entered against the Borrower or the General Partner pursuant to the Bankruptcy Code or other federal or state law affecting debtor and creditor rights in any involuntary bankruptcy proceeding initiated or joined in by an Affiliate;
- (xi) an involuntary bankruptcy or other involuntary insolvency proceeding is commenced against the Borrower or the General Partner (by a party other than the Funding Lender or the Noteowner) but only if the Borrower or the General Partner, as applicable, has failed to use commercially reasonable efforts to dismiss such proceeding or has consented to such proceeding. "Commercially reasonable efforts" will not require any direct or indirect interest Noteowners in the Borrower or the General Partner to contribute or cause the contribution of additional capital to the Borrower or the General Partner; or

(xii) the Borrower's or the Guarantor's actions delay or hinder the Funding Lender or the Fiscal Agent, as applicable, in the appointment of a receiver or foreclosure following an Event of Default (excepting only the good faith assertion of applicable legal defenses).

(d) The Borrower and the Guarantor shall have full recourse and personal liability as a result of all of the following:

(i) the performance of and compliance with all of the Borrower's obligations under Sections 5.12 and 6.14 of this Agreement (relating to environmental matters) or the Borrower's failure to comply with the provisions of the Environmental Indemnity;

(ii) the costs of any audit under Section 6.8 of this Agreement;

(iii) any costs and expenses incurred by the Governmental Lender, the Servicer and the Funding Lender in connection with the collection of any amount for which the Borrower is personally liable under this Section 10.13, including attorneys' fees and costs and the costs of conducting any independent audit of the Borrower's books and records to determine the amount for which the Borrower has personal liability; and

(iv) the Borrower's indemnity obligations pursuant to Section 2.5 and 10.12.

(e) Further, nothing contained in this Section shall be deemed to limit, vary, modify or amend any obligation owed under any guaranty, master lease or indemnification agreement, including the Environmental Indemnity and the other guaranty agreements of the Guarantor, furnished in connection with financing of the acquisition, renovation, improvement and equipping of the Project, recourse under which is not, by its terms, expressly limited in accordance with this Section 10.13.

(f) Notwithstanding anything to the contrary in this Agreement or any of the other Funding Loan Documents, the Governmental Lender, the Funding Lender, the Servicer and the Noteowners shall not be deemed to have waived any right such Persons may have under Section 506(a), 506(b), 1111(b) or any other provisions of the Bankruptcy Code to file a claim for the full amount of the Borrower's and the Guarantor's Indebtedness under the Funding Loan Documents or to require that all collateral shall continue to secure all of the Indebtedness under the Funding Loan Documents.

**Section 10.14 Publicity.** The Borrower hereby authorizes the Servicer or the Funding Lender and their respective Affiliates, without further notice or consent, to use the Borrower's and its Affiliates' name(s), logo(s) and photographs related to the Project in its advertising, marketing and communications materials on a national and/or international basis. Such materials may include web pages, print ads, direct mail and various types of brochures or marketing sheets, and various media formats other than those listed (including without limitation video or audio presentations through any media form). In these materials, the Servicer or the Funding Lender also may discuss at a high level the types of services and solutions the Servicer or the Funding Lender has provided the Borrower. This authorization shall remain in effect unless the Borrower notifies the Funding Lender and the Servicer in writing in accordance with the notice provisions set forth herein that such authorization is revoked. The Servicer or the Funding Lender shall also have the right to publicize its involvement in the financing of the Project, including the right to maintain a sign indicating such involvement at a location at the Project reasonably acceptable to the Borrower and the Funding Lender.

**Section 10.15 Determinations by the Funding Lender and Servicer.** Subject to specific provisions in this Agreement to the contrary, in any instance under this Agreement where the consent or approval of the Funding Lender or the Servicer may be given or is required, or where any determination, judgment or

decision is to be rendered by the Funding Lender or the Servicer under this Agreement, the granting, withholding or denial of such consent or approval and the rendering of such determination, judgment or decision shall be made or exercised by the Funding Lender or the Servicer (or its designated representative) at its sole and absolute discretion.

Section 10.16 Further Assurances. The Borrower will promptly and duly execute, acknowledge and deliver from time to time such further instruments and take such further actions as may be reasonably required by the Governmental Lender, the Funding Lender or the Servicer to carry out the purposes and provisions of this Agreement and to the other Funding Loan Documents, to make elections or take actions (or, as requested, to refrain from making elections or taking actions) related to the audit procedures involving the Borrower and/or its partners set forth in the Bipartisan Budget Act of 2015 so that the Borrower's members, equity holders, shareholders, and partners will be directly responsible for any audit adjustments, changes or modifications rather than the Borrower, to confirm the priority and/or perfection of any lien, pledge, assignment or security interest created or intended to be created by this Agreement and the other Funding Loan Documents and to assure the Funding Lender and the Servicer of the subrogation and security rights in favor of the Funding Lender (or the Fiscal Agent for the benefit of the Funding Lender) for the benefit of the Noteowners of the Governmental Note contemplated by this Agreement, by the other Funding Loan Documents in connection with any of the foregoing and such approvals shall be in form satisfactory to the Funding Lender.

[The remainder of this page is left blank intentionally.]

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

**GOVERNMENTAL LENDER,**

**AUSTIN HOUSING FINANCE CORPORATION**

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

Name: Rosie Truelove

Title: Treasurer

**BORROWER,**

**AUSTIN LEASED HOUSING ASSOCIATES VI,  
LIMITED PARTNERSHIP**

a Texas limited partnership

By: OTM Woodway Square GP, LLC,  
a Texas limited liability company  
its General Partner

By: On Track Ministries, Inc.,  
a Texas non-profit corporation  
its Sole Member

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

Name: Cliff McDaniel

Title: President

**EXHIBIT A**  
**FORM OF BORROWER NOTE**

[TAX-EXEMPT][TAXABLE] PROMISSORY NOTE

*[Create form for Taxable Note as necessary]*

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 FISCAL AGENT IN ACCORDANCE WITH THE FUNDING LOAN AGREEMENT, BOTH REFERRED TO HEREIN.

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

FOR VALUE RECEIVED, \_\_\_\_\_, a \_\_\_\_\_ duly formed and validly existing under the laws of the State of Texas (the "Borrower"), by this promissory note (this "Note") hereby promises to pay to the order of the [Governmental Lender] (the "Governmental Lender") the principal sum of \_\_\_\_\_ and no/100 Dollars (\$ \_\_\_\_\_), together with interest on the drawn and unpaid principal amount hereof, from the Closing Date (as defined in the Funding Loan Agreement referenced below) until paid in full, at a rate per annum, and Acceleration Premium, if any, as set forth herein.

1. **Defined Terms.** All capitalized terms used but not defined in this Note or Exhibit A hereto shall have the meanings given to such terms in the Borrower Loan Agreement.

2. **Method of Payment.** All payments due under this Note shall be payable to Fiscal Agent, or, if there is no Fiscal Agent, to the Funding Lender, or its successor. Each such payment shall be made by wire transfer of immediately available funds in accordance with wire transfer instructions that the Funding Lender or the Servicer shall supply by written notice to the Borrower from time to time on the date that is two Business Days before any other date that any payment of interest, premium, if any, principal or other amount is required to be made hereunder.

3. **Payments Due on Non-Business Days.** In any case where the date of maturity of, interest on or premium, if any, or principal of this Note or the date fixed for prepayment of this Note shall not be a Business Day, then payment of such interest, premium or principal need not be made on such date but shall be made on the next succeeding Business Day, with the same force and effect as if made on the date of maturity or the date fixed for prepayment, and, in the case of such payment, no interest shall accrue for the period from and after such date.

4. **Interest Rate.**

(a) Interest shall accrue on the drawn and unpaid principal of this Note from, and including, the Closing Date, [until the Maturity Date, at the Fixed Rate] [to but excluding the Stabilization Date at the Adjustable Rate and from and after the Stabilization Date until the Maturity Date at the Fixed Rate]. Notwithstanding any other provision of this Note to the contrary, interest shall not exceed the Maximum Rate. [During the period that interest accrues at the Adjustable Rate, the Adjustable Rate shall be determined by the Servicer on each Rate Determination Date and the Servicer will promptly, after such Rate Determination Date, notify the Fiscal Agent, the Borrower and the Funding Lender via electronic mail of the applicable Adjustable Rate. The determination of the Adjustable Rate by the Servicer, absent manifest error, shall be conclusive and binding on the Borrower and the Fiscal Agent.]

(b) [During the period that interest accrues at the Adjustable Rate, interest shall accrue and be computed for each Accrual Period on the basis of the actual number of days in the period in respect of which payment is being made divided by 360. The Adjustable Rate and related terms shall be subject to the Benchmark Replacement Setting provisions and defined terms set forth in Schedule A attached hereto and Schedule A is made a part hereof in its entirety. Interest shall compound monthly on any amounts unpaid on each Loan Payment Date.] [During the period that the interest accrues at the Fixed Rate, interest shall accrue and be computed on the basis of a 360-day year comprised of twelve 30-day months].

(c) If the Servicer at any time determines, in its sole but reasonable discretion, that it has miscalculated the amounts due hereunder (whether because of a miscalculation of the Adjustable Rate or otherwise), then the Servicer shall give prompt notice to the Borrower and the Fiscal Agent (with a copy to the Funding Lender) of the corrected amount of the interest due hereunder (and the corrected Adjustable Rate, if applicable) and (a) if the corrected amount of the interest due hereunder represents an increase, then the Borrower shall, within thirty (30) calendar days thereafter, pay to the Funding Lender any sums that the Borrower would have otherwise been obligated to pay under this Note had the amount of the interest due hereunder not been miscalculated, or (b) if the corrected amount of the interest due hereunder represents a decrease thereof, then such amount shall be held by the Funding Lender and applied as a credit to the amount payable by the Borrower on the next Loan Payment Date.

5. **Payment of Principal and Interest.** Principal and interest shall be paid as follows:

(a) Borrower shall pay all amounts due under this Note at the times and in the amounts set forth herein and in the Borrower Loan Agreement. Borrower shall make its payments under this Note in immediately available funds.

(b) Commencing on the First Interest Payment Date and continuing on each Loan Payment Date thereafter until and including the First Principal Payment Date, Borrower shall pay monthly payments of interest only, at the [Fixed Rate][Adjustable Rate], in successive monthly installments. Such payments shall be made to the Fiscal Agent by 2:00 p.m., New York City time, on each Loan Payment Date. Accrued interest on this Note shall be paid in arrears on each Loan Payment Date.

(c) Commencing on the First Principal Payment Date, and continuing on each Loan Payment Date thereafter until and including the Maturity Date, Borrower shall pay monthly payments of principal and interest as set forth on the Debt Service Schedule attached to the Borrower Loan Agreement as Schedule 3, in successive monthly installments, in accordance with Section 7(c) hereof. Such payments shall be made to the Fiscal Agent by 2:00 p.m., New York City time, on each Loan Payment Date.

(d) Any accrued interest remaining past due may, at the Funding Lender's discretion, be added to and become part of the unpaid principal balance and shall bear interest at the rate or rates specified in this Note, and any reference below to "accrued interest" shall refer to accrued interest that has not become part of the unpaid principal balance.

(e) The Borrower shall pay all unpaid principal of and interest on this Note on the Maturity Date and any other amounts due hereunder.

(f) Any regularly scheduled monthly installments of principal and/or interest that are received by the Fiscal Agent before the date due shall be deemed to have been received on the due date solely for the purpose of calculating interest due.

(g) The Borrower shall make all payments of principal and interest under this Note without relief from valuation and appraisal laws.

(h) The Borrower acknowledges that the calculation of all interest payments due hereunder shall be made by the Servicer (on behalf of the Funding Lender) and shall be final and conclusive, absent manifest error.

6. **Acceleration.** If a Default or Event of Default has occurred and is continuing, the entire unpaid principal balance, any accrued interest, the prepayment premium payable hereunder, if any, and all other amounts payable under this Note and any other Funding Loan Document shall at once become due and payable, at the option of the Funding Lender, without any prior notice to the Borrower (except as notice may be required by applicable law, then after such notice). The Funding Lender may exercise this option to accelerate regardless of any prior forbearance.

7. **Prepayments.** In connection with any prepayment (*i.e.*, any receipt by the Funding Lender of principal, other than principal required to be paid in monthly installments pursuant to Section 3, prior to the Maturity Date) made under this Note, whether voluntary or involuntary, a prepayment premium shall be payable to the extent provided in Section 9 of this Note and Section 2.3 of the Borrower Loan Agreement. EXCEPT AS OTHERWISE PERMITTED HEREIN, NO VOLUNTARY PREPAYMENTS OF THIS NOTE, IN WHOLE OR IN PART, SHALL BE PERMITTED.

(a) *Optional Prepayment of Borrower Note.* [[TAX-EXEMPT] This Note is subject to optional prepayment in whole but not in part, by the Borrower upon not less than forty-five (45) days written notice, by Electronic Means or by first-class mail, postage prepaid, to the Funding Lender, the Servicer and the Fiscal Agent (which notice shall be unconditional and irrevocable) on any Loan Payment Date occurring on or after the Par Call Date, at a prepayment price equal to 100% of the principal amount thereof and accrued interest thereon to, but not including, the prepayment date.] [[TAXABLE] This Note is not subject to optional prepayment [*modify as needed*]].]

