

## RESOLUTION NO. 22-024

RESOLUTION AUTHORIZING AND APPROVING THE ISSUANCE, SALE AND DELIVERY OF TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS MULTIFAMILY HOUSING MORTGAGE REVENUE BONDS (UNION ACRES PROJECT) SERIES 2022; APPROVING THE FORM AND SUBSTANCE AND AUTHORIZING THE EXECUTION AND DELIVERY OF DOCUMENTS AND INSTRUMENTS PERTAINING THERETO; AUTHORIZING AND RATIFYING OTHER ACTIONS AND DOCUMENTS; AND CONTAINING OTHER PROVISIONS RELATING TO THE SUBJECT

WHEREAS, the Texas Department of Housing and Community Affairs (the "Department") has been duly created and organized pursuant to and in accordance with the provisions of Chapter 2306, Texas Government Code, as amended (the "Act"), for the purpose, among others, of providing a means of financing the costs of residential ownership, development, construction and rehabilitation that will provide decent, safe, and affordable living environments for individuals and families of low, very low and extremely low income (as defined in the Act) and families of moderate income (as described in the Act and determined by the Governing Board of the Department (the "Board") from time to time); and

WHEREAS, the Act authorizes the Department: (a) to make mortgage loans to housing sponsors to provide financing for multifamily residential rental housing in the State of Texas (the "State") intended to be occupied by individuals and families of low, very low and extremely low income and families of moderate income, as determined by the Department; (b) to issue its revenue bonds, for the purpose, among others, of obtaining funds to make such loans and provide financing, to establish necessary reserve funds and to pay administrative and other costs incurred in connection with the issuance of such bonds; and (c) to pledge all or any part of the revenues, receipts or resources of the Department, including the revenues and receipts to be received by the Department from such multifamily residential rental development loans, and to mortgage, pledge or grant security interests in such loans or other property of the Department in order to secure the payment of the principal or redemption price of and interest on such bonds; and

WHEREAS, the Board has determined to authorize the issuance of its Multifamily Housing Mortgage Revenue Bonds (Union Acres Project) Series 2022 (the "Bonds") pursuant to and in accordance with the terms of a Trust Indenture (the "Indenture") between the Department and Wilmington Trust, National Association, as trustee (the "Trustee"), for the purpose of providing funds in connection with the financing of the Development (defined below), all under and in accordance with the Constitution and laws of the State; and

WHEREAS, the Department desires to use the proceeds of the Bonds to fund a mortgage loan to Center 818 Cotton Ford Road, LP, a Texas limited partnership (the "Borrower"), in connection with the acquisition, rehabilitation and equipping of a qualified residential rental development described in Exhibit A attached hereto (the "Development") located within the

State and required by the Act to be occupied by individuals and families of low and very low income and families of moderate income, as determined by the Department; and

WHEREAS, the Board, by resolution adopted on October 14, 2021, declared its intent to issue its revenue bonds or notes to provide financing for the Development; and

WHEREAS, the Borrower has requested and received a reservation of private activity bond allocation from the State of Texas; and;

WHEREAS, it is anticipated that the Department, CommunityBank of Texas, N.A., as bond owner (the "Purchaser"), and the Borrower will execute and deliver a Financing Agreement (the "Financing Agreement") pursuant to which (i) the Department will agree to make a mortgage loan funded with the proceeds of the Bonds (the "Loan") to the Borrower to enable the Borrower to finance the acquisition, rehabilitation and equipping of the Development and related costs, and (ii) the Borrower will execute and deliver to the Department a promissory note (the "Borrower Note") in an original principal amount equal to the original aggregate principal amount of the Bonds, and providing for payment of interest on such principal amount equal to the interest on the Bonds and to pay other costs described in the Financing Agreement; and

WHEREAS, it is anticipated that the obligations of the Borrower under the Financing Agreement will be secured by a Construction and Permanent Deed of Trust, Security Agreement, Assignment of Leases and Rents, and Fixture Filing (the "Bond Mortgage") from the Borrower for the benefit of the Department and assigned to the Trustee; and

WHEREAS, the Department's rights (except for certain unassigned rights) under the Indenture, the Financing Agreement, the Borrower Note and the Bond Mortgage will be assigned to the Trustee pursuant to an Assignment of Deed of Trust Documents (the "Assignment") from the Department to the Trustee; and

WHEREAS, with respect to the Bonds, the Board has determined that the Department, the Trustee and the Borrower will execute a Regulatory and Land Use Restriction Agreement (the "Regulatory Agreement") with respect to the Development, which will be filed of record in the real property records of Shelby County, Texas; and

WHEREAS, in order to assure compliance with Section 103 and 141 through 150 of the Code, the Board has determined that the Department, the Trustee and the Borrower will execute a Tax Exemption Certificate and Agreement (the "Tax Exemption Agreement"), in connection with the Bonds, pursuant to which the Department and the Borrower will make certifications, representations and covenants relating to the treatment of the interest on the Bonds as exempt from gross income for federal income tax purposes; and

WHEREAS, capitalized terms used herein and not otherwise defined shall have the meanings ascribed to such terms in the Indenture; and

WHEREAS, the Board has examined proposed forms of (a) the Indenture, the Financing Agreement, the Regulatory Agreement, the Assignment, and the Tax Exemption Agreement (collectively, the "Issuer Documents"), all of which are attached to and comprise a part of this Resolution and (b) the Bond Mortgage and the Borrower Note; has found the form and substance of such documents to be satisfactory and proper and the recitals contained therein to be true, correct and complete; and has determined, subject to the conditions set forth in Article 1, to authorize the issuance of the Bonds, the execution and delivery of the Issuer Documents, the acceptance of the Bond Mortgage and the Borrower Note and the taking of such other actions as may be necessary or convenient in connection therewith;

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BOARD OF THE TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS:

## ARTICLE 1

### ISSUANCE OF BONDS; APPROVAL OF DOCUMENTS

Section 1.1 Issuance, Execution and Delivery of the Bonds. That the issuance of the Bonds is hereby authorized pursuant to the Act, including particularly Section 2306.353 thereof, all under and in accordance with the conditions set forth herein and in the Indenture, and that, upon execution and delivery of the Indenture, the Authorized Representatives of the Department named in this Resolution are each hereby authorized to execute, attest and affix the Department's seal to the Bonds and to deliver the Bonds to the Attorney General of the State (the "Attorney General") for approval, the Comptroller of Public Accounts of the State for registration and the Trustee for authentication (to the extent required in the Indenture), and thereafter to deliver the Bonds to or upon the order of the Purchaser.

Section 1.2 Interest Rate, Principal Amount, Maturity and Price. That (i) the Bonds shall bear interest at a fixed interest rate of 4.25% subject to adjustment as described in the Indenture; provided that in no event shall the interest rate (including any default rate) exceed the maximum interest rate permitted by applicable law; (ii) the aggregate principal amount of the Bonds shall be \$10,100,000; (iii) the final maturity of the Bonds shall occur on June 1, 2039; and (iv) the price at which the Bonds are sold to the Purchaser shall be the principal amount thereof.

Section 1.3 Approval, Execution and Delivery of the Indenture. That the form and substance of the Indenture are hereby approved, and that the Authorized Representatives are each hereby authorized to execute the Indenture, and to deliver the Indenture to the Trustee.

Section 1.4 Approval, Execution and Delivery of the Financing Agreement. That the form and substance of the Financing Agreement are hereby approved, and that the Authorized Representatives each are hereby authorized to execute the Financing Agreement, and to deliver the Financing Agreement to the Borrower.

Section 1.5 Approval, Execution and Delivery of the Regulatory Agreement. That the form and substance of the Regulatory Agreement are hereby approved, and that the Authorized Representatives each are hereby authorized to execute the Regulatory Agreement, and to deliver the Regulatory Agreement to the Borrower and the Trustee and to cause the Regulatory Agreement to be filed of record in the real property records of Shelby County, Texas.

Section 1.6 Approval, Execution and Delivery of the Tax Exemption Agreement. That the form and substance of the Tax Exemption Agreement are hereby approved, and that the Authorized Representatives each are hereby authorized to execute the Tax Exemption Agreement, and to deliver the Tax Exemption Agreement to the Borrower and the Trustee.

Section 1.7 Reserved.

Section 1.8 Reserved.

Section 1.9 Reserved.

Section 1.10 Acceptance of the Borrower Note and the Bond Mortgage. That the form and substance of the Borrower Note and the Bond Mortgage are hereby accepted by the Department and that the Authorized Representatives each are hereby authorized to endorse and deliver the Borrower Note to the order of the Trustee without recourse.

Section 1.11 Approval, Execution and Delivery of the Assignment. That the form and substance of the Assignment are hereby approved, and that the Authorized Representatives each are hereby authorized to execute the Assignment, and to deliver the Assignment to the Trustee.

Section 1.12 Reserved.

Section 1.13 Taking of Any Action; Execution and Delivery of Other Documents. That the Authorized Representatives are each hereby authorized to take any actions and to execute, attest and affix the Department's seal to, and to deliver to the appropriate parties, all such other agreements, commitments, assignments, bonds, certificates, contracts, documents, instruments, releases, financing statements, letters of instruction, notices of acceptance, written requests and other papers, whether or not mentioned herein, as they or any of them consider to be necessary or convenient to carry out or assist in carrying out the purposes of this Resolution.

Section 1.14 Power to Revise Form of Documents. That, notwithstanding any other provision of this Resolution, the Authorized Representatives are each hereby authorized to make or approve such revisions in the form of the documents attached hereto as exhibits as, in the judgment of such Authorized Representative, and in the opinion of Bracewell LLP, Bond Counsel to the Department ("Bond Counsel"), may be necessary or convenient to carry out or

assist in carrying out the purposes of this Resolution, such approval to be evidenced by the execution of such documents by the Authorized Representatives.

Section 1.15 Exhibits Incorporated Herein. That all of the terms and provisions of each of the documents listed below as an exhibit shall be and are hereby incorporated into and made a part of this Resolution for all purposes:

- Exhibit B - Indenture
- Exhibit C - Financing Agreement
- Exhibit D - Regulatory Agreement
- Exhibit E - Borrower Note
- Exhibit F - Bond Mortgage
- Exhibit G - Assignment
- Exhibit H - Tax Exemption Agreement

Section 1.16 Authorized Representatives. That the following persons are each hereby named as authorized representatives of the Department for purposes of executing, attesting, affixing the Department's seal to, and delivering the documents and instruments and taking the other actions referred to in this Article 1: the Chair or Vice Chair of the Board, the Executive Director of the Department, the Director of Administration of the Department, the Director of Financial Administration of the Department, the Interim Director of Bond Finance of the Department, the Director of Multifamily Bonds of the Department, the Director of Texas Homeownership of the Department, and the Secretary or any Assistant Secretary to the Board. Such persons are referred to herein collectively as the "Authorized Representatives." Any one of the Authorized Representatives is authorized to act individually as set forth in this Resolution.

## ARTICLE 2

### APPROVAL AND RATIFICATION OF CERTAIN ACTIONS

Section 2.1 Approval and Ratification of Application to Texas Bond Review Board. That the Board hereby ratifies and approves the submission of the application for approval of state bonds to the Texas Bond Review Board on behalf of the Department in connection with the issuance of the Bonds in accordance with Chapter 1231, Texas Government Code.

Section 2.2 Approval of Submission to the Attorney General. That the Board hereby authorizes, and approves the submission by Bond Counsel to the Attorney General, for his approval, of a transcript of legal proceedings relating to the issuance, sale and delivery of the Bonds.

Section 2.3 Certification of the Minutes and Records. That the Secretary or Assistant Secretary to the Board hereby is authorized to certify and authenticate minutes and other records on behalf of the Department for the Bonds and all other Department activities.

Section 2.4 Reserved.

Section 2.5 Authority to Invest Proceeds. That the Department is authorized to invest and reinvest the proceeds of the Bonds and the fees and revenues to be received in connection with the financing of the Development in accordance with the Indenture and the Tax Exemption Agreement and to enter into any agreements relating thereto only to the extent permitted by the Indenture and the Tax Exemption Agreement.

Section 2.6 Reserved.

Section 2.7 Engagement of Other Professionals. That the Executive Director of the Department or any successor is authorized to engage auditors to perform such functions, audits, yield calculations and subsequent investigations as necessary or appropriate to comply with the requirements of Bond Counsel, provided such engagement is done in accordance with applicable law of the State.

Section 2.8 Ratifying Other Actions. That all other actions taken by the Executive Director of the Department and the Department staff in connection with the issuance of the Bonds and the financing of the Development are hereby ratified and confirmed.

### ARTICLE 3

#### CERTAIN FINDINGS AND DETERMINATIONS

Section 3.1 Findings of the Board. That in accordance with Section 2306.223 of the Act and after the Department's consideration of the information with respect to the Development and the information with respect to the proposed financing of the Development by the Department, including but not limited to the information submitted by the Borrower, independent studies commissioned by the Department, recommendations of the Department staff and such other information as it deems relevant, the Board hereby finds:

(a) Need for Housing Development.

(i) that the Development is necessary to provide needed decent, safe, and sanitary housing at rentals or prices that individuals or families of low and very low income or families of moderate income can afford,

(ii) that the financing of the Development is a public purpose and will provide a public benefit, and

(iii) that the Development will be undertaken within the authority granted by the Act to the housing finance division and the Borrower.

(b) Findings with Respect to the Borrower.

(i) that the Borrower, by operating the Development in accordance with the requirements of the Financing Agreement, the Regulatory Agreement and the Tax Exemption Agreement, will supply well-planned and well-designed housing for individuals or families of low and very low income or families of moderate income,

(ii) that the Borrower is financially responsible, and

(iii) that the Borrower is not, and will not enter into a contract for the Development with, a housing developer that (A) is on the Department's debarred list, including any parts of that list that are derived from the debarred list of the United States Department of Housing and Urban Development; (B) breached a contract with a public agency; or (C) misrepresented to a subcontractor the extent to which the developer has benefited from contracts or financial assistance that has been awarded by a public agency, including the scope of the developer's participation in contracts with the agency and the amount of financial assistance awarded to the developer by the Department.

(c) Public Purpose and Benefits.

(i) that the Borrower has agreed to operate the Development in accordance with the Financing Agreement, the Regulatory Agreement and the Tax Exemption Agreement, which require, among other things, that the Development be occupied by individuals and families of low and very low income and families of moderate income, and

(ii) that the issuance of the Bonds in connection with the financing of the Development is undertaken within the authority conferred by the Act and will accomplish a valid public purpose and will provide a public benefit by assisting individuals and families of low and very low income and families of moderate income in the State to obtain decent, safe, and sanitary housing by financing costs of the Development, thereby helping to maintain a fully adequate supply of sanitary and safe dwelling accommodations at rents that such individuals and families can afford.

Section 3.2 Determination of Eligible Tenants. That the Board has determined, to the extent permitted by law and after consideration of such evidence and factors as it deems relevant, the findings of the staff of the Department, the laws applicable to the Department and the provisions of the Act, that eligible tenants for the Development shall be (1) individuals and families of low and very low income, (2) persons with special needs, and (3) families of moderate income, with the income limits as set forth in the Tax Exemption Agreement and the Regulatory Agreement.

Section 3.3 Sufficiency of Loan Interest Rate. That, in accordance with Section 2306.226 of the Act, the Board hereby finds and determines that the interest rate on the Loan

established pursuant to the Financing Agreement will produce the amounts required, together with other available funds, to pay for the Department's costs of operation with respect to the Bonds and the Development and enable the Department to meet its covenants with and responsibilities to the holders of the Bonds.

Section 3.4 No Gain Allowed. That, in accordance with Section 2306.498 of the Act, no member of the Board or employee of the Department may purchase the Bonds in the secondary open market for municipal securities.

#### ARTICLE 4

##### GENERAL PROVISIONS

Section 4.1 Limited Obligations. That the Bonds and the interest thereon shall be special limited obligations of the Department payable solely from the trust estate created under the Indenture, including the revenues and funds of the Department pledged under the Indenture to secure payment of the Bonds, and under no circumstances shall the Bonds be payable from any other revenues, funds, assets or income of the Department.

Section 4.2 Non-Governmental Obligations. That the Bonds shall not be and do not create or constitute in any way an obligation, a debt or a liability of the State or create or constitute a pledge, giving or lending of the faith or credit or taxing power of the State. Each Bond shall contain on its face a statement to the effect that the State is not obligated to pay the principal thereof or interest thereon and that neither the faith or credit nor the taxing power of the State is pledged, given or loaned to such payment.

Section 4.3 Effective Date. That this Resolution shall be in full force and effect from and upon its adoption.

Section 4.4 Notice of Meeting. This Resolution was considered and adopted at a meeting of the Governing Board that was noticed, convened, and conducted in full compliance with the Texas Open Meetings Act, Chapter 551 of the Texas Government Code, and with Section 2306.032 of the Texas Government Code, regarding meetings of the Governing Board.

PASSED AND APPROVED this 12th day of May, 2022.



**EXHIBIT A**

**Description of Development**

Borrower: Center 818 Cotton Ford Road, LP, a Texas limited partnership

Development: The Development is a 100-unit affordable, multifamily housing development known as Union Acres, located at 818 Cotton Ford Road, Center, Shelby County, Texas 75935. It consists of fifty (50) residential apartment buildings with approximately 84,292 net rentable square feet. The unit mix will consist of:

12	one-bedroom/one-bath units
24	two-bedroom/one-bath units
30	three-bedroom/one-bath units
30	four-bedroom/two-bath units
4	five-bedroom/two-bath units
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100	Total Units

Unit sizes will range from approximately 522 square feet to approximately 1,150 square feet.

TRUST INDENTURE

by and between

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS,

as ISSUER

and

WILMINGTON TRUST, NATIONAL ASSOCIATION,

as TRUSTEE

Dated as of June 1, 2022

Relating to

\$10,100,000

Texas Department of Housing and Community Affairs  
Multifamily Housing Mortgage Revenue Bonds  
(Union Acres Project)  
Series 2022

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## TRUST INDENTURE

THIS TRUST INDENTURE dated as of June 1, 2022 (as the same may be amended, modified or supplemented from time to time, this “**Indenture**”) is entered into by and between the TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS, a public and official agency of the State of Texas (the “**Issuer**”), and Wilmington Trust, National Association, a national banking association duly established, existing, and authorized to accept and execute trusts of the character herein set out, as the Trustee (the “**Trustee**”, as that term is hereafter defined):

### WITNESSETH:

**WHEREAS**, the Issuer has been duly created and organized pursuant to and in accordance with the provisions of Chapter 2306, Texas Government Code, as amended (the “**Act**”); and

**WHEREAS**, the Act authorizes the Issuer to issue Bonds to finance the costs of acquisition, rehabilitation and equipping of residential housing facilities such as the Project (defined below); and

**WHEREAS**, the Issuer deems it desirable and in keeping with its purposes to issue its \$10,100,000 Multifamily Housing Mortgage Revenue Bonds (Union Acres Project) Series 2022 (the “**Bonds**”) for the purposes of funding a loan in the aggregate principal amount not to exceed \$10,100,000 (the “**Bond Loan**”) to Center 818 Cotton Ford Road, LP, a limited partnership organized and existing under the laws of the State of Texas (together with its permitted successor and assigns, the “**Borrower**”), the proceeds of which will be used to finance the acquisition, rehabilitation and equipping of a 100-unit multifamily residential facility (as defined in the Financing Agreement and referred to herein as the “**Improvements**”) located at 818 Cotton Ford Road in Center, Shelby County, Texas (as defined in the Financing Agreement and referred to herein as the “**Land**”); collectively with the Improvements, the “**Project**”); and

**WHEREAS**, the Issuer has agreed to issue the Bonds and to use the proceeds thereof to make the Bond Loan in accordance with the Financing Agreement dated as of even date with this Indenture (the “**Financing Agreement**”), by and among the Issuer, Borrower and CommunityBank of Texas, N.A., as bond owner (the “**Bond Owner**”), and the Borrower has agreed to (x) apply the proceeds of the Bond Loan to pay a portion of the costs of acquisition, rehabilitation and/or equipping of the Project, (y) make payments sufficient to pay the principal of and interest on and purchase price of the Bonds when due (whether at maturity, by redemption, acceleration or otherwise), and (z) observe the other covenants and agreements and make the other payments set forth therein; and

**WHEREAS**, the Borrower has delivered to the Issuer its Promissory Note dated the date of issuance of the Bonds in the principal amount not to exceed \$10,100,000 (as the same may be amended, supplemented or modified from time to time, the “**Bond Note**”) evidencing the Borrower’s obligation to repay the Bond Loan and the Issuer has made the Bond Loan to the Borrower, subject to the terms and conditions of this Indenture; and

**WHEREAS**, the execution and delivery of this Indenture and the issuance of the Bonds have been in all respects duly and validly authorized by the Issuer.

**NOW, THEREFORE**, in consideration of the premises and the mutual promises, representations and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, the parties hereto agree as follows:

#### GRANTING CLAUSES

The Issuer, in consideration of the premises and the acceptance by the Trustee of the trusts hereby created and of the purchase and acceptance of the Bonds by the Holders thereof, and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and in order to secure the payment of the principal of and interest and premium, if any, on the Bonds according to their tenor and effect and the performance and observance by the Issuer of all the covenants, agreements, and conditions expressed or implied herein and in the Bonds, does hereby assign, transfer in trust, and pledge to the Trustee and its successors and assigns in trust forever, and does hereby grant a security interest unto the Trustee and its successors in trust, and to them and their assigns forever, the following (excepting, however, the Unassigned Issuer's Rights) (collectively referred to as the "**Trust Estate**"):

#### GRANTING CLAUSE FIRST

All right, title, interest, and privileges of the Issuer in, to, and under (but not its obligations under) the Financing Agreement and the Bond Note, including, but not limited to, all sums which the Issuer is entitled to receive from the Borrower pursuant to the Financing Agreement (but excluding the Unassigned Issuer's Rights), the Funds (excluding funds held in the Rebate Fund), and all other sums (except rebatable arbitrage, whether or not deposited in the Rebate Fund and Issuer Fees) that are required to be deposited in the Funds in accordance with **Article 6** hereof;

#### GRANTING CLAUSE SECOND

All of the Issuer's right, title, and interest in all property mortgaged, pledged, and assigned under the Bond Mortgage and the Bond Loan Documents to secure the Bond Loan (not including the Unassigned Issuer's Rights) or the Bonds and any and all other property of every name and nature that may from time to time hereafter by delivery or by writing of any kind be subjected to the lien hereof by the Issuer or by anyone on its behalf or with its written consent, and the Trustee is hereby authorized to receive any and all such property at any and all times and to hold and apply the same as additional security hereunder subject to the terms hereof; and

#### GRANTING CLAUSE THIRD

The earnings derived from the investment of any of the foregoing sums (except amounts on deposit in the Rebate Fund and Issuer Fees) as provided herein.

TO HAVE AND TO HOLD all the Trust Estate, together with all rights and privileges hereby transferred, pledged, assigned or granted or agreed or intended so to be, to the Trustee and its successors and assigns in trust and to them and their assigns forever and in connection therewith, Issuer hereby constitutes and appoints the Trustee as the Issuer's true and lawful attorney with respect to the Trust Estate, irrevocable in law or in equity, in the Issuer's name, place and stead, but at Trustee's cost and expense, to have, use and take all lawful ways and means for the recovery



of all of the said money and interest; and in case of payment, to discharge the same as fully as the Issuer might or could if the assignment of the Trust Estate to Trustee were not made;

IN TRUST NEVERTHELESS, upon the terms and trusts herein set forth, first for the equal and proportionate benefit, security, and protection of all Holders from time to time of the Bonds issued under and secured by this Indenture, without privilege, priority, or distinction as to the lien or otherwise of any of the Bonds over any of the others except as otherwise provided herein, all as herein provided, and for the uses and purposes and upon the terms, agreements, and conditions set forth herein;

PROVIDED, HOWEVER, that if the Issuer, its successors or assigns, shall well and truly pay, or cause to be paid, or provide fully for payment as herein provided of the principal of the Bonds and the interest due or to become due thereon (together with premium, if any), at the time and in the manner set forth in the Bonds according to the true intent and meaning thereof, and shall make the payments into the Bond Fund as required under **Article 6** hereof or shall provide, as provided hereby in **Article 8**, for the payment thereof, and shall well and truly keep, perform and observe all the covenants and conditions pursuant to the terms of this Indenture to be kept, performed and observed by it, and shall pay to the Trustee all sums of money due or to become due to it in accordance with the terms and provisions hereof and of the Bond Loan Documents, then this Indenture and the rights hereby granted shall cease, terminate, and become void, and thereupon the Trustee, on payment of its lawful charges and disbursements then unpaid, on demand of the Issuer and upon the payment by the Issuer of the cost and expenses thereof, shall duly execute, acknowledge and deliver to the Issuer such instruments of satisfaction or release as may be necessary or proper to discharge this Indenture of record, and if necessary shall grant, reassign and deliver to the Issuer, all and singular the property, rights, privileges and interests by it hereby granted, conveyed and assigned, and all substitutes therefor, or any part thereof, not previously disposed of or released as herein provided; otherwise this Indenture shall be and remain in full force.

THIS INDENTURE FURTHER WITNESSETH, and it is hereby expressly declared, covenanted and agreed by and between the parties hereto, that the Bonds issued and secured hereunder are to be issued, authenticated, and delivered and that all the Trust Estate is to be held and applied under, upon and subject to the terms, conditions, stipulations, covenants, agreements, trusts, uses, and purposes as hereinafter expressed, and the Issuer has agreed and covenanted, and does hereby agree and covenant, with the Trustee for the benefit of the respective Owners from time to time of the Bonds to the extent of its rights, as follows:

## ARTICLE 1 DEFINITIONS, EXHIBITS AND GENERAL PROVISIONS

**Section 1.1 Definitions.** Capitalized terms not otherwise defined herein shall have the meaning specified in the herein defined Financing Agreement (whether or not specific reference is given to the Financing Agreement). The following capitalized terms, as used in this Indenture, shall have the meanings, specified below unless the context shall otherwise require:

“**Accounts**” means, collectively, the accounts of the Bond Fund created by **Section 6.4** hereof, and the Servicing Fund created by **Section 6.8** hereof.

“**Act**” has the meaning provided in the Recitals.

“**Additional Charges**” means the payments required in connection with **Section 4.3** of the Financing Agreement.

“**Agreement Commencement Date**” has the meaning assigned to that term in the Financing Agreement.

“**Authorized Denomination**” means \$100,000 or any amount (including cents) in excess thereof.

“**Authorized Officer**” means the Chair or Vice Chair of the Governing Body, the Executive Director of the Issuer, the Director of Administration of the Issuer, the Director of Financial Administration of the Issuer, the Interim Director of Bond Finance of the Issuer, the Director of Multifamily Bonds of the Issuer, the Director of Texas Homeownership of the Issuer, and the Secretary or Assistant Secretary to the Governing Body.

“**Bankruptcy Code**” means the United States Bankruptcy Reform Act of 1978, as amended, or any similar or succeeding federal bankruptcy law.

“**Basic Payments**” has the meaning assigned to that term in the Financing Agreement.

“**Bond Closing Date**” has the meaning given to that term in the Financing Agreement.

“**Bond Counsel**” means Bracewell LLP, or any other firm of nationally recognized bond counsel experienced in tax exempt private activity bond financing selected by the Issuer.

“**Bond Documents**” has the meaning assigned to that term in the Financing Agreement.

“**Bond Fund**” means the Fund created by **Section 6.4** hereof.

“**Bond Loan**” has the meaning provided in the Recitals.

“**Bond Loan Documents**” has the meaning assigned to that term in the Financing Agreement.

“**Bond Mortgage**” has the meaning assigned to that term in the Financing Agreement.

“**Bond Note**” means the Bond Note defined in the Recitals which will be in the original principal amount of \$10,100,000.00, dated as of June 1, 2022, and made by the Borrower to the order of the Issuer and assigned by the Issuer to the Trustee.

“**Bond Owner**” means CommunityBank of Texas, N.A., and any successor or Holder of the Bonds.

“**Bond Registrar**” means the Trustee, and any successor thereto appointed, qualified, and then acting as such under the provisions of this Indenture, and their respective successors and assigns.

“**Bond Year**” has the meaning assigned to such term in the Tax Exemption Agreement.

“**Bonds**” has the meaning provided in the Recitals.

“**Borrower**” has the meaning provided in the Recitals.

“**Business Day**” shall have the meaning given to that term in the Financing Agreement but for purposes hereof shall include any day other than a Saturday, Sunday, legal holiday, or a day on which banking institutions in the city where the designated corporate trust office of the Trustee and the Bond Registrar and the Operations Office of the Trustee are located are authorized by law or executive order to close.

“**Code**” or “**Internal Revenue Code**” has the meaning assigned to the term “Code” in the Tax Exemption Agreement.

“**Completion Date**” means the Bond Owner’s Required Completion Date under and as defined in the Financing Agreement, or such later date as the Bond Owner approves.

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

“**Condemnation**” or the phrase “**eminent domain**” as used herein shall include the taking or requisition by Governmental Authority or by a person, firm, or corporation acting under governmental authority and a conveyance made under threat of such taking or requisition, and “**Condemnation Award**” shall mean payment for property condemned or conveyed under threat of Condemnation.

“**Construction Contract**” has the meaning assigned to that term in the Financing Agreement.

“**Construction Term Maturity Date**” means twenty-four (24) calendar months after the Agreement Commencement Date, as may be extended under the terms of the Financing Agreement.

“**Costs of Issuance**” has the meaning given to such term in the Tax Exemption Agreement.

“**Costs of Issuance Fund**” means the fund created by **Section 6.9** hereof.

“**Default**” means any event or occurrence which with notice, lapse of time, or expiration of any applicable cure period, would be an Event of Default.

“**Default Rate**” means the interest rate equal to the lesser of (i) five percent (5%) in excess of the interest rate provided in the Bonds or (ii) the Maximum Lawful Rate.

“**Defeasance Collateral**” shall have the meaning set forth in **Section 8.1** hereof.

“**Electronic Means**” has the meaning assigned to that term in the Financing Agreement.

“**Electronic Signature**” means any electronic sound, symbol, or process attached to or associated with, a contract or other record and adopted by a Person with the intent to sign, authenticate or accept such contract or record.

“**Event of Default**” means any of those events defined as Events of Default by **Section 9.1** of this Indenture.

“**Event of Taxability**” means a final judgment or order of a court of original jurisdiction, a final order of any other court of competent jurisdiction, or a final ruling or decision of the Internal Revenue Service, in any such case to the effect that the interest on the Bonds (other than interest on the Bonds for a period during which such Bonds are held by a “substantial user” of any facility financed with the proceeds of the Bonds or a “related person,” as such terms are used in section 147(a) of the Code and except as a result of any minimum tax, preference tax, or other similar tax) is not excludable from the gross income for federal income purposes of the holder thereof. With respect to the foregoing, a judgment or order of a court or a ruling or decision of the Internal Revenue Service shall be considered final only if no appeal or action for judicial review has been filed and the time for filing such appeal or action has expired (and in any event, all legal rights for appeals or for further judicial or administrative review have been exhausted).

“**Favorable Opinion of Bond Counsel**” means, with respect to any action, or omission of an action, the taking or omission of which requires such an opinion, an unqualified written opinion of Bond Counsel to the effect that such action or omission does not adversely affect the Federal Tax Status of the Bonds under existing law (subject to the inclusion of any customary exceptions acceptable to the recipient thereof).

“**Federal Tax Status**” means, as to the Bonds, the status of the interest on the Bonds as excludable from gross income for federal income tax purposes (except on any Bond during any period during which it is held by a “substantial user” of the Project or “related person” to such a substantial user within the meaning of Section 147(a) of the Code).

“**Financing Agreement**” has the meaning assigned to that term in the Recitals.

“**Funds**” means, collectively, the Bond Fund, the Project Fund, the Rebate Fund, the Revenue Fund, the Mortgage Recovery Fund, the Servicing Fund, and the Costs of Issuance Fund.

“**General Partner**” means Center 818 Cotton Ford Road GP LLC, a limited liability company organized and existing under the laws of the State of Texas, in its capacity as general partner of the Borrower, and any approved permitted successor general partner of the Borrower.

“**Governing Body**” means the Governing Board of the Issuer, or any governing body that succeeds to the functions of the Governing Board of the Issuer.

“**Governmental Authority**” shall have the meaning assigned to that term in the Financing Agreement.

“**Hazardous Substances**” has the meaning assigned to that term in the Bond Mortgage.

“**Holder**” means the person in whose name a Bond is registered in the Bond Register.

“**Indenture**” means this Trust Indenture, as the same may from time to time be amended, modified or supplemented as herein provided.

“**Independent Accountant**” means a certified public accountant or firm of certified public accountants registered and qualified to practice as such under the laws of the State, and not employed by the Issuer or the Borrower, except to perform independent audits of the books and records of either or both of them or other similar periodic reviews and to perform other independent services.

“**Independent Counsel**” means any attorney acceptable to the Trustee, duly admitted to practice law before the highest court of any state or of the District of Columbia, who may be counsel to the Issuer but who may not be an officer or an employee of the Issuer.

“**Initial Bond**” means the Initial Bond registered by the Comptroller and subsequently canceled and replaced by definitive Bonds pursuant to this Indenture.

“**Investor Limited Partner**” shall have the meaning assigned to that term in the Financing Agreement.

“**Investor’s Letter**” means a letter in the form of **Exhibit C** hereto and executed by the Bond Owner, as initial Holder, and any subsequent transferees of the Bonds pursuant to **Section 3.12** hereof.

“**Issuer**” has the meaning assigned to that term in the introductory paragraph of this Agreement.

“**Issuer Administration Fee**” means the fee payable annually in advance to the Issuer on each June 1, in the amount of 0.10% per annum of the aggregate principal amount of Bonds Outstanding at the inception of each payment period. On the Bond Closing Date, the Borrower will pay the Issuer Administration Fee for the period from the Bond Closing Date to May 31, 2024. The Trustee will remit to the Issuer (upon receipt of an invoice from the Issuer), payable solely from funds provided by the Borrower, all payments of the Issuer Administration Fee due on or after June 1, 2024.

“**Issuer Compliance Fee**” means the fee payable annually in advance to the Issuer on each June 1, in the amount of \$25 per Unit (as defined in the Regulatory Agreement) in the Project, for the duration of the State Restrictive Period (as defined in the Regulatory Agreement). The first annual Issuer Compliance Fee shall be paid on the Bond Closing Date. The Trustee will remit to the Issuer (upon receipt of an invoice from the Issuer), solely from funds provided by the Borrower, all payments of the Issuer Compliance Fee due on or after June 1, 2025. The Issuer Compliance Fee is for bond compliance only, and an additional fee may be charged for tax credit compliance.

“**Issuer Fees**” means, collectively, the Issuer Administration Fee and the Issuer Compliance Fee.

“**Land**” has the meaning assigned to that term in the Financing Agreement.

“**Maturity Date**” means June 1, 2039.

“**Maximum Lawful Rate**” shall mean the lesser of (i) 12% per annum and (ii) the maximum interest rate that may be paid on the Bonds under State law pursuant to Chapter 1204 of the Texas Government Code.

“**Mortgaged Property**” means the properties, real, personal, or mixed, described in the granting clauses of the Bond Mortgage (and defined in the Bond Mortgage as such), as they may at any time exist.

“**Mortgage Recovery Fund**” means the Fund created by **Section 6.7** hereof.

“**Net Foreclosure Proceeds**” shall have the meaning set forth in the Bond Mortgage.

“**Operating Reserve Account**” means the Operating Reserve Account under and as defined in the Financing Agreement and in any event, shall be an account of the Servicing Fund established pursuant to **Section 6.8(1)** hereof.

“**Operations Office**” with respect to the Trustee means the designated office of the Trustee or any affiliate of the Trustee for the payment of interest and principal on the Bonds.

“**Outstanding Bonds**” or “**Bonds Outstanding**” means, as of the date of determination, all Bonds theretofore issued and delivered under this Indenture except:

- (A) Bonds theretofore canceled by the Bond Registrar, the Trustee, or the Paying Agent or delivered to the Bond Registrar, the Trustee, or the Paying Agent for cancellation;
- (B) Bonds for which payment or redemption moneys or securities (as provided in **Section 3.10** hereof or **Article 8** hereof) shall have been theretofore deposited with the Trustee or the Paying Agent in trust for the Holders of such Bonds; provided, however, that if such Bonds are to be redeemed, notice of such redemption shall have been duly given pursuant to this Indenture or irrevocable written direction shall have been given by the Issuer (or the Bond Owner, as the case may be) to the Trustee to call such Bonds for redemption at a stated redemption date; and
- (C) Bonds in exchange for or in lieu of which other Bonds shall have been issued and delivered pursuant to **Section 3.7** hereof or other provisions of this Indenture;

provided, however, that in determining whether the Holders of the requisite principal amount of Outstanding Bonds have given any request, demand, authorization, direction, notice, consent, or waiver hereunder, Bonds owned by the Borrower shall be disregarded and deemed not to be Outstanding Bonds (unless the Borrower owns all the Bonds otherwise outstanding, in which case they shall be deemed Outstanding), except that in determining whether the Trustee shall be protected in relying upon any such request, demand, authorization, direction, notice, consent, or waiver, only Bonds which the Trustee actually knows to be so owned shall be disregarded.

“**Paying Agent**” means the Trustee or any other entity designated pursuant to this Indenture as the agent of the Issuer and the Trustee to receive and disburse the principal of and premium, if any, and interest on the Bonds.

**“Payment Date”** has the meaning assigned to that term in the Financing Agreement, provided that on and after the Stabilized Occupancy Date, the Payment Date for mandatory sinking fund redemption payments may be on a different date as shall be set forth in **Exhibit D**, as may be revised and/or replaced.

**“Permitted Investments”** means, to the extent not prohibited by State law, the following:

- (A) certificates or interest-bearing notes or obligations of the United States, or those for which the full faith and credit of the United States are pledged for the payment of principal and interest;
- (B) investments in any of the following obligations, provided such obligations are backed by the full faith and credit of the United States: (a) direct obligations or fully guaranteed certificates of beneficial interest of the Export-Import Bank of the United States, (b) debentures of the Federal Housing Administration, (c) mortgage-backed securities of the Government National Mortgage Association, (d) certificates of beneficial interest of the Farmers Home Administration, (e) obligations of the Federal Financing Bank, (f) project notes and local authority bonds of the United States Department of Housing and Urban Development, or (g) obligations of the Private Export Funding Corp.;
- (C) investments in (a) senior obligations of the Federal Home Loan Bank System, (b) participation certificates or senior debt obligations of the Federal Home Loan Mortgage Corporation, (c) mortgage-backed securities and senior debt obligations (excluding stripped mortgage securities that are valued greater than par on the portion of the unpaid principal) of the Federal National Mortgage Association or (d) senior debt obligations of the Student Loan Marketing Association;
- (D) repurchase agreements with primary dealers and/or banks rated “A” or better at the time of acquisition thereof by either of the Rating Agencies collateralized with the obligations described in (a) or (b) above held by a third-party custodian;
- (E) money market mutual funds (including such funds of or managed by the Trustee or an affiliate of the Trustee) registered with the Securities Exchange Commission conforming to Rule a-7 of the Investment Company Act of 1940 that invest primarily in direct obligations issued by the U.S. Treasury and repurchase agreements backed by those obligations, and rated in the highest category by either of the Rating Agencies;
- (F) certificates of deposit of any bank (including the Trustee or an Affiliate thereof), trust company or savings and loan association whose short-term obligations are rated “A-1” or better at the time of acquisition thereof by either of the Rating Agencies provided that such certificates of deposit are fully secured by the obligations described in (a) or (b) above, the Trustee has a perfected first security interest in the obligations securing the certificates and the Trustee holds (or shall have the option to appoint a bank, trust company or savings and loan association as its agent to hold) the obligations securing the certificates;

- (G) certificates of deposit of any bank (including the Trustee or an Affiliate thereof), trust company or savings and loan association which certificates are fully insured by the Federal Deposit Insurance Corporation;
- (H) commercial paper rated “A 1+” or better at the time of acquisition thereof by either of the Rating Agencies;
- (I) obligations of, or obligations fully guaranteed by, any state of the United States of America or any political subdivision thereof which obligations are rated by either of the Rating Agencies in the highest rating categories (without regard to any refinement or gradation of rating category by numerical modifier or otherwise and without regard to credit enhancement) assigned by such rating agency to obligations of that nature;
- (J) demand deposits of any bank insured by FDIC; and
- (K) any other investment which is approved in writing by the Bond Owner and the Issuer.

The Trustee shall not have a duty or any obligation to determine whether a Permitted Investment is prohibited by State law.

“**Principal Office**” with respect to the Trustee means the office identified in **Section 13.6** hereof.

“**Project**” has the meaning set forth in the Recitals.

“**Project Fund**” means the fund created under **Section 6.2** hereof.

“**Qualified Project Costs**” has the meaning given to such term in the Tax Exemption Agreement.

“**Rating Agencies**” means Standard & Poor’s Ratings Services, a Standard & Poor’s Financial Services LLC business, or Moody’s Investors Service, Inc.

“**Real Estate Taxes and Insurance Reserve Account**” means an account of the Servicing Fund established pursuant to **Section 6.8(1)(a)** hereof.

“**Rebate Analyst**” has the meaning given to such term in the Tax Exemption Agreement. The initial Rebate Analyst will be [\_\_\_\_\_].

“**Rebate Fund**” means the fund so designated in **Section 6.6** hereof into which the Trustee is to deposit rebatable arbitrage paid by the Borrower.

“**Record Date**” means with respect to any Payment Date, (a) the close of business on the **first** day of the month (whether or not a Business Day) prior to such Payment Date or (b) if there is a default in payment of interest and principal due on such Payment Date, a special Record Date that is ten (10) days prior (whether or not a Business Day) to the date for the payment of such



defaulted interest or principal established by the Trustee by notice mailed by the Trustee; such notice shall be mailed not less than five (5) days preceding the applicable special payment date, to the Holders as set forth in the Bond Register at the close of business on the special Record Date.

“**Record Date Holders**” has the meaning provided in **Section 3.2(7)** of this Indenture.

“**Recovery Proceeds**” means the proceeds of any insurance recovery or Condemnation Award less amounts reimbursed to the Borrower, the Trustee, and the Issuer for expenses incurred in connection therewith.

“**Related Person**” has the meaning given to such term in the Tax Exemption Agreement.

“**Representative**” means, with respect to the Issuer, an Authorized Officer, and with respect to the General Partner, any officer of the General Partner, or any other person at any time designated to act on behalf of the Issuer or the Borrower, as the case may be, as evidenced by a written certificate furnished to such other party and the Trustee containing the specimen signature of such person and signed for the Issuer by any officer or for the Borrower by any officer of the General Partner. The Trustee may conclusively presume that a person designated in a written certificate filed with it as a Representative is a Representative until such time as the Issuer or the Borrower, as the case may be, files with it a written certificate satisfying the above requirements, identifying a different person or persons to act in such capacity.

“**Replacement Reserve Account**” has the meaning assigned to that term in the Financing Agreement, and in any event, shall be an account of the Servicing Fund established pursuant to **Section 6.8(1)(b)** hereof.

“**Replacement Reserve Deposit Requirement**” means the amount shown as the Replacement Reserve Deposit Requirement in **Schedule F-1** of the Financing Agreement.

“**Resizing Payment**” has the meaning assigned to that term in the Financing Agreement.

“**Resolution**” means the resolution adopted by the Governing Body of the Issuer on May 12, 2022.

“**Responsible Officer**” means any person duly authorized and designated by the Trustee, the Bond Registrar, or the Paying Agent to act on its behalf in carrying out the applicable duties and powers of such entity as set forth in this Indenture; any action required by the Trustee, the Bond Registrar, or the Paying Agent under this Indenture may be taken by a Responsible Officer.

“**Revenue Fund**” means the Fund designated in **Section 6.3** hereof.

“**Securities Act**” has the meaning provided in **Section 3.12** hereof.

“**Servicing Fund**” means the Fund created by **Section 6.8** hereof.

“**Stabilized Occupancy Conditions**” has the meaning assigned to that term in the Financing Agreement.

“**Stabilized Occupancy Date**” has the meaning assigned to that term in the Financing Agreement.

“**State**” means the State of Texas.

“**Stated Rate**” means the fixed per annum rate of four and one-quarter percent (4.25%).

“**Tax Credits**” means the federal low income housing tax credits allocated to the Project pursuant to section 42 of the Code (and which are referred to as the “Low-Income Housing Tax Credit” in the Financing Agreement).

“**Tax Exemption Agreement**” means the Tax Exemption Certificate and Agreement, dated as of even date with this Indenture, by and among the Issuer, the Trustee and the Borrower as amended and supplemented from time to time.

“**Tax Regulatory Agreement**” means that certain Regulatory and Land Use Restriction Agreement dated as of even date with this Indenture, by and among Borrower, Issuer and Trustee, as amended or supplemented from time to time.

“**Title Company**” means Texas Regional Title, LLC, as insuring agent for Old Republic National Title Insurance Company.

“**Title Policy**” has the meaning assigned to that term in the Financing Agreement.

“**Treasury Regulations**” shall have the meaning assigned to the term “Regulations” in the Tax Exemption Agreement.

“**Trustee**” means Wilmington Trust, National Association, and any co-Trustee or successor trustee appointed, qualified, and then acting as such under the provisions of this Indenture.

“**Trustee’s Ordinary Fees and Expenses**” means (i) the Trustee’s initial fee of \$2,500, payable on the Closing Date; (ii) the Trustee’s ongoing fee of \$4,500, payable annually in advance beginning on the Closing Date and thereafter on each June 1; and (iii) the fees and expenses charged or incurred by the Trustee in the fulfillment of its obligations hereunder, including its obligations as Paying Agent and Bond Registrar, which are reimbursable to the Trustee, plus its indirect out-of-pocket expenses.

“**Trust Estate**” means the Trust Estate as described and set forth in the Granting Clauses hereof.

“**Unassigned Issuer’s Rights**” means (a) all of the Issuer’s right, title and interest in and to all reimbursement, costs, expenses and indemnification; (b) the right of the Issuer to amounts payable to it pursuant to Section 4.3 of the Financing Agreement, including the Issuer Fees; (c) all rights of the Issuer to receive any Rebate Amount (as defined in the Tax Exemption Agreement) required to be rebated to the United States of America under the Code in connection with the Bonds, as described in the Tax Exemption Agreement; (d) all rights of the Issuer to receive notices, reports or other information, and to make determinations and grant approvals or consent hereunder

and under the Financing Agreement, the Tax Regulatory Agreement and the Tax Exemption Agreement; (e) all rights of the Issuer of access to the Project and documents related thereto and to specifically enforce the representations, warranties, covenants and agreements of the Borrower set forth in the Financing Agreement, in the Tax Exemption Agreement and in the Tax Regulatory Agreement; (f) any and all rights, remedies and limitations of liability of the Issuer set forth in this Indenture, the Financing Agreement, the Tax Regulatory Agreement, the Tax Exemption Agreement or the Bond Mortgage, as applicable, regarding (1) the negotiability, registration and transfer of the Bonds, (2) the loss or destruction of the Bonds, (3) the limited liability of the Issuer as provided in the Act, this Indenture, the Financing Agreement, the Tax Regulatory Agreement, the Tax Exemption Agreement, the Bond Mortgage or the Bond Note, (4) no liability of the Issuer to third parties, and (5) no warranties of suitability or merchantability by the Issuer; (g) all rights of the Issuer in connection with any amendment to or modification of this Indenture, the Financing Agreement, the Tax Regulatory Agreement, the Tax Exemption Agreement, the Bond Mortgage and the Bond Note; and (h) any and all limitations of the Issuer's liability and the Issuer's disclaimers of warranties set forth in this Indenture, the Tax Regulatory Agreement, the Tax Exemption Agreement or the Financing Agreement, and the Issuer's right to inspect and audit the books, records and permits of the Borrower and the Project.

## **Section 1.2 Rules of Interpretation.**

(1) This Indenture shall be governed by and construed in accordance with the laws and judicial decisions of the State, except as they may be preempted by Federal rules, regulations, and laws applicable to the Issuer. References in this Indenture and the other Bond Documents to particular sections of the Internal Revenue Code, the Uniform Commercial Code, or any other legislation, rule, or regulation shall be deemed to refer also to any successor sections thereto or other re-designation for codification purposes. The Issuer and the Trustee expressly acknowledge and agree that any judicial action to enforce any rights of the Issuer under this Indenture may be brought and maintained at the option of the acting party in any state district court in the State having jurisdiction over the matter or in the United States District Court for any district in the State having jurisdiction over the matter or in any United States Bankruptcy Court in any case involving or having jurisdiction over the Borrower or over the Project.

(2) References in this Indenture to any particular article, section, or subdivision hereof are to the designated article, section, or subdivision of this Indenture as originally executed.

(3) All accounting terms not otherwise defined herein have the meanings assigned to them in accordance with generally accepted accounting principles; and all computations provided for herein shall be made in accordance with generally accepted accounting principles consistently applied and applied on the same basis as in prior years.

(4) The Table of Contents and titles of articles and sections herein are for convenience of reference only and are not a part of this Indenture and shall not define or limit the provisions hereof.

(5) Unless the context hereof clearly requires otherwise, the singular shall include the plural and vice versa and the masculine shall include the feminine gender and neuter state and vice versa.

(6) Articles, sections, subsections, and clauses mentioned by number only are those so numbered which are contained in this Indenture.

(7) Any opinion of counsel called for herein shall be a written opinion of such counsel.

(8) Every “request,” “order,” “demand,” “direction,” “application,” “appointment,” “notice,” “statement,” “certificate,” “consent,” or similar action under this Indenture by any party shall, unless the form of such issuance is specifically provided, be in writing signed by a duly authorized representative of such party with a duly authorized signature.

(9) The terms “hereby”, “hereof”, “hereto”, “herein”, “hereunder” and any similar terms refer to this Indenture, and the term “hereafter” shall mean after, and the term “heretofore” shall mean before, the date of adoption of this Indenture.

(10) Words of the masculine gender shall mean and include correlative words of the female and neuter genders, and words importing the singular number shall mean and include the plural number and vice versa.

(11) Words importing the redemption of a Bonds or the calling of a Bonds for redemption do not include or connote the payment of such Bonds at its stated maturity or the purchase of such Bonds.

(12) References in this Indenture to particular sections of the Code, the Act or any other legislation shall be deemed to refer also to any successor sections thereto or other re-designation for codification purposes.

(13) The terms “receipt”, “received”, “recovery”, “recovered” and any similar terms, when used in this Indenture with respect to moneys or payments due the Issuer, shall be deemed to refer to the passage of physical possession and control of such moneys and payments to the Issuer, the Owners of the Bonds or the Trustee on its behalf.

(14) All references herein to time shall be to the prevailing Central time.

(15) All references in this Indenture to “counsel fees,” “attorneys’ fees,” or the like shall mean and include fees and disbursements of in-house or outside counsel, whether or not suit is instituted, and including fees and disbursements preparatory to and during trial and appeal and in any bankruptcy or arbitration proceeding.

## **ARTICLE 2 REPRESENTATIONS AND COVENANTS OF THE ISSUER**

**Section 2.1 Representations by the Issuer.** The Issuer represents and covenants to the Trustee and the Owners of the Bonds that:

(a) The Issuer is a public and official agency of the State.

(b) The Issuer has power and lawful authority to adopt the Resolution, to execute and deliver the Bond Documents, to issue the Bonds and to receive the proceeds of the Bonds, to apply the proceeds of the Bonds to finance the Bond Loan, and to perform and observe the provisions of the Bond Documents and the Bonds on its part to be performed and observed.

(c) The Issuer has duly authorized the execution and delivery of each of the Bond Documents to which the Issuer is a party, the issuance, execution, sale and delivery of the Bonds, and the performance of the obligations of the Issuer thereunder.

(d) No official or employee of the Issuer has any interest, financial, employment or other, in the Borrower, the Project or in the transactions contemplated hereby.

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

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

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

(h) None of the adoption of the Resolution, the execution and delivery of the Bond Documents to which the Issuer is a party, the issuance, execution, sale and delivery of the Bonds or the performance by the Issuer of its obligations under such Bond Documents will violate any provision of law (including the Act) or regulation, or any decree, writ, order or injunction by which the Issuer is bound, or conflict with the provisions of the organizational documents of the Issuer, or contravene the provisions of or constitute a default under any agreement, indenture, resolution or other instrument to which the Issuer is a party or by which the Issuer is bound.

(i) All actions on the part of the Issuer necessary for the execution and delivery of the Bond Documents to which the Issuer is a party, the issuance, execution, sale and delivery of the Bonds and the performance by the Issuer of its obligations thereunder have been duly and effectively taken. No consent, authorization or approval of, or filing or registration with, any governmental or regulatory body is required on the part of the Issuer for the execution and delivery of such Bond Documents, the issuance, execution, sale and delivery of the Bonds, or the

performance by the Issuer of its obligations under the Bond Documents or the Bonds, except the aforesaid action on the part of the Issuer which has been duly and effectively taken.

(j) All requirements and conditions specified in the Act, the Resolution and all other applicable laws and regulations to the adoption of the Resolution, the making of the Bond Loan, the execution and delivery of the Bond Documents to which the Issuer is a party and the issuance, execution, sale and delivery of the Bonds have been fulfilled.

**Section 2.2 Covenants of the Issuer.** The Issuer hereby agrees with the Owners from time to time of the Bonds that, so long as the Bonds remains unpaid:

(a) The Issuer will take all action and do all things which it is authorized by law to take and do in order to perform and observe all covenants and agreements on its part to be performed and observed under the Bond Documents and the Bonds and in order to provide for and to assure payment of the Bonds and interest thereon when due.

(b) The Issuer will not take any action impairing any authority, right or benefit given or conferred by the Bond Documents or the Bonds.

(c) The Issuer will pay or cause to be paid the principal of and the interest on the Bonds as the same become due, but solely to the extent of payments remitted by the Borrower pursuant to the Bond Note.

(d) The Issuer will do, execute, acknowledge, when appropriate, and deliver from time to time at the request of the Owners of the Bonds such further acts, instruments, financing statements and other documents as are necessary or desirable to better assure, transfer, pledge or assign to the Trustee, and grant a security interest unto the Trustee in and to the Trust Estate and the other properties and revenues herein described and otherwise to carry out the intent and purpose of the Bond Documents and the Bonds (except with respect to the Unassigned Issuer's Rights). Except as specifically directed by the Bond Owner, the Trustee shall have no duty or obligation related to the creation, preservation, or perfection of any security interest.

### **ARTICLE 3 THE BONDS**

**Section 3.1 Authorized Amount and Form of Bonds.** Bonds secured by this Indenture shall be issued in fully registered form without coupons and in substantially the form set forth herein with such appropriate variations, omissions, and insertions as are permitted or required by this Indenture, and in accordance with the further provisions of this **Article 3**. The aggregate principal amount of Bonds that shall be issued hereunder shall be \$10,100,000 unless duplicate Bonds are issued as provided in **Section 3.7** hereof. The Bonds, together with the Certificate of Authentication, the form of Assignment, and the registration information thereon, shall be in substantially the forms found at **Exhibit B** hereto.

**Section 3.2 Issuance of Bonds.** The Bonds shall:

(1) be dated as of the Bond Closing Date;

(2) be issued and delivered as fully registered bonds without coupons, in Authorized Denominations; except that Bonds may be exchanged after redemption or purchase for Bonds in the denomination of less than an Authorized Denomination to the extent necessary to represent the unredeemed or unpurchased portion of such Bonds;

(3) be designated as Series 2022 Bonds;

(4) except for the Initial Bond, which shall be numbered I-1, the Bonds shall be numbered consecutively from R-1 upwards in chronological order of delivery;

(5) mature on the Maturity Date, and shall have principal payments based on a 420 month amortization schedule which schedule is set forth in **Exhibit D** to this Indenture (as the amount of the monthly payments in such schedule may be adjusted based on the term of length of the Permanent Term and the balance of the Bond Loan on the Stabilized Occupancy Date); provided, upon any such adjustment of the amortization schedule, the Bond Owner will provide to the Trustee, the Issuer and the Borrower a revised amortization schedule;

(6) shall bear interest from the Bond Closing Date at the Stated Rate under and as provided for in the Bonds; provided that if an Event of Taxability occurs, such Stated Rate will be increased by one percent (1%) per annum, and the Issuer shall pay (but solely from a corresponding payment made by Borrower under the Bond Note and Financing Agreement) to the Holders promptly upon demand any interest due retroactively; and

(7) be payable in such coin or currency of the United States of America as at the time of payment is legal tender for payment of public and private debts, at the Operations Office of the Trustee or Paying Agent, except that interest on the Bonds will be payable either by instruction to the depository or by check mailed on the Payment Date by the Trustee to the Holders of such Bonds on the applicable Record Date (the **“Record Date Holders”** as further defined in the form of Bonds set forth in **Exhibit B** hereto) at the last addresses thereof as shown in the Bond Register on the applicable Record Date; and the principal of and any premium on any Bonds shall be payable at the Operations Office of the Trustee without presentation and surrender of the Bonds except for the final principal payment; and be subject to redemption upon the terms and conditions and at the redemption prices specified in **Article 4** hereof. Notwithstanding anything contained herein to the contrary, during any period of time that the Bond Note bears interest at the Default Rate or late charges are due under **Section 4.3(5)** of the Financing Agreement, the Bonds shall also bear interest at the Default Rate including any late charges under **Section 4.3(5)** of the Financing Agreement and during any period of time that the Bond Note bears interest at the rate described in **Section 7.15** of the Financing Agreement, the Bonds shall also bear interest at such rate; provided that in no event shall the interest rate on the Bonds including any late charges due under **Section 4.3(5)** of the Financing Agreement exceed the Maximum Lawful Rate. Late charges due under **Section 4.3(5)** of the Financing Agreement are in addition to the Default Rate. If the date for payment of the principal of, premium, if any, or interest on the Bonds shall be a day which is not a Business Day, then the date for such payment shall be the next succeeding day which is a Business Day, and payment on such later date shall have the same force and effect as if made on the nominal date of payment. Any Holder of at least \$1,000,000 principal amount of Bonds (or a lesser amount of such Bonds if such Bonds constitute all the Bonds at the time Outstanding), upon payment by the Holder of the costs of wire transfers, may file with the Trustee an instrument

satisfactory to the Trustee not less than five (5) days prior to the applicable Record Date requesting the interest amounts payable by the Trustee to such Holder be paid either by instruction to the depository or by transferring by wire transfer in immediately available funds, on the day such payment is due, the amount to be distributed to such Holder to a designated account maintained by such Holder at any bank in the United States. The designation so given will be effective unless and until rescinded in writing by the Holder at least five (5) days prior to the Record Date for the Payment Date to which such rescission is designated to apply. The Trustee shall pay all amounts payable by the Trustee hereunder to such Holder by transfer directly to said designated bank in accordance with the provisions of any such instrument. All payments so made shall be valid and effective to satisfy and discharge the liability upon such Bonds. Notwithstanding the foregoing, all payments of principal of and interest on and/or premium on the Bonds payable on the Maturity Date or any date of redemption (other than pursuant to **Section 4.1(5)** hereof) shall only be payable upon presentation of the Bonds maturing or being redeemed at the Operations Office.

**Section 3.3 Execution.** Bonds shall be signed by, or executed with the facsimile or manual signature of, the Chair or Vice Chair of the Issuer and attested by the facsimile or manual signature of the Secretary of the Issuer, and the seal of the Issuer or a facsimile thereof shall be impressed or otherwise reproduced thereon. In case any authorized officer of the Issuer whose signature or whose facsimile signature shall appear on any Bonds shall cease to be such officer before the delivery of such Bonds, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes, the same as if such officer had remained in office until such delivery, and also any Bonds may be signed by such persons as at the actual time of the execution of such Bonds shall be the proper officers to sign such Bonds although at the date of delivery of such Bonds such persons may not have been such officers.

**Section 3.4 Registration and Authentication.** No Bonds shall be valid or obligatory for any purpose or be entitled to any security or benefit under this Indenture unless a certificate of authentication or registration on such Bonds, substantially in the form set forth in **Exhibit B** hereto, shall have been duly executed manually by a Responsible Agent of the Bond Registrar or Comptroller, respectively. Certificates of authentication or registration on different Bonds need not be signed by the same person. The Bond Registrar shall authenticate the signatures of officers of the Issuer on each Bond (other than the Initial Bond) by execution of the certificate of authentication on the Bonds; and the certificate of authentication so executed on each Bonds shall be conclusive evidence that it has been authenticated and delivered under this Indenture.

**Section 3.5 Conditions Precedent to the Delivery of Bonds.** Upon the execution and delivery of this Indenture and delivery of the purchase price of the Bonds, the Issuer shall execute and deliver the Bonds to the Bond Registrar, and the Bond Registrar shall authenticate the Bonds (other than the Initial Bond that bears the certificate of registration of the Comptroller) for delivery from time to time as required by this Indenture. The Bond Registrar shall deliver the Initial Bond to or upon the order of the Bond Owner at such time as may be directed by the Issuer after the Trustee has received the following (which may be provided in electronic form):

(1) executed counterparts of the Financing Agreement, the Bond Note (endorsed to the Trustee), the Tax Exemption Agreement, and this Indenture;



(2) copies of executed counterparts of the Bond Mortgage, the Tax Regulatory Agreement, and UCC financing statements with evidence of recording and filing or evidence that they will be recorded and filed as appropriate;

(3) to the extent required by the Bond Owner (as it may direct the Title Company to provide to the Trustee), copies of executed counterparts of all Bond Loan Documents not specifically referred to in paragraphs **(1)** and **(2)** above;

(4) a copy, duly certified, of the Resolution passed by the Governing Body, approving the execution and delivery of this Indenture, the Financing Agreement and the Tax Regulatory Agreement and the issuance of the Bonds;

(5) *reserved*;

(6) a request and authorization (which may be part of a certificate of the Issuer) to the Trustee on behalf of the Issuer, signed by the Representative of the Issuer, to deliver the Bonds to the Bond Owner upon payment to the Trustee of an amount equal to the principal price of the Bonds and payment of the Costs of Issuance;

(7) the opinion of counsel to the Borrower in the form required by Bond Counsel and counsel to the Bond Owner, addressed to the Issuer, the Trustee, the Borrower, and the Bond Owner, compliance with such form to be evidenced by Bond Counsel's delivery of its opinion required in clause **(8)** below;

(8) the opinion of Bond Counsel, addressed to the Borrower, the Trustee, and the Bond Owner, to the effect that (a) the Bonds have been duly and validly issued, and (b) the interest on the Bonds are excludable from gross income of the Holder thereof for federal income tax purposes, subject to customary assumptions and qualifications;

(9) *reserved*;

(10) an Investor's Letter executed by the Bond Owner and addressed to the Trustee and the Issuer in the form of **Exhibit C** hereto;

(11) the approving opinion of the Attorney General of the State approving the Bonds and the registration certificate of the Comptroller;

(12) confirmation from Bond Owner that it has received and approved all items required under the Financing Agreement for closing the Bond Loan; and

(13) any other documents or opinions which the Trustee, the Issuer, or Bond Counsel may reasonably require.

**Section 3.6 Additional Bonds.** No Additional Bonds may be issued hereunder.

**Section 3.7 Mutilated, Lost, or Destroyed Bonds.** In case any Bond issued hereunder shall become mutilated or be destroyed or lost, the Issuer shall, if not then prohibited by law, cause to be executed, and the Bond Registrar shall authenticate and deliver, a new Bond of like amount,

series, Maturity Date, and tenor, in exchange and substitution for and upon cancellation of any such mutilated Bond, or in lieu of and in substitution for any such Bond destroyed or lost, upon the Holder's paying the reasonable expenses and charges of the Bond Registrar and the Issuer and, in the case of a Bond destroyed or lost, the Holder's filing with the Bond Registrar of evidence satisfactory to the Issuer, the Bond Registrar and the Trustee that such Bond was destroyed or lost, and of the Holder's ownership thereof, and furnishing the Borrower, the Issuer, the Trustee, and the Bond Registrar with indemnity satisfactory to them. If the mutilated, destroyed, or lost Bond has already matured or been called for redemption in accordance with its terms, it shall not be necessary to issue new Bonds prior to payment.

**Section 3.8 Ownership of Bond.** The Issuer, the Trustee, the Bond Registrar, and Paying Agent may deem and treat the Holder of any Bond or Bonds, whether or not such Bond shall be overdue, as the absolute owner of such Bond for the purpose of receiving payment thereof and for all other purposes whatsoever, and the Issuer (or any agent thereof), the Trustee, the Bond Registrar, and the Paying Agent shall not be affected by any notice to the contrary.

**Section 3.9 Registration, Transfer, and Exchange of Registered Bonds.**

(1) The Bond Registrar shall, at the expense of the Borrower, authenticate fully registered Bonds (other than the Initial Bond), and shall cause to be kept at the designated corporate trust office of the Bond Registrar (which will be the Operations Office for the Trustee if it is the Bond Registrar) a Bond Register in which, subject to such reasonable regulations as the Bond Registrar may prescribe, the Trustee or the Bond Registrar shall provide for the registration of Bonds and the registration of transfers of Bonds. The Bond Registrar shall contain a record of every Bonds, including bond number and principal amount, at any time registered by the Bond Registrar (or, in the case of the Initial Bond, the Comptroller) or authenticated hereunder, together with the name and address of the Holder thereof, the date of registration or authentication, the date of transfer or payment, and such other matters as are appropriate for the Bond Register in the estimation of the Issuer, the Bond Registrar and the Trustee.

(2) The transfer of the Bonds are subject to registration by the Holder thereof only upon compliance with the conditions for registration of transfer imposed on the Holder under this **Section 3.9** and **Section 3.12** hereof. Upon surrender of any Bonds at the designated corporate trust office of the Bond Registrar (which will be the Operations Office of the Trustee if it is the Bond Registrar), the Issuer shall execute (if necessary), and the Bond Registrar shall authenticate and deliver, in the name of the designated transferee or transferees (but not registered in blank or to "bearer" or a similar designation), one or more new Bonds of any Authorized Denomination of a like aggregate principal amount, having the same stated maturity and interest rate.