(b) *Mandatory Prepayment of Borrower Note.*

(i) This Note is subject to mandatory prepayment in part upon the written direction of the Funding Lender from, and to the extent of, any Surplus Funding Loan Proceeds, on any Loan Payment Date after Final Completion of the Project, but in no event later than the Stabilization Date, at a prepayment price equal to 100% of the principal amount of this Note to be prepaid plus interest accrued thereon to, but not including, the prepayment date.

(ii) This Note is subject to mandatory prepayment in whole or in part upon the written direction of the Funding Lender on any the Loan Payment Date to the extent that Insurance Proceeds or a Condemnation Award in connection with the Project are deposited in the Project Fund and are not to be used to repair or restore the Project at a prepayment price equal to 100% of the principal amount of this Note to be prepaid plus interest accrued thereon to, but not including, the prepayment date.

(iii) [TAX-EXEMPT] This Note is subject to mandatory prepayment in part on any Loan Payment Date upon the written direction of, and in the amount as specified by, the Funding Lender necessary to cause the Project to meet the requirements of clause (ii) of the definition of "Stabilization," if the Project have not achieved Stabilization by the Stabilization Date at a prepayment price equal to 100% of the principal amount of this Note

to be prepaid plus interest accrued thereon to, but not including, the prepayment date. [TAXABLE – Reserved.].

(iv) This Note is subject to extraordinary mandatory prepayment in whole or in part on any Loan Payment Date at the direction of the Funding Lender at a prepayment price equal to 100% of the principal amount of this Note to be prepaid plus interest accrued thereon to, but not including, the prepayment date following receipt by the Fiscal Agent of the direction of the Funding Lender, within one hundred eighty (180) days of the occurrence of any of the following events:

(A) the Project shall have been damaged or destroyed to such an extent that in the judgment of the Funding Lender (A) the Borrower is thereby prevented from carrying on its normal operations at the Project for a period of twelve (12) consecutive months, or (B) it would not be economically feasible for the Borrower to replace, repair, rebuild or restore the same;

(B) title in and to, or the temporary use of, all or substantially all of the Project shall have been taken under the exercise of the power of eminent domain by any Governmental Authority or any Person acting under Governmental Authority (including such a taking as, in the judgment of the Funding Lender, results in the Borrower being prevented thereby from carrying on its normal operations at the Project for a period of twelve (12) consecutive months);

(C) as a result of any changes in the Constitution of the State, or the Constitution of the United States of America or by legislative or administrative action (whether state or federal) or by final decree, judgment, decision or order of any court or administrative body (whether state or federal), the Funding Loan Agreement or the other Funding Loan Documents (in each case, as determined by the Funding Lender) shall have become void or unenforceable or impossible of performance in accordance with the intent and purpose of the parties as expressed therein, as determined by the Funding Lender;

(D) unreasonable burdens or excessive liabilities shall have been imposed on the Borrower with respect to the operations of the Project, including, without limitation federal, state or other ad valorem, property, income or other taxes not being imposed on the date of this Note that, in the judgment of the Funding Lender, render the continued operation of the Project uneconomical;

(E) changes which the Borrower cannot reasonably control or overcome in the economic availability of materials, supplies, labor, equipment and other properties and things necessary for the efficient operation of the Project for the purposes contemplated by the Borrower Loan Agreement shall have occurred or technological changes that the Borrower cannot reasonably overcome shall have occurred that, in the judgment of the Funding Lender, render the continued operation of the Project uneconomical;

(F) legal curtailment of the Borrower's use and occupancy of all or substantially all of the Project for any reason other than that set forth in (2) above, which curtailment shall, in the judgment of the Funding Lender, prevent the Borrower from carrying on its normal operations at the Project for a period of twelve (12) consecutive months; or

(G) the Borrower Loan Agreement is terminated prior to its expiration for any reason, including the occurrence of an Event of Default under the Borrower Loan Agreement.

(v) This Note is subject to mandatory prepayment in whole at a prepayment price equal to 100% of the principal amount of this Note to be prepaid plus interest accrued thereon to, but not including, the prepayment date, on the first Loan Payment Date for which notice of prepayment can be given in accordance with the Funding Loan Agreement within forty-five (45) days after the occurrence of a Determination of Taxability; provided, however, if mandatory prepayment on account of a Determination of Taxability of less than all the Tax-Exempt Governmental Note would result, in the opinion of Tax Counsel, in the interest on the Tax-Exempt Governmental Note outstanding following such mandatory prepayment being excludable from the gross income of the Noteowners of such Tax-Exempt Governmental Note outstanding, then this Note is subject to mandatory prepayment upon the occurrence of a Determination of Taxability in the amount specified in such opinion.

(vi) [TAX-EXEMPT] This Note is subject to mandatory prepayment in whole on any Loan Payment specified by the Funding Lender on or after [DATE], if the Funding Lender directs prepayment by providing written notice, by Electronic Means, to the Borrower, the Fiscal Agent and the Governmental Lender at least one hundred eighty (180) days prior to the Loan Payment Date specified in such notice on which this Note is to be prepaid at a prepayment price equal to 100% of the principal amount hereof plus interest accrued thereon to, but not including, the prepayment date set forth in such notice.

(vii) [This Note is subject to mandatory prepayment in whole on any Loan Payment Date specified by the Funding Lender following Final Completion but not later than the Stabilization Date in the principal amount of \$[amount of "construction Borrower Note paydown"] at a prepayment price equal to 100% of the principal amount of this Note to be prepaid without premium or penalty plus interest accrued thereon to, but not including, the prepayment date.]

(c) *Mandatory Sinking Fund Prepayment.* This Note is subject to mandatory sinking fund prepayment in part on each Principal Payment Date, from amounts paid by the Borrower to the Fiscal Agent for deposit into the Prepayment Fund pursuant to Sections 2.3(d) and 8.3 of the Borrower Loan Agreement (in the amount set forth on Schedule 3 attached to the Borrower Loan Agreement, as supplemented from time to time), at a prepayment price equal to 100% of the principal amount of this Note to be prepaid plus interest accrued thereon to, but not including, the prepayment date.

8. **Obligations of the Borrower Absolute and Unconditional.** Subject to Section 10.13 of the Borrower Loan Agreement, the obligation of the Borrower to make all payments required under this Note and the other Funding Loan Documents on or before the date the same become due, and to perform all of its other obligations, covenants and agreements hereunder and under the other Funding Loan Documents shall be primary, absolute, unconditional and irrevocable, and shall be paid or performed strictly in accordance with the terms of this Note and the other Funding Loan Documents under any and all circumstances, without notice or demand, and without abatement, deduction, set-off, counterclaim, recoupment or defense or any right of termination or cancellation arising from any circumstance whatsoever, whether now existing or hereafter arising, and irrespective of whether the Borrower's title to the Property mortgaged under the Mortgage or to any part thereof is defective or nonexistent, and notwithstanding any damage due to loss, theft or destruction of such Property or any part thereof, any failure of consideration or frustration of commercial purpose, the taking by eminent domain of title to or of the

right of temporary use of all or any part of the Property, legal curtailment of the Borrower's use thereof, the eviction or constructive eviction of the Borrower, any change in the tax or other laws of the United States of America, the State or any political subdivision thereof, any change in the Funding Lender's legal organization or status, or any default of the Governmental Lender or the Funding Lender under any Funding Loan Document, and regardless of the invalidity of any action of the Funding Lender or the invalidity of any portion of this Note or the other Funding Loan Documents. Provided further, the obligations of Borrower under this Note and the other Funding Loan Documents shall not be affected by:

- (a) any lack of validity or enforceability of any Funding Loan Document;
- (b) any amendment of, or any waiver or consent with respect to, any of the Funding Loan Documents;
- (c) the existence of any claim, set-off, defense or other rights which the Borrower, the General Partner or the Guarantor may have at any time against the Funding Lender (other than the defense of payment in accordance with the terms of this Note or the other Funding Loan Documents) or any other Person, whether in connection with this Note or any other Funding Loan Document or any transaction contemplated thereby or any unrelated transaction;
- (d) any breach of contract or other dispute between the Borrower, the General Partner or the Guarantor, and the Funding Lender;
- (e) any Requisition or any document presented in connection therewith, proving to be forged, fraudulent, untrue, inaccurate, invalid or insufficient in any respect (except in the event of willful misconduct by the Funding Lender with respect to same); or
- (f) any exchange, release or nonperfection of any lien or security interest in any collateral pledged or otherwise provided to secure any of the Obligations contemplated herein or in any other Funding Loan Document.

The Borrower hereby waives the application to it of the provisions of any statute or other law now or hereafter in effect contrary to any of its Obligations, covenants or agreements under this Note or the other Funding Loan Documents or which releases or purports to release the Borrower therefrom. Nothing contained herein shall be construed as prohibiting the Borrower from pursuing any rights or remedies it may have against any Person in a separate legal proceeding.

9. **Default Interest and Acceleration Premium.** In the event that principal or interest payable on this Note is not paid when due, there shall be payable on the amount not timely paid, interest at the Default Rate, to the extent permitted by law. This interest shall accrue at the Default Rate until the unpaid amount, together with interest thereon, shall have been paid in full. In the event there shall have occurred an acceleration of this Note or the Borrower's Obligations under the Borrower Loan Agreement following an Event of Default on or before the Par Call Date, any tender of payment of any amount necessary to pay this Note in full shall include the Acceleration Premium.

10. **Costs and Expenses.** To the fullest extent allowed by applicable law, the Borrower shall pay all expenses and costs, including, without limitation, out-of-pocket expenses and reasonable fees of attorneys (including, without limitation, in-house attorneys) and expert witnesses and costs of investigation, incurred by the Funding Lender as a result of any default under this Note or in connection with efforts to collect any amount due under this Note, or to enforce the provisions of any of the other Funding Loan Documents, including those incurred in post-judgment collection efforts and in any bankruptcy proceeding (including any action for relief from the automatic stay of any bankruptcy proceeding) or judicial or non-judicial foreclosure proceeding. For purposes of this Section 10, attorneys' out of pocket expenses shall

include, but are not limited to, support staff costs, costs of preparing for litigation, computerized research, telephone and facsimile transmission expenses, mileage, deposition costs, postage, duplicating, process service, videotaping and similar costs and expenses.

11. **Waivers.** Presentment, demand, notice of dishonor, protest, notice of acceleration, notice of intent to demand or accelerate payment or maturity, presentment for payment, notice of nonpayment, grace, and diligence in collecting the Indebtedness are waived by the Borrower and all endorsers and guarantors of this Note and all other third party obligors.

12. **Governing Law.** This Note shall be governed by and enforced in accordance with the laws of the State, without giving effect to the choice of law principles of the State that would require the application of the laws of a jurisdiction other than the State.

13. **Consent to Jurisdiction and Venue.** The Borrower agrees that any controversy arising under or in relation to this Note shall be litigated exclusively in the State. The state and federal courts and authorities with jurisdiction in the State shall have exclusive jurisdiction over all controversies which shall arise under or in relation to this Note. The Borrower irrevocably consents to service, jurisdiction, and venue of such courts for any such litigation and waives any other venue to which it might be entitled by virtue of domicile, habitual residence or otherwise. However, nothing herein is intended to limit the Funding Lender's right to bring any suit, action or proceeding relating to matters arising under this Note against the Borrower or any of the Borrower's assets in any court of any other jurisdiction.

14. **Further Assurances.** The Borrower shall at any time and from time to time, promptly execute and deliver all further instruments and documents, and take all further action that may be reasonably necessary or desirable, or that the Funding Lender may reasonably request, in order to protect any right or interest granted by this Note or to enable the Funding Lender to exercise and enforce its rights and remedies under this Note.

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

16. **Servicer.** The Borrower hereby acknowledges and agrees that, pursuant to the terms of the Funding Loan Documents: (a) from time to time, the Funding Lender may appoint a servicer to collect payments, escrows and deposits, to give and to receive notices under this Note or the other Funding Loan Documents, and to otherwise service the Borrower Loan and (b) unless the Borrower receives written notice from the Funding Lender to the contrary, any action or right which shall or may be taken or exercised by the Funding Lender may be taken or exercised by such servicer with the same force and effect.

17. **Waiver of Trial by Jury.** TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, EACH OF THE BORROWER AND THE FUNDING LENDER (A) COVENANTS AND AGREES NOT TO ELECT A TRIAL BY JURY WITH RESPECT TO ANY ISSUE ARISING OUT OF THIS NOTE OR THE RELATIONSHIP BETWEEN THE PARTIES THAT IS TRIABLE OF RIGHT BY A JURY AND (B) WAIVES ANY RIGHT TO TRIAL BY JURY WITH RESPECT TO SUCH ISSUE TO THE EXTENT THAT ANY SUCH RIGHT EXISTS NOW OR IN THE FUTURE. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS SEPARATELY GIVEN BY EACH PARTY KNOWINGLY AND VOLUNTARILY WITH THE BENEFIT OF COMPETENT LEGAL COUNSEL.

18. **Time of the Essence.** Time is of the essence with respect to this Note.

*[Signature on Following Page]*

IN WITNESS WHEREOF, the undersigned has duly executed and delivered this Promissory Note or caused this Promissory Note to be duly executed and delivered by its authorized representative as of the date first set forth above.

**AUSTIN LEASED HOUSING ASSOCIATES VI,  
LIMITED PARTNERSHIP**

a Texas limited partnership

By: OTM Woodway Square GP, LLC,  
a Texas limited liability company  
its General Partner

By: On Track Ministries, Inc.,  
a Texas non-profit corporation  
its Sole Member

By: \_\_\_\_\_  
Name: Cliff McDaniel  
Title: President

**ENDORSEMENT**

Pay to the order of [Fiscal Agent], without recourse, as Fiscal Agent under the Funding Loan Agreement referred to in the within mentioned Agreement, as security for the Governmental Note delivered under such Funding Loan Agreement. This endorsement is given without any warranty as to the authority or genuineness of the signature of the maker of the Borrower Note.

AUSTIN HOUSING FINANCE CORPORATION

By: \_\_\_\_\_  
Name: Rosie Truelove  
Title: Treasurer

Dated: \_\_\_\_\_, 2023

## **EXHIBIT A**

### **Defined Terms**

For purposes of the foregoing Borrower Note, the following terms shall have the meanings set forth below:

**“Accrual Period”** means the period commencing on the first calendar day of each month to but excluding the first calendar day of the following month (without adjustment in either case for Business Day payment conventions). The initial Accrual Period shall be the period commencing on the Closing Date and to but excluding the first calendar day of the month immediately following the Closing Date.

**“Adjustable Rate”** means the sum of (i) the Benchmark, and (ii) the Margin, which sum is then rounded to five decimal places.

**“Benchmark”** means, initially, Term SOFR; provided that: (i) if the Funding Lender determines prior to the Reference Time that a Benchmark Transition Event and its related Benchmark Replacement Date have occurred with respect to Term SOFR or the then-current Benchmark, then “Benchmark” means the applicable Benchmark Replacement; and (ii) if the Benchmark or Replacement Benchmark would be less than the Floor on any Rate Determination Date, such Benchmark or Replacement Benchmark shall be deemed to be equal to the Floor for the purposes of this Note.

**“Benchmark Replacement”** means the first alternative set forth in the order below that can be determined by the Funding Lender as of the Benchmark Replacement Date, in a manner consistent with the Funding Lender’s determination for other floating rate loans secured by mortgages on similar commercial real estate assets:

(a) Compounded SOFR for an Accrual Period of one-month’s duration if, on the applicable Rate Determination Date, the Funding Lender determines in its sole discretion that Compounded SOFR will be operationally, administratively, and technically feasible; or

(b) the sum of (a) the alternate Benchmark rate that has been selected by the Funding Lender as the replacement for the then current Benchmark giving due consideration to (i) any selection or recommendation of a replacement benchmark rate or the mechanism for determining such a rate by the Relevant Governmental Body or (ii) any evolving or then-prevailing market convention for determining a benchmark rate as a replacement for the then current Benchmark for U.S. dollar-denominated secured real estate loans at such time and (b) the Benchmark Replacement Adjustment.

**“Benchmark Replacement Adjustment”** means, for purposes of clause (b) of the definition of “Benchmark Replacement,” the spread adjustment (which may be a positive or negative value or zero) that has been selected by the Funding Lender giving due consideration to any industry-accepted spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of the then-current Benchmark and in a manner consistent with the Funding Lender’s determination for other floating rate loans secured by mortgages on similar commercial real estate assets.

**“Benchmark Replacement Conforming Changes”** means, with respect to any Benchmark Replacement, any technical, administrative or operational changes (including changes to Accrual Periods, the timing and frequency of determining rates and making payments of interest, length of lookback periods, rounding of amounts or tenors, and other technical, administrative or operational matters) that the Funding Lender decides may be appropriate to reflect the adoption of such Benchmark Replacement in a manner substantially consistent with market practice (or, if the Funding Lender decides that adoption of

any portion of such market practice is not administratively feasible or if the Funding Lender determines that no market practice for use of the Benchmark Replacement exists, in such other manner as the Funding Lender determines is reasonably necessary in connection with the administration of this Note), in each case, in a manner consistent with the Funding Lender's determination for other floating rate loans secured by mortgages on similar commercial real estate assets.

**“Benchmark Replacement Date”** means the earliest to occur of the following events with respect to the then-current Benchmark (including the daily published component used in the calculation thereof):

- (a) in the case of clause (a) or (b) of the definition of “Benchmark Transition Event,” the later of (1) the date of the public statement or publication of information referenced therein and (2) the date on which the administrator of the Benchmark permanently or indefinitely ceases to provide the Benchmark (or such component); or
- (b) in the case of clause (c) of the definition of “Benchmark Transition Event,” the date of the public statement or publication of information referenced therein; or
- (c) in the case of clause (d) of the definition of “Benchmark Transition Event,” the date specified in the notice to the Borrower.

For the avoidance of doubt, if the event that gives rise to the Benchmark Replacement Date occurs on the same day as, but earlier than, the Reference Time in respect of any determination, the Benchmark Replacement Date will be deemed to have occurred prior to the Reference Time for such determination.

**“Benchmark Source”** means with respect to Compounded SOFR, the website of the SOFR Administrator, with respect to Term SOFR, the website of CME Group Benchmark Administration Ltd., as applicable (or a successor administrator or benchmark source for Compounded SOFR or Term SOFR selected by Funding Lender in its reasonable discretion), in each case, in a manner consistent with the Funding Lender's determination for other floating rate loans secured by mortgages on similar commercial real estate assets.

**“Benchmark Transition Event”** means the occurrence of one or more of the following events with respect to the then-current Benchmark (including the daily published component used in the calculation thereof):

- (a) a public statement or publication of information by or on behalf of the administrator of the Benchmark (or such component) announcing that such administrator has ceased or will cease to provide the Benchmark (or such component), permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide the Benchmark (or such component); or
- (b) a public statement or publication of information by the regulatory supervisor for the administrator of the Benchmark (or such component), the central bank for the currency of the Benchmark (or such component), an insolvency official with jurisdiction over the administrator for the Benchmark (or such component), a resolution authority with jurisdiction over the administrator for the Benchmark (or such component) or a court or an entity with similar insolvency or resolution authority over the administrator for the Benchmark, which states that the administrator of the Benchmark (or such component) has ceased or will cease to provide the Benchmark (or such component) permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide the Benchmark (or such component); or

(c) a public statement or publication of information by the regulatory supervisor for the administrator of the Benchmark announcing that the Benchmark is no longer representative or in compliance with or aligned with the International Organization of Securities Commissions (IOSCO) Principles for Financial Benchmarks; or

(d) a determination by the Funding Lender by notice to the Borrower (in its sole discretion but after giving due consideration to any recommendation of a Relevant Governmental Body or industry standard) that the Benchmark is no longer representative.

**“Compounded SOFR”** means the compounded average of SOFR over a rolling 30-calendar day period as such rate is currently published on the Benchmark Source as “30-Day Average SOFR.”]]

**“First Interest Payment Date”** means \_\_\_\_\_, 20\_\_.

**“First Principal Payment Date”** means \_\_\_\_\_, 20\_\_.

**“Fixed Rate”** shall mean a fixed rate of [\_\_\_\_\_] % per annum [up to but excluding the earlier of the date of achievement of Stabilization or the Stabilization Date and [\_\_\_\_\_] % per annum from and thereafter].

[**“Floor”** means \_\_\_\_ % (\_\_\_\_ basis points).]

**“Loan Payment Date”** means: (i) the first Business Day of each month, commencing on the First Interest Payment Date, and (ii) any other date on which the Borrower Note is prepaid or paid, whether at the scheduled maturity or upon the acceleration of the maturity thereof.

[**“Margin”** means \_\_\_\_ % (\_\_\_\_ basis points).]

**“Maturity Date”** means [CLOSING MONTH] 1, 20\_\_.

**“Maximum Rate”** means the lesser of (i) twelve percent (12%) per annum or (ii) the maximum interest rate that may be paid on the Borrower Loan under the laws of the State.

**“Par Call Date”** means [CLOSING MONTH] 1, 20\_\_.

[**“Rate Determination Date”** means 3:00 p.m. (New York time) on the day that is two U.S. Government Securities Business Days prior the first day of such Accrual Period; provided, however, that if Benchmark has not been published by the SOFR Administrator and a Benchmark Replacement Date has not occurred, then the Benchmark will be the Benchmark by the SOFR Administrator on the first preceding U.S. Government Securities Business Day for which such Benchmark was published by the SOFR Administrator so long as such first preceding U.S. Government Securities Business Day is not more than five U.S. Government Securities Business Days prior to such Rate Determination Date.]

**“Reference Time”** with respect to any determination of the Benchmark means (1) if the Benchmark is Term SOFR or Compounded SOFR, the Rate Determination Date, and (2) if the Benchmark is not a rate based on or referencing SOFR, the time determined by the Funding Lender after giving effect to the Benchmark Replacement Conforming Changes.

**“Relevant Governmental Body”** means the Federal Reserve Board and/or the Federal Reserve Bank of New York, or a committee officially endorsed or convened by the Federal Reserve Board and/or the Federal Reserve Bank of New York or any successor thereto.

**“SOFR”** means a rate per annum equal to the secured overnight financing rate for such U.S. Government Securities Business Day as such rate is currently published on the Benchmark Source.

**“SOFR Administrator”** means the Federal Reserve Bank of New York (or a successor administrator of the secured overnight financing rate).]]

**“Surplus Funding Loan Proceeds”** means all drawn but unexpended moneys and any unliquidated investments with respect thereto remaining upon Final Completion and after payment in full of the Project Costs, except for Funding Loan proceeds retained to pay for Project Costs not then due and payable.

**“Term SOFR”** means the forward-looking term rate with a tenor of approximately one calendar month based on SOFR that is recommended by the Relevant Governmental Body.

**“U.S. Government Securities Business Day”** means any day except for a Saturday, a Sunday or a day on which the Securities Industry and Financial Markets Association (or a successor organization) recommends that the fixed income departments of its members be closed for the entire day for purposes of trading in U.S. government securities.]]

## SCHEDULE A<sup>1</sup>

### BENCHMARK REPLACEMENT SETTING

#### **Benchmark Replacement.**

(a) If the Funding Lender determines prior to the relevant Reference Time that a Benchmark Transition Event and its related Benchmark Replacement Date have occurred with respect to the then-current Benchmark, the Benchmark Replacement will replace the then-current Benchmark for all purposes relating to this Note in respect of all determinations on such date and for all determinations on all subsequent dates without any amendment to, or further action or consent of any other party to this Note.

(b) In connection with the implementation of a Benchmark Replacement, the Funding Lender will have the right to make Benchmark Replacement Conforming Changes from time to time. Notwithstanding anything to the contrary in this Note or in any other Funding Loan Documents, any amendments to this Note or the other Funding Loan Documents implementing such Benchmark Replacement Conforming Changes will become effective and binding on the Borrower upon notice by the Funding Lender to the Borrower without the necessity of any action by or consent of any other party.

(c) Any determination, decision or election that may be made by the Funding Lender pursuant to this Note, including any determination with respect to administrative feasibility (whether due to technical, administrative or operational issues), a tenor, a rate, an adjustment or the occurrence or non-occurrence of an event, circumstance or date and any decision to take or refrain from taking any action or any selection, will be conclusive and binding absent manifest error, and, notwithstanding anything to the contrary in the documentation relating to this Note, will become effective without consent from any other party. Each such determination, decision and election will be in the Funding Lender's sole discretion.

(d) The Funding Lender will promptly provide notice to the Borrower of (i) any Benchmark Replacement Date and the related Benchmark Replacement, (ii) the effectiveness of any Benchmark Replacement Conforming Changes, and (iii) the removal or reinstatement of any tenor of a Benchmark. For the avoidance of doubt, any notice required to be delivered by the Funding Lender as set forth herein may be provided, at the option of the Funding Lender (in its sole discretion), in one or more notices and may be delivered together with, or as part of any amendment which implements any Benchmark Replacement or Benchmark Replacement Conforming Changes.

(e) The Funding Lender does not warrant or accept any responsibility for, and shall not have any liability with respect to (i) the administration, submission or any other matter related to SOFR or with respect to any alternative or successor rate thereto, or replacement rate thereof (including, without limitation any Benchmark Replacement implemented hereunder), (ii) the composition or characteristics of any Benchmark Replacement, including whether it is similar to, or produces the same value or economic equivalence to SOFR (or any other Benchmark) or has the same volume or liquidity as did SOFR (or any other Benchmark), (iii) any actions or use of its discretion or other decisions or determinations made with respect to any matters covered by this Note including, without limitation, whether or not a Benchmark Transition Event has occurred, the removal or lack thereof of unavailable or non-representative tenors, the implementation or lack thereof of any Benchmark Replacement Conforming Changes, the delivery or non-delivery of any notices required hereby or otherwise in accordance herewith, and (iv) the effect of any of the foregoing provisions of this Note.