(3) At the option of the Holder, Bonds may be exchanged for other Bonds of any Authorized Denomination of a like aggregate principal amount and stated maturity, upon surrender of the Bonds to be exchanged at the designated corporate trust office of the Bond Registrar or, in the case in which the Trustee is the Bond Registrar, at the Operations Office of the Trustee, and upon payment of the taxes, if any, hereinafter referred to. Whenever any Bonds are so surrendered for exchange, the Issuer shall execute (if necessary), and the Bond Registrar shall authenticate and deliver, the Bonds which the Holder making the exchange is entitled to receive.

(4) All Bonds delivered in exchange for or upon transfer of Bonds shall be valid special and limited obligations of the Issuer evidencing the same debt, and entitled to the same benefits under this Indenture, as the Bonds surrendered for such exchange or transfer.

(5) Registration of the transfer of Bonds may be made on the Bond Register by the Holder in person or by the Holder's attorney duly authorized in writing. Every Bonds presented or surrendered for registration of transfer or exchange shall (i) be accompanied by evidence of compliance with the provisions of **Section 3.12** hereof, and (ii) be duly endorsed or be accompanied by a written instrument or instruments of transfer, in the form printed on the Bonds or in another form satisfactory to the Bond Registrar, duly executed and with guaranty of signature of the Holder thereof or his, her or its attorney duly authorized in writing, and (iii) include written instructions as to the details of the transfer of the Bonds.

(6) No service charge shall be made to the Holder for any registration, transfer, or exchange, but the Bond Registrar and the Trustee shall require payment of a sum sufficient to cover any tax, fee, or other governmental charge that may be imposed in connection with any transfer or exchange of Bonds, other than exchanges expressly provided in this Indenture to be made without expense or without charge to Holders, and any legal or unusual costs of transfers or lost Bonds.

(7) Subject to the provisions of subsection **(8)** below, the Bond Registrar shall endeavor to comply with rules applicable to transfer agents registered with the Securities and Exchange Commission as to the 72-hour "turnaround" standard established for the transfer of registered corporate securities.

(8) The Bond Registrar shall not be required (a) to transfer or exchange any Bonds during a period beginning at the opening of business 15 days before the day of the mailing of a notice of redemption or purchase of Bonds under this Indenture and ending at the close of business on the day of such mailing or (b) to transfer or exchange any Bonds so selected for redemption or purchase in whole or in part.

(9) Any Bonds that may be purchased by the Borrower or any "related person" of the Borrower within the meaning of section 144(a)(3) of the Code shall be canceled, unless the Issuer and the Trustee receive (a) an Investor's Letter from such purchaser (as provided in **Section 3.12** hereof) and (b) a Favorable Opinion of Bond Counsel with respect to such purchase; and the Bond Registrar shall register any Bonds purchased by any other person at the direction or request of the Borrower in the name of such person, and such Bonds shall be deemed to be "**Subordinated Bonds**". The Borrower shall provide written notice to the Trustee of any transfer of the Bonds pursuant to this **Section 3.9(9)**. In the absence of such written notice from the Borrower, the Trustee may presume that a transfer is not being made pursuant to this **Section 3.9(9)**.

**Section 3.10 Nonpresentment of Bonds.** In the event any Bonds shall not be presented for payment when the principal, premium, if any, redemption price (other than pursuant to **Section 4.1(5)** hereof for which presentment is not required for payment) thereof becomes due, if funds sufficient to pay such Bonds shall have been paid to the Trustee (or the Paying Agent (if any)) for the benefit of the registered owner thereof, all liability of the Issuer to the registered

owner thereof for the payment of such Bonds shall forthwith cease, terminate, and be completely discharged, and thereupon it shall be the duty of the Trustee or other Paying Agent to hold such fund or funds, without liability for interest thereon, for the benefit of the Holder of such Bonds, who shall thereafter be restricted exclusively to such fund or funds, for any claim of whatever nature on his part under this Indenture or on, or with respect to, said Bonds. Any such moneys still held by the Trustee (or other Paying Agent, if any) after three (3) years from the date on which such amount was due to be paid, except as otherwise required by law, shall be delivered in accordance with the unclaimed property laws of the State of Texas, and, thereafter all liability of the Trustee or such Paying Agent with respect to such money, shall thereupon cease.

**Section 3.11 Disposition of Bonds.** Whenever any Outstanding Bond shall be delivered to the Bond Registrar or the Trustee for cancellation pursuant to this Indenture, upon payment of the principal amount and interest represented thereby or for replacement pursuant to **Section 3.7** hereof or transfer pursuant to **Section 3.9** hereof, such Bonds shall be canceled and disposed of by the Bond Registrar or the Trustee, as the case may be, in accordance with its applicable policies, and counterparts of a certificate of cancellation evidencing such cancellation shall be furnished by the Bond Registrar, or the Trustee, as the case may be, to the Issuer and the Bond Registrar or the Trustee, as the case may be, from time to time, upon request, and in accordance with the Bond Registrar's or the Trustee's policies.

**Section 3.12 Restrictions on Transfer.** Bonds or interests in Bonds may be transferred only (i) to an "accredited investor" (as defined in Rule 501(a)(1), (2), (3), (7), or (8) of Regulation D promulgated under the Securities Act of 1933, as amended (the "**Securities Act**")); or (ii) to a Qualified Institutional Buyer (as defined in Rule 144A promulgated under the Securities Act). Notwithstanding any other provision of this Indenture, the Bond Registrar shall not register any transfer or exchange of any Bonds or any interests therein unless a Holder's prospective transferee delivers to the Trustee and the Issuer an investor's letter substantially in the form set forth in **Exhibit C** hereto ("**Investor's Letter**"). The Issuer and the Trustee shall be entitled to rely, without any further inquiry, on any Investor's Letter delivered to them and shall be fully protected in registering any transfer or exchange of any Bonds in reliance on any such Investor's Letter. ANY SUCH HOLDER DESIRING TO EFFECT SUCH TRANSFER SHALL AGREE TO INDEMNIFY THE BORROWER, THE ISSUER, THE TRUSTEE, THE PAYING AGENT, AND THE BOND REGISTRAR FROM AND AGAINST ANY AND ALL LIABILITY, COST OR EXPENSE (INCLUDING ATTORNEYS' FEES) THAT MAY RESULT IF THE REPRESENTATIONS CONTAINED IN SUCH INVESTOR'S LETTER ARE FALSE IN ANY MATERIAL RESPECT. The Trustee or the Bond Registrar, as the case may be, are authorized and directed to put a stop order on the Bond Registry in regard to the foregoing restrictions on the transfer of the Bonds.

The Bond Registrar will have no obligation or duty to monitor, determine or inquire as to compliance with any restrictions on transfer imposed under this Indenture or under applicable law with respect to any restrictions other than to require delivery of such certificates and other documentation or evidence as are expressly required by, and, to do so, if and when expressly required by the terms of this Indenture and to examine the same to determine substantial compliance as to form with the express requirements hereof.

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

THIS SECURITY HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT, OR THE SECURITIES LAWS OF ANY STATE OR OTHER JURISDICTION. THE HOLDER OF THIS SECURITY BY ITS ACCEPTANCE HEREOF AGREES TO TRANSFER SUCH SECURITY ONLY (A) TO AN "ACCREDITED INVESTOR" (AS DEFINED IN RULE 501(A)(1), (2), (3), (7), OR (8) OF REGULATION D PROMULGATED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR (B) TO A PERSON WHO IS A "QIB" AS DEFINED IN RULE 144A PROMULGATED UNDER THE SECURITIES ACT) (EACH AN "APPROVED TRANSFEREE", AND COLLECTIVELY, "APPROVED TRANSFEREES"), IN EITHER CASE, WHICH IS ACQUIRING THIS SECURITY FOR ITS OWN ACCOUNT OR AS A FIDUCIARY, CUSTODIAN, TRUSTEE OR AGENT FOR OTHER BENEFICIAL HOLDERS HOLDING BENEFICIAL INTERESTS IN THE BONDS THROUGH SUCH FIDUCIARY, CUSTODIAN, TRUSTEE OR AGENT (WHICH FIDUCIARY, CUSTODIAN, TRUSTEE OR AGENT AND SUCH BENEFICIAL HOLDERS MUST ALSO BE AN APPROVED TRANSFEREE); PROVIDED, AS A CONDITION PRECEDENT TO ANY SUCH TRANSFER ANY SUCH PROSPECTIVE TRANSFEREE SHALL DELIVER TO THE ISSUER AND TRUSTEE AN INVESTOR LETTER IN SUBSTANTIALLY THE FORM SET FORTH IN EXHIBIT C TO THE INDENTURE.

**Section 3.13 Limited Obligations.** THE BONDS, TOGETHER WITH INTEREST THEREON, AND REDEMPTION PREMIUM, IF ANY, ARE NOT GENERAL OBLIGATIONS OF THE ISSUER, BUT ARE SPECIAL, LIMITED OBLIGATIONS OF THE ISSUER SECURED BY THE TRUST ESTATE, ARE AND WILL ALWAYS BE PAYABLE SOLELY FROM THE REVENUES AND INCOME DERIVED FROM THE TRUST ESTATE (EXCEPT TO THE EXTENT PAID OUT OF MONEYS ATTRIBUTABLE TO PROCEEDS OF THE BONDS OR THE INCOME FROM THE TEMPORARY INVESTMENT THEREOF), AND ARE AND WILL ALWAYS BE A VALID CLAIM OF THE OWNER THEREOF ONLY AGAINST THE REVENUES AND INCOME DERIVED FROM THE TRUST ESTATE, WHICH REVENUES AND INCOME MAY BE USED FOR NO OTHER PURPOSE THAN TO PAY THE PRINCIPAL INSTALLMENTS OF, REDEMPTION PREMIUM, IF ANY, AND INTEREST ON THE BONDS, EXCEPT AS MAY BE EXPRESSLY AUTHORIZED OTHERWISE IN THIS INDENTURE AND IN THE FINANCING AGREEMENT. THE BONDS AND THE OBLIGATION TO PAY INTEREST THEREON AND REDEMPTION PREMIUM, IF ANY, DO NOT NOW AND WILL NEVER CONSTITUTE A DEBT OR AN OBLIGATION OF THE STATE OF TEXAS OR ANY POLITICAL SUBDIVISION THEREOF AND NEITHER THE STATE NOR ANY POLITICAL SUBDIVISION THEREOF WILL BE LIABLE THEREFOR. **THE BONDS ARE NOT AND DO NOT CREATE OR CONSTITUTE IN ANY WAY AN OBLIGATION, A DEBT OR A LIABILITY OF THE STATE OF TEXAS OR ANY POLITICAL SUBDIVISION THEREOF, OR CREATE OR CONSTITUTE A PLEDGE, GIVING OR LENDING OF THE FAITH, CREDIT, OR TAXING POWER OF THE STATE OR ANY POLITICAL SUBDIVISION THEREOF. THE ISSUER HAS NO TAXING POWER.** The foregoing statement of limitation shall appear on the face of each Bond.

**ARTICLE 4**  
**REDEMPTION AND PURCHASE OF BONDS BEFORE MATURITY**

**Section 4.1 Redemption and Purchase.** Subject to the provisions of **Section 4.2** and **Section 4.4** hereof, the Bonds are subject to redemption as follows:

(1) **Mandatory Redemption.** The Bonds shall be subject to mandatory redemption and shall be redeemed in full at the direction of the Bond Owner (i) following an Event of Default and acceleration of maturity thereof in accordance with **Section 9.2** hereof, (ii) in part, in an amount equal to any Resizing Payment (as further provided in (6) below), (iii) in an amount necessary to reduce the outstanding balance of the Bonds to satisfy the Stabilized Occupancy Conditions (as further provided in (6) below), and (iv) in part, in the principal amounts due on and under the Bonds after the Stabilized Occupancy Date as provided for in this Indenture.

(2) **Extraordinary Mandatory Redemption.**

(a) **Casualty and Condemnation Proceeds.** Unless the Project is to be restored in accordance with the terms of the Financing Agreement or the Bond Mortgage, the Bonds are subject to mandatory redemption, in whole or in part, on any Business Day, at the written direction of the Borrower and with the written consent of the Bond Owner, in the event of damage to, or destruction or Condemnation of the Project or any part thereof under the conditions and to the extent provided in **Section 6.7(3)** hereof, at a redemption price equal to the principal amount of the Bonds to be redeemed plus accrued and unpaid interest. The foregoing extraordinary mandatory redemption event described in this **Section 4.1(2)(a)** shall occur on the first Payment Date after which proper notice is given under this Indenture.

(b) **Excess Project Fund Proceeds.** The Bonds are subject to mandatory redemption, in whole or in part, if Bonds proceeds remaining on deposit in the Project Fund are not needed for the development of the Project or to cause the Stabilized Occupancy Conditions to occur prior to the Construction Term Maturity Date (based on the Borrower's advice to Bond Owner the Trustee that no further requisitions will be made from the Project Fund, together with the written consent to such advice by the Bond Owner), such redemption amount to be based on the amount then remaining on deposit in the Project Fund, such redemption to occur at a redemption price equal to the principal amount of the Bonds to be redeemed, plus accrued and unpaid interest; provided that, if the amount of Bonds proceeds that remains in the Project Fund and to be used to redeem Bonds pursuant to this provision causes less than 95 percent of the net proceeds of the Bonds to be used to provide an exempt facility, such redemption must adhere to the remedial action requirements set forth in Section 1.142-2 of the Treasury Regulations. The Trustee may assume that the amount of Bonds proceeds that remains in the Project Fund and to be used to redeem Bonds pursuant to this provision will not cause less than 95 percent of the net proceeds of the Bonds to be used to provide an exempt facility, unless the Borrower delivers to the Trustee a certificate to the contrary and provides written instructions in regard to comply with Section 1.142-2 of the Treasury Regulations.

(3) **Optional Redemption.** The Bonds are subject to redemption at the option of the Borrower (as a prepayment), in whole or in part on any date at a redemption price of par plus accrued and unpaid interest to the redemption date without premium or penalty.

(4) **Mandatory Sinking Fund Redemption.** The Bonds shall be subject to mandatory sinking fund redemption in the years and in the principal amounts set forth in **Exhibit D** attached to this Indenture (without notice to the Holder or presentment by Holder); provided that, if Bonds are redeemed by the Borrower pursuant to **Section 4.1(7)**, on the Stabilized Occupancy Date, the Bond Owner shall provide to the Trustee and Issuer a revised mandatory sinking fund redemption schedule showing substantially level monthly debt service on the Bonds, based on the principal amount of the Bonds outstanding on the Stabilized Occupancy Date at a 35-year amortization calculated based on the interest rate of the Bonds, and based on the then existing Maturity Date, together with a Favorable Opinion of Bond Counsel with respect to the revised schedule.

(5) **Mandatory Redemption upon Financing Agreement or Bond Mortgage Default.** The Bonds are subject to mandatory redemption, in whole, upon the occurrence and continuance of an Event of Default (and in lieu of an acceleration under **Section 9.2**) at the written direction of the Bond Owner at a redemption price equal to the principal amount of the Bonds then Outstanding, plus accrued and unpaid interest, plus a redemption premium equal to three percent of the principal of the Bonds subject to redemption.

(6) **Redemption by Borrower for Lease Stabilization.** The Bonds are subject to redemption, in part, at the option of the Borrower from sources determined by Borrower (other than the Borrower's Sources as defined in the Financing Agreement), subject to **Section 4.1(1)** and **(4)** hereof, on any date on or prior to the Stabilized Occupancy Date but after the date the Project is placed in service under the Code, in an aggregate amount sufficient to cause the requirements for the Stabilized Occupancy Date to be met as provided in **Schedule I** to the Financing Agreement, at a redemption price equal to the aggregate principal amount thereof plus accrued and unpaid interest. If the Bonds are redeemed as provided in the preceding sentence, the Bond Owner shall provide to the Trustee and the Issuer the revised mandatory sinking fund redemption schedule and opinion described in **Section 4.1(5)** above.

(7) **Electronic Notices.** Notices of prepayments under **Section 4.1(4)** may be made by Electronic Means (including e-mail and internet or intranet websites) pursuant to procedures approved by the Bond Owner. Such approval may be limited to particular notices or communications. Unless the Bond Owner otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgment from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgment), provided that if such notice or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next Business Day for the recipient, and (ii) notices or communications posted to an internet or intranet website shall be deemed received upon the "receipt" by the intended recipient at its e-mail address as described in the foregoing clause (i) of notification that such notice or communication is available in identifying the website address therefor. The Trustee, the Borrower, the Bond Owner and the Issuer may change the address or telecopier number or e-mail address for notices and other communications hereunder by notice to the others.

#### **Section 4.2 Notice of Redemption or Purchase.**

(1) To effect the redemption or purchase of the Bonds under **Section 4.1** hereof, the Trustee shall promptly give notice within the time, in the manner and with the effect provided by this **Section 4.2**. Unless waived by the Bond Owner, notice of redemption or purchase shall be mailed by first class mail not less than thirty (30) days prior to the redemption or Bond Closing Date by the Trustee to the Paying Agent and the Holders of Bonds to be redeemed or purchased. No defect in or failure to give notice shall affect the validity of the proceedings for redemption or purchase of any Bonds not affected by such defect. Such notice, which shall be prepared by the Trustee at the expense of the Borrower, shall state the date on which and the place where the Bonds shall be presented for redemption or purchase and, unless all Outstanding Bonds are to be redeemed or purchased, each such notice shall refer to the Bonds to be redeemed or purchased by their numbers and maturities. The notice shall state the conditions precedent to redemption or purchase specified in **Section 4.4** hereof. Except as specifically provided in this Indenture and provided sufficient funds are on deposit with the Trustee with respect to such redemption or purchase, the Bonds thus called for redemption or purchase, provided funds for their redemption or purchase have been duly deposited, shall cease to bear interest from and after the specified redemption date and the Holder of such Bonds shall have no further rights with respect to the Bonds or under this Indenture except to receive the redemption or purchase price of such Bonds.

(2) The Bond Registrar, if not the Trustee, shall, upon the Trustee's request, furnish the names and addresses of the Holders of the Bonds as of the Record Date immediately preceding such redemption date to the Trustee and the Issuer.

**Section 4.3 Cancellation.** Subject to the provisions of **Section 3.10** hereof, all Bonds which have been redeemed shall be canceled by the Trustee or the Bond Registrar as provided in **Section 3.11** hereof and shall not be reissued.

#### **Section 4.4 Method of Redemption or Purchase.**

(1) Unless waived by Bond Owner, the Trustee shall redeem Bonds under **Section 4.1(2)** hereof only if it has received written notice and instructions from the Bond Owner to so redeem at least thirty-five (35) days before the redemption date (or such shorter period as consented to by the Trustee), and the Trustee has been provided with immediately available funds sufficient for such purpose when added to other funds on deposit in the Bond Fund, at least ten Business Days prior to the redemption date. The Trustee shall redeem the Bonds under **Section 4.1(2)** or **Section 4.1(5)** hereof in accordance with the written instructions from the Borrower, subject to **Section 4.1(2)**. Unless waived by Bond Owner, at least thirty-five (35) days prior to the redemption date (or such shorter period as consented to by the Trustee), the Borrower shall give the Trustee written notice of its election to redeem or purchase the Bonds pursuant to **Section 4.1(2)** or **Section 4.1(5)**, which notice shall contain the redemption date and the principal amount of Bonds to be redeemed and direct the Trustee to redeem the Bonds. Mandatory sinking fund redemptions under **Section 4.1(3)** do not require any prior notice or instruction.

(2) If the Bonds are redeemed only in part, it shall be surrendered to the Trustee (with a written instrument of transfer in form satisfactory to the Issuer and the Trustee duly executed by the Holder thereof or his, her or its attorney duly authorized in writing) and the Issuer shall execute (if necessary) and the Bond Registrar shall authenticate and deliver to the Holder of such Bonds, at the Borrower's expense, a new Bond or Bonds of the same series, of any Authorized



Denomination, as requested by such Holder, having the same stated maturity and interest rate in aggregate principal amount equal to and in exchange for the unredeemed or unpurchased portion of the principal of the Bonds so surrendered.

## **ARTICLE 5 GENERAL COVENANTS**

**Section 5.1 Payment of Principal, Premium, and Interest.** The Issuer will duly and punctually pay or cause to be paid the principal of, premium, if any, and interest on the Bonds in accordance with the terms of the Bonds and this Indenture, but solely from and to the extent of the Trust Estate, and trust funds deposited in the Funds (excluding amounts held in the Rebate Fund and rebatable arbitrage whether or not deposited in the Rebate Fund) to the extent hereof and in the manner provided in **Article 6** hereof. Nothing in the Bonds or in this Indenture shall be considered as assigning or pledging funds or assets of the Issuer other than the Trust Estate.

### **Section 5.2 Performance of Covenants.**

(1) The Issuer covenants that it will faithfully perform at all times any and all of its covenants, undertakings, stipulations, and provisions contained in this Indenture, and in every Bond executed, authenticated, and delivered hereunder. The Issuer represents; that it is duly authorized under the Constitution and laws of the State, including particularly and without limitation the Act, to issue the Bonds authorized hereby, to execute this Indenture, to loan the proceeds of the Bonds to the Borrower, and to assign and pledge the payments from the Financing Agreement in the manner and to the extent herein set forth; that all action required on its part for the issuance of the Bonds and the execution and delivery of this Indenture has been duly and effectively taken; and that the Bonds in the hands of the Holders thereof are and will be valid and enforceable obligations of the Issuer according to the terms thereof.

(2) The Trustee covenants that it is duly organized, validly existing, and in good standing and possesses all authorizations necessary to enter into this Indenture; that it has full power and authority to enter into this Indenture and the transactions contemplated hereby; that this Indenture has been duly executed and delivered by it; that this Indenture constitutes a legal, valid, binding, and enforceable obligation of the Trustee (subject to bankruptcy, insolvency, or creditor rights laws generally and principles of equity generally); that the execution, delivery, and performance of this Indenture by the Trustee will not cause or constitute, including after due notice or lapse of time or both, a default under or conflict with organizational documents or other agreements or otherwise materially or adversely affect performance of duties; that the execution of this Indenture by the Trustee, assuming that neither the Trustee or this Indenture is required to be qualified under the Trust Indenture Act of 1939, as amended, will not violate any law, regulation, order, or decree of any Governmental Authority; assuming that neither the Trustee or the Indenture is required to be qualified under the Trust Indenture Act of 1939, as amended, that all consents, approvals, authorizations, orders, or filings of or with any court or governmental agency or body, if any, required for the execution, delivery, and performance of this Indenture by the Trustee have been obtained or made; and that there is no pending action, suit, proceeding, arbitration, or governmental investigation against it, an adverse outcome of which would materially adversely affect its performance under this Indenture.

**Section 5.3 Instruments of Further Assurance.** The Issuer covenants that it has not made, done, executed, or suffered, and will not make, do, execute, or suffer, any act or thing within its control whereby its interest in the Financing Agreement or any part thereof is now or at any time hereafter will be impaired, changed, or encumbered in any manner whatsoever, except as may be expressly permitted herein or in the Financing Agreement; and that it will do, execute, acknowledge, and deliver or cause to be done, executed, acknowledged, and delivered, such instruments supplemental hereto and such further acts, instruments, and transfers as the Trustee may reasonably require for the better assuring, transferring, pledging, assigning, and confirming unto the Trustee all and singular the Trust Estate.

**Section 5.4 Recording and Filing.** The Borrower, at the written direction of the Bond Owner, and at the sole expense of the Borrower, shall take such action with respect to the execution and filing of any continuation statements as are necessary to maintain the perfection of the liens on personal property granted in the Bond Mortgage and to preserve and protect fully the security of the Holders of the Bonds and the rights of the Trustee hereunder and under any of the other aforesaid instruments. Except in accordance with instructions duly provided by Bond Owner, the Trustee shall have no duty or obligation related to the creation, preservation, or perfection of any security instrument, and shall not be responsible for the sufficiency or the proper recording or indexing of any financing or continuation statements.

**Section 5.5 Books and Records.** The Trustee covenants that so long as any Outstanding Bonds issued hereunder and secured by this Indenture shall be unpaid, the Trustee will keep proper books or records and accounts, in which full, true, and correct entries will be made of all its financial dealings or transactions in relation to the Project and the payments derived from the Financing Agreement, this Indenture, and the Bond Mortgage. Upon reasonable notice and at reasonable times during the Trustee's regular business hours and under reasonable regulations established by the Trustee, such books shall be open to the inspection of the Borrower, the Bond Owner, the Holders, or the Issuer, and such accountants or other agencies as the Borrower, the Bond Owner, the Holders, or the Issuer may from time to time designate in writing to the Trustee.

**Section 5.6 Holders' Access to Bond Register.** At reasonable times and under reasonable regulations established by the Bond Registrar, the Bond Register or a copy thereof may be inspected and copied by the Borrower, the Issuer, the Trustee, or the Holders of ten percent (10%) or more in principal amount of the then Outstanding Bonds (or a designated representative thereof), such authority of any such designated representative to be evidenced to the reasonable satisfaction of the Bond Registrar. Except as otherwise may be provided by law, the Bond Register shall not be deemed a public record and shall not be made available for inspection by the public, unless and until notice to the contrary is given to the Bond Registrar by the Issuer and the Bond Owner.

**Section 5.7 Rights Under Financing Agreement.** The Financing Agreement sets forth covenants and obligations of the Issuer and the Borrower, and reference is hereby made to the same for a detailed statement of said covenants and obligations. The Issuer agrees to cooperate in the enforcement of all covenants and obligations of the Borrower under the Financing Agreement and agrees that the Trustee and the Bond Owner may enforce all rights of the Issuer (other than the Unassigned Issuer's Rights) and all obligations of the Borrower under and pursuant to the

Financing Agreement in their respective names and on behalf of the Holders, whether or not the Issuer has undertaken to enforce such rights and obligations.

**Section 5.8 Rights Under Bond Mortgage.** The Issuer acknowledges that it has assigned its interest in and to the Bond Mortgage, other than the Unassigned Issuer's Rights, to the Trustee under this Indenture and that such instrument further secures payment of the Bond Loan, interest thereon, and amounts due under certain other Bond Loan Documents, and reference is hereby made to the same for a detailed statement of the obligations of the parties thereto. Trustee shall only act under and with respect to the Bond Mortgage at the written instruction of the Bond Owner.

**Section 5.9 Tax Covenants Relating to the Bonds.** The Issuer agrees that it (i) will comply with all applicable requirements of the Code that are necessary to preserve the excludability from gross income of interest on the Bonds for federal income tax purposes, all as set forth in the Tax Exemption Agreement; and (ii) will not take any action inconsistent with its expectations stated in the Tax Exemption Agreement and will comply with the covenants and requirements stated therein and incorporated by reference herein.

The Trustee agrees that it (i) will invest funds held under this Indenture in accordance with the terms of this Indenture, the Tax Exemption Agreement and the written instructions of the Borrower; and (ii) will not take any action inconsistent with its obligations expressly stated in the Tax Exemption Agreement and will comply with the covenants and requirements stated therein and incorporated by reference herein.

In connection with the foregoing, the Issuer and the Trustee may request and conclusively rely upon the advice of Bond Counsel. The Issuer and Trustee shall not have liability or responsibility to the extent they follow the terms of this Indenture, the Tax Exemption Agreement or the advice of Counsel, including Bond Counsel.

**Section 5.10 Change in Law.** To the extent that published rulings of the Internal Revenue Service, or amendments to the Code or the Treasury Regulations modify the covenants of the Issuer or the Trustee which are set forth in this Indenture or which are necessary to maintain the Federal Tax Status of the Bonds, at the Borrower's expense the Trustee and the Issuer will comply with such modifications to the extent advised by Bond Counsel so to do.

## **ARTICLE 6 FUNDS AND ACCOUNTS**

**Section 6.1 Trust Funds Pledged and Assigned to the Trustee.** All payments, revenues, and income receivable by the Issuer under the Financing Agreement and Bond Note and pledged and assigned by this Indenture to the Trustee, together with the balance of the Trust Estate, are to be paid directly to the Trustee and, subject to the provisions of **Section 9.6** hereof, deposited by it in the Funds and the Accounts described in this **Article 6** and held in trust for the purposes set forth herein, and, except as otherwise provided herein, shall not be subject to any lien, levy, garnishment, or attachment by any creditor of the Issuer or the Borrower nor shall they be subject to any assignment or hypothecation by the Borrower. Moneys on deposit in the Funds and the Accounts described in this **Article 6** shall be maintained and administered by the Trustee in trust,

and pending application in accordance with the provisions of this **Article 6** shall be subject to a lien and charge in favor of the Holders until applied as hereinafter provided. The Trustee shall at all times maintain accurate records of deposits into and withdrawals from and transfers among such Funds and the day of receipt of such deposits, withdrawals, and transfers. In addition, each Fund shall constitute a segregated trust account or accounts maintained by the Trustee, segregated from all other funds of the Trustee, and shall be established in the name of the Trustee (or the Borrower, as may be applicable), as trustee for the Bonds. The Trustee shall not deposit into such Funds any moneys other than as provided in this Indenture or the Financing Agreement.

### **Section 6.2 Project Fund; Disbursement of Project Funds.**

(1) A special trust fund is hereby created by the Trustee and designated the Project Fund. The proceeds of the Bonds (less \$[\_\_\_\_\_] representing proceeds of the Bonds deposited in the Costs of Issuance Fund) and any other amounts deposited by the Borrower for deposit therein shall be paid to the Trustee for deposit at the Bond Owner Bond Closing Date for deposit in the Project Fund.

(2) No moneys shall be disbursed from the Project Fund until the Issuer and the Trustee shall have received evidence of the recordation of the Bond Mortgage and the Tax Regulatory Agreement in the real property records of Shelby County, Texas. The Trustee may conclusively rely upon telephonic notice from the Title Company responsible for recording the Bond Mortgage and the Tax Regulatory Agreement as evidence of such recordation.

(3) Upon satisfaction of the requirements of this **Section 6.2** and receipt from the Borrower of a written requisition in the form of **Exhibit A** hereto, executed by the Borrower and consented to by the Bond Owner, the Trustee shall promptly withdraw and disburse all amounts requested in such requisition from funds in the Project Fund to the Borrower.

(4) Neither the Trustee nor the Issuer shall be responsible for the application by the Borrower of moneys disbursed to the Borrower (if any money is disbursed thereto) in accordance with this **Section 6.2**.

(5) All requisitions in the form provided by this Indenture and all other statements, orders, certifications, and approvals received by the Trustee, as required by this Article as conditions of payment from the Project Fund, may be conclusively relied upon by the Trustee, and shall be retained by the Trustee, subject at all reasonable times to examination by the Borrower, the Issuer, the Bond Owner, and the agents and representatives thereof.

(6) Without duplication of the terms and requirements of the Financing Agreement, all costs incurred in connection with the requisition and disbursement of funds from the Project Fund, including but not limited to the cost of the Bond Owner's construction consultant and updates to the Title Policy, shall be paid by the Borrower.

(7) On or after the Stabilized Occupancy Date, all amounts remaining on deposit in the Project Fund that are not proceeds of the Bonds shall be paid to the Borrower, upon receipt by the Trustee of a certificate from the Representative certifying what amount on deposit in the Project Fund are not proceeds of the Bonds. If the Stabilized Occupancy Date does not occur by the Construction Term Maturity Date, or on such earlier date as the Borrower (with

written concurrence of the Bond Owner) advises the Trustee, no further draws will be made from the Project Fund as provided for in **Section 4.1(3)** hereof, all amounts remaining on deposit in the Project Fund representing proceeds of the Bonds shall be transferred to the Bond Fund and used to redeem Bonds in accordance with **Section 4.1(3)** hereof within ninety (90) days.

**Section 6.3 Revenue Fund.** A special trust fund is hereby created by Trustee at the Bond Owner and designated the Revenue Fund.

(1) **Deposits to the Revenue Fund.** All Basic Payments under the provisions of the Financing Agreement and the Bond Note are assigned by the Issuer to the Trustee pursuant to this Indenture for monthly deposit to the Revenue Fund.

(2) **Uses of Revenue Fund.** Provided no Event of Default has occurred and is continuing, funds on deposit in the Revenue Fund shall be withdrawn and distributed at least monthly by the Trustee as follows:

(A) Through and including the Stabilized Occupancy Date (or such later date as approved by the Bond Owner):

FIRST: to the Principal Account of the Bond Fund in an amount equal to the principal or redemption price, if any, and then to the Interest Account of the Bond Fund, the interest on Bonds to become due on the next Payment Date;

SECOND: to the Rebate Fund, the amount calculated as due with respect to a particular Bond Year by the Rebate Analyst;

THIRD: to the Trustee, the amount of the Trustee's Ordinary Fees and Expenses then due, if any, and then to the Rebate Analyst, the reasonable fees and expenses as billed and due to it for services hereunder; and

FOURTH: to the Issuer, the amount of the Issuer Fees then due, and, to the Trustee, the Additional Charges of the Trustee, in each case pursuant to **Section 4.3** of the Financing Agreement.

(B) After Stabilized Occupancy Date (or such later date as approved by the Bond Owner):

FIRST: to the Principal Account of the Bond Fund in an amount equal to the principal (including sinking fund installments) of and then to the Interest Account of the Bond Fund, the interest on the Bonds to become due on the next Payment Date, provided that in the month next preceding each Payment Date, sufficient amounts shall be transferred to the Bond Fund pursuant to **Section 6.4** hereof on the Business Day next preceding such Payment Date so that the aggregate amount on deposit in the Bond Fund is equal to, but not in excess of, the next required payment of principal (including sinking fund redemption) of and interest on the Bonds and provided, further, that when the amount in the Bond Fund is equal to the

next required payment of principal (including mandatory sinking fund redemptions) of and interest on the Bonds, no further transfers to the Bond Fund for purposes of debt service on Bonds shall be required until the monthly distribution date next following the related Payment Date;

SECOND: to the Rebate Fund, the amount calculated as due with respect to a particular Bond Year by the Rebate Analyst;

THIRD: to the Trustee, the amount of the Trustee's Ordinary Fees and Expenses then due, if any, and then to the Rebate Analyst, the reasonable fees and expenses, if any, as billed and due to it for services hereunder;

FOURTH: to the Real Estate Taxes and Insurance Account (as defined herein) of the Servicing Fund, in an amount determined by the Bond Owner based on the requirements of the Bond Mortgage which will equate to 1/12th of the amount budgeted by the Borrower (and accepted as such by the Bond Owner) for annual premiums for insurance required to be maintained pursuant to the Financing Agreement and for any annual real estate taxes (or any payments in lieu of taxes) or other charges for governmental services for the current year (except for utility charges) which shall be disbursed by the Trustee from time to time upon written instructions from the Bond Owner to pay such premiums, taxes, and other charges when due or reimburse the Borrower upon receipt of satisfactory evidence of payment thereof; provided, however, that distribution by the Trustee to the Real Estate Taxes and Insurance Account in respect of the first date or dates on which premiums for insurance and taxes or other payments described above are payable shall be made in amounts equal to the respective quotients obtained by dividing (i) the amount of such premiums and (ii) the amount of such taxes or other charges by the respective number of months, including the month of computation, to and including the month prior to the month in which such premiums or taxes are payable;

FIFTH: to the Replacement Reserve Account of the Servicing Fund the Replacement Reserve Deposit Requirement multiplied by the number of units in the Project until such amount is funded in full;

SIXTH: to the Issuer, the amount of the Issuer Fees then due, and, to the Trustee, the Additional Charges of the Trustee, in each case, pursuant to **Section 4.3** of the Financing Agreement;

SEVENTH: to the Subordinated Bond Interest Account of the Bond Fund, an amount up to the interest on the Subordinated Bonds (if any) to become due on the next succeeding Payment Date until such amount is funded in full; and

EIGHTH: to the Subordinated Bond Principal Account of the Bond Fund, an amount up to the principal of the Subordinated Bonds (if any) to become

due on the next succeeding Payment Date until such amount is funded in full.

On December 15 of each year (or such other time as approved by Bond Owner) and provided that sufficient amounts have been deposited in the Revenue Fund to enable the Trustee to make all deposits (or arrears in deposits) and payments required above, amounts on deposit in the Revenue Fund shall be withdrawn and disbursed by the Trustee to the Borrower or at the Borrower's request may be deposited to the Redemption Account and used to redeem the Bonds.

**Section 6.4 Bond Fund.** A special trust fund is hereby created by the Trustee at the Bond Owner and designated the Bond Fund, which shall contain (i) the Interest Account, (ii) the Principal Account, (iii) the Redemption Account, (iv) the Subordinated Bond Interest Account, (v) the Subordinated Bond Principal Account, and (vi) the Subordinated Bond Redemption Account.

(1) **Interest Account.** The Trustee shall deposit to the Interest Account moneys transferred from the Revenue Fund and from the Project Fund (to the intent of the budgeted interest reserve) as provided in **Section 6.3** hereof. Moneys in the Interest Account shall be used to pay interest on the Bonds other than Subordinated Bonds as due. The Trustee shall also deposit to the Interest Account the proceeds, if any, from the Bonds to be used to pay capitalized interest.

(3) **Principal Account.** The Trustee shall deposit to the Principal Account moneys transferred from the Revenue Fund as provided in **Section 6.3** hereof. Moneys in the Principal Account shall be used to pay principal of and mandatory sinking fund redemptions on the Bonds when due.

(4) **Redemption Account.** The Trustee shall deposit to the Redemption Account any amounts of funds transferred or deposited to effect redemption (other than mandatory sinking fund redemption) or purchase of Bonds pursuant to **Article 4** hereof. Moneys on deposit in the Redemption Account shall be used for redemption or purchase (other than mandatory sinking fund redemption pursuant to **Section 4.1(5)** hereof) of Bonds pursuant to the provisions of **Article 4** hereof.

**Section 6.5 Deposit of Funds with Paying Agent.**

(1) If the Trustee is not the Paying Agent, the Trustee shall transfer and remit sums from the Bond Fund to the Paying Agent, on or before the Business Day immediately prior to each Payment Date or Maturity Date, from the balance then on hand in the Bond Fund, sufficient to pay all principal, interest and redemption premiums then due on the Bonds. The Paying Agent shall hold in trust for the Holders of such Bonds all sums so transferred to it until paid to such Holders or otherwise disposed of as herein provided.

(2) The Trustee will cause any Paying Agent which is not the Trustee to execute and deliver to it an instrument in which such Paying Agent shall agree with the Trustee, subject to the provisions of this **0**, that such Paying Agent will:

(a) Hold all sums held by it for the payment of principal of (and premium, if any) or interest on Bonds in trust for the benefit of the Holders of such Bonds until such sums shall be paid to such Holders or otherwise disposed of as herein provided; and

(b) At any time during the continuance of any default in the making of any such payment of principal (and premium, if any) or interest, upon the written request of the Trustee forthwith pay to the Trustee all sums so held in trust by such Paying Agent. The Trustee, acting as Paying Agent, shall also be bound by the terms of the foregoing requirements. Notwithstanding anything to the contrary herein, all Funds and Accounts will be located at the Bond Owner.

**Section 6.6 Rebate Fund.** There is hereby created and established with the Trustee a separate trust fund which shall be designated the “Rebate Fund.” The Rebate Fund shall not be subject to the lien or encumbrance of this Indenture, but shall be held in trust for the benefit of the United States of America, and shall be subject to the claim of no other person, including that of the Trustee and the Holders. The money deposited in the Rebate Fund, together with all investments thereof and income from investments therefrom, shall be held in trust and applied solely as provided in the Tax Exemption Agreement. The Trustee shall make deposits to and disbursements from the Rebate Fund, as well as investments of the amounts therein, in accordance with the Tax Exemption Agreement. To the extent permitted by the Tax Exemption Agreement, the Trustee shall pay to the Borrower any amount remaining in the Rebate Account after the Rebate Amount has been finally calculated and/or paid and the Bonds have been paid in full. Notwithstanding the foregoing, the Trustee with respect to the Rebate Fund is afforded all the rights, protections and immunities otherwise accorded to it under this Indenture.

**Section 6.7 Mortgage Recovery Fund.** The Trustee shall establish and maintain at the Bond Owner a special trust fund separate from any other Fund established and maintained hereunder designated as the Mortgage Recovery Fund.

(1) In the event there is damage, destruction, or Condemnation of the Project, the Recovery Proceeds shall be deposited in the Mortgage Recovery Fund and shall be disbursed in the following order of priority: (a) to pay or reimburse the Borrower for the costs of repairing or replacing the Project subject to the requirements provided in paragraph **(5)** below; (b) to the extent required or permitted by **Section 6.5** of the Financing Agreement, or if the Borrower fails to comply with the requirements of paragraph **(5)** below, to redeem Bonds, in whole or in part, or to pay the principal of and interest on the Bonds upon the acceleration of the maturity thereof; (c) to make payments of principal and interest on the Bonds; and (d) to pay Additional Charges. The Trustee’s use of Recovery Proceeds is further subject to the provisions of paragraph **(4)** below.

(2) In the event of a foreclosure of the Bond Mortgage, the Net Foreclosure Proceeds realized from the foreclosure sale shall be deposited in the Mortgage Recovery Fund and shall be withdrawn and disbursed by the Trustee to: (a) redeem Bonds, in whole; (b) make payments of principal and interest on the Bonds or other amounts due under the Bond Loan Documents; or (c) pay Additional Charges. The Trustee’s use of Net Foreclosure Proceeds pursuant to clause (c) is subject to the provisions of paragraph **(4)** below.



(3) Moneys in the Mortgage Recovery Fund shall be transferred by the Trustee to the Bond Fund to pay principal of, premium and interest on the Bonds when due to the extent funds are not otherwise available to make payment on the Bonds when due.

(4) In the event moneys (other than Recovery Proceeds) are deposited in the Mortgage Recovery Fund pursuant to the Bond Mortgage, such moneys shall be disbursed in the manner set forth in paragraph **(3)** above.

(5) (a) Amounts in the Mortgage Recovery Fund shall be applied to pay or reimburse the Borrower for the costs of repairing or replacing the Project only if the following conditions are satisfied:

- (i) The Trustee shall have been furnished a written confirmation from the Bond Owner that the conditions contained in **Section 6.4** of the Financing Agreement have been satisfied or waived;
- (ii) The Borrower shall have provided a construction statement itemizing the full cost of the repair or restoration (the "**Construction Statement**");
- (iii) The Recovery Proceeds to be deposited in the Mortgage Recovery Fund to pay for such repair or restoration must be sufficient to complete such repair or restoration as stated in the Construction Statement, or the Borrower must deposit in the Mortgage Recovery Fund the net difference prior to commencing repair or restoration;
- (iv) Disbursements from the Mortgage Recovery Fund to pay the cost of such repair or restoration shall be made not more frequently than twice a month for restoration work completed and in place pursuant to the construction lending procedures and conditions contained in **Sections 6.4** and **6.5** of the Financing Agreement; and
- (v) The Borrower submits a written requisition in the form of **Exhibit A** hereto and the Bond Owner gives its written approval of such requisition.

(b) All requisitions in the form attached as **Exhibit A** hereto and all other statements, orders, certifications, and approvals received by the Trustee, as required by this Article as conditions of payment from the Mortgage Recovery Fund, may be conclusively relied upon by the Trustee, and shall be retained by the Trustee, subject at all reasonable times to examination by the Borrower (so long as the Financing Agreement shall remain in force and effect), the Issuer, and the agents and representatives of each of them.

(c) In the event that the Borrower does not complete the repair or replacement of the Project in accordance with the terms and schedule set forth above and the

Borrower is otherwise in default in its obligations with respect to the restoration as required by the Bond Mortgage, if such failure continues to exist thirty (30) days after notice thereof from the Bond Owner to the Borrower, the Trustee shall either disburse moneys in the Mortgage Recovery Fund, including retainage for the payment of costs of repairing or replacing the Project or disburse moneys in the Mortgage Recovery Fund in accordance with written instructions from Bond Owner.

(d) Upon the completion of the repair or replacement of the Project (as evidenced by a certificate of the Borrower), the accumulated retainage shall be disbursed to the Borrower and the balance in the Mortgage Recovery Fund, shall be disbursed to the Borrower.

**Section 6.8 Servicing Fund.** A special trust fund is hereby created by the Trustee separate from any other Fund established and maintained hereunder designated as the Servicing Fund, which shall contain (i) the “**Real Estate Taxes and Insurance Account**,” (ii) the “**Replacement Reserve Account**,” (iii) the “**Operating Reserve Account**” and (iv) if required by the Investor Limited Partner, the “**Lease Up Reserve**.”

(1) In addition to reserves required to be maintained pursuant to the terms of the Partnership Agreement (as that term is defined in the Financing Agreement), the Trustee shall deposit into the Servicing Fund the amounts provided in **Section 6.3** hereof. Pursuant to **Schedule F** of the Financing Agreement, the following Accounts are established in the Servicing Fund:

(a) **The Real Estate Taxes and Insurance Reserve Account.** In accordance with written instructions from the Bond Owner and **Schedule F** of the Financing Agreement, the Trustee shall transfer from the Revenue Fund amounts required by **Section 5.23** of the Financing Agreement for deposit to the Real Estate Taxes and Insurance Account (the “**Real Estate Taxes and Insurance Account**”) and shall maintain separate accounting of payments applicable to each of real estate taxes and other governmental charges and insurance premiums. Interest accrued on this Account shall become a part of this Account and may be utilized for the purposes of this Account. The Trustee shall pay all of the real estate taxes and other governmental charges with respect to the Project, in accordance with written instructions from the Borrower, with the written concurrence of the Bond Owner, solely from funds earmarked for real estate taxes and other governmental charges and accounted for as part of the Real Estate Taxes and Insurance Account in all events not later than when due; provided that such instructions have been timely received and adequate funds are available in the Real Estate Taxes and Insurance Account. The Trustee shall pay all of the insurance premiums due with respect to the Project, in accordance with written instructions from the Borrower, with the written concurrence of the Bond Owner, solely from funds available therefor and earmarked for insurance premiums and accounted for as part of the Real Estate Taxes and Insurance Account in all events not later than when due; provided that such instructions have been timely received and adequate funds are available in the Real Estate Taxes and Insurance Account. In the event insurance for the Project is provided through a blanket policy of insurance covering additional properties other than the Project, the Trustee shall pay such portion of the premiums therefor as may be properly allocated to the Project, in accordance with written instructions from the Borrower, with the written concurrence of the Bond Owner. The Trustee shall only be required to pay insurance premiums, real estate taxes, and other governmental charges from funds available therefor as provided in this Indenture and in the Financing Agreement. In the event there are insufficient funds in the Real Estate Taxes and Insurance Account to pay the real estate taxes and other governmental charges and insurance premiums when

due, the Trustee will notify the Borrower and the Bond Owner of such deficiency, and Borrower shall, on demand of the Trustee, deposit any amount necessary to make up the deficiency. Amounts in the Real Estate Taxes and Insurance Account in excess of the requirements therefor shall be credited against future required transfers from the Revenue Fund.

(b) **The Replacement Reserve Account.** In accordance with **Section 5.23** and **Schedule F** of the Financing Agreement, the Trustee shall transfer from the Revenue Fund amounts required by **Section 5.23** of the Financing Agreement for deposit to the Replacement Reserve Account and shall maintain separate accounting thereof (the “**Replacement Reserve Account**”). The Trustee shall withdraw and disburse amounts from such funds accounted for as the Replacement Reserve Account at the written direction of the Borrower and the Investor Limited Partner) with the written consent of the Bond Owner for disbursements over Five Thousand Dollars (\$5,000) in any calendar year, to pay or reimburse the Borrower for the payment of capital expenditures and replacements to the Project, exclusive of ordinary or routine maintenance. The Bond Owner or an agent thereof shall monitor the Borrower’s requests to ensure no duplication of disbursements. Interest accrued on the Replacement Reserve Account shall become a part of this Account and may be utilized for the purposes of this Account. In no event shall the Trustee be obligated to consider, nor shall the Bond Owner be obligated to consent to, requests for more than one disbursement from the Replacement Reserve Account each calendar month. Moneys in the Replacement Reserve Account shall be transferred by the Trustee to the Bond Fund to pay principal of and interest on the Bonds when due to the extent funds are not otherwise available to make payment on the Bonds when due.

(c) **Schedule F.** In addition to the deposits, withdrawals, and transfers contained herein in regard to moneys deposited in the Servicing Fund, the Trustee shall make deposits, withdrawals, and transfers of such moneys as provided in **Schedule F** of the Financing Agreement, to which reference is hereby made. In the case there are any inconsistencies between such **Schedule F** and the provisions of this **Section 6.8**, the Trustee shall be entitled to rely upon the written instructions of the Bond Owner in regard to the deposit and/or disposition of moneys in the Servicing Fund.

**Section 6.9 Costs of Issuance Fund.** A special trust fund is hereby created by the Trustee at the Bond Owner and designated the Costs of Issuance Fund. There shall be deposited to the credit of the Costs of Issuance Fund on the Bond Closing Date \$[\_\_\_\_\_] of Bond proceeds and \$[\_\_\_\_\_] of amounts provided by the Borrower other than proceeds of the Bonds. The Trustee shall withdraw and disburse amounts in such Fund upon written direction of the Borrower and receipt of written approval by the Bond Owner to pay or reimburse the Borrower for Costs of Issuance. Any proceeds of the Bonds, including investment earnings, in the Costs of Issuance Fund on the ninetieth day following the Bond Closing shall be (i) if derived from proceeds of the Bonds, transferred to the Project Fund or (ii) if derived from sources other than proceeds of the Bonds, transferred to the Borrower or used as directed by the Borrower, as the case may be.

**Section 6.10 Interest Earned on Funds.** The interest earned from the investment of money maintained and administered by the Trustee and located at the Bond Owner in each of the Funds and the Accounts created under this **Article 6** (other than the Rebate Fund) shall inure to the benefit of the Borrower and shall be retained in such separate Fund or Account and applied as a credit against the payment next due into such separate Fund or Account.

**Section 6.11 Final Balances.** Upon the deposit with the Trustee of moneys sufficient to pay all principal of, premium, if any, and interest on the Bonds, and upon satisfaction of all claims against the Issuer hereunder and under the Bond Loan Documents, including any rebate obligation, and all fees, charges, and expenses of the Trustee, the Bond Registrar, the Issuer, and any Paying Agent which are properly due and payable hereunder or to be come due on or before the redemption or payment of the Bonds, or upon the making of adequate provisions for the payment of such amounts as permitted hereby, all moneys remaining in all Funds, except: (1) moneys necessary to pay principal of, premium, if any, and interest on the Bonds, or the redemption price of Bonds due in accordance with **Section 4.1(5)** which moneys shall be held by the Trustee to be paid to the Holders; and (2) moneys, if any, set aside pursuant to **Section 6.6** hereof, shall be remitted to the Borrower.

## ARTICLE 7 INVESTMENTS

**Section 7.1 Investments by the Trustee.** The Trustee is directed to deposit moneys in the Funds at the Bond Owner unless otherwise invested by the Trustee in Permitted Investments upon the written direction of the Borrower (which direction may only be provided if no Event of Default is then continuing and is known to the Trustee and only if such Permitted Investment shall have been approved in writing by the Bond Owner otherwise, if an Event of Default is then continuing, investments shall be made at the sole discretion and written direction of the Bond Owner) (which direction shall specify the amount thereof to be so invested), in Permitted Investments. In the absence of written direction of the Borrower, the Trustee shall, until such directions are received, invest such moneys in the Wilmington U.S. Treasury Money Market Fund CUSIP 97181C316 (to the extent Bond Owner acknowledges that such investment constitutes a Permitted Investment). During the period that moneys are held in accounts at the Bond Owner, Bond Owner will provide monthly statements to the Trustee and the Issuer detailing the Funds and Accounts held by it and reflecting all transactions in such Funds and Accounts. Except as expressly otherwise provided herein with respect to a Reserve Account, the Borrower and the Bond Owner, as the case may be, shall direct investments which mature on or before the Business Day immediately prior to the day such amounts are required and in the amounts required, to enable the Trustee to make payments due hereunder on the Bonds or otherwise, but in no event longer than one hundred eighty (180) days (unless approved in writing by the Bond Owner). In this regard the Trustee may use its automatic cash management system.

(1) The Trustee shall sell and reduce to cash a sufficient portion of investments under the provisions of this Section whenever the cash balance in the Fund for which the investment was made is insufficient for its current requirements. Securities so purchased as an investment of money shall be held by the Trustee or its custodian, shall be registered in the name of the Trustee or the custodian or the nominee of either if registration is required, and shall be deemed at all times a part of the applicable Fund, and the interest accruing thereon and any profit realized from such investments shall be credited to the Fund from which the investment was made, subject to any transfer to another Fund as herein provided. Any loss resulting from such investment shall be charged to the Fund from which the investment was made, and in the event such loss reduces the amount held in such Fund below the amount required to be deposited in such Fund, the Trustee shall request the Borrower to transfer to the Trustee for deposit into such Fund the amount required to restore amounts in such Fund to the required amount. The Trustee shall

not be liable or responsible for any loss incurred from the investment or purchase or sale of any investment in accordance with directions given by the Borrower or the Bond Owner under this **Section 7.1** or in accordance with subparagraph **(1)** above, except for any loss which has been adjudicated by court of competent jurisdiction in a final non-appealable judgment to have resulted from the negligence or willful misconduct of the Trustee or its employees. The Trustee shall not be held accountable for the Bonds being deemed “arbitrage Bonds” if it makes investments pursuant to the instructions given to it in this **Section 7.1**. The Parties acknowledge that the Trustee is not providing investment supervision, recommendation, or advice.

(2) The Trustee is hereby authorized, in making or disposing of any investment permitted by this Indenture, to deal with itself (in its individual capacity) or with any one or more of its affiliates, whether it or any such affiliate is acting as an agent of the Trustee or for any third person or dealing as principal for its own account.

(3) Although the Issuer and the Borrower each recognizes that it may obtain a broker confirmation with respect to the investment of monies in any fund or account (or a written statement containing comparable information) at no additional cost, the Issuer and the Borrower hereby agree that confirmations of Permitted Investments are not required to be issued by the Trustee for any month in which a monthly statement is rendered. No statement need be rendered for any fund or account for any month if no activity occurred in such fund or account during such month.

(4) The Trustee may rely on the directions of the Borrower or Bond Owner given as provided above and shall have no responsibility or liability for or with respect to the suitability, the legality and the compliance with the terms of this Indenture of the investments so directed.

**Section 7.2 Computation of Balances in Funds.** In computing the assets of any Fund established hereunder, investments and accrued but unpaid interest thereon shall be deemed a part thereof, and, such investments shall be valued at par value, or at the redemption price thereof, if then redeemable at the option of the obligor, whichever is lower.

**Section 7.3 Downgrade of Investments.** If any rating of a Permitted Investment during the term of this Indenture falls below such rating that is required pursuant to the definition of “**Permitted Investments**” then the Trustee shall within five Business Days after the Trustee or a Responsible Officer’s having actual knowledge of the downgrade of the rating of an investment is known to the Trustee as provided in **Section 10.1(15)** of this Indenture, notify the Borrower and the Bond Owner in writing of such downgrade. The Borrower shall within five (5) Business Days of the receipt of the downgrade notice from the Trustee, direct (with the written consent of the Bond Owner) the Trustee in writing to reinvest such downgraded investment in other Permitted Investments. The Trustee shall not have a duty or obligation to monitor the investment grade of any Permitted Investment.

**ARTICLE 8  
DISCHARGE OF LIEN**

**Section 8.1 Payment of Bonds; Satisfaction, Defeasance, and Discharge of Bonds, and Obligation to Holders.** Whenever the conditions specified in either clause (1)(A) or clause (1)(B) of the following subsection (1) and the conditions specified in the following subsections (2), (3), (4), and (5) to the extent applicable, shall exist, namely:

(1) Either:

(A) All Bonds have become due and payable and all principal or premium, if any, and interest on the Bonds shall have been paid in full, or all Bonds have been canceled by the Trustee or delivered to the Trustee for cancellation, except for:

- (i) Bonds for which funds have theretofore been deposited in trust or segregated and held in trust by the Paying Agent or the Trustee (even if thereafter repaid to the Issuer or discharged from such trust, as provided in Section 3.10 hereof); and
- (ii) Bonds alleged to have been destroyed or lost which have been replaced or paid as provided in Section 3.7 hereof, and (1) which, prior to the satisfaction and discharge of this Indenture as hereinafter provided, have not been presented to the Paying Agent or the Trustee with a claim of ownership and enforceability by the Holder hereof, or (2) whose enforceability by the Holder thereof has been determined adversely to the Holder by a court of competent jurisdiction or other competent tribunal; or

(B) Borrower has paid or caused to be paid, as trust funds, to the Trustee cash and/or Permitted Investments of the type described in clause (i) of the definition of that term which do not permit the redemption thereof at the option of the issuer thereof, the principal of, premium, if any, and interest on which when due (or upon the redemption thereof at the option of the holder), will, without reinvestment, provide cash, which together with the cash, if any, deposited at the same time, shall be sufficient, to pay and discharge the entire indebtedness on Bonds (excluding Bonds described in clauses (i) and (ii) of paragraph (A) above) not theretofore canceled by the Trustee or delivered to the Trustee for cancellation at their stated maturity or redemption date, as the case may be (the “Defeasance Collateral”), and has made arrangements satisfactory to the Trustee for the giving of notice of redemption, if any, by the Trustee at the expense of the Borrower in the same manner as is provided by Section 4.2 hereof;

(2) The Borrower has paid, caused to be paid or made arrangements satisfactory to the Trustee and the Issuer for the payment of all other sums due and payable hereunder and under the Bond Loan Documents, including any rebate obligation, and any Issuer Fees;

(3) If discharge is to be effected under paragraph **(1)(B)** of subsection **(1)**, the Borrower has delivered to the Trustee and the Issuer a report of an Independent Accountant stating that the payments to be made on any securities, together with the cash, if any, deposited pursuant to paragraph **(1)(B)** of subsection **(1)** of this **Section 8.1** will be sufficient to pay when due the principal of, premium, if any, and interest on the Bonds to be defeased;

(4) If discharge is to be effected under paragraph **(1)(B)** of subsection **(1)** of this **Section 8.1**, there is delivered to the Trustee and the Issuer a Favorable Opinion of Bond Counsel and an opinion of Independent Counsel that all conditions to such discharge contained in this Indenture have been satisfied; and

(5) If discharge is to be effected under paragraph **(1)(B)** of subsection **(1)** of this **Section 8.1**, the Borrower has delivered to the Trustee and the Issuer an opinion of Independent Counsel which opinion may contain, and be subject to, conditions, exceptions or qualifications as are then customarily included in such opinions, to the effect that (i) the Defeasance Collateral has been duly and validly assigned and delivered to the Trustee, (ii) the security interest of the Trustee for the ratable benefit of the Holders, with respect to Defeasance Collateral, is a first priority perfected security interest as security for payment of the Bonds, (iii) making the payment which accompanies such opinion would not constitute an avoidable preference under Section 547 of the Bankruptcy Code or under applicable state law in the event of a filing of a petition for relief under the Bankruptcy Code or such applicable state law by or against the Borrower, and (iv) the Defeasance Collateral would not be part of the bankrupt estate under Section 541 of the Bankruptcy Code or be subject to the automatic stay under Section 362 of the Bankruptcy Code in the event of a filing of a petition for relief under the Bankruptcy Code by or against the Borrower; then, except as otherwise provided in **Section 8.5** hereof, the rights of the Holders shall be limited to the cash or cash and securities deposited as provided in subsection **(1)(A)** or **(1)(B)** of this **Section 8.1**, the rights and interest hereby granted or granted by the Bond Loan Documents to or for the benefit of the Trustee or the Holders shall cease and terminate, and the Issuer and the Trustee shall, at the expense of the Borrower and upon the Borrower's written request, execute and deliver such instruments of satisfaction and transfer as may be necessary, and forthwith the estate, right, title and interest of the Trustee and all rights under this Indenture and the Bond Loan Documents (except the moneys or securities or both deposited as required above and rebatable arbitrage and except as may otherwise be provided in **Section 8.5** hereof) shall thereupon be discharged and satisfied; except that in any event the obligations of the Borrower under **Section 4.3**, **Section 7.3**, **Section 11.3**, **12.17**, and **12.18** of the Financing Agreement shall survive.

**Section 8.2 Cancellation of Surrendered Bonds.** The Issuer or the Borrower may at any time surrender to the Trustee for cancellation by the Trustee any Bonds previously authenticated and delivered hereunder which the Issuer or Borrower acquired in any manner whatsoever, and such Bonds, upon such surrender and cancellation, shall be deemed to be paid and retired.

**Section 8.3 Payment of Bonds.** Any Bonds shall be deemed paid if the conditions set forth in **Section 8.1** hereof have been satisfied with respect thereto, even though other Bonds may remain Outstanding.

**Section 8.4 Application of Deposited Money.** All money, securities, and income thereon deposited pursuant to **Section 8.1** hereof for the purpose of paying the principal, premium, if any, and interest on Bonds shall be applied by the Trustee solely for such purpose.

**Section 8.5 Survival of Certain Provisions.** Notwithstanding satisfaction of the conditions set forth in **Section 8.1(1)(B)** hereof, the provisions contained in **Section 5.9**, **Section 5.10**, and **Section 6.6** hereof shall survive the discharge of this Indenture pursuant to **Section 8.1(1)(B)** hereof.

## ARTICLE 9 DEFAULT PROVISIONS AND REMEDIES

**Section 9.1 Events of Default.** Subject to the provisions of **Section 9.10** hereof, each of the following events is hereby defined as and declared to be and to constitute an Event of Default (whatever the reason for such an Event of Default and whether it shall be voluntary or involuntary or be effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule, or regulation of any administrative or governmental body):

(1) Failure to make payment of any interest on any Outstanding Bonds on the due date thereof; or

(2) Failure to make payment of the principal or redemption price of any Outstanding Bonds, on the stated maturity thereof, on the date fixed for redemption thereof or upon acceleration, or failure to timely pay any redemption premium, if any, on the Bonds; or

(3) Failure to pay any other moneys required to be paid to the Trustee under the provisions of this Indenture and such default shall have continued for a period of five (5) days after written notice thereof, specifying such default, shall have been given by the Trustee to the Issuer and the Borrower, or to the Issuer, the Borrower and the Trustee by the Holders of not less than 25% in aggregate principal amount of the Bonds then Outstanding; or

(4) Failure by Issuer to perform or observe any other of the covenants, agreements, or conditions on the part of the Issuer contained in this Indenture or in the Bonds, and such default shall have continued for a period of thirty (30) days after written notice thereof given in the manner provided in clause **(3)** above; or

(5) The occurrence of any Event of Default under the Financing Agreement.

The Trustee shall provide the Bond Owner, the Holders, the Borrower, and the Issuer notice of any Event of Default as provided in **Section 10.3** hereof.

**Section 9.2 Acceleration.** If an Event of Default is then continuing, the Trustee shall solely upon written direction of the Bond Owner (which direction shall be provided at the option of the Bond Owner), by notice in writing delivered to the Issuer and the Borrower (unless notice to Borrower is not required therefor in the Financing Agreement), declare the principal of all of the Bonds Outstanding and the unpaid interest accrued thereon immediately due and payable. The Trustee shall give notice of acceleration to Holders in the same manner as notice of redemption is given under **Section 4.2** hereof (except as to the timing thereof) stating the accelerated date upon



which the Bonds are due and payable, provided that the Trustee shall not be required to delay the effective date of acceleration until such notice is given.

### **Section 9.3 Remedies.**

(1) During the continuance of an Event of Default, the Trustee shall only take such actions as the Bond Owner shall direct (subject to receipt of indemnity acceptable to it pursuant to **Section 10.1** hereof) to enforce any and all rights available to the Issuer (other than the Unassigned Issuer's Rights) or Holders under this Indenture, the Financing Agreement, the Tax Regulatory Agreement, and the Bond Mortgage or otherwise, and, in this regard, is specifically authorized to transfer funds from any Fund created pursuant to **Article 6** hereof (except rebatable arbitrage whether or not deposited in the Rebate Fund), and moneys held in trust for the payment of principal, premium, redemption price, or interest with respect to the Bonds which has matured or otherwise become payable prior to such Event of Default to the Bond Fund for its use in paying principal and interest on the Bonds. The Bond Owner may take any such action for and on behalf of the Trustee.

(2) No remedy by the terms of this Indenture conferred upon or reserved to the Trustee (or the Holders) is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative and shall be in addition to any other remedy (i) given to the Trustee or to the Holders hereunder or (ii) now or hereafter existing at law or in equity or by statute.

(3) No delay or omission to exercise any right or power accruing upon any Event of Default shall impair any such right or power or shall be construed to be a waiver of any such Event of Default, or acquiescence therein; and every such right and power may be exercised from time to time and as often as may be deemed expedient.

(4) No waiver of any Event of Default hereunder, whether by the Trustee or the Holders, shall extend to or shall affect any subsequent Event of Default or impair any rights or remedies consequent thereon (and in any event no waiver of an Event of Default shall be effective unless joined in or consented to by the Bond Owner).

**Section 9.4 Direction of Proceedings by Bond Owner.** Anything in this Indenture to the contrary notwithstanding, but subject to the Unassigned Issuer's Rights, the Bond Owner shall have the right, at any time, by an instrument or instruments in writing executed and delivered to the Trustee and subject to receipt by the Trustee of indemnity acceptable to it pursuant to **Section 10.1** hereof, to direct the method, time, and place of conducting all proceedings to be taken in connection with the enforcement of the terms and conditions of this Indenture, the Financing Agreement, the Tax Regulatory Agreement, and the Bond Mortgage or for the appointment of a receiver or any other proceedings hereunder, provided that such direction shall not be otherwise than in accordance with the provisions of law and of this Indenture, the Financing Agreement, the Tax Regulatory Agreement, and the Bond Mortgage.

**Section 9.5 Waiver of Stay or Extension Laws.** Upon the occurrence of an Event of Default, to the extent that such rights may then lawfully be waived, neither the Issuer nor anyone claiming through it or under it shall or will set up, claim, or seek to take advantage of any appraisalment, valuation, stay, extension, or redemption laws now or hereafter in force, in order to

prevent or hinder the enforcement of this Indenture, but the Issuer, for itself and all who may claim through or under it, hereby waives to the extent that it lawfully may do so the benefit of all such laws and all right of appraisal and redemption to which it may be entitled under the laws of the State.