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<sup>1</sup> Remove schedule for fixed rate only transactions

**EXHIBIT B  
FORM OF WRITTEN REQUISITION  
OF THE BORROWER**

BORROWER:

PROJECT :

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

In the Amount of \$\_\_\_\_\_

TO: KeyBank National Association, as Servicer  
1140 19th Street NW, Suite 600  
Washington, DC 20036

The Borrower hereby requests payments in the following amounts, from the following sources and to be made to the following parties, all as set forth on the Borrower's Request for Payment attached to this Requisition:

Amount

Source

Payable to:

[identify name of Account &  
Fund]

[Borrower's account #]  
[third party payment/wire  
instructions must be attached]

**Requisition - Contents and Attachments**

- ☐ Borrower's Representations and Warranties
- ☐ Contractor's Application and Certification for Payment (AIA Form G-702)
- ☐ Requisitions and Invoices Supporting Application
- ☐ Contractor's Requisition Certificate
- ☐ Architect's Requisition Certificate
- ☐ Borrower's Request for Payment
- ☐ Lien Waivers

### **Representations and Warranties**

1. No changes have been made in the Plans and Specifications which require and have not received the prior approval of (i) the Funding Lender or the Servicer under the terms of the Borrower Loan Agreement dated as of [DATE] (the “Agreement”), (ii) any Governmental Authority having jurisdiction over the Project or (iii) any other parties from whom such approval is required.
2. renovation of the Improvements has been performed in accordance with the Plans and Specifications (other than any changes that did not constitute Material Change Orders).
3. As of the date hereof, the Borrower has executed change orders (increasing/decreasing) the cost of renovation of the Improvements by \$\_\_\_\_\_ in the aggregate, has notified the Engineering Consultant of such changes and, to the extent necessary, has received any and all necessary approvals from the Funding Lender.
4. Funding of this Requisition shall be in accordance with the terms and provisions of (i) the Agreement, and (ii) the Funding Loan Agreement dated as of [CLOSING MONTH] 1, 2023, with respect to the Governmental Note.
5. Each obligation herein for which such disbursement is being requested has been properly incurred and has not been the basis for any previous disbursement. All money requisitioned by the Borrower for renovation of the Improvements and disbursed by the Fiscal Agent under previously approved requisitions has been paid to the Contractor and, to the Borrower’s best knowledge, all subcontractors, vendors and suppliers; all other funds requisitioned by the Borrower and disbursed by the Fiscal Agent under previously approved requisitions have been expended for the purpose for which they were requisitioned.
6. All of the information submitted to the Funding Lender and the Servicer in connection with this Requisition is true and accurate in all material respects as of the date of submission.
7. The representations and warranties set forth in the Funding Loan Documents are true and correct in all material respects as of the date hereof with the same effect as if made on this date.
8. The Borrower represents and warrants that (i) there has occurred no Event of Default or event which, with the passage of time or the giving or notice or both, would constitute an Event of Default on the part of the Borrower or the Guarantor under the terms of the Funding Loan Documents, (ii) except as previously disclosed by the Borrower to the Funding Lender and the Servicer, the Borrower has not received notice from or been informed by any Governmental Authority or the Engineering Consultant of any alleged deficiencies in the Work performed to date or any deviation of such Work from the Plans and Specifications or notice of any assertion of a claim that the Improvements are not being renovated in accordance with all applicable Legal Requirements, (iii) with the exception of any Permitted Liens and those being contested by the Borrower in accordance with the terms of the Funding Loan Documents, there are no liens against any portion of the Project or any other asset of the Borrower, and (iv) the Funding Loan Documents are in full force and effect.
9. The Borrower represents and warrants that this Requisition is in the form of requisition required by the Funding Lender.
10. The Borrower represents and warrants that, the expenditure of such disbursement, when added to all previous disbursements, will result in not less than (i) ninety-five percent (95%) of all

disbursements paid from proceeds of the Tax-Exempt Governmental Note having been used to pay or reimburse the Borrower for Qualified Project Costs, and (ii) one hundred percent (100%) of all disbursements have been used to pay or reimburse the Borrower for Project Costs.

11. Attached hereto are copies of lien waivers from all such contractors, subcontractors and materialmen requisitioning payment under this Requisition, the originals of which have been delivered to the Title Insurance Company.
12. All capitalized terms used herein and not otherwise defined shall have the meanings ascribed thereto under the Borrower Loan Agreement.

Executed this \_\_\_\_ day of \_\_\_\_, 20\_\_.

**AUSTIN LEASED HOUSING ASSOCIATES VI,  
LIMITED PARTNERSHIP**  
a Texas limited partnership

By: OTM Woodway Square GP, LLC,  
a Texas limited liability company  
its General Partner

By: On Track Ministries, Inc.,  
a Texas non-profit corporation  
its Sole Member

By: \_\_\_\_\_  
Name: Cliff McDaniel  
Title: President

Approved:

**DEUTSCHE BANK SECURITIES INC.,**  
as Funding Lender

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

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

Dated: [MONTH] \_\_, 20\_\_

Contractor's Application for Payment

DRAFT

**Requisitions and Invoices**

DRAFT

**Contractor's Requisition Certificate**

Application for Payment No. \_\_\_\_\_

TO: Deutsche Bank Securities Inc. ("Funding Lender")  
KeyBank National Association ("Servicer")

FROM: [CONTRACTOR] ("Contractor")

RE: renovation of Woodway Square, 240-units in Austin, Texas (the "Project") by Austin  
Leased Housing Associates VI, Limited Partnership ("Borrower").

We are the general contractor for the Project and, to induce the Servicer to approve disbursements of Governmental Note proceeds and other amounts by the Funding Lender to assist in funding renovation of the Improvements and knowing that the Funding Lender and the Servicer will rely on this certificate in doing so, we hereby certify as follows:

1. In reference to our contract dated [MONTH] \_\_, 20\_\_, with Borrower for renovation of the Improvements, and the Plans and Specifications therefor, no amendments, modifications or changes have been made with respect to our contract or the Plans and Specifications except such as have had your prior written approval. There are no pending change orders except as follows:
2. Our Application for Payment No. \_\_\_\_\_, dated [MONTH] \_\_, 20\_\_, which we understand is to be included as an item in the Borrower's requisition to you, is in full compliance with the terms of our contract with Borrower, and, upon the payment of same, we will have no other or additional claim (including claims for so-called "extras") against Borrower on account of our contract or otherwise for and through the period of time ending upon the date of our Application for Payment, for all labor and materials furnished by us through and including the date of our Application for Payment except as follows:
  - a. Retainage not exceeding \_\_% of the value of labor and materials incorporated into the Project and covered by applications submitted by us on account of the renovation of the Improvements for which payment is to be made to us after substantial completion of our contract, as provided therein (the amount of said retainage), as of the end of the period covered by our Application for Payment dated [MONTH] \_\_, 20\_\_, is \$\_\_\_\_\_); and
  - b. [specify other claims, if any]
3. The Borrower is not in default of any of the Borrower's obligations to us as of the date hereof except as follows: \_\_\_\_\_ [none]
4. We have paid in full all our obligations to subcontractors, workmen, suppliers and materialmen for and with respect to all labor and materials supplied through and including the date of our last Application for Payment, except for an amount equal to \_\_% thereof, which we are holding in accordance with the terms of such obligations and our contract, and all our subcontractors have paid their subcontractors, workmen and materialmen in full for and with respect to all labor and materials supplied through and including the date of our last Application for Payment.

5. To the fullest extent allowed by law, we waive and release any and all rights to claim any lien for labor done or materials furnished up to an amount equal to the amount of our Application for Payment dated [MONTH] \_\_, 20\_\_ plus the amount of all our previously funded applications.

DRAFT

Executed as an instrument under seal this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**[CONTRACTOR]**

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

Name:

Title:

DRAFT

## Architect's Requisition Certificate

Application for Payment No. \_\_\_\_\_

TO: Deutsche Bank Securities Inc. ("Funding Lender")  
KeyBank National Association ("Servicer")

FROM: [ARCHITECT], a [TYPE OF ENTITY] ("Architect")

RE: Rehabilitation of Woodway Square, 240-units in Austin, Texas (the "Project") by Austin  
Leased Housing Associates VI, Limited Partnership ("Borrower")

We are the architect for the Project and, to induce the Servicer to approve disbursements of Governmental Note proceeds and other amounts by the Funding Lender to assist in funding renovation of the Improvements, and knowing that the Servicer will rely on this certificate in doing so, we hereby certify as follows:

1. We inspected the Project on [MONTH] \_\_, 20\_\_ and found the status of Work at the Project on that date and the progress made on the Project since our last certificate to you dated [MONTH] \_\_, 20\_\_ to be as follows:  
  
[substantially in accordance with the approved, as amended and approved, plans and specifications], [non-compliant with the approved plans and specifications], [other – describe here]
2. We delivered the Plans and Specifications for the Project, copies of which have been delivered to you (the "Plans and Specifications"). We have made no changes to the Plans and Specifications except as you have approved in writing. There are no pending change orders or construction change directives except as follows: \_\_\_\_\_
3. All Work to date has been done in accordance with the Plans and Specifications and in a good and workmanlike manner. All materials and fixtures usually furnished and installed or stored on site at the current stage of renovation have been furnished, installed or stored on site. All of the Work to date is hereby approved except as follows: \_\_\_\_\_
4. We have examined the requisition being submitted herewith to you by the Borrower, which requisition includes an Application for Payment from [CONTRACTOR] ("Contractor") respecting renovation of the Improvements. The payment so applied for by Contractor does not exceed (when added to the payments heretofore applied for by and paid to Contractor) \_\_% of the value of labor and materials incorporated into the Improvements.
5. We have been advised that as of this date there remains unexpended funds of \$\_\_\_\_\_ which are available to fund renovation costs, from which funds to pay the aforementioned Application for Payment will be deducted. In our opinion, such unexpended funds, after deduction of funds sufficient to cover both the current Application for Payment and the applicable retainage heretofore withheld and to become due on account of previous Applications, will be sufficient to pay for all renovation costs reasonably required to complete the Work, provided that the amount advanced under the current application is, in fact, applied against obligations incurred for labor and materials heretofore furnished on account of renovation of the Improvements.

6. All permits, licenses, approvals and the like required to complete renovation of the Improvements have been validly issued by the appropriate authorities and are in full force and effect, and there is no violation of any of the provisions thereof or of any Legal Requirements applicable to the Project of which we have notice or knowledge as of the date hereof except as follows:
7. Access to and egress from the Project and all improvements to be constructed thereon are in accordance with all applicable Legal Requirements. Water, drainage and sanitary sewerage facilities and telephone, gas and electric services of public utilities are or are due to be installed in the locations indicated on the Plans and Specifications and are adequate to serve the Project. All necessary approvals for installation of or connection to said facilities or services have been obtained.
8. To the best of our knowledge, there are no petitions, actions or proceedings pending or threatened to revoke, rescind, alter or declare invalid any laws, ordinances, regulations, permits, licenses or approvals for or relating to the Project.
9. No amendments, modifications or changes have been made to our contract dated [MONTH] \_\_\_\_, 20\_\_ with the Borrower except such as have had your prior written approval.
10. The Borrower is not in default of any of the Borrower's obligations to us as of the date hereof except as follows:\_\_\_\_\_

This certificate is rendered based on our examination of the Project, the Plans and Specifications, the data comprising the Application for Payment and all other matters which we deem relevant. We are to incur no liability under this certificate except for failure to exercise due professional skill and diligence.

Executed as a sealed instrument this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**[ARCHITECT]**

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

Name:

Title:

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**Borrower's Request for Payment**

[attach spreadsheets in form provided by Servicer]

DRAFT

**Lien Waivers**

DRAFT

**EXHIBIT C**  
**MOISTURE DISCLOSURE STATEMENT**

This Addendum to the Residential Lease Contract (this "Addendum") dated the day of, \_\_\_\_\_, 20\_\_ between Austin Leased Housing Associates VI, Limited Partnership ("Owner") and \_\_\_\_\_ ("Residents") for the premises located at 1700 Teri Road, Austin, Texas 78744 (the "Leased Premises"). All capitalized terms used but not defined herein shall have the meaning set forth in the Residential Lease Contract.

Mildew, mold and fungi are everywhere in our indoor and outdoor environments. In fact, they play an important and necessary role in decomposition and breaking down of organic matter. All mildew, mold and fungi require water or dampness to grow. Indoors, this water intrusion can come from flooding, backed-up sewers, leaky buildings, humidifiers, constant plumbing leaks, steam, poor housekeeping, wet clothes, appliances not properly vented, inadequate air circulation, etc.

There are a number of factors that influence the growth of mildew, mold and fungi: environmental humidity and moisture content of materials, temperature, air circulation, light, and the chemical composition of potential substances. If there is mildew, mold and fungi growing, you can impact its amplification by affecting the water source, encouraging proper ventilation, and drying out the area.

There are no established guidelines for unacceptable air quality caused by mildew, mold and fungi. Mildew, mold and fungi are a naturally occurring phenomenon. Mildew, mold and fungi should be cleaned as soon as it appears. Mildew, mold and fungi can often be seen in the form of discoloration. The different colors of mildew, mold and fungi range from white to black, including, but not limited to, green, gray brown, orange, yellow and other colors.

Your housekeeping and living habits are an integral part of the ability of mildew, mold and fungi to grow. In order for mildew, mold and fungi to grow water and/or moisture must be present.

RESIDENTS AGREE to maintain the Leased Premises in a manner that prevents the occurrence of mildew, mold and fungi growth within the Leased Premises. In furtherance of such obligation, RESIDENTS AGREE TO PERFORM THE FOLLOWING:

1. To keep the Leased Premises free from dirt and debris that can harbor moisture and result in mildew, mold and fungi growth;
2. To inspect the Leased Premises regularly for the indications and sources of indoor moisture;
3. To immediately report to the Owner any water intrusion, such as roof leaks, window leaks, plumbing leaks, drips, or "sweating" pipes;
4. To immediately notify Owner of overflows from bathroom, kitchen, or the Leased Premises laundry facilities, especially in cases where the overflow may have permeated walls or cabinets;
5. To immediately notify Owner in writing of any significant mildew, mold and fungi growth on surfaces in the Leased Premises;
6. To not air dry wet clothes indoors;

7. To use bathroom exhaust fans while showering or bathing and use stove hood exhaust fans whenever cooking, dishwashing, or cleaning and to notify Owner of any nonworking fan. If the Leased Premises is equipped with an automatic ventilation fan, Residents agree to not disable or otherwise adjust the fan settings;
8. To notify Owner of any problems with the heating, ventilating, and/or air conditioning systems;
9. To water plants outdoors;
10. To clean upon first appearance, any mildew from condensation on window interiors, bathroom & kitchen walls, floors and/or ceilings. Residents understand that mildew, mold and fungi can grow on damp surfaces within 24 to 48 hours and agree to clean including personal property, as soon as reasonably possible. Cleaning is done with common household bleach. Mixture is one part bleach to 10 parts water. Residents may add a little dish soap to the water mixture to cut any dirt and oil on the surface Residents are cleaning that may hold mildew, mold and fungi. Do not add other cleaning chemicals, especially ammonia. Dispose of any rags or sponges used to clean the mildew, mold and fungi in a sealed bag;
11. TO REPORT TO OWNER IN WRITING AND VERBALLY THE PRESENCE OF ANY MILDEW, MOLD AND FUNGI GROWTH on surfaces inside the Leased Premises;
12. To allow Owner immediate entry to the Leased Premises to inspect and make necessary repairs;
13. To use all reasonable care during periods of rain, fog or other outside moisture presence to close all windows and other openings in the Leased Premises to prevent outdoor water from penetrating into the interior of the Leased Premises;
14. To clean and dry any visible condensation/moisture on windows and window tracks, walls and other surfaces, including personal property as soon as reasonably possible. Condensation on windows indicates that fresh air is not being circulated in the Leased Premises. To prevent moisture buildup, open the windows and air out the Leased Premises for short periods of time to keep fresh air present. Excessive running of the heater will cause condensation in the Leased Premises;
15. To maximize the circulation of air by keeping furniture away from walls and out of corners;

RESIDENTS FURTHER AGREE to indemnify and hold harmless Owner and Owner's agents from any suits, actions, claims, losses, damages, and expenses (including reasonable attorneys' fees and court costs) and any liability whatsoever that Owner and/or Owner's agents may sustain or incur as a result of Residents' failure to comply or perform with the obligations set forth above or as the result of the intentional or negligent action or failure to act on the part of Residents or of any other person living in, occupying, or using the Leased Premises, except if the liability is based upon a negligent act or omission of Owner or any agent or employee of Owner;

Residents hereby certify that Residents have read the MOISTURE DISCLOSURE STATEMENT, and have read and understood the contents of this ADDENDUM, and have received a duplicate copy.

INTENDING TO BE BOUND, the parties hereto have executed this Addendum as of the day and year first above written.

Resident or Residents:  
(all Residents must sign here)

Lessor:

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

**AUSTIN LEASED HOUSING ASSOCIATES VI,  
LIMITED PARTNERSHIP**  
a Texas limited partnership

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

By: OTM Woodway Square GP, LLC,  
a Texas limited liability company  
its General Partner

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

By: On Track Ministries, Inc.,  
a Texas non-profit corporation  
its Sole Member

By: \_\_\_\_\_  
Name: Cliff McDaniel  
Title: President

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

[None]

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

1. Funding Loan Documents
2. [Amended and Restated] [AGREEMENT OF LIMITED PARTNERSHIP or LIMITED LIABILITY COMPANY AGREEMENT] of the Borrower
3. Development Agreement
4. Management Agreement
5. Construction Contract
6. Architect's Agreement
7. Ground Lease
8. [Prime Subcontract]
9. [Subordinate Debt Documents]

**SCHEDULE 3**  
**SCHEDULE OF DEBT SERVICE PAYMENTS**

[See Attached]

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**SCHEDULE 4  
DEVELOPMENT BUDGET**

**[See Attached]**

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**SCHEDULE 5  
PLANS AND SPECIFICATIONS**

**[See Attached]**

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**SCHEDULE 6**  
**PERMITS AND APPROVALS**

**[See Attached]**

]

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**SCHEDULE 7**  
**CONDITIONS TO ADVANCES**

A. CONDITIONS TO INITIAL ADVANCE. **The right of the Borrower to draw the initial advance shall be subject to the fulfillment of the following conditions precedent in a manner, and by documentation, satisfactory to the Servicer:**

1. Construction Documents. Each of the Architect's Agreement [, the Prime Subcontract] and the Construction Contract shall have been duly executed and delivered by the respective parties thereto and shall be in full force and effect. The Architect and the Contractor shall have duly executed and delivered to the Servicer a consent to the assignment of the Architect's Contract, [the Prime Subcontract] and the Construction Contract in form and substance satisfactory to the Servicer.

2. Subcontracts; Other Contracts. The Borrower shall have delivered to the Servicer, and the Funding Lender shall have approved, a list of all subcontractors and materialmen who have been or, to the extent identified by the Borrower, will be supplying labor or materials for the Project in the amount of \$10,000 or more. The Borrower shall have delivered to the Servicer correct and complete photocopies of all other executed contracts with contractors, subcontractors, engineers or consultants for the Project in an amount of \$25,000 or more, and of all development, management, brokerage, sales or leasing agreements for the Project.

3. Validity of Liens. The Mortgage, the Assignment of Project Documents, the Assignment of Capital Contributions, [the Assignment of Lease], [the Assignment of HAP Contract,] the Developer Fee Pledge and the General Partner Pledge shall be effective to create in the Fiscal Agent or the Funding Lender, as applicable, a legal, valid and enforceable lien and security interest in the collateral identified therein. All filings, recordings, deliveries of collateral or any documentary evidence of any of the foregoing necessary to preserve such liens and security interests shall have been duly effected.

4. Deliveries. The following items or documents shall have been delivered to the Servicer by the Borrower and shall be in form and substance satisfactory to the Funding Lender.

(a) Plans and Specifications. Two complete sets of the Plans and Specifications and approval thereof by any necessary Governmental Authority, with a certification from the Architect that the Improvements to be constructed comply with all Legal Requirements and Governmental Actions and that the Construction Contract [and Prime Subcontract] satisfactorily provides for the renovation of the Improvements.

(b) Title Policy. The Title Policy, or a pro forma policy that constitutes a commitment to issue the Title Policy in the form of such pro forma policy, together with proof of payment of all fees and premiums for such policy and true and accurate copies of all documents listed as exceptions under such policy.

(c) Other Insurance. Duplicate originals or certified copies of all policies of insurance required hereunder to be obtained and maintained during the renovation of the Improvements.

(d) Evidence of Sufficiency of Funds. Evidence that the proceeds of the Funding Loan, [the proceeds of the Subordinate Debt], together with Required Equity Funds delivered to the Fiscal Agent on the Closing Date or to be delivered after the Closing Date pursuant to the Funding Loan Agreement and the Partnership Agreement, will be sufficient to cover all Project Costs reasonably anticipated to be incurred to [complete/renovate] the Improvements prior to the Completion Date and to carry the Project through to Stabilization.

5. Evidence of Access, Availability of Utilities, Governmental Approvals. Evidence as to:

(a) the methods of access to and egress from the Project, and nearby or adjoining public ways, meeting the reasonable requirements of the Project and the status of completion of any required improvements to such access;

(b) the availability of water supply and storm and sanitary sewer facilities meeting the reasonable requirements of the Project;

(c) the availability of all other required utilities, in location and capacity sufficient to meet the reasonable needs of the Project; and

(d) the obtaining of all Governmental Actions which are required, necessary or desirable for the renovation of the Improvements and the access thereto, together with copies of all such Governmental Actions.

6. Environmental Report. An environmental site assessment report or reports of one or more qualified environmental engineering or similar inspection firms approved by the Funding Lender, which report or reports shall indicate a condition of the Land and any existing improvements thereon in compliance with all Requirements and in all respects satisfactory to the Funding Lender in its sole discretion and upon which report or reports the Servicer and the Funding Lender shall be expressly entitled to rely.

7. Soils Report. A soils report for the Project prepared by a soils engineer approved by the Funding Lender, which report shall indicate that based upon actual surface and subsurface examination of the Project, the soils conditions are fully satisfactory for the proposed renovation and operation of the Improvements and upon which report or reports the Servicer and the Funding Lender shall be expressly entitled to rely. A termite or other insect infestation report prepared by a firm approved by the Funding Lender, which report shall indicate that based upon actual inspection of the Project either (i) that there is no termite or other insect infestation at the Project, or (ii) that termite or insect infestation is present and recommended steps for extermination and remediation of the conditions at the Project, and upon which report or reports the Servicer and the Funding Lender shall be expressly entitled to rely.

8. Survey and Taxes. A Survey of the Land (and any existing improvements thereon) and Surveyor's Certificate, and evidence of payment of all real estate taxes and municipal charges on the Land (and any existing improvements thereon) which were due and payable prior to the Closing Date.

9. Deposit of Funds. The initial installment of Required Equity Funds and any other source of funds required for closing shall have been delivered to the Fiscal Agent and deposited in the Project Fund, or otherwise delivered to the satisfaction of the Funding Lender.

10. Requisition. A Requisition complying with the provisions of this Agreement and the Funding Loan Agreement.

11. Form Lease. The standard form of lease to be used by the Borrower in connection with the Improvements.

12. Engineering Consultant Report. The Funding Lender and the Servicer shall have received a report or written confirmation from the Engineering Consultant that (i) the Engineering Consultant has reviewed the Plans and Specifications, (ii) the Plans and Specifications have been received and approved by each Governmental Authority to which the Plans and Specifications are required under applicable Legal Requirements to be submitted, (iii) the Construction Contract [and the Prime Subcontract] satisfactorily

provides for the renovation of the Improvements, and (iv) in the opinion of the Engineering Consultant, renovation of the Improvements can be completed on or before the Completion Date for an amount not greater than the amount allocated for such purpose in the Development Budget.

13. Searches. The Servicer shall have received searches from a recognized search firm (which shall be updated from time to time at Borrower's expense upon request by the Funding Lender or the Servicer) that searches of the public record disclosed (a) no conditional sales contracts, security agreements, chattel mortgages, leases of personalty, financing statements or title retention agreements which affect the collateral, (b) no bankruptcy filings on the part of any of the Borrower, the General Partner and the Guarantor (collectively, the "Obligors"), and (c) no litigation with respect to the Project or any of the Obligors that would materially adversely affect the obligations of the Obligors hereunder.

14. Mechanics' Liens. In the event that for any reason the initial Advance is not funded on the Closing Date, the Funding Lender or the Servicer may withhold or refuse to approve the initial Advance if any mechanic's lien or notice of intention to record or file a mechanic's lien has been filed or given.

15. Notices. All notices required by any Governmental Authority under applicable Legal Requirements to be filed prior to commencement of renovation of the Improvements shall have been filed.

16. Appraisal. The Servicer shall have received an Appraisal, in form and substance satisfactory to the Funding Lender, showing that the original face amount of the Governmental Note does not exceed [TBD]% of the value of the Project, assuming completion in accordance with the Plans and Specifications and including the value of the low income housing tax credits and favorable financing.

17. Performance; No Default. The Borrower shall have performed and complied with all terms and conditions herein required to be performed or complied with by it on or prior to the date of the initial advance, and on the date of the initial advance there shall exist no Event of Default.

18. Representations and Warranties. The representations and warranties made by the Obligors in the Funding Loan Documents, the General Partner Pledge, the Developer Fee Pledge or the documents executed by the Guarantor or otherwise made by or on behalf of the Obligors in connection therewith or after the date thereof shall have been true and correct in all respects when made and shall be true and correct in all respects on the date of the initial advance.

19. Proceedings and Documents. All proceedings in connection with the transactions contemplated by this Agreement and the other Funding Loan Documents shall be satisfactory to the Funding Lender and its counsel in form and substance, and the Funding Lender and the Servicer shall have received all information and such counterpart originals or certified copies of such documents and such other certificates, opinions or documents as they or their counsel may reasonably require.

20. Payment and Performance Bonds. The Servicer shall have received the Payment and Performance Bonds equal to 100% of the construction contract amount in form and content and from a surety satisfactory in all respects to the Funding Lender.