**Section 9.6 Priority of Payment and Application of Moneys.** All Bonds issued hereunder and secured hereby shall be equally and ratably secured by and payable from the Bond Fund, without priority of one Bonds over any other, except as otherwise expressly provided herein. During the continuation of an Event of Default, all moneys collected pursuant to action taken under the Financing Agreement, the Tax Regulatory Agreement, or the Bond Mortgage (other than sums payable directly to the Issuer in connection with Unassigned Issuer's Rights or deposited in the Rebate Fund), after payment of the costs and expenses (including court costs and reasonable attorneys' fees) of the proceedings resulting in the collection of such moneys (including any such costs and expenses incurred by the Issuer) and of the expenses, liabilities, and advances (provided that the Trustee shall not be required to make any advances, as set forth in **Section 10.1(12)** hereof) incurred or made by the Trustee, and any amounts needed to be deposited into the Rebate Fund, and after any other prior application of such moneys has been made as is required by law, or required or permitted by the Bond Loan Documents, shall be deposited in such Fund or Funds described in **Article 6** hereof by the Trustee as directed by the Bond Owner in such manner as the Bond Owner deems appropriate; and all moneys in the Bond Fund and, as directed by the Bond Owner, except when otherwise required hereunder, any other Fund described in **Article 6** hereof (except rebatable arbitrage, whether or not deposited in the Rebate Fund, Issuer Fees, and moneys held in trust for the payment of principal, premium, redemption price or interest with respect to Bonds which have matured or otherwise become payable prior to such Event of Default) shall be applied as follows:

(1) Subject to further direction by the Bond Owner, unless the principal of all the Bonds shall have become or shall have been declared due and payable, all such moneys shall be applied:

FIRST: To reimburse and/or pay to the Trustee in full for costs, expenses, and fees (including, without limitation, all amounts payable as Additional Charges pursuant to the Financing Agreement) not described in the first unnumbered paragraph of this **Section 9.6**; and

SECOND: To the payment to the persons entitled thereto of first all installments of interest and late payment charges, if any, then due on the Bonds other than interest which has become payable prior to such Event of Default and moneys for the payment of which are held in trust pursuant to the provisions of this Indenture, in the order of the maturity of the installments of such interest and, if the amount available shall not be sufficient to pay in full any particular installment, then to the payment ratably, according to the amounts due on such installment, to the persons entitled thereto, without any discrimination or privilege, and second unpaid principal on the Bonds which shall have become due (other than Bonds which have matured or have otherwise become payable prior to such Event of Default and moneys for the payment of which are held in trust pursuant

to the provisions of this Indenture) in the order of their due dates and, if the amount available shall not be sufficient to pay in full the unpaid principal on such Bonds due on any particular due date, then to the payment ratably, according to the amount of principal due on such date, to the persons entitled thereto; and

THIRD: To reimburse and/or pay to the Issuer in full for the Issuer Fees and all other costs, expenses or fees (including, without limitation, all amounts payable as Additional Charges pursuant to the Financing Agreement) not described in the first unnumbered paragraph of this **Section 9.6**;

(2) If the principal of the Bonds shall have become due or shall have been declared due and payable, all such moneys shall be applied first, to reimburse and/or pay to the Trustee in full for costs, expenses, or fees (including, without limitation, all amounts payable as Additional Charges pursuant to the Financing Agreement) not described in the first unnumbered paragraph of this **Section 9.6**; second, to the payment of the principal, interest, and late payment charges, if any, on the Bonds, other than principal and interest which has become payable prior to such Event of Default and moneys for the payment of which are held in trust pursuant to the provisions of this Indenture, without preference or priority of principal over interest or of interest over principal, or of any installment of interest over any other installment of interest, or of any Bonds over any other Bonds ratably according to the amounts due respectively for principal and interest to the persons entitled thereto, without any discrimination or privilege; and third to reimburse and/or pay the Issuer for any Issuer Fees and all other costs, expenses, or fees (including, without limitation, all amounts payable as Additional Charges not described in the first unnumbered paragraph of this **Section 9.6**).

(3) If the principal of any Bond shall have been declared due and payable, and if such declaration shall thereafter have been rescinded and annulled for all Bonds under the provisions of this **Article 9**, then, subject to the provisions of paragraph (2) of this **Section 9.6** in the event that the principal of any Bonds shall later become due or be declared due and payable, the moneys shall be applied in accordance with the provisions of paragraph (1) of this **Section 9.6**.

Whenever moneys are to be applied by the Trustee pursuant to the provisions of this **Section 9.6**, such moneys shall be applied by it at such times, and from time to time, as the Trustee shall determine, having due regard for the amount of such moneys available for application and the likelihood of additional moneys becoming available for such application in the future. Whenever the Trustee shall apply such funds, it shall (i) fix the date (which shall be a Payment Date unless it shall deem another date more suitable) upon which such application is to be made and upon such date interest on the amounts of principal to be paid on such dates shall cease to accrue and (ii) on or before such date set aside the moneys necessary to effect such application. The Trustee, at the expense of the Borrower, shall give to the Holders mailed notice of the deposit with it of any such moneys and of the fixing of any such date. Neither the Trustee nor any Paying Agent shall be required to make payment of principal or redemption premium to the Holder of any Bonds until such Bonds shall be presented to the Trustee for appropriate endorsement or for cancellation if fully paid.

Whenever all Bonds and premium and interest and late payment charges, if any, thereon have been paid or provided for under the provisions of this **Section 9.6**, all expenses and charges of the Trustee and the Issuer have been paid and rebatable arbitrage has been paid or provided for, any balance remaining shall be paid to the person entitled to receive the same pursuant to **Section 6.11** hereof.

**Section 9.7 Remedies Vested in the Trustee.** All rights of action (including the right to file proof of claims) under this Indenture or under any of the Bonds may be enforced by the Trustee without the possession of any of the Bonds or the production thereof in any trial or other proceedings relating thereto, and any such suit or proceeding instituted by the Trustee shall be brought in its name as the Trustee without the necessity of joining as plaintiffs or defendants any Holders, and any recovery or judgment shall be for the equal benefit of the Holders of the Outstanding Bonds. When pursuing any right or remedy with respect to the Bonds (or not pursuing any such remedy), Trustee has and does hereby agree, subject to the provisions of **Article 10** hereof (including without limitation the requirement that the Trustee be furnished with satisfactory indemnity), to act only at the written authorization or direction of the Bond Owner and then follow the such written directions of the Bond Owner in connection with all matters related to a Default or Event of Default. The Trustee may, but is not required to, delegate its rights to take action hereunder on a Default or Event of Default to the Bond Owner and the Trustee shall not be responsible for the acts or omissions of the Bond Owner in connection with any action so delegated.

**Section 9.8 Rights and Remedies of Holders.** No Holder shall have any right to institute any suit, action or proceeding in equity or at law for the enforcement of this Indenture or any Bond Loan Document or for the execution of any trust hereof or any remedy hereunder or thereunder or for the appointment of a receiver, unless: (i) a default thereunder shall have become an Event of Default and the Bond Owner shall have made written direction to the Trustee and shall have offered it reasonable opportunity either to proceed to exercise the powers hereunder granted or to institute such action, suit, or proceeding in its own name; (ii) the Bond Owner shall have offered furnished indemnity to the Trustee as provided in **Section 10.1** hereof; and (iii) the Trustee shall thereafter fail or refuse to exercise within sixty (60) days the remedies hereunder granted, or to institute such action, suit or proceeding in its own name. Such notification, request, and furnishing of indemnity are hereby declared in every such case at the option of the Trustee to be conditions precedent to the execution of the powers and trusts of this Indenture, and to any action or cause of action for the enforcement of this Indenture or any Bond Loan Document, or for the appointment of a receiver or for any other remedy hereunder; it being understood and intended that no one or more Holders shall have any right in any manner whatsoever to affect, disturb, or prejudice the lien of this Indenture or any Bond Loan Document, by its, his, her, or their action or to enforce any right thereunder except in the manner herein provided, and that all proceedings at law or in equity shall be instituted, had, and maintained in the manner herein provided and for the equal benefit of the Holders of all Bonds then Outstanding; provided, however, that nothing herein shall be construed to preclude any Holder from enforcing, or impair the right of any Holder to enforce, the payment by the Trustee of principal of, and interest and premium, if any, on any Bonds of such Holder at or after its date of maturity, if and to the extent that such payment is required to be made to such Holder by the Trustee from available funds in accordance with the terms hereof. In addition to the foregoing, if an Event of Default is then continuing and the time for payment of the Bonds has accelerated pursuant to the terms hereof, upon the written request of Bond Owner,

in consideration of the satisfaction of the obligation of Issuer to pay the Bonds to the Bond Owner, the Issuer (and/or Trustee, as applicable) shall assign the Bond Loan (including the Financing Agreement, the Bond Note, and the Bond Mortgage) to Bond Owner (or its designee).

**Section 9.9 Termination of Proceedings.** In case the Trustee shall have, at the direction of Bond Owner, proceeded to enforce any right under this Indenture or any Bond Loan Document by the appointment of a receiver, by entry and possession, or otherwise, and such proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely to the Trustee, then and in every such case the Issuer and the Trustee shall be restored to their former positions and rights hereunder with respect to the property herein conveyed, and all rights, remedies, and powers of the Trustee shall continue as if no such proceedings had been taken.

**Section 9.10 Waiver of an Event of Default.** The Trustee shall waive any Event of Default hereunder and its consequences and rescind any declaration of acceleration of maturity or principal, only upon written direction of the Bond Owner.

## **ARTICLE 10 THE TRUSTEE**

**Section 10.1 Acceptance of the Trustee.** The Trustee, prior to the occurrence of an Event of Default and after the curing of all Events of Default that may have occurred, undertakes to perform such duties and only such duties as are specifically set forth in this Indenture; such duties are purely ministerial in nature, and the Trustee shall not be liable except for the performance of (or failure to perform) such duties, and no implied covenants or obligations shall be read into this Indenture against the Trustee. The Trustee shall not be liable for any acts or omissions, except for such losses, damages or expenses which have been finally adjudicated by a court of competent jurisdiction to have directly resulted from the Trustee's negligence or willful misconduct. In case an Event of Default has occurred, the Trustee agrees to follow the written instructions of the Bond Owner as provided herein, subject to the following express terms and conditions, and shall be accountable only for the negligent or willful failure to follow such instructions. In the absence of such instructions during the continuance of an Event of Default, the Trustee agrees to exercise such of the rights and powers vested in it by this Indenture, and use the same degree of care in their exercise as a prudent person would exercise or use under the circumstances in the conduct of his or her own affairs, but in any event, only upon and subject to the following express terms and conditions:

(1) The Trustee may execute any of the trusts or powers hereof and perform any of its duties by or through attorneys, accountants, agents, receivers, depositaries or employees, including, but not limited to, the duties set forth in **Section 6.8** hereof, and shall not be liable for any willful misconduct or negligence on the part of any such attorneys, accountants, agents, receivers, or depositaries appointed with due care, and shall be entitled to request, obtain and rely conclusively on the advice of counsel concerning all matters of trusts hereof and duties hereunder, and may in all cases pay such reasonable compensation to any attorney, accountant, agent, or receiver retained or employed by it in connection herewith and shall be entitled to reimbursement from the Borrower for such payment. The Trustee may conclusively rely upon, and shall incur no liability and shall be fully protected in acting or refraining from acting strictly in accordance with

the written opinion or written advice of any attorney, surveyor, engineer, or accountant selected by it in the exercise of reasonable care or, if selected or retained by the Issuer, acceptable to the Trustee in the exercise of such care, provided that the only legal advice or opinion that the Trustee may rely upon for purposes of securing advice or an opinion relating to the exclusion from gross income for federal income tax purposes of interest on the Bonds is advice or an opinion given by Bond Counsel. The Trustee shall not be liable or responsible for any loss or damage resulting from any action in good faith in reliance upon such opinion or advice.

(2) The Trustee shall not be responsible for any recital herein, or in the Bonds or for the investment of moneys as herein provided (except as provided in **Section 7.1** or **Section 7.3** hereof), or for collecting any property insurance proceeds, or for the validity of the execution by the Issuer of this Indenture, or of any supplemental indentures or instruments of further assurance, or for the sufficiency of any security for the Bonds, or for the value of title of the property herein conveyed, if any, or otherwise as to the maintenance of the security hereof; except that in the event the Trustee enters into possession of a part or all of the property conveyed pursuant to any provisions of this Indenture or the Bond Mortgage, it shall use due diligence in preserving such property. The Trustee may, but shall be under no duty to, require of the Borrower full information and advice as to the performance of the covenants, conditions, and agreements in the Financing Agreement, the Tax Regulatory Agreement, and the Bond Mortgage as to the condition of any Mortgaged Property and the performance of all other obligations thereunder.

(3) The Trustee shall not be accountable for the use or application of any of the Bonds or the proceeds thereof (except as herein expressly provided) or for the use or application of any money paid over by the Trustee in accordance with the provisions of this Indenture or for the use and application of money received by any Paying Agent. The Trustee may become the owner of Bonds secured hereby with the same rights it would have if it were not the Trustee.

(4) To the extent it is acting in good faith, and absent negligence or willful misconduct, the Trustee may conclusively rely and shall be protected in acting or refraining from acting upon any written notice, order, judgment, requisition, request, consent, certificate, opinion (including an opinion of Independent Counsel or Bond Counsel), affidavit, letter, telegram, resolution, statement, direction or other paper or document believed by it in good faith to be genuine and correct and to have been signed or sent by the proper person or persons, and the Trustee shall be under no duty to make an investigation or inquiry into any statement contained therein. Any action taken by the Trustee pursuant to this Indenture upon the request or authority or consent of any person who at the time of making such request or giving such authority or consent is the Holder of any Bonds, shall be conclusive and binding upon all future Holders of the same Bonds and upon Bonds issued in exchange therefor, upon transfer thereof, or in place thereof.

(5) As to the existence or non-existence of any fact or as to the sufficiency or authenticity of any instrument, paper, or proceeding of the Issuer, the Trustee may request and shall be entitled to rely and act upon a certificate of the Issuer signed by an Authorized Officer as sufficient evidence of the facts stated therein as the same appear from the books and records under the custody or control or are otherwise known to such Authorized Officer. The Trustee may accept a certificate of an Authorized Officer of the Issuer to the effect that a motion, resolution, or ordinance in the form therein set forth has been adopted by the governing body of the Issuer as conclusive evidence that such motion or resolution has been duly adopted, and is in full force and

effect, and may accept such motion, resolution, or ordinance as sufficient evidence of the facts stated therein and the necessity or expediency of any particular dealing, transaction or action authorized or approved thereby, but may at its discretion secure such further evidence deemed necessary or advisable, but shall in no case be bound to secure the same. The Trustee shall incur no liability and shall be fully protected in acting or refraining from acting in accordance with any such Authorized Officer's certificate.

(6) The Trustee shall not be personally liable for any debts contracted or for damages to persons or to personal property injured or damaged, or for salaries or nonfulfillment of contracts during any period in which it may be in possession of or managing the real and tangible personal property as in this Indenture provided.

(7) Upon the occurrence and continuance of an Event of Default at any and all reasonable times, the Trustee, and its duly authorized agents, attorneys, experts, engineers, accountants, and representatives, shall have the right fully to inspect any and all of the property comprising the Mortgaged Property, and all books, papers, and records of the Issuer pertaining to the Mortgaged Property and the Bonds, and to photocopy such memoranda from and with regard thereto as may be desired.

(8) The Trustee shall not be required to give any bond or surety with respect to the execution of said trusts and powers or otherwise with respect to the premises.

(9) Notwithstanding anything contained elsewhere in this Indenture, the Trustee shall have the right, but shall not be required, to demand, with respect to the authentication of any Bonds, the withdrawal of any cash, other than as required expressly by the terms hereof, the release of any property or any action whatsoever within the purview of this Indenture, any showings, certificates, opinions (including opinions of Independent Counsel), appraisals, environmental reports, or other information, or corporate action or evidence thereof, in addition to that by the terms hereof required as a condition of such action by the Trustee, deemed desirable for the purpose of establishing the right of the Issuer to the authentication of the Bonds, the withdrawal of any cash, the release of any property, or the taking of any other action by the Trustee.

(10) The Issuer shall not be liable for the payment of sums due hereunder or for providing for the indemnification of the Trustee.

(11) Notwithstanding any provision of this Indenture to the contrary, before taking any action or exercising any rights or powers vested in it hereunder, the Trustee may require that it be furnished indemnity satisfactory to it in its sole and reasonable discretion for the reimbursement of all expenses to which it may be put and to protect it against all liability (except liability which is adjudicated to have resulted from the negligence or willful misconduct of the Trustee) by reason of any action so taken by the Trustee.

(12) No provision of this Indenture or any Bond Loan Document shall require the Trustee to expend or risk its own funds, make advances, or otherwise incur any financial liability in the performance of any of its duties, or the exercise of its rights and powers hereunder.

(13) Notwithstanding anything to the contrary contained in this Indenture, in the event the Trustee is entitled or required to commence an action or otherwise exercise remedies to

acquire control or possession of any or all of the Project under, but not limited to, the provisions of the Bond Mortgage, the Trustee shall not be required to commence any such action or exercise any such remedy if the Trustee has determined in good faith that it may incur liability under an Environmental Law (as defined below) as the result of the presence at, or release on or from the Project of any Hazardous Substances unless the Trustee has received security or indemnity, from a person, in an amount and in a form all satisfactory to the Trustee in its sole discretion, protecting the Trustee from all such liability. To determine if it may incur liability under an Environmental Law, the Trustee, with the written consent of the Bond Owner (which consent shall not be unreasonably withheld) may obtain an appropriate environmental study with respect to the Project. The term “**Environmental Laws**” shall mean all federal, state, and local environmental, land use, zoning, health, chemical use, safety and sanitation laws, statutes, ordinances, and codes relating to the protection of the environment or governing the use, storage, treatment, generation, transportation, processing, handling, production, or disposal of Hazardous Substances and the rules, regulations, policies, guidelines, interpretations, decisions, orders, and directives of federal, state, and local governmental agencies and authorities with respect thereto.

(14) The Trustee is under no obligation to monitor the receipt of rents by the Borrower or otherwise monitor the compliance by the Borrower of any of its covenants contained herein, the Financing Agreement, or the Tax Regulatory Agreement, except as may be expressly provided herein and therein.

(15) The Trustee shall not be deemed to have notice of any Event of Default under **Section 9.1(4)** or a downgrade of a Permitted Investment under **Section 7.1(1)** hereof unless a Responsible Officer has actual knowledge thereof or the Trustee shall be specifically notified in writing of such Event of Default or downgrade by the Issuer, the Bond Owner, the Borrower, or the Holders of at least fifty-one percent (51%) in aggregate principal amount of Bonds Outstanding, delivered to the Trustee at the Principal Office of the Trustee, and, in the absence of such notice so delivered, the Trustee may conclusively assume there is no such Event of Default or downgrade.

(16) The Trustee will not be liable for any action taken, or errors in judgment made, in good faith by a Responsible Officer, unless it is proven that the Trustee was negligent or acting in willful disregard to ascertaining the pertinent facts.

(17) Unless expressly provided in this Indenture, the Tax Regulatory Agreement, or in the Bond Mortgage, neither the Trustee nor any Responsible Officer shall be responsible for nor have a duty or obligation to ascertain or inquire as to the performance or observance of any covenants, conditions, or agreements on the part of the Issuer or on the part of the Borrower in such agreements, nor shall it have any liability in connection with the malfeasance or nonfeasance by any such party. Unless notified otherwise in writing by Bond Owner, the Trustee may assume performance by all such parties of their respective obligations. Except as otherwise provided in this subsection or in accordance with a specific direction of the Bond Owner, the Trustee shall have no enforcement or notification obligations relating to breaches of representations or warranties of any other party.

(18) The permissive rights of the Trustee under this Indenture shall not be construed as duties of the Trustee.



(19) The Trustee shall be entitled to request and receive written instructions from the Bond Owner and the Borrower and shall not be liable for any action taken or omitted to be taken in good faith in strict accordance with such instructions (but only to the extent such directions and instructions are made in accordance with this Indenture and the other Bond Documents).

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

(21) The Trustee shall not be responsible or liable for any failure or delay in the performance of its obligations under this Agreement arising out of or caused, directly or indirectly, by circumstances beyond its control, including without limitation, any act or provision of any present or future law or regulation or governmental authority; acts of God; earthquakes; fires; floods; wars; terrorism; civil or military disturbances; sabotage; epidemics; riots; interruptions, loss or malfunctions of utilities, computer (hardware or software) or communications service; accidents; labor disputes; acts of civil or military authority or governmental actions; or the unavailability of the Federal Reserve Bank wire or telex or other wire or communication facility.

(22) Unless as a result of malfeasance or negligence of the Trustee, the Trustee shall not be responsible or liable for special, indirect, punitive, incidental or consequential loss or damage of any kind whatsoever (including, but not limited to, loss of profit), irrespective of whether the Trustee has been advised of the likelihood of such loss or damage and regardless of the form of action.

(23) The Trustee's right to immunities and protection from liability hereunder will survive its resignation or removal and the final payment or defeasance of the Bonds.

## **Section 10.2 The Trustee's Fees, Charges, and Expenses.**

(1) The Trustee and any Paying Agent shall be entitled to payment and/or reimbursement for the Trustee's Ordinary Fees and Expenses and all advances, counsel fees, and other expenses reasonably made or incurred by the Trustee in and about the execution of the trusts created by this Indenture in connection with any Event of Default or Default and in and about the exercise and performance of the powers and duties of the Trustee hereunder in connection with any Event of Default or Default and for the reasonable and necessary costs and expenses incurred in defending any liability in the premises of any character whatsoever (unless such liability is adjudicated to have resulted from the negligence or willful misconduct of the Trustee or Paying Agent) in connection with such Event of Default or Default. In this regard, provisions have been made in **Section 4.3** of the Financing Agreement for the payment of said fees, advances, counsel

fees, costs, and expenses, and reference is hereby made to the Financing Agreement for the provisions so made; and the Issuer shall not otherwise be liable for the payment of such sums.

(2) *intentionally omitted.*

(3) The compensation of the Trustee shall not be limited by any provision of law which limits the compensation of a Trustee of an express trust.

(4) When the Trustee incurs expenses or renders services 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.

**Section 10.3 Notice to Holders of Default.** The Trustee (at the written direction of the Bond Owner) or, in the alternative, the Bond Owner shall give to the Borrower, the Investor Limited Partner, the Holders, and the Issuer written notice of all Events of Default known to the Trustee, within five (5) days after the Trustee has actual knowledge or receives written notice of such Event of Default. The failure of the foregoing persons to receive such notice or failure of the Trustee to give such notice shall not affect any of the proceedings under **Article 9** hereof.

**Section 10.4 Intervention by the Trustee.** In any judicial proceeding to which the Issuer is a party and which in the opinion of the Trustee and its counsel has a substantial bearing on the interests of Holders, the Trustee may intervene on behalf of Holders and shall, subject to being indemnified as provided herein, so do if requested in writing by the Bond Owner. The rights and obligations of the Trustee under this Section are subject to the approval of a court of competent jurisdiction in the premises.

**Section 10.5 Successor Trustee.** Any corporation, association, or agency into which the Trustee may be converted or merged, or with which it may be consolidated, or to which it may sell or transfer its corporate trust business and assets as a whole or substantially as a whole, or any corporation or association resulting from any such conversion, sale, merger, consolidation, or transfer to which it is a party, ipso facto, shall be and become successor trustee and paying agent under this Indenture and vested with all of the title to the Trust Estate, and all the trusts, powers, discretions, immunities, privileges, and all other matters as was its predecessor, without the execution or filing of any instrument or any further act, deed or conveyance on the part of any of the parties hereto, anything herein to the contrary notwithstanding.

**Section 10.6 Resignation by the Trustee.** The Trustee and any successor trustee may at any time resign from the trusts hereby created by giving thirty (30) days' written notice to the Issuer, the Bond Owner, and the Borrower and by first-class mail to each Holder as shown on the Bond Register, and such resignation shall take effect upon the appointment of a successor trustee as provided in **Section 10.8** hereof. Such notice to the Issuer, the Bond Owner, or the Borrower may be served personally or sent by registered or certified mail, or overnight courier. In the event no successor trustee is appointed, the Trustee may petition a court of competent jurisdiction to appoint a successor trustee.

**Section 10.7 Removal of the Trustee.** The Trustee may be removed at any time, upon thirty (30) days' written notice, by an instrument or concurrent instruments in writing delivered to

the Trustee, the Borrower, and/or the Issuer, and signed by (i) the Issuer so long as no Event of Default has occurred and is continuing, and (ii) the Issuer and the Bond Owner during such time as an Event of Default has occurred and is continuing.

**Section 10.8 Appointment of Successor Trustee.** In case the Trustee hereunder shall resign or be removed, or be dissolved or shall be in course of dissolution or liquidation, or otherwise become incapable of acting hereunder, or in case it shall be taken under the control of any public officer or officers, or of a receiver appointed by a court, a successor trustee may be appointed by the Issuer upon the written direction of the Bond Owner, by an instrument or concurrent instruments in writing signed by the Issuer. Nevertheless, in case of such vacancy the Issuer or the Bond Owner with the consent of the Issuer may appoint a temporary trustee to fill such vacancy until a successor trustee shall be approved by the Bond Owner in the manner above provided; and any such temporary trustee so appointed by the Issuer shall immediately and without further act be superseded by the successor trustee so approved by the Bond Owner. Every such successor trustee appointed pursuant to the provisions of this **Section 10.8** must be a trust company or bank having trust powers and having a reported capital and surplus not less than \$50,000,000. In the event that 60 days following the resignation or removal of the Trustee, no successor trustee has been appointed and accepted its obligations under this Indenture, the Trustee shall have the right to petition a court of competent jurisdiction for the appointment of a successor (any costs incurred by Trustee shall be reimbursed in the same manner as other expenses of the Trustee are to be paid under this Indenture).

**Section 10.9 Acceptance by Successor Trustees.** Every successor trustee appointed hereunder shall execute, acknowledge, and deliver to its predecessor, to the Borrower and the Issuer, an instrument in writing accepting such appointment hereunder, and thereupon such successor, without any further act, deed, or conveyance shall become fully vested with all the estates, properties, rights, powers, trusts, duties, and obligations of its predecessors as the Trustee and Paying Agent; but such predecessor shall, nevertheless, on the written request of the Issuer, or of its successor trustee, execute and deliver an instrument transferring to such successor trustee all the estates, properties, rights, powers, and trusts of such predecessor hereunder, and every predecessor Trustee shall deliver all securities and moneys held by it as the Trustee hereunder to its successor. Should any instrument in writing from the Issuer be reasonably required by any successor trustee for more fully and certainly vesting in such successor the estates, rights, powers, and duties hereby vested or intended to be vested in the predecessor Trustee, any and all such instruments in writing shall, on request, be executed, acknowledged, and delivered by the Issuer. The resignation of any Trustee and the instrument or instruments removing any Trustee and appointing a successor hereunder, together with all other instruments provided for in this Article, shall be forthwith filed or recorded or both by the successor trustee in each recording office where this Indenture or the Bond Mortgage shall have been filed or recorded or both.

**Section 10.10 Right of the Trustee to Pay Taxes and Other Charges.** In case any tax, assessment, or governmental or other charge upon any part of the Project is not paid, to the extent, if any, that the same is legally payable, the Trustee may, but shall be under no duty to, pay such tax, assessment, or governmental or other charge, without prejudice, however, to any rights of the Trustee or Holders hereunder arising as a consequence of such failure; and any amount at any time so paid under this **Section 10.10**, or under the Bond Mortgage, with interest thereon as provided in **Section 4.3** of the Financing Agreement at the Default Rate, shall be repaid to the Trustee upon

demand out of Additional Charges under the Financing Agreement, and shall become so much additional indebtedness secured by this Indenture, and the same shall be given a preference in payment over any of the Bonds, except with respect to the payment of any principal, interest, or premium on the Bonds which is then due but not paid, but the Trustee shall be under no obligation to make such payment of taxes, assessments, or governmental charges unless it shall have been requested to do so by the Bond Owner and shall have been provided with adequate indemnity or other security satisfactory to it for the purpose of such payment. Any such payment shall be made upon five days' prior written notice to the Borrower unless the delay occasioned by any such written notice could result in the forfeiture or termination of any right.

**Section 10.11 The Trustee Protected in Relying Upon Resolutions.** The resolutions, orders, requisitions, opinions, certificates, and other instruments provided for in this Indenture may be accepted by the Trustee as conclusive evidence of the facts and conclusions stated therein and shall be full warrant, protection, and authority to the Trustee.

**Section 10.12 Successor Trustee as Custodian of Funds and Paying Agent.** In the event of a change in the office of the Trustee, the predecessor Trustee which has resigned or been removed shall cease to be custodian of the Funds described in Article 6 hereof and shall cease to act as a Paying Agent for principal and interest on the Bonds, and the successor trustee shall be and become such custodian and a Paying Agent.

**Section 10.13 Co-Trustee.** At any time or times upon the consent of the Bond Owner, for the purpose of meeting any legal requirements of any jurisdiction in which any part of the Trust Estate may at the time be located, the Trustee shall have the power to appoint, and, upon the request of the Trustee, the Issuer shall for such purpose join with the Trustee in the execution, delivery, and performance of all instruments and agreements necessary or proper to appoint one or more persons either to act as co-Trustee or co-Trustees, jointly with the Trustee, of all or any part of the Trust Estate, or to act as separate Trustee or separate Trustees of all or any part of the Trust Estate, and to vest in such person or persons, in such capacity, such right to the Trust Estate or any part thereof, and such rights, powers, duties, trusts or obligations as the Trustee may consider necessary or desirable, subject to the remaining provisions of this Section 10.13. Every such co-Trustee or separate Trustee appointed pursuant to the provisions of this Section 10.13 must be a trust company or bank having trust powers and having a reported capital and surplus not less than \$50,000,000, if there be such an institution willing, qualified, and able to accept the trust upon reasonable or customary terms.

(1) The Issuer shall execute, acknowledge, and deliver all such instruments as may be required by any such co-Trustee or separate Trustee for more fully confirming such title, rights, powers, trusts, duties, and obligations to such co-Trustee or separate Trustee.

(2) Every co-Trustee or separate Trustee shall, to the extent permitted by law but to such extent only, be appointed subject to the following terms, namely:

(a) All rights, powers, trusts, duties, and obligations conferred by this Indenture upon the Trustee with respect to the custody, control or management of moneys, papers, securities, and other personal property shall be exercised solely by the Trustee.

(b) All rights, powers, trusts, duties, and obligations conferred or imposed upon the Trustees shall be conferred or imposed upon and exercised or performed by the Trustee, or by the Trustee and such co-Trustee or co-Trustees or separate Trustee or separate Trustees jointly, as shall be provided in the instrument appointing such co-Trustee or co-Trustees or separate Trustee or separate Trustees; provided, however, the Trustee shall remain responsible for exercising all rights and powers, maintaining all trusts and performing all duties and obligations conferred or imposed upon the Trustees, except to the extent that, under the law of any jurisdiction in which any particular act or acts are to be performed, the Trustee shall be incompetent or unqualified to perform such act or acts, in which event such act or acts shall be performed by such co-Trustee or co-Trustees or separate Trustee or separate Trustees.

(c) Any request in writing by the Trustee to any co-Trustee or separate Trustee to take or to refrain from taking any action hereunder shall be sufficient warrant for the taking, or the refraining from taking, of such action by such co-Trustee or separate Trustee.

(d) Any co-Trustee or separate Trustee may delegate to the Trustee the exercise of any right, power, trust, duty, or obligation, discretionary or otherwise.

(e) The Trustee at any time, by an instrument in writing, may accept the resignation of or remove any co-Trustee or separate Trustee appointed under this **Section 10.13**. Upon the request of the Trustee, the Issuer shall join with the Trustee in the execution, delivery and performance of all instruments and agreements necessary or proper to effectuate such resignation or removal. A successor to any co-Trustee or separate Trustee so resigned or removed may be appointed in the manner provided in this **Section 10.13**.

(f) No Trustee hereunder shall be personally liable by reason of any act or omission of any other Trustee hereunder.

(g) Any demand, request, direction, appointment, removal, notice, consent, waiver, or other action in writing delivered to the Trustee shall be deemed to have been delivered to each co-Trustee or separate Trustee.

(h) Any moneys, papers, securities, or other items of personal property received by any such co-Trustee or separate Trustee hereunder shall forthwith, so far as may be permitted by law, be turned over to the Trustee promptly.

(3) Upon the acceptance in writing of such appointment by any such co-Trustee or separate Trustee, such co-Trustee or separate Trustee shall be vested with such interest in and to the Trust Estate or any part thereof, and with such rights, powers, duties or obligations, as shall be specified in the instrument of appointment jointly with the Trustee (except insofar as local law makes it necessary for any such co-Trustee or separate Trustee to act alone) subject to all the terms of this Indenture. Every such acceptance shall be filed with the Trustee and the Issuer. Any co-Trustee or separate Trustee may, at any time by an instrument in writing, constitute the Trustee its attorney-in-fact and agent, with full power and authority to do all acts and things and to exercise all discretion on its behalf and in its name.

(4) In case any co-Trustee or separate Trustee shall become incapable of acting, resign or be removed, the title to the Trust Estate and all rights, powers, trusts, duties, and

obligations of said co-Trustee or separate Trustee shall, so far as permitted by law, vest in and be exercised by the Trustee unless and until a successor co-Trustee or separate Trustee shall be appointed in the manner herein provided.

**Section 10.14 Obligations as to Reporting.** The Trustee shall provide to the Issuer, the Bond Owner, and the Borrower monthly reports of the balances in the Funds and the Accounts held under Article 6 hereof, including summaries of the deposits to and withdrawals from and transfers among such Funds and Accounts.

**Section 10.15 Appointment of Bond Registrar and Paying Agent.** The Issuer at the direction of the Borrower hereby appoints the Trustee as Bond Registrar and Paying Agent under this Indenture.

**Section 10.16 Successor Paying Agent or Bond Registrar.** The provisions of Section 10.5 through Section 10.9 hereof with respect to removal, resignation, and appointment of a successor trustee shall be equally applicable to the removal, resignation, and appointment of a successor to the Paying Agent and the Bond Registrar. If permissible under applicable law, the Trustee shall be eligible for appointment as successor to the Paying Agent and Bond Registrar if the Trustee is not then already serving in such capacity.

**Section 10.17 Confirmation of the Trustee.** At any time while Bonds remain Outstanding under this Indenture, if the Trustee reasonably questions whether it has proper authority to take certain actions hereunder, the Trustee may proceed in accordance with an opinion of counsel which may be an opinion of Bond Counsel.

(1) In construing and interpreting this Indenture and any other Bond Loan Document, the objective shall always be to ascertain and effectuate the intention of the parties.

(2) The Trustee or successor trustee shall not be answerable for actions taken in compliance with any final order of any court. The Trustee or successor trustee shall not be entitled to require an indemnity bond pursuant to Section 10.1 hereof, prior to taking any action directed by final order of such court.

**Section 10.18 Certain Representations of the Trustee.** The Trustee represents that:

(1) The Trustee will take possession of the Bond Note in accordance with the terms of this Indenture in the ordinary course of its business.

(2) The Trustee or a nominee within the control of the Trustee is and will at all relevant times be a “Member Bank” (as such term is used in 31 C.F.R. section 115(g)) of the Federal Reserve Bank of New York and maintains a book-entry securities account with the Federal Reserve Bank of New York and is a participant in each clearing corporation (as defined in § 8-102(5) of the Uniform Commercial Code) in which securities are held or will be held hereunder and any book-entry securities and physical securities in the custody of a clearing corporation credited to the accounts hereunder will be represented in accounts at the book-entry system maintained at the Federal Reserve Bank of New York and the appropriate clearing corporation in the name of the Trustee or its nominee which include only assets held by the Trustee for customers, including, but not limited to, accounts in which the Trustee acts in a fiduciary or agency capacity.

(3) The Trustee is a bank which in the ordinary course of its business maintains security accounts for its customers and is acting in that capacity pursuant to the terms of this Indenture and it will maintain the accounts hereunder as trust accounts and shall administer such accounts in the same manner it administers similar accounts established for the same purpose.

## ARTICLE 11 SUPPLEMENTAL INDENTURES

**Section 11.1 Supplemental Indentures Not Requiring Consent of Holders.** The Issuer and the Trustee may, from time to time and at any time with the prior written consent of the Bond Owner and the Borrower, but without the consent of, or notice to, any of the other Holders, and when so required by this Indenture shall, enter into an indenture or indentures supplemental to this Indenture (which supplemental indenture or indentures shall thereafter form a part hereof), so as to thereby (1) cure any ambiguity or formal defect or omission in this Indenture or in any supplemental indenture, (2) grant to or confer upon the Trustee for the benefit of the Holders any additional rights, remedies, powers, authority, or security that may lawfully be granted to or conferred upon the Holders or the Trustee, (3) more precisely identify the Trust Estate, or any other property which may become a part of the Trust Estate, (4) subject to the lien and pledge of this Indenture additional revenues, properties, or collateral, (5) evidence the appointment of a separate Trustee or a co-Trustee or the succession of a new Trustee, Bond Registrar, or Paying Agent or both hereunder, (6) modify, eliminate, and/or add to the provisions of this Indenture to such extent as shall be necessary to prevent any interest on the Bonds from becoming includable in gross income for federal income tax purposes or to effect the qualification of this Indenture under the Trust Indenture Act of 1939, as then amended, or under any similar federal statute hereafter enacted, and to add to this Indenture such other provisions as may be expressly permitted by said Trust Indenture Act of 1939, as then amended, excluding however the provisions referred to in Section 316(a)(2) of said Trust Indenture Act of 1939, as then amended, (7) make any other change which is required by any provision of this Indenture or which is deemed by the Trustee necessary to reconcile this Indenture with the Bond Loan Documents, or any amendments thereto, or (8) make any other change which based upon an opinion of Independent Counsel, is necessary or desirable and will not materially prejudice any Holder.

**Section 11.2 Supplemental Indentures Requiring Consent of Holders.** Exclusive of supplemental indentures covered by Section 11.1 hereof and subject to the terms and provisions contained in this Section 11.2, and not otherwise, the Trustee, upon receipt of an instrument evidencing the consent to the below-mentioned supplemental indenture by the Bond Owner or the Holders of not less than fifty-one percent 51% of the principal amount of Bonds Outstanding and the Borrower, shall join with the Issuer in the execution of such other indenture or indentures supplemental hereto as shall be deemed necessary and desirable for the purpose of modifying, altering, amending, adding to, or rescinding, in any particular, any of the terms or provisions contained in this Indenture or in any supplemental indenture; provided, however, that nothing herein contained shall permit or be construed as permitting without the consent of the Holders of one hundred percent 100% of the principal amount of all Bonds adversely affected thereby: (1) an extension of the date when the principal or the interest on or any premium on any Bonds are due; (2) a reduction in the principal amount of any Bonds or the rate of interest thereon, or any premium; (3) a privilege or priority of any Bond or Bonds over any other Bond or Bonds except as may be otherwise expressly provided herein; (4) a reduction in the aggregate principal amount of the

Bonds required for consent to such supplemental indenture; or (5) the modification of any of the provisions of this **Section 11.2**.

If at any time the Issuer shall request the Trustee to enter into any such supplemental indenture for any of the purposes of this Section, the Trustee shall, upon being satisfactorily indemnified with respect to expenses, cause notice of the proposed execution of such supplemental indenture to be mailed by first class mail, postage prepaid, to the Borrower and the Holders at the addresses shown on the Bond Register. Such notice shall briefly set forth the nature of the proposed supplemental indenture and shall state that copies thereof are on file at the Principal Office of the Trustee for inspection by the Borrower and all Holders. The Trustee shall not, however, be subject to any liability to any Holder by reason of its failure to mail such notice to any particular Holder if notice was generally mailed to Holders, and any such failure shall not affect the validity of such supplemental indenture when consented to and approved as provided in this Section. If the Borrower and the Bond Owner or the Holders of not less than the applicable percentage (as referenced above) in aggregate principal amount of the Bonds then Outstanding at the time of the execution of any such supplemental indenture shall have consented to and approved the execution thereof as herein provided, no Holder shall have any right to object to any of the terms and provisions contained herein or the operation thereof, or in any manner to question the propriety of the execution thereof, or to enjoin or restrain the Trustee or Issuer from executing the same or from taking any action pursuant to the provisions thereof. Upon the execution of any such supplemental indenture as in this Section permitted and provided, this Indenture shall be and is deemed to be modified and amended in accordance herewith.

**Section 11.3 Favorable Opinion of Bond Counsel.** Any supplemental indenture governed by this Article shall be accompanied by a Favorable Opinion of Bond Counsel delivered to the Issuer and the Trustee and provided at the sole expense of the Borrower.

**Section 11.4 Rights of the Trustee and Issuer.** Neither the Issuer nor the Trustee shall be obligated to enter into any supplemental indenture which may adversely affect its own rights, obligations, duties, or immunities under this Indenture. Neither the Issuer nor the Trustee shall be required to consent to any supplemental indenture referred to in this **Article 11** unless it has first received an opinion of Independent Counsel addressed to the Issuer and Trustee that such amendment is allowed by this Indenture.

## **ARTICLE 12 AMENDMENTS TO BOND LOAN DOCUMENTS**

**Section 12.1 Amendments Require Bond Owner Consent.** Neither the Issuer nor the Trustee shall, without the prior written consent or written direction of the Bond Owner, consent to any amendment, change, or modification of any of the Bond Loan Documents.

**Section 12.2 Amendments Requiring Holder Consent.** Subject to **Section 12.1** hereof and except for amendments, changes, or modifications permitted by any Bond Loan Document, neither the Issuer nor the Trustee shall consent to any other amendment, change, or modification of any Bond Loan Document without the giving of notice and the written approval or consent of the Bond Owner or the Holders of not less than fifty-one percent (51%) of the principal amount of the Bonds then Outstanding given and procured as provided in this **Section 12.2**; provided that in



no event shall such amendment, change, or modification relieve the Borrower of the obligation under any Bond Loan Documents to make when and as due any payments required for the payment of principal, interest, and any premium due or to become due on the Bonds unless the consent of the Holders of one hundred percent (100%) of the principal amount of all Bonds adversely affected thereby is first secured. If at any time the Issuer and the Borrower shall request the consent of the Trustee to any such proposed amendment, change, or modification of any Bond Loan Documents to which the Issuer is a party or the Borrower shall request consent of the Trustee to any such proposed amendment, change, or modification of any other Bond Loan Document to which the Issuer is not a party, the Trustee shall, upon being satisfactorily indemnified with respect to expenses, cause notice of such proposed amendment, change, or modification to be given in the same manner as provided in **Section 11.2** hereof with respect to supplemental indentures. Such notice shall briefly set forth the nature of such proposed amendment, change, or modification and shall state that copies of the instrument embodying the same are on file at the Principal Office of the Trustee for inspection by all Holders. The Trustee shall not, however, be subject to any liability to any Holder by reason of its failure to mail such notice to any particular Holder if notice was generally mailed to Holders, and any such failure shall not affect the validity of such amendment, change or modification when consented as provided in this **Section 12.2**. If the Bond Owner or the Holders of not less than a majority in aggregate principal amount of the Bonds then Outstanding at the time of the execution of any such amendment shall consent to the execution thereof as herein provided, no Holder of any Bonds shall have any right to object to any of the terms and provisions contained therein, or the operation thereof, or in any manner to question the propriety of the execution thereof, or to enjoin or restrain the Trustee or Issuer from executing the same or from taking any action pursuant to the provisions thereof. Upon the execution of any such amendment, the applicable Loan Document thereby amended shall be deemed to be modified and amended in accordance therewith.

**Section 12.3 Favorable Opinion of Bond Counsel.** Any amendment governed by this Article shall be accompanied by a Favorable Opinion of Bond Counsel delivered to the Issuer and the Trustee and provided at the sole expense of the Borrower.

**Section 12.4 Rights of the Trustee and Issuer.** Neither the Issuer nor the Trustee shall be required to consent to any amendment referred to in this Article unless it has first received an opinion of Independent Counsel that such amendment is allowed by this Indenture and the applicable Bond Loan Document. Neither the Issuer nor the Trustee shall be obligated to enter into an amendment to a Bond Loan Document which may affect its own rights, duties or immunities thereunder or, in the case of the Issuer, the Unassigned Issuer Rights.

## **ARTICLE 13 MISCELLANEOUS PROVISIONS**

**Section 13.1 Consent of Holders.** Any consent, request, direction, approval, objection, or other instrument required by this Indenture to be signed and executed by the Holders may be in any number of concurrent writings of similar tenor and must be signed or executed by such Holders in person or by agent appointed in writing. Proof of the execution of any such consent, request, direction, approval, objection, or other instrument or of the writing appointing any such agent and of the ownership of Bonds, if made in the following manner, shall be sufficient for any of the

purposes of this Indenture, and shall be conclusive in favor of the Trustee with regard to any action taken by it under such request or other instrument, namely:

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

(2) The fact of the ownership by any person of Bonds and the amounts and numbers of such Bonds, and the date of the holding of the same, may be proved only by reference to the Bond Register.

**Section 13.2 Rights Under Indenture.** Nothing expressed or mentioned in or to be implied from this Indenture or the Bonds are intended or shall be construed to give any person or company other than the parties hereto, the Borrower, and the Holders, any legal or equitable right, remedy, or claim under or with respect to this Indenture or any covenants, conditions, and provisions herein contained; this Indenture and all of the covenants, conditions, and provisions hereof being intended to be and being for the sole and exclusive benefit of the parties hereto, the Borrower, and the Holders of the Bonds hereby secured as herein provided.

**Section 13.3 Severability.** If any provision of this Indenture shall be held or deemed to be or shall, in fact, be inoperative or unenforceable as applied in any particular case in any jurisdiction or jurisdictions or in all jurisdictions or in all cases because it conflicts with any provisions of any constitution or statute or rule of public policy, or for any other reason, such circumstances shall not have the effect of rendering the provision in question inoperative or unenforceable in any other case or circumstance, or of rendering any other provisions herein contained invalid, inoperative, or unenforceable to any extent whatever.

**Section 13.4 Execution in Counterparts; Electronic Signatures.** This Indenture may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument. To the fullest extent permitted by applicable law and except for the certificate of authentication on the Bonds (which must be manually signed by an authorized representative of the Trustee) and instruments of transfer of the Bonds, Electronic Signatures shall constitute original signatures for all purposes under this Indenture.

**Section 13.5 Electronic Transactions.** The transactions described in this Indenture, the other Bond Documents and the Bond Loan Documents may be conducted and related documents may be sent, received or stored by Electronic Means. Copies, telecopies, facsimiles, electronic files and other reproductions of original executed documents shall be deemed to be authentic and valid counterparts of such original documents for all purposes, including the filing of any claim, action or suit in the appropriate court of law. Unless otherwise specifically instructed in an opinion of Bond Counsel or to the extent otherwise provided in this Indenture, the Trustee shall retain and maintain these records until three years following the final maturity of (i) the Bonds or (ii) any obligation issued to refund the Bonds. Any records maintained electronically must comply with Section 4.01 of Revenue Procedure 97-22.

**Section 13.6 Notices.** Without limiting Section 13.4 and Section 13.5 above, all notices, certificates, or other communications hereunder shall be given to all parties identified below, shall be in writing (except as otherwise expressly provided herein) and shall be sufficiently given and shall be deemed given (i) when delivered by hand delivery with confirmed receipt, telegram, or facsimile or (ii) two days after such notice is served by depositing the same with the United States Postal Service, or any official successor thereto, designated as Registered or Certified Mail, Return Receipt Requested, bearing adequate postage, or (iii) upon delivery by reputable private courier such as Federal Express, Airborne, DHL, or similar overnight delivery service, and addressed as hereinafter provided. Notices, except to the Trustee, shall be deemed given when mailed as provided herein. Notices to the Trustee shall be deemed given only when received by the Trustee. All parties identified below may, by written notice given by each to the others, designate any address or addresses to which notices, certificates, or other communications to them shall be sent when required as contemplated by this Indenture. Any notice, certificate, report, financial statement, or other communication properly provided by legal counsel on behalf of any party hereunder shall be deemed properly provided by the party represented by such counsel. Until otherwise provided by the respective parties, all notices, certificates, and communications to each of them shall be addressed as follows:

To the Issuer:

Texas Department of Housing and Community Affairs  
P.O. Box 13941  
Austin, Texas 78711  
Attention: Director of Multifamily Bonds  
Telephone: (512) 475-3344  
Email: Teresa.morales@tdhca.state.us.tx

with a copy to:

Bracewell LLP  
111 Congress Avenue, Suite 2300  
Austin, Texas 78701-4061  
Attention: Elizabeth Bowes  
Email: Elizabeth.bowes@bracewell.com

To the Borrower:

Center 818 Cotton Ford Road LP  
c/o Itex Group  
9 Greenway Plaza, Suite 1250  
Houston, Texas 77046  
Attention: Bobkin Simonains  
Telephone: (213) 255-9220  
Email: Bobkin.Simonains@itexgrp.com

with a copy to:

Coats | Rose  
9 Greenway Plaza  
Suite 1000  
Houston, Texas 77046  
Attention: Barry Palmer  
Telephone: (713) 653-7395  
Email: [bpalmer@coatsrose.com](mailto:bpalmer@coatsrose.com)

with a copy to:

RBC Community Investments, LLC  
600 Superior Avenue, Suite 2300  
Cleveland, Ohio 44114  
Attention: President and General Counsel  
Telephone: \_\_\_\_\_  
Email: \_\_\_\_\_

With a copy to:

Nixon Peabody LLP  
Exchange Place  
Boston, MA 02109  
Attention: Roger Holmes  
Fax No.: (617) 345-1227  
Email: [rholmes@nixonpeabody.com](mailto:rholmes@nixonpeabody.com)

To the Trustee:

Wilmington Trust, National Association  
15950 North Dallas Parkway  
Suite 550  
Dallas, Texas 75248  
Attention: Dayna L. Smith  
Telephone: (972) 383-3154  
Email: [dsmith@wilmingtontrust.com](mailto:dsmith@wilmingtontrust.com)

To the initial Bond Owner:

CommunityBank of Texas, N.A.  
5999 Delaware  
Beaumont, Texas 77706  
Attention: Stephen W. Rose  
Telephone: (713) 294-9620  
Email: [srose@communitybankoftx.com](mailto:srose@communitybankoftx.com)

Greenberg Traurig LLP  
1000 Louisiana, Suite 1700  
Houston, Texas 77002  
Attn: Wayne A. Yaffee  
Email: wayne.yaffee@gtlaw.com

The Trustee agrees to accept and act upon instructions or directions pursuant to this Indenture sent by unsecured email, facsimile transmission or other similar unsecured electronic methods, provided, however, that the Issuer and the Borrower shall provide to the Trustee an incumbency certificate listing designated persons authorized to provide such instructions, which incumbency certificate shall be amended whenever a person is to be added or deleted from the listing. If the Issuer and the Borrower elect to give the Trustee email or facsimile instructions (or instructions by a similar electronic method) and the Trustee in its discretion elects to act upon such instructions, the Trustee's understanding of such instructions shall be deemed controlling. The Trustee shall not be liable for any losses, costs or expenses arising directly or indirectly from the Trustee's reliance upon and compliance with such instructions notwithstanding such instructions conflict or are inconsistent with a subsequent written instruction. The Borrower agrees to assume all risks arising out of the use of such electronic methods to submit instructions and directions to the Trustee, including without limitation, the risk of the Trustee acting on unauthorized instructions, and the risk of interception and misuse of third parties.

**Section 13.7 Required Approvals.** Consents and approvals required by this Indenture to be obtained from the Borrower, the Issuer, the Bond Owner, or the Trustee shall be in writing and shall not be unreasonably withheld or delayed.

**Section 13.8 Counterparts.** This Indenture may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

**Section 13.9 Limitation of Liability of Issuer and Its Officers, Employees, and Agents.** No covenant, agreement, or obligation contained herein shall be deemed to be a covenant, agreement, or obligation of any present or future member, officer, employee, or agent of the Issuer in his/her individual capacity, and neither the members or directors of the Issuer nor any officer thereof executing the Bonds shall be liable personally on the Bonds or be subject to any personal liability or accountability by reason of the issuance thereof. No member, officer, employee, or agent of the Issuer shall incur any personal liability with respect to any other action taken by him pursuant to this Indenture or the Act, provided such member, officer, employee, or agent acts in good faith.

(1) No agreements or provisions contained in this Indenture nor any agreement, covenant, or undertaking by the Issuer contained in any document executed by the Issuer in connection with the Project, or the issuance, sale, and delivery of the Bonds shall give rise to any pecuniary liability of the Issuer or a charge against its general credit, or shall obligate the Issuer financially in any way except as may be payable from the payments by the Borrower under the Financing Agreement or Note and the proceeds of the Bonds and the other amounts held as part of the Trust Estate under this Indenture. No failure of the Issuer to comply with any term, condition,

covenant, or agreement herein or in any document executed by the Issuer in connection with the issuance and sale of the Bonds shall subject the Issuer to liability for any claim for damages, costs, or other financial or pecuniary charge except to the extent that the same can be paid or recovered from the payments by the Borrower under the Financing Agreement or proceeds of the Bonds or the other amounts held as part of the Trust Estate under this Indenture. Nothing herein shall preclude a proper party in interest from seeking and obtaining, to the extent permitted by law, specific performance against the Issuer for any failure to comply with any term, condition, covenant, or agreement herein, provided that no costs, expenses, or other monetary relief shall be recoverable from the Issuer except as may be payable from the Trust Estate or from the proceeds of the Bonds or from the other amounts held as part of the Trust Estate under this Indenture.

(2) All covenants, stipulations, promises, agreements and obligations of the Issuer contained in this Indenture shall be deemed to be the covenants, stipulations, promises, agreements and obligations of the Issuer and not of any of its officers or employees or members of its governing body, past, present or future, in his or her individual capacity, and no recourse shall be had for the payment of the principal of, premium, if any, or interest on the Bonds or for any claim based thereon or hereunder against any such officer or employee of the Issuer or member of its governing body or any natural person executing the Bonds.

(3) Anything in this Indenture to the contrary notwithstanding, it is expressly understood and agreed by the parties hereto that (a) the Issuer may rely conclusively on the truth and accuracy of any certificate, opinion, notice, or other instrument furnished to the Issuer by the Trustee or the Borrower as to the existence of any fact or state of affairs required hereunder to be noticed by the Issuer; (b) the Issuer shall not be under any obligation hereunder to perform any record keeping or to provide any legal services; and (c) none of the provisions of this Indenture shall require the Issuer to expend or risk its own funds or otherwise incur financial liability in the performance of any of its duties or in the exercise of any of its rights or powers hereunder, unless it shall first have been adequately indemnified to its satisfaction against the cost, expenses, and liability which may be incurred thereby.

(4) Neither the members of the Issuer nor any person executing the Bonds shall be liable personally on the Bond by reason of the issuance thereof. The Bonds are issued pursuant to the Act, and the Bonds shall so state on their face, and shall state that the Bonds shall not be a debt of the Issuer, or the State, or any political subdivision thereof; and neither the Issuer, nor the State nor any political subdivision thereof, shall be liable thereon; nor in any event shall such Bonds or obligations be payable out of any funds or properties other than those of the Issuer identified herein.

**Section 13.10 Subordination to Extended Use Agreement.** The Borrower has informed the Trustee that the Borrower intends that the Project qualify for an allocation of low-income housing tax credits under section 42 of the Internal Revenue Code (being the “**Tax Credits**” as defined herein). In order to receive an allocation of Tax Credits, the Borrower will be required to record in the real property records of Shelby County, Texas, an “extended low-income housing commitment” (as defined in section 42(h)(6)(B) of the Code) (the “**Extended Use Agreement**”). If requested by the Borrower, the Trustee shall execute, or cause to be executed by the appropriate parties a subordination Loan Agreement, in form and substance satisfactory to the Trustee and the

Bond Owner, wherein the lien of the Bond Mortgage is subordinated to the Extended Use Agreement in such manner as is required for Tax Credit purposes.

**Section 13.11 Governing Law; Jurisdiction; Waiver of Trial by Jury.** This Indenture shall be governed by and construed in accordance with the laws of the State, without giving effect to its choice and conflict of law principles that would require the application of the laws of a jurisdiction other than that of the State, and any action arising out of this Indenture shall be filed and held in Jefferson County, Texas, unless the Issuer waives this requirement. To the extent permitted by State law, the parties hereby (i) irrevocably submit to the exclusive jurisdiction of any federal or state court sitting in the State, (ii) waive any objection to laying of venue in any such action or proceeding in such courts, and (iii) waive any objection that such courts are an inconvenient forum or do not have jurisdiction over any party. To the extent permitted by State law, each of the parties hereto hereby waives the right to trial by jury with respect to any litigation directly or indirectly arising out of, under or in connection with this Indenture.

**Section 13.12 Complete Agreement.** The Issuer and the Trustee understand that oral agreements or commitments to loan money, extend credit, or forbear from enforcing repayment of a debt, including promises to extend or renew such debt, are not enforceable. To protect the Issuer and the Trustee from misunderstanding, any agreements the Issuer and the Trustee reach covering such matters are contained in this Indenture, which is the complete and exclusive statement of the agreement between the Issuer and the Trustee, except as the Issuer and the Trustee may later agree in writing to modify this Indenture as more particularly provided herein.

**Section 13.13 USA Patriot Act.** The Trustee hereby notifies the Issuer, Bank, and Borrower that pursuant to the requirements of the USA Patriot Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the “**Patriot Act**”), it is required to obtain, verify and record information that identifies the Borrower, which information includes the name and address of the Borrower and other information that will allow Trustee to identify the Borrower in accordance with the Patriot Act.

**Section 13.14 Compliance with Texas Government Code .** The Trustee hereby verifies that it and its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, do not boycott Israel and will not boycott Israel during the term of this Indenture, the Financing Agreement, the Regulatory Agreement, and the Tax Exemption Agreement (collectively, the “Representation Documents”), and such representation is hereby incorporated by reference into each of the Representation Documents. The foregoing verification is made solely to comply with Section 2271.002, Texas Government Code, and to the extent such Section does not contravene applicable Federal law. As used in the foregoing verification, ‘boycott Israel’ means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes. The Trustee understands ‘affiliate’ to mean an entity that controls, is controlled by, or is under common control with the Trustee and exists to make a profit.

The Trustee represents that neither it nor any of its parent company, wholly- or majority-owned subsidiaries, and other affiliates is a company identified on a list prepared and maintained

by the Texas Comptroller of Public Accounts under Section 2252.153 or Section 2270.0201, Texas Government Code, and posted on any of the following pages of such officer's internet website:

<https://comptroller.texas.gov/purchasing/docs/sudan-list.pdf>,  
<https://comptroller.texas.gov/purchasing/docs/iran-list.pdf>,  
<https://comptroller.texas.gov/purchasing/docs/fto-list.pdf>.

The foregoing representation is made solely to comply with Section 2252.152, Texas Government Code, and to the extent such Section does not contravene applicable Federal law and excludes the Trustee and each of its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, that the United States government has affirmatively declared to be excluded from its federal sanctions regime relating to Sudan or Iran or any federal sanctions regime relating to a foreign terrorist organization. The Trustee understands "affiliate" to mean any entity that controls, is controlled by, or is under common control with the Trustee and exists to make a profit.

Trustee further agrees and represents that the total value of the Representation Documents due to Trustee pursuant to the Representation Documents shall not exceed the dollar limitation set forth in Section 2274.002(a)(2) of the Texas Government Code (as added by Senate Bill 13, 87th Texas Legislature, Regular Session) and Section 2274.002(a)(2) of the Texas Government Code (as added by Senate Bill 19, 87th Texas Legislature, Regular Session).

[SIGNATURE PAGE FOLLOWS]



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

TEXAS DEPARTMENT OF HOUSING AND  
COMMUNITY AFFAIRS

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

Name: James B. "Beau" Eccles

Title: Secretary to Board

Issuer signature page to Trust Indenture

WILMINGTON TRUST, NATIONAL  
ASSOCIATION, as Trustee

By: \_\_\_\_\_  
Name: Dayna L. Smith  
Title: Vice President

Trustee signature page to Trust Indenture

EXHIBIT A

FORM OF REQUISITION CERTIFICATE  
Project Fund

Re: 10,100,000 Texas Department of Housing and Community Affairs Multifamily  
Housing Mortgage Revenue Bonds (Union Acres Project) Series 2022

Ladies and Gentlemen:

You are requested to withdraw and disburse funds from the Project Fund pursuant to Section 6.2 of the Indenture and Section 3.3, Section 4.7 and Schedule D of the Financing Agreement in the amount(s), to the person(s) and for the purpose(s) set forth in this requisition (the "**Requisition**"). The terms used in this Requisition shall have the meanings given to those terms in the Trust Indenture (the "**Indenture**"), dated as of June 1, 2022, by and between Texas Department of Housing and Community Affairs, as Issuer, and Wilmington Trust, National Association, as Trustee, securing the above-referenced Bonds or in the Tax Exemption Agreement (as defined in the Indenture).

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

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

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

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

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

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

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

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

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

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

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

CENTER 818 COTTON FORD ROAD, LP, a Texas limited partnership

By: Center 818 Cotton Ford Road GP, LLC, a Texas limited liability company, its General Partner

By: ITEX Advisors, LLC, a Texas limited liability company, its Manager

By: The ITEX Group Management, LLC, a Texas limited liability company, its Manager

By: \_\_\_\_\_  
Christopher A. Akbari,  
Manager

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

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

“Bond Owner”

COMMUNITYBANK OF TEXAS, N.A.

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

EXHIBIT B  
FORM OF BOND

No. [I-1] [R-\_\_]

UNITED STATES OF AMERICA  
STATE OF TEXAS

\$10,100,000  
TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS  
MULTIFAMILY HOUSING MORTGAGE REVENUE BONDS  
(UNION ACRES PROJECT)  
SERIES 2022

THIS SECURITY HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT, OR THE SECURITIES LAWS OF ANY STATE OR OTHER JURISDICTION. THE HOLDER OF THIS SECURITY BY ITS ACCEPTANCE HEREOF AGREES TO TRANSFER SUCH SECURITY ONLY (A) TO AN “ACCREDITED INVESTOR” (AS DEFINED IN RULE 501(A)(1), (2), (3), (7), OR (8) OF REGULATION D PROMULGATED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE “SECURITIES ACT”), OR (B) TO A PERSON WHO IS A “QIB” AS DEFINED IN RULE 144A PROMULGATED UNDER THE SECURITIES ACT) (EACH AN “APPROVED TRANSFEREE”, AND COLLECTIVELY, “APPROVED TRANSFEREES”), IN EITHER CASE, WHICH IS ACQUIRING THIS SECURITY FOR ITS OWN ACCOUNT OR AS A FIDUCIARY, CUSTODIAN, TRUSTEE OR AGENT FOR OTHER BENEFICIAL HOLDERS HOLDING BENEFICIAL INTERESTS IN THE BONDS THROUGH SUCH FIDUCIARY, CUSTODIAN, TRUSTEE OR AGENT (WHICH FIDUCIARY, CUSTODIAN, TRUSTEE OR AGENT AND SUCH BENEFICIAL HOLDERS MUST ALSO BE AN APPROVED TRANSFEREE); PROVIDED, AS A CONDITION PRECEDENT TO ANY SUCH TRANSFER ANY SUCH PROSPECTIVE TRANSFEREE SHALL DELIVER TO THE ISSUER AND TRUSTEE AN INVESTOR LETTER IN SUBSTANTIALLY THE FORM SET FORTH IN EXHIBIT C TO THE INDENTURE.

BOND CLOSING DATE: June \_\_, 2022  
MATURITY DATE: June 1, 2039  
REGISTERED OWNER: \_\_\_\_\_  
INTEREST RATE: 4.25 % (as may be increased pursuant to Section 3.2(6) of the Indenture is referred to herein as the “Stated Rate”)

BOND  
PRINCIPAL AMOUNT: \$10,100,000

PAYMENT DATE: The first (1<sup>st</sup>) day of each month commencing August 1, 2022

Texas Department of Housing and Community Affairs (the “**Issuer**”), a public and official agency of the State of Texas organized and existing pursuant to the provisions of the Constitution of the State of Texas and Chapter 2306, Texas Government Code, as amended (the “**Act**”), and

empowered to issue revenue bonds pursuant to the provisions of the Act, for value received, promises to pay to the Registered Owner specified above, or registered assigns, but only from the Bond Fund established under the Indenture described below (the “**Bond Fund**”) the Principal Amount specified above, on the Maturity Date specified above, or, if this Bond is redeemable as stated below, on a prior date on which it shall have been duly called for redemption, and to pay interest as specified above (and hereafter further provided) on said Principal Amount to the Record Date Holder hereof, as defined below, solely from the Bond Fund, until the Principal Amount is paid or discharged.