**B. CONDITIONS TO SUBSEQUENT ADVANCES. The right of the Borrower to draw each advance after the initial advance shall be subject to the following conditions precedent in a manner, and by documentation, satisfactory to the Funding Lender:**

1. Prior Conditions Satisfied. All conditions precedent to any prior disbursement shall continue to be satisfied as of the date of the Requisition of such subsequent advance.

2. Performance; No Default. The Borrower shall have performed and complied with all terms and conditions herein required to be performed or complied with by it on or prior to the date of such Requisition, and on such date there shall exist no Default or Event of Default.
3. Representations and Warranties. Each of the representations and warranties made by the Borrower in the Funding Loan Documents or otherwise made by or on behalf of the Borrower in connection therewith after the date thereof shall have been true and correct in all respects on the date when made and shall also be true and correct in all material respects on the date of such Requisition (except to the extent of changes resulting from transactions contemplated or permitted by the Funding Loan Documents).
4. No Damage. If the Improvements shall have been materially injured or damaged by fire, explosion, accident, flood or other casualty, such Improvements are able to be and are diligently being restored in accordance with the terms of the Mortgage.
5. Receipt by Funding Lender. The Funding Lender, as well as the Servicer, shall have received:
  - (a) Requisition. A completed Requisition meeting the requirements of this Agreement and the Funding Loan Agreement; and
  - (b) Endorsement to Title Policy. At the time of each advance to update the date of and increase the amount of coverage by the amount of such advance, such endorsements (a "Down Date Endorsement") shall be delivered by the Title Insurer, increasing the coverage under the Title Policy by the amount of the approved Requisition plus the amount of any proceeds of the Funding Loan disbursed from the Capitalized Interest Account of the Project Fund.
6. Foundation Survey; Current Survey. If the Plans and Specifications provide for construction of the foundations, including expansion or modification of existing foundations, within thirty (30) days after completion of renovation of the foundations of the Improvements, a survey certified by a registered engineer or surveyor showing that the foundations are located within the perimeter of the Land and any set back lines and at the location shown on the Plans and Specifications, and from time to time. An updated Survey if required by the Title Company or the Servicer.
7. Approval by Engineering Consultant. Approval of the Requisition for such disbursement by the Engineering Consultant, accompanied by a certificate or report from the Engineering Consultant to the effect that in its opinion, based on site observations and submissions by the Contractor, the renovation of the Improvements to the date thereof was performed in a good and workmanlike manner and in accordance with the Plans and Specifications, stating the estimated total cost of renovation of the Improvements, stating the percentage of in-place renovation of the Improvements, and stating that the remaining non-disbursed portion of the Project Fund and Required Equity Funds allocated for such purpose in the Development Budget is adequate to complete the renovation of the Improvements;
8. Contracts. Evidence that one hundred percent (100%) of the cost of the remaining Work is covered by firm fixed price or guaranteed maximum price contracts or subcontracts, or orders for the supplying of materials, with contractors, subcontractors, materialmen or suppliers satisfactory to the Funding Lender, and that the Payment and Performance Bonds have been obtained, as required.
9. Mechanics' Liens. The Funding Lender or the Servicer may withhold or refuse to fund any advance hereunder if any mechanic's lien has been filed or recorded and not bonded over or otherwise collateralized to the satisfaction of the Funding Lender, or if notice of intention to record or file any such lien has been received.

10. Lien Waivers. No sums shall be disbursed until the Borrower has delivered a waiver or full, conditional or partial release of liens from all contractors, subcontractors, materialmen or others who may be entitled to a lien, as permitted by law for the Work supplied or materials provided and for which payment is requested, and with respect to all contractors, subcontractors, materialmen or others entitled to a lien for work done or materials provided and paid from any prior advance funded by reliance on conditional lien waivers, on unconditional waiver or release of lien with respect to such Work.
11. Required Equity Funds. All installments of Required Equity Funds which shall be then due and payable under the Partnership Agreement shall have been deposited with the Fiscal Agent.
12. Release of Retainage. In addition to the conditions set forth in this Section, the Servicer's obligation to approve any Requisition for Retainage shall be subject to receipt by the Funding Lender and the Servicer of the Engineering Consultant's certification of completion as to the Work performed under any contract or subcontract for which the Retainage will be disbursed.
13. Loan Rebalancing. The Servicer shall not be obligated to authorize any further advances until the requirements of Section 6.32 of this Agreement have been satisfied.
14. Material Change Orders. No Material Change Order shall have been made without the written approval of the Funding Lender.

**SCHEDULE 8**  
**FORM OF COMPLETION CERTIFICATE**

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

KeyBank National Association, as Servicer  
1140 19th Street NW, Suite 600  
Washington, DC 20036

Deutsche Bank Securities Inc.  
1 Columbus Circle  
New York, New York 10119

Re: Renovation of Woodway Square, 240-units in Austin, Texas (the “Project”)

Ladies and Gentlemen:

The undersigned, being the owner of the Project, hereby certifies to Deutsche Bank Securities Inc., as Funding Lender (the “Funding Lender”), and KeyBank National Association, as Servicer, that “Final Completion” of the Project (as defined in the Funding Loan Agreement dated as of [CLOSING MONTH] 1, 2023 (the “Funding Loan Agreement”) by and among the Funding Lender, the Fiscal Agent and Austin Housing Finance Corporation (the “Governmental Lender”)) has been attained as of the date hereof and all conditions relating thereto as set forth in the Borrower Loan Agreement dated as of [CLOSING MONTH] 1, 2023, between the undersigned and the Governmental Lender (the “Borrower Loan Agreement”) have been satisfied. Capitalized terms used herein and not defined shall have the meanings ascribed thereto in the Funding Loan Agreement or the Borrower Loan Agreement, as may be applicable.

The undersigned hereby represents and warrants that:

1. Attached hereto is an original, executed Architect’s certificate as required by clause (iv) of the definition of “Final Completion” contained in the Funding Loan Agreement.
2. Attached hereto are true, complete and correct copies of all use and occupancy permits issued in connection with the Project (the “Permits”) as referenced in clause (ii) of the definition of “Final Completion” contained in the Funding Loan Agreement. The Permits are all of the permits, licenses or approvals required for the occupancy of the Project as a multifamily residential facility. No appeal, action or proceeding challenging any of the Permits has been filed; there is no pending claim, litigation or governmental proceeding challenging the Permits.
3. Attached hereto is a complete schedule of all Punchlist Items referenced in clause (ii) of the definition of “Final Completion” contained in the Funding Loan Agreement. This schedule of Punchlist Items meets the requirements and limitations set forth in the Borrower Loan Agreement for Punchlist Items. The undersigned will promptly complete all Punchlist Items.
4. Attached are lien waivers required by clause (vii) of the definition of “Final Completion” contained in the Funding Loan Agreement.
5. Attached hereto is an endorsement down dating the Title Policy insuring the Mortgage in favor of the Funding Lender, subject only to Permitted Encumbrances, as required by clause (ix) of the definition of “Final Completion” contained in the Funding Loan Agreement.

6. [Attached hereto is an as-built ALTA/ACSM Urban Class Survey, certified to the Funding Lender and the Servicer and meeting the requirements of clause (x) of the definition of “Final Completion” contained in the Funding Loan Agreement.]

7. Attached hereto is evidence of completion of the Environmental Completion Conditions, if any.

8. Attached hereto is evidence of insurance meeting the requirements of Section 6.4 of the Borrower Loan Agreement.

9. Attached hereto is evidence of payment of all Impositions which are due and payable.

**AUSTIN LEASED HOUSING ASSOCIATES VI,  
LIMITED PARTNERSHIP**  
a Texas limited partnership

By: OTM Woodway Square GP, LLC,  
a Texas limited liability company  
its General Partner

By: On Track Ministries, Inc.,  
a Texas non-profit corporation  
its Sole Member

By: \_\_\_\_\_  
Name: Cliff McDaniel  
Title: President

Accepted and agreed to by:

**DEUTSCHE BANK SECURITIES INC.,**  
as Funding Lender

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

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

## **Schedule of Attachments to Completion Certificate**

Architect's Completion Certificate

Occupancy Permits

Schedule of Punchlist Items

Lien Waivers

Endorsement to Title Policy

[As-Built Survey]

Insurance Certificates

Evidence of Payment of Impositions

[Evidence of Satisfaction of Environmental Completion Conditions]

**SCHEDULE 9**  
**FORM OF USE OF PROCEEDS CERTIFICATE**

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

KeyBank National Association, as Servicer  
1140 19th Street NW, Suite 600  
Washington, DC 20036

Deutsche Bank Securities Inc.  
1 Columbus Circle  
New York, New York 10119

Re: Woodway Square (the “Project”)

Ladies and Gentlemen:

The undersigned, being the owner of the Project hereby certifies to Deutsche Bank Securities Inc., as Funding Lender (the “Funding Lender”), and KeyBank National Association, as Servicer, that [(i)] no less than 95% of the Net Proceeds of the Tax-Exempt Governmental Note have been spent for Qualified Project Costs of the Project as required by Section 142(a) of the Internal Revenue Code (attached hereto is a schedule of expenditures showing all costs of the Project, the amounts expended for each category of cost, the source of funds therefor, and a calculation of the percentage of the net proceeds of the Governmental Note expended in compliance with the requirements of the Internal Revenue Code); [and (ii) the undersigned has expended, within two (2) years of the later of the date the Project were acquired or the date of delivery of the Governmental Note, from proceeds of the Governmental Note or other sources, an amount equal to at least 15% of the “portion of the cost of acquiring such building (and equipment) financed with the net proceeds of the Governmental Note” for “rehabilitation expenses” within the meaning of Section 147(d) of the Code.] Capitalized terms used herein and not defined shall have the meanings ascribed to such terms in the Funding Loan Agreement dated as of [CLOSING MONTH] 1, 2023, between the Funding Lender and the Austin Housing Finance Corporation.

*[Signature on Following Page]*

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

**AUSTIN LEASED HOUSING ASSOCIATES VI  
LIMITED PARTNERSHIP**

a Texas limited partnership

By: OTM Woodway Square GP, LLC,  
a Texas limited liability company  
its General Partner

By: On Track Ministries, Inc.,  
a Texas non-profit corporation  
its Sole Member

By: \_\_\_\_\_  
Name: Cliff McDaniel  
Title: President

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

Evidence of Use of Proceeds

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**SCHEDULE 10**  
**FORM OF STABILIZATION CERTIFICATE**

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

KeyBank National Association, as Servicer  
1140 19th Street NW, Suite 600  
Washington, DC 20036

Deutsche Bank Securities Inc.  
1 Columbus Circle  
New York, New York 10119

Re: Woodway Square (the "Project")

Ladies and Gentlemen:

The undersigned, being the owner of the Project, hereby certifies to Deutsche Bank Securities Inc., as Funding Lender (the "Funding Lender") and KeyBank National Association, as Servicer, that the date of Stabilization was \_\_\_\_\_, 20\_\_ and:

The undersigned hereby represents and warrants that:

1. The Improvements have been [at least 90]% occupied by qualified tenants meeting the requirements of the Funding Loan Documents in each of the prior three (3) consecutive months.
2. The ratio of Stabilized NOI in each of the prior three (3) consecutive months to maximum principal, interest, Governmental Lender Fee and Fiscal Agent fees payable in any month (other than the month in which the Maturity Date occurs) on the amount of the Borrower Note outstanding is 1.15 to 1.0.
3. No Event of Default or event which, with the passage of time or the giving of notice or both, would constitute an Event of Default has occurred and be continuing under the Funding Loan Documents, the General Partner Pledge, the Developer Fee Pledge or the Guarantor Documents.
4. The amount on deposit in the Operating Reserve Fund is no less than the Operating Reserve Fund Requirement.
5. The Borrower has at all times been and is currently in compliance with all requirements set forth in the Regulatory and Land Use Restriction Agreement.
6. The Taxable Governmental Note has been prepaid in [full/part] in accordance with the provisions of Section 7(b)(vii) of the Taxable Borrower Note.
7. The Tax-Exempt Governmental Note has been prepaid in part to the extent required by the Funding Lender in accordance with the provisions of Section 7(b)(iii) of the Borrower Note.
8. The Borrower has deposited \$[TBD] into the Tax and Insurance Escrow Fund, as required by Section 8.2(a) of the Borrower Loan Agreement.

9. The Borrower shall have delivered the final complete use of proceeds and completion certificates in the form required under the Borrower Loan Agreement.

10. Stabilization [has/has not] occurred.

11. Attached hereto is \_\_\_\_\_ showing the calculation of Stabilization.

Capitalized terms used herein and not defined shall have the meanings ascribed thereto in the Funding Loan Agreement dated as of \_\_\_\_\_ 1, 20\_\_ between the Funding Lender and [Name of Governmental Lender].

**AUSTIN LEASED HOUSING ASSOCIATES VI,  
LIMITED PARTNERSHIP**  
a Texas limited partnership

By: OTM Woodway Square GP, LLC,  
a Texas limited liability company  
its General Partner

By: On Track Ministries, Inc.,  
a Texas non-profit corporation  
its Sole Member

By: \_\_\_\_\_  
Name: Cliff McDaniel  
Title: President

Accepted and agreed to by:

**DEUTSCHE BANK SECURITIES INC.,**  
as Funding Lender

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

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

## Stabilization Spreadsheet

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**SCHEDULE 11**  
**ANNUAL EXPENSES**

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## **SCHEDULE 12**

### **INITIAL INSURANCE REQUIREMENTS**

The Project must be continuously covered by acceptable property insurance policies meeting the minimum requirements described below. This is a general outline of the insurance coverages required by the Funding Lender, additional coverage may be required at the Funding Lender's discretion.

The named insured in each policy must be the Borrower.

All policies must be written on a per occurrence basis except for boiler and machinery which may be written on a per-accident basis. Each policy must have a cancellation provision requiring the carrier to notify the Funding Lender and the Servicer at least 30 days in advance of any policy reduction or cancellation for any reason.

Use of an Acord form 28, 27 or other form are acceptable as temporary evidence of coverage provided the form states "This is evidence that insurance as identified below has been issued, is in force, and conveys all the rights and privileges afforded under the policy" and uses a cancellation clause section "Should the policy be terminated, the company will give the additional interest identified below 30 days written notice, and will send notification of any changes to the policy that would affect that interest, in accordance with the policy provisions or as required by law" Use of an Acord form stating "...matter of information only..." and "...the issuing insurer will endeavor to mail notice..." are unacceptable.

Blanket Insurance policies are acceptable but must comply with certain requirements. Please see the Blanket Insurance section for details on page S13-15.

Terrorism coverage is required for property and general liability and excess/umbrella coverage unless the Funding Lender grants prior written waiver and must meet the same requirements under the property, general liability and excess/umbrella coverage requirements provided in the sections following.

Each Policy must be for a term of not less than one year. All existing or new policies must be paid in full and cannot be financed.

## Carrier Rating Requirement

Each insurance carrier providing property damage and/or liability insurance, whether admitted or non-admitted, must fall into one of the acceptable Financial Size Categories and meet the applicable minimum Financial Strength Rating for A.M. Best and, if the aggregate carrier exposure is greater than \$25 million, the minimum rating from one of the following: Fitch, Inc. Standard & Poor's Rating Services, or Moody's Investors Service. Details are in the chart below:

Aggregate Carrier Exposure	Minimum A.M. Best Financial Strength Rating	AND	Minimum A.M. Best Financial Size Category	AND	Minimum Rating from Fitch Inc., Standard & Poor's Rating Services, or Moody's
Less than \$5 million	A-	AND	VII	N/A	Not applicable
Greater than \$5 million & Less than \$25 million	A-	AND	VIII	N/A	Not applicable
Greater than \$25 million	A-	AND	IX	AND	A- or its equivalent by Fitch Inc.  A- or its equivalent by Standard & Poor's Ratings Services  A3 or its equivalent by Moody's Investors Service Inc.

Standard insurance carrier rating requirements and minimum financial size categories are based on the aggregate carrier exposure, which is defined in the chart below.

**Aggregate Carrier Exposure (for each individual carrier)**

**Property Damage (“All Risk”) Insurance**

Insurance Type		
Property damage insurance	Specific Insurance or policy for one property	Required building coverage limits + required Business Income/Rental Value Insurance
	Blanket Insurance or master program from one carrier	Blanket Insurance or master program limit
	An individual policy, Blanket Insurance or master program with more than one carrier participating with layered limits	Total limit provided by the carrier in all layers in which the carrier participates
Liability Insurance	Specific Insurance or policy for one Property	Total aggregate limits (general liability + excess/umbrella)
	Liability insurance for multiple properties, or master program from one carrier	Total aggregate limits (general liability + excess/umbrella)
	An individual policy, liability insurance policy for multiple properties or master program with more than one carrier participating with layered limits	Total limit provided by the carrier in all layers in which the carrier participates
<b>What’s Required?</b>	“All Risk” or Cause of Loss-Special Form which includes an agreed value clause or no-coinsurance provision and inflation guard endorsement (where available).	
<b>When Does it Apply?</b>	All property types.	
<b><u>Maximum Deductible</u></b>	<b>Replacement Cost</b>	<b>Maximum Deductible*</b>
	Less than \$10 million	\$50,000
<b><u>Maximum Deductible for Blanket Insurance</u></b>	Equal to or greater than \$10 million	\$75,000
	<b>Aggregate Replacement Cost of the covered properties</b>	<b>Maximum Per Occurrence Deductible*</b>
	Equal to or less than \$5 million	\$50,000
	Greater than \$5 million but less than \$7.5 million	\$75,000
	Greater than \$7.5 million	One percent of the aggregate Replacement Cost of the covered properties, to a maximum deductible of \$250,000

<b>Amount of Coverage</b>	<p>100% Replacement cost coverage. Replacement cost must be certified annually. The most common resources to determine the estimated replacement cost of the property may include one of the following resources:</p> <p><b>Insurance Company</b>-the replacement cost estimate provided by the insurance company that has underwritten or will underwrite the property damage insurance.</p> <p><b>Appraiser</b>-a qualified commercial real estate appraiser experienced in the market</p> <p><b>Contractor</b>-reputable commercial contractor with experience constructing and/or reconstructing properties in the area similar for the Project</p> <p><b>Third Party Vendor</b>-a third party vendor that specializes in replacement cost calculations or publishes data used for this purpose</p>
<p>* A higher deductible may be available if certain qualifications are met. Contact the Funding Lender for list of criteria.</p>	

**Boiler and Machinery Insurance**

<b>What's Required?</b>	Boiler and Machinery Insurance	
<b>When Does it Apply?</b>	Properties with a central HVAC system where steam boilers and/or other pressurized systems are in operation and are regulated by the State where the property is located. The insurance must cover loss or damage from explosion of steam boilers, pressure vessels and/or other steam equipment now or installed at a later date.	
<b>Amount of Coverage</b>	Replacement cost of the building housing the central HVAC system, including the replacement cost of the central HVAC system. If coverage is provided by a different carrier than the property damage policy a joint loss agreement is required by both policies.	
<b>Maximum Deductible</b>	<b>Replacement Cost of the Property</b>	<b>Maximum per occurrence deductible</b>
	Less than \$10 million	\$50,000
	Equal to or greater than \$10 million	\$75,000
<b>Maximum Deductible for Blanket Insurance</b>	<b>Aggregate Replacement Cost of the covered properties</b>	<b>Maximum per occurrence deductible</b>
	Equal to or less than \$5 million	\$50,000
	Greater than \$5 million but less than \$7.5 million	\$75,000
	Greater than \$7.5 million	One percent of the aggregate Replacement Cost of the covered properties to a maximum deductible of \$250,000

**Business Income/Rent Loss Coverage**

<b>What's Required?</b>	Business Income/Rental Value Insurance, if the business income/rental value insurance is not included in the primary or other property damage policy (for example, it may not be included in the coverage provided by a flood, earthquake, or windpool insurance policy), a separate policy must be obtained to include business income/rental value for such covered losses.	
<b>When Does it Apply?</b>	All property types.	
<b>Amount of Coverage</b>	<b>UPB (unpaid principal balance) and number of stories</b>	<b>Minimum number of months of anticipated gross income</b>
	Mortgages with improvements of 5 stories or more above grade, regardless of UPB	18
	Mortgages with a UPB of \$50 million or greater	18
	All other mortgages	12
<b>Extended Period of Indemnity required</b>	<b>UPB and number of stories</b>	<b>Minimum extended period of indemnity</b>
	Mortgages with improvements of 5 stories or more above grade, regardless of the UPB	90 days
	All other mortgages with a UPB of \$25 million or greater	90 days
	All other mortgages	None required
<b>Maximum Deductible</b>	72 hours	

**Earthquake Insurance**

<b>What's Required?</b>	<b>Earthquake Insurance</b>
<b>When Does it Apply?</b>	Project located in a seismic zone 3 or 4 with a PML of 20% or greater.
<b>Amount of Coverage</b>	See section regarding Earthquake Insurance page S13-20.
<b>Maximum Deductible</b>	See section regarding Earthquake Insurance page S13-20.

**Flood Insurance**

<b>What's Required?</b>	Flood Insurance	
<b>When Does it Apply?</b>	Flood insurance is required for Project having improvements located in an area identified as a Special Flood Hazard Area (SFHA).	
<b>Amount of Coverage</b>	100% of the full replacement cost. If 100% of the full replacement cost exceeds NFIP coverage limit, additional flood insurance from another insurer is required. Business Income/Rental Value Insurance is also required.	
<b>Deductible for NFIP coverage</b>	Must comply with NFIP deductible for the type of improvement insured.	
<b>Maximum Deductible for private flood insurance</b>	<b>Property replacement cost</b>  Less than \$10 million  Equal to or greater than \$10 million	<b>Maximum deductible</b>  \$50,000  \$75,000
<b>Maximum Deductible for flood insurance under Blanket Insurance</b>	<b>Aggregate Replacement Cost of the covered properties</b>  Equal to or less than \$5 million  Greater than \$5 million but less than \$7.5 million  Greater than \$7.5 million	<b>Maximum per occurrence deductible</b>  \$50,000  \$75,000  One percent of the aggregate Replacement Cost of the covered properties to a maximum deductible of \$250,000

**Ordinance and Law Coverage**

<b>What's Required?</b>	Ordinance and Law Coverage
<b>When Does it Apply?</b>	All property types that represent nonconforming uses under current building, zoning, or land use laws or ordinances.
<b>Amount of Coverage</b>	<ol style="list-style-type: none"><li>1. Loss of Undamaged Portion of the Building-full replacement cost less the damage threshold of the local building ordinance. If threshold is not available, 100% of the full replacement cost of the Project.</li><li>2. Demolition Cost-estimated full demolition expense of the single largest building, or 10% of full replacement cost.</li><li>3. Increased Cost of Construction-no less than 10% of full replacement cost.</li></ol>
<b>Loss of Income</b>	Business Interruption/Rent Loss must be endorsed to cover income/rent loss arising out of the increased time necessary to repair or rebuild.

### Windstorm Coverage

What’s Required?	If the “All Risk” property damage insurance excludes wind-related events, a separate windstorm insurance policy must be obtained meeting the same requirements as the Property Damage (“All Risk”) Insurance. If coverage is provided by a state windpool policy, see State Windpool Policy Requirements on page S13-19.	
When Does it Apply?	Required for all properties.	
Amount of Coverage	100% of replacement cost, either not contain a coinsurance clause or contain a coinsurance clause that is offset or suspended by an Agreed Amount endorsement. If an Agreed Amount endorsement is used the Agreed Amount must be equal to replacement cost.	
For properties in Florida and for all other East Coast and Gulf Coast Properties located within 50 miles of the coast, the maximum deductible per occurrence is 5 percent of the Replacement Cost of the covered properties.		
Maximum Deductible	Property replacement cost  Less than \$10 million  Equal to or greater than \$10 million	Maximum Deductible  \$50,000  \$75,000
Maximum Deductible for Blanket Insurance	Aggregate Replacement Cost of the covered properties  Equal to or less than \$5 million  Greater than \$5 million but less than \$7.5 million  Greater than \$7.5 million	Maximum per occurrence deductible  \$50,000  \$75,000  One percent of the aggregate Replacement Cost of the covered properties to a maximum deductible of \$250,000

**Commercial Liability Insurance**

<b>What's Required?</b>	Minimum coverage of \$1 million per occurrence and \$2 million in the annual aggregate <u>in addition to</u> excess/umbrella coverage as indicated below.		
<b>When Does it Apply?</b>	All property types. If a property contains any special hazard that is excluded from the CGL or other liability policy, such as garage operation or swimming pool, supplemental coverage for the hazard must be obtained.		
<b>Maximum Deductible</b>	The maximum deductible or SIR or combined deductible and SIR for all forms of individual liability insurance is \$35,000 per occurrence. The maximum deductible or SIR or combined deductible and SIR for multiple properties is \$50,000 per occurrence.		
<b>Amount of Coverage in the annual aggregate for <u>one</u> property</b>	<b>Number of stories</b>	<b>UPB</b>	<b>Minimum per occurrence and annual aggregate</b>
	1 to 3	Equal to or less than \$3 million	None required
	1 to 7	Greater than \$3 million	\$1 million per story
	8 or more	Greater than \$3 million	\$8 million
<b>Amount of Coverage in the annual aggregate for <u>more than one</u> property</b>	<b>Number of properties covered by the policy</b>	<b>Maximum number of stories in any of the covered properties</b>	<b>Minimum umbrella or excess liability in Millions</b>
	2 to 3	3	\$3
	2 to 3	Greater than 3	\$10
	4 to 5	3	\$5
	4 to 5	Greater than 3	\$12
	6 to 10	3	\$7
	6 to 10	Greater than 3	\$15
	11 to 19	3	\$9
	11 to 19	Greater than 3	\$20
	20 or more	3	\$15
	20 or more	Greater than 3	\$30

**Liability Insurance Requirements for Seniors Housing Properties**

<b>What's Required?</b>	<p>Minimum coverage of \$1 million per occurrence and \$2 million in the annual aggregate <u>in addition to</u> excess/umbrella coverage as indicated below.</p> <p>Policy may be written on a “claims made” or “an occurrence-based” policy. If coverage is changed from a “claims made” policy to an “occurrence-based” policy the Borrower must obtain the prior approval of the Funding Lender.</p>	
<b>Assisted Living Residences, Properties with Assisted Living Care, and Properties that provide Skilled Nursing, Alzheimer’s Disease or Dementia Care</b>	<b>Number of licensed beds</b>  Less than or equal to 100 beds  Greater than 100 but less than or equal to 500  Greater than 500 but less than or equal to 1,000  Greater than 1,000	<b>Minimum per claim/occurrence</b>  \$1 million  \$5 million  \$10 million  \$25 million
<b>Maximum Deductible</b>	Maximum \$100,000 deductible or Self Insured Retention.	
<b>Additional Insured</b>	Fiscal Agent is not to be named as an additional insured on professional liability insurance policies.	