Notwithstanding the foregoing, (a) during any period of time that the Bond Note bears interest at the Default Rate, the Bonds shall also bear interest at the Default Rate; and (b) during any period of time that the Bond Note bears interest at the rate described in **Section 7.15** of the Financing Agreement, the Bonds shall bear interest at such after-tax equivalent rate (or the Maximum Lawful Rate if less). Interest hereon shall accrue from the Bond Closing Date and shall be calculated on the basis of a 360-day year of twelve 30-day months and the actual number of days in any whole or partial month. Interest shall be payable on the first day of each month commencing August 1, 2022, through and including June 1, 2024, and thereafter, principal and interest shall be payable as described in the sinking fund redemption schedule as provided for in Exhibit D to the Indenture (each a “**Payment Date**”). The “**Record Date Holder**” is the person in whose name this Bond is registered (the “**Holder**” hereof) in the Bond Register maintained by Wilmington Trust, National Association, as Bond Registrar, or its successor either (i) on the close of business on the first day of the month (whether or not a Business Day) prior to each Payment Date (the “**Record Date**”), irrespective of any transfer or exchange of such Bonds subsequent to such Record Date and prior to such Payment Date, or (ii) if there shall be a default in payment of principal and/or interest due on such Payment Date, at the close of business on a date (the “**Special Record Date**”) that is ten (10) days prior (whether or not a Business Day) to the date for the payment of such defaulted principal and/or interest as established by notice mailed by the Trustee. Notice of the Special Record Date shall be mailed not less than five (5) days before the special payment date, to the Holder at the close of business on the Special Record Date. Interest shall be payable by check mailed on the Payment Date to the Holder at his, her, or its address as it last appears on the Bond Register on the Record Date or the Special Record Date, as the case may be, except as otherwise provided in the Indenture. Notwithstanding the foregoing, any Holder of at least \$1,000,000 principal amount of any Bonds (or a lesser amount of such Bonds if such Bonds constitute all the Bonds at the time Outstanding), upon payment to the Trustee by the Holder of the costs of such wire transfers, may file with the Trustee an instrument satisfactory to the Trustee not less than five (5) days prior to the Record Date or Special Record Date, as applicable, requesting the interest amounts payable by the Trustee to such Holder be paid either by instruction to the custodian or by transferring by wire transfer in immediately available funds, on the day such payment is due, the amount to be distributed to such Holder to a designated account maintained by such Holder at any bank in the United States. Notwithstanding the foregoing, all payments of principal of and interest and/or premium on the Bonds payable on the Maturity Date or a redemption date (other than pursuant to Section 4.1(5) of the Indenture) shall only be payable upon presentation of the Bonds being redeemed, at the Operations Office of the Trustee. The principal of and interest and premium, if any, on this Bonds are payable in lawful money of the United States of America.

The Bonds are issued under the provisions of and in full compliance with the Act, and a Resolution duly adopted by the Issuer pursuant to which this Bond is issued and which authorizes the execution and delivery of the Financing Agreement (as herein defined) and the Indenture. This Bond and the issue of which it is a part are special limited obligations of the Issuer, and the principal and premium, if any, and interest thereon are payable solely and only from the Trust Estate created by the Indenture, including the revenues, and other amounts derived by the Issuer from the Financing Agreement pledged and assigned by the Issuer to the Trustee under the Indenture to secure payment of the principal of, premium, if any, and interest on this Bond.

THE BONDS, TOGETHER WITH INTEREST THEREON, AND REDEMPTION PREMIUM, IF ANY, ARE NOT GENERAL OBLIGATIONS OF THE ISSUER, BUT ARE SPECIAL, LIMITED OBLIGATIONS OF THE ISSUER SECURED BY THE TRUST ESTATE, ARE AND WILL ALWAYS BE PAYABLE SOLELY FROM THE REVENUES AND INCOME DERIVED FROM THE TRUST ESTATE (EXCEPT TO THE EXTENT PAID OUT OF MONEYS ATTRIBUTABLE TO PROCEEDS OF THE BONDS OR THE INCOME FROM THE TEMPORARY INVESTMENT THEREOF), AND ARE AND WILL ALWAYS BE A VALID CLAIM OF THE OWNER THEREOF ONLY AGAINST THE REVENUES AND INCOME DERIVED FROM THE TRUST ESTATE, WHICH REVENUES AND INCOME MAY BE USED FOR NO OTHER PURPOSE THAN TO PAY THE PRINCIPAL INSTALLMENTS OF, REDEMPTION PREMIUM, IF ANY, AND INTEREST ON THE BONDS, EXCEPT AS MAY BE EXPRESSLY AUTHORIZED OTHERWISE IN THIS INDENTURE AND IN THE FINANCING AGREEMENT. THE BONDS AND THE OBLIGATION TO PAY INTEREST THEREON AND REDEMPTION PREMIUM, IF ANY, DO NOT NOW AND WILL NEVER CONSTITUTE A DEBT OR AN OBLIGATION OF THE STATE OF TEXAS OR ANY POLITICAL SUBDIVISION THEREOF AND NEITHER THE STATE NOR ANY POLITICAL SUBDIVISION THEREOF WILL BE LIABLE THEREFOR. **THE BONDS ARE NOT AND DO NOT CREATE OR CONSTITUTE IN ANY WAY AN OBLIGATION, A DEBT OR A LIABILITY OF THE STATE OF TEXAS OR ANY POLITICAL SUBDIVISION THEREOF, OR CREATE OR CONSTITUTE A PLEDGE, GIVING OR LENDING OF THE FAITH, CREDIT, OR TAXING POWER OF THE STATE OR ANY POLITICAL SUBDIVISION THEREOF. THE ISSUER HAS NO TAXING POWER.**

NO RECOURSE SHALL BE HAD FOR THE PAYMENT OF THE PRINCIPAL OF OR PREMIUM OR INTEREST ON THIS BOND AGAINST ANY PAST, PRESENT, OR FUTURE GOVERNING BOARD MEMBER, DIRECTOR, OFFICER, AGENT OR EMPLOYEE OF THE ISSUER, OR OF ANY SUCCESSOR TO THE ISSUER, AS SUCH, EITHER DIRECTLY OR THROUGH THE ISSUER OR ANY SUCCESSOR TO THE ISSUER, UNDER ANY RULE OF LAW OR EQUITY, STATUTE, OR CONSTITUTION OR BY THE ENFORCEMENT OF ANY ASSESSMENT OR PENALTY OR OTHERWISE, AND ALL SUCH LIABILITY OF ANY SUCH OFFICERS, DIRECTORS, MEMBERS, EMPLOYEES, OR AGENTS, AS SUCH, IS HEREBY EXPRESSLY WAIVED AND RELEASED AS A CONDITION OF, AND CONSIDERATION FOR, THE EXECUTION AND ISSUANCE OF THIS BOND.

This Bond is one of a duly authorized issue of bonds of the Issuer, issued in the initial aggregate principal amount of \$10,100,000, known as the Multifamily Housing Mortgage Revenue Bonds (Union Acres Project) Series 2022 (the "**Bonds**"), issued in accordance with a Trust Indenture dated as of June 1, 2022 (the "**Indenture**"), by and between the Issuer and Wilmington



Trust National Association, as the Trustee (the “**Trustee**”), setting forth the terms upon which such Bonds are issued. The Bonds are issued by the Issuer for the purpose of making a loan of the proceeds thereof (the “**Loan**”) to Center 818 Cotton Ford Road, LP, a Texas limited partnership (the “**Borrower**”), under the provisions of a Financing Agreement dated as of June 1, 2022 (the “**Financing Agreement**”), by and among the Issuer, the Borrower, and the initial Bond Owner to finance the acquisition, rehabilitation and equipping of an affordable multifamily residential rental housing development located in the City of Center, Shelby County, Texas (the “**Project**”). The Loan is evidenced by a promissory note from the Borrower to the Issuer and endorsed without recourse by the Issuer to the Trustee (the “**Bond Note**”). The Borrower has agreed under the Financing Agreement to repay the Loan, together with interest thereon, in amounts and at times sufficient to pay the principal of, premium, if any, and interest on the Bonds as the same shall become due and payable.

Pursuant to the Indenture, the Issuer has assigned and pledged to the Trustee, for the equal and ratable benefit of the Holders, all revenues and receipts derived by the Borrower from the operation of the Project. Pursuant to a Construction and Permanent Deed of Trust, Security Agreement, Assignment of Leases and Rents, and Fixture Filing filed with respect to the Project (the “**Bond Mortgage**”) dated as of June 1, 2022 and executed by the Borrower for the benefit of the Issuer, the Borrower has granted to the trustee identified in the Bond Mortgage, for the equal and ratable benefit of the Holders of the Bonds, a first priority mortgage lien on and a security interest in the Project and the rents and leases thereof. The Bond Mortgage may be released or modified in any respect upon compliance with certain conditions in the Bond Mortgage and the Indenture.

Reference is hereby also made to the Financing Agreement, the Indenture, and the Bond Mortgage, including all supplements thereto, for a description of the property encumbered and assigned, the provisions, among others, with respect to the nature and extent of the security, the rights of the Issuer, and the rights, duties, and obligations of the Borrower, the Trustee, and the Holders of the Bonds, and the terms upon which the Bonds are issued and secured, redeemed and any Prepayment Fee assessed.

Interest will accrue on the outstanding balance of the Bonds at the Stated Rate, subject to adjustment as provided in the Indenture and herein. If any monthly amount payable under this Bond or payment with respect to the Loan is not received by the Holder (i) within ten (10) days after the scheduled Payment Date, Issuer (solely from a corresponding payment made by Borrower under the Bond Note and Financing Agreement) shall pay to Holder, promptly and without demand by Holder, a late charge equal to five percent (5%) of such amount. Failure to make timely payments will cause Bond Owner to incur additional expenses in holding, servicing, and processing this Bond, and that it is extremely difficult and impractical to determine those additional expenses. The late charge payable pursuant to this paragraph represents a fair and reasonable estimate, taking into account all circumstances existing on the date of this Bond, of the additional expenses Holder will incur by reason of such late payment. The late charge is payable in addition to, and not in lieu of, any interest payable at the Default Rate as provided below.

During the continuance of an Event of Default, at the option of Bond Owner, interest under the Bonds shall accrue on the unpaid principal balance from the earlier of the due date of the first unpaid monthly installment or other payment due, as applicable, at a rate (the “**Default Rate**”)

equal to the lesser of five (5) percentage points above the applicable Stated Rate or the Maximum Lawful Rate. If the unpaid principal balance and all accrued interest are not paid in full on the Maturity Date, the unpaid principal balance and all accrued interest shall bear interest from the Maturity Date at the Default Rate. An Event of Default will materially increase Bond Owner's risk and/or cause Bond Owner to incur additional expenses in holding, servicing, and processing this Bond arising from its loss of the use of the money due, and that it is extremely difficult and impractical to determine those additional risks, costs and expenses. The increase in the rate of interest payable under this Bond to the Default Rate represents a fair and reasonable estimate, taking into account all circumstances existing on the date of this Bond, of the additional costs and expenses Bond Owner will incur by reason of an Event of Default and the additional compensation Bond Owner is entitled to receive for the increased risks of any nonpayment associated therewith.

### **MISCELLANEOUS PROVISIONS**

1. Date of Bond Payments. If the date for payment of the principal of, premium, if any, or interest on this Bond shall be a day which is not a Business Day, then the date for such payment shall be the next succeeding day which is a Business Day, and payment on such later date shall have the same force and effect as if made on the nominal date of payment.

2. Enforcement; Modification of Indenture and Bond Loan Documents. The Holder of this Bond shall have the right to authorize and instruct the Trustee to enforce the provisions of the Indenture or to institute action to enforce the covenants therein, or to take any action with respect to any Event of Default under the Indenture, or to institute, appear in or defend any suit or other proceedings with respect thereto, except as provided in the Indenture (Trustee will not act without any such authorization or instruction from Bond Owner). Modifications or alterations of the Indenture, of any indenture supplemental thereto or of Bond Loan Documents, may be made only to the extent and in the circumstances permitted by the Indenture.

3. Consent to Modifications. With the consent of the Issuer, Borrower, Bond Owner, and the Trustee, as appropriate, and to the extent permitted by and as provided in the Indenture, the terms and provisions of the Indenture and the Bond Loan Documents or any instrument supplemental thereto may be modified or altered by the consent of the Holders of the requisite percentage of Bonds Outstanding required by the Indenture. Supplemental indentures may also be executed and delivered, without consent of or notice to any Holders, for the purpose of curing any ambiguity or formal defect or omission in the Indenture or in any supplemental indenture, granting for the benefit of the Holders additional rights, remedies, powers, authority, or security, more precisely identifying the Trust Estate, subjecting to the lien and pledge of the Indenture additional rights, preventing the interest on the Bonds from becoming includable in gross income for federal income tax purposes, qualifying the Indenture under the Trust Indenture Act of 1939, evidencing appointment of a co-Trustee or successor trustee, bond registrar, or successor paying agent, reconciling the Indenture with Loan Documents, or making any other change which in the judgment of the Trustee based upon an opinion of Bond Counsel is necessary or desirable and will not materially prejudice any non-consenting Holders. Every Holder hereof is deemed by the Holder's purchase and retention of this Bond to consent to be bound by every supplemental indenture and every modification and amendment adopted in accordance with the provisions of the Indenture, whether or not noted or endorsed hereon or incorporated herein.

4. Waiver or Consent Conclusive. The Indenture also contains provisions permitting the Trustee, on behalf of all the Holders, to waive any Event of Default as defined under the Indenture and rescind any acceleration of the Bonds.

5. Authorized Denomination; Exchange; Treatment of Registered Holder. The Bonds are issued as fully registered bonds without coupons in the minimum denominations of \$100,000 or any amount (including cents) in excess thereof (an “**Authorized Denomination**”) of a single maturity or series; except that a Bond may be exchanged after redemption or purchase for a Bond in less than an Authorized Denomination to the extent necessary to represent the unredeemed portion of any Bonds. The Bonds may be exchanged by the Holder for other Bonds of any Authorized Denominations and of a like aggregate principal amount, series, and stated maturity, upon surrender thereof by the Holder at the Operations Office of the Bond Registrar or, in the case in which the Trustee is the Bond Registrar, at the Operations Office of the Trustee, in the manner and subject to the limitations provided in the Indenture. The Issuer, the Trustee, the Bond Registrar, and the Paying Agent may deem and treat the Holder of this Bond as the absolute owner of this Bond (whether or not this Bond shall be overdue) for the purpose of receiving payment on this Bond (except as otherwise herein above provided with respect to the Record Date and Special Record Date) and for all other purposes, and the Issuer (or any agent thereof), the Trustee, the Bond Registrar, and the Paying Agent shall not be affected by any notice to the contrary.

6. Registration of Transfer. The transfer of this Bond is subject to certain restrictions as provided in the Indenture and described below and to registration by the Holder or by the Holder’s attorney hereof upon surrender of this Bond at the designated corporate trust office of the Bond Registrar or, in the case in which the Trustee is the Bond Registrar, at the Operations Office of the Trustee, duly endorsed or accompanied by a written instrument or instruments of transfer in the form printed on this Bond or in another form satisfactory to the Bond Registrar and duly executed and with guaranty of signature of the Holder hereof or his, her, or its attorney duly authorized in writing, containing written instructions as to the details of the registration of the transfer of the Bonds. Thereupon the Issuer shall execute (if necessary) and the Bond Registrar shall authenticate and deliver in the name of the designated transferee or transferees (but not registered in blank or to “bearer” or a similar designation), one or more new Bonds of any Authorized Denomination(s), of a like series and aggregate principal amounts having the same stated maturity and interest rate.

THE TRUSTEE SHALL NOT REGISTER ANY TRANSFER OR EXCHANGE OF ANY BOND UNLESS ALL REQUIREMENTS OF **SECTION 3.12** OF THE INDENTURE ARE MET AND, IF REQUIRED BY THE INDENTURE, SUCH HOLDER’S PROSPECTIVE TRANSFEREE DELIVERS TO THE TRUSTEE AN INVESTOR’S LETTER SUBSTANTIALLY IN THE FORM SET FORTH IN **EXHIBIT C** TO THE INDENTURE.

The Bond Registrar shall not be required (a) to transfer or exchange any Bond during a period beginning at the opening of business fifteen (15) days before the day of the mailing of a notice of redemption or purchase of Bonds under the Indenture and ending at the close of business on the day of such mailing or (b) to transfer or exchange any Bond so selected for redemption or purchase in whole or in part.

7. Service Charges, Taxes. No service charge shall be made to the Holder for any registration, transfer, or exchange herein before referred to, but the Bond Registrar and the Trustee shall require payment of a sum sufficient to cover any tax, fee, or other governmental charge that may be imposed in connection with any transfer or exchange of Bonds, other than exchanges expressly provided in the Indenture to be made without expense or without charge to Holders, and any legal or unusual costs of transfers and lost Bonds.

8. Acceleration. In certain events, on the conditions, in the manner and with the effect set forth in the Indenture, the principal of all the Bonds then Outstanding under the Indenture may become or may be declared due and payable before the stated maturities thereof, together with the interest accrued thereon.

9. Governing Law. This Bond shall be governed by and construed in accordance with the laws of the State of Texas, excluding its conflict and choice of law principles.

10. Indenture Controlling. The terms of this Bond are subject in all respects to the terms of the Indenture. If there is a conflict between the provisions of this Bond and the Indenture, the provisions of the Indenture shall control.

11. Defined Terms. Any capitalized term not defined herein shall, as applicable, have the meaning assigned in the Indenture, the Financing Agreement, or the Bond Note.

12. Authentication. This Bond shall not be valid or become obligatory for any purpose or be entitled to any benefit or security under the Indenture unless either (1) the Certificate of Authentication hereon has been executed by the Bond Registrar, or (2) the Comptroller's Registration Certificate hereon has been executed by an authorized representative of the Comptroller of Public Accounts of the State of Texas.

13. Redemption. This Bond shall be subject to mandatory and optional redemption, subject to and as provided in **Article 4** of the Indenture.

IT IS HEREBY CERTIFIED AND DECLARED that all acts, conditions, and things required to exist, happen, and be performed precedent to and in the execution and delivery of the Indenture and the issuance of this Bond do exist, have happened, and have been performed in due time, form, and manner as required by law.

[Executed on the following pages]

IN WITNESS WHEREOF, the Issuer has caused this Bond to be duly executed in its name by the facsimile signature of its Chair or Vice Chair under its official seal, or a facsimile, and attested by the facsimile signature of its Secretary all as of the Bond Closing Date stated above.

TEXAS DEPARTMENT OF HOUSING  
AND COMMUNITY AFFAIRS

By: \_\_\_\_\_  
[Vice] Chair

(SEAL)

ATTEST:

[\_\_\_\_\_]

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

[FORM OF CERTIFICATE OF AUTHENTICATION]

CERTIFICATE OF AUTHENTICATION

This Bond is one of the Bonds described in the within mentioned Indenture.

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

WILMINGTON TRUST, NATIONAL  
ASSOCIATION, as Bond Registrar

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

[Form of Comptroller's Registration to be included on Initial Bond only]

COMPTROLLER'S REGISTRATION CERTIFICATE: REGISTER NO. \_\_\_\_\_

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

WITNESS MY SIGNATURE AND SEAL this \_\_\_\_\_.

\_\_\_\_\_

(SEAL)

[Form of Assignment]

FOR VALUE RECEIVED, the undersigned hereby sells, assigns, and transfers unto \_\_\_\_\_ (Please Print or Typewrite Name and Address) (Please Insert Social Security or Other Identifying Number of Assignee: \_\_\_\_\_) the within Bonds and all rights and title therein, and hereby irrevocably constitutes and appoints \_\_\_\_\_ attorney to transfer the within Bonds on the books kept for registration thereof, with full power of substitution in the premises.

Dated: \_\_\_\_\_  
(Registered Owner)

NOTICE: The signature(s) to this assignment must correspond with the name as it appears upon the face of the within Bonds in every particular, without alteration or enlargement or any change whatever.

Signature guaranteed

\_\_\_\_\_  
NOTICE: Signature(s) must be guaranteed by a member firm of the New York Stock Exchange or a commercial bank or trust company that is a medallion guarantor.

The following abbreviations, when used in the inscription on the face of the within Bonds, shall be construed as though they were written out in full according to applicable laws or regulations.

TEN COM as tenants in common  
TEN ENT as tenants by the entirety  
JT TEN as joint tenants with rights of survivorship and not as tenants in common

UNIF GIFT MIN ACT \_\_\_\_\_ Custodian \_\_\_\_\_  
(Minor) (Cust)

Under Uniform Gifts to Minors Act

(State)

Additional abbreviations may also be used though not in the above list.



EXHIBIT C

INVESTOR'S LETTER

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS  
P.O. Box 13941  
Austin, Texas 78711

Wilmington Trust, National Association  
15950 North Dallas Parkway, Suite 550  
Dallas, Texas 75248  
Attention: Vice President

RE: \$10,100,000 Texas Department of Housing and Community Affairs Multifamily  
Housing Mortgage Revenue Bonds (Union Acres Project) Series 2022

Ladies and Gentlemen:

The undersigned representative of \_\_\_\_\_ (the "Purchaser"), the [initial] purchaser of the Texas Department of Housing and Community Affairs Multifamily Housing Mortgage Revenue Bonds (Union Acres Project) Series 2022, dated [CLOSING DATE] (the "Bonds"), does hereby certify, represent and warrant for the benefit of the Texas Department of Housing and Community Affairs (the "Issuer") and Wilmington Trust, National Association, as trustee (the "Trustee"), that the Purchaser is an "accredited investor" as defined under Regulation D of the Securities Act of 1933, as amended (an "Accredited Investor"), excluding Section 230.501(a)(4), (a)(5) and (a)(6), or a "qualified institutional buyer" as defined in Rule 144A under the Securities Act of 1933, as amended (a "QIB").

The Purchaser hereby acknowledges, represents, and warrants to, and agrees with, the Issuer and the Trustee, as follows:

(1) The Purchaser is purchasing the Bonds with its own funds (or with funds from accounts over which it has sole investment authority) and not the funds of any other person, and for its own account (or for accounts over which it has sole investment authority) and not as nominee or agent for the account of any other person and not with a view to any distribution thereof, other than the deposit of the Bonds in a custodial or trust arrangement each of the beneficial owners of which shall be required to be an Accredited Investor or a QIB.

(2) The Purchaser has such knowledge and experience in business and financial matters and with respect to the purchase and ownership of multifamily housing revenue bonds, tax-exempt securities and other investment vehicles similar in character to the Bonds, so as to enable it to understand and evaluate the risks of such investments and form an investment decision with respect thereto; the Purchaser has no need for liquidity in such investment; and the Purchaser is (or any account for which it is purchasing is) able to bear the risk of such investment for an indefinite period and to afford a complete loss thereof.

(3) The Purchaser acknowledges that it has been provided with, and has had the opportunity to review, the documents relating to the issuance of the Bonds by the Issuer. The Purchaser either has been supplied with or has had access to information, including financial statements, and other financial information, and has had the opportunity to ask questions and receive answers from individuals concerning the Issuer and Center 818 Cotton Ford Road, LP, a Texas limited partnership (the “Borrower”) and its credit standing, the Financing Agreement dated as of June 1, 2022, among the Issuer, CommunityBank of Texas, N.A., as Bond Owner, and the Borrower (the “Financing Agreement”), the Trust Indenture dated as of June 1, 2022, between the Issuer and the Trustee (the “Indenture”), and the Bonds so that, as a sophisticated investor, the Purchaser has been able to make its decision to purchase the Bonds.

(4) The Purchaser has had the opportunity to ask questions and receive answers concerning the terms and conditions of the offering and to obtain any additional information it may request.

(5) The Purchaser is a nationally- or state-chartered bank that regularly extends credit to state and local governments by making loans the repayment obligations under which are evidenced by obligations such as the Bonds; has knowledge and experience in financial and business matters that make it capable of evaluating the Borrower, the Bonds and the risks associated with the extension of credit evidenced by the Bonds; and has the ability to bear the economic risk of extending the credit evidenced by the Bonds. The Purchaser is not acting as a broker, dealer, municipal securities underwriter, municipal advisor or fiduciary in connection with its extension of credit evidenced by the Bonds.

(6) The Purchaser acknowledges that (a) the Bonds (i) have not been registered under the Securities Act of 1933, as amended, (ii) have not been registered or otherwise qualified for sale under the securities laws of any state, and (iii) will not be listed on any securities exchange and (b) there is no established market for the Bonds and that none is likely to develop.

(7) THE PURCHASER UNDERSTANDS THAT:

(a) NEITHER THE STATE OF TEXAS, THE ISSUER, NOR ANY POLITICAL SUBDIVISION OR AGENCY OF THE STATE OF TEXAS, SHALL BE LIABLE OR OBLIGATED (GENERALLY, SPECIALLY, MORALLY OR OTHERWISE) TO PAY THE PRINCIPAL OF THE BONDS OR THE PREMIUM, IF ANY, OR INTEREST THEREON, AND NEITHER THE FAITH AND CREDIT NOR THE TAXING POWER OF THE STATE OF TEXAS, OR ANY OTHER POLITICAL SUBDIVISION OR AGENCY THEREOF IS PLEDGED TO THE PAYMENT OF THE PRINCIPAL OF, PREMIUM, IF ANY, OR INTEREST ON THE BONDS; AND

(b) THE ISSUER HAS NO TAXING POWER AND PRINCIPAL, PREMIUM, IF ANY, AND INTEREST ON THE BONDS IS PAYABLE SOLELY OUT OF THE MONEYS TO BE RECEIVED BY THE TRUSTEE ON BEHALF OF THE ISSUER UNDER THE FINANCING AGREEMENT AND

AMOUNTS ON DEPOSIT IN THE FUNDS AND ACCOUNTS ESTABLISHED AND PLEDGED UNDER THE INDENTURE.

(8) The Purchaser understands that in connection with any proposed transfer or exchange of Bonds, there must be delivered to the Trustee a letter of the transferee in substantially the same effect as this letter or otherwise as permitted under the Indenture.

(9) The Purchaser understands that, in connection with any proposed transfer of the Bonds, such transfer must be limited to an Eligible Purchaser. "Eligible Purchaser" means a prospective transferee that the Purchaser has clear grounds to believe and does believe can make representations with respect to itself to substantially the same effect as the representations set forth herein.

**(10) THE PURCHASER INDEMNIFIES THE ISSUER AND THE TRUSTEE AGAINST ANY AND ALL LIABILITY, COST OR EXPENSE (INCLUDING ATTORNEYS' FEES) THAT RESULT IF THE REPRESENTATIONS CONTAINED IN THIS INVESTOR'S LETTER ARE FALSE IN ANY MATERIAL RESPECT.**

(11) The Purchaser is acquiring 100% of the Bonds.

The Purchaser has conducted its own investigation to the extent it deemed necessary. The Purchaser has been offered an opportunity to have made available to it any and all such information it might request from the Issuer and the Borrower. On this basis, it is agreed by the Purchaser that the Purchaser is not relying on any other party or person to undertake the furnishing or verification of information related to the referenced transaction.

The Bonds for this Purchaser should be registered with the Trustee as follows and an executed W-9 has been attached:

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Tax ID #: \_\_\_\_\_

Payment instructions: ( ) wire ( ) check

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

This letter and the representations and agreements contained herein are made for your benefit and may be relied upon by the addressees hereof.

IN WITNESS WHEREOF, I have hereunto set my hand the \_\_\_\_\_ day of \_\_\_\_\_.

PURCHASER:

\_\_\_\_\_

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**MUST BE SIGNED BY ACTUAL  
PURCHASER. MAY NOT BE SIGNED BY  
NOMINEE OR AGENT.**

EXHIBIT D

SINKING FUND INSTALLMENTS

Date Principal Amount


FINANCING AGREEMENT

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

as

ISSUER

and

COMMUNITYBANK OF TEXAS, N.A.

as

BOND OWNER

and

CENTER 818 COTTON FORD ROAD, LP

as

BORROWER

Dated as of June 1, 2022

Relating to

\$10,100,000

Texas Department of Housing and Community Affairs  
Multifamily Housing Mortgage Revenue Bonds  
(Union Acres Project)  
Series 2022

*The interests of the Issuer in this Agreement, excluding the Unassigned Issuer's Rights (as defined in the hereinafter defined Indenture), have been assigned to Wilmington Trust, National Association, as Trustee (the "Trustee") pursuant to a Trust Indenture dated as of June 1, 2022 (the "Indenture"), between the Issuer and the Trustee.*

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## FINANCING AGREEMENT

THIS FINANCING AGREEMENT (this “Agreement”) is made as of June 1, 2022, by and among TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS, a public and official agency of the State of Texas (the “Issuer”), COMMUNITYBANK OF TEXAS, N.A., a national banking association (the initial “Bond Owner”), and CENTER 818 COTTON FORD ROAD, LP, a Texas limited partnership (the “Borrower”).

### WITNESSETH:

WHEREAS, the Issuer was created and organized and is validly existing under the Constitution and laws of the State of Texas (the “State”), including Chapter 2306, Texas Government Code, as amended (the “Act”); and

WHEREAS, pursuant to the Act, the Issuer is authorized and empowered to issue revenue bonds and use the proceeds from the sale of such bonds to make loans for the acquisition, construction, rehabilitation, equipping, furnishing, and development of affordable housing facilities; and

WHEREAS, pursuant to a Trust Indenture (the “Indenture”) executed as of even date herewith, by and between the Issuer and Wilmington Trust, National Association, as trustee (“Trustee”), the Issuer has, among other things, issued its Multifamily Housing Mortgage Revenue Bonds (Union Acres Project) Series 2022, in the original principal amount of \$10,100,000 (the “Bonds”) for the purposes of making a loan to finance the acquisition, rehabilitation and equipping of Union Acres, a 100-unit multifamily affordable residential rental complex consisting of 50 buildings (hereafter defined as the “Project”) located on a 18.372-acre (approximately) site at 818 Cotton Ford Road in Center, Texas, which is more particularly described in Schedule A (the “Land”); and [*BORROWER CONFIRM*]

WHEREAS, the Issuer deems it desirable and in keeping with its purpose to issue the Bonds and loan the proceeds thereof (the “Bond Loan”) to the Borrower for the purposes described above under the terms and conditions contained in this Agreement; and

WHEREAS, to evidence the Bond Loan, the Borrower is making to the order of Issuer a Promissory Note in the principal sum of \$10,100,000 (the “Bond Note”) substantially in the form attached hereto as Schedule B, which Bond Note provides for the repayment of the Bond Loan in payments sufficient to pay, when due, the principal of, premium, if any, and interest on the Bond, and to secure, among other things, the payments due under the Bond Note and the other obligations of Borrower under this Agreement, and the Borrower is executing a Construction and Permanent Deed of Trust, Security Agreement, Assignment of Leases and Rents and Fixture Filing (the “Bond Mortgage”) naming the Issuer as beneficiary (the beneficial interest in which is being assigned by the Issuer to the Trustee as provided for in the Indenture) with respect to the Project; and

WHEREAS, the Bond Loan consists of a loan (the “Construction Loan”) in the principal amount not to exceed \$10,100,000 and which, subject to the terms hereof, will convert on the

Stabilized Occupancy Date to a permanent loan (the “**Permanent Loan**”) in an amount not to exceed \$6,500,000; and

WHEREAS, Center 818 Cotton Ford Road GP, LLC, a Texas limited liability company, as the General Partner (the “**General Partner**”), Center 818 Cotton Ford Road SLP, LLC, as the Class B Special Limited partner, RBC Community Investments Manager II, Inc., as the Special Limited Partner, and RBC Community Investments, LLC, an Illinois limited liability company, as the Investor Limited Partner (“**Investor Limited Partner**”) entered into that certain [Amended and Restated Agreement of Limited Partnership] dated June \_\_, 2022 (the “**Partnership Agreement**”), pursuant to which the Investor Limited Partner has been admitted as limited partner and has agreed to make capital contributions to the Borrower upon the satisfaction of certain conditions set forth therein and herein; and [**BORROWER/EQUITY CONFIRM**]

WHEREAS, the execution and delivery of this Agreement and the issuance of the Bonds have been in all respects duly and validly authorized by the Issuer; and

WHEREAS, the execution and delivery of this Agreement by the Bond Owner confirms that all the conditions for the closing of the Bond Loan set forth in **Schedule D** hereto have been met or waived for purposes of the purchase of the Bond; and

NOW, THEREFORE, the Bond Owner, the Issuer, and the Borrower, each in consideration of the representations, covenants, and agreements of the other as set forth herein, mutually represent, covenant, and agree as follows:

ARTICLE 1  
DEFINITIONS, EXHIBITS AND RULES OF INTERPRETATION

Section 1.1 **Definitions.** In this Agreement, all capitalized terms used herein and not defined shall have the meaning ascribed thereto in **Section 1.1** of the Indenture (whether or not specific reference is made to that term in **Section 1.2** below).

Section 1.2 **Additional Definitions.** In addition to the other terms defined elsewhere in this Agreement, the following terms shall have the meanings assigned to them:

“**Act of Bankruptcy**” means any of the following events:

(a) the Borrower, a Guarantor, or the Investor Limited Partner shall (i) apply for or consent to the appointment of, or the taking of possession by, a receiver, custodian, trustee, or liquidator of the Borrower, a Guarantor, or the Investor Limited Partner or of all or a substantial part of the property of the Borrower, a Guarantor, or the Investor Limited Partner, (ii) commence a voluntary case under the Bankruptcy Code (as now or hereafter in effect), or (iii) file a petition with respect to itself seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts; or

(b) a proceeding or case shall be commenced without the application or consent of the Borrower, a Guarantor, or the Investor Limited Partner, as the case may be, in any court of competent jurisdiction, seeking (i) the liquidation, reorganization, dissolution,

winding-up, or the composition or adjustment of debts of the Borrower, a Guarantor, or the Investor Limited Partner, (ii) the appointment of a trustee, receiver, custodian, or liquidator of the Borrower, a Guarantor, or the Investor Limited Partner or of all or any substantial part of the assets of the Borrower, a Guarantor, or the Investor Limited Partner, or (iii) similar relief in respect of the Borrower, a Guarantor, or the Investor Limited Partner under any law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts and such proceeding or case shall not be dismissed within 60 days of such filing.

For purposes of this Agreement, an Act of Bankruptcy shall be deemed dismissed only if (i) the petition is dismissed by order of a court of competent jurisdiction and no further rights exist from such order and (ii) the Borrower or the Issuer notifies the Trustee that such a dismissal has occurred.

Further, on the Stabilized Occupancy Date, references to the Guarantor and the Investor Limited Partner in this definition of Act of Bankruptcy shall be deemed deleted for purposes of this definition (an Act of Bankruptcy shall only relate to the Borrower on and after the Stabilized Occupancy Date).

“**ADA**” has the meaning assigned to that term in **Section 12.33**.

“**Additional Charges**” has the meaning assigned to that term in **Section 4.3**.

“**Affiliate**” means, with respect to a specified Person, another Person that directly or indirectly through one or more intermediaries, Controls, or is Controlled by, or is under common Control with the Person specified

“**Agreement Commencement Date**” means June 1, 2022.

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

“**Anti-Money Laundering Laws**” means the USA Patriot Act of 2001, as amended, the Bank Secrecy Act, as amended, Executive Order 13324 – Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism, as amended, and other federal laws and regulations and executive orders administered by OFAC which prohibit, among other things, the engagement in transactions with, and the provision of services to, certain foreign countries, territories, entities and individuals (such individuals include specially designated nationals, specially designated narcotics traffickers and other parties subject to OFAC sanction and embargo programs), and such additional laws and programs administered by OFAC which prohibit dealing with individuals or entities in certain countries regardless of whether such individuals or entities appear on any of the OFAC lists.

“**Appraisal**” or “**appraisal**” means a written statement setting forth an opinion of the Appraisal Value of the Project that (i) has been independently and impartially prepared by a qualified appraiser directly engaged by the Bond Owner or its agent, (ii) complies with all applicable federal and state laws and regulations dealing with appraisals or valuations of real

property, and (iii) has been reviewed as to form and content and approved by the Bond Owner, in its reasonable judgment.

**“Appraisal Value”** means the stabilized, as-completed, value of the Project based on the rent restricted value of the Project (for purposes of determining the Appraisal Value prior to the Stabilized Occupancy Date, after taking into account the value of the Low-Income Housing Tax Credit allocated to the Project in connection with the residential units in the Improvements and any other collateral acceptable to Bond Owner). In making this determination for purposes of determining the Appraisal Value prior to the Stabilized Occupancy Date, the “value of the Low-Income Housing Tax Credit” will be based on, among other factors, the total Capital Contributions made or to be made by the Investor Limited Partner pursuant to the Partnership Agreement. Notwithstanding the foregoing, for determining the Appraisal Value for purposes of determining if Lease Stabilization has occurred and for determining Appraisal Value for purposes of Lease Stabilization after the Stabilized Occupancy Date, the Appraisal Value will be determined as provided for in the definition of Lease Stabilization.

**“Architect”** has the meaning assigned to that term in **Section 5.7(b)**.

**“Architecture Contract”** has the meaning assigned to that term in **Section 5.11(c)**.

**“Assignment of Architecture Contract”** means the Assignment of Architecture Contract dated as of the Agreement Commencement Date from Borrower to Issuer.

**“Assignment of Construction Contract”** means the Assignment of Construction Contract dated as of the Agreement Commencement Date from Borrower to Issuer

**“Assignment of Engineering Agreement”** means the Assignment of Engineering Agreement dated as of the Agreement Commencement Date from Borrower to Issuer.

**“Assignment of Management Agreement”** means the Assignment of Management Agreement dated as of the Agreement Commencement Date from Borrower to Bond Owner.

**“Bad Costs”** means budgeted project items which are not Good Costs.

**“Basic Payments”** has the meaning assigned to that term in **Section 4.2(b)**.

**“Bond Closing Date”** means the date upon which the Bonds are issued and delivered in exchange for the proceeds representing the purchase price of the Bonds paid by the original purchasers thereof.

**“Bond Counsel”** has the meaning assigned to that term in the Indenture.

**“Bond Documents”** means the Indenture, the Bond, this Agreement, the Bond Note, the Tax Regulatory Agreement, Tax Exemption Agreement and the Bond Mortgage.

**“Bond Loan”** has the meaning provided in the Recitals of this Agreement.

**“Bond Loan Documents”** means the Bond Documents, the Guaranty, the Assignment of Accounts, the Assignment of Management Agreement, the Assignment of Architecture Contract, the Assignment of Construction Contract, the Assignment of Engineering Agreement, the Intercreditor Agreement, the Collateral Assignment, the Developer Fee Subordination, the HAP Assignment, and such other instruments, documents, and agreements evidencing, securing, or pertaining to the Bond Loan which have heretofore been or hereafter are from time to time executed and delivered to Bond Owner by Borrower, or any other party pursuant to this Agreement.

**“Bond Mortgage”** has the meaning assigned to that term in the Recitals.

**“Bonded”** means a lien or claim that is bonded against in a manner acceptable to the Bond Owner as to preclude the claimant thereof from having recourse to the Project or Borrower for the payment of a debtor otherwise with respect to a claim.

**“Bond Owner”** has the meaning assigned to that term in the introductory paragraph on page 1.

**“Bond Owner’s Required Completion Date”** means the earlier to occur of (a) [eighteen (18)] calendar months from the date of this Agreement (as may be extended for up to an aggregate combined amount of 60 days as a result of Excusable Delays), (b) the date the Investor Limited Partner shall require that the Improvements are placed in service as provided in the Partnership Agreement, (c) the date required by the Credit Agency for placing the Project in service in order to maintain its fully committed Low-Income Housing Tax Credit, (d) the date for completing the Improvements as may be required for purposes of the HAP Agreement (or any agreement to enter into the HAP Contract), (e) the date required for completion of the Improvements under the Seller Loan Documents or (f) the date required in the Construction Contract for completing the Improvements.

**“Bond Owner Term Sheet”** means any written or oral commitment, offer, or statement made by Bond Owner to Borrower before the Bond Closing Date with respect to the terms and manner upon which Bond Owner will purchase the Bonds (including the letter dated February 11, 2022, from the Bond Owner to Borrower).

**“Borrower’s Funds Account”** has the meaning assigned to that term in **Section 4.6**.

**“Borrower’s Sources”** has the meaning assigned to that term in **Section 4.6**.

**“Budget”** means the budget prepared by Borrower, and approved by Bond Owner, setting forth in detail all direct and indirect costs for the acquisition and rehabilitation of the Improvements, as provided for in **Schedule C** attached hereto. In any event, the Budget shall include a hard and soft cost contingency of at least 5% each (calculated on the total amount of the general contracts, including profit, overhead, and general conditions, but excluding architectural design fees).

**“Business Day”** shall mean any day other than (i) a Saturday or a Sunday, or (ii) a day on which federally insured depository institutions in Houston, Texas, New York, New York, or any other jurisdiction in which the Bond Owner’s designated offices are located, are authorized or



obligated by law, regulation, governmental decree or executive order to be closed, or (iii) any other day which is not a Business Day under and for purposes of the Indenture.

“**Capital Contribution Account**” means that certain Bond Owner controlled interest bearing account in the name of Borrower, located at Bond Owner to be used for disbursements by Bond Owner of certain of the Capital Contributions.

“**Capital Contributions**” means the Capital Contributions to be made by the Investor Limited Partner in accordance with the terms and provisions of the Partnership Agreement; a schedule of such payments is set forth in **Schedule J**, with respect to the purchase of the Low-Income Housing Tax Credit. References to specific Capital Contributions shall be to the associated installment of the Capital Contribution in **Schedule J**.

“**Cash Collateral**” has the meaning assigned to that term in **Section 4.6**.

“**Code**” or “**Internal Revenue Code**” has the meaning assigned to the term “Code” in the Tax Exemption Agreement.

“**Collateral Assignment**” means the Collateral Assignment of Rights to Low Income Housing Tax Credit and Membership Interests dated as of the Agreement Commencement Date from Borrower and General Partner to Trustee.

“**Commencement Deadline**” means thirty (30) days from the Bond Closing Date.

“**Completion Certificate**” has the meaning assigned to that term in **Section 5.7(b)**.

“**Condemnation**” shall have the meaning assigned to that term in the Indenture.

“**Construction Capital Contributions**” has the meaning assigned to that term in **Section 4.7**.

“**Construction Contract**” has the meaning assigned to that term in **Section 5.11(c)**.

“**Construction Inspection Fee**” has the meaning assigned to that term in **Section 5.18**.

“**Construction Term**” means the period beginning on the Agreement Commencement Date and ending on the earlier to occur of (a) Construction Term Maturity Date, and (b) the Stabilized Occupancy Date.

“**Construction Term Maturity Date**” means twenty-four (24) months from the Agreement Commencement Date, as the same may be extended pursuant to **Section 4.2(e)** of this Agreement.

“**Contractor**” means ICON Builders, L.L.C., and each other general contractor, whether one or more, engaged by Borrower, and approved in writing by the Bond Owner, to construct the Improvements.

“**Control**” means the possession, directly or indirectly, of the power to direct or cause the direction of the management policies of a Person whether through the ability to exercise voting power, by contract or otherwise. “**Controlling**” and “**Controlled**” shall have meanings correlative thereto.

“**Conversion Certificate**” means Conversion Certificate in the form attached hereto as **Schedule P**.

“**Costs of Issuance**” has the meaning assigned to that term in the Tax Exemption Agreement.

“**County**” means Shelby County, Texas.

“**Credit Agency**” means the Texas Department of Housing and Community Affairs, together with its successors and assigns in such capacity.

“**Credit Agency Regulatory Agreement**” means that certain Tax Credit Regulatory Agreement to be executed by and between Borrower and Credit Agency following Borrower’s filing of Form 8609 with respect to the Project.

“**Debt Service Coverage Ratio**” shall have the meaning given to that term in the Partnership Agreement.

“**Default**” means any event which, with the giving of notice or the passage of time, or both, would be an Event of Default.

“**Default Rate**” has the meaning assigned to that term in the Indenture.

“**Developer**” means Center 818 Cotton Ford Road Developer, LLC.

“**Developer Fee**” means that fee for development services payable to the Developer in the amount and upon such terms and conditions provided for in that certain Development Agreement executed on or before even date herewith by and between Borrower and Developer.

“**Developer Fee Subordination**” means the Developer Fee Subordination Agreement dated the Agreement Commencement Date from Borrower and Developer to Bond Owner.

“**Disbursement Checking Account**” has the meaning assigned to that term in **Section 4.7**.

“**Disbursement Schedule**” has the meaning assigned to that term in **Section 3.3(4)**.

“**Draw Request**” has the meaning assigned to that term in **Section 4.7**.

“**Electronic Means**” means facsimile transmission, email transmission, or other similar means of communication capable of being evidenced by a paper copy.

“**Eligible Costs**” has the meaning assigned to that term in **Section 4.9**.

“**Entity Guarantors**” means Itex Group, LLC, Itex Partners, LLC, and Itex Development, LLC.

“**ERISA**” means the Employee Retirement Income Security Act of 1974, as the same may be amended from time to time.

“**ERISA Affiliate**” means any corporation or trade or business that is a member of any group of organizations (a) described in Section 414(b) or (c) of the Code, of which the Borrower is a member, and (b) solely for purposes of potential liability or any lien arising under Section 302 of ERISA and Section 412 of the Code, described in Section 414(m) or (o) of the Code, of which the Borrower is a member.

“**Event of Default**” has the meaning given to that term in **Section 11.1**.

“**Event of Taxability**” has the meaning given to that term in the Indenture.

“**Excusable Delays**” means unusually adverse weather conditions which have not been taken into account in the construction schedule, fire, hurricane, tropical storm, earthquake or other acts of God, State or Federal ordered evacuation of the Land, shortages of materials, strike, lockout, acts of public enemy, riot, or insurrection or any unforeseen circumstances or events (except financial circumstances or events or matters which may be resolved by the payment of money on commercially reasonable terms) beyond the control of Borrower, provided the Borrower shall notify the Bond Owner in writing within five (5) days after such occurrence, but no Excusable Delay shall suspend or abate any obligation of the Borrower or any other Person to pay any money under this Agreement and the other Bond Loan Documents.

“**Existing Project Cash Reserve**” means the cash reserve existing on the Bond Closing Date with respect to the Project in an amount of at least \$[268,825.00], which will be transferred to Borrower on or before the Bond Closing Date. [***PARTIES CONFIRM APPLICABILITY – WILL NEED TO CONFIRM TAX IMPLICATIONS, IF ANY, OF THIS FUND***]

“**Extraordinary Revenues**” means Recovery Proceeds, but such term shall not include use and business interruption insurance proceeds and rental loss insurance proceeds.

“**Favorable Opinion of Bond Counsel**” has the meaning given to that term in the Indenture.

“**Federal Laws**” has the meaning assigned to that term in **Section 2.2(37)**.

“**Federal Tax Status**” has the meaning given to that term in the Indenture.

“**Fifty Percent Test**” means the 50% aggregate basis test under Section 42(h)(4)(B) of the Code.

“**Financial Institution**” means (a) any national bank, banking corporation, national banking association or other banking institution, whether acting in its individual or fiduciary capacity, organized under the laws of the United States, any state, any territory or the District of Columbia, the business of which is substantially confined to banking and is supervised by the

Comptroller of the Currency or a comparable state or territorial official or agency; (b) an insurance company whose primary and predominant business activity is the writing of insurance or the reinsuring of risks underwritten by insurance companies and which is subject to supervision by the insurance commissioner or a similar official or agency of a state, a territory or the District of Columbia; (c) an investment company registered under the Investment Company Act of 1940 or a business development company as described in Section 2(a)(48) of that Act; (d) an employee benefit plan, including an individual retirement account, which is subject to the provisions of the Employee Retirement Income Security Act of 1974, if the investment decision is made by a plan fiduciary, as defined in Section 3(21) of such Act, which is either a bank, insurance company or registered investment company; or (e) institutional investors or other entities who customarily purchase commercial paper or tax-exempt securities in large denominations.

“**Funds**” shall have the meaning assigned to that term in the Indenture.

“**GAAP**” means the generally accepted accounting principles established by the Financial Accounting Standards Board or the American Institute of Certified Public Accountants and in effect in the United States from time to time, applied on a basis consistent with that of the preceding fiscal year of Borrower, reflecting only such changes in accounting principles or practice with which the independent public accountants of Borrower concur.

“**Good Costs**” means costs of the Project that are Qualified Project Costs.

“**Governmental Authority**” means any nation, country, commonwealth, territory, government, state, county, parish, municipality, agency, or other political subdivision and any entity exercising executive, legislative, judicial, regulatory, or administrative functions of or pertaining to government (which shall include the County and Issuer), including, without limitation, any state agencies and Persons responsible in whole or in part for monitoring compliance with environmental matters in the states in which Borrower is located or otherwise conducting its business activities and the United States Environmental Protection Agency, to the extent same have actual jurisdiction and/or authority over the Borrower, the Land, and/or the Project.

“**Guarantors**” means, collectively, each Entity Guarantor and the Individual Guarantor (as to payment and completion).

“**Guaranty**” means the Payment and Performance Guaranty dated the Agreement Commencement Date, executed by Guarantor (in favor of Issuer).

“**HAP Assignment**” means the Assignment of Housing Assistance Payments Contract dated as of the Bond Closing Date from Borrower to Bond Owner.

“**HAP Contract**” means the Project Based Section 8 Housing Assistance Payments Contract to be entered into by and between HUD and the Borrower after the Bond Closing Date and prior to the Construction Term Maturity Date pursuant to 24 CFR Part 983, which shall in any event cover all of the units in the Project and all renewals and extensions thereof (as a renewal of the Project Based Section 8 Housing Assistance Payments Renewal Mark to Market Agreement, Project TX \_\_\_\_\_, dated effective \_\_\_\_\_, between HUD and Seller (as assigned by Seller to Borrower), which is referred to herein as the “**Original HAP Contract**”).

“**Hazardous Substances**” shall have the meaning assigned to that term in the Bond Mortgage.

“**Holder**” has the meaning assigned to that term in the Indenture.

“**Housing Act**” means the United States Housing Act of 1937, as amended from time to time, and any successor legislation.

“**HUD**” means the United States Department of Housing and Urban Development.

“**Impositions**” shall mean all real estate and personal property taxes, water, gas, sewer, electricity and other utility rates and charges, charges for any easement, license or agreement maintained for the benefit of or affecting the Project, and all other taxes or common area charges and assessments and an related interest, costs or penalties, of any kind whatsoever whether general or special, ordinary or extraordinary, foreseen or unforeseen, which at any time prior to or after the execution hereof may be assessed, levied or imposed upon the Project or the ownership, use, occupancy or enjoyment thereof.

“**Improvements**” means the 100-unit affordable housing community, consisting of 50 residential buildings, to be known as Union Acres, which will be located on the Land, and which will be developed with the proceeds of the Bond Loan and the Capital Contributions in accordance with the Plans and Specifications. All of the units will be subject to the Low-Income Housing Tax Credit, and all of the units will be Section 8 units eligible for project based housing choice vouchers as provided in the Original HAP Contract (and in the HAP Contract, once executed). Nothing herein shall limit the requirements of each Regulatory Agreement with respect to the occupancy of the units.

“**Indemnified Parties**” has the meaning assigned to that term in **Section 7.3**.

“**Indenture**” has the meaning provided in the Recitals of this Agreement.

“**Individual Guarantor**” means Christopher A. Akbari.

“**Intercreditor Agreement**” means an Intercreditor Agreement, among Borrower, Bond Owner and Seller, other things, subordinating all liens securing the Seller Loan to the Bond Mortgage and subordinating the payment of the Seller Loan to payment of the Bond Loan.

“**Interest**” has the meaning assigned to that term in **Section 12.31**.

“**Investor Limited Partner**” has the meaning given to that term in the Recitals hereof.

“**Issuer Fees**” has the meaning assigned to that term in the Indenture.

“**Land**” has the meaning assigned to that term in the Recitals.

“**Lease Stabilization**” means such time when the Project shall, for the three most recently completed months (being the same three month period for purposes of determining if the Stabilization Date has occurred under and for purposes of the Partnership Agreement), have (i) at

least ninety percent (90%) occupancy levels (on the basis of the percentage of available units leased) pursuant to Approved Leases at rents required to maintain the Low Housing Income Tax Credit for the Project, as may be adjusted upward under applicable Requirements of Law (on an average basis), (ii) the amount of the Bond Loan evidenced by the outstanding balance of the Bond Note shall not be more than eighty percent (80%) of the Appraisal Value of the Project (calculated, based for purposes of determining the Loan to Value Ratio for purposes of Lease Stabilization based upon the decontrol value, which shall be the value of the Project on a market rate basis (non-restricted) but adjusting the valuation with respect to the Project for the mandated 3-year decontrol period under Section 42 of the Code if the Project is taken back due to foreclosure and a thirty-five (35) year amortization), and (iii) a Debt Service Coverage Ratio (calculated in the same manner as set forth in the definition of Debt Service Coverage Ratio in the Partnership Agreement) of at least 1.15 to 1.0. Borrower may provide tenants concessions on rents; provided if rents are below pro forma rents described above as a result of such concessions to tenants or otherwise, Bank has the right to adjust (and the Borrower has the right to pay the Bond Loan down to) the amount of the Permanent Loan necessary to achieve the Debt Service Coverage Ratio in clause (iii) required for Lease Stabilization (and the requirement to achieve such pro forma rents as a condition of achieving Lease Stabilization will be deemed satisfied); provided that such Debt Service Coverage Ratio will be calculated in accordance with the terms of the Partnership Agreement, using number components to be plugged into the formula for determining Debt Service Coverage Ratio acceptable to Bank, in Bank's sole and reasonable discretion, and will include debt service payments on the Bond Loan (with respect to the Bond Loan based upon a thirty-five year amortization and an interest rate of 4.25% per annum), operating expenses, any and all taxes payable, insurance, and replacement reserves. Free rent concessions of one month's rent or less, and any other pro forma rent concessions, shall not result in any adjustment to pro forma rents if and as provided for in the Partnership Agreement.

“**Liabilities**” has the meaning assigned to that term in **Section 7.3**.

“**Lien**” means any interest in the Project, securing an obligation owed to, or a claim by, a Person other than an owner of the Project, whether such interest is based on common law, statute, or contract, and including, but not limited to, the security interest, security title or lien arising from a security agreement, deed of trust, deed to secure debt, encumbrance, pledge, conditional sale, trust receipt, lease, or a consignment or bailment for security purposes. The term “**Lien**” shall include reservations, exceptions, encroachments, easements, rights-of-way, covenants, conditions, restrictions, leases, and other title exceptions and encumbrances affecting the Project.

“**Loan to Value Ratio**” means the ratio expressed as a percentage, of (a) the principal amount of the Bonds (as then committed and outstanding), to (b) the Appraisal Value.

“**Low Income Housing Tax Credit**” means the 4% Low-Income Housing Credit as that term is used in Section 42 of the Code available to the Project in the anticipated amount of approximately \$[\_\_\_\_], annually for ten (10) years.

“**Material Adverse Change or Effect**” means any act, circumstance, or event (including, without limitation, any announcement of action) which (i) causes an Event of Default, (ii) is material and adverse to the financial condition or operations of Borrower or the Project, or the

Guarantor, or (iii) materially and adversely affect the validity or enforceability of any Bond Loan Document.

“**Maximum Lawful Rate**” has the meaning assigned to that term in the Indenture.

“**Mortgaged Property**” shall have the meaning assigned to that term in the Bond Mortgage.

“**NOI**” means the following difference:

(1) the lesser of (a) Project Revenues actually received from or in connection with the Project during the period in question or (b) the Project Revenues which would be generated if ninety-five percent (95%) of the residential units in the Project were leased at rents in compliance with the appraisal for the Project approved prior to the Bond Closing Date by the Bond Owner; minus

(2) the sum of (a) the greater of pro forma operating expenses for the Project approved prior to the Bond Closing Date by the Bond Owner or operating expenses actually incurred by the Borrower for the Project during the period in question (provided that management fees for the Project will be deemed to be equal to the greater of the management fee actually paid or five percent (5%) of the actual Project Revenues) with an appropriate adjustment to include in such period an allocable share of property taxes, Issuer Fees, Trustee’s Ordinary Fees and Expenses, utility costs, insurance premiums, and recurring maintenance expenses which cover a period of time greater than the period in question (except to the extent such items are funded from the Replacement Reserve Account), plus (b) the amounts required to be deposited into the Replacement Reserve Account of the Servicing Fund pursuant to the fifth subparagraph of Section 6.3(2)(B) of the Indenture.

“**Occupancy Requirement**” means not less than eighty-five percent (85%) of the units at the Project have been physically occupied by tenants paying rent with no offset, at not less than the proforma rents for the Project approved prior to the Bond Closing Date by the Bond Owner. “Physically occupied” is measured as the number of units occupied compared to the total units available.

“**OFAC**” means the United States Department of the Treasury, Office of Foreign Assets Control, or any successor or replacement agency.

“**OFAC Prohibited Person**” means, a country, territory, individual or Person (i) listed on, included within or associated with any of the countries, territories, individuals or entities referred to on The Office of Foreign Assets Control’s List of Specially Designated Nationals and Blocked Persons or any other prohibited person lists maintained by governmental authorities, or otherwise included within or associated with any of the countries, territories, individuals or entities referred to in or prohibited by OFAC or any other Anti-Money Laundering Laws, or (ii) which is obligated or has any interest to pay, donate, transfer or otherwise assign any property, money, goods, services, or other benefits from the Project directly or indirectly, to any countries, territories, individuals or entities on or associated with anyone on such list or in such laws.

**“Operating Expenses”** means all recurring line item expenses based on the higher of the following: (i) originally underwritten, historical annualized expenses at the Project, (ii) the Budget, and (iii) third party appraisal. However, real estate taxes will be adjusted for fully assessed actual taxes based on 100% completion. If abatement applies, taxes will be adjusted to any payment in lieu of taxes that are assessed against the Project. Management fee shall be defined as the greater of the management fee of the existing contract in place or market. A replacement reserve of \$300.00 per unit consistent with **Schedule F-1** will be included in the Operating Expenses estimate.

**“Partnership Agreement”** shall have the meaning ascribed to the same in the Recitals of this Agreement.

**“Patriot Act”** has the meaning assigned to that term in **Section 5.26**.

**“Payment Date”** has the meaning assigned to that term in **Section 4.2(b)**.

**“Payment and Performance Bond”** means a payment and performance bond providing that the Contractor is bonded for payment and performance, in an aggregate amount at least equal to the Construction Contract, by a surety, having an AM Best rating of at least A-/VIII or where an AM Best rating is unavailable, an S&P rating of at least AA (this bond shall contain a dual obligee rider naming Bond Owner, ISAOA). The Payment and Performance Bond shall also satisfy all requirements therefor of the Bond Owner and the Investor Limited Partner.

**“Permanent Term”** means the term commencing on the Stabilized Occupancy Date and ending on the Permanent Term Maturity Date.

**“Permanent Term Maturity Date”** means June 1, 2039.

**“Permitted Encumbrance”** means the items listed in **Schedule A-1** (and in any event shall include each Regulatory Agreement).

**“Person”** means any natural person, firm, partnership, association, limited liability company, corporation, company or public body.

**“Placed in Service” or “placed in service”** means with respect to the Project, the date that (a) it has received all temporary certificates of occupancy and use permits required for legal occupancy of all of its dwelling units and is ready and available for occupancy by tenants under Approved Leases (if such certificates or permits are of a temporary nature, the Project shall not be deemed to have been Placed in Service unless: (i) any work remaining to be done is of a nature that would not impair the permanent occupancy of any of the units on a full paying basis; and (ii) the Borrower has made adequate provision for the payment and completion of all outstanding punch list items and any other work that needs to be completed); (b) the Project is free of any mechanics or other liens, except for the Bond Mortgage securing the Bond Loan, and the subordinate liens securing the Seller Loan, and liens bonded against in such a manner as to preclude the holder thereof from having any recourse to the Project or the Borrower for payment of any debt, or obligations secured thereby or affirmatively insured against by the Trustee’s loan title policy (in such manner as precludes recourse to the Borrower for any loss incurred by the insurer) or by another policy of title insurance issued to the Borrower by a reputable title insurance



company, in an amount complying with the requirements of this Agreement (or by an endorsement of either such policy); (c) the Architect has issued an Architect's Certificate in the form of AIA document G704 stipulating that construction or rehabilitation is substantially complete; (d) the general partner of Borrower has issued a certification that the construction or rehabilitation is substantially complete and that all temporary certificates of occupancy and use permits have been issued for 100% of the units; (e) the Contractor has issued a General Contractor's Certificate comparable to AIA Form G706 and G706A certifying that it has been paid in full under the Construction Contract, that it has paid all subcontractors and materialmen in full, and that it has received waivers of mechanic's lien from all subcontractors, materialmen and anyone else that could lien the property in connection with the work under the Construction Contract or any such lien has been Bonded, and (f) there is no Event of Default that has occurred and is continuing.

**"Plans and Specifications"** has the meaning assigned to that term in **Section 5.7**.

**"Pro Forma Schedule"** means the schedule set forth at **Schedule E** attached hereto.

**"Project"** has the meaning assigned to that term in the Indenture (but in any event, including the Improvements and the Land).

**"Project Documents"** has the meaning assigned to that term in the Partnership Agreement.

**"Project Fund"** shall have the meaning assigned to that term in the Indenture.

**"Project Revenues"** means all gross revenues and receipts derived by the Borrower from the operation of the Project during the period in question, including tenant rents and all other moneys as may be paid to or on behalf of the Borrower or to which the Borrower may be entitled with respect to the Project excluding securities deposits and including earnings on the foregoing and proceeds of business interruption or rental loss insurance. Such term shall not include Extraordinary Revenues.

**"Property Manager"** means J Allen Management Co, Inc.

**"QAP"** means Qualified Allocation Plan for the 2022 Housing Tax Credit Program adopted by the Credit Agency (as may be amended, replaced, or superseded).

**"Qualified Project Costs"** has the meaning assigned to that term in the Indenture.

**"Qualified Project Period"** has the meaning assigned to that term in the Tax Regulatory Agreement.

**"Qualified Project Reimbursements"** has the meaning assigned to that term in the Indenture.

**"Rebate Amount"** means, for any given period, the amount determined by the Rebate Analyst as required to be rebated or paid as a yield reduction payment to the United States of America with respect to the Bonds.

**"Rebate Analyst"** shall have the meaning assigned to that term in the Indenture.

“**Rebate Fund**” shall have the meaning assigned to that term in the Indenture.

“**Recovery Proceeds**” has the meaning assigned to that term in the Indenture.

“**Regulatory Agreements**” means, collectively: (i) the Tax Regulatory Agreement, and (ii) the Credit Agency Regulatory Agreement.

“**Rehabilitation of the Project**” has the meaning assigned to that term in **Section 5.7**.

“**Replacement Reserve Account**” shall have the meaning assigned to that term in the Indenture.

“**Requirements**” shall have the meaning set forth at **Section 5.1** herein (but in any event shall include the Treasury Regulations under and as defined in the Financing Agreement).

“**Requirements of Law**” means as to any Person the certificate or articles of incorporation or organization or formation and by-laws, operating agreement, or other organizational or governing documents of such Person; all requirements of the Indenture, and of HUD, the Credit Agency, each Regulatory Agreement, the Seller Loan Documents, the Original HAP Contract (and the HAP Contract once executed), and any other restrictions or covenants applicable to and affecting the use and development of the Project. Requirements of Law shall also include, without limitation, any and all applicable (a) federal, state, parish and municipal laws, codes, ordinances, rules and regulations actually applicable to the Project, whether currently existing or hereafter promulgated, including without limitation environmental laws, building codes, land use, and zoning codes to the extent actually applicable to the Project, (b) all requirements and terms of the QAP as adopted by the Credit Agency and applicable to the Low Income Housing Tax Credit for the Project as the Treasury Regulations, (c) federal regulations and policies issued pursuant to these regulations, including without limitation, 24 CFR 941 Subpart F, as amended from time to time, (d) the Architectural Barriers Act of 1968 (42 U.S.C. §§4151-4157); (e) the Uniform Federal Accessibility Standards, as set forth in 24 CFR Part 570.614; (f) the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973; provided, further, that to the extent there are any conflicts between the Uniform Federal Accessibility Standards and the Americans with Disabilities Act of 1990, then the Americans with Disabilities Act of 1990 shall control (unless applicable law provides otherwise); (g) the requirements of the Secretary of Labor in accordance with the Davis-Bacon Act (40 U.S.C. §276(a) to (a-7) 24 CFR Part 570.603) and supporting Department of Labor regulations; (h) the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended (49 CFR Part 24) and Section 104(d) of the Housing and Community Development Act of 1974 as amended, and 24 CFR Part 570.606; and (i) for existing properties built prior to 1978, the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §4831(b)) and the Residential Lead Based Paint Hazard Reduction Act of 1992 (42 U.S.C. §§4851-4856) and implementing regulations at 24 CFR Part 35.

“**Requisition**” means a request for the disbursement of funds in the Project Fund in accordance with **Section 6.2(3)** of the Indenture on the form attached as **Exhibit A** to the Indenture (and in any event shall be the same as the requisitions used in the Indenture).

“**Resizing Payment**” means a payment of the principal of the Bond Loan required to be made by the Borrower for the Stabilized Occupancy Date to occur on or before the Construction

Term Maturity Date in the amount which the outstanding principal balance of the Permanent Loan exceeds the amount determined by the Bond Owner, in its sole and reasonable discretion, required to meet a Debt Service Coverage Ratio of 1.15 to 1.0.

**“Retainage”** means an amount equal to (i) 10% of the aggregate actually incurred by the Borrower for work in place as part of the construction of the first 50% of the Improvements, as verified from time to time by the Bond Owner's construction consultant pursuant to the provisions of this Agreement and (ii) 5% of the aggregate actually incurred by the Borrower for work in place in completing the last 50% of the Improvements, as verified from time to time by the Bond Owner's construction consultant pursuant to the provisions of this Agreement, it being the intent that the total Retainage held by the Bond Owner upon completion of Rehabilitation of the Project in accordance with the plans and specifications shall be equal to 7.5% of the aggregate direct construction costs actually incurred by the Borrower for work in place as a part of such renovation of the Improvements, as verified from time to time by the Bond Owner's construction consultant pursuant to the provisions of this Agreement. Retainage shall not be required to be withheld on the fees and overhead of the Contractor. The Retainage shall in no event be less than the amount actually held back by the Borrower from the Contractor and all subcontractors and materialmen engaged in the Rehabilitation of the Project.

**“Sanctions”** means economic or financial sanctions or trade embargoes imposed, administered or enforced from time to time by the U.S. government, including those administered by the Office of Foreign Assets Control of the U.S. Department of the Treasury or the U.S. Department of State.

**“Sanctioned Country”** means, at any time, a country or territory which is the subject or target of any Sanctions.

**“Sanctioned Person”** means, at any time, (a) any Person listed in any Sanctions-related list of designated Persons maintained by the Office of Foreign Assets Control of the U.S. Department of the Treasury, the U.S. Department of State, (b) any Person operating, organized or resident in a Sanctioned Country or (c) any Person controlled by any such Person.