**Vehicle Liability Insurance**

When Does it Apply?	If the Borrower owns, leases, hires, rents, borrows, uses or has another use on its behalf a vehicle in conjunction with the operation of the Project.
Amount of Coverage	\$1 million per accident.

**Cooperative Fidelity Bond/Crime Insurance**

<b>What's Required</b>	Maintain fidelity bond/crime insurance coverage for the Co-op's employees, officers and board members.
<b>When Does it Apply?</b>	Cooperative Corporations.
<b>Amount of Coverage</b>	Two times the monthly gross association fee plus reserves or Six times the monthly gross association fee.
<b>Maximum Deductible</b>	\$25,000

**Cooperative Directors and Officers Liability Insurance**

<b>What's Required</b>	Maintain directors' and officers' liability insurance.
<b>When Does it Apply?</b>	Cooperative Corporations.
<b>Amount of Coverage</b>	\$1 million per occurrence.
<b>Maximum Deductible</b>	\$25,000

**Builder's Risk Insurance**

<b>What's Required?</b>	Builder's Risk Insurance	
<b>When Does it Apply?</b>	Required for any additions, alternations, rehabilitations, new construction or repairs to the Project during any construction. Amount equal to 100% of contracts and materials. Requirement may be met with either an extension of the standard property damage insurance policy or a separate Builder's Risk policy.	
<b>Amount of coverage</b>	Coverage must be at least 100% of the sum of the contract or contracts and all materials to complete the work. Policy must cover fire and other perils within the scope of a policy known as a "Causes of Loss-Special Form" or "All Risk" policy.	
<b>Maximum Deductible</b>	<b>Replacement Cost of the property</b>  Less than \$10 million  Equal to or greater than \$10 million	<b>Maximum per occurrence deductible</b>  \$50,000  \$75,000
<b>Maximum Deductible for Blanket Insurance</b>	<b>Aggregate Replacement Cost of the covered properties</b>  Equal to or less than \$ 5 million  Greater than \$5 million but less than \$7.5 million  Greater than \$7.5 million	<b>Maximum per occurrence deductible</b>  \$50,000  \$75,000  One percent of the aggregate Replacement Cost of the covered properties to a maximum deductible of \$250,000

### Localized Perils Insurance

<b>What's Required?</b>	Sinkhole, mine subsidence, volcanic eruption or avalanche insurance	
<b>When Does it Apply?</b>	For a property located in an area prone to localized perils, such as sinkhole, mine subsidence, volcanic eruption and avalanche. Sinkholes are particularly common in Florida, mine subsidence may occur in any location where there is, or has been, subterranean mining, but is particularly common in Pennsylvania, Ohio, Illinois and Colorado.	
<b>Amount of Coverage</b>	100% Replacement Cost of the buildings affected by the localized peril	
<b>Maximum Deductible</b>	<b>Replacement Cost of the property</b>  Less than \$10 million  Equal to or Greater than \$10 million	<b>Maximum per occurrence deductible</b>  \$50,000  \$75,000
<b>Maximum Deductible for Blanket Insurance</b>	<b>Aggregate Replacement Cost of the covered properties</b>  Equal to or less than \$ 5 million  Greater than \$5 million but equal to or less than \$7.5 million  Greater than \$7.5 million	<b>Maximum per occurrence deductible</b>  \$50,000  \$75,000  One percent of the aggregate Replacement Cost of the covered properties to a maximum deductible of \$250,000

### Sewer and Drain Insurance

<b>What's Required?</b>	Sewer and drain backup insurance
<b>When Does it Apply?</b>	If the Project are prone to periodic sewer or drain back-ups caused by ground water, public or private water systems or public sewers external to the Project.
<b>Amount of Coverage and Deductible</b>	Must be consistent with coverage obtained by other lenders in the area.

## **Blanket Insurance Guidelines**

### ***Blanket Insurance with related Borrowers***

The following are acceptable to determine, support and document that the limits of the blanket insurance policy are appropriate for the insurable value of the Borrower's portfolio:

- ☐ The Borrower has provided a Probable Maximum Loss (PML) analysis that addresses the insurable value/risk of its portfolio.
- ☐ The Borrower has provided a statement of values that identifies whether its portfolio has insurable value concentrated in geographical locations or concentrated with respect to any given insurable peril.

If the Borrower does not provide a PML or a statement of values as indicated above, the Funding Lender must determine, support and document that the limit provide by the blanket insurance policy is satisfactory. The Borrower shall submit to the Funding Lender and the Servicer a statement of values from, prepared by the Borrower or the insurance company issuing the policy. Such a statement of values should include:

- ☐ The replacement cost and address of each covered property
- ☐ Complete street address for covered properties
- ☐ A list of any properties that are contiguous to other covered properties
- ☐ The number of stories in each covered property
- ☐ Other data relevant to the coverage limits in the blanket insurance policy

In assessing the adequacy of the coverage, the Funding Lender shall consider all of the following guidelines to determine if the property damage insurance coverage provided by the blanket insurance policy is adequate for the subject property and the other properties covered by the blanket insurance policy.

The guidelines below apply to all required property damaged overage that is being provided by a blanket insurance policy, including catastrophic perils such as windstorm, windstorm-related perils, named storms, flood and earthquake.

The per occurrence limit of the blanket insurance policy should, at a minimum, cover 40% of the replacement cost of all properties covered by the policy. Depending on the geographically disbursement of the properties, the physical perils in the area, the number of properties covered and/or other risk factors observed, the per occurrence limit may approach 90%. For example, if the policy covers properties with a replacement cost of \$100 million, generally the minimum coverage should be no lower than \$40 million while the per occurrence limit may approach \$90 million if these is high concentration of properties in an area subject to a catastrophic peril.

The per occurrence limit of the blanket insurance policy must be no less than the largest replacement cost exposure covered by the limit of the blanket insurance policy. Additional coverage, greater than the largest property, may also be appropriate.

Contiguous properties or properties in close proximity to each other should be covered for at least 90% of the total replacement cost. For example, two \$50 million properties next to each other should, at a

minimum, be covered with a per occurrence limit of \$90 million. Properties that are 10 or 20 miles (or more) apart may also be considered to be in close proximity to each other if they are located in an area that is prone to hurricanes or another peril that could impact multiple properties that are miles apart. The definition of “close proximity” varies based on the peril covered. Properties that are contiguous, including those that are across the street from each other, must be considered to be in close proximity for most perils.

If the properties are widely dispersed throughout the country (less than 25% concentration in any one Metropolitan Statistical Area (MSA) and a large percentage of the properties are not subject to high-risk factors such as windstorm, windstorm related perils, named storms, flood damage or other perils, a blanket insurance policy covering 40% to 50% of the replacement cost of all assets may be acceptable.

If the properties are concentrated in one MSA, for example, if 25% or more of the assets are in Kansas City, the coverage should increase to account for the concentration of assets in that MSA plus any risks specific to that MSA (such as tornados). If assets are concentrated in more than one MSA (for example, if 30% of the assets are in Kansas City and 35% percent are in Topeka), coverage should again compensate for those risks (such as tornados) in addition to concentration risk.

The coverage provided by the blanket insurance policy should increase:

- ☐ If the assets are concentrated in a compact MSA, such as New Orleans

Based on the physical perils in a specific geographic region, for example:

- ☐ Properties on the Atlantic and Gulf Coasts are at a high risk of damage from windstorm and/or windstorm perils and/or named storms
- ☐ Properties in New Orleans are at a high risk of flood damage, windstorm and/or wind related perils and/or named storms
- ☐ Properties in southern California are at a high risk from brush fires

Based on the number of covered assets (the greater the number of properties covered by the policy, the lower the percentage of coverage in relation to the replacement cost of all assets, as the risk of loss is more widely dispersed. For example, a blanket insurance policy covering 100 properties will typically have a lower percentage of coverage than a policy covering 50 properties).

The coverage provided by the blanket insurance policy should increase if the Funding Lender believes additional coverage is appropriate for the circumstances.

In addition, the Borrower may also obtain coverage for the following types of insurance under a limit provided by the blanket insurance policy.

- ☐ Business Income/Rental value insurance
- ☐ Boiler and machinery insurance
- ☐ Ordinance and law insurance

The coverage under these insurance policies must meet the requirements of the other applicable sections.

However, if the coverage is provided with a blanket insurance policy, the Borrower should, at a minimum, have business income/rental value insurance coverage for no less than the per occurrence percentage

determined for the property damage insurance above. For example, if the Funding Lender determines that a per occurrence limit for property damage insurance of 50% of the replacement cost of all properties covered is appropriate, then the limit for business income/rental value insurance should be no less than 50% of the anticipated gross income for all properties covered.

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***Blanket Insurance with unrelated Borrowers***

Some blanket insurance or master program property damage insurance may be purchased by unrelated borrower, borrower principals, or entities covering unrelated properties. This includes blanket insurance policies that are written for properties and borrowers, borrower principals or entities that are only related through the relationship with the property management company. This is perceived as additional risk in the blanket insurance policies for these properties and requires the Funding Lender to carefully analyze these policies to determine if the Project are adequately insured.

We must obtain the following information to help in assessing the adequacy of the property damage insurance provided by this type of blanket insurance policy for unrelated entities:

- ☐ Name and address of the insurance company or companies
- ☐ Carrier ratings of the insurance company or companies
- ☐ The per occurrence limit and any sublimits (plus coverage by layer, if applicable)
- ☐ Address and replacement cost of the Project
- ☐ Address and replacement cost of other properties controlled by the same borrower or borrower principal that are insured under this policy
- ☐ City, state, zip code and replacement cost of all other properties that are covered under the policy
- ☐ Number of stories in each property
- ☐ Per occurrence limit/cap for the policy
- ☐ Deductibles
- ☐ Number of borrowers, borrower principals and entities insured

### **State Windpool Policy Requirements**

#### **Windstorm insurance through a State Windpool**

The following requirements in 1, 2 or 3 below must be met if windstorm coverage can only be obtained from a State Windpool:

1. If the policy issued by the State Windpool does not contain a coinsurance clause, the policy must be written with replacement cost coverage in an amount equal to 100% replacement of the replacement cost of the insurable improvements without any deduction for depreciation.
2. If the policy issued by the State Windpool contains a coinsurance clause that is offset or suspended by an agreed amount provision:
  - ☐ The policy must be written with replacement cost coverage in an amount equal to 100% of the replacement cost of the insurable improvements without any deduction for depreciation and
  - ☐ The agreed amount must equal the replacement cost
3. If the policy issued by the State Windpool contains a coinsurance clause that is not offset or suspended by an agreed amount endorsement provision, then all of the following are required:
  - ☐ The policy must be written with replacement cost coverage in an amount equal to 100% of the replacement cost of the insurable improvements without any deduction for depreciation
  - ☐ The replacement cost estimate must meet the requirements for the guide
  - ☐ The replacement cost estimate must be dated within 12 months of the request for coinsurance
  - ☐ The policy must contain a coinsurance clause less than or equal to 90% (such as 70% or 80%)

In addition, the guarantor must sign an additional guaranty of any losses incurred by the Fiscal Agent associated with the Borrower's failure to maintain the required windstorm coverage.

If business income/rental value insurance is not included in the State Windpool insurance policy, a separate business income/rental value insurance policy for windstorm coverage must be obtained.

## **Earthquake Insurance Requirements**

### **Earthquake Insurance**

If the Project are located in a Seismic Risk Zone 3 or 4 and the PML is greater than 20% but less than or equal to 40%, earthquake insurance is required. For Project for which earthquake insurance is required, the coverage must be the greater of \$1 million or 150% of the difference between the projected loss for the Project using the actual PML and the projected loss with a 20% PML. A reserve account may be required for certain deductibles based on the Borrower's equity and the maximum deductible.

The Borrower will be required to obtain separate business income/rental value insurance and ordinance and law coverage if earthquake insurance does not provide that coverage for earthquake damage.

For example:

Replacement cost for the property=\$30 million

Actual PML=30%

Minimum required earthquake insurance=\$4.5 million

Replacement Cost X Actual PML	\$30 million X 30%	=	\$9 million
Replacement Cost X 20%	\$30 million X 20%	=	\$6 million
			\$3 million
Difference X 150%	\$3 million X 150%	=	\$4.5 million

### **Maximum Deductibles**

<b>Borrower Equity</b>	<b>Maximum Deductible</b>  (a reserve account may be required for certain deductibles)	<b>Reserve Account</b>
Equal to or less than 30%	5% of coverage	Not required
Equal to or less than 30%	10% of coverage	Required for 5% of the coverage amount
Equal to or less than 30%	15% of coverage	Required for 10% of the coverage amount
Greater than 30%	15% of coverage	Not required