**“Seller”** means [Union Acres Trust].

**“Seller Loan”** means a loan from Seller to the Borrower in the amount of \$[2,970,000] which will accrue interest at \_\_\_% per annum and have a 50-year term. [***BORROWER CONFIRM***]

**“Seller Loan Documents”** means all Financing Agreements, notes, mortgages, and any other agreements, instruments and documents governing, evidencing, or securing the Seller Loan.

**“Servicing Fund”** has the meaning assigned to that term in the Indenture.

**“Stabilized Occupancy Conditions”** means each of the conditions listed in **Schedule I**.

**“Stabilized Occupancy Date”** means the date Bond Owner has provided a Conversion Certificate to the Trustee and the Borrower, indicating the Stabilized Occupancy Conditions are satisfied, provided that the Stabilized Occupancy Date shall in any event occur prior to the Construction Term Maturity Date.

“**State**” means the State of Texas.

“**State Laws**” has the meaning assigned to that term in **Section 2.2(37)**.

“**Stored Materials**” has the meaning assigned to that term in **Section 5.27(a)**.

“**Substantial Completion**” means the completion of the construction and equipping of the Improvements free and clear of all liens other than Permitted Encumbrances in accordance with the Plans and Specifications to the satisfaction of the Bond Owner and its construction consultant, except for such defects or departures which do not, in the opinion of the Bond Owner and its construction consultant, adversely affect either the value of the work in place or the full utilization of the applicable portion of the Improvements for which it is intended, and copies of all permits and approvals of Governmental Authorities for the occupancy of all apartment units comprised of the Improvements including, and not by way of limitation, a conditional, temporary or permanent certificate of occupancy.

“**Tax Credit Allocation**” means the letter (or other form of notice) issued by the Credit Agency regarding the availability of a Low Income Housing Tax Credit for the Project which is attached hereto as **Schedule M** subject to the terms and provisions thereof.

“**Tax Exemption Agreement**” has the meaning assigned to that term in the Indenture.

“**Tax Regulatory Agreement**” has the meaning assigned to that term in the Indenture.

“**Three Month Period**” means three (3) consecutive full calendar months prior to the Stabilized Occupancy Date, the last of which shall not be more than two (2) months prior to the month in which the Stabilized Occupancy Date will occur.

“**Title Policy**” has the meaning provided in **Schedule D**.

“**Total Project Expenses**” has the meaning assigned to that term in **Section 4.6(1)**.

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

“**Treasury Regulations**” shall have the meaning assigned to the term “Regulations” in the Tax Exemption Agreement.

“**Trustee’s Ordinary Fees and Expenses**” has the meaning assigned to that term in the Indenture.

**“Unassigned Issuer’s Rights”** has the meaning assigned to that term in the Indenture.

Section 1.3 **Schedules and Exhibits.** The following Schedules and Exhibits are attached to and by reference made a part of this Agreement:

- (1) **Schedule A:** Legal Description of Project;
- (2) **Schedule A-1:** Permitted Encumbrances;
- (3) **Schedule B:** Form of Promissory Note;
- (4) **Schedule C:** Project Expenses/Budget;
- (5) **Schedule D:** Disbursement Schedule;
- (6) **Schedule D-1:** Authorized Signers
- (7) **Schedule E:** Pro Forma Schedule;
- (8) **Schedule F:** Conditions Relating to Reserve Account;
- (9) **Schedule F-1:** Replacement Reserve Deposit Requirements;
- (10) **Schedule F-2:** Replacements;
- (11) **Schedule G:** List of Plans and Specifications;
- (12) **Schedule H-1:** Insurance Requirements (pre-Stabilizer Occupancy Date);
- (13) **Schedule H-2:** Insurance Requirements (post-Stabilizer Occupancy Date);
- (14) **Schedule I:** Stabilized Occupancy Conditions;
- (15) **Schedule J:** Investor Capital Contribution Schedule;
- (16) **Schedule K:** Title Insurance Requirements;
- (17) **Schedule L:** Survey Requirements;
- (18) **Schedule M:** Tax Credit Allocation;
- (19) **Schedule N:** Affidavit of Commencement;
- (20) **Schedule O:** Affidavit and Certificate of Completion;
- (21) **Schedule P:** Conversion Certificate;
- (22) **Schedule Q** Owner Interest Certification
- (23) **Schedule R** Lien Waiver Forms

Section 1.4      **Rules of Interpretation.**

(1) This Agreement shall be governed by and construed in accordance with the laws and judicial decisions of the State, except as they may be preempted by federal rules, regulations, and laws. References in this Agreement and the other Bond Loan Documents to particular sections of the Internal Revenue Code, the Uniform Commercial Code, or any other legislation, rule, or regulation shall be deemed to refer also to any successor sections thereto or other re-designation for codification purposes. The Issuer and the Borrower expressly acknowledge and agree that any judicial action to enforce any rights of the issuer under this Agreement and the other Bond Loan Documents shall be brought and maintained in the District Court for Jefferson County, Texas, or in the United States District Court for the Southern District of Texas or in any United States Bankruptcy Court in any case involving or having jurisdiction over the Borrower or over the Project.

(2) The words “herein,” “hereof,” and “hereunder” and words of similar import, without reference to any particular section or subdivision, refer to this Agreement as a whole rather than to any particular section, or subdivision of this Agreement.

(3) References in this Agreement to any particular article, section, or subdivision hereof are to the designated article, section or subdivision of this Agreement as originally executed.

(4) All accounting terms not specifically defined herein shall be construed in accordance with GAAP consistent with such principles. In the event that changes in GAAP shall be mandated by the Financial Accounting Standards Board and/or the American Institute of Certified Public Accountants or any similar accounting body of comparable standing, or shall be recommended by Borrower’s certified public accountants, to the extent that such changes would modify such accounting terms or the interpretation or computation thereof as contemplated by this Agreement at the time of execution hereof, then in such event, such changes shall be followed in defining such accounting terms only after Bond Owner and Borrower amend this Agreement to reflect the original intent of such terms in light of such changes, and such terms shall continue to be applied and interpreted without such change until such agreement.

(5) The Table of Contents and titles of articles and sections herein are for convenience of reference only and are not a part of this Agreement and shall not define or limit the provisions hereof.

(6) Unless the context hereof clearly requires otherwise, the singular shall include the plural and vice versa and the masculine shall include the feminine gender and the neuter state and vice versa.

(7) Articles, sections, subsections, and clauses mentioned by number only are those so numbered which are contained in this Agreement.

(8) Any opinion of counsel required hereunder shall be a written opinion of such counsel on a form acceptable to Bond Owner.

(9) References to the Bonds as “tax exempt” or to the “tax exempt status of the Bonds” are to the Federal Tax Status of the Bonds

(10) Every “request,” “order,” “demand,” “direction,” “application,” “appointment,” “notice,” “statement,” “certificate,” “consent,” or similar action under this Agreement by any party shall, unless the form of such instrument is specifically provided, be in writing signed by a duly authorized representative of such party with a duly authorized signature.

(11) The parties hereto acknowledge that each such party and its respective counsel have participated in the drafting and revisions of this Agreement and the Indenture. Accordingly, the parties agree that any rule of construction which disfavors the drafting party shall not apply to the interpretation of this Agreement and the Indenture.

(12) References in this Agreement and the other Bond Loan Documents to particular sections of the Internal Revenue Code, the Act, the Housing Act, ADA, the Uniform Commercial Code, or any other legislation, rule, or regulation shall be deemed to refer also to any successor sections thereto or other re-designation for codification purposes. All references to any instruments or agreements, including, without limitation, references to any of the Bond Loan Documents, shall include any and all modifications or amendments thereto and any and all extensions or renewals thereof. Knowledge, for purposes of this Agreement (and the other Bond Loan Documents), shall mean actual and constructive knowledge. Current, for purposes of this Agreement and the other Bond Loan Documents, shall mean within thirty (30) days from the applicable date. The term, “or” when used in this Agreement and the other Bond Loan Documents in a sequence shall mean “and/or”. Delivery of this Agreement and any other Bond Loan Document by the Bond Owner shall occur when the Bond Owner authorizes those documents to be released by the applicable closing or escrow agent.

## ARTICLE 2

### REPRESENTATIONS OF ISSUER, BORROWER AND BOND OWNER

Section 2.1 **Representations of the Issuer.** The Issuer makes the following representations and warranties as the basis for its covenants herein:

(1) The Issuer is organized and existing as a public and official agency of the State of Texas and is authorized to issue the Bonds to finance the acquisition, rehabilitation and equipping of the Project pursuant to the Act.

(2) The Issuer has lawful power and authority under the Act to enter into this Agreement, each Regulatory Agreement, and the Indenture and to carry out its obligations hereunder and under each Regulatory Agreement and the Indenture. By proper action of its governing body, the Issuer has been duly authorized to execute and deliver this Agreement, acting by and through its duly authorized officers. The Indenture, the Tax Regulatory Agreement, and this Agreement have been duly executed by the Issuer and each constitutes a valid, legal, binding and enforceable obligation of the Issuer (subject to bankruptcy, insolvency, or other laws affecting creditors’ rights generally and to the application of principles of equity generally) without offset, defense, or counterclaim. The execution, delivery, and performance of the Indenture, each Regulatory Agreement, and this Agreement by the Issuer will not violate any law, regulation, order, or decree of any governmental authority regulating the Issuer and all consents, approvals, authorizations, orders, or filings of or with any court or governmental agency or body, if any,

required for the execution, delivery, and performance of such documents by the Issuer have been obtained or made.

(3) The Issuer has no knowledge of any pending action, suit, or proceeding, arbitration, or governmental investigation against the Issuer, an adverse outcome of which will materially affect performance under the Indenture and this Agreement by the Issuer.

(4) The financing of the Bond Loan to the Borrower with the proceeds received by the Issuer from the sale of the Bonds for the purposes herein specified will further the public purposes of the Issuer under the Act.

(5) To finance the costs of the Project, the Issuer proposes to issue the Bonds in the aggregate principal amount of \$10,100,000. The Bonds will bear interest and be scheduled to mature and will be subject to redemption prior to maturity in accordance with the provisions of the Indenture. The Bonds are to be issued under and secured by the Indenture, pursuant to which the payments, revenues, and receipts derived by the Issuer pursuant to this Agreement, other than the Unassigned Issuer's Rights, will be pledged and assigned to the Trustee for the benefit of Bond Owner as security for payment of the principal of, premium, if any, and interest on the Bonds.

(6) Under the provisions of the Indenture, the Issuer's interest in this Agreement and certain payments due hereunder (other than the Unassigned Issuer's Rights) is pledged and assigned to the Trustee for the benefit of Bond Owner as security for the payment of the principal of, interest on, and premium, if any, on the Bonds and the Issuer will not otherwise or further assign such interest in this Agreement.

(7) To the extent within its reasonable control, the Issuer will not knowingly engage in any activity which might adversely affect the Federal Tax Status of the Bonds.

(8) The execution, delivery, and performance of the Indenture and this Agreement by the Issuer will not cause or constitute a default under or conflict with its organizational documents or other agreements to which it is a party or otherwise materially adversely affect performance of the duties of the Issuer under such organizational documents or other agreements.

(9) The Issuer makes no representation as to the financial position or business condition of the Borrower and does not represent or warrant as to any of the statements, materials (financial or otherwise), representations, or certifications furnished or to be made and furnished by the Borrower in connection with the sale of the Bonds, or as to the correctness, completeness, or accuracy of such statements.

(10) THE ISSUER MAKES NO WARRANTY, EXPRESS, OR IMPLIED, WITH RESPECT TO THE PROJECT OR ANY PORTION THEREOF, INCLUDING WITHOUT LIMITATION, THE HABITABILITY THEREOF, THE MERCHANTABILITY OR FITNESS THEREOF FOR ANY PARTICULAR PURPOSES; THE DESIGN OR CONDITION THEREOF; THE WORKMANSHIP, QUALITY, OR CAPACITY THEREOF; LATENT DEFECTS THEREIN; THE VALUE THEREOF; FUTURE PERFORMANCE OR THE COMPLIANCE THEREOF WITH ANY REQUIREMENTS OF LAW.



Section 2.2            **Representations and Covenants of the Borrower.** The Borrower makes the following representations and warranties as the basis for its covenants herein:

(1) The Borrower is a limited partnership duly formed and existing under the laws of the State, and is duly authorized to conduct its business in the State and all other states where its activities require such authorization, has power to enter into this Agreement and the other Bond Loan Documents to which the Borrower is a party and to use the Project for the purposes set forth in this Agreement, and by proper limited partnership action has authorized the execution and delivery of this Agreement and the other Bond Loan Documents to which the Borrower is a party, and has approved the Indenture.

(2) This Agreement and the other Bond Loan Documents to which the Borrower is a party have been duly executed and delivered by the Borrower; such documents constitute valid, legal, binding, and enforceable obligations of the Borrower (subject to bankruptcy, insolvency, or other laws affecting creditors' rights generally and to application of principles of equity generally), without offset, defense, or counterclaim; the execution, delivery, and performance of such documents by the Borrower will not violate any law, regulation, order, or decree of any Governmental Authority; and all consents, approvals, authorizations, orders, or filings of or with any court or governmental agency or body, if any, required for the execution, delivery, and performance of such documents by the Borrower have been obtained or made, except as indicated in Paragraph **(4)** below.

(3) The execution and delivery of this Agreement and the other Bond Loan Documents to which the Borrower is a party, the consummation of the transactions contemplated thereby, and the fulfillment of the terms and conditions thereof do not and will not conflict with or result in a breach of any of the terms or conditions of the Partnership Agreement, or any restriction, any agreement or any instrument to which the Borrower is now a party or by which it is bound or to which any property of the Borrower is subject, and do not and will not constitute a default under any of the foregoing, or, to the best of the Borrower's knowledge, cause the Borrower to be in violation of any order, decree, statute, rule, or regulation of any court or any state or federal regulatory body having jurisdiction over the Borrower or the Project and do not and will not result in the creation or imposition of any lien, charge, or encumbrance of any nature upon any of the property or assets of the Borrower contrary to the terms of any instrument or agreement to which the Borrower is a party or by which it is bound. The Borrower and General Partner have complied with any and all laws and regulations concerning their organization, existence, and the transaction of their business, and each is in good standing in each state in which it conducts its business. The Borrower has the right and power to own the Project and to develop the Project as contemplated in the Bond Loan Documents.

(4) The Borrower is familiar with, and has complied in all material respects with, all of the Requirements of Law, as well as all other applicable laws, regulations, and ordinances. The Project and the actual use and intended use thereof by the Borrower comply in all material respects with the Requirements. The Borrower has received no notices of violations of any Requirement, except violations that have been corrected. There are no claims, actions, proceedings, or investigations pending, to Borrower's knowledge, or threatened against the Borrower or affecting the Project except for those previously disclosed by the Borrower to the Bond Owner and the Issuer, in writing. To Borrower's knowledge, Borrower's use of the Project will be in full

compliance with the requirements of the of the Original HAP Contract (and the HAP Contract once executed), and of the Internal Revenue Code for obtaining and preserving the Low-Income Housing Tax Credit. Without limiting the foregoing, all of the units associated with the Low-Income Housing Tax Credit will be eligible for “project based housing choice vouchers” and will be eligible to receive the benefit of operating assistance pursuant to the Original HAP Contract (and the HAP Contract once executed) as Section 8 units. The Borrower has properly obtained, or will, when necessary for purposes of this Agreement, obtain, all permits, licenses and approvals necessary to construct, occupy, operate, market, and lease or sell the Project in accordance with all Requirements, including those pertaining to zoning, and, upon request, the Borrower will deliver true and correct copies of them to Bond Owner. To Borrower’s knowledge, no provision or obligation of the Borrower contained in any of the Bond Loan Documents violates any of the Requirements, any other applicable law, regulation, or ordinance or any order or ruling of any court or governmental entity. To Borrower’s knowledge, no such provision or obligation conflicts with, or constitutes a breach or default under, any agreement binding or regulating the Project.

(5) No obligations have been or are expected to be issued under the Indenture or otherwise for purposes of section 103 of the Code that were or will be (i) for sale at substantially the same time as the Bonds, (ii) for sale pursuant to the same plan of financing as the Bonds and (iii) payable from the same source of funds as the Bonds, or which are otherwise treated as the same “issue” of obligations as the Bonds under Section 1.150-1(c) of the Treasury Regulations.

(6) The Borrower is not in the trade or business of selling properties such as the Project and has acquired the Project for investment purposes only or otherwise for use by the Borrower in its trade or business, and therefore the Borrower has no present intention to voluntarily sell, surrender, or otherwise transfer, in whole or part, its interest in the Project.

(7) To the actual knowledge of Borrower, there are no actions, suits, proceedings, or inquiries or investigations at law or in equity pending or, to the actual knowledge of the Borrower, threatened against the Borrower or to Borrower’s knowledge, against the Guarantor or any property of the Borrower in any court or before any federal, state, municipal, or other governmental agency, which, (i) if decided adversely to the Borrower or to Borrower’s knowledge, the Guarantor, would have a Material Adverse Change on the Borrower or upon the business or properties of the Borrower or upon its power, authority and right to enter into this Agreement and the other Bond Loan Documents to which the Borrower is a party, (ii) affects or seeks to prohibit, restrain, or enjoin the issuance, sale, or delivery of the Bonds or the loaning of the proceeds of the Bonds to the Borrower or the execution and delivery of the Bond Loan Documents, (iii) affects or questions the validity or enforceability of the Bond Loan Documents, (iv) questions the Federal Tax Status of the Bonds, or (v) questions the power or authority or would have a Material Adverse Change on the Borrower’s ability to carry out the transactions contemplated by, or to perform its obligations under, the Bond Loan Documents. The Borrower is not in default with respect to any order of any court or governmental agency.

(8) The Borrower has filed all federal and state income tax returns, if any, which, to the knowledge of the Borrower, are required to be filed and has paid all taxes shown on said returns and all assessments and governmental charges received by it to the extent that they have become due. The Borrower knows of no basis for any additional assessment of federal or state income taxes against it.

(9) The Borrower has reviewed the provisions of the Indenture and by execution of this Agreement hereby approves the same.

(10) To the best of the Borrower's knowledge, except through positions held by virtue of employment by the Issuer, no member of the governing body of the Issuer or any other officer of the Issuer has any significant or conflicting interest, financial, employment, or otherwise, in the Borrower, the Project, or the transactions contemplated hereby.

(11) The covenants, representations, and warranties of the Borrower in the Tax Regulatory Agreement and the Tax Exemption Agreement are true and correct and are incorporated herein by reference and made a part of this Agreement.

(12) The Borrower has not entered into the transaction evidenced hereby with the actual intent to hinder, delay, or defraud any creditor and the Borrower has received reasonably equivalent value in exchange for its obligations hereunder and under the Bond Mortgage and the Regulatory Agreements.

(13) The Borrower has no contingent liabilities.

(14) The Borrower has no material financial obligation under any indenture, mortgage, deed of trust, Financing Agreement or other agreement or instrument to which the Borrower is a party or by which the Borrower or the Project are otherwise bound, other than (a) obligations under this Agreement and the other Bond Loan Documents to which the Borrower is a party; (b) obligations permitted by and specifically described in the Partnership Agreement as it exists as of the date of this Agreement or as it may be amended from time to time, with the consent of the Bond Owner to the extent such consent is required under the Bond Loan Documents; (c) the Seller Loan (to the extent made subordinate to the Bond Note or the Bond Mortgage in a manner acceptable to the Bond Owner); and (d) obligations incurred by Borrower from time to time in the ordinary course of business.

(15) Except for the Bond Loan and the Seller Loan, the Borrower has not borrowed or received other debt financing that has not been heretofore repaid in full.

(16) The Borrower is not (a) an "investment company" or a company "controlled by an investment company" within the meaning of the Investment Company Act of 1940, as amended; or (b) a "holding company" or a "subsidiary company" of a "holding company" or an "affiliate" of either a "holding company" or a "subsidiary company" within the meaning of the Public Utility Holding Company Act of 2005, as amended; or (c) subject to any other federal or state law or regulation which purports to restrict its ability to borrow money.

(17) Except as disclosed in the Title Policy, there are no pending or, to the knowledge of the Borrower, proposed special or other assessments for public improvements affecting the Project, nor, to the knowledge of the Borrower, are there any contemplated improvements to the Project that may result in such special or other assessments.

(18) No statement of fact made herein or in the Bond Loan Documents to which the Borrower is a party made by the Borrower contains any untrue statement of a material fact or omits to state any material fact necessary to make statements made herein or therein by the Borrower not

misleading. There is no fact presently known to the Borrower which has not been disclosed to the Issuer and the Bond Owner which would have a Material Adverse Change.

(19) All financial information which has been and will be prepared and delivered by or on behalf of the Borrower to the Issuer or the Bond Owner, including all information relating to the financial condition of the Borrower or any of its partners and the Project, does and will fairly and accurately represent (or, in the case of materials prepared by Persons other than the Borrower or the General Partner or their respective agents or employees, to the best of the Borrower's knowledge does and will fairly and accurately represent) the financial condition or results of operations being reported on. All such information prepared by or on behalf of the Borrower was and will be prepared in accordance with generally accepted accounting principles, consistently applied, unless otherwise noted. As of the date hereof, there has been no Material Adverse Change or Effect in any financial condition reported at any time to the Issuer or the Bond Owner.

(20) All reports, documents, instruments, information, and forms of evidence delivered by or on behalf of the Borrower to the Bond Owner or the Issuer concerning the Bond Loan or required by the Bond Loan Documents are (or, in the case of materials prepared by persons other than the Borrower or the General Partner or their respective agents or employees, are to the best of the Borrower's knowledge) accurate, correct, and sufficiently complete to give the Issuer and the Bond Owner true and accurate knowledge of their subject matter.

(21) All utility services, including gas (if any), water, sewage, electrical, and telephone, necessary to develop and occupy the Project are available at or within the boundaries of the Project. In the alternative, the Borrower has taken all steps necessary to assure that all utility services will be available upon Substantial Completion of the Project.

(22) The Borrower is not a "foreign person" within the meaning of section 1445(f)(3) of the Code.

(23) The Borrower will hold and dispose of all tenant security deposits relating to the Project in accordance with State law.

(24) 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 and management of the Project and shall not deny admission to any person exclusively on the basis of rent assistance payments under a local, state, federal, or other housing assistance program

(25) The Borrower shall comply with all requirements of the Act and any and all lawful rules, policies, and applicable regulations of the Issuer (or its sponsoring entity) adopted pursuant to the Act.

(26) All Borrower's tenant lists, applications, and waiting lists relating to the Project shall at all times be kept separate and identifiable from any other business of the Borrower that is unrelated to the Project, and shall be maintained in a reasonable condition for proper audit and be subject to examination during business hours by representatives of the Issuer or the Trustee.

(27) The Borrower agrees to maintain and operate the Project in a manner that provides decent, safe, and sanitary housing.

(28) From time to time the Issuer may direct the Borrower to file such additional reports as the Issuer reasonably determines to be necessary to comply with State or federal laws or regulations in connection with administration of the Bond Loan and operation of the Project hereunder and the Borrower agrees to file such reports promptly.

(29) The Borrower covenants and agrees to execute such additional instruments as may be reasonably requested by the Trustee or the Issuer for purposes of carrying out the provisions of this Agreement and the other Bond Loan Documents and to perfect or give further assurances of any of the rights granted or provided for in the Bond Loan Documents.

(30) As of the Bond Closing Date, the Borrower is in compliance with all requirements of each Regulatory Agreement and the Tax Exemption Agreement, and the representations set forth in the Tax Exemption Agreement pertaining to the Borrower and the Project are true and accurate and Borrower hereby incorporates the same as if set forth herein.

(31) The Title Policy delivered at the Bond Closing Date satisfies the requirements of **Schedule D** and **Schedule K** of this Agreement. The Borrower acknowledges that (a) it understands the nature and structure of the transactions relating to the financing of the Project, (b) it is familiar with the provisions of all of the documents and instruments relating to such financing to which it is a party, (c) it understands the risks inherent in such transactions, including without limitation the risk of loss of the Project, and (d) it has not relied on the Issuer, for any guidance or expertise in analyzing the financial or other consequences of the transactions contemplated by this Agreement and the other Bond Documents or the Bond Loan Documents or otherwise relied on the Issuer in any manner (except as to the accuracy of the representations made by the Issuer and the performance by the Issuer of its agreements, covenants and undertakings under this Agreement, other Bond Documents and the Bond Loan Documents).

(32) Borrower shall lease tenant space in the Improvements only pursuant to Approved Leases. An "**Approved Lease**" is (i) a tenant lease of residential space in the Improvements that is substantially on the standard form submitted to Bond Owner prior to the Bond Closing Date and which has been approved by Bond Owner, and (ii) which is on terms and to a tenant who satisfies the requirements (1) of the terms and conditions of the Code for preserving the Low Income Housing Tax Credit, (2) of the Partnership Agreement, (3) of the Original HAP Contract and the HAP Contract (once issued), (4) of the Seller Loan Documents, and (4) of all other applicable Requirements of Law. Further, if the applicable tenant is to receive Title IX Housing Protection for the associated lease to be an Approved Lease, the Borrower shall have provided to that tenant a copy of the HUD disclosure form. Borrower shall not, without the consent and approval of Bond Owner, make any change to its standard form of lease other than in the ordinary course of business.

(33) **Low Income Housing Tax Credit**. The Borrower promises to keep each of the following covenants relating to the Low-Income Housing Tax Credit:

(A) To observe and perform all obligations imposed on the Borrower in connection with the Low Income Housing Tax Credit,

including the “placed in service” requirements under Section 42 of the Code, as applicable, and under the Partnership Agreement in a timely manner to ensure and preserve the availability of each such tax credit; and to operate the residential units of the Project or to use the Borrower’s best efforts to ensure the appropriate parties operate the same in accordance with all applicable statutes and regulations governing the Low Income Housing Tax Credit; and

(B) Following the Bond Closing Date, Borrower shall not release, forego, alter, amend, or modify its rights to the Low Income Housing Tax Credit, without the Bond Owner’s prior written consent, which the Bond Owner may give or withhold in the Bond Owner’s reasonable discretion;

(34) Not to execute any residential lease of all or any portion of the Project which would not qualify as an Approved Lease (and in any event each such residential lease shall comply fully with all requirements and regulations governing the Low-Income Housing Tax Credit);

(35) Keep all records, and cause to be made all elections and certifications, pertaining to the number and size of apartment units, occupancy thereof by tenants, income levels of tenants, set-asides for low-income tenants, and any other matters now or hereafter required to qualify for and maintain the availability of Low Income Housing Tax Credit applicable to the Project;

(36) Upon the issuance thereof, Borrower shall promptly provide a copy of the HAP Contract, and Borrower shall cause HUD to execute a Consent to an Assignment of the HAP Contract (or acknowledgement of the assignment to Bank) promptly after the HAP Contract is issued. Without limiting the foregoing, all of the apartment units in the Improvements will be continuously eligible to receive Section 8 subsidies under the Original HAP Contract and the HAP Contract (once executed);

(37) Comply with the appropriate minimum low-income set-aside requirements under the Code or applicable federal regulations (“**Federal Laws**”), and all laws and regulations of the State of Texas (“**State Laws**”), if any, applicable to the creation, maintenance and continued availability of the Low Income Housing Tax Credit; and

(38) Certify compliance with the set-aside requirement and report the dollar amount of qualified basis and maximum applicable percentage, date of “placed in service” under Section 42 of the Code, as applicable, and any other information required, and as applicable, for the Low Income Housing Tax Credit at such time periods as required by Federal Laws, or State Laws, as applicable.

Section 2.3 **General Representations, Warranties, and Covenants of the Borrower.** The Borrower further represents, warrants, and covenants as follows:

(1) It will comply with the requirements and conditions of the Tax Exemption Agreement and will assure compliance of the Project with the provisions of each Regulatory Agreement and the Original HAP Contract (and the HAP Contract, once each is executed). The Borrower is not now in default under any Regulatory Agreement nor the Original HAP Contract

(and the HAP Contract, once executed) and specifically agrees to continue to meet its requirements thereunder.

(2) *intentionally omitted.*

(3) *intentionally omitted.*

(4) *intentionally omitted.*

(5) *intentionally omitted.*

(6) If the Borrower becomes aware of any situation, event or condition which could, based upon an opinion of Bond Counsel, result in the interest payable on the Bonds becoming includable in gross income for federal income tax purposes, the Borrower will promptly give written notice of such situation, event or condition to the Issuer, the Trustee, and the Bond Owner.

(7) *intentionally omitted.*

(8) The Borrower will cause all of the residential units in the Project to be rented or available for rental on a basis that satisfies the requirements, if any, of each Regulatory Agreement and the Original HAP Contract (and the HAP Contract once executed) (to the extent any of the foregoing is then executed) which has then been executed, including all applicable requirements of the Code; and all leases will comply with all applicable State and Federal laws and each Regulatory Agreement which has then been executed and the Original HAP Contract (and the HAP Contract, once executed).

(9) *intentionally omitted.*

(10) *intentionally omitted.*

(11) Upon the issuance thereof and as a condition to Bond Owner's agreement to buy the Bonds, Borrower shall promptly provide a copy of the HAP Contract, and Borrower shall seek, as required by Bond Owner, HUD's execution of a consent to an assignment of the HAP Contract if the HAP Contract does not contain the customary lender provisions in the HAP Contract. Borrower shall not permit the Project to not qualify as a Section 8 Property, and Borrower shall not amend, restate, modify, cancel or permit to be terminated, the HAP Contract.

(12) *intentionally omitted.*

(13) *intentionally omitted.*

(14) *intentionally omitted.*

(15) *intentionally omitted.*

(16) *intentionally omitted.*

(17) The Borrower further warrants and covenants that it has not executed and will not execute any other agreement, or any amendment or supplement to any other agreement, with

provisions contradictory to, or in opposition to, the provisions of this **Section 2.3**, the Indenture, the Tax Exemption Agreement or the Tax Regulatory Agreement, and that in any event, the requirements of the Tax Exemption Agreement and the Tax Regulatory Agreement are paramount and controlling as to the rights and obligations herein set forth and supersede any other requirements in conflict herewith and therewith.

(18) *intentionally omitted.*

(19) *intentionally omitted.*

(20) It is anticipated that the completed Project will qualify for the Low Income Housing Tax Credit as evidenced by the Tax Credit Allocation and Borrower will use its best efforts to ensure that all requirements for Borrower to receive the anticipated amount of the Low Income Housing Tax Credit have or will be timely and fully satisfied in accordance with all Requirements of Law to the extent applicable to the Project. In connection with the foregoing, the Tax Credit Allocation has not been rescinded and Borrower is in full compliance with the terms and provisions thereof.

(21) Borrower has implemented and maintains in effect policies and procedures designed to ensure compliance by the Borrower, its subsidiaries and their respective directors, officers, employees and agents with Anti-Corruption Laws and applicable Sanctions, and the Borrower, its subsidiaries and their respective officers and employees and to the knowledge of the Borrower its directors and agents, are in compliance with Anti-Corruption Laws and applicable Sanctions in all material respects. None of (a) the Borrower, any subsidiary or to the knowledge of the Borrower or such subsidiary any of their respective directors, officers or employees, or (b) to the knowledge of the Borrower, any agent of the Borrower or any subsidiary that will act in any capacity in connection with or benefit from the credit facility established hereby, is a Sanctioned Person. No use of proceeds or other transaction contemplated by this Agreement will violate Anti-Corruption Laws or applicable Sanctions.

(22) No default or event of default is continuing with respect to any of the Seller Loan. Each of the Seller Loan Documents are in full force and effect.

(23) Within sixty (60) days of the Bond Closing Date, Borrower shall obtain a recordable release in form acceptable to Bond Owner of the memorandum of lease excepted to in the Title Policy.

Section 2.4 **Intentionally omitted.**

Section 2.5 **Regulatory Agreements.** The Borrower hereby covenants, represents, and agrees as follows:

(1) to file of record such documents and take such other reasonable steps as are necessary in order to ensure that the requirements and restrictions, if any, of each Regulatory Agreement then executed by Borrower, will be binding upon all owners of the Project, including, but not limited to, the execution and recordation, if required, of each Regulatory Agreement, once executed, in the real property records of Shelby County, Texas; and



(2) to include the requirements and restrictions, if any, contained in each Regulatory Agreement, once executed, in any deed or other document transferring any of its interest in the Project to another person to the end that such transferee has notice of, and is bound by, such restrictions, and to obtain the agreement from any transferee to so abide.

Section 2.6 **Representations and Covenants of the Borrower as Single Purpose Entity.** Without limiting any of the foregoing, but in addition thereto, Borrower covenants and agrees that it shall not, nor shall the General Partner:

(1) engage in any business or activity other than the acquisition, ownership, operation and maintenance of the Project, and activities incidental thereto;

(2) acquire or own any material asset other than (i) the Project, and (ii) such incidental personal property as may be necessary for the operation of the Project;

(3) (A) merge into or consolidate with any Person or entity, or (B) dissolve, terminate or liquidate in whole or in part, (C) transfer or otherwise dispose of all or substantially all of its assets, or (D) change its legal structure, without in each case described in clauses (A)-(D) Bond Owner's consent;

(4) fail to preserve its existence as an entity duly organized, validly existing and in good standing (if applicable) under the laws of the jurisdiction of its organization or formation, or without the prior written consent of Bond Owner, amend or modify (to the extent prohibited in this Agreement), terminate or fail to comply with the provisions of Borrower's organizational documents;

(5) own any subsidiary or make any investment in or acquire the obligations or securities of any other Person or entity without the consent of Bond Owner;

(6) commingle its assets with the assets of any of its partner(s), members, shareholders, affiliates, or of any other Person or entity or transfer any assets to any such Person or entity other than distributions on account of equity interests in the Borrower permitted hereunder and properly account for and any other transfer permitted under the Bond Loan Documents;

(7) incur any debt, secured or unsecured, direct or contingent (including guaranteeing any obligation), other than the Seller Loan and unsecured trade and operational debt incurred with trade creditors in the ordinary course of its business of owning and operating the Project in such amounts as are normal and reasonable under the circumstances;

(8) allow any Person to pay its debts and liabilities (except a Guarantor) or fail to pay its debts and liabilities solely from its own assets.

(9) fail to maintain its records, books of account and Bond Owner accounts separate and apart from those of the shareholders, partners, members, principals and affiliates of Borrower, the affiliates of a shareholder, partner or member of Borrower, or if such financial statements are consolidated, fail to cause such financial statements to contain footnotes disclosing that the Project is actually owned by the Borrower.

(10) enter into any contract or agreement with any shareholder, partner, member, principal or affiliate of Borrower, Guarantor or any shareholder, partner, member, principal or affiliate thereof, except upon terms and conditions that are intrinsically fair and substantially similar to those that would be available on an arms-length basis with third parties other than any shareholder, partner, member, principal or affiliate of Borrower or Guarantor, or any shareholder, partner, member, principal or affiliate thereof;

(11) seek dissolution or winding up, in whole or in part;

(12) fail to correct any known misunderstandings regarding the separate identity of Borrower;

(13) hold itself out to be responsible or pledge its assets or credit worthiness for the debts of another Person or allow any Person to hold itself out to be responsible or pledge its assets or credit worthiness for the debts of the Borrower (except for Guarantor);

(14) make any loans or advances to any third party, including any shareholder, partner member, principal or affiliate of Borrower, or any shareholder, partner, member, principal or affiliate thereof;

(15) fail to file its own tax returns or to use separate contracts, purchase orders, stationery, invoices and checks;

(16) fail either to hold itself out to the public as a legal entity separate and distinct from any other entity or person or to conduct its business solely in its own name in order not (i) to mislead others as to the entity with which such other party is transacting business, or (ii) to suggest that Borrower is responsible for the debts of any third party (including any shareholder, partner, member, principal or affiliate of Borrower, or any shareholder, partner, member, principal or affiliate thereof);

(17) fail to allocate fairly and reasonably among Borrower and any third party (including, without limitation, any Guarantor) any overhead for common employees, shared office space or other overhead and administrative expenses;

(18) fail to 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.

(19) file a voluntary petition or otherwise initiate proceedings to have the Borrower or any manager, managing member or general partner of Borrower, as applicable, adjudicated bankrupt or insolvent, or consent to the institution of bankruptcy or insolvency proceedings against the Borrower or any manager, managing member or general partner of Borrower, as applicable, or file a petition seeking or consenting to reorganization or relief of the Borrower or any manager, managing member or general partner of Borrower, as applicable, as debtor under any applicable federal or state law relating to bankruptcy, insolvency, or other relief for debtors with respect to the Borrower or any manager, managing member or general partner of Borrower, as applicable; or seek or consent to the appointment of any trustee, receiver, conservator, assignee, sequester, custodian, liquidator (or other similar official) of the Borrower or any manager, managing member or general partner of Borrower, as applicable, or of all or any substantial part of the properties and

assets of the Borrower or any manager, managing member or general partner of Borrower, as applicable, or make any general assignment for the benefit of creditors of the Borrower or any manager, managing member or general partner of Borrower, as applicable, or admit in writing the inability to the Borrower or any manager, managing member or general partner of Borrower, as applicable, to pay its debts generally as they become due or declare or effect a moratorium on the Borrower or any manager, managing member or general partner of Borrower, as applicable, debt or take any action in furtherance of any such action;

(20) share any common logo with or hold itself out as or be considered as a department or division of (i) any shareholder, partner, principal, member or affiliate of Borrower, (ii) any affiliate of a shareholder, partner, principal, member or affiliate of Borrower, or (iii) any other Person or allow any Person to identify the Borrower as a department or division of that Person; or

(21) conceal assets from any creditor, or enter into any transaction with the intent to hinder, delay or defraud creditors of the Borrower or the creditors of any other Person.

(22) fail to 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, provided that there is sufficient cash flow from the Project at such time to do so and the Borrower's constituent owners shall not be required to fund or advance any additional capital to satisfy this obligation;

(23) fail to use separate contracts, purchase orders, invoices and checks (other than such documents that bear the name of its manager or managing agent with reference to the Project); or

(24) Except as otherwise provided in the Bond Loan Documents, the Borrower shall not amend or modify the Partnership Agreement in any manner that would result in a breach of any of the representations, warranties or covenants set forth in this **Section 2.6** or that would otherwise adversely affect the Borrower's special purpose entity status without the prior written consent of the Bond Owner, which consent shall not be unreasonably withheld, delayed or conditioned.

Section 2.7 **Additional Representations and Agreements of Borrower.** The Borrower represents, warrants, covenants and agrees as set forth below to and with the Trustee, and the Borrower agrees that the Trustee may rely on such representations, warranties covenants and agreements and the other representation, warranties, covenants and agreements contained in this Agreement as if the Trustee were a party to this Agreement.

(1) The Title Policy delivered on or before the Bond Closing Date satisfies the requirements of **Schedule D** and **Schedule K** of this Agreement.

(2) If the Construction Term Maturity Date is to be extended pursuant to **Section 4.2(e)**, the Trustee may rely on a certificate of the Bond Owner to the effect that the conditions contained in **Section 4.2(e)** have been satisfied.

(3) The Trustee may assume without investigation that the amounts of money transferred to it by the Borrower as "Basic Payments" in accordance with **Section 4.2(b)** of this Agreement are sufficient to satisfy the requirements of **Section 4.2(b)** of this Agreement.

(4) The Trustee may assume without investigation that the amounts of money transferred to it by the Borrower as “Basic Payments” in accordance with **Section 4.2(b)** of this Agreement are sufficient to satisfy the requirements of **Section 4.2(b)** of this Agreement.

(5) The Trustee may assume without investigation that the amounts of money transferred to it by the Borrower in accordance with **Schedule F** of this Agreement are sufficient to satisfy the requirements of **Schedule F** of this Agreement.

Section 2.8 **ERISA.** (1) The Borrower shall not engage in any transaction which would cause any obligation, or action taken or to be taken hereunder to be a non-exempt (under a statutory or administrative class exemption) prohibited transaction under ERISA and/or Section 4975 of the Code.

(2) The Borrower further covenants and agrees to deliver to the Bond Owner such certifications and other evidence from time to time throughout the term of the Bond Loan as are reasonably requested by the Bond Owner that (i) the Borrower is not (and is not deemed to include the assets of) an “employee benefit plan” that is subject to Title I of ERISA and/or a “plan” that is subject to Section 4975 of the Code; (ii) the Borrower is not a “governmental plan” within the meaning of Section 3(32) of ERISA and is not subject to state statutes regulating investments and fiduciary obligations with respect to governmental plans; and (iii) one or more of the following statements is and remains true:

(A) Equity interests in the Borrower are not “publicly offered securities” within the meaning of 29 C.F.R. § 2510.3-101 (as modified by Section 3(42) of ERISA, the “**Plan Assets Regulation**”); or

(B) Less than 25% of each outstanding class of equity interests in the Borrower are held by “benefit plan investors” (determined in accordance with the Plan Assets Regulation).

(3) The Borrower shall not agree to, enter into or consummate any transaction which would render the Borrower unable to furnish the certification or other evidence referred to in **Section 2.9(2)**, to the extent applicable.

(4) The Borrower represents, warrants and covenants to the Bond Owner that neither the Borrower nor any ERISA Affiliate maintains, contributes to, or has any obligation to contribute to, or has any direct or indirect liability with respect to any “employee benefit plan” as defined in Section 3(3) of ERISA (including any “multiemployer plan” as defined in Section 3(37) of ERISA) that is subject to Title IV or Section 302 of ERISA or Section 412 of the Code. The Borrower shall take or refrain from taking, as the case may be, such actions as may be necessary to cause the representation and warranty in this **Section 2.8** to remain true and accurate until full repayment of the Bond Loan.

(5) The Bond Owner shall have the right to consult with the Borrower on significant business issues relating to the operation of the Project and the management of the Borrower. Representatives of the Borrower shall make themselves available quarterly, either personally or by telephone at mutually agreeable times for such consultations. Such consultations need not result

in any changes in the Borrower's decisions or actions. The Bond Owner intends to use such rights to satisfy the management rights requirements under the Plan Assets Regulation.

Section 2.9 **Terrorism and Anti-Money Laundering.**

(1) As of the date hereof and until full repayment of the Bond Loan: (i) the Borrower; (ii) any Person Controlling or Controlled by the Borrower; (iii) if the Borrower is a privately held entity, any Person having a ten percent (10%) or more direct or indirect beneficial interest in the Borrower; or (iv) any Person for whom the Borrower is acting as agent or nominee in connection with this transaction, is not an OFAC Prohibited Person.

(2) To comply with applicable Anti-Money Laundering Laws, all payments by the Borrower to the Bond Owner or from the Bond Owner to the Borrower will only be made and received in the Borrower's name and to and from a bank account of a bank based or incorporated in or formed under the laws of the United States or a bank that is not a "foreign shell bank" within the meaning of the U.S. Bank Secrecy Act (31 U.S.C. § 5311 et seq.), as amended, and the regulations promulgated thereunder by the U.S. Department of the Treasury, as such regulations may be amended from time to time.

(3) Prior to the Bond Closing Date, Borrower shall provide Bond Owner with an Owner Interest Certification in the form of **Schedule Q** (as a condition to Bond Owner's agreement to buy the Bonds). Thereafter, the Borrower shall provide the Bond Owner, at any time and from time to time until repayment in full of the Bond Loan with such information as the Bond Owner determines to be necessary or appropriate to comply with the Anti-Money Laundering Laws of any applicable jurisdiction, or to respond to requests for information concerning the identity of the Borrower, any Person Controlling or Controlled by the Borrower or any Person having a beneficial interest in the Borrower, from any Governmental Authority, self-regulatory organization or Financial Institution in connection with its anti-money laundering compliance procedures, or to update such information.

(4) The representations and warranties set forth in this **Section 2.9** shall be deemed repeated and reaffirmed by the Borrower as of each date that the Borrower makes a payment to the Trustee (or the Bond Owner, if applicable) or receives any disbursement of Loan proceeds, reserve funds or other funds from the Trustee (or the Bond Owner, if applicable). The Borrower agrees promptly to notify the Bond Owner in writing should the Borrower become aware of any change in the information set forth in these representations.

Section 2.10 **Representations and Warranties of the Bond Owner.** The Bond Owner makes the following representations and warranties:

(1) The Bond Owner has all power and authority necessary (i) to execute and deliver this Agreement, (ii) to perform its obligations under this Agreement and (iii) to consummate the transactions contemplated by this Agreement.

(2) The Bond Owner has taken all actions necessary to authorize (i) the execution and delivery of this Agreement, (ii) the performance of its obligations under this Agreement, and (iii) the consummation of the transactions contemplated by this Agreement.

(3) This Agreement has been duly executed and delivered by the Bond Owner and constitutes, assuming due execution and delivery by the other parties hereto, the valid and binding obligation of the Bond Owner, enforceable against the Bond Owner in accordance with its terms, except as limited by bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting the rights of creditors generally and the exercise of judicial discretion in accordance with principles of general equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

(4) To the best knowledge of the Bond Owner, neither the execution and delivery by the Bond Owner of this Agreement, nor the performance by the Bond Owner of its obligations under any of the Bond Loan Documents to which it is a party, nor the consummation of the transactions contemplated by such Bond Loan Documents will violate any law, rule, regulation or ordinance, or any order, judgment or decree of any Federal, state or local court or will conflict with, or constitute a breach of, or a default under, the charter or by-laws of the Bond Owner or under any agreement, instrument or commitment to which the Bond Owner is a party or by which the Bond Owner or any of its property is bound.

(5) To the best knowledge of the Bond Owner, there is no action, suit, proceeding, inquiry or investigation by or before any court, governmental agency or public board or body pending or, to the knowledge of the Bond Owner, threatened against the Bond Owner (nor, to the knowledge of the Bond Owner, is there any basis therefor), which (i) affects or seeks to prohibit, restrain or enjoin the execution and delivery by the Bond Owner of any of the Bond Loan Documents to which it is a party; the performance by the Bond Owner of its obligations under such Bond Loan Documents, or the consummation of the transactions contemplated by such Bond Loan Documents, or (ii) affects or questions the validity or enforceability of such Bond Loan Documents.

(6) No approval, permit, consent, authorization or order of any court, governmental agency or public board or body not already obtained is required to be obtained by the Bond Owner as a prerequisite to the execution and delivery by the Bond Owner of the Bond Loan Documents, the performance by the Bond Owner of its obligations under such Bond Loan Documents or the consummation of the transactions contemplated by such Bond Loan Documents.

(7) To the best knowledge of the Bond Owner, no information, statement or report furnished to the Issuer or Bond Counsel by the Bond Owner in connection with the negotiation of or performance under any of the Bond Loan Documents or the consummation of the transactions contemplated hereby contains any material misstatement of fact or omits to state a material fact necessary to make the statements contained therein, in light of the circumstances under which they were made, not misleading. It is specifically understood by the Bond Owner that all such statements, representations and warranties shall be deemed to have been relied upon by the Issuer as an inducement to effectuate the Bond Loan, and that if any such statements, representations and warranties were materially incorrect at the time they were made or as of the Bond Closing Date, the Issuer may consider any such misrepresentation or breach a Default.

(8) To the best knowledge of the Bond Owner, it is not in default with respect to any order or decree of any court or any order, regulation or demand of any Federal, state, municipal or

governmental agency, which default might have consequences that would affect its performance hereunder.

(9) To the best knowledge of the Bond Owner, it is not a party to or bound by any agreement or instrument or subject to any charter or any other corporate restriction or any judgment, order, writ, injunction, decree, law, or regulation which now or in the future may materially and adversely affect the ability of the Bond Owner to perform its obligations under any Bond Loan Document to which it is a party, or which requires the consent of any third person to the execution of such Bond Loan Document, or the consummation of the transaction contemplated hereby.

(10) All fees charged by the Bond Owner in connection with the origination of the Bond Loan are no more than those which are reasonable and customary for lenders to charge in connection with similar loans not financed through the issuance of a tax-exempt bond.

(11) Any certificate signed by a representative of the Bond Owner and delivered pursuant to and concurrently with this Agreement shall be deemed a representation of the Bond Owner as to the statements made therein.

(12) The Bond Owner hereby agrees to purchase from the Issuer the Bonds in the principal amount of \$10,100,000 as provided in the Indenture and in the Financing Agreement, at a purchase price equal to 100% of the principal amount thereof, for the purpose of financing the acquisition, construction and equipping of the Project.

(13) All funds held by the Bond Owner or any other party, which are used to secure payment of the obligations of the Borrower under the Bond Note are identified in the Tax Exemption Agreement.

(14) The Bond Owner represents that it is purchasing the Bonds for its own account and not for reoffering to the public. In connection with its purchase of the Bond, the Bond Owner agrees to deliver to the Issuer an investor letter substantially in the form of **Exhibit C** to the Indenture. In the event the Bond Owner transfers the Bond, such transfer shall be subject to the terms of the Indenture. In the event of a transfer of the Bonds (or any beneficial interest therein), by the Bond Owner other than in accordance with the provisions of the Indenture and the securities laws of the United States, the Bond Owner agrees to indemnify the Issuer against any liability, cost and expense (including attorney's fees) that may result therefrom.

(15) The Bond Owner has reviewed the provisions of the Indenture and by execution of this Agreement hereby approves the same.

Section 2.11 **Compliance with Texas Government Code.**

(1) Each of the Borrower and the Bond Owner hereby verifies that it and its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, do not boycott Israel and will not boycott Israel during the term of this Agreement, and solely with respect to the Borrower, the Tax Regulatory Agreement and the Tax Exemption Agreement (the Financing Agreement, Regulatory Agreement and Tax Exemption Agreement, as applicable, are hereinafter referred to collectively as the "Representation Documents"), and such verification is hereby

incorporated by reference into each of the Representation Documents, as applicable. The foregoing verification is made solely to comply with Section 2271.002, Texas Government Code, and to the extent such Section does not contravene applicable Federal law. As used in the foregoing verification, “boycott Israel” means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes.

(2) Each of the Borrower and the Bond Owner represents that neither it nor any of its parent company, wholly- or majority-owned subsidiaries, and other affiliates is a company identified on a list prepared and maintained by the Texas Comptroller of Public Accounts under Section 2252.153 or Section 2270.0201, Texas Government Code, and posted on any of the following pages of such officer’s internet website:

<https://comptroller.texas.gov/purchasing/docs/sudan-list.pdf>,

<https://comptroller.texas.gov/purchasing/docs/iran-list.pdf>,

<https://comptroller.texas.gov/purchasing/docs/fto-list.pdf>.

The foregoing representation is made solely to comply with Section 2252.152, Texas Government Code, and to the extent such Section does not contravene applicable Federal law and excludes the Borrower or the Bond Owner and each of such entity’s parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, that the United States government has affirmatively declared to be excluded from its federal sanctions regime relating to Sudan or Iran or any federal sanctions regime relating to a foreign terrorist organization.

(3) To the extent any of the Representation Documents constitutes a contract for goods or services for which a written verification is required under Section 2274.002, Texas Government Code (as added by Senate Bill 13, 87th Texas Legislature, Regular Session) as amended, each of the Borrower and the Bond Owner hereby verifies that it and its parent company, wholly- or majority- owned subsidiaries, and other affiliates, if any, do not boycott energy companies and, will not boycott energy companies during the term of such Representation Document, and such verification is hereby incorporated by reference into each of the Representation Documents, as applicable. The foregoing verification is made solely to comply with Section 2274.002, Texas Government Code, as amended, to the extent Section 2274.002, Texas Government Code does not contravene applicable Texas or Federal law. As used in the foregoing verification, “boycott energy companies” shall have the meaning assigned to the term “boycott energy company” in Section 809.001, Texas Government Code.

(4) To the extent any of the Representation Documents constitutes a contract for the purchase of goods or services for which a written verification is required under Section 2274.002, Texas Government Code (as added by Senate Bill 19, 87th Texas Legislature, Regular Session, “SB 19”), as amended, each of the Borrower and the Bond Owner hereby verifies that it and its parent company, wholly- or majority- owned subsidiaries, and other affiliates, if any,

(a) do not have a practice, policy, guidance or directive that discriminates against a firearm entity or firearm trade association; and



(b) will not discriminate during the term of the applicable Representation Document against a firearm entity or firearm trade association,

and such verification is hereby incorporated by reference into each of the Representation Documents, as applicable.

The foregoing verification is made solely to comply with Section 2274.002, Texas Government Code, as amended, to the extent Section 2274.002, Texas Government Code does not contravene applicable Texas or Federal law. As used in the foregoing verification, “discriminate against a firearm entity or firearm trade association” shall have the meaning assigned to such term in Section 2274.001(3), Texas Government Code (as added by SB 19).

(5) Each of the Borrower and the Bond Owner understands the term “affiliate” as used in this Section 2.11 to mean an entity that controls, is controlled by, or is under common control with such entity and exists to make a profit.

### ARTICLE 3 ISSUANCE OF BONDS; PAYMENT OF COSTS

Section 3.1 **Issuance and Purchase of Bonds.** The Issuer has determined to issue the Bonds pursuant to the Indenture, and the Borrower and the Bond Owner have reviewed and do hereby approve the terms of the Indenture. Upon execution of this Agreement, the other Bond Loan Documents, and the Indenture and the occurrence (or waiver by all required parties) of all conditions precedent to issuance (including the conditions to closing listed in **Schedule D**), or as soon thereafter as practicable, the Bond Owner agrees to pay the purchase price of the Bonds, and the Issuer will execute and deliver the Bonds to or upon the order of the Bond Owner as the initial purchaser thereof upon receipt of such purchase price and the delivery to the Trustee of all documents required to be delivered as a condition to such delivery pursuant to the Indenture. The proceeds of the Bonds will be deposited with the Trustee and disbursed in accordance with the Indenture.

Section 3.2 **No Warranty by Issuer.** The Borrower agrees that, because the components of the Project have been and are to be designated and selected by it, THE ISSUER HAS NOT MADE AN INSPECTION OF THE PROJECT OR OF ANY FIXTURE OR OTHER ITEM CONSTITUTING A PORTION THEREOF, AND THE ISSUER MAKES NO WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED OR OTHERWISE, WITH RESPECT TO THE SAME OR THE LOCATION, USE, DESCRIPTION, DESIGN, MERCHANTABILITY, FITNESS FOR USE FOR ANY PARTICULAR PURPOSE, CONDITION, OR DURABILITY THEREOF OR AS TO THE QUALITY OF THE MATERIAL OR WORKMANSHIP THEREIN, IT BEING AGREED THAT ALL RISKS INCIDENT THERETO ARE TO BE BORNE BY THE BORROWER IN THE EVENT OF ANY DEFECT OR DEFICIENCY OF ANY NATURE IN THE PROJECT OR ANY FIXTURE OR OTHER ITEM CONSTITUTING A PORTION THEREOF, WHETHER PATENT OR LATENT, THE ISSUER SHALL HAVE NO RESPONSIBILITY OR LIABILITY WITH RESPECT THERETO. THE PROVISIONS OF THIS **SECTION 3.2** HAVE BEEN NEGOTIATED AND ARE INTENDED TO BE A COMPLETE EXCLUSION AND NEGATION OF ANY WARRANTIES OR REPRESENTATIONS BY THE ISSUER, EXPRESS OR IMPLIED, WITH RESPECT TO

THE PROJECT OR ANY FIXTURE OR OTHER ITEM CONSTITUTING A PORTION THEREOF, WHETHER ARISING PURSUANT TO THE UNIFORM COMMERCIAL CODE OR ANY OTHER LAW NOW OR HEREAFTER IN EFFECT.

Section 3.3      **Disbursements From the Project Fund and the Costs of Issuance Fund.**

(1) The Issuer has authorized and directed the Trustee to make payments upon receipt of a Requisition, which has been consented to by the Bond Owner, to pay the costs of issuing the Bonds (subject to the limitations in the Tax Exemption Agreement in order that such representation is correct in addition to the terms of **Section 3.4**), and to reimburse the Borrower for any of the foregoing paid or incurred by the Borrower before or after the execution and delivery of this Agreement and the issuance and delivery of the Bonds in accordance with the requirements of the Indenture, and the Bond Owner has consented to Trustee's making of such payments by acknowledging a written Requisition upon the satisfaction of the applicable conditions listed in **Schedule D** and **Section 4.7** of this Agreement and the limitations relating to the 95% rule as represented in the Tax Exemption Agreement.

(2) The balance of the Bonds proceeds shall be deposited in the Project Fund and then disbursed by the Trustee only in accordance with the Indenture, including delivery of a written Requisition by the Borrower satisfying the requirements of **Section 6.2** of the Indenture and this Agreement and approved in writing by the Bond Owner, which approval of the Bond Owner will be granted upon satisfaction of the conditions and performance of the covenants and conditions set forth in this Agreement.

(3) The Bond Owner shall consent to Requisitions of amounts to be drawn under the Bonds from deposits in the Project Fund for costs of the Project, based on the Budget and the further terms and conditions of this Agreement (including **Schedule D** and **Section 4.7**). If the Borrower cannot complete the Project in conformity with the most recently approved Budget, the Borrower shall immediately submit to the Bond Owner for its approval a revised Budget in the same format as the initial Budget. The Bond Owner need not make further disbursements unless and until it approves the revised Budget, which approval shall not be unreasonably withheld, conditioned, or delayed.

(4) In addition to the items required in the attached **Schedule D** ("**Disbursement Schedule**"), Borrower shall have provided to the Bond Owner all items in **Section 4.7(2)** for a disbursement of the applicable Borrower's Sources to be funded.

(5) In no event shall the Bond Owner be required to approve disbursements from Borrower's Sources (as defined in **Section 4.6(1)** below) in an aggregate total amount in excess of the Total Project Expenses (including contingency reserve and interest reserve) as set forth in the most recently approved Budget.

(6) As a condition to the Bond Owner's purchasing the Bond, Bond Owner shall have received and approved evidence the Seller Loan has closed on terms acceptable to the Bond Owner, and the Bond Owner shall have received a fully executed original counterpart of the Intercreditor Agreement for the Seller Loan, together with copies of the Seller Loan Documents.

Section 3.4 **Payment of Costs of Issuance by the Borrower.** The Borrower agrees that it will provide any and all funds required for the prompt and full payment of Costs of Issuance for the Bond, including, but not limited to, to pay the following items:

(1) all reasonable legal fees (including Bond Counsel and the respective counsel to the Borrower, the Issuer, the Bond Owner, the Guarantors, and the Trustee), abstractors', title insurance, financial, engineering, environmental, construction services, appraisal and accounting fees and expenses, administrative fees, printing and engraving costs, and other expenses incurred and to be incurred by the Borrower, the Issuer, the Bond Owner, and the Trustee in connection with issuance of the Bond;

(2) all recording fees and other taxes, charges, assessments, license, or registration fees of every nature whatsoever incurred and to be incurred in connection with the issuances of the Bond;

(3) all initial fees and expenses of the Trustee, the Paying Agent, and the Issuer;

(4) all reasonable fees and expenses for title insurance, survey, and related matters;

(5) a non-refundable origination fee due to the initial Bond Owner for the Construction Loan upon execution of this Agreement, in the amount of \$101,000;

(6) a non-refundable origination fee due the initial Bond Owner for the Permanent Loan upon execution of this Agreement, in the amount of \$65,000; and

(7) all Costs of Issuance actually incurred.

Section 3.5 **Title Insurance.** The Borrower agrees to furnish to the Bond Owner at the closing of the transaction contemplated hereby the original Title Policy with respect to the Project as required by **Schedule D** and **Schedule K** (a copy shall be provided to the Trustee).

(1) At such time or times as reasonably required by the Bond Owner as an advance is made on the Bond Loan, if required by the Bond Owner, the Borrower agrees to furnish to the Issuer and the Trustee in connection with each advance of the Bond Loan, at the Borrower's expense, an endorsement to the Title Policy extending the effective date of the Title Policy (with no new exceptions to coverage other than as permitted by the Bond Loan Documents) and increasing the amount of coverage under the Title Policy to include the advance.

(2) The Borrower hereby represents that the Permitted Encumbrances do not and will not Materially Adversely Affect (a) the ability of the Borrower to pay in full the principal of and interest on the Bond Note in a timely manner or (b) the use of the Project for the use contemplated or (c) the value of the Project.

(3) The Borrower has (a) good and insurable title to the Project, subject to no liens, charges, or encumbrances other than the Permitted Encumbrances, including those liens granted in the Bond Loan Documents and the Seller Loan Documents.

(4) Upon the execution by the Borrower and the proper recording of the Bond Mortgage, and upon the execution and appropriate filing of UCC-1 financing statements, and upon execution of the Intercreditor Agreement, the Trustee will have a valid first lien in and to the Project and a valid security interest in the personal property encumbered by the Bond Mortgage subject to no liens, charges or encumbrances other than the Permitted Encumbrances and the subordinate liens granted in the Seller Loan Documents.

#### ARTICLE 4

#### THE BOND LOAN, LOAN REPAYMENT AND ADDITIONAL CHARGES

Section 4.1 **The Bond Loan.** The Issuer agrees, upon the terms and conditions herein specified, to make the Bond Loan to the Borrower solely from the proceeds received by the Issuer from the Bond Owner from the sale of the Bond, excluding any interest earned thereon by causing such proceeds to be deposited with the Trustee in the Project Fund for disposition as provided herein and in the Indenture. The obligation of the Issuer to make the Bond Loan shall be deemed fully discharged upon the deposit of the proceeds of the Bonds to the Project Fund with the Trustee. The Bond Loan shall be evidenced by the Bond Note payable to Trustee on behalf of the Bond Owner, in the form attached as **Schedule B** hereto, and contemporaneously with the issuance of the Bond, the Issuer will endorse the Bond Note without warranty, representation or recourse to the order of and will pledge the Bond Note to the Trustee, as the assignee of the Issuer. The obligation of the Bond Owner to approve to any Requisition (or to purchase the Bond) is subject to satisfaction of the conditions listed in **Schedule D.**

#### Section 4.2 **Loan Repayment.**

(a) The Borrower will repay the Bond Loan in accordance with the provisions of the Bond Note and this Agreement. Notwithstanding anything to the contrary contained herein, the Borrower covenants that it shall make payments, at such times and in such amount to assure that payment of the principal of and premium, if any, and interest on the Bonds shall be made when due, whether at maturity, by call for redemption, by acceleration or otherwise (including, without limitation, any prepayment premium due with respect to the Bond). Without limiting the foregoing, Borrower agrees that it will pay the Bonds down as needed to satisfy the Fifty Percent Test as soon after Substantial Completion as reasonably practical (Borrower acknowledges that the Bonds can be paid down to satisfy Fifty Percent Test prior to the Stabilized Occupancy Date)

(b) Subject to the Borrower's right of prepayment granted in **Section 10.1** (or in connection with the corresponding redemption under the terms of the Indenture), the Borrower hereby acknowledges its indebtedness to the Issuer and agrees to make monthly payments, on the first day of each month (each a "**Payment Date**") (or, if such Payment Date is not a Business Day, on the next Business Day which follows such Payment Date), commencing August 1, 2022, which monthly payments shall be in an amount which will equal the sum of each of the following which will be due (whether at maturity or by redemption or acceleration or otherwise pursuant to the Indenture) on the next payment date under the Bond Note (or other date upon which any of the following items are payable) ("**Basic Payments**") To ensure timely payment, all payments required to be made by the

Borrower pursuant to this Section 4.2(b) shall be made to the Trustee no later than the second (2nd) Business Day prior to each Payment Date:

(i) Amounts then due under the Bond Note as provided in **Section 4.2(d)** and **(g)** below;

(ii) The Trustee's Ordinary Fees and Expenses;

(iii) The Issuer Fees, and, on demand, all fees, charges, costs, advances, indemnities and expenses, including agent and counsel fees, of the Issuer incurred under the Bond Documents, as and when the same become due;

(iv) Amounts required to be deposited in the Real Estate Taxes and Insurance Reserve Account under **Section 5.23** hereof and **Schedule F** or the Bond Mortgage;

(v) Amounts required to be deposited in the Replacement Reserve Account pursuant to **Section 5.23** hereof and **Schedule F**; and

(vi) Amounts required to be deposited in the Operating Reserve Account pursuant to **Section 5.23** hereof and **Schedule F**.

(c) The Borrower shall pay to the Trustee, within ten (10) days after written demand therefor together with a reasonable accounting of such amounts, any reasonable extraordinary fees and expenses actually incurred by the Trustee, the amounts required to be deposited in the Rebate Fund pursuant to **Section 7.17**, and the reasonable fees and expenses of the Rebate Analyst actually incurred.

(d) Interest only as it accrues on the Bond Note (as provided in the Bond Note) during the Construction Term shall be payable monthly on each Payment Date (for interest unpaid and accruing from and including the preceding Payment Date (or, if the first Payment Date has not occurred, the Bond Closing Date) through the last day of the calendar month). The Bond Loan shall be due and payable in full on the Permanent Term Commencement Deadline unless a Notice of Conversion has been provided prior to the Permanent Term Commencement Deadline, in which case the Construction Loan shall convert to a Permanent Loan and thereafter principal and interest shall be payable as set forth in the Bond Note.

(e) The Construction Term Maturity Date may be automatically renewed and extended at the request of the Borrower, on a one time basis, for six (6) calendar months from June 1, 2024, to December 1, 2024, provided that each of the following conditions have been fully, completely, and timely satisfied (otherwise, Bond Owner and Trustee shall have no commitment to renew and extend the Construction Term Maturity Date and any agreement to extend and renew the Construction Term Maturity Date will be at the sole discretion of Bond Owner; provided that the described extension of the Construction Term Maturity Date shall not extend the Permanent Term Maturity Date):

(i) On or before 60 days prior to June 1, 2024, the Borrower shall have provided the Bond Owner and the Trustee with written notice of its intent to renew and extend the Construction Term Maturity Date provided for herein for a period of six months to December 1, 2024, and the Bond Owner shall approve or deny such request subject to the full satisfaction of the other subsections of this subsection **(e)** as determined by the Bond Owner in its sole discretion;

(ii) Substantial Completion of the Improvements shall have occurred;

(iii) No event which materially limits, reduces, or impairs the Low-Income Housing Tax Credit for the Project shall have occurred, and Borrower shall otherwise be in strict compliance with all guidelines relating to the Low Income Housing Tax Credit for the Project;

(iv) Borrower shall have delivered, at its sole cost and expense, all extension and other agreements, instruments, amendments, title insurance endorsements, and modifications of the Bond Note required by Bond Owner in its reasonable discretion to effect such renewal and extension (which extension agreement of the Bond Note will extend the Construction Term Maturity Date for up to six calendar months and will provide for, among other things, that interest shall continue to accrue on the Bond Note at the rate provided for in the Bond Note prior to the Stabilized Occupancy Date, and the Bond Note shall continue to be payable interest only and will modify as needed the amortization of the Bond Loan during the Permanent Term, and the execution of any such extension agreement by the Bond Owner shall evidence to the Trustee that subsections **(i)-(xv)** of this subsection **(e)** have been satisfied or waived), as provided for in the Bond Note before it begins amortizing for the requested extension of the Construction Term Maturity Date (but without extending the Permanent Term Maturity Date);

(v) The Occupancy Requirement shall have been satisfied;

(vi) Leasing efforts for the units, the number of units leased, the level of operating expenses, and the rate of lease-up shall each be reasonably satisfactory to Bond Owner;

(vii) Borrower shall have reimbursed Bond Owner and Trustee for all of their reasonable costs and expenses (including reasonable attorneys' fees) actually incurred and relating to the extension;

(viii) The Borrower shall have delivered to the Bond Owner evidence of compliance of the Project with all placed in service requirements under Section 42 of the Code required by the Bond Owner to effect such renewal and extension;

(ix) Each of the conditions listed in **Section 1(c)** of the Disbursement Schedule (**Schedule D**) shall have been fully and completely satisfied;

(x) No Material Adverse Change shall have occurred;

(xi) No Default or Event of Default shall be then existing;

(xii) The interest reserve must be sufficient (as determined by the Bond Owner in its reasonable discretion) to pay interest for the term of the extension (Borrower may satisfy the requirement by advancing any deficiency in the interest reserve prior to such extension), and the Bond Loan shall otherwise be in balance;

(xiii) The Borrower shall have paid an extension fee equal to .25% of the principal amount of the Bond Outstanding to the Bond Owner;

(xiv) If and to the extent required by Bond Owner or Trustee, the Trustee has received a Favorable Opinion of Bond Counsel with respect to such extension; and

(xv) The Borrower has received all required Capital Contributions due on or prior to conversion to the Permanent Loan, and the Bond Loan shall otherwise be in balance as required by this Agreement.

(f) If needed to satisfy the Stabilized Occupancy Conditions, the Borrower agrees to pay the requisite Resizing Payment on or within thirty days before the Construction Term Maturity Date. Without limiting the foregoing, the Borrower agrees to cause the payment from sources then available to Borrower (other than the Borrower's Sources) in accordance with the requirements of the Indenture on or within 30 days before the Construction Term Maturity Date of a sufficient principal amount of the Bonds in order for the Project to achieve a Debt Service Coverage Ratio of not less than 1.15:1.00. In any event, all conditions listed in **Schedule F** (with respect to achieving Lease Stabilization and the deposit of required reserves) and **Schedule I** shall be satisfied prior to the Construction Term Maturity Date.

(g) Beginning on the first day of the month next following the Stabilized Occupancy Date (provided that the Stabilized Occupancy Date has occurred on or before the Construction Term Maturity Date) and on the same day of each and every calendar month thereafter (each, also, a "**Payment Date**") until the Permanent Term Maturity Date, the Borrower shall pay principal and interest in equal monthly installments to the holder of the Bond Note in an amount sufficient to repay the unpaid principal balance of the Permanent Loan in full, together with interest rate set forth in the Indenture, by that date which is four hundred twenty (420) months after the Stabilized Occupancy Date. Notwithstanding the foregoing, payments of principal and interest on the Permanent Loan shall be equal to the amounts then due on the Bonds as provided in the schedule for sinking fund installments attached as **Exhibit D** to the Indenture. Further, if an Event of a Taxability occurs, the monthly payment shall be adjusted to that amount which is sufficient to repay the unpaid principal balance of the Permanent Loan in full, together with interest at the then applicable rate of interest of the Bond, in substantially equal monthly payments. Such payment schedule, and such payment adjustment, upon the occurrence of an Event of Taxability, shall be provided by the Bond Owner to the Trustee in writing. The foregoing shall not limit any right of redemption provided for in the Indenture. Unless sooner due under the terms of this Agreement, the Bond Note, or the Indenture, on the Permanent Term

Maturity Date, all amounts outstanding principal, unpaid and accrued interest, and other amounts then due under this Agreement by Borrower shall be fully and finally due and payable.

(h) If the monthly payments in the schedule attached as **Exhibit D** to the Indenture is adjusted pursuant to Section 3.2(5) of the Indenture, the Bond Owner agrees hereby to provide a revised amortization schedule to the Trustee, the Issuer and the Borrower to replace such **Exhibit D**.

(i) The Borrower shall make each payment required to be made by it hereunder (whether principal, interest or fees or otherwise) prior to 11:00 a.m., Houston, Texas time, on the date when due, in immediately available funds, without set-off or counterclaim. Any amounts received after such time on any date may be deemed by the Trustee (with the consent of Bond Owner), to have been received on the next succeeding Business Day for purposes of calculating interest thereon. If any payment hereunder shall be due on a day that is not a Business Day, the date for payment shall be extended to the next succeeding Business Day, and payment on such later date shall have the same force and effect as if made on the nominal date of payment. All payments made hereunder shall be made in U.S. dollars.

Section 4.3 **Additional Charges**. The Borrower agrees to pay, when due, subject to the payment of amounts due under **Section 4.2** all reasonable costs and expenses incurred in connection with the issuance of the Bonds (but only to the extent the same are not included in the Trustee's Ordinary Fees and Expenses, are not paid from the Cost of Issuance Fund established under the Indenture), and are not paid pursuant to **Section 4.2** (in the aggregate, the "**Additional Charges**"), including without limitation, the expenses listed in **Section 3.4** and each and all of the following:

(1) all reasonable fees of the Trustee, the Issuer, and any Holder for services rendered pursuant to the terms of the Indenture, any amounts due under **Section 3.4** hereof (but only to the extent the same are not included in the Trustee's Ordinary Fees and Expenses and are not paid pursuant to **Section 4.2**) and all reasonable fees and reasonable charges of any registrars, legal counsel, accountants, engineers, public agencies, and others actually and reasonably incurred in the performance of services reasonably required pursuant to the terms and conditions of the Indenture for which such persons are actually entitled to payment or reimbursement, any reasonable fees or charges of public agencies, and any reasonable fees or expenses actually incurred and resulting directly from the occurrence and continuance of an Event of Default by the Borrower hereunder;

(2) (a) all indemnity payments required to be made to the Issuer and any Holder under **Section 7.3**; (b) all reasonable expenses (including reasonable legal fees) incurred by the Issuer or the Trustee to exercise their rights under this Agreement following an Event of Default; and (c) all other reasonable expenses incurred by the Issuer in relation to the Project which are not otherwise required to be paid by the Borrower under the terms of this Agreement or any separate fee agreement, including costs incurred as a result of a request by the Borrower;

(3) amounts advanced by the Trustee pursuant to the Indenture;



(4) interest, at the Default Rate, on all payments not made by the Borrower under **Section 4.2** and under this **Section 4.3** when due (accruing from the applicable due date), to the parties entitled thereto; and

(5) If any payment required under this Agreement is not paid within ten (10) days after such payment is due, then, at the option of the Bond Owner, the Borrower shall pay the Issuer, promptly and without demand, a late charge equal to five percent (5.0%) of the amount of such payment to compensate the Bond Owner for administrative expenses and other costs of delinquent payments. This late charge may be assessed without notice, shall be immediately due and payable and shall be in addition to all other rights and remedies available to the Issuer. This late charge shall be in addition to any interest due as a result of interest then accruing on the Bonds Outstanding at the Default Rate, if applicable.

Section 4.4 **The Borrower's Obligations Unconditional.** The obligations of the Borrower to perform and observe the agreements on its part contained herein shall be absolute and unconditional and payment of the Bond Loan and Additional Charges and all other payments required of the Borrower hereunder or under the Bond Note shall be paid without set off, counterclaim, or defense for any reason and without abatement or deduction or defense. The Borrower will not suspend or discontinue any such payments, and will perform and observe all of its other agreements in this Agreement, and, except as expressly permitted in **Section 10.3** will not terminate this Agreement for any cause, including but not limited to any acts or circumstances that may constitute failure of consideration, destruction or damage to the Project or the Borrower's business, the taking of the Project or the Borrower's business by Condemnation or otherwise, the lawful prohibition of the Borrower's use of the Project or the Borrower's business, the interference with such use by any private person or corporation, the invalidity or unenforceability or lack of due authorization or other infirmity of this Agreement, the lack of right, power or authority of the Issuer to enter into this Agreement, eviction by paramount title, commercial frustration of purpose, bankruptcy, or insolvency of the Issuer or the Trustee, change in the tax or other laws or administrative rulings or actions of the United States of America or of the State or any political subdivision thereof, or failure of the Issuer to perform and observe any agreement, whether express or implied, or any duty, liability, or obligation arising out of or connected with this Agreement, or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the payment of the Bond Loan and other amounts payable by the Borrower hereunder or under the Bond Note shall be paid in full when due without any delay or diminution whatever.

Section 4.5 **Assignment of Issuer's Rights.** As security for the payment of the Bond, except with respect to the Unassigned Issuer's Rights, the Issuer hereby pledges the amounts payable hereunder and assign, without recourse or liability, to the Trustee, the Issuer's rights under this Agreement, including the right to receive any payments hereunder, and hereby directs the Borrower to make said payments directly to the Trustee, or otherwise upon the order of the Trustee. The Borrower herewith assents to such assignment and will make payments under this Agreement directly to the Trustee, or otherwise upon the order of the Trustee without defense or set off by reason of any dispute between the Borrower and the Issuer, the Bond Owner, or the Trustee. The Trustee shall have the rights and remedies of the Issuer under this Agreement and each Bond Loan Document and shall have the right to exercise such rights and remedies without the joinder or consent of the Issuer, in the same manner and under the limitations and conditions that the Trustee

is entitled to exercise rights and remedies under the Indenture (provide that the Trustee shall in no event exercise any such rights and remedies without prior written direction and authorization of the Bond Owner).

Section 4.6            **Loan in Balance; the Borrower's Sources.**

(1) The Bond Loan is “in balance” whenever the undisbursed funds available in the Project Fund to the Borrower for the Project (taking into account, among other things, the timing of anticipated receipts and disbursements of funds) under the Bond Loan, plus any sums on deposit in the Capital Contribution Account (and other amounts from the Capital Contributions available to be used for the Project and to pay the Bond Loan), all Existing Project Cash Reserves then available to pay budgeted items, and any other amounts to be deposited therein for budgeted items and to pay the Bond Loan prior to the Stabilized Occupancy Date, plus any sums on deposit in the Borrower's Funds Account (as defined below) or otherwise made available to the Bond Owner in the form of a letter of credit, pledged bank account, or other form of cash collateral, approved by the Bond Owner in its sole and absolute discretion (“**Cash Collateral**”), are sufficient in the reasonable judgment of the Bond Owner to pay, through Substantial Completion of all of the Project and on a timely basis all of the following sums (“**Total Project Expenses**”): (i) all costs of acquisition, equipment, ownership and maintenance of the Project and Project and all costs and expenses of construction and equipment of the Improvements in accordance with the Plans and Specifications and the Budget approved by the Bond Owner; (ii) all costs of leasing or renting of the apartment units in the Project; and (iii) all interest and all other sums and costs which may accrue or be payable under the Bond Loan Documents prior to or in connection with the Stabilized Occupancy Date. The amounts then on deposit in the Capital Contribution Account (and other amount from the Capital Contributions available to be used for the Project and to pay the Bond Loan), the amounts then on deposit in the Borrower's Funds Account, all Existing Project Cash Reserves, any Cash Collateral, and amounts then in Borrower's Funds Account, together with undisbursed Loan funds in the Project Fund (with respect to budgeted construction items) and the Interest Account of the Bond Fund (with respect to budgeted interest), are collectively referred to herein as “**Borrower's Sources.**” As a condition to Bond Owner's agreement to purchase the Bond, Borrower shall (a) cause the Investor Limited Partner to deposit the first installment of the Capital Contribution set forth in **Schedule J**, less any portion thereof used to pay Costs of Issuance through the escrow for the closing of the Bond Loan into the Capital Contribution Account on the Bond Closing Date (and cause the deposit in a cash collateral account of Borrower located at Bond Owner for future disbursement all Excess Project Cash Reserves not used on the Bond Closing Date to pay budgeted items); (b) cause the Investor Limited Partner to deposit subsequent Capital Contributions in the Capital Contribution Account as set forth in **Schedule J** at the time such equity installments become due and payable as provided for in the Partnership Agreement; and (c) deposit amounts demanded by the Bond Owner as set forth below when the Bond Loan is “out of balance” into a restricted non-interest bearing account to be maintained with the Bond Owner in the Borrower's name (the “**Borrower's Funds Account**”) to be disbursed to complete the Rehabilitation of the Project, unless the Bond Owner has agreed otherwise in writing in each instance, which agreement may be withheld by the Bond Owner in its sole discretion.

(2) The Bond Loan is “out of balance” if and when the Bond Owner determines that there are insufficient Borrower's Sources (taking into account the amount and timing of all of the Borrower's Sources) in the reasonable judgment of the Bond Owner, to pay, through Substantial

Completion of the Project, all Total Project Expenses. The Borrower acknowledges that the Bond Loan may become “out of balance” in numerous ways, not all of which may now be foreseen. Except as permitted in **Schedule D**, undisbursed funds in one category or line item may not be applied to another category or line item unless the Bond Owner consents in writing to such use in each instance, such consent not to be unreasonably withheld, conditioned or delayed. All Requisitions of amounts in the Project Fund must comply with the requirements of the Tax Regulatory Agreement, the Tax Exemption Agreement and the Indenture.

(3) Whenever the Bond Loan becomes “out of balance,” the Bond Owner may, at its option, make written demand on the Borrower to deposit the Borrower’s own funds into the Borrower’s Funds Account and/or draw upon, demand, or otherwise obtain payment to the Bond Owner of any Cash Collateral, in any such instance in an amount sufficient in the Bond Owner’s reasonable estimation to cause the Bond Loan to be “in balance.” Within thirty (30) days following the Bond Owner’s written demand, together with a reasonable accounting of Bond Owner’s calculation of the funds requested in such demand, the Borrower will deposit into the Borrower’s Funds Account all funds required by the Bond Owner’s demand that are in excess of any Cash Collateral actually delivered to the Bond Owner. At any time the Bond Loan is determined to be “out of balance” and should the Bond Owner request same, the Borrower must also submit, for the Bond Owner’s approval, a revised Budget (with a copy to the Issuer) within ten (10) Business Days after any such demand for a revised Budget. Notwithstanding anything herein to the contrary, at any time that the Bond Loan is determined to be “out of balance”, amounts to be funded from any Requisition shall be first paid with amounts in Borrower’s Funds Account. Any funds in the Borrower’s Fund Account on the Stabilized Occupancy Date shall be paid to Borrower

#### Section 4.7 **Disbursement Procedures.**

(1) Subject to the terms and conditions of this Agreement and **Schedule D**, the Bond Owner shall consent to Requisitions of Bonds proceeds and Draw Requests of amounts in the Project Fund and of Capital Contributions in the Capital Contribution Account and of any deposits of the Excess Project Cash Reserves. Notwithstanding recording of the Bond Mortgage or anything contained in this Agreement, the Bond Owner shall not be required to approve any Requisitions of amounts in the Project Fund and amounts on deposit in the Capital Contribution (except for reasonable fees, costs and reimbursements payable to the Bond Owner pursuant to the terms and conditions of this Agreement and **Schedule D**), unless and until the Bond Owner has determined that: (i) the amount and timing of the Borrower’s Sources are sufficient to pay the Total Project Expenses and to pay the Bond Loan down to the Permanent Loan (or such lesser amount required for satisfying the Stabilized Occupancy Conditions), (ii) the Bond Mortgage and all disbursements of the Bond Loan funds will be and shall remain a first priority lien on the Project; and (iii) the applicable conditions in **Schedule D** have been satisfied or waived in writing by all required parties. Notwithstanding anything herein or in the Indenture to the contrary, Trustee shall not authorize any disbursement of the Bonds proceeds from the Project Fund unless and until the Bond Owner has approved that Requisition by executing that Requisition prior to the delivery to the Trustee, such approval not to be unreasonably withheld (but in any event shall be subject to the terms of this Agreement and particularly the conditions listed in **Schedule D**).

(2) Disbursements of Borrower’s Sources to the Borrower shall be made by the Trustee from the Project Fund and by the Bond Owner from all other of Borrower’s Sources by deposit

into a non-interest-bearing checking account to be maintained with the Bond Owner in the name of the Borrower (the “**Disbursement Checking Account**”) unless otherwise requested by the Borrower and consented to by the Bond Owner, such consent to be delivered in writing to the Trustee. Before the Bond Owner becomes obligated to consent to a Requisition of amounts in the Project Fund or to disburse any amounts in the Capital Contribution Account to the extent on deposit with the Bond Owner, or to disburse any deposits of the Excess Project Cash Reserves to the extent on deposit with the Bond Owner, it must receive a written request signed by the Borrower or the Borrower’s agent designated in **Section 7** of the Disbursement Schedule attached hereto as **Schedule D**, using a form acceptable to the Bond Owner (referred to and defined in **Schedule D** the “**Draw Request**”), accompanied by such documentation and information as required by **Schedule D** and as the Bond Owner may reasonably require (for fundings from the Project Fund, such required documentation shall include a signed Requisition). In each Draw Request, the Borrower shall request disbursement for one or more specified line item(s) of the Cost Breakdown. Without limiting the foregoing, each Draw Request shall be accompanied by lien waivers, on the applicable form attached as **Schedule R**, from each subcontractor or material supplier paid with the proceeds of the immediately preceding Draw Request. The Bond Owner shall not be obligated to consent to a Requisition or to disburse amounts in the Capital Contribution Account, as requested in any Draw Request, earlier than ten (10) Business Days after receipt of a complete supporting package and satisfaction of the items listed in **Schedule D**. If the Bond Owner approves a Requisition, the Bond Owner will then submit the Requisition to the Trustee. In the event the Draw Request is approved and the funds from Borrower’s Sources are disbursed into the Disbursement Checking Account, the Borrower shall promptly then pay the appropriate parties with the proceeds of the amounts in the Disbursement Checking Account unless otherwise requested by the Borrower and consented to by the Bond Owner which consent shall not be unreasonably withheld, conditioned or delayed. The Borrower may submit Requisitions and Draw Requests to the Bond Owner no more frequently than once each calendar month, unless the Bond Owner has given its prior written consent and delivered such consent to the Trustee in each instance. Notwithstanding the foregoing, for purposes of accruing interest thereon, the Bond Loan shall be deemed disbursed and made available to the Borrower (subject to the terms of this Agreement) upon deposit of the proceeds of the Bond Loan with the Trustee.

(3) The Bond Owner, at any time, subject to the terms and conditions of this Agreement, may use any of Borrower’s Sources which are on deposit with the Bond Owner to pay outstanding Loan fees owed to the Bond Owner, interest on the Bond Loan, reasonable fees and expenses of the Bond Owner’s attorneys, title insurance and miscellaneous costs actually incurred which are specifically payable by the Borrower hereunder, and such other sums as are actually outstanding and owing from time to time by the Borrower to the Bond Owner with respect to the Bond Loan, all without further notice to or authorization by the Borrower (subject to the requirements of **Section 4.7(6)** below). These payments may be made, at the Bond Owner’s option, by: (i) debiting the applicable account containing any of the Borrower’s Sources (excluding the Funds established pursuant to the Indenture) in the amount of the payments without first depositing that amount into the Disbursement Checking Account; (ii) disbursing all or any part of the amount of the payments into the Disbursement Checking Account and then debiting the Disbursement Checking Account or (iii) invoicing the Borrower in the amount of the payments; provided, however, that the Bond Owner shall provide the Borrower with notice of any such debit by the Bond Owner no later than ten (10) Business Days after the debiting has occurred together with a reasonable accounting of such debited amount as such is reasonably practical after a written

request therefor by Borrower. For these purposes, the Bond Owner is not restricted to the line items and cost categories of the Budget. The Borrower acknowledges that such a use of Borrower's Sources by the Bond Owner may cause the Bond Loan to become "out of balance," requiring deposits by the Borrower into the Borrower's Funds Account or payment to the Bond Owner of Cash Collateral.

(4) If the Budget provides for an undisbursed balance remaining in the interest reserve line item of the Cost Breakdown and all other disbursement conditions have been met, then the Bond Owner from time to time shall disburse Borrower's Sources to pay interest on the Bond Loan from the interest reserve line item.

(5) Subject to the further terms of this Section and this Agreement (including **Schedule D** and except for any amounts payable from the Costs of Issuance Fund on the Bond Closing Date (as provided in the Indenture), amounts approved to be paid pursuant to a particular Draw Request to pay Good Costs shall be paid and/or disbursed in the following order (A) first from any deposit of the Excess Project Cash Reserves (to the extent such amounts are not restricted for a particular purpose, (B) second, from proceeds of the first and second installments of the Capital Contribution set forth in **Schedule J** (sometimes referred to herein as the "**Construction Capital Contributions**") deposited in the Capital Contribution Account maintained by the Bond Owner (to the extent deposited with the Bond Owner under the terms of the Partnership Agreement and to the extent available to pay Good Costs as provided in the most recently revised Budget and as set forth in subsection (6) below and to the extent available after making the payment required in the last grammatical paragraph of this Section), and (C) third, from the Requisitions made on the Project Fund until Bond proceeds have been fully disbursed therefrom. Without limiting the foregoing, no consent to a Requisition by the Bond Owner will be provided unless and until all of the Construction Capital Contributions then payable under the Partnership Agreement have been fully funded in accordance with the terms of the Partnership Agreement and used first to pay Bad Costs and other Costs of Issuance (by payment to the Trustee in accordance with the terms of the Indenture) and then to pay Good Costs (by deposit in the Capital Contribution Account for disbursement therefrom in accordance with the terms of this Agreement), and all deposits of the Excess Project Cash Reserves shall have been then disbursed to pay budgeted items. Without limiting the foregoing, it is agreed the proceeds of the Bonds shall only be used to pay Good Costs, and the proceeds of the Capital Contributions shall be used first to pay Bad Costs and then any remaining amounts shall be used to pay Good Costs. Notwithstanding the foregoing (and without limiting the terms of **Section 3.3(6)** hereof), if the Bond Owner determines it is necessary that certain Draw Requests be instead funded from the Project Fund to satisfy the Fifty Percent Test, those Draw Requests will be first funded from the Project Fund (in any event, it is the intent of the parties that all proceeds of the Bonds will be used for the development of the Project.

(6) In addition to the foregoing, without limiting the requirements of **Schedule D**, prior to and as a condition to the Bond Owner's agreement to buy the Bond, the Borrower shall have caused the portion of the Construction Capital Contributions set forth in **Schedule J** which will be used to pay Costs of Issuance to be deposited in the Cost of Issuance Fund in accordance with the terms of the Indenture, and then any remainder of the Construction Capital Contributions shall have been deposited in the Capital Contribution Account for disbursement in accordance with the terms of this Agreement to first pay budgeted Bad Costs which are not Costs of Issuance in

accordance with the Budget and then to pay budgeted Good Costs as provided in subsection **(5)** above.

Notwithstanding the foregoing or anything in this Agreement to the contrary, the outstanding principal balance of the Bond Loan (and the Bonds) shall be paid down to an amount not to exceed \$ \_\_\_\_\_ .00 from the [second] installment of the Capital Contribution and applied to the principal balance of the Bond Note (and then used to pay the Bond).

(7) The third and fourth installments of the Capital Contributions set forth in **Schedule J** shall each be funded into the Capital Contribution Account to first pay any budgeted construction items and then, except as otherwise provided in **Schedule J**, any remaining proceeds thereof shall if directed by Borrower, be applied to the Bond Note, and otherwise shall, until the Stabilized Occupancy Date, be held as security for the Bond Note by remaining in the Capital Contribution Account and for any resizing or other requirements and conditions to the occurrence of the Stabilized Occupancy Date for purposes of achieving Lease Stabilization (and conversion to the Permanent Loan).

Section 4.8 **Additional Disbursement Conditions.** The Bond Owner need not approve the disbursement of Borrower's Sources (including approving a Requisition) until the Borrower fulfills all conditions of the Bond Loan Documents relating to such disbursement set forth in **Schedule D** to the Bond Owner's satisfaction, in its reasonable judgment. The Bond Owner's Loan closing conditions and conditions for subsequent disbursements include the matters described in the Disbursement Schedule. Further, fundings will be based upon the percentage of completion for actual work-in-place as approved by the Bond Owner and its construction consultant.

Section 4.9 **No Waiver of Conditions.** Any waiver by the Bond Owner of a condition of disbursement must be expressly made by the Bond Owner in writing. If the Bond Owner makes a disbursement before fulfillment of one or more required conditions, such disbursement shall not be a waiver of such condition with respect to subsequent disbursements, and the Bond Owner reserves the right to require their fulfillment before making any subsequent disbursements. If all disbursement conditions are not satisfied, the Bond Owner, without waiving any rights or conditions as to any other or further disbursements, may disburse selectively as to certain items or categories of costs and not others.

Notwithstanding anything to the contrary set forth in this Agreement, all of the Bonds proceeds shall, for federal income tax purposes, be (1) allocated on a pro rata basis to each building in the Project and the Land on which it is located (if there is more than one building) and (2) used exclusively to pay costs of the Rehabilitation of the Project which are includable in aggregate basis of any building and the land on which the building is located ("**Eligible Costs**") in a manner such that each building satisfies the requirements of section 42(h)(4)(B) of the Code. Accordingly, no Bond proceeds will be deemed to have been used to pay any of the Costs of Issuance, except as otherwise provided for in this Agreement, or to fund any reserve account other than the Project Fund to be used to pay Eligible Costs.

Section 4.10 **Seller Loan.** As a condition to the Bond Owner's purchase of the Bond, the Bond Owner shall have received and approved evidence that the Seller Loan has closed on

terms acceptable to the Bond Owner, and, if and to the extent required by the Bond Owner, the Bond Owner shall have received an executed counterpart of the Intercreditor Agreement in form and substance satisfactory to the Bond Owner.

Section 4.11 **Anti-Corruption.** The Borrower will maintain in effect and enforce policies and procedures designed to ensure compliance by the Borrower, its subsidiaries and their respective directors, officers, employees and agents with Anti-Corruption Laws and applicable Sanctions. The Borrower will not request any Drawing, and the Borrower shall not use, and shall ensure that its subsidiaries and its or their respective directors, officers, employees and agents should not use, the proceeds of any Drawing (A) in furtherance of an offer, payment, promise to pay, or authorization of the payment or giving of money, or anything else of value, to any Person in violation of any Anti-Corruption Laws, (B) for the purpose of funding, financing or facilitating any activities, business or transaction of or with any Sanctioned Person, or in any Sanctioned Country, or (C) in any manner that would result in the violation of any Sanctions applicable to any party hereto.

Section 4.12 **Cash Flow.** Until the Stabilized Occupancy Date, all NOI shall be deposited by Borrower, on a monthly basis, in an account of Borrower located at Bond Owner which shall be a blocked collateral account. Borrower shall have no access to such account until the Stabilized Occupancy Date has occurred, but funds in the account will be available to pay principal and interest due on the Bond Note, for budgeted development items, and for contingency needs approved by Bond Owner in writing. If NOI is not a budgeted development source, notwithstanding anything herein to the contrary, prior to the Stabilized Occupancy Date, Borrower shall pay interest due under the Bond Note from NOI before using any unfunded interest reserves.

## ARTICLE 5 PROJECT COVENANTS

Section 5.1 **Project, Title, Operation, and Maintenance.** The Issuer, Bond Owner, and the Trustee shall not be under any obligation to operate, maintain, or repair the Project. The Borrower agrees that until this Agreement is terminated pursuant to **Section 10.3** hereof, it will, at its own expense (to the extent the expenses will not be paid from a Reserve Account), and consistent with similarly sized and situated projects in the Center, Texas area, (a) keep the Project in safe repair and in such operating condition as is needed for its operations; (b) make all necessary repairs and replacements to the Project (whether ordinary or extraordinary, structural or nonstructural); (c) operate the Project in a sound and economic manner in accordance with usual business practice, subject to the restrictions imposed on the Project pursuant to each Regulatory Agreement, once executed, and any “extended use agreement” entered into with respect to the Project in order to secure the availability of Low Income Housing Tax Credit for the Project; (d) operate the Project in compliance with all applicable laws, codes, environmental laws, zoning laws, the Americans with Disabilities Act of 1990 applicable to the Project, laws regulating construction, occupancy, or maintenance of property of a character included in the Project; (e) operate the Project in a manner which assures compliance with the Seller Loan Documents; and (f) comply with all applicable existing and future laws, regulations, orders, building codes and restrictions, and requirements of, and all permits and approvals from, and agreements with and commitments to, all governmental, judicial, or legal authorities having actual jurisdiction over the Project and other Requirements of Law applicable to the Project (including all conditions or

requirements imposed upon Borrower or the Project in connection with the allocation of Low Income Housing Tax Credit to the Project) or the Borrower's business conducted thereon or therefrom, and with all restrictive covenants and other title encumbrances encumbering the Project, including without limitation those contained in each Regulatory Agreement, and any additional regulatory agreements to which the Project may now or hereafter be subject in connection with the allocation of low income housing tax credits to the Project (all collectively, the "**Requirements**").

(1) The Borrower shall pay all expenses of the operation and maintenance of the Project including, but without limitation, the policies of insurance required pursuant to **Section 5.6**, and all taxes and special assessments levied upon or with respect to the Project and payable during the term of this Agreement, all in conformance with and subject to any good faith contest provisions provided in the Bond Mortgage or this Agreement.

(2) In the event that the Borrower shall fail to maintain, or cause to be maintained, the full insurance coverage required by this Agreement or shall fail to keep the Project in as reasonably safe condition as its operating conditions will permit, or shall fail to keep the Project in good repair and good operating condition and make all necessary repairs and replacements to the Project, the Trustee (on direction from the Bond Owner) or the Bond Owner may (but shall be under no duty or obligation to) after giving the Borrower notice of its intention to do so and an opportunity to cure, contract for the required policies of insurance and pay the premiums on the same or contract for any required repairs, renewals and replacements; and the Borrower agrees to reimburse the Trustee or the Bond Owner, as the case may be, to the extent of the amounts so advanced, and in addition shall pay interest on any such amount (but not including amounts in the Replacement Reserve Account to be used for that purpose) at the Default Rate from the date of demand for such amount until the date such amount is paid or reimbursed by the Borrower.

(3) The Borrower shall obtain or cause to be obtained all required permits and approvals for the operation and maintenance of the Project and shall comply with all lawful requirements of any governmental body with jurisdiction concerning the use or condition of the Project, whether existing or later enacted or whether involving any change in governmental policy or requiring structural or other changes to part or all of the Project and irrespective of the cost of making the same.

(4) Notwithstanding the provisions of this **Section 5.1** the Borrower may in good faith contest the actual validity or the applicability of any law, ordinance, rule or regulation provided that during the period of such contest and any appeal therefrom, (i) such failure to comply with such requirement or requirements will not adversely affect the lien of the Bond Mortgage or result in a Material Adverse Change and (ii) will not subject the Project or any part thereof to loss or forfeiture.

(5) The Borrower agrees not to permit to continue or allow others to permit to continue a nuisance in connection with their use or occupancy of the Project.

(6) Without limiting the foregoing, all of the apartment units associated with the Low-Income Housing Tax Credit will be eligible for Section 8 subsidies under the Original HAP Contract (and the HAP Contract once executed).



Section 5.2            **Change in Composition of Borrower.** Except to the extent permitted pursuant to the Bond Mortgage or this **Section 5.2**, Borrower shall not permit any change in the ownership of the Project or in Borrower, or in the ownership interests of the partners of Borrower, except that (i) a limited partner may transfer its interest to an Affiliate of that limited partner (to the extent such new limited partner is capitalized in a sufficient manner), (ii) a limited partner may syndicate, sell, and transfer interests in the limited partner (to the extent in compliance with **Section 5.29**), (iii) the Investor Limited Partner may pledge and encumber its interests to or for the benefit of any Financial Institution which provides financing to the Investor Limited Partner to make its Capital Contributions to the Borrower, (iv) the general partner may change its interest in cash flow and capital transaction proceeds related to the Project in accordance with the terms of the Partnership Agreement, (v) the general partner may pledge its interest in the Borrower to the Investor Limited Partner (or an affiliate thereof) as contemplated by the Partnership Agreement, and (vi) the limited partners may replace the general partner in accordance with the terms of the Partnership Agreement with prior or contemporaneous written notice to the Issuer and the prior written consent thereto of the Bond Owner, provided that such replacement general partner is acceptable to Bond Owner in its reasonable discretion (Bond Owner agrees that a replacement general partner that is an Affiliate of the Investor Limited Partner is acceptable to the Bond Owner to the extent replacement is made as provided in the Partnership Agreement and that such transfers of the general partnership interest in Borrower are permitted without Bond Owner's consent). Further, in addition to the foregoing, after the Stabilized Occupancy Date, the following shall be permitted without the necessity of consent from the Bond Owner, provided that written notice thereof has been provided to the Issuer and Bond Owner: (A) the transfer by Investor Limited Partner of its non-Controlling interest in the Borrower in accordance with the terms of Partnership Agreement, (B) the transfer of ownership interests in Investor Limited Partner provided that an Affiliate of RBC Community Investments, LLC remains in Control of the Investment Limited Partner, (C) upon the expiration of the tax credit compliance period, the transfer of the interests of Investor Limited Partner in the Borrower to the general partner of the Borrower or any of its affiliates as provided for in the Partnership Agreement, and (D) any amendment to the Partnership Agreement to memorialize the transfers or removal permitted above. The ownership changes provided for in this **Section 5.2** shall be in all cases subject to Section 10 of the Tax Regulatory Agreement.

Section 5.3            **Sale or Lease of Project and Interest in the Borrower.** While the Bonds are Outstanding, the Borrower will not transfer, or otherwise dispose of the Project, or any portion thereof (other than leases or rental agreements of units for individual tenant use as contemplated in the Tax Regulatory Agreement) except (i) to a purchaser which qualifies as a single purpose entity and (ii) as otherwise permitted by the Bond Mortgage and the applicable provisions of the Tax Regulatory Agreement, and with the prior written consent of the Bond Owner.

Section 5.4            **Reserved.**

Section 5.5            **Alterations to the Project and Removal of Equipment.**

(1) Without the prior written consent of the Bond Owner, the Borrower shall not remodel or make any material additions, modifications, alterations, improvements, or changes that would be a Material Adverse Change in or to the Project after Substantial Completion of

construction or remove any equipment therefrom other than in connection with the replacement of worn, damaged, non-functioning or obsolete property. Notwithstanding the provisions of the Bond Mortgage, no such alteration or removal will be made if to do so would impair the character of the Project as a “public facility” within the meaning of the Act or impair the Federal Tax Status of the Bonds.

(2) The Borrower shall be entitled to use funds held by the Trustee in each Reserve Account to pay for alterations, improvements, replacements, and maintenance of the Project (“**Reserve Uses**”) to the extent and as provided in **Schedule F**, including, but not limited to, appliances, air conditioners, furnaces, hot water heaters, roofs, carpeting, floor vinyl, decks, pool equipment replacement, concrete replacement, tie walls, gutters, downspouts, window replacement, blinds, and similar items, including but not limited to the items listed on **Schedule F-2** attached hereto (as may be amended from time to time upon the written agreement of Borrower and Bond Owner), and for the costs of alterations or replacements, provided that the written consent of the Bond Owner is obtained for each such disbursement (not to be unreasonably delayed, withheld or conditioned; provided further that Bond Owner’s prior consent shall not be required for Reserve Uses less than \$5,000). The Bond Owner shall consent to disbursements from each Reserve Account which are required in order to maintain the Project in the condition and state of repair required pursuant to this Agreement and the Bond Mortgage, subject to the terms and conditions of **Schedule F**.

Section 5.6 **Insurance.**

(a) The Bond Mortgage. At all times prior to the Stabilized Occupancy Date, the Borrower must provide, maintain, and keep in force at all times the insurance required in **Schedule H-1** attached hereto. At all times on and after the Stabilized Occupancy Date, the Borrower must provide, maintain, and keep in force the insurance required in **Schedule H-2** attached hereto.

(b) At all times prior to repayment in full of the Bond Loan, the Borrower must provide, maintain and keep in force all other insurance reasonably required by the Bond Owner.

(c) All policies of insurance required under this Agreement must be issued by companies approved by the Bond Owner having an A.M. Best’s rating of A or better, with limits, coverage, forms, deductibles, inception and expiration dates and cancellation provisions acceptable to the Bond Owner. In addition, each required property insurance policy must contain a Lender’s Loss Payable Form (Form 438 BFU or equivalent) in favor of Issuer, the Trustee and the Holders and provide that all proceeds be payable to the Trustee to the extent of its interest. An approval by the Bond Owner is not, and may not be deemed to be, a representation of the solvency of any insurer or the sufficiency of any amount of insurance.

(d) Each policy of insurance required under the Bond Loan Documents must provide that it may not be modified or canceled without at least thirty (30) days’ prior written notice to Bond Owner. At least fifteen (15) days before expiration of any required insurance policy, the Borrower must furnish the Bond Owner with proof reasonably

acceptable to the Bond Owner that the policy has been reinstated or a new policy issued, continuing in force the insurance covered by the expired policy. The Borrower must also furnish evidence satisfactory to the Bond Owner that all premiums for such policy have been paid within fifteen (15) days of renewal or issuance. If the Bond Owner fails to receive such proof and evidence, the Bond Owner has the right, but not the obligation, after notice and opportunity to cure to pay for current coverage on account of the Borrower. The Borrower must repay the Bond Owner immediately on demand for any such payment made on Borrower's account for such premiums, which will be an additional loan to the Borrower bearing interest at the Default Rate, and secured by the Bond Mortgage and any other collateral held by the Trustee in connection with the Bond Loan; provided, however, that interest on any such advances will be included in gross income for federal income tax purposes.

Section 5.7            **Commencement and Substantial Completion of the Project.**

(a)     The Borrower must commence rehabilitation of the Improvements (the "**Rehabilitation of the Project**") by the Commencement Deadline and continue renovation of such improvements diligently and continually to Substantial Completion which shall occur by the Bond Owner's Required Completion Date. Without limiting the foregoing, Borrower shall cause the Project to be placed in service pursuant to Section 42 of the Code by the deadline required by the Credit Agency. The Borrower shall not permit cessation of work on the Project for a period in excess of 10 consecutive days (but excluding Excusable Delays) without the Bond Owner's prior written consent, provided that in no event shall there be a cessation of work on the Project for an aggregate period in excess of 30 days. So long as no Event of Default has occurred and is continuing, the Bond Owner shall extend the Substantial Completion date set forth in **Schedule E** by a period of time equal to the period of the Excusable Delay, but not more than a total of sixty (60) days (as provided for in the definition of Bond Owner's Required Completion Date). Such an extension, however, shall not affect the time for performance of, or otherwise modify, any of the Borrower's other obligations under the Bond Loan Documents or the maturity of the Bond Note.

(b)     By the Bond Owner's Required Completion Date, the Borrower must have Substantially Completed Rehabilitation of the Project, as hereinafter defined. Notwithstanding and without limiting the foregoing, as used in this Agreement, "**Rehabilitation of the Project**" includes completing the planned rehabilitation of the structural components, operating systems, and all other elements of such improvements to buildings (as contemplated by the Plans and Specifications). The Rehabilitation of the Project is deemed complete for all purposes of this Agreement when the rehabilitation has been completed in substantial accordance with the plans and specifications described in **Schedule G**, as those plans and specifications may be amended in accordance with **Section 5.11** (the "**Plans and Specifications**"), as evidenced by the written certification of the architect for the Project (the "**Architect**") and Contractor for the Project in Form AIA G-706 or another form satisfactory to the Bond Owner and filed with the Trustee and the Bond Owner (the "**Completion Certificate**"), and the Bond Owner has received evidence reasonably satisfactory to it that:

(i) All of the buildings constituting the Project have been “placed in service” if required by and within the meaning of Section 42 of the Code; and

(ii) The completed Project has been inspected by and received all approvals of Governmental Authorities having jurisdiction over the Project, permitting occupancy by residential tenants of all units in the Project.

(c) In addition, the Borrower shall record the Affidavit and Certificate of Completion in the form of **Schedule O** in Shelby County, Texas (with a copy to be provided to the Issuer and the Trustee with 30 day of completion), all appropriate notices of completion, and obtain certificates of occupancy or similar permits regarding completed apartment units and other spaces within the Project as necessary or required to permit the lawful use and occupancy of each of such units and spaces.

Section 5.8 **Rehabilitation**. The Borrower must conduct the Rehabilitation of the Project in a good and workmanlike manner in accordance with sound building practices, and all governmental and insurance requirements applicable to the Project and the Borrower, in accordance with the Plans and Specifications and the recommendations of any geotechnical inspection, environmental report or engineering report delivered by the Borrower to, and approved by, the Bond Owner.

Section 5.9 **Preservation of Rights**. The Borrower must obtain, preserve, and maintain in good standing, as applicable, all rights, privileges, and franchises necessary or desirable for the operation of the Project and the conduct of the Borrower’s business thereon or therefrom.

Section 5.10 **Maintenance and Repair**. The Borrower must (i) maintain the Project, including the parking and landscaping portions thereof, in good condition and repair, (ii) promptly make all necessary structural and non-structural repairs to the Project (or cause tenants under any leases to perform such obligation), and (iii) not demolish, alter, remove, or add to the Project, excepting (A) the repair and restoration of the Project following damage thereto as permitted by this Agreement, (B) the construction or installation of non-structural alterations or improvements, provided the same are in all respects consistent with the character and utility of the existing Project, (C) the installation or construction of tenant improvements and related demolition in connection with any leases allowed by this Agreement, and (iv) not erect any new buildings, structures, or building additions on the Project, except as described in the Plans and Specifications, without the prior written consent of the Bond Owner. Subject to **Section 12.32**, the Borrower must pay when due all claims for labor performed and materials furnished therefor in connection with any improvement or construction activities, unless such claims are being contested in good faith and are Bonded. If a claim of lien is recorded which affects the Project or a stop notice, funds capture notice or similar notice from a potential mechanic’s lien claimant is served upon the Borrower, the Borrower shall, within twenty (20) calendar days of such recording or service or within five (5) calendar days of the Bond Owner’s demand, whichever occurs first (a) effect the release thereof by recording or delivering to the Bond Owner a surety bond in sufficient form and amount; or (b) provide the Bond Owner with other reasonable assurances which are reasonably determines to be satisfactory to the Bond Owner for the payment of such claim of lien and for the full and

continuous protection of the Trustee and the Bond Owner from the effect of such lien (without limiting the terms of **Section 12.32**).

Section 5.11 **Changes.**

(a) The Borrower agrees to provide Bond Owner with copies of all change orders pursuant to which changes are proposed to the Plans and Specifications or to the design of the Project, together with all additional documents relating to the proposed change that the Bond Owner may reasonably require. These documents may include the following: (i) plans and specifications indicating the proposed change; (ii) a written description of the proposed change and related working drawings; and (iii) a written estimate of the cost of the proposed change and the time necessary to complete it.

(b) The Borrower must obtain the Bond Owner's prior written approval of any change order which in any single instance involves more than Twenty-Five Thousand and No/100 Dollars (\$25,000) in changes in costs of the Project or which, when aggregated with other change orders not previously approved by the Bond Owner, involves more than One Hundred Thousand and No/100 Dollars (\$100,000) in changes in costs of the Project (the foregoing approval may be evidenced by the funding of the applicable change order or by specific written approval by the Bond Owner for that change order). In any event, any changes in costs must also satisfy the requirements of the Seller Loan Documents and the Partnership Agreement.

(c) In addition, the Borrower must obtain the Bond Owner's prior written approval of all material changes in the scope or general conditions of the contract with the Contractor for the Rehabilitation of the Project (the "**Construction Contract**") or the contract with the Architect for the design of the Project (the "**Architecture Contract**"). Finally, the Borrower must obtain from the appropriate persons or entities all approvals of any changes in plans, specifications, work, materials, or contracts required by any of the Requirements, applicable to the Project, or under the terms of any lease, loan commitment, or other agreement relating to the Project.

(d) The Bond Owner may take a reasonable time not to exceed 10 Business Days to evaluate any requests for proposed changes and may require that all approvals required from other parties (including investment partners of the Borrower) be obtained before it approves any requested change. The Bond Owner may approve or disapprove changes in the exercise of its reasonable judgment. In the event that Bond Owner exceeds such 10 Business Days to evaluate that request, clause (a) of the definition of Bond Owner's Required Completion Date shall be extended by the same number of days. The Borrower acknowledges that delays may result and agrees that, so long as the delays are not unreasonable in duration, they will not affect the Borrower's obligation to complete the Project by the Bond Owner's Required Completion Date.

(e) **Construction Information and Verification.** Within thirty (30) days after receiving a written request from the Bond Owner so to do, the Borrower shall deliver to the Bond Owner any and all of the following information and documents, all in forms reasonably acceptable to the Bond Owner:

(i) Current Plans and Specifications for the Project certified by the Architect as being complete and accurate;

(ii) If required by Bond Owner, a current, complete, and correct list showing the name, address, and telephone number of each contractor, subcontractor, and material supplier who is engaged or potentially engaged by the Borrower in connection with the Rehabilitation of the Project, together with the total dollar amount of each contract and subcontract (including any changes) and the amounts paid through the date of the list;

(iii) A true and correct copy of the most current version of the Construction Contract, including any changes;

(iv) A current construction progress schedule showing the progress of Construction and the projected sequencing and completion times for uncompleted work, all as of the date of the schedule;

(v) Any update to any item described above, previously delivered to the Bond Owner; and

(vi) At any time after Rehabilitation of the Project, as-built plans and specifications for the Project as actually completed to date, certified by the Architect as being complete and accurate (provided, however, if the Architect is not reasonably able to deliver such as-built plans and specifications within such thirty (30) day period, the Bond Owner consents to extend the Borrower's deadline up to an additional thirty (30) days).

(f) The Borrower expressly authorizes the Bond Owner to contact the Architect, the Contractor, or any contractor, subcontractor, material supplier, surety, or any Governmental Authority or agency to verify or discuss any information disclosed in accordance with this **Section 5.11** and any other information that the Bond Owner may reasonably require.

(g) The Borrower shall promptly notify the Bond Owner of any material default by Architect, Contractor, subcontractor, material supplier, or surety under its respective agreement which is not cured after the passage of applicable notice and cure periods. Any Architect, Contractor, subcontractor, material supplier, or surety who terminates or materially breaches its contract and fails to cure such breach during any applicable notice and cure period must be replaced promptly, with a replacement approved by the Bond Owner, and the Borrower must deliver all required information and documents to the Bond Owner regarding each such replacement Architect, Contractor, subcontractor, material supplier, and surety. The Bond Owner shall not unreasonably withhold, condition or delay its approval of any replacement Architect, Contractor, subcontractor, material supplier, surety, or other party reasonably selected by the Borrower.

Section 5.12 **Permits, Licenses, and Approval.** The Borrower must obtain, comply with, and keep in effect all required and necessary permits, licenses and approvals related to the Project and required by governmental bodies in order to construct, occupy, operate, market, and

lease the Project. The Borrower must promptly deliver, within ten (10) Business Days after a reasonable written request therefor from Bond Owner, copies of all such permits, licenses, and approvals.

Section 5.13 **Purchase of Materials; Conditional Sales Contracts.** Without the Bond Owner's prior written consent, the Borrower may not: (i) purchase or contract for any materials, equipment, furnishings, fixtures, or articles of personal property to be placed or installed on the Project under any security agreement or other agreement where the seller reserves or purports to reserve title or the right of removal or repossession, or the right to consider them personal property after their incorporation in the work of construction; or (ii) remove or permit to be removed from the Project any equipment, machinery, or fixtures used in connection with the management, maintenance, operation, or enjoyment thereof unless replaced by articles of equal suitability and value owned by the Borrower or the person in whom ownership of the removed article was vested, as applicable, in each case free and clear of any lien or security interest.

Section 5.14 **Site Visits; Right to Stop Work.**

(a) Subject to the rights of the tenants under residential leases, the Borrower grants to the Bond Owner, and its agents and representatives, the right to enter and visit the Project on any Business Day during normal business hours upon prior reasonable notice to Borrower of at least 48 hours in advance (but that no such advance notice will be required if an Event of Default is then continuing) and its property manager of the Project for the purposes of performing an appraisal, pursuant to any requirement for same under this Agreement, observing the work of construction, inspecting the property, and examining all materials, plans, specifications, working drawings, and other matters relating to the construction and following the occurrence and continuance of an Event of Default beyond any notice and cure provisions provided for herein the taking soil or groundwater samples, conducting tests to, among other things, investigate for the presence of Hazardous Substances. For purposes of these site visits, the Borrower must maintain at all times a full set of working drawings at the construction site. During such site visits, the Bond Owner has the right to examine, copy, and audit the books, records, accounting data, and other documents of the Borrower and its contractors relating to the Project or Rehabilitation of the Project. The Bond Owner is under no duty to visit or observe the Project, or to examine any books or records. Any site visit, observation, or examination by the Bond Owner will be solely for the purpose of protecting and preserving the rights of the Trustee and the Bond Owner under this Agreement and the Bond Mortgage. No site visit, observation or examination by the Bond Owner will impose any liability on Bond Owner or result in a waiver of any default of the Borrower or be a representation that the Borrower is or will be in compliance with the Plans and Specifications, that the construction is free from defective materials or workmanship, or that the construction complies with all applicable Requirements. Neither the Borrower nor any other party is entitled to rely on any site visit, observation or testing by Bond Owner, its agents, or representatives. The Bond Owner owes no duty of care to protect the Borrower or any other party against, or to inform the Borrower or any other party of, any adverse condition affecting the Project, including any defects in the design or construction of any improvements on the Project or the presence of any Hazardous Substances on the Project. In each instance, the Bond Owner will give the Borrower reasonable prior notice before entering the Project and make all reasonable

efforts to avoid interfering with the Borrower's Rehabilitation of the Project, use or operation of the Project, or any tenant's rights under leases of the Project when exercising any of the rights granted in this Section.

(b) Subject to the terms and provisions of **Section 11.2**, if the Bond Owner in its reasonable judgment determines that any work or materials fail to conform to the approved Plans and Specifications or sound building practices, or that they otherwise depart from any of the requirements of this Agreement, the Bond Owner may require the work to be stopped and withhold its consent to disbursements until the matter is corrected. If this occurs, the Borrower must promptly correct the work to the Bond Owner's reasonable satisfaction and halt all other work pending completion of such corrective work. No such action by the Bond Owner will affect the Borrower's obligation to complete the Project on or before the Bond Owner's Required Completion Date set forth in the Pro Forma Schedule.

Section 5.15 **Protection Against Lien Claims**. The Borrower must pay or otherwise discharge promptly all claims and liens for labor done and materials and services furnished in connection with the Rehabilitation of the Project. Notwithstanding the foregoing sentence and subject to the terms and requirements of **Section 5.9** and **Section 12.32**, the Borrower has the right to contest in good faith any claim or lien, provided that it does so diligently and without prejudice to the Bond Owner or delay in completing the Project. Promptly upon the Bond Owner's request, the Borrower must provide a bond, cash deposit, or other security in accordance with **Section 5.9**.

Section 5.16 **Cooperation**. The Borrower will reasonably cooperate at all times with the Issuer, the Trustee, and the Bond Owner in bringing about the timely completion of the Project, and the Borrower must resolve all disputes arising during the Rehabilitation of the Project in a manner allowing work to proceed expeditiously. Further, from time to time the Bond Owner may direct the Borrower to file such reasonable additional reports for compliance with State or federal laws or regulations in connection with administration of the Bond Loan and operation of the Project hereunder and the Borrower agrees to file such reports promptly. Further, the Borrower covenants and agrees to execute such additional instruments as may be reasonably requested by the Bond Owner, the Trustee, or the Issuer in order to carry out the provisions of this Agreement and the other Bond Loan Documents and to perfect or give further assurances of any of the rights granted or provided for in the Bond Documents and the Bond Loan Documents.

Section 5.17 **Income from Project**. The Borrower must first apply all Project Revenues derived from the Project, to pay costs and expenses then due and payable and associated with the ownership, maintenance, development, operation, and marketing of the Project, including all amounts then required to be paid under this Agreement and the other Bond Loan Documents, in accordance with applicable agreements and applicable Requirements of Law, before using or applying such income for any other purpose.

Section 5.18 **Payment of Expenses**. The Borrower must pay the Bond Owner's reasonable costs and expenses incurred in connection with the administration of, and approval of disbursement of proceeds of, the Bond Loan. The Borrower must also pay any and all of the Bond Owner's reasonable costs and expenses incurred in connection with any revisions, extensions, renewals, modifications, or "workouts" of the Bond Loan, and in the exercise of any of the Bond



Owner's rights or remedies under this Agreement. Such reasonable costs and expenses include, without limitation, charges for title insurance (including endorsements), filing, recording and escrow charges, reasonable fees for appraisals and appraisal reviews, architectural and engineering review and services, construction services and cost engineering and environmental review and services, zoning and entitlement review and services, mortgage taxes, document review and preparation, reasonable legal fees and expenses of the Bond Owner's counsel, survey charges, insurance premiums, and any other reasonable fees and costs for services, regardless of whether such services are furnished by the Bond Owner's employees, or agents or independent contractors. The Borrower acknowledges that amounts payable under this Section are not included in any loan or commitment fees for the Bond Loan. Without limiting the generality of the foregoing, as a condition to the approval of a Draw Request or Requisition, the Borrower shall pay to the Bond Owner a construction inspection/administrative fee ("**Construction Inspection Fee**") of \$\_\_\_\_\_ per monthly inspection (plus travel expenses) provided that the fee for the initial inspection and review of the plans and specifications shall be \$\_\_\_\_\_ (or such other amounts as may be owing to the Bond Owner's construction consultant for such inspections). All such sums reasonably and actually incurred by the Bond Owner and not reimbursed by the Borrower promptly upon Borrower's receipt of written demand together with a reasonable accounting of all amounts for payment will be considered an additional loan to the Borrower, secured by the Bond Mortgage and the other collateral held by the Trustee in connection with the Bond Loan, and bearing interest at the Default Rate; provided, however, that interest on any such advances will be included in gross income for federal income tax purposes. In addition, the Borrower must pay to the Issuer all fees and expenses of Issuer described in the Indenture.

Section 5.19 **Performance of Acts.** Upon the Bond Owner's reasonable request, the Borrower must perform all acts necessary or advisable to perfect any lien or security interest provided for in the Bond Loan Documents or to carry out the intent of the Bond Loan Documents.

Section 5.20 **Management Agreement.** The Property Manager and the management agreement with the Property Manager shall be subject to the prior written approval of the Bond Owner prior to the Bond Closing Date, which approval shall not be unreasonably delayed, conditioned or withheld. The management agreement shall not be materially amended, modified, or supplemented, or terminated, or canceled without the prior written approval of the Bond Owner, which approval shall not be unreasonably delayed, conditioned or withheld. The Borrower shall obtain the Bond Owner's approval of the Borrower's management plan for the Project, which plan shall provide for training of the onsite staff in full compliance with federal, state and local affordable housing requirements applicable to the Project.

Section 5.21 **Perfection and Continued Perfection.** The Borrower shall take such actions as reasonably requested by Bond Owner (including the filing of UCC financing statements) as may be necessary to (a) initially perfect the lien and security interests of the Trustee pursuant to the Bond Mortgage and the Indenture, as first priority liens, and (b) maintain the liens and security interests of the Trustee pursuant to the Bond Mortgage and the Indenture as continuously perfected first priority liens on the property therein described.

Section 5.22 **Appraisals.** If reasonably required by the Bond Owner, or if required by law or regulations, the Bond Owner shall have the right to order Appraisals of the Project from time to time (but in no event more often than annually) from an appraiser selected by the Bond

Owner, which Appraisals shall comply with all federal and state standards for appraisals and otherwise shall be satisfactory to the Bond Owner in all material respects. The Borrower agrees to pay the reasonable cost and expense for all appraisals and reviews thereof ordered by the Bond Owner pursuant to this Section. It shall not be an Event of Default under this Agreement if the Appraised Value of the Project goes down (provided that in connection with any re-appraisal of the property, the Loan to Value Ratio as calculated pursuant to this Agreement shall not exceed 80%).

Section 5.23 **Reserve Accounts.** The Borrower shall establish and fund the Reserve Accounts in accordance with **Schedule F** attached hereto.

Section 5.24 **HAP Compliance.** The Borrower shall comply with all requirements of the Original HAP Contract (and the HAP Contract once executed). Borrower shall fully comply with all terms and requirements for maintaining all units in the Project as project-based housing choice voucher Section 8 units pursuant to the Original HAP Contract (and the HAP Contract once executed) and 24 CFR Part 983. The Borrower shall promptly furnish the Bond Owner with a copy of the fully executed the HAP Contract once it is issued.

Section 5.25 **Seller Loan.** Borrower shall fully comply with all terms and requirements of the Seller Loan Documents.

Section 5.26 **USA Patriot Act.** Bond Owner hereby notifies the Borrower that pursuant to the requirements of the USA Patriot Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the “**Patriot Act**”), it is required to obtain, verify and record information that identifies the Borrower, which information includes the name and address of the Borrower and other information that will allow Bond Owner to identify the Borrower in accordance with the Patriot Act.

Section 5.27 **Stored Materials.**

(a) Bond Owner shall have the right to approve or disapprove in its reasonable discretion disbursements for any materials to be used for the Rehabilitation of the Project and not to be immediately incorporated into and made a part of the Improvements (“**Stored Materials**”). Bond Owner will not approve disbursements for Stored Materials until Borrower complies with the conditions set forth below. Without the Bond Owner’s prior written consent, Stored Materials in no event shall exceed \$50,000 for offsite materials and deposits, at any one time

(b) As a condition precedent to the disbursement of Capital Contributions from the Capital Contribution Account or from the Bond Loan from the Project Fund for Stored Materials, Borrower shall supply Bond Owner, as reasonably requested by Bond Owner (x) evidence reasonably satisfactory to Bond Owner that the Stored Materials are included in the coverage of the insurance policies required by this Agreement; (y) evidence reasonably satisfactory to Bond Owner from the Borrower or the Contractor that, upon payment for such Stored Materials, ownership thereof will vest in Borrower free of any liens or claims of third parties; (z)(A) evidence reasonably satisfactory to Bond Owner that the Stored Materials are satisfactorily stored at the Project to protect against theft or

damage, or (B) if the Stored Materials are not stored at the Project, (1) evidence satisfactory to Bond Owner that the Stored Materials are stored in a bonded warehouse or storage yard approved by Bond Owner, and the warehouse or yard has been notified that Bond Owner has a security interest in the subject Stored Materials, and (2) Bond Owner shall have received from Borrower or the Contractor the original warehouse receipt. With Bond Owner's prior written approval, Stored Materials may be stored in the yard or warehouse of the seller or fabricator, subject to satisfaction of conditions (x), (y), (z)(B)(1) and (z)(B)(2) in this subsection **(b)**, and *provided further* that Bond Owner receives satisfactory evidence that the Stored Materials are protected against theft or damage, have been suitably identified as belonging to Borrower for use in the Project, and that such seller or fabricator has been notified of the security interest of Bond Owner therein.

Section 5.28 **Environmental Reports.** Borrower agrees to provide Bond Owner, in a timely manner, with copies of all environmental reports on the Project generated during the term of the Bond Loan.

Section 5.29 **Equity Funding.** Prior to the Bond Closing Date, Investor Limited Partner disclosed to Bond Owner the upper tier funding source of the Capital Contributions. If, after the Bond Closing, the Investor Limited Partner transfers the Investor Limited Partner's interest in the Borrower other than to the Bond Owner or an affiliate thereof, the Investor Limited Partner shall provide Bond Owner with written notice of the transfer and the identity of all partners or members of the entity (the "**Fund**") to which the Investor Limited Partner's limited partnership interest was transferred. All information received in connection with the foregoing shall be kept confidential by Bond Owner. If prior to the earlier to occur of (i) the full and final payment of the Bond Loan, (ii) the Stabilized Occupancy Date, or (iii) the payment in full of the Capital Contribution, subject to any adjusters, in the Partnership Agreement, any partner or member in the Fund is substituted for any one or more other Persons, the Investor Limited Partner shall promptly notify Bond Owner in writing of the substitution. The Investor Limited Partner (or another subsidiary or affiliate of RBC Community Investments, LLC) shall in any event be the general partner (or manager, if applicable) of the Fund. The partners or members owning in the aggregate not less than 75% of the ownership interests in the Fund will be investment grade (defined as BBB- or better rated by S&P or similar rating agency) financial institutions or corporations, or wholly-owned subsidiaries of such entities, or otherwise approved by Bond Owner in writing.

Section 5.30 **Developer Fee/Contractor Profit.** The Developer Fee shall be paid pursuant to the terms of **Section 7(c)** of **Schedule D** of this Agreement. Contractor profit and overhead may be paid, as budgeted, on a percentage of completion basis.

## ARTICLE 6 **DAMAGE, DESTRUCTION, AND CONDEMNATION**

Section 6.1 **Damage and Destruction.** If the Bonds are Outstanding when the Project is damaged or destroyed by fire or other casualty, the Borrower shall restore the Project if the conditions contained in **Section 6.4** are satisfied; otherwise, the Borrower shall use any proceeds received with respect of such casualty to prepay the Bond Loan in whole or in part.

Section 6.2 **Condemnation.** Subject to the terms of the Bond Mortgage, if the Bonds are the Bonds outstanding when the Project or any part thereof is taken by Condemnation, the Borrower shall restore the Project if the conditions contained in **Section 6.4** are satisfied; otherwise the Borrower shall use any proceeds received with respect of such condemnation to prepay the Bond Loan in whole or in part or take such other action, as is required or permitted by the Bond Mortgage and the other Bond Loan Documents.

Section 6.3 **Parties To Give Notice.** In the case of material damage to or destruction of all or a substantial part of the Project, the Borrower shall give prompt notice thereof to the Issuer, the Trustee, and the Bond Owner in the manner prescribed by **Section 12.2**. In the case of a taking or proposed taking of all or any part of the Project by Condemnation, the party hereto upon which notice of such taking or proposed taking is served shall give prompt notice thereof to the Issuer, the Trustee, and the Bond Owner in the manner prescribed by **Section 12.2**. Any such notice shall describe generally the nature and extent of such damage, destruction, taking, or proposed taking.

Section 6.4 **Conditions to Restoration.** Notwithstanding anything in the Bond Mortgage to the contrary, the following shall be conditions precedent to the obligation of the Borrower to restore the Project following the occurrence of a casualty or condemnation:

- (a) No Event of Default shall have occurred, and no event which, with the giving of notice or the passage of time, or both, would be an Event of Default shall have occurred and be continuing;
- (b) The Bond Owner shall have received and approved each of the following (which approval shall not be unreasonably withheld, conditioned or delayed):
  - (i) Plans and Specifications for the restoration of the Project;
  - (ii) Copy of the construction contract for the restoration of the Project;
  - (iii) A payment and performance bond for the restoration of the Project provided by a surety acceptable to the Bond Owner (with an AM Best rating of “A/VIII”);
  - (iv) assignments by the Borrower to the Trustee of each of the contracts and subcontracts described in clause (ii), in form and content satisfactory to the Bond Owner, and consents to such assignment, in form and content satisfactory to the Bond Owner, duly executed by the contractors and subcontractors; and
  - (v) a line item budget setting forth, in form and level of detail satisfactory to the Bond Owner, all costs of Rehabilitation of the Project in accordance with the Plans and Specifications described in clause **(i)**, above;
- (c) All proceeds of casualty insurance policies or condemnation awards less the costs of collection, as the case may be, shall have been received in an account at the Trustee (the “**Restoration Account**”) and the Borrower hereby grants a security interest in each of

said accounts to the Issuer, and the Issuer hereby assigns such security interest to Trustee on behalf of the Bond Owner; and

(d) it is determined by an appraiser reasonably selected by the Bond Owner at the expense of the Borrower (unless waived by the Bond Owner) that the Project will, following reconstruction, have a fair market value which is at least equal to its value immediately prior to the casualty or condemnation.

Section 6.5 **Conditions to Disbursement of Proceeds.** If all of the foregoing conditions are satisfied, proceeds in the Restoration Account shall be disbursed subject to the consent of the Bond Owner in the same manner and subject to the same conditions, including without limitation consent of the Bond Owner to each disbursement (subject to adjustment to reflect the different nature of construction) as applied with respect to the initial disbursement of the proceeds of the Bond Loan (as provided in **Schedule D**). When obtaining disbursements from the Restoration Account, the Borrower agrees to the conditions contained herein, and agrees to comply with the procedures otherwise required by Trustee. If the foregoing conditions are not satisfied, or if, after satisfaction of such conditions any proceeds of casualty insurance or condemnation awards remain, all such proceeds shall be remitted to the Trustee promptly on account of the outstanding balance on the Bond Note for application to the redemption in whole or in part of the Bonds.

## ARTICLE 7 **COVENANTS OF ISSUER AND BORROWER**

Section 7.1 **Covenant for the Benefit of the Bond Owner.** The Borrower recognizes the authority of the Issuer to assign its interest in and right to receive moneys receivable under this Agreement (other than the Unassigned Issuer's Rights) to the Trustee as security for the payment of the principal of and interest and redemption premium, if any, on the Bonds, and the payment of all Additional Charges. The Borrower hereby agrees to be bound by, and grants a security interest to the Trustee in any right and interest the Borrower may have in sums held in the Funds described in the Indenture, pursuant to the terms and conditions thereof, to secure payment of the Bonds and payments made under the Bond Loan Documents. Each of the terms and provisions of this Agreement is a covenant for the use and benefit of the Bond Owner, so long as the Bonds shall remain outstanding; but upon discharge of the Bonds in accordance with Article 8 of the Indenture and payment of all reasonable fees and charges incurred by the Issuer and the Trustee all references in this Agreement to the Bond Owner, and, the Bonds, shall be ineffective, and the Bond Owner shall thereafter have no rights hereunder, save and except those that shall have theretofore vested or that arise from provisions hereunder or under the Regulatory Agreements, once executed, which survive termination of this Agreement.

### Section 7.2 **Inspection and Access.**

(1) The Borrower agrees that, upon prior reasonable notice (if at least 48 hours) by the Issuer, Bond Owner and/or the Trustee to the Borrower and the Property Manager (provided no such prior notice shall be required if an Event of Default is then continuing) but specifically subject to the rights of the tenants under the leases, the Issuer, the Bond Owner, the Trustee, and their duly authorized agents shall have the right to examine and inspect during normal business hours on a

Business Day, and for that purpose to enter upon, the Project, and shall also have such right of access thereto at reasonable times and under reasonable conditions but specifically subject to the rights of tenants in possession as may be reasonably necessary to cause the Project to be properly maintained in accordance with **Article 5** of this Agreement and in accordance with the applicable provisions of the other Bond Loan Documents.

(2) The Borrower hereby covenants to execute, acknowledge, and deliver all such further documents, and do all such other acts and things as may be necessary in order to grant to the Issuer, Bond Owner, and the Trustee the rights of access and entry described herein and agrees that such rights of access and entry shall not be terminated, curtailed, or otherwise limited by any assignment, lease, or other transfer of the Project by the Borrower to any other person; provided, that such rights will be specifically subject to the rights of tenants in possession under their respective leases.

Section 7.3 **INDEMNITY.**

(1) **Indemnification of Issuer.**

(a) TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE BORROWER HEREBY COVENANTS AND AGREES AS FOLLOWS: TO PROTECT, INDEMNIFY AND SAVE THE ISSUER AND ITS GOVERNING BOARD MEMBERS, DIRECTORS, OFFICERS, AGENTS AND EMPLOYEES (EACH A "GOVERNMENTAL INDEMNIFIED PARTY") HARMLESS FROM AND AGAINST ALL LIABILITY, LOSSES, DAMAGES, COSTS, EXPENSES (INCLUDING REASONABLE ATTORNEYS' FEES), TAXES, CAUSES OF ACTION, SUITS, CLAIMS, DEMANDS AND JUDGMENTS OF ANY NATURE OR FORM, BY OR ON BEHALF OF ANY PERSON ARISING IN ANY MANNER FROM THE TRANSACTION OF WHICH THIS AGREEMENT IS A PART OR ARISING IN ANY MANNER IN CONNECTION WITH THE PROJECT OR THE FINANCING OF THE PROJECT INCLUDING, WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, ARISING FROM (I) THE WORK DONE ON THE PROJECT OR THE OPERATION OF THE PROJECT DURING THE TERM OF THIS AGREEMENT OR (II) ANY BREACH OR DEFAULT ON THE PART OF THE BORROWER IN THE PERFORMANCE OF ANY OF ITS OBLIGATIONS UNDER THIS AGREEMENT, OR (III) THE PROJECT OR ANY PART THEREOF, OR (IV) ANY VIOLATION OF CONTRACT, AGREEMENT OR RESTRICTION RELATING TO THE PROJECT EXCLUDING THE PAYMENT OF THE PRINCIPAL, PREMIUM, IF ANY, AND INTEREST ON THE BONDS, OR (V) ANY LIABILITY, VIOLATION OF LAW, ORDINANCE OR REGULATION AFFECTING THE PROJECT OR ANY PART THEREOF OR THE OWNERSHIP OR OCCUPANCY OR USE THEREOF. UPON NOTICE FROM A GOVERNMENTAL INDEMNIFIED PARTY, THE BORROWER SHALL DEFEND THE GOVERNMENTAL INDEMNIFIED PARTIES IN ANY ACTION OR PROCEEDING BROUGHT IN CONNECTION WITH ANY OF THE ABOVE; PROVIDED, HOWEVER, THAT THE GOVERNMENTAL INDEMNIFIED PARTY SHALL HAVE THE RIGHT TO EMPLOY SEPARATE COUNSEL IN ANY ACTION DESCRIBED IN THE PRECEDING SENTENCE AT THE EXPENSE OF THE BORROWER.

(b) IT IS THE INTENTION OF THE PARTIES HERETO THAT THE GOVERNMENTAL INDEMNIFIED PARTIES SHALL NOT INCUR PECUNIARY LIABILITY BY REASON OF THE TERMS OF THIS AGREEMENT OR BY REASON OF THE UNDERTAKINGS REQUIRED OF THE GOVERNMENTAL INDEMNIFIED PARTIES IN CONNECTION WITH THE ISSUANCE OF THE BONDS, INCLUDING BUT NOT LIMITED TO THE EXECUTION AND DELIVERY OF THE INDENTURE, THIS AGREEMENT, THE TAX EXEMPTION AGREEMENT, THE TAX REGULATORY AGREEMENT, AND ALL OTHER INSTRUMENTS AND DOCUMENTS REQUIRED TO CLOSE THE TRANSACTION; THE PERFORMANCE OF ANY ACT REQUIRED OF THE GOVERNMENTAL INDEMNIFIED PARTIES BY THIS AGREEMENT; OR THE PERFORMANCE OF ANY ACT REQUESTED OF A GOVERNMENTAL INDEMNIFIED PARTY BY THE BORROWER OR IN ANY WAY ARISING FROM THE TRANSACTION OF WHICH THIS AGREEMENT IS A PART OR ARISING IN ANY MANNER IN CONNECTION WITH THE PROJECT OR THE FINANCING OF THE PROJECT, INCLUDING BUT NOT LIMITED TO THE EXECUTION AND DELIVERY OF THE INDENTURE, THIS AGREEMENT, THE TAX EXEMPTION AGREEMENT, THE TAX REGULATORY AGREEMENT AND ALL OTHER INSTRUMENTS AND DOCUMENTS REQUIRED TO CLOSE THE TRANSACTION; NEVERTHELESS, IF A GOVERNMENTAL INDEMNIFIED PARTY SHOULD INCUR ANY SUCH PECUNIARY LIABILITY WITH RESPECT TO EVENTS OCCURRING AFTER THE DATE HEREOF, THEN IN SUCH EVENT THE BORROWER SHALL INDEMNIFY AND HOLD THE GOVERNMENTAL INDEMNIFIED PARTIES HARMLESS AGAINST ALL CLAIMS BY OR ON BEHALF OF ANY PERSON, ARISING OUT OF THE SAME, AND ALL COSTS AND EXPENSES INCURRED IN CONNECTION WITH ANY SUCH CLAIM OR IN CONNECTION WITH ANY ACTION OR PROCEEDING BROUGHT THEREON, AND UPON TIMELY NOTICE FROM A GOVERNMENTAL INDEMNIFIED PARTY THE BORROWER SHALL DEFEND THE GOVERNMENTAL INDEMNIFIED PARTIES IN ANY SUCH ACTION OR PROCEEDING, AND PROVIDE COMPETENT COUNSEL SATISFACTORY TO THE GOVERNMENTAL INDEMNIFIED PARTY AND THE BORROWER SHALL PAY THE GOVERNMENTAL INDEMNIFIED PARTY'S EXPENSES INCLUDING PAYMENT OF THE COUNSEL USED BY THE GOVERNMENTAL INDEMNIFIED PARTY; PROVIDED HOWEVER, THAT A GOVERNMENTAL INDEMNIFIED PARTY SHALL HAVE THE RIGHT TO EMPLOY SEPARATE COUNSEL IN ANY ACTION DESCRIBED IN THE PRECEDING SENTENCE AT THE EXPENSE OF THE BORROWER.

(c) NOTWITHSTANDING ANY PROVISION OF THIS AGREEMENT TO THE CONTRARY, EACH GOVERNMENTAL INDEMNIFIED PARTY SHALL BE INDEMNIFIED BY THE BORROWER WITH RESPECT TO LIABILITIES ARISING FROM SUCH PARTY'S OWN GROSS NEGLIGENCE, NEGLIGENCE OR BREACH OF CONTRACTUAL DUTY, BUT NOT FOR ANY LIABILITIES ARISING FROM THE SUCH PARTY'S OWN BAD FAITH, FRAUD OR WILLFUL MISCONDUCT.

**(2) Other Indemnification Provisions.**

(a) THE BORROWER WILL PAY, DEFEND, AND WILL PROTECT, INDEMNIFY, AND SAVE THE TRUSTEE, THE BOND OWNER, AND EACH HOLDER OF THE BONDS (INCLUDING WITHOUT LIMITATION THE BOND OWNER), AND THE DIRECTORS, OFFICIALS, OFFICERS, ATTORNEYS, AGENTS, AND EMPLOYEES OF EACH OF THEM AND ANY PERSON WHO CONTROLS ANY OF THEM WITHIN THE MEANING OF THE SECURITIES ACT OF 1933 (FOR PURPOSES OF THIS **SECTION 7.3** ONLY, COLLECTIVELY, THE “**INDEMNIFIED PARTIES**”) FROM AND AGAINST ALL LIABILITIES, LOSSES, DAMAGES, REASONABLE COSTS AND EXPENSES (INCLUDING WITHOUT LIMITATION REASONABLE ATTORNEYS’ FEES, LITIGATION AND COURT COSTS, AMOUNTS PAID IN SETTLEMENT AND AMOUNTS PAID TO DISCHARGE JUDGMENTS) ACTUALLY INCURRED, CAUSES OF ACTION (WHETHER IN CONTRACT, TORT, OR OTHERWISE), SUITS, CLAIMS, DEMANDS, AND JUDGMENTS OF EVERY KIND, CHARACTER, AND NATURE WHATSOEVER ASSERTED AGAINST ANY INDEMNIFIED PARTY BY ANY THIRD PARTY (COLLECTIVELY REFERRED TO HEREIN AS THE “**LIABILITIES**”) DIRECTLY OR INDIRECTLY ARISING FROM OR RELATING TO THE BONDS, THE BOND LOAN OF THE PROCEEDS OF THE BONDS, THIS AGREEMENT AND THE OTHER BOND LOAN DOCUMENTS, THE PROJECT, THE BOND MORTGAGE, THE INDENTURE, OR ANY DOCUMENT RELATED TO THE ISSUANCE AND SALE OF THE BONDS (BUT EXCLUDING FROM THE OBLIGATIONS UNDERTAKEN BY THE BORROWER PURSUANT TO THIS **SECTION 7.3** ANY OBLIGATIONS TO PAY PRINCIPAL OR INTEREST ON THE BOND LOAN OR THE BONDS), INCLUDING, BUT NOT LIMITED TO, THE FOLLOWING:

(i) THE INDENTURE, THIS AGREEMENT, AND EACH REGULATORY AGREEMENT, ONCE EXECUTED, OR THE EXECUTION OR AMENDMENT THEREOF OR THE TRANSACTIONS CONTEMPLATED THEREBY, INCLUDING THE ISSUANCE, SALE, RESALE, OR REMARKETING OF THE BONDS OR ANY OF THEM;

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

(iii) ANY INJURY TO OR DEATH OF ANY PERSON OR DAMAGE TO PROPERTY IN OR UPON THE PROJECT OR GROWING OUT OF OR CONNECTED WITH THE USE, NON-USE, CONDITION OR OCCUPANCY OF THE PROJECT OR ANY PART THEREOF;



(iv) ANY LIEN OR CHARGE UPON PAYMENTS BY THE BORROWER TO THE ISSUER AND THE TRUSTEE HEREUNDER, OR ANY TAXES (INCLUDING, WITHOUT LIMITATION, ALL AD VALOREM TAXES AND SALES TAXES), ASSESSMENTS, IMPOSITIONS, AND OTHER CHARGES IMPOSED ON THE ISSUER OR THE TRUSTEE IN RESPECT OF ANY PORTION OF THE PROJECT;

(v) ACTUAL VIOLATION BY THE BORROWER OF ANY AGREEMENT OR CONDITION OF THIS AGREEMENT, THE TAX REGULATORY AGREEMENT, ONCE EXECUTED, OR THE BOND MORTGAGE;

(vi) ACTUAL VIOLATION BY THE BORROWER OF ANY CONTRACT, AGREEMENT, OR RESTRICTION RELATING TO THE PROJECT;

(vii) ACTUAL VIOLATION BY THE BORROWER OF ANY LAW, ORDINANCE, OR REGULATION AFFECTING THE PROJECT, OR ANY PART THEREOF OR THE OWNERSHIP, OCCUPANCY, OR USE THEREOF, INCLUDING WITHOUT LIMITATION ANY VIOLATION OF ANY APPLICABLE ENVIRONMENTAL LAW, RULE, OR REGULATION WITH RESPECT TO, OR THE RELEASE OF ANY HAZARDOUS SUBSTANCE FROM, THE PROJECT OR ANY PART THEREOF;

(viii) THE DEFEASANCE OR REDEMPTION, IN WHOLE OR IN PART, OF THE BONDS;

(ix) ANY STATEMENT, INFORMATION, OR CERTIFICATE FURNISHED BY THE BORROWER TO THE ISSUER WHICH IS INTENTIONALLY MISLEADING, UNTRUE, OR INCORRECT IN ANY MATERIAL RESPECT, INCLUDING WITHOUT LIMITATION ANY UNTRUE STATEMENT OR MISLEADING STATEMENT OF A MATERIAL FACT BY THE BORROWER CONTAINED IN ANY OFFERING STATEMENT OR DOCUMENT FOR THE BONDS OR ANY OF THE DOCUMENTS RELATING TO THE BONDS TO WHICH THE BORROWER IS A PARTY, OR ANY MATERIAL OMISSION FROM ANY OFFERING STATEMENT OR DOCUMENT FOR THE BONDS OF ANY MATERIAL FACT NECESSARY TO BE STATED THEREIN IN ORDER TO MAKE THE STATEMENTS MADE THEREIN BY THE BORROWER, IN THE LIGHT OF THE CIRCUMSTANCES UNDER WHICH THEY WERE MADE, NOT MISLEADING;

(x) ANY AND ALL LIABILITIES DIRECTLY OR INDIRECTLY ARISING OUT OF OR RESULTING FROM CONSTRUCTION OF ANY IMPROVEMENTS ON THE PROJECT, INCLUDING ANY DEFECTIVE WORKMANSHIP OR MATERIALS;

(xi) ANY FAILURE TO SATISFY ANY REQUIREMENTS OF ANY APPLICABLE LAWS, REGULATIONS, ORDINANCES, GOVERNMENTAL POLICIES OR STANDARDS, REPORTS, SUBDIVISION MAPS, OR DEVELOPMENT AGREEMENTS THAT ACTUALLY APPLY AND PERTAIN TO THE PROJECT;

(xii) BREACH OF ANY REPRESENTATION OR WARRANTY MADE OR GIVEN BY THE BORROWER TO ANY OF THE INDEMNIFIED PARTIES OR TO ANY PROSPECTIVE OR ACTUAL BUYER OF ALL OR ANY PORTION OF THE PROJECT;

(xiii) ANY CLAIM OR CAUSE OF ACTION OF ANY KIND BY ANY PARTY THAT ANY INDEMNIFIED PARTY IS LIABLE FOR ANY ACT OR OMISSION OF THE BORROWER OR ANY OTHER PERSON OR ENTITY IN CONNECTION WITH THE OWNERSHIP, SALE, OPERATION, OR DEVELOPMENT OF THE PROJECT; AND

(xiv) ANY DECLARATION OF TAXABILITY OF INTEREST ON THE BONDS, OR ALLEGATIONS OR REGULATORY INQUIRY THAT INTEREST ON THE BONDS IS TAXABLE, FOR FEDERAL TAX PURPOSES, EXCEPT BY REASON OF BEING HELD BY A "SUBSTANTIAL USER" OF THE PROJECT OR A "RELATED PERSON" WITHIN THE MEANING OF SECTION 147(A) OF THE CODE.

(b) THE BORROWER ALSO AGREES TO INDEMNIFY AND HOLD HARMLESS EACH OF THE INDEMNIFIED PARTIES FROM AND AGAINST THE LIABILITIES DIRECTLY OR INDIRECTLY ARISING FROM OR RELATING TO ANY FRAUD OR MISREPRESENTATIONS OR OMISSIONS BY THE BORROWER OCCURRING DURING ANY PROCEEDINGS OF THE ISSUER RELATING TO THE ISSUANCE OF THE BONDS OR PERTAINING TO THE FINANCIAL CONDITION OF THE BORROWER WHICH, IF KNOWN TO THE BOND OWNER PURCHASING THE BONDS, MIGHT BE CONSIDERED A FACTOR IN ITS DECISION TO PURCHASE THE BONDS.

(c) NOTHING IN **SECTION 7.3(2)(a)** SHALL BE DEEMED TO REQUIRE THE BORROWER TO PROVIDE INDEMNIFICATION TO AN INDEMNIFIED PARTY WITH RESPECT TO LIABILITIES ARISING FROM THE FRAUD, THE NEGLIGENCE (EXCEPT IN THE CASE OF ISSUER AND THE BOND OWNER), OR WILLFUL MISCONDUCT OF ANY INDEMNIFIED PARTY. THE BOND OWNER AND THE TRUSTEE SHALL BE INDEMNIFIED BY THE BORROWER WITH RESPECT TO LIABILITIES ARISING SOLELY AND EXCLUSIVELY FROM ITS OWN NEGLIGENCE TO THE EXTENT PERMITTED BY LAW AND THE PROJECT DOCUMENTS.

(d) PROMPTLY AFTER RECEIPT BY AN INDEMNIFIED PARTY OF ACTUAL NOTICE OF THE COMMENCEMENT OF ANY ACTION OR PROCEEDING WITH RESPECT TO WHICH INDEMNIFICATION IS BEING

SOUGHT HEREUNDER, SUCH INDEMNIFIED PARTY WILL AS SOON AS REASONABLY PRACTICAL NOTIFY THE BORROWER OF THE COMMENCEMENT OF SUCH PROCEEDING. RECEIPT OF SUCH NOTIFICATION SHALL BE A NECESSARY CONDITION PRECEDENT TO THE BORROWER'S INDEMNIFICATION OBLIGATION HEREUNDER, BUT FAILURE OF THE BORROWER TO RECEIVE SUCH NOTIFICATION OR DEFECTS IN SUCH NOTIFICATION WILL NOT RELIEVE IT FROM ANY LIABILITY TO AN INDEMNIFIED PARTY WHICH THE BORROWER MAY HAVE OTHERWISE. AS TO PARTIES OTHER THAN ISSUER, IF THE BORROWER SO ELECTS, IT MAY ASSUME THE DEFENSE OF SUCH ACTION OR PROCEEDING, INCLUDING THE EMPLOYMENT OF COUNSEL REASONABLY SATISFACTORY TO THE INDEMNIFIED PARTY AND WILL PAY THE FEES AND DISBURSEMENTS OF SUCH COUNSEL. HOWEVER, NOTWITHSTANDING THE FOREGOING, (I) IF COUNSEL FOR SUCH INDEMNIFIED PARTY AND COUNSEL FOR THE BORROWER AGREE THAT (A) HAVING COMMON COUNSEL TO REPRESENT BOTH THE BORROWER AND THE INDEMNIFIED PARTY WOULD PRESENT A CONFLICT OF INTEREST OR (B) DEFENSES ARE AVAILABLE TO SUCH INDEMNIFIED PARTY WHICH ARE NOT AVAILABLE TO THE BORROWER OR (II) IF THE BORROWER FAILS TO ASSUME THE DEFENSE OF THE ACTION OR PROCEEDING IN A TIMELY MANNER, THEN SUCH INDEMNIFIED PARTY MAY EMPLOY SEPARATE COUNSEL TO REPRESENT OR DEFEND IT IN ANY SUCH ACTION OR PROCEEDING AND THE BORROWER WILL PAY THE REASONABLE FEES AND DISBURSEMENTS OF SUCH COUNSEL. IN ANY ACTION OR PROCEEDING THE DEFENSE OF WHICH THE BORROWER ASSUMES, THE INDEMNIFIED PARTY WILL HAVE THE RIGHT TO PARTICIPATE IN SUCH LITIGATION AND TO RETAIN ITS OWN COUNSEL AT SUCH INDEMNIFIED PARTY'S OWN EXPENSE.

(e) THE INDEMNIFIED PARTIES, OTHER THAN THE BOND OWNER, SHALL BE CONSIDERED TO BE INTENDED THIRD PARTY BENEFICIARIES OF THIS AGREEMENT FOR PURPOSES OF **SECTION 7.3(2)**.

(3) THIS INDEMNIFICATION COVENANT SHALL SURVIVE REPAYMENT OF THE BOND LOAN AND THE BONDS.

(4) NOTWITHSTANDING ANY TRANSFER OF THE PROJECT TO ANOTHER OWNER IN ACCORDANCE WITH THE PROVISIONS OF THIS AGREEMENT PRIOR TO THE FULL AND FINAL PAYMENT OF THE BOND NOTE, THE BORROWER SHALL REMAIN OBLIGATED TO INDEMNIFY EACH GOVERNMENTAL INDEMNIFIED PARTY AND INDEMNIFIED PARTY PURSUANT TO THIS **SECTION 7.3** BUT ONLY FOR SUCH LIABILITIES ARISING FROM AND WITH RESPECT TO ACTION, INACTION, OR OTHER CIRCUMSTANCES OR EVENTS OCCURRING PRIOR TO SUCH TRANSFER, BUT ONLY IF THE BOND OWNER, THE ISSUER AND THE TRUSTEE HAVE CONSENTED TO SUCH TRANSFER. IN THAT EVENT, SUCH SUBSEQUENT OWNER SHALL INDEMNIFY ANY GOVERNMENTAL INDEMNIFIED PARTIES AND INDEMNIFIED PARTIES HEREUNDER FOLLOWING SUCH TRANSFER UNDER ALL OF THE TERMS AND CONDITIONS APPLICABLE TO BORROWER.

(5) ANYTHING TO THE CONTRARY IN ANY OTHER BOND LOAN DOCUMENT NOTWITHSTANDING, THE PROVISIONS OF THIS **SECTION 7.3** ARE NOT SECURED BY THE BOND MORTGAGE, AND SURVIVE THE TERMINATION OF THIS AGREEMENT, REPAYMENT OF THE BOND LOAN AND FORECLOSURE OF THE BOND MORTGAGE OR SIMILAR PROCEEDINGS, FINAL PAYMENT OR DEFEASANCE OF THE BONDS, AND (IN THE CASE OF THE TRUSTEE) ANY RESIGNATION OR REMOVAL, INsofar AS SUCH INDEMNIFICATION RELATES TO ACTIONS OR CLAIMS ARISING FROM THE TRUSTEE’S SERVICES PRIOR TO SUCH RESIGNATION OR REMOVAL.

(6) THE OBLIGATIONS OF THE BORROWER UNDER THIS **SECTION 7.3** ARE INDEPENDENT OF ANY OTHER CONTRACTUAL OBLIGATION OF THE BORROWER TO PROVIDE INDEMNITY TO THE GOVERNMENTAL INDEMNIFIED PARTIES OR THE INDEMNIFIED PARTIES NAMED HEREIN, AND THE OBLIGATION OF THE BORROWER TO PROVIDE INDEMNITY HEREUNDER MAY NOT BE INTERPRETED, CONSTRUED, OR LIMITED IN LIGHT OF ANY OTHER SEPARATE INDEMNIFICATION OBLIGATION OF THE BORROWER. ANY GOVERNMENTAL INDEMNIFIED PARTY OR INDEMNIFIED PARTY IS ENTITLED SIMULTANEOUSLY TO SEEK INDEMNITY UNDER THIS **SECTION 7.3** AND ANY OTHER PROVISION UNDER WHICH IT IS ENTITLED TO INDEMNITY FROM THE BORROWER, PROVIDED, HOWEVER, SUCH GOVERNMENTAL INDEMNIFIED PARTY OR INDEMNIFIED PARTY SHALL BE ENTITLED TO ONLY ONE RECOVERY OF INDEMNITY FOR THE SAME LIABILITIES.

(7) THE BORROWER’S DUTY AND OBLIGATION TO DEFEND, INDEMNIFY, AND HOLD HARMLESS THE GOVERNMENTAL INDEMNIFIED PARTIES AND THE INDEMNIFIED PARTIES SHALL SURVIVE THE TERM OF THE BONDS, THE RELEASE, RECONVEYANCE, OR PARTIAL RECONVEYANCE OF THE BOND MORTGAGE, THE TERMINATION OF THIS AGREEMENT, AND THE RESIGNATION OR REMOVAL OF THE TRUSTEE.

Section 7.4 **Keeping the Issuer Informed.** The Borrower must keep the Issuer informed, following its receipt of written request from Issuer, concerning the Borrower’s financial condition and business operations, the condition and all uses of the Project, including all changes in condition or use, and any and all other circumstances that are a Material Adverse Change.

Section 7.5 **Status of the Borrower.**

(1) Throughout the term of this Agreement, the Borrower will maintain its existence as a limited partnership organized under the laws of the State in good standing and qualified to transact business in the State and will not wind up or otherwise dispose of all or substantially all of its assets except as provided in the Bond Mortgage and **Section 5.2** of this Agreement.

(2) Notwithstanding the provisions of the Bond Mortgage, the Borrower shall not effect a merger, consolidation, or transfer if the result thereof would cause the interest on the Bonds (in the hands of any person who is not a “substantial user” of the Project or a “related person”) to become includable in gross income for federal income tax purposes.

(3) Upon any change in the general partner of the Borrower or the jurisdiction of organization of the Borrower, by way of substitution, sale, or otherwise, or a change in the jurisdiction of the Borrower's organization, the Issuer, the Trustee, and the Bond Owner shall be immediately informed, and if requested, the Borrower as newly constituted shall deliver to the Issuer, the Trustee, and the Bond Owner an instrument in form satisfactory to each of them affirming the liability of the Borrower hereunder, subject to all events to the terms and conditions of **Section 5.2** and **Section 11.10** hereof.

(4) The Borrower will maintain in effect and enforce policies and procedures designed to ensure compliance by the Borrower, its subsidiaries and their respective directors, officers, employees and agents with Anti-Corruption Laws and applicable Sanctions.

Section 7.6 **Execution of Financing Statements.** Without limiting **Section 7.4**, the Borrower agrees that it will, at its sole expense, file at the request of Bond Owner, any financing statements or continuation statements required or requested by the Bond Owner to perfect and preserve the security interest of the Issuer and the Trustee in this Agreement and the payments to be made hereunder, as granted in the Indenture.

Section 7.7 **Proceedings Relating to an Event of Taxability.** If any action or proceeding is commenced which questions the Federal Tax Status of the Bonds or which might result in an Event of Taxability, the Borrower, the Issuer, the Trustee, or the Bond Owner may contest such action or Event of Taxability. All reasonable costs actually incurred by Bond Owner, the Issuer and/or the Trustee in such contest shall be borne by the Borrower. No such action or proceeding shall be settled by the Borrower or the Trustee without the written consent of the Issuer and the Bond Owner, and, if no Default or Event of Default has then occurred and is continuing, no such action or proceeding shall be settled by the Issuer, the Trustee or the Bond Owner without the written consent of the Borrower.

Section 7.8 **Financial Information.** Borrower shall furnish to Bond Owner all financial and other information relating to Borrower and the Project as Bond Owner shall reasonably request, including, without limitation, all of the following:

(a) Within sixty (60) days from the end of each calendar month (beginning with the first month after the first calendar month ending after Rehabilitation of the Project is Substantially Completed), (including the last calendar month of each calendar year), unaudited financial statements showing the financial condition of Borrower at the close of the most recently completed calendar month, signed by a duly authorized officer of the general partner of Borrower, which financial statements shall include a balance sheet, statements of income, operating statement and expense and cash flow, a summary report of monthly rent collections for the period (including a rent roll identifying tenants by name and unit of occupancy), a report detailing the total number of units occupied and vacant as of the end of that calendar month, the current month's budget, year to date activity, year to date budget, a reconciliation of NOI for that month, any and all reports then required by the Credit Agency, and all other matters as the Bond Owner may reasonably request. The unaudited financial statements to be delivered under this subsection shall be accompanied by a certificate signed by a duly authorized representative of the manager (or managing member or general partner, as applicable) of Borrower, certifying that a review of the

activities of Borrower during the period covered by such financial statements has been made under his or her supervision with a view to determining whether Borrower has kept, observed, performed, and fulfilled all of its obligations under the Bond Loan Documents and that to the best of his or her knowledge Borrower is not at the time in default under the Bond Loan Documents, or, if to his or her knowledge Borrower shall be in default, specifying any such default and the nature and status thereof (after the Stabilized Occupancy Date, the foregoing information shall be provided quarterly within 60 days of the end of each fiscal quarter of Borrower instead of monthly);

(b) As soon as available, and in any event within 180 days after the end of each fiscal year of Borrower (beginning with the fiscal year ending on December 31, 2023), audited financial statements of Borrower prepared by an independent, third party accounting firm reasonably acceptable to Bank, showing the financial condition of Borrower at the close of the most recently completed fiscal year and the results of operations during such fiscal year, which financial statements shall include a balance sheet, statements of income and expense and cash flow and statement of contingent liabilities;

(c) As soon as available, and in any event within 120 days after the end of each calendar year (beginning with the fiscal year ending on December 31, 2023), annual financial statements of each Guarantor prepared on a form and in a manner reasonably acceptable to Bank, showing the financial condition of Guarantor at the close of the most recently completed calendar year, which financial statement shall include a balance sheet, statements of income and expense and cash flow and statement of contingent liabilities;

(d) Within 60 days after the end of each fiscal year of Borrower, evidence the Borrower is in compliance with all requirements of the Credit Agency and other otherwise for maintaining the Low Income Tax Credit and in compliance with each Regulatory Agreement;

(e) If requested by Bond Owner, within 30 days after filing thereof (but in no event later than October 31 of each calendar year following that tax year), copies of Borrower's and each Guarantor's respective most recently filed federal income tax returns (and all K-1's used for preparation, as applicable) and all requests for extensions to the filing thereof;

(f) Borrower agrees to promptly notify Bond Owner (A) of any change in direct or indirect ownership interests in the Borrower after the Bond Closing Date as certified to Bond Owner prior to or in connection with the execution of this Agreement (the "**Ownership Interest Certification**"), or (B) if the individual with significant managerial responsibility identified in the Ownership Interest Certification ceases to have that responsibility or if the information reported about that individual changes, and in connection with foregoing, Borrower hereby agrees to provide such information and documentation as Bond Owner may request during the term of the Bond Loan to confirm or update the continued accuracy of the information provided in connection with the foregoing; and

- (g) Within 30 days after receipt thereof, the results of any federal, state, local, or other governmental audit or inspection, including without limitation, those covering compliance, operation, or financial reporting.

Each of the Borrower statements, schedules and reports required by this **Section 7.8** shall be certified to be complete and accurate by an individual having authority to bind Borrower or the Property Manager where applicable, and shall be in such form and contain such detail as Bond Owner may reasonably require. If Borrower fails to provide in a timely manner the statements, schedules and reports required by this **Section 7.8**, Bond Owner shall have the right to have Borrower's books and records audited, at Borrower's expense, by independent certified public accountants selected by Bond Owner in order to obtain such statements, schedules and reports, and all related reasonable costs and expenses of Bond Owner shall become immediately due and payable. If an Event of Default has occurred and is continuing, Borrower shall deliver to Bond Owner upon written demand all books and records relating to the Project or its operation, provided, however, Borrower can keep copies thereof. Borrower authorizes Bond Owner to obtain a credit report on Borrower at any time.

Section 7.9 **Notices.** The Borrower, upon receipt of actual notice, must notify the Bond Owner, the Trustee and the Issuer promptly in writing of:

- (a) Any litigation not previously disclosed in writing to the Bond Owner and the Issuer affecting the Borrower or the General Partner wherein the amount in issue is in excess of \$75,000, and the amount claimed is not fully covered by insurance (except for permitted deductibles);
- (b) Any written or oral communication the Borrower receives from any governmental, judicial, or legal authority giving notice of any claim or assertion that the Project fails in any respect to comply with any of the Requirements or any other applicable governmental law and that failure is not fully cured within 30 days after the date the applicable notice is given;
- (c) Any Material Adverse Change in the physical condition of the Project (including any damage suffered as a result of earthquakes or floods or other natural disasters);
- (d) Any Material Adverse Change in the financial condition or operations of the Borrower or the General Partner or any change in the management of the Borrower or the General Partner, or any Guarantor (to the extent the Borrower has actual knowledge of such change);
- (e) Any default by the Contractor or any subcontractor, material supplier, or surety which could have a Material Adverse Change on any Guarantor, the Borrower, or any General Partner or the Project, or any Material Adverse Change in the financial condition or operations of any of them which could have a Material Adverse Change on the Borrower or the Project;
- (f) All material notices or other documents or communications that the Borrower receives from tax or Low Income Housing Tax Credit allocation authorities or

from the Issuer or which the Borrower gives to such entities with regard to or relating in any way to the Low Income Housing Tax Credit;

(g) Any Material Adverse Change in the Borrower's ability to timely perform any of its obligations under any of the Bond Loan Documents;

(h) To the Borrower's actual knowledge, any Material Adverse Change in any Guarantor's ability to timely perform any of its obligations under any of the Bond Loan Documents; and

(i) Actual knowledge of any governmental investigation against the Borrower, the General Partner, and, to Borrower's actual knowledge, any Guarantor (including within thirty (30) days after Borrower's actual receipt thereof, the results of any Federal, State, local, or other government audit or inspection, covering compliance, property condition, operations or financial reporting).

Section 7.10 **Notice of Change**. The Borrower shall give the Bond Owner, the Issuer, and the Trustee prior written notice of any change in:

(a) the location of its place of business or its chief executive office if it has more than one place of business; and

(b) the Borrower's name or business structure as a limited partnership.

Unless otherwise approved by the Bond Owner in writing, the Borrower agrees that all Mortgaged Property that consists of personal property (other than the books and records) will be located at the Project and that all books and records will be located at the Borrower's place of business, which place of business will be immediately identified to Bond Owner upon request.

Section 7.11 **Negative Covenants**. Without the Bond Owner's prior written consent, the Borrower may not:

(a) engage in any business activities substantially different from the Borrower's present business;

(b) liquidate or dissolve the Borrower's business;

(c) lease, sell, or dispose of (other than pursuant to leases allowed by this Agreement or the Bond Mortgage) all or a substantial part of the Borrower's business or the Borrower's assets (except worn, obsolete, or damaged property);

(d) enter into any consolidation, merger, pool, joint venture, syndicate, or other combination;

(e) incur, create, assume, or permit to exist any debt, except:

(i) the Bond Loan and all obligations under the Bond Loan Documents;



- (ii) Seller Loan (to the extent it is then subordinate to the Bond Loan in a manner satisfactory to Bond Owner);
- (iii) endorsements of negotiable instruments for collection or deposit in the ordinary course of business;
- (iv) obligations from time to time incurred in the ordinary course of business, other than for borrowed money; and
- (v) taxes, assessments, or other government charges which are not yet due or which are being contested in good faith by appropriate action promptly initiated and diligently conducted if a reserve shall have been made therefor as required by GAAP.
- (f) Create, incur, assume, or permit to exist any mortgage, pledge, security interest, lien, or similar encumbrance on any of the Borrower's assets, including, without limitation, any of the Project, acquire or agree to acquire assets under any conditional sale agreement or title retention contract, or the sale and leaseback any assets, except that the foregoing restrictions shall not apply to:
  - (i) liens for taxes, assessments, and other governmental charges not yet due;
  - (ii) liens of vendors, carriers, warehousemen, landlords, mechanics, laborers, and materialmen arising by law in the ordinary course of business for sums not yet due or being contested in good faith if reserve shall have been made therefor as required by GAAP or the same are Bonded;
  - (iii) pledges or deposits in connection with or to secure worker's compensation, unemployment insurance, pensions, or other employee benefits;
  - (iv) mortgages, pledges, security interests, liens, encumbrances, landlord's liens, or title retention contracts existing as of the date of this Agreement and disclosed to the Bond Owner in writing and approved by the Bond Owner before the date hereof;
  - (v) Liens securing the Seller Loan (to the extent it is then subordinate to the Bond Mortgage in a manner satisfactory to Bond Owner);
  - (vi) liens and/or security interests required by this Agreement and the other Bond Loan Documents; and
  - (vii) items set forth in **Exhibit B** to the Bond Mortgage and other Permitted Encumbrances;
  - (g) permit prior to the Stabilized Occupancy Date, the Loan to Value Ratio to exceed eighty percent (80%) at any time.

(h) at any time prior to the Stabilized Occupancy Date, except for Developer Fee which may be paid under the terms of this Agreement, make any distributions or advances to its members or partners, as applicable, without the written consent of Bond Owner.

Section 7.12 **Government Regulations.** At no time shall Borrower:

(a) be or become subject at any time to any law, regulation, or list of any government agency (including, without limitation, the U.S. Office of Foreign Asset Control list) that prohibits or limits Bond Owner from making any advance or extension of credit to Borrower or from otherwise conducting business with Borrower;

(b) fail to provide documentary and other evidence of Borrower's identity as may be requested by Bond Owner at any time to enable Bond Owner to verify Borrower's identity or to comply with any applicable law or regulation, including, without limitation, Section 326 of the USA Patriot Act of 2001, 31 U.S.C. Section 5318; or

(c) except for Developer Fee which may be paid under the terms of this Agreement, make any distributions or advances to its members or partners, as applicable, without the written consent of Bond Owner;

(d) permit the Borrower or any of its respective officers, managers or principal employees to be on the list of Specially Designated Nationals and Blocked Persons issued by the office of Foreign Assets Control of the U.S. Department of Treasury.

(e) permit the Borrower to fail to satisfy the requirement of Section 42(h)(4)(B) of the Code; or

(f) request any borrowing of the Bond Loan and the Borrower shall not use and shall ensure that its or their respective directors, officers, employees and agents shall not use the proceeds of any borrowing of the Bond Loan:

(i) in furtherance of an offer, payment, promise to pay, or authorization of the payment or giving of money, or anything else of value, to any Person in violation of any Anti-Corruption Laws;

(ii) for the purpose of funding, financing or facilitating any activities, business or transaction of or with any Sanctioned Person, or in any Sanctioned Country, to the extent such activities, businesses or transactions would be prohibited by Sanctions if conducted by a corporation incorporated in the United States; or

(iii) in any manner that would result in the violation of any Sanctions applicable to any party hereto.

Section 7.13 **Tax Status of the Bonds.** The Borrower hereby covenants, represents, and agrees as follows: (a) that the Borrower will not take or permit any action to be taken that would adversely affect the Federal Tax Status of the Bonds and, if it should take or permit any

such action, the Borrower will take all lawful actions to rescind such action promptly upon having knowledge thereof and (b) that the Borrower will take such action or actions, including amending the Bond Loan and/or this Agreement, as determined reasonably necessary in the opinion of Bond Counsel, to comply fully with all applicable rules, rulings, policies, procedures, regulations, or other official statements promulgated or proposed by the United States Department of the Treasury or the Internal Revenue Service under the Code. The Borrower further covenants and agrees that it will direct all investments in compliance with the Code. The Borrower covenants and agrees to calculate and pay any amounts owing to the United States as rebate in accordance with the procedures set forth in the Tax Exemption Agreement and section 148 of the Code. Neither the Borrower nor any “related party,” within the meaning of Section 1.150-1(b) of the Treasury Regulations, to the Borrower shall be permitted to purchase the Bonds in an amount related to the Bond Loan.

Section 7.14 **Incorporation of Tax Exemption Agreement.** The covenants, representations, warranties, and agreements of the Borrower set forth in the Tax Exemption Agreement are incorporated by reference herein as if fully set forth herein. Notwithstanding anything herein or in the Tax Exemption Agreement to the contrary, Bond Owner may rely on and enforce on its own behalf the covenants, representations, warranties, and agreements of the Borrower set forth in the Tax Exemption Agreement.

Section 7.15 **Loss of Tax Exclusion.** The interest rates will be increased, as provided for in Section 3.2(6) of the Indenture, both prospectively and retroactively to the date on which such Event of Taxability on the Bonds shall be applicable, and the Borrower shall pay promptly upon demand therefor by Bond Owner to Borrower, any interest due retroactively. The Borrower shall also indemnify, defend, and hold the Bond Owner and the Issuer harmless from any penalties, interest expense or other costs, including reasonable attorneys’ fees (including all allocated time and charges of the Bond Owner’s and the Issuer’s “in-house” and “outside” counsel) and accountants’ costs, resulting from any dispute with the Internal Revenue Service concerning the proper tax treatment of interest on the Bonds and the interest payable to Bond Owner on the Bonds. The obligations of the Borrower under this paragraph shall survive termination of this Agreement and repayment of the Bond Loan.

If, following any increase in interest rates pursuant to this **Section 7.15** a final determination is made, to the satisfaction of the Bond Owner, that interest paid on the Bonds is excludable from the Bond Owner’s gross income for federal income tax purposes, the Bond Owner shall promptly refund to the Borrower any additional interest paid by the Borrower pursuant to this **Section 7.15** and the original tax exempt interest rate on the Bond Note provided for in the Indenture shall be reinstated retroactive to the date on which such rate was increased pursuant to this **Section 7.15**.

Notwithstanding any provision of this Section to the contrary, in no event shall the interest rate on the Bond Note exceed the maximum lawful rate under State law.

Section 7.16 **Low Income Housing Tax Credits.** With respect to the Low Income Housing Tax Credit, the Borrower covenants and agrees:

(a) To observe and perform all obligations imposed on the Borrower in connection with the Low Income Housing Tax Credit, including the obligation to have the Project “placed in service” (within the meaning given in section 42 of the Code) in a timely manner to ensure the entire allocation of that tax credit; and to operate the residential units of the Project or to use the Borrower’s best efforts to ensure the appropriate parties operate the same in accordance with all applicable statutes and regulations governing the Low Income Housing Tax Credit;

(b) To preserve at all times the allocation and availability to the Project of the Low-Income Housing Tax Credit;

(c) Not to release, forego, alter, amend, or modify its rights to the Low Income Housing Tax Credit, without the Bond Owner’s prior written consent, which the Bond Owner may give or withhold in the Bond Owner’s reasonable discretion;

(d) Not to execute any residential lease of all or any portion of the Project not complying fully with all requirements and regulations governing the Low Income Housing Tax Credit, except with the Bond Owner’s prior written consent, which the Bond Owner may give or withhold in the Bond Owner’s sole and reasonable discretion;

(e) To cause to be kept all records, and cause to be made all elections and certifications, pertaining to the number and size of apartment units, occupancy thereof by tenants, income levels of tenants, set-asides for low-income tenants, and any other matters now or hereafter required to qualify for and maintain the availability of Low Income Housing Tax Credit in connection with the low-income occupancy of the Project;

(f) To comply with the appropriate minimum low-income set-aside requirements under the Federal Laws, and State Laws, if any, applicable to the creation, maintenance and continued availability of the Low Income Housing Tax Credit;

(g) To certify compliance with the set-aside requirement and report the dollar amount of qualified basis and maximum applicable percentage, date of “placed in service” under Section 42 of the Code, as applicable, and any other information required, and as applicable, for each of the Low Income Housing Tax Credit, at such time periods as required by Federal Laws, or State Laws, as applicable;

(h) To set aside the appropriate number of units for households with incomes meeting the required standards of the area median income to qualify for the Low Income Housing Tax Credits (as determined pursuant to Section 42 of the Code and/or State Laws, if any), adjusted for family size, and to operate and maintain all such units as “low-income units” qualifying for the Low Income Housing Tax Credits under section 42(i)(3) of the Code and/or State Laws; and

(i) To exercise good faith in all activities relating to the operation and maintenance of the Project in accordance with the requirements of Federal Laws and State Laws, if any.

Section 7.17 **Payment of Rebate Amounts.** The Borrower will, on a timely basis, provide the Issuer with all necessary information and, with respect to the Borrower's rebate requirement or yield reduction payments (both as may be required under **Section 15** of the Tax Exemption Agreement) required to be paid, all necessary funds, in addition to any funds that are then available for such purpose in the Rebate Fund, to enable the Issuer to comply with all arbitrage and rebate requirements of the Code. To that end, the Borrower covenants and agrees to make such payments to the Trustee as are required of it under the Tax Exemption Agreement. The obligation of the Borrower to make such payments shall remain in effect and be binding upon the Borrower notwithstanding the release and discharge of the Indenture and this Agreement.

Section 7.18 **Qualifications Under the Act.** So long as the Bonds remain Outstanding, the Borrower will operate the Project in accordance with the Housing Act and agrees to take all reasonable actions necessary to qualify and to continue to qualify the Project as a "residential development" under the Act.

Section 7.19 **Rental Project.** With respect to the residential units in the Project, the Borrower represents, covenants, and warrants that, once available for occupancy, such units will be rented or available for rental subject to the limitations contained in this Agreement, each Regulatory Agreement, and the requirements of Section 42 of the Code through the Qualified Project Period (unless occupied by or reserved for a resident manager, security personnel, or maintenance personnel reasonably required for the Project), that the Borrower will not give preference in renting residential units to any particular class or group of persons and other than as required or permitted by each Regulatory Agreement and/or as otherwise approved by HUD, and that at no time will any portion of the Project be exclusively reserved for use by a limited number of nonexempt persons in their trades or businesses.

Section 7.20 **Certification as to Qualified Project Period.** The Borrower shall provide to the Bond Owner, the Issuer, and the Trustee a certificate, as set forth as Exhibit E to the Tax Regulatory Agreement, certifying (i) within ninety (90) days thereof, the date on which ten percent (10%) of the units are occupied; and (ii) within ninety (90) days thereof, the date on which fifty percent (50%) of the units are occupied.

Section 7.21 **Sales and Use Taxes.** If Bond Owner reasonably determines, based upon any duly issued ruling, law, opinion, or regulation (or as the result of the withdrawal of any previously issued ruling, law, opinion, or regulation), that Contractor (or its subcontractors) is not exempt from state sales and use taxes, in such event, if Contractor has not paid such taxes, at the written request of Bond Owner, Borrower shall create and maintain a reserve or other account in a manner satisfactory to Bond Owner in an amount equal to the aggregate sales and use taxes that Contractor did not pay with respect to the development of the Project because Contractor took the position it was exempt from such sales and use taxes. Borrower agrees Bond Owner has not represented to Borrower or to any other Person, whether sales and use taxes are and shall be due with respect to the Project. Borrower has and does hereby agree to indemnify and hold Bond Owner, Issuer, and Trustee harmless from any loss, claims, or causes of action arising as a result of the failure of Borrower or Contractor to pay any such sales and use taxes.

ARTICLE 8  
LEASES

Section 8.1      **Use of the Project and Lease Approval.**

(a)      The Borrower must not change its intended use of the Project without the Bond Owner's prior written approval.

(b)      The Bond Owner must approve the Borrower's standard forms of residential lease or rental agreement prior to its use by the Borrower. The Borrower may not materially modify the approved standard forms of residential lease without the Bond Owners prior written consent, together with the approval of all other parties whose consent is required, including without limitation, the Investor Limited Partner, the Trustee, and the Issuer.

(c)      The Borrower may enter into residential leases (and amendments thereto) in the ordinary course of business with bona fide third party residential tenants if the Borrower uses the approved standard forms of residential lease and:

(i)      Within fifteen (15) days after the Bond Owner's reasonable written request therefor, the Bond Owner receives a copy of the executed lease (accompanied by all financial information and certificates obtained by the Borrower pertaining to the tenant);

(ii)     The Borrower, acting in good faith and exercising commercially reasonable due diligence, has determined that the tenant qualifies as a low-income person for purposes of meeting the requirements for availability of the Low Income Housing Tax Credit;

(iii)    The lease reflects an arm's-length transaction; and

(iv)     The lease does not affect more than one (1) residential unit within the Project and has a term of not less than six (6) months and not more than twelve (12) months, unless otherwise agreed in writing by Bond Owner.

(d)      The prior written approval of the Bond Owner in the exercise of its reasonable discretion will be required in connection with any lease that does not comply with the foregoing provisions of this **Section 8.1**. If the Borrower at any time fails to comply with the requirements of this **Section 8.1** or if any Event of Default has occurred, the Bond Owner may make written demand on the Borrower to submit all future leases for the Bond Owner's approval prior to execution, and Borrower will thereafter comply with that demand.

(e)      Notwithstanding the foregoing, any change in use of the Project must be approved by the Issuer and the Project must continue to qualify as a "residential development" within the meaning of the Act.

Section 8.2 **Purpose and Effect of Lease Approval.** The Bond Owner's approval of any residential lease (to the extent required by this Agreement) is for the sole purpose of protecting the Bond Owner's and the Issuer's security and preserving the rights of the Issuer, the Trustee and the Bond Owner under this Agreement and the Bond Mortgage. No approval by the Bond Owner will result in a waiver of any default of the Borrower. In no event will the Bond Owner's approval of any lease be a representation of any kind with regard to the lease, its enforceability or the financial capacity of any tenant or guarantor.

Section 8.3 **Landlord's Obligations.** The Borrower must perform or will ensure that the Property Manager will perform all obligations required to be performed by it as landlord under any lease affecting any part of the Project or any space within the Improvements.

ARTICLE 9  
RESERVED

ARTICLE 10  
BORROWER'S OPTIONS

Section 10.1 **Principal Prepayments.** The Borrower may prepay all or part of the Bond Loan at any time in whole or in part without premium or penalty.

Section 10.2 **Direction of Investments.** Subject to prior written consent of the Bond Owner, except during the continuance of an Event of Default, the Borrower shall have the right during the term of this Agreement to direct the Trustee in writing to invest or reinvest all money held for the credit of Funds established by Article 6 of the Indenture in Permitted Investments subject, however, to the further conditions of Article 7 of the Indenture and the Tax Exemption Agreement.

Section 10.3 **Termination of Financing Agreement** (1) Except during the continuance of an Event of Default, the Borrower shall have the option of terminating this Agreement if (i) the Bonds have been paid in full or if provision is otherwise made for payment of the Bonds in such manner that the Indenture will be discharged under Article 9 thereof on or before the date of termination, (ii) such prepayment and termination is allowed by the Bond Mortgage, and (iii) the Borrower provides the Trustee and the Issuer with an opinion of Independent Counsel to the effect that all such conditions have been satisfied and a Favorable Opinion of Bond Counsel; provided that this Agreement may not be terminated unless and until (a) all of the Borrower's obligations under the Bond Loan Documents have been satisfied and (b) all of the Borrower's obligations with respect to the Issuer's Fees and the Trustee's Ordinary Fees and Expenses and any rebate obligation have been satisfied and the Borrower has so certified to the Issuer and the Trustee. All obligations of the Borrower under Sections 4.3 and 7.3 and shall survive termination of this Agreement but only to the extent as provided for in those respective sections.

(2) Notwithstanding the foregoing, the Borrower may not terminate this Agreement unless and until the Trustee has on deposit an amount equal to the sum of the following:

(a) Funds on deposit in any of the Funds established under Article 5 of the Indenture and available for that purpose which are sufficient to discharge the Indenture in accordance with Article 7 thereof and to pay amounts due under Section 11.3, plus

(b) to the extent not paid under subsection (a) above, an amount equal to the Trustee's Ordinary Fees and Expenses, Issuer Fees and expenses due or to become due under the Indenture not otherwise paid or provided for pursuant to Section 4.2 or 4.3 hereof and any other amounts due and unpaid under Section 7.3 hereof, accrued and to accrue until the Bonds are fully paid and redeemed and all other advances, fees, costs, and expenses reasonably incurred and to be incurred on or before the termination date by the Trustee under the Indenture and by the Issuer and the Trustee under this Agreement and/or the other Bond Loan Documents; provided that in any event, in order to effect prepayment or discharge of the Outstanding Bonds the Borrower shall, prior to the termination date, satisfy the requirements of Section 8.1 of the Indenture, and of the Bonds and the Bond Note.

(3) On the termination date, a closing shall be held at any office mutually agreed upon among the Issuer, the Borrower, the Bond Owner, and the Trustee (which closing may be conducted by first-class mail or recognized overnight delivery service). At the closing the Issuer and the Trustee shall, upon acknowledgment of receipt of the sum set forth in subsection (2) above, execute and deliver to the Borrower such release and other instruments as the Borrower reasonably determines is necessary to terminate this Agreement and the other Bond Loan Documents. All further obligations of the Borrower hereunder (except as specifically provided in Sections 4.3 and 7.3) shall thereupon terminate, provided, however, that the Borrower shall also remain obligated to pay or reimburse the Issuer, the Bond Owner, and the Trustee for the payment of all other fees, costs, and expenses unaccounted for in the sum paid in accordance with subsection (2) above and reasonably incurred before or subsequent to such closing in connection with the Bonds.

## ARTICLE 11 EVENTS OF DEFAULT AND REMEDIES

Section 11.1 **Events of Default.** Any one or more of the following events is an Event of Default under this Agreement, and the term "**Event of Default**", wherever used herein, means any one of the following events, whatever the reason for such default and whether it shall be voluntary or involuntary or be effected by operation of law or pursuant to any judgment, decree, or order of any court or any order, rule or regulation of any administrative or governmental body:

(1) the Borrower shall fail to pay (a) any amount due under Section 4.2 on the date such payment is due; and (b) any Additional Charges when due and such failure shall continue for ten (10) days after receipt by the Borrower of a written notice to the Borrower by the Issuer, the Trustee, or the Bond Owner stating that such Additional Charges were not received on the due date; or

(2) the Borrower shall fail in any respect to observe and perform or shall breach in any respect any other provision, covenant, condition, or agreement on its part under this Agreement and shall fail to remedy such default or breach within thirty (30) days after written notice to Borrower from the Issuer, the Trustee, or the Bond Owner, specifying such default or breach and requesting that it be remedied; or

(3) the occurrence and continuance of an event of default or default by Borrower under and in connection with any of the Seller Loan Documents, which is not fully cured or waived



within any applicable cure or grace period, or as a result thereof, the holder of the Seller Loan would be entitled to accelerate the Seller Loan; or

(4) an Act of Bankruptcy shall occur with respect to the Borrower, the Investor Limited Partner, or Guarantor, or with respect to the General Partner unless, in the case of an Act of Bankruptcy of the General Partner, within sixty (60) days after such Act of Bankruptcy, the General Partner is replaced with an entity reasonably acceptable to the Bond Owner; or

(5) the Borrower dissolves, terminates, or liquidates; or

(6) during the Construction Term, an Entity Guarantor, the Investor Limited Partner, or the General Partner dissolves, terminates, or liquidates, unless the foregoing relates to an Entity Guarantor and such Entity Guarantor is replaced with a new guarantor reasonably acceptable to the Bond Owner within (30) thirty days after such dissolution, termination, or liquidation, as applicable; or

(7) the occurrence and continuance of an event of default or a default shall occur under the Indenture or any Regulatory Agreement, once executed, or any Bond Loan Document and any applicable period for remedying or waiving such event of default has expired or, if no cure period is otherwise specified, the Borrower shall fail to remedy such default within thirty (30) days after notice to Borrower from the Issuer, the Trustee, or the Bond Owner, specifying such event of default or default and requesting that it be remedied; or

(8) any representation or warranty made by the Borrower herein, or in any document or certificate furnished to the Issuer and/or the Bond Owner, in connection herewith or pursuant hereto shall prove at any time to be, in any material adverse respect, incorrect or misleading as of the date made; or

(9) except as permitted by **Section 5.02** hereof, the General Partner ceases for any reason to act in that capacity, and is not replaced with the Investor Limited Partner (or an affiliate thereof) or another substitute general partner reasonably acceptable to the Bond Owner within thirty (30) days; or

(10) Any interest in the Borrower or in any partner in the Borrower is transferred to any person or entity if such transfer is not permitted by the terms of this Agreement; or

(11) the Borrower or the Project fails to meet or exceed the Pro Forma Schedule set forth at **Schedule E** herein; or

(12) Rehabilitation of the Project is not completed by the Bond Owner's Required Completion Date (except as may be extended by the terms of this Agreement); or

(13) subject to Excusable Delays, Rehabilitation of the Project is abandoned or halted prior to the Bond Owner's Required Completion Date for any period of thirty (30) consecutive days for any cause not beyond the reasonable control of the Borrower; or

(14) any governmental, judicial, or legal authority having jurisdiction over the Project orders or requires that Rehabilitation of the Project be stopped in whole or in part, for reasons other

than Excusable Delays, or any required approval, license, or permit relating to the construction or operation of the Project is withdrawn or suspended, and the order, requirement, withdrawal, or suspension remains in effect for a period of thirty (30) consecutive days; or

(15) the Trustee fails to have an enforceable first lien on or security interest in any property given as security for the Bond Loan; provided that this Event of Default shall not extend to any actions or omissions of the Trustee, the Issuer or the Bond Owner which in and of itself causes the loss of such first lien; or

(16) prior to the Substantial Completion of the Improvements, the Borrower is in material default under the Construction Contract and any applicable period for remedying such default has expired, or has not been waived, or if no cure period is otherwise specified, the Borrower shall fail to remedy such default within thirty (30) days after written notice from the Issuer, the Trustee, or the Bond Owner specifying such default and requesting that it be remedied; or

(17) (i) any default (beyond any applicable cure period) by the Investor Limited Partner in connection with the payment of the Capital Contributions as and when due and payable under the Partnership Agreement which is not cured within any applicable cure or grace period provided for in the Partnership Agreement or any such other agreement, or (ii) any material reduction in the portion of the Capital Contributions to be used for budgeted items and to pay the Loan as set forth in **Schedule J** (subject to terms, conditions, and adjustments set forth in the Partnership Agreement) to be made by the Investor Limited Partner which are not consented to by Bond Owner in writing (unless the amount of the reduction is made by the General Partner as an equity contribution in a manner satisfactory to Bond Owner or the amount of the reduction is otherwise made available in the manner satisfactory to Bond Owner or the reduction does not affect the amount of the scheduled Capital Contributions listed in **Schedule J** which are to be applied to budgeted items or to the Bond Note);

(18) a determination by the Bond Owner in its reasonable judgment that there has been a Material Adverse Change in the Borrower's, the General Partner's, the Contractor's, or the Guarantor's financial condition, unless in that Person is replaced within 30 days after such material adverse change with an entity reasonably acceptable to Bond Owner; or

(19) the Borrower fails to satisfy any condition to any request for approval of a Requisition or Draw Request in **Schedule D** which is not fully cured within 30 days after written notice thereof is provided by Bond Owner to Borrower; or

(20) the Borrower fails to satisfy any of the conditions to payment to the Borrower of any of Borrower's Sources in a timely manner, which failure is not cured or waived in writing prior to the expiration of any applicable grace or cure period; or

(21) Borrower or its authorized representatives and affiliates shall challenge or contest in any action, suit, or proceeding the validity or enforceability of this Agreement or any of the Bond Loan Documents, the legality or enforceability of any of the obligations secured by the Bond Loan Documents or the perfection or priority of any lien or security interests granted to Issuer or Trustee; or

(22) failure of Borrower or the Project to fully comply with all of the rules and regulations with respect to the Low Income Housing Tax Credit, and such failure is not fully cured within 30 days after written notice thereof is provided by Bond Owner to Borrower; or

(23) a judgment or judgments are entered (which there is no legal right to appeal), or any Government Authority takes action, against the Borrower or the General Partner in any case which has a Material Adverse Effect; or

(24) the Borrower fails to comply with any provision contained in this Agreement other than those provisions elsewhere referred to in this **Section 11.1** and does not cure that failure within 30 days after its receipt of written notice from the Bond Owner, or

(25) the Borrower fails to satisfy the Stabilized Occupancy Conditions on or before the Construction Term Maturity Date (as may be extended under **Section 4.2(e)**); or

(26) failure by any Person to comply with the terms and requirements of the Original HAP Contract (and the HAP Contract once executed).

Notwithstanding the foregoing, the Investor Limited Partner shall have the right (but not the obligation) to cure any event set forth in this **Section 11.1** by the expiration of the cure period available to the Borrower under the terms of this Agreement or the applicable Bond Loan Document. Notwithstanding anything to the contrary in the Bond Loan Documents, upon the occurrence of an Event of Default arising out of: (i) the Act of Bankruptcy of the General Partner, the Borrower, or any Guarantor or an assignment of assets for the benefit of creditors by any of them, or (ii) the withdrawal from the Borrower of the General Partner, except as otherwise expressly permitted pursuant to **Section 5.2**, then without in any way limiting or postponing the Bond Owner's immediate right (at its opting to pursue its rights and remedies with respect to that Event of Default), the Investor Limited Partner shall have the option, but not the obligation, within 30 days of receipt of written notice of such Event of Default from the Trustee or the Bond Owner, to cure that Event of Default by appointing a substitute or additional General Partner or Guarantor acceptable to the Bond Owner that is an affiliate of the Investor Limited Partner to act as such General Partner or Guarantor on terms and in a manner satisfactory to the Bond Owner.

Section 11.2 **Remedies.** If an Event of Default exists under this Agreement, the Bond Owner may direct the Trustee, as assignee of the rights of the Issuer to exercise any right or remedy that the Issuer has under any of the Bond Loan Documents or that is otherwise available at law or in equity or by statute, and all of such rights and remedies shall be cumulative. The Trustee shall take such actions hereunder and under the Bond Loan Documents as directed in writing by the Bond Owner, subject to the Trustee's rights to indemnification in the Indenture (in no event may Trustee take any action under this Section without prior direction from the Bond Owner). If any Default or Event of Default occurs and is continuing, the Bond Owner's obligation to approve funding under the Bond Loan Documents shall automatically terminate and the Bond Owner may, in its sole discretion, withhold its approval of any one or more Requisitions or any one or more disbursements. The Bond Owner may also withhold its approval of any one or more Requisitions or any one or more disbursements during the continuance of a Default or an Event of Default. No disbursement of Loan funds by the Trustee or approval of any one or more Requisitions and/or Draw Request will cure any Default or Event of Default of the Borrower, unless the Bond Owner

agrees otherwise in writing in each instance. The Bond Owner may, upon the occurrence and continuance of an Event of Default but subject to any of the other Bond Loan Documents or the Indenture, instruct the Trustee to redeem the Bonds pursuant to **Section 4.2** of the Indenture.

Notwithstanding anything to the contrary contained in the Indenture, this Agreement, or any of the other Bond Loan Documents, the Bond Owner has the right to instruct the Issuer and the Trustee to take any action which the Bond Owner, in its good faith discretion, deems prudent in order to enforce any right or remedy of the Issuer or the Trustee under the Bond Loan Documents, provided that such action shall not adversely affect the Federal Tax Status of the Bonds and, with respect to the Trustee, subject in all respects to the express terms and conditions set forth in the Indenture, including, without limitation, **Article 9** thereof.

Notwithstanding anything to the contrary herein, if the Borrower commits an Act of Bankruptcy, all of the Borrower's obligations under the Bond Loan Documents shall automatically, ipso facto, become immediately due and payable upon the filing of the petition commencing such proceeding, all without notice of default, presentment or demand for payment, protest or notice of nonpayment or dishonor, or other notices or demands of any kind or character. Upon the occurrence of any other Event of Default, all of the Borrower's obligations under the Bond Loan Documents may become immediately due and payable without notice of default, presentment or demand for payment, protest, or notice of nonpayment or dishonor, or other notices or demands of any kind or character, all at the Bond Owner's option, exercisable in its sole discretion. If such acceleration occurs, the Bond Owner may direct the Trustee to apply the undisbursed Bond Loan funds, and the Bond Owner may apply any other available Borrower's Sources to the obligations of the Borrower under the Bond Loan Documents, in any order and proportions that the Bond Owner in its sole discretion may choose, subject to the requirements of the Indenture with respect to the application of Bonds proceeds and the rights of the Trustee.

Also upon the occurrence and continuance of any Event of Default that occurs during the Rehabilitation of the Project, the Trustee (upon written direction from the Bond Owner) or the Bond Owner in its sole discretion may enter and take possession of the Project, whether in person, by agent or by court appointed receiver, to take any and all actions which the Bond Owner in its sole discretion may consider necessary to complete the Rehabilitation of the Project, including making changes in plans, specifications, work, or materials and entering into, modifying, or terminating any contractual arrangements (subject to the specific termination provisions of such contractual arrangements), all subject to the Bond Owner's right at any time to discontinue any work without liability and cause to be exercised any and all rights and remedies of the Issuer (except for Unassigned Rights) under the Bond Loan Documents in such order and to such extent as the Bond Owner determines in its sole and reasonable discretion. If the Bond Owner chooses to complete the Project, it shall not assume any liability to the Borrower or any other person for completing the Project, or for the manner or quality of the Rehabilitation of the Project, and the Borrower expressly waives any such liability of the Bond Owner for the period prior to the Bond Owner's exercise of its rights pursuant to this **Section 11.2**. If the Bond Owner or the Trustee exercises any of the rights or remedies provided in this paragraph, that exercise shall not make the Bond Owner or the Trustee, or cause the Bond Owner or Trustee to be deemed to be, a partner or joint venturer of the Borrower. The Bond Owner in its sole discretion may choose to complete the construction in its own name. All reasonable sums which are expended by the Bond Owner in completing construction shall be considered to have been disbursed to the Borrower on behalf of

the Issuer and shall be secured by the Bond Mortgage and any other collateral held by the Issuer, the Trustee, or the Bond Owner in connection with the Bond Loan; any sums of principal shall be considered to be an additional loan to the Borrower bearing interest at the Default Rate, and shall be secured by the Bond Mortgage and any other collateral held in connection with the Bond Loan. For these purposes, the Bond Owner, in its sole discretion, may reallocate any line item or cost category of the cost breakdown.

The Bond Owner shall also have, and is hereby granted, a continuing security interest in, lien on, and right of set-off against the Capital Contribution Account, the Disbursement Checking Account, the Borrower's Funds Account, and all other deposit and other accounts of the Borrower now or hereafter located at the Bond Owner (except for the Funds established pursuant to the Indenture).

Except as otherwise expressly provided in this Agreement and/or the other Bond Loan Documents, Borrower waives presentment, demand for payment, notice of dishonor and any or all notices or demands in connection with the delivery, acceptance, performance, default or enforcement of the Bond Note and consents to any or all delays, extensions of time, renewals, release of any party to the Bond Note, the Bond Mortgage, this Agreement or any other Bond Loan Document and of any available security therefor, to any party to the Bond Note, the Bond Mortgage, this Agreement, or the other Bond Loan Documents or to the actual holder thereof and any and all waivers or modifications that may be granted or consented to by the Trustee (with the authorization of the Bond Owner) with regard to the time of payment or with respect to any other provisions of the Bond Note, the Bond Mortgage, this Agreement or the other Bond Loan Documents, and agrees that no such action, delay or failure to act on the part of the Bond Owner shall be construed as a waiver by the Trustee (with the authorization of the Bond Owner) of, or otherwise affect, in whole or in part, its right to avail itself of any remedy with respect thereto. No notice to or demand on the Borrower shall be deemed to be a waiver of the obligation of the Borrower or of the right of the Issuer, Trustee, and/or the Bond Owner to take further action without further notice or demand as provided in the Bond Note, the Bond Mortgage, this Agreement, or the other Bond Loan Documents.

The parties hereby acknowledge and agree that the Low-Income Housing Tax Credit is an inseparable benefit of ownership of the Project which is transferred with the transfer of ownership of the Project and that the Low-Income Housing Tax Credit may not be transferred or assigned by Bond Owner separately from its security interest in the Project nor by Borrower and its partners to any other Person separately from the Borrower and its partners' ownership of the Project. In the event that the Bond Owner (or its designee) obtains title to and ownership of the Project, the Borrower (or the Investor Limited Partner) shall have no right to claim the Low-Income Housing Tax Credit which are generated by the Project from and after the date on which the Bond Owner (or its designee) obtains title to and ownership of the Project. Therefore, only to the extent permitted under applicable Requirements of Law, from and after the date of foreclosure, deed-in-lieu of foreclosure, or otherwise obtaining title to the Project, Bond Owner (acting for an on behalf of the Trustee) may exercise and claim ownership and control of the Low Income Housing Tax Credit. In connection with the foregoing, Borrower grants to Bond Owner an irrevocable power of attorney, coupled with an interest, which Bond Owner may exercise from and after the date of foreclosure, deed-in-lieu of foreclosure, or otherwise obtaining title to the Project, pursuant to which Bond Owner may obtain and exercise all rights or documents deemed by the Bond Owner

to be necessary to obtain, retain, or sell all or any portion of the Low Income Housing Tax Credit (but only to the extent permitted under applicable Requirements of Law).

Upon discovery by Bond Owner of any material deviations from the Plans and Specifications or of any defective material or labor being used in the Rehabilitation of the Project, Bond Owner may immediately order stoppage of construction and demand that any unsatisfactory work be replaced and that the condition be corrected, whether or not any unsatisfactory work has already been incorporated into the Improvements. After issuance of such an order in writing, the condition shall be corrected within thirty (30) days from the date of stoppage by Bond Owner, subject to Excusable Delays. Bond Owner shall have the right to withhold approval of all further requisitions of the Bond proceeds until the condition is corrected and no other work shall be done on the Improvements without the prior written consent of Bond Owner unless, and until, such condition has been fully corrected. Notwithstanding the foregoing, the Bond Owner acknowledges that its judgment with regard to any decision to halt work shall be reasonably exercised in light of the scope of the deficiency discovered in comparison to the current ongoing Rehabilitation of the Project and the actual impact of such deficiency on Borrower's and Contractor's ability to continue with other portions of the Rehabilitation of the Project regardless of the presence of such deficiency.

Section 11.3 **Attorneys' Fees and Expenses.** If an Event of Default shall exist under this Agreement and the Issuer, the Bond Owner, or the Trustee employ attorneys or actually incur other reasonable expenses for the collection of any amounts due hereunder, or for the enforcement of performance of any obligation or agreement on the part of the Borrower, the Borrower shall promptly pay upon written demand therefor, together with a reasonable accounting of such amounts due to the Issuer, the Bond Owner, or the Trustee, as applicable.

The Bond Owner agrees to accept performance on the part of the Investor Limited Partner or an Affiliate as though the same had been performed by the Borrower under any of the Bond Loan Documents. The Bond Owner will provide Investor Limited Partner with copies of all notices provided to Borrower hereunder or under the Bond Loan Documents at the time the notice is provided to Borrower.

Section 11.4 **Effect of Waiver.** In the event any agreement contained in this Agreement is breached by any party and thereafter such breach is waived by another party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

Section 11.5 **The Issuer and the Trustee May File Proofs of Claim.** In case of the pendency of any receivership, insolvency, liquidation, bankruptcy, reorganization, arrangement, adjustment, composition, or other judicial proceeding relative to the Borrower or the property of the Borrower (at the direction of the Bond Owner, the Trustee or the Issuer (with the prior consent of the Trustee), shall be entitled and empowered, by intervention in such proceeding or otherwise:

(1) to file and prove a claim and to file such other papers or documents as may be necessary or advisable in order to have the claims of the Issuer and the Trustee (including any claim for the reasonable compensation, expenses, disbursements, and advances of the Issuer and Trustee, their agents, and counsel) allowed in such judicial proceeding; and

(2) to collect and receive any moneys or other property payable or deliverable on any such claims, and to distribute the same.

Section 11.6 **Restoration of Positions.** If a party has instituted any proceeding to enforce any right or remedy under this Agreement, and such proceeding has been discontinued or abandoned for any reason, or has been determined adversely to a party, then and in every such case the parties shall, subject to any determination in the proceeding, be restored to the positions they held prior to commencement of such proceedings, and thereafter all rights and remedies of the parties shall continue as though no such proceeding had been instituted.

Section 11.7 **Suits To Protect the Project.** If the Borrower shall fail so to do after 30 days' prior written notice from the Issuer or the Trustee, at the written direction of the Bond Owner, the Issuer or the Trustee shall have power to institute and to maintain such proceedings as either of them may reasonably deem expedient to prevent any impairment in any material respect of the Project or any portion thereof, by any acts which may be unlawful or in violation of this Agreement, and such suits and proceedings as the Issuer or the Trustee (at the direction of the Bond Owner) may reasonably deem expedient to protect its interests in the Project or any portion thereof, including power to institute and maintain proceedings to restrain the enforcement of or compliance with any governmental enactment, rule, or order that may be unconstitutional or otherwise invalid, if the enforcement of, or compliance with, such enactment, rule, or order would have a Material Adverse Change or Effect on the Project or prejudicial to the interests of the Trustee in any material respect.

Section 11.8 **Performance of Third Parties.** The Trustee or the Issuer (in either case, with the prior consent and written direction of the Bond Owner) may permit third parties to perform any and all acts or take such action as may be necessary for and on behalf of the Borrower to cure any Event of Default hereunder. The acceptance by the Bond Owner of any such performance by third parties shall not in any way diminish or absolve the Borrower of primary liability hereunder.

Section 11.9 **Exercise of the Issuer Remedies by Bond Owner.** Whenever any Event of Default shall have occurred and be continuing, the Trustee but only at the written direction of the Bond Owner) may, but except as otherwise provided in the Indenture shall not be obligated to, exercise any or all of the rights of the Issuer under this **Section 11.9** with notice Bond Owner to the Issuer.

Section 11.10 **Recourse/Non-Recourse Provisions.**

(a) Prior to the Stabilized Occupancy Date, the Borrower and each Guarantor are personally liable for any deficiency in the payment of any "Secured Obligations" (as defined in the Bond Mortgage) that may remain following a judicial foreclosure (or, to the extent permitted by law, a non-judicial foreclosure) of the Bond Mortgage.

(b) Following the Stabilized Occupancy Date, except as otherwise provided in this **Section 11.10**, Borrower and its general partners and Borrower's limited partners and the Guarantor shall have no personal liability with respect to the Bond Loan under this Agreement, the Bond Note, and the other Bond Loan Documents, or otherwise, and the

only recourse for the payment of the Bond Loan during the Permanent Term shall be the exercise of rights and remedies with respect to the Project and any other collateral held as security of the Bond Loan. Notwithstanding the foregoing or anything to the contrary in **Section 11.10(a)** above, during the Permanent Term, Borrower shall be personally liable for the repayment of the following:

(A) The amount of any loss or damage suffered by Bond Owner, Trustee, or Issuer as a result of:

(i) the failure of Borrower to pay upon demand made during the continuation of an Event of Default all Rents (as that term is defined in the Bond Mortgage and is hereafter used) to which Issuer, Trustee, and/or Bond Owner is entitled under the Bond Mortgage and the amount of non-forfeited security deposits collected by Borrower from tenants then in residence;

(ii) failure of Borrower to maintain all insurance policies required by this Agreement and other Bond Loan Documents; provided, however, that this subsection **(ii)** shall not apply if and to the extent that Lender holds escrowed funds for the payment of premiums and sums necessary for the maintenance of such insurance policies;

(iii) failure of Borrower to pay (or authorize the payment) to Trustee (or Bond Owner, as the case may be) of any condemnation or insurance proceeds awarded to Borrower, or similar funds or payments attributable to the Project, which under the terms of the Bond Loan Documents should have been paid to the Trustee (or Bond Owner, as the case may be) Lender but have not been so paid or otherwise applied as required by this Agreement, the Bond Mortgage, and the other Bond Loan Documents;

(iv) failure of Borrower to pay the amount of any assessments and property taxes due and payable with respect to the Project, which non-payment causes the taxing authority to commence foreclosure proceedings; provided, however, that this subsection **(iv)** shall not apply if and to the extent that Trustee (or Bond Owner, as the case may be) holds escrowed funds for the payment of such assessments and property taxes;

(v) Borrower's failure to first apply the amount of any rent or other income received by Borrower (on its own behalf or through its management agent) from the Project to the payment of reasonable operating expenses related to the Project (other than property management fees that are not currently payable pursuant to the terms of this Agreement or other agreement executed in



connection with the Bond Loan) and then to the payment of amounts that are then due and payable under the Bond Note;

(vi) (y) abandonment of the Project by Borrower prior to completion of foreclosure by Trustee (at the written direction of Bond Owner) of the Bond Mortgage or the appointment of a receiver for the Project at the request of Trustee (at the written direction of Bond Owner), or (z) intentional physical waste of the Project by Borrower;

(vii) violations known and willfully made by Borrower of any governmental statute, rule or regulation applicable to the Project (and the operation thereof); or

(viii) the failure of Borrower to comply with the requirements of this Agreement relating to the delivery of books and records, statements, schedules and reports, following the receipt of a written request notifying Borrower of such failure.

(B) The full and prompt payment and performance when due of the Bond Note and the other indebtedness secured by the Bond Mortgage, whether at maturity or earlier, by reason of acceleration or otherwise upon the occurrence of any of the following:

(i) failure of Borrower to pay all environmental indemnities and other amounts owing by Borrower under Section 4.19 of the Bond Mortgage;

(ii) Any transfers of any interest in the Borrower or the general partner of the Borrower that is not expressly permitted under and for purposes of this Agreement;

(iii) The occurrence of any Act of Bankruptcy;

(iv) Failure by Borrower to be a single-asset entity;

(v) any bad faith claim, defense, counterclaim or allegation initiated by or on behalf of the Borrower that seeks to prevent, delay or hinder Trustee's (at the direction of Bond Owner) enforcement of its security interests under the Bond Mortgage during any judicial or non-judicial proceeding relating to the Mortgaged Property (bad faith constitutes when the Borrower acts for purposes of delay and has no reasonable basis under applicable law or the Bond Loan Documents from preventing the Bond Owner Lender from acting); or

(vi) Fraud or misrepresentation by or on behalf of the Borrower in connection with the Bond Loan.

(C) To the extent that Borrower has personal liability under this **Section 11.10**, Trustee (at the written direction of Bond Owner) may exercise its rights against Borrower personally without regard to whether Trustee (at the direction of Bond Owner) has exercised any rights against the Project or any other security, or pursued any rights against any guarantor, or pursued any other rights available to Trustee, Issuer, and/or Bond Owner under the Bond Note, this Agreement, the Bond Mortgage, or any other Bond Loan Document or applicable law.

Nothing set forth in this **Section 11.10** shall impair the lien of the Security Instrument.

ARTICLE 12  
GENERAL PROVISIONS

Section 12.1 **Amounts Remaining in Funds**. Any amounts remaining in the Funds created under Article 6 of the Indenture upon cancellation of the liens and trusts of the Indenture shall be distributed as provided in **Section 6.11** of the Indenture.

Section 12.2 **Notices**. All notices, demands, certificates, or other communications hereunder and under each other Bond Loan Document shall be given to all parties identified below, shall be in writing (except as otherwise expressly provided herein) and shall be sufficiently given and shall be deemed given (i) when delivered by hand delivery, telegram or Electronic Means or (ii) five days after such notice is served by depositing the same with the United States Postal Service, or any official successor thereto, designated as Registered or Certified Mail, Return Receipt Requested, bearing adequate postage, or (iii) upon delivery by reputable private courier such as Federal Express, Airborne, DHL, or similar overnight delivery service, and addressed as hereinafter provided. Notwithstanding the foregoing, notices to the Trustee shall be deemed given only when received by the Trustee. All parties identified below may, by written notice given by each to the others, designate any address or addresses to which notices, demands, certificates, or other communications to them shall be sent when required as contemplated by this Agreement. Any notice, demand, certificate, report, financial statement, or other communication properly provided by legal counsel on behalf of any party hereunder shall be deemed properly provided by the party represented by such counsel. Until otherwise provided by the respective parties, all notices, demands, certificates, and communications to each of them shall be addressed as follows:

To the Issuer:

Texas Department of Housing and Community Affairs  
P.O. Box 13941  
Austin, Texas 78711-3941  
Attention: Director of Multifamily Bonds  
Telephone: (512) 3344  
Email: Teresa.morales@tdhaca.state.tx.us

with a copy to:

Bracewell LLP  
111 Congress Avenue, Suite 2300  
Austin, Texas 78701-4061  
Attention: Elizabeth Bowes  
Telephone: (512) 542-2104  
E-Mail: elizabeth.bowes@bracewell.com

To the Borrower:

Center 818 Cotton Ford Road, LP  
c/o The Itex Group, LLC  
9 Greenway Plaza, Suite 1250  
Houston, Texas 77046  
Attention: Bobken Simonians  
Telephone: (213) 255-9220  
Email: bobken.simonians@itexgrp.com

with a copy to:

Coats | Rose  
9 Greenway Plaza  
Suite 1000  
Houston, Texas 77046  
Attention: Barry Palmer  
Telephone: (713) 653-7395  
Email: bpalmer@coatsrose.com

with a copy to:

RBC Community Investments, LLC  
600 Superior Avenue, Suite 2300  
Cleveland, Ohio 44114  
Attention: President and General Counsel  
Telephone.: \_\_\_\_\_  
Email: \_\_\_\_\_

with a copy to:

Nixon Peabody LLP  
Exchange Place  
Boston, MA 02109  
Attention: Roger Holmes  
Telephone.: (617) 345-1227  
Email: rholmes@nixonpeabody.com

To the Trustee:

Wilmington Trust, National Association  
15950 North Dallas Parkway  
Suite 550  
Dallas, Texas 75248  
Attention: Dayna L. Smith  
Telephone: (972) 383-3154  
Email: dlsmith@wilmingtontrust.com

To the initial Bond Owner:

Community Bank of Texas, N.A.  
5999 Delaware  
Beaumont, Texas 77706-7607  
Attention: Stephen W. Rose  
Telephone: (713) 294-9620  
Email: srose@cbotx.com

Wayne Yaffee  
Greenberg Traurig LLP  
1000 Louisiana Street, Suite 1700  
Houston, Texas 77002  
Telephone: (713) 374-3655  
Email: wayne.yaffee@gtlaw.com

The Trustee agrees to accept and act upon instructions or direction pursuant to this Agreement sent by unsecured e-mail, facsimile transmission or other similar unsecured electronic methods, provided, however, that the Issuer and the Borrower shall provide to the Trustee an incumbency certificate listing designated persons authorized to provide such instructions, which incumbency certificate shall be amended whenever a person is to be added or deleted from the listing. If the Issuer and the Borrower elect to give the Trustee e-mail or facsimile instructions (or instructions by a similar electronic method) and the Trustee in its discretion elects to act upon such instructions, the Trustee's understanding of such instructions shall be deemed controlling. The Trustee shall not be liable for any losses costs or expenses arising directly or indirectly from the Trustee reliance upon and compliance with such instructions notwithstanding such instructions conflict or are inconsistent with a subsequent written instruction. The Issuer and the Borrower agree to assume all risks arising out of the use of such electronic methods to submit instructions and direction to the Trustee, including without limitation, the risk of the Trustee acting on unauthorized instructions, and the risk of interception and misuse by third parties.

Section 12.3 **Binding Effect.** This Agreement shall inure to the benefit of and shall be binding upon the Bond Owner, the Issuer, and the Borrower and their respective successors and assigns. Insofar as this Agreement provides for rights of the Trustee, this Agreement shall also inure to the benefit of the Trustee.

Section 12.4 **NO ORAL AGREEMENT.** THIS AGREEMENT AND THE OTHER BOND LOAN DOCUMENTS REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR,

CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES. If there is any conflict between the terms, conditions, and provisions of this Agreement and those of any other agreement or instrument, including any other Bond Loan Document, the terms, conditions, and provisions of this Agreement shall prevail as among said parties to this Agreement.

Section 12.5      **Severability.**

(1) If any provision of this Agreement shall be held or deemed to be or shall, in fact, be inoperative or unenforceable as applied in any particular case in any jurisdiction or jurisdictions or in all jurisdictions or in all cases because it conflicts with any provisions of any constitution or statute or rule of public policy, or for any other reason, such circumstances shall not have the effect of rendering the provision in question inoperative or unenforceable in any other case or circumstance, or of rendering any other provisions herein contained invalid, inoperative, or unenforceable to any extent whatever.

(2) The invalidity of any one or more phrases, sentences, clauses, or paragraphs contained in this Agreement shall not affect the remaining portions of this Agreement or any part thereof.

Section 12.6      **Amendments, Changes and Modifications.** This Agreement may not be modified or amended except by a written agreement signed by the parties hereto. Except as otherwise provided in this Agreement or in the Indenture, subsequent to the issuance of the Bonds and before the lien of the Indenture is satisfied and discharged in accordance with its terms, this Agreement may not be effectively amended, changed, modified, altered, or terminated without the written consent of Borrower, the holders of not less than a majority of the aggregate principal amount of the Bonds then Outstanding as provided in Article 11 of the Indenture, and the Issuer. The Bond Owner shall have the right to waive or modify, conditionally or unconditionally, the conditions to its approvals and consents provided hereunder, without the consent of any party other than the Borrower.

Section 12.7      **Execution in Counterparts.** This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 12.8      **Required Approvals.** Consents and approvals required by this Agreement to be obtained from the Bond Owner, the Borrower, the Issuer, or the Trustee shall be in writing and shall not be unreasonably withheld, conditioned or delayed unless otherwise specifically provided herein.

Section 12.9      **Limitation on Issuer's Liability.** All covenants, obligations and agreements of the Issuer contained in this Agreement and the Indenture shall be effective to the extent authorized and permitted by applicable law. No such covenant, obligation or agreement shall be deemed to be a covenant, obligation or agreement of any present or future official, governing board member, director, officer, employee, agent or attorney of the Issuer in other than his official capacity, and no official executing the Bonds shall be liable personally on the Bonds or be subject to any personal liability or accountability by reason of the issuance thereof or by

reason of the covenants, obligations or agreements of the Issuer contained in this Agreement or in the Indenture. No provision, covenant or agreement contained in this Agreement, the Indenture or the Bonds, or any obligation herein or therein imposed upon the Issuer, or the breach thereof, shall constitute or give rise to or impose upon the Issuer a pecuniary liability or a charge. No recourse shall be had for the enforcement of any obligation, covenant, promise, or agreement of the Issuer contained in this Agreement or in the Bonds or for any claim based on the Bonds or otherwise in respect hereof or upon any obligation, covenant, promise, or agreement of the Issuer contained in any agreement, instrument, or certificate executed in connection with the Project or the issuance and sale of the Bonds, against any the member of the governing board of the Issuer, its officers, counsel, financial advisor, employees or agents, as such, in his or her individual capacity, past, present, or future, or of any successor thereto, whether by virtue of any Constitutional provision, statute, or rule of law, or by the enforcement of any assessment or penalty or otherwise; it being expressly agreed and understood that no personal liability whatsoever shall attach to, or be incurred by, any member of the governing board, officers, counsel, financial advisors, employees or agents, as such, in his or her individual capacity, past, present, or future, of the Issuer or of any successor thereto, either directly or by reason of any of the obligations, covenants, promises, or agreements entered into between the Issuer and the Trustee or the Borrower to be implied therefrom as being supplemental hereto or thereto, and that all personal liability of that character against every such governing board member, director, officer, counsel, financial advisor, employee or agent, is, by the execution of the Bonds, this Agreement, and the Indenture, and as a condition of, and as part of the consideration for, the execution of the Bonds, this Agreement, and the Indenture, expressly waived and released.

Section 12.10 **Limitation on Investor Limited Partner's Liability.** The parties to this Agreement hereby acknowledge and agree that the Investor Limited Partner shall not have any liability to the other parties or to any third party as a general partner of the Borrower resulting from any action taken by the Investor Limited Partner pursuant to the Partnership Agreement, unless and until the Investor Limited Partner is admitted to the Borrower entity as a general partner or if arising as a result of the fraud or misrepresentation of the Investor Limited Partner. Except as applicable law provides otherwise, each of the Issuer and the Bond Owner agrees that it will not, in connection with any demand, claim or legal action concerning the Bond Loan or the Bond Loan Documents, claim that the Investor Limited Partner is liable as a general partner as a result of the Investor Limited Partner allegedly participating in the control of the Borrower for any reason or any action taken by either of them pursuant to its powers as a limited partner under the Partnership Agreement.

Section 12.11 **No Waiver; Consents.** No alleged waiver by the Trustee, the Bond Owner, the Borrower, or the Issuer will be effective unless in writing, and no waiver will be construed as a continuing waiver. No waiver may be implied from any delay or failure by the Trustee, the Bond Owner, the Borrower, or the Issuer to take action on account of any default or to exercise any right or remedy or any security. Consent by the Trustee, the Bond Owner, the Borrower or the Issuer to any act or omission may not be construed as a consent to any other or subsequent act or omission or as a waiver of the requirement for consent to be obtained in any future or other instance. All rights and remedies are cumulative.

Section 12.12 **Purpose and Effect of Bond Owner Approval.** The Bond Owner's approval of any matter in connection with the Bond Loan is for the sole purpose of protecting the

Issuer's security and rights of the Trustee and the Bond Owner. No such approval will result in a waiver of any Event of Default hereunder.

Section 12.13 **No Commitment to Increase Loan.** From time to time, the Bond Owner may approve changes to the Plans and Specifications at the Borrower's request and also require the Borrower to make corrections to the work of construction, all on and subject to the terms and conditions of this Agreement. The Borrower acknowledges that no such action or other action by the Bond Owner will in any manner commit or obligate the Bond Owner to increase the amount of the Bond Loan.

Section 12.14 **Third Parties Benefited.** This Agreement is made and entered into for the sole protection and benefit of the Bond Owner, the Issuer, and the Borrower and their permitted successors and assigns and, to the extent expressly set forth herein, the Trustee. The parties hereto expressly recognize that the Trustee is a third party beneficiary to this Agreement and may enforce any right, remedy or claim conferred, given or granted hereunder. No trust fund is created by this Agreement, and no other persons or entities have any right of action under this Agreement or any right to the proceeds of the Bond Loan.

Section 12.15 **Authority to File Notices.** The Borrower irrevocably appoints the Bond Owner as its attorney-in-fact, with full power of substitution, following the occurrence and during the continuance of an Event of Default to file or record, at the Borrower's cost and expense and in the Borrower's name, any notices of completion, notices of cessation of labor, or any other notices that the Bond Owner in its sole discretion considers necessary or desirable to protect the Project, if the Borrower fails to do so after receipt of five days' prior written notice from the Bond Owner. Nothing in this **Section 12.15** shall impose any obligations on the Bond Owner.

Section 12.16 **Affirmative Action.** The Borrower shall not discriminate in its employment practices against any employee or applicant for employment because of the applicant's race, creed, religion, national origin or ancestry, sex, age, sexual orientation or preference, marital status, color, physical disability, familial status and disability, mental condition or medical condition, including pregnancy, childbirth, or related condition.

Section 12.17 **Actions.** Each of the Trustee, the Bond Owner, and the Issuer has the right, but not the obligation, to commence, appear in, and defend any action or proceeding that might affect its security or its rights, duties, or liabilities relating to the Bond Loan, the Project, or any of the Bond Loan Documents pursuant to the terms of **Section 7.3** hereof and otherwise in this Agreement and the other Bond Loan Documents. The Borrower must pay promptly on demand all of the Trustee's, the Bond Owner's, and the Issuer's reasonable out-of-pocket costs, expenses, and legal fees and expenses of the Trustee, the Bond Owner, and the Issuer's counsel incurred in those actions or proceedings.

Section 12.18 **Attorneys' Fees.** In any lawsuit, reference, or arbitration arising out of or relating to this Agreement, the Bond Loan Documents, or the Bond Loan, including but not limited to any alleged tort action, regardless of which party commences the action, the prevailing party will be entitled to recover from each other party such sums as the court, referee, or arbitrator adjudges to be reasonable attorneys' fees in the action, reference, or proceeding, in addition to reasonable costs and expenses otherwise allowed by law. Any reasonable attorneys' fees actually

incurred by a party in enforcing a judgment in its favor under this Agreement will be recoverable separately from and in addition to any other amount included in such judgment, and the attorneys' fees obligation is intended to be severable from the other provisions of this Agreement and to survive and not be merged into any judgment. In all other situations, including any bankruptcy or other voluntary or involuntary proceeding, in or out of court, for the adjustment of debtor-creditor relationships, the Borrower agrees to pay all of the Trustee's, the Bond Owner's, and the Issuer's costs and expenses, including reasonable attorneys' fees, that may be incurred in any effort to collect or enforce the Bond Loan or any part of it or any term of any Bond Loan Document; from the time(s) incurred until paid in full, all such sums will bear interest at the Default Rate.

Section 12.19 **Assignment of Issuer's Rights.** As security for payment of the Bonds, the Issuer will pledge the amounts payable hereunder and collaterally assign, without recourse or liability, to the Trustee, the Issuer's rights under this Agreement and the Bond Note, including the right to receive payments hereunder (but excluding Unassigned Issuer's Rights), and hereby directs the Borrower to make said payments directly to the Trustee, or otherwise upon the order of the Trustee. The Borrower herewith consents to such collateral assignment and will make payments under this Agreement directly to the Trustee, or otherwise to the order of the Trustee without defense or set off by reason of any dispute between the Borrower and the Issuer, the Trustee, or any Bond Owner.

Section 12.20 **Applicable Law.** This Agreement is governed by the laws of the State of Texas without regard to the choice of law rules of that State.

Section 12.21 **Heirs, Successors, and Assigns Participation.** The terms of this Agreement will bind and benefit the heirs, legal representatives, successors, and assigns of the parties; provided, however, that the Borrower may not assign this Agreement or any Loan proceeds, or assign or delegate any of its rights or obligations, without the prior written consent of the Bond Owner and the Issuer in each instance. Also without notice to or the consent of the Borrower, the Bond Owner, and the Issuer may disclose to any actual or prospective purchaser of any securities issued or to be issued by the Bond Owner or the Issuer and to any actual or prospective purchaser or assignee of any participation or other interest in the Bond Loan or any other loans made by the Bond Owner or the Issuer to the Borrower (whether under this Agreement or otherwise), any financial or other information, data, or material in Bond Owner's possession relating to the Borrower, any partners of the Borrower, the Bond Loan, or the Project. Nothing in this Agreement shall impose any restrictions on the ability of the Holders of the Bonds to sell or otherwise transfer the Bonds.

Section 12.22 **Relationships With Other Bond Owner Customers.** From time to time, the Bond Owner may have business relationships with the Borrower's customers, suppliers, contractors, tenants, partners, shareholders, officers, or directors, or with businesses offering products or services similar to those of the Borrower, or with persons seeking to invest in, borrow from or lend to the Borrower. The Borrower agrees that the Bond Owner may extend credit to such parties and take any action it deems necessary to collect the credit, regardless of the effect that such extension or collection of credit may have on the Borrower's financial condition or operations. The Borrower further agrees that in no event will the Bond Owner be obligated to disclose to the Borrower any information concerning any other the Bond Owner customer.



Section 12.23 **Disclosure to Title Company.** Without notice to or the consent of the Borrower, the Bond Owner may disclose to any title insurance company insuring any interest of the Bond Owner under the Bond Mortgage (whether as primary insurer, coinsurer, or reinsurer) any information, data, or material relating to the Borrower, the Bond Loan, or the Project, and related to such title insurance coverage associated with the Project in the Bond Owner's possession.

Section 12.24 **Improvement District.** The Borrower may not vote in favor of, or directly or indirectly advocate or assist in, the incorporation of any part of the Project into any improvement or utility district, special assessment district, or other district without the Bond Owner's prior written consent in each instance.

Section 12.25 **Restriction on Disposition of Personal Property.** Except for the replacement of personal property made in the ordinary course of the Borrower's business with items of similar value, the Borrower may not sell, convey, or otherwise transfer or dispose of its interest in any tangible personal property in which the Bond Owner has a security interest or contract to do any of the foregoing, without the prior written consent of the Bond Owner in each instance.

Section 12.26 **Interpretation.** The language of this Agreement must be construed as a whole according to its fair meaning, and not strictly for or against any party. Whenever the context requires, all words used in the singular will be construed to have been used in the plural, and vice versa, and each gender and the neuter state will include the other gender and the neuter state. The captions of the sections of this Agreement are for convenience only and do not define or limit any terms or provisions. The word "include(s)" means "include(s), without limitation," and the word "including" means "including, but not limited to." No listing of specific instances, items or matters in any way limits the scope or generality of any language of this Agreement. The schedules to this Agreement are hereby incorporated in this Agreement.

Section 12.27 **Miscellaneous.** Time is of the essence in the performance by the Borrower of its obligations under this Agreement and the other Bond Loan Documents. Any irreconcilability or inconsistency or conflict between the terms of the Bond Mortgage and the terms of this Agreement or the Indenture shall be governed and controlled by the terms of this Agreement or the Indenture, as applicable. Further, notwithstanding anything herein to the contrary, the Trustee (as assignee of Issuer) shall only enforce the rights and remedies of the Issuer hereunder under the Bond Mortgage, the Indenture (as provided therein), or under this Agreement at the written direction of the Bond Owner.

Section 12.28 **Publicity.** The Borrower hereby agrees that the Bond Owner, at Borrower's expense, may publicize the financing of the Project and, in connection therewith, may erect signs at the Project and use the address, description and a photograph or other illustrative drawing of the Project.

Section 12.29 **Participations.** Borrower acknowledges and agrees that the Bond Owner may provide any information the Bond Owner may have about Borrower or about any matter relating to this Agreement to the Bond Owner, its parent, its subsidiaries, its affiliates or their successors, or to any one or more purchasers or potential purchasers of the Bonds (or interests

therein). Borrower agrees that the Bond Owner may at any time sell, assign or transfer one or more interests or participations in all or any part of its rights or obligations in the Bond Note and the Bonds to any or more purchasers whether or not related to the Bond Owner. Borrower authorizes the Bond Owner to disseminate any information it has pertaining to the Bond Loan and the Bonds, including, without limitation, credit information on Borrower, any of its principals, or any other party liable, directly or indirectly for the Bond Loan and the Bonds, to any such assignee or participant or prospective assignee or participant. Borrower shall execute, acknowledge, and deliver any and all instruments reasonably requested by the Bond Owner to satisfy such assignee or participant that the Bond Loan is outstanding in accordance with the terms and provisions of the Bond Note and the Bond Loan Documents.

Section 12.30 **Loan Commission.** The Bond Owner is not obligated to pay any brokerage commission or fee in connection with or arising out of the Bond Loan. The Borrower must pay any and all brokerage commissions or fees arising out of or in connection with the Bond Loan as a result of any commitment made by the Borrower.

Section 12.31 **Compliance with Usury Laws.** Notwithstanding any provision of this Agreement, the Bond Note, or any of the Bond Loan Documents to the contrary, it is hereby agreed that in no event (including without limitation the acceleration of the Bond Note) shall the amount of interest contracted for, charged, received, reserved, or taken in connection with the Bond Loan (including interest on the Bond Note together with any other costs or considerations that constitute interest under applicable law which are contracted for, charged, received, reserved, or taken pursuant to the Bond Loan Documents) (“**Interest**”), cause the rate of interest on the Bond Notes to exceed the maximum lawful rate. For purposes of this **Section 12.31** to the maximum extent permitted by law, Interest shall be: (i) spread over the term of the Bond Loan; (ii) if appropriate, characterized as a premium for the privilege of making an optional prepayment of the Bond Loan; and (iii) computed after giving effect to the provisions of any other Bond Loan Documents which require the cancellation or refunding of Interest. Default Rate interest, if any (after the application of the foregoing provisions), provided for in this Agreement, the Bond Note, or any of the Bond Loan Documents shall be canceled automatically as of the date of such acceleration or mandatory prepayment or, if theretofore paid, shall be credited on the principal of the Bond Note or if the principal of the Bond Note has been paid in full, refunded to the Borrower. The provisions of this **Section 12.31** shall control all agreements, whether now or hereafter existing and whether written or oral, by the Issuer, the Borrower, the Trustee, and the Holders, but such provisions may not cause interest on the Bonds to exceed the Maximum Lawful Rate.

This Agreement is also subject to the condition that amounts paid hereunder representing late payments or penalty charges or the like shall only be payable to the extent permitted by State law or applicable federal law.

Section 12.32 **Right To Contest Liens, Taxes, Etc.** The Borrower will have the right to contest in good faith any claim, charge, demand, levy, or assessment payable to a person or entity other than the Bond Owner, the nonpayment of which would constitute an Event of Default, but only with the Bond Owner’s written consent. If the Bond Owner grants such consent, such nonpayment will not constitute an Event of Default so long as such consent remains effective. The Bond Owner will not unreasonably withhold, delay or condition its consent, provided that the Bond Owner may reasonably require Borrower to furnish reasonable bond satisfactory to it in its sole

and reasonable discretion or the Borrower deposits with the Bond Owner cash collateral sufficient, in the Bond Owner's sole and reasonable discretion, to fully discharge such claim, charge, demand, levy or assessment in the event the Borrower should not prevail in such contest. The Bond Owner may withdraw such consent at any time if: (a) the Borrower fails to prosecute such contest diligently, in full compliance with all conditions to the Bond Owner's consent and in a manner not prejudicial to the Bond Owner or to the Project, or (b) the Bond Owner, in its sole discretion, determines that such contested claim, charge, demand, levy, or assessment has a Material Adverse Change on the Project or the Bond Owner or that any bond or cash collateral previously accepted by the Bond Owner has become insufficient.

Section 12.33 **Americans with Disabilities Act.** The Bond Owner and the Borrower shall be in full compliance with all applicable federal and state laws, including those of the Americans with Disabilities Act ("**ADA**"), 42 U.S.C. 12101 et seq. and its implementing regulations. Under the ADA, the Bond Owner and the Borrower shall provide for reasonable accommodations to allow qualified individuals access to and participation in their programs, services and activities. In addition, the Bond Owner and the Borrower shall not discriminate against individuals with disabilities nor against persons due to their relationship or association with a person with a disability. Firms granted subawards (i.e., subcontractors, subgrants, contracts under loans, etc.) shall comply with the ADA and certify and disclose accordingly. The Bond Owner and the Borrower shall provide certificates attesting to compliance with the provisions of this **Section 12.33.**

Section 12.34 **Integration and Relation to Bond Owner Term Sheet.** The Bond Loan Documents (a) integrate all the terms and conditions mentioned in or incidental to this Agreement, (b) supersede all oral negotiations and prior writings with respect to their subject matter, including the Bond Owner Term Sheet, and (c) are intended by the parties as the final expression of their agreement with respect to the terms and conditions set forth in those documents and as the complete and exclusive statement of the terms agreed to by the parties. No representation, understanding, promise, or condition is enforceable against any party unless it is contained in the Bond Loan Documents. If there is any conflict among the terms, conditions, and provisions of this Agreement and those of any other agreement or instrument, including any other Bond Loan Document (excluding the Indenture), the terms, conditions, and provisions of this Agreement will prevail.

Section 12.35 **Venue.** Notwithstanding anything to the contrary set forth in the Agreement and/or any of the other Bond Loan Documents, the parties hereto hereby agree that the state and federal courts located in Jefferson County, Texas, shall have exclusive jurisdiction and venue with respect to all actions brought by or against any party under or pursuant to this Agreement.

Section 12.36 **JURY WAIVER.** EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS

REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

Section 12.37 **Increased Costs**. If any law, regulation or change in any law or regulation or in the interpretation thereof, or any final, non-appealable ruling, decree, judgment, guideline, directive or recommendation (whether or not having the force of law) by any regulatory body, court, central bank, or any administrative or Governmental Authority charged or claiming to be charged with the administration thereof (including, without limitation, a request or requirement which affects the manner in which the Bond Owner allocates capital resources to its commitments including its obligations hereunder) shall either (a) impose upon, modify, require, make or deem applicable to the Bond Owner or any of its affiliates, subsidiaries or participants any reserve requirement, special deposit requirement, insurance assessment or similar requirement against or affecting the Bond Loan, or (b) subject the Bond Owner or any of its affiliates, subsidiaries or participants to any tax, charge, fee, deduction or withholding of any kind whatsoever in connection with the Bond Loan or change the basis of taxation of the Bond Owner or any of its affiliates, subsidiaries or participants (other than a change in the rate of tax based on the overall net income of the Bond Owner or such participant), or (c) impose any condition upon or cause in any manner the addition of any supplement to or increase of any kind to the Bond Owner's or an Affiliate's, subsidiary's or participant's capital or cost base for issuing or owning a participation in the Bond Loan which results in an increase in the capital requirement supporting the Bond Loan, or (d) impose upon, modify, require, make or deem applicable to the Bond Owner or any of its Affiliates, subsidiaries or participants any capital requirement, increased capital requirement or similar requirement, such as the deeming of the Bond Loan (and the Bond) to be an asset held by the Bond Owner or any of its affiliates, subsidiaries or participants for capital adequacy calculation or other purposes (including, without limitation, a request or requirement which affects the manner in which the Bond Owner or any participant allocates capital resources to its commitments including its obligations hereunder or under the Bond Loan), and the result of any events referred to in (a), (b), (c) or (d) above shall be to increase the costs in any way to the Bond Owner or any Affiliate, subsidiary or participant of issuing, maintaining or participating in the Bond Loan or reduce the amounts payable by Borrower hereunder or reduce the rate of return on capital, as a consequence of the issuing, maintaining or participating in the Bond Loan, to a level below that which the Bond Owner, its affiliates, subsidiaries or participants could have achieved but for such events; then and in such event, and to the extent such law, regulation or change in law or regulation or the interpretation thereof, or any final non-appealable ruling, decree, judgment, guideline, directive or recommendation allows the terms and conditions of this **Section 12.37** to become operative or enforceable under federal or State law, Borrower shall, promptly upon receipt of written notice to Borrower, together with a reasonable accounting, by the Bond Owner of such increased costs and/or decreased benefits, pay within 60 Business Days of demand therefor to the Bond Owner all such additional amounts which, in the Bond Owner's or participant's commercially reasonable good faith calculation as allocated to the Bond Loan, shall be sufficient to compensate it for all such increased costs and/or decreased benefits, all as reasonably accounted for and certified by the Bond Owner or such participants in said written notice to Borrower. Such certification shall be accompanied by a reasonable accounting concerning the calculation of such increased costs and/or decreased benefits and shall be

conclusive and binding on the parties hereto, absent manifest error. In determining such amount, the Bond Owner or any participant may use any reasonable averaging or attribution methods.

Section 12.38 **USA Patriot Act Notification**. The following notification is provided to Borrower pursuant to Section 326 of the USA Patriot Act of 2001, 31 U.S.C. Section 5318:

IMPORTANT INFORMATION ABOUT PROCEDURES FOR OPENING A NEW ACCOUNT. To help the government fight the funding of terrorism and money laundering activities, Federal law requires all Financial Institutions to obtain, verify, and record information that identifies each person or entity that opens an account, including any deposit account, treasury management account, loan, other extension of credit, or other financial services product. What this means for Borrower: When Borrower opens an account, if Borrower is an individual, Bond Owner will ask for Borrower's name, taxpayer identification number, residential address, date of birth, and other information that will allow Bond Owner to identify Borrower, and, if Borrower is not an individual, Bond Owner will ask for Borrower's name, taxpayer identification number, business address, and other information that will allow Bond Owner to identify Borrower. Bond Owner may also ask, if Borrower is an individual, to see Borrower's driver's license or other identifying documents, and, if Borrower is not an individual, to see Borrower's legal organizational documents or other identifying documents.

Section 12.39 **WAIVER OF SPECIAL DAMAGES**. TO THE EXTENT PERMITTED BY APPLICABLE LAW, THE BORROWER SHALL NOT ASSERT, AND HEREBY WAIVES, ANY CLAIM AGAINST THE BOND OWNER, ON ANY THEORY OF LIABILITY, FOR SPECIAL, INDIRECT, CONSEQUENTIAL OR PUNITIVE DAMAGES (AS OPPOSED TO DIRECT OR ACTUAL DAMAGES) ARISING OUT OF, IN CONNECTION WITH, OR AS A RESULT OF, THIS AGREEMENT OR ANY AGREEMENT OR INSTRUMENT CONTEMPLATED HEREBY, THE TRANSACTIONS, THE BONDS, THE BOND LOAN OR THE USE OF THE PROCEEDS THEREOF.

Section 12.40 **No Offset**. All payments due by Borrower to Issuer under the Bond Loan Documents are to be made by the Borrower without offset or other reduction.

Section 12.41 **Electronic Transactions**. The transactions described in this Agreement and the other Bond Loan Documents may be conducted and related documents may be sent, received or stored by Electronic Means. Copies, telecopies, facsimiles, electronic files and other reproductions of original executed documents shall be deemed to be authentic and valid counterparts of such original documents for all purposes, including the filing of any claim, action or suit in the appropriate court of law.

Section 12.42 **Electronic Delivery of Documents**. (a) The provisions of this Section shall be applicable in the event that Borrower delivers any (i) financial statements of Borrower or any other Person ("**Financial Statement**"), (ii) no default or compliance certificates ("**No Default Certificates**"), or (iii) borrowing base certificates ("**Borrowing Base Certificates**"), and together with the Financial Statements, the No Default Certificates, and any other documents or information

regarding Borrower or any other Person delivered to Bond Owner pursuant to this Agreement, collectively, the “**Financial Information**”) in electronic form (by “email”).

(a) The Financial Information delivered in electronic form shall, for all purposes, be the same as if, and shall have the same validity, force and effect as if, such Financial Information had been delivered in paper or other tangible form. Each item of Financial Information delivered in electronic form shall be deemed to have been originally signed by Borrower for all purposes (including all purposes and interpretations of federal and state law), whether or not there is an electronic name or signature of Borrower thereon, and Borrower waives any right it may have to claim that the electronic documents are not original documents or valid documents.

(b) Borrower shall deliver Financial Information to Bond Owner in, and only in, a format that Bond Owner may both retain in its own records (i.e. save as a file on its own system) and print. In the event that at any time, under the electronic format then currently used by Bond Owner, Bond Owner is unable to save or print Financial Information delivered in electronic form, Borrower shall no longer be permitted to deliver Financial Information in electronic form.

(c) This Section constitutes an agreement between the parties to conduct transactions by electronic means pursuant to the Texas Uniform Electronic Transactions Act, Chapter 43, Texas Business & Commerce Code (the “**ETA Act**”), and the provisions of the ETA Act shall be applicable to the delivery of Financial Information by Borrower to Bond Owner in electronic form.

**BORROWER COVENANTS AND AGREES TO ASSUME LIABILITY FOR AND TO PROTECT, INDEMNIFY AND SAVE THE BOND OWNER, TRUSTEE, AND/OR THE ISSUER HARMLESS FROM ANY AND ALL REASONABLE LIABILITIES, OBLIGATIONS, DAMAGES, PENALTIES, CLAIMS, CAUSE OF ACTION, COSTS, CHARGES AND EXPENSES, INCLUDING REASONABLE ATTORNEY’S FEES AND EXPENSES OF EMPLOYEES, WHICH MAY BE IMPOSED, INCURRED BY OR ASSERTED AGAINST THE BOND OWNER, TRUSTEE, AND/OR THE ISSUER BY REASON OF ANY LOSS, DAMAGE OR CLAIM HOWSOEVER ARISING OR INCURRED BECAUSE OF OR OUT OF OR IN CONNECTION WITH (I) ANY ACTION OF THE BOND OWNER, TRUSTEE, AND/OR THE ISSUER PURSUANT TO REQUESTS FOR ADVANCES UNDER THIS NOTE, OR (II) THE TRANSFER OF FUNDS PURSUANT TO SUCH. BOND OWNER, TRUSTEE, AND/OR THE ISSUER IS ENTITLED TO RELY UPON AND ACT UPON REQUESTS MADE OR PURPORTEDLY MADE BY ANY OF THE OFFICERS OF BORROWER AUTHORIZED UNDER THE TERMS OF THIS AGREEMENT, AND BORROWER SHALL BE UNCONDITIONALLY AND ABSOLUTELY ESTOPPED FROM DENYING (I) THE AUTHENTICITY AND VALIDITY OF ANY SUCH TRANSACTION SO ACTED UPON BY BOND OWNER, TRUSTEE, AND/OR THE ISSUER ONCE THE BOND OWNER HAS APPROVED ADVANCE OF FUNDS UNDER THE BOND NOTE AND HAS DEPOSITED OR TRANSFERRED SUCH FUNDS AS REQUESTED IN ANY SUCH REQUEST, AND (II) BORROWER’S LIABILITY AND RESPONSIBILITY THEREFOR. NOTWITHSTANDING ANYTHING TO THE CONTRARY SET FORTH HEREIN, IN**

**THE SECURITY INSTRUMENT, AND/OR ANY OF THE OTHER SECURITY DOCUMENTS, THIS PARAGRAPH AND THE INDEMNITIES PROVIDED HEREIN SHALL NOT APPLY IF SOLELY AND EXCLUSIVELY THE RESULT OF THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF BOND OWNER, OR ANY OF BOND OWNER'S EMPLOYEES OR AGENTS.**

Section 12.43 **On-Line Banking Loan Payments**. From time to time, Bond Owner may (but shall not be required to) permit loan payments to be made through its online banking website. Bond Owner may impose and change limitations on making online loan payments, such as minimum or maximum payment amounts, the types of accounts from which loan payments may be made, and the types of payments that may be made online (i.e., ordinary installment payments, principal only payments, or other types of payments). Whether online payments are permitted, and Bond Owner's applicable terms and restrictions if such payments are permitted, will be reflected in the features available online when a user logs into the online banking website.

*[REMAINDER OF THIS PAGE LEFT BLANK INTENTIONALLY]*

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and delivered as of the day and year first above written.

**BORROWER:**

CENTER 818 COTTON FORD ROAD, LP, a Texas limited partnership

By: Center 818 Cotton Ford Road GP, LLC, a Texas limited liability company, its General Partner

By: ITEX Advisors, LLC, a Texas limited liability company, its Manager

By: The ITEX Group Management, LLC, a Texas limited liability company, its Manager

By: \_\_\_\_\_  
Christopher A. Akbari,  
its Manager

Borrower signature page to Financing Agreement



**ISSUER:**

TEXAS DEPARTMENT OF HOUSING AND  
COMMUNITY AFFAIRS

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

Name: James B. "Beau" Eccles

Title: Secretary to Board

Issuer signature page to Financing Agreement

**BOND OWNER:**

COMMUNITYBANK OF TEXAS, N.A.

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

Name: Stephen W. Rose

Title: Executive Vice President

Bond Owner signature page to Financing Agreement

ACKNOWLEDGED BY TRUSTEE:

WILMINGTON TRUST, NATIONAL  
ASSOCIATION, as Trustee

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

Name: Dayna L. Smith

Title: Vice President

Trustee acknowledgment page to Financing Agreement

**SCHEDULE A**

**LEGAL DESCRIPTION OF PROJECT**

As described in the Bond Mortgage

**SCHEDULE A-1**

**PERMITTED ENCUMBRANCES**

As described in Exhibit B to the Bond Mortgage

## SCHEDULE B

### FORM OF PROMISSORY NOTE

\$10,100,000

June \_\_, 2022

FOR VALUE RECEIVED, CENTER 818 COTTON FORD ROAD, LP, a Texas limited partnership (the “Borrower”), promises to pay in lawful money of the United States of America to the order of the TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS, a public and official agency of the State of Texas, its successors or assigns (the “Issuer”), the principal sum of TEN MILLION ONE HUNDRED THOUSAND and No/100 Dollars (\$10,100,000.00), with interest thereon from the date of delivery hereof at the rates per annum on the outstanding principal balance hereon from time to time as provided with respect to the Bonds in the hereinafter referred to Indenture. Terms not otherwise defined in this Note shall have the respective meanings as set forth in the Indenture or in the Financing Agreement (as defined herein).

The principal and interest on this Note shall be payable at the times and in the amounts determined as provided in **Section 4.2** of the Financing Agreement dated as of June 1, 2022, among the Borrower, the Issuer and CommunityBank of Texas, N.A. (the “Financing Agreement”), with the final payment of all outstanding principal and interest on this Note to be paid on June 1, 2039. Both principal and interest under this Note shall be payable at the Payment Office of Wilmington Trust, National Association, a national banking association (the “Trustee”) at 15950 North Dallas Parkway, Suite 550, Dallas, Texas 75248. The Borrower may make prepayments upon this Note as provided in **Section 10.1** of the Financing Agreement.

If any payment required under this Note is not paid within ten (10) days after such payment is due, then the Borrower shall pay to the Issuer, promptly and without demand, a late charge equal to five percent (5.0%) of the amount of such payment to compensate the unpaid party for administrative expenses and other costs of delinquent payments. This late charge may be assessed without notice, shall be immediately due and payable and shall be in addition to all other rights and remedies available to the Issuer. This late charge shall be in addition to any interest due as a result of interest then accruing on the Bond Outstanding at the Default Rate, if applicable.

This Note is made pursuant to the Financing Agreement wherein, among other things, the Issuer has agreed to loan to the Borrower and the Borrower has agreed to accept a loan in the aggregate principal amount of \$10,100,000, being the proceeds from the sale of the Issuer’s Multifamily Housing Mortgage Revenue Bonds (Union Acres Project) Series 2022 in the principal amount of \$10,100,000 (the “Bonds”), said proceeds to be disbursed to the Borrower from time to time in accordance with the provisions of the Financing Agreement. The Bonds are being issued by the Issuer pursuant to a Trust Indenture dated as of June 1, 2022, between the Issuer and the Trustee (the “Indenture”).

If an Event of Default as described in **Section 11.1** of the Financing Agreement then exists, all unpaid principal of and accrued and unpaid interest on this Note may be declared to be forthwith due and payable in the manner and with the effect provided in the Financing Agreement. Failure

to exercise this option shall not constitute a waiver of the right to exercise the same in the event of any subsequent occurrence of an Event of Default.

The indebtedness evidenced by this Note is secured by a Construction and Permanent Deed of Trust, Security Agreement, Assignment of Leases and Rents and Fixture Filing dated as of June 1, 2022, and by certain other personal property collateral.

The obligations of the Borrower to make Basic Payments, Additional Charges, and payment of any other amounts due under the Financing Agreement shall be absolute and unconditional, and the Borrower shall make such payments without abatement, diminution, or deduction regardless of any cause or circumstances whatsoever including, without limitation, any defense, setoff, recoupment, or counterclaim which the Borrower may have or assert against the Issuer, the Trustee, or any other person and/or entity; provided that the Bond Loan and all obligations of the Borrower (other than the Unassigned Issuer's Rights) under the Bond Loan Documents shall be nonrecourse as and to the extent provided in **Section 11.10** of the Financing Agreement after the delivery of the Conversion Certificate and the occurrence of the Stabilized Occupancy Date.

If this Note shall be placed in the hands of an attorney or attorneys for collection, the Borrower agrees to pay, in addition to the amount due hereon, the reasonable costs and expenses of collection, including reasonable attorneys' fees. All parties to this Note, whether principal, surety, guarantor or endorser, hereby waive presentment for payment, demand, protest, notice or protest and notice of dishonor.

Executed as of the date first above written.

CENTER 818 COTTON FORD ROAD, LP, a Texas  
limited partnership

By: Center 818 Cotton Ford Road GP, LLC, a Texas  
limited liability company, its General Partner

By: ITEX Advisors, LLC, a Texas limited  
liability company, its Manager

By: The ITEX Group Management,  
LLC, a Texas limited liability  
company, its Manager

By: \_\_\_\_\_  
Christopher A. Akbari,  
Manager

**ENDORSEMENT**

Pay to the order of Wilmington Trust, N.A., without recourse, as Trustee under the Indenture referred to in the within mentioned Note, as security for the Bonds issued under the Indenture. This endorsement is given without any warranty as to the authority or genuineness of the signature of the maker of the Promissory Note.

**TEXAS DEPARTMENT OF HOUSING AND  
COMMUNITY AFFAIRS**

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

Name: \_\_\_\_\_

Its: \_\_\_\_\_



## SCHEDULE C

### PROJECT EXPENSES/BUDGET

(Affordable Housing)

The Budget attached to this **Schedule C** is an analysis, caused to be prepared by the Borrower and approved by the Bond Owner, of the total amount needed by the Borrower to construct the Project and to perform Borrower's other obligations under the Bond Loan Documents. The categories of costs are further broken down by line items, each for a specific type of cost associated with construction or performance of the Borrower's obligations under the Bond Loan Documents.

Whenever a Budget is required, the Borrower must prepare and submit it for the Bond Owner's approval pursuant to **Section 3.3** of this Agreement. Any revised Budget approved by the Bond Owner will be a more recent version of the analysis provided in the Budget and must include revised versions of any detailed breakdowns included in the Budget.

## SCHEDULE D

### DISBURSEMENT SCHEDULE

All capitalized terms not defined herein shall be defined as they are defined in the Indenture and the Financing Agreement, as applicable.

#### 1. Conditions to Disbursement

Before the Bond Owner becomes obligated to consent to any disbursement under this Agreement, all conditions to the disbursement must be satisfied at the Borrower's sole cost and expense in a manner acceptable to the Bond Owner, or waived in writing by Bond Owner. The Borrower acknowledges that delays in disbursements may result from the time necessary for the Bond Owner to verify satisfactory fulfillment of any and all conditions to a given disbursement. If the Bond Owner in its sole discretion purchases the Bonds or consents to a particular disbursement, before all applicable conditions are satisfied, such fact will not be a waiver of such conditions as to any other disbursement.

##### (a) Bond Closing

The Bond Owner is not required to purchase the Bonds until the following requirements have been satisfied:

1) The Bond Owner must have received and approved each of the following Bond Loan Documents duly executed and, where required, acknowledged.

1) The Bond shall have been issued to Bond Owner on terms acceptable to Bond Owner and in connection therewith, the Trustee shall be prepared to cause the Bonds to be delivered to Bond Owner.

2) The Bond Owner must have received and approved copies of the fully executed Indenture, each Regulatory Agreement (as applicable).

3) Evidence that the proceeds of the Bonds will be loaned to the Borrower pursuant to the Financing Agreement and except for Costs of Issuance, the proceeds will be deposited in the Project Fund.

4) The Bond Owner must have received evidence satisfactory to the Bond Owner that the Borrower's Sources, taking into account the amount and timing thereof, are sufficient to pay the Total Project Expenses on a timely basis.

2) Evidence required by Bond Owner that the Project has received a 42(m) letter from the Issuer in respect of the Project evidencing the amount of the Low-Income Housing Tax Credit allowed pursuant to Section 42(h)(4) and 42(m)(i) of the Code, and that such allocation has not been rescinded, revoked, canceled, or otherwise suspended.

5) A copy of the Partnership Agreement; (y) a copy of the filed Certificate of Formation for Borrower and such other evidence of Borrower's and the General

Partner's existence and good standing, and (z) copies of all other documents and agreements referenced in the Partnership Agreement, and all modifications and amendments thereto, or otherwise required in connection therewith by the Investor Limited Partner;

6) Copies of the fully executed Seller Loan Documents (and related Intercreditor Agreement with respect thereto), and no event of default is then continuing under the Seller Loan Documents;

7) Evidence of how any predevelopment funds have been used for the Project.

8) Evidence that the Existing Project Cash Reserves have been transferred Borrower on terms satisfactory to Bond Owner and use to pay budgeted items (and portion of the Existing Project Cash Reserves not used on the Bond Closing Date shall be deposited in a blocked collateral account of Borrower located at Bond Owner and then disbursed for budgeted items in accordance with the terms of this Agreement).

9) The Bond Mortgage and the Assignment of Mortgage, each Regulatory Agreement (as then applicable), and all financing statements required by the Bond Owner must be executed and, where required, acknowledged by all parties thereto and each be delivered to a title insurer, in a manner satisfactory to the Bond Owner for recording in the office of the county clerk in which the Project is located. If required by the Bond Owner, the Borrower and the holder of each lien or encumbrance that is not a Permitted Encumbrance must execute in recordable form a Subordination Agreement, in form and substance acceptable to the Bond Owner ("**Subordination Agreement**"), to be recorded concurrently with the Bond Mortgage.

10) A title insurer acceptable to the Bond Owner must execute an instruction letter in a manner satisfactory to the Bond Owner agreeing to issue a loan policy of title insurance satisfying the requirements of **Schedule K** (the "**Title Policy**"), in the amount of the Bond Loan insuring the Bond Mortgage as a first priority encumbrance against the Project (showing the title to the Project to be vested in the Borrower), subject only to the Permitted Exceptions consented to by the Bond Owner in writing, together with such endorsements as the Bond Owner may require, subject only to exceptions consented to by the Bond Owner in writing, together with such endorsements as the Bond Owner may reasonably require. The Bond Owner must have reviewed and approved a current ALTA survey of the Project prepared at the Borrower's expense by a licensed surveyor acceptable to the Bond Owner, certified to the Bond Owner and the title insurance company.

11) The Borrower shall deliver to the Bond Owner copies of or certificates acceptable to the Bond Owner evidencing, all policies of insurance required pursuant to the Bond Mortgage and the Bond Owner's insurance requirements.

12) The Budget attached to the Agreement as **Schedule C** must have been approved by the Bond Owner.

11) The Plans and Specifications must have been approved by the Bond Owner and by all governmental authorities as needed for lawful Rehabilitation of the Project.

13) The Capital Contribution Account and the Disbursement Checking Account to be maintained in the name of the Borrower with the Bond Owner must be opened with the Bond Owner in accordance with the Bond Owner's customary policies for the establishment of such accounts.

14) All executed contracts and subcontracts with respect to the Rehabilitation of the Project must be acceptable to the Bond Owner and be in full force and effect.

15) The Bond Owner must have received an environmental disclosure statement prepared and certified by the Borrower using the Bond Owner's prescribed form, and the information set forth in it must be acceptable to the Bond Owner. If the Bond Owner so requires, it must also receive a Phase I Report and (if applicable) a Phase II Report prepared by a consultant acceptable to the Bond Owner stating that there are no hazardous substances present in, on, under, or around the Project, and that there is no condition or circumstance which warrants further investigation or analysis in the opinion of the preparer of the report. The Bond Owner shall also receive satisfactory evidence, if required, of the abatement, removal, disposal, or correction of all unacceptable conditions identified in such reports, and the Borrower must execute an operations and maintenance plan on the Bond Owner's form or otherwise acceptable to the Bond Owner if asbestos containing materials or lead paint will continue to be present on the Project after abatement.

16) The Bond Owner's loan fees required pursuant to the Agreement, and the Issuer's Fees as then due under the Indenture, have been paid as set forth therein. The Borrower shall have paid all of the Bond Owner's reasonable costs and fees due in connection with the Bond Loan, including, without limitation, appraisal, administrative, closing, escrow, and title fees (which title fees will include, among other things, for all required endorsements to the Title Policy as provided in **Schedule K**, in such number as the Bond Owner specifies), cost engineering fees, environmental fees, and legal expenses. Said items must be paid by the Borrower out of sources other than the Borrower's Sources except to the extent included in the Initial Budget.

17) The (on a compiled basis) financial statements, tax returns, and other financial information which Bond Owner may reasonably require regarding the financial condition of the Borrower, any of its members, a Guarantor, Contractor, any other parties, or the Project.

17) Certified copies of the entity formation documents of the Borrower and its members as the Bond Owner may require, including, without limitation, a copy of the Partnership Agreement executed by all members of the Borrower.

19) The Bond Owner must have received and approved such financial statements, tax returns, and other financial information which it may require regarding the financial condition of the Borrower, any of its general partners or joint venturers, any guarantors, any other parties, or the Development.

20) The Bond Owner must have received and approved certified copies of such of the entity formation documents of the Borrower, General Partner, and the Guarantor, as the Bond Owner may require, including, without limitation, a copy of the Partnership Agreement

executed by all of the general and limited partners, including, without limitation, all limited partners who will be providing equity contributions to the Borrower.

21) The Bond Owner must have received evidence satisfactory to the Bond Owner that the Project is exempt from property taxes (including an opinion to that effect from counsel to the Borrower).

22) The fully executed Original HAP Contract, together with evidence that the Original HAP Contract has been duly assigned to the Borrower (and a consent to that assignment and consent to the collateral assignment as security for financing to Bond Owner, by HUD).

23) Either (a) a Payment and Performance Bond, or (b) if a Payment and Performance Bond cannot be provided to the Contractor, a letter of credit issued by a Financial Institution acceptable to the Bond Owner (which in any event shall have a Fitch rating of B or higher and if the institution is not rated by Fitch, then having an S&P rating of A or higher or a Moody's rating of A1 or higher) with a face amount of at least 15% of the budgeted hard costs for the Improvements (which amount shall not include the amount of Contractor profit, overhead and general requirements included in the Construction Contract, to the extent each is budgeted as soft costs) and on a form acceptable to Bond Owner. If at any time the Bond Owner, in its reasonable discretion, determines that the creditworthiness of the issuer of any letter of credit issued under this **Section 1(a)(22)** is no longer acceptable, the Borrower shall cause such letter of credit to be replaced within 30 days of written notice thereof with a letter of credit issued by a Financial Institution acceptable to Bond Owner, or (c) a dollar amount equal to at least 15% of the budgeted hard costs for the Improvements has been deposited into a blocked account located at the Bond Owner. Bond Owner shall have received and approved lien waivers on the applicable form attached as **Schedule R** for all materials supplied and work performed prior to the Bond Closing Date in a manner satisfactory to Bond Owner.

24) If available, the final form of each Regulatory Agreement which has not then been executed by Borrower.

25) The Borrower's standard form of residential tenant lease to be used for the Project.

26) If required by Bond Owner, a list of all contractors, subcontractors, and the material suppliers to be employed by the Contractor in connection with the Rehabilitation of the Project (setting forth the nature of the work to be performed, the labor and materials to be supplied and the dollar amount of such work or materials). If requested by the Bond Owner, the Borrower shall also submit copies of all bids received for each item of work to be performed as well as copies of executed subcontracts with accepted bidders.

27) An executed copy of the Architecture Contract and the Construction Contract.

28) The Bond Owner must have received evidence satisfactory to the Bond Owner that all utilities will be provided which are necessary to develop and occupy the Project, including written assurances from such utility companies as the Bond Owner may require.

The Bond Owner must also receive evidence satisfactory to the Bond Owner of the availability of such amounts of potable water as are necessary to develop and occupy the Project, as contemplated by the Agreement.

29) The Bond Owner must have received evidence of such zoning (including variances) and other land use entitlements and building permits as may be necessary to lawfully commence and carry on Rehabilitation of the Project to Substantial Completion, and thereafter to operate and occupy the Project as an apartment complex as contemplated hereby (except that actual issuance of permits necessary to commence construction may be evidenced by a city letter confirming availability of building permit(s) subject only to payment of the applicable fees).

30) The Bond Owner must have received an opinion of the Borrower's and Guarantor's counsel in form, scope, and substance satisfactory to the Bond Owner, covering the due formation and good standing of the Borrower and each of its general partners or members, the Borrower's authority to enter in the transaction contemplated by the Bond Loan Documents, conflicts with applicable laws and other agreements, material litigation, enforceability, and such other matters as the Bond Owner shall require. If the Bond Loan Documents include a Guaranty, the Bond Owner must have received an opinion of each guarantor's counsel to the same effect regarding the Guaranty and each guarantor.

31) The Bond Owner must have received evidence satisfactory to it that all of the conditions under any applicable development agreement for the development and Rehabilitation of the Project have been satisfied in full by the Borrower.

32) Evidence that use of the proceeds of the Bonds will meet the Fifty Percent Test.

33) Original title insurance policies and endorsements and such other items referred to in the first sentence of **Section 1(a)(12)** of this **Schedule D** in a form acceptable to the Bond Owner.

34) The Bond Owner must have received evidence that the first installment of the Capital Contribution from the Investor Limited Partner, in the amount set forth in **Schedule J** (net of amounts paid for Costs of Issuance and amounts retained by the Investor Limited Partner for its fees), shall have been deposited in the Capital Contribution Account for the purposes set forth in **Schedule J** (which may occur simultaneously with the Bond Closing Date).

35) No mechanic's lien shall be recorded against the Project, unless the Borrower has (i) furnished and perfected a bond issued by a company satisfactory to the Bond Owner and on a form and in an amount satisfactory to Bond Owner, or (ii) provided 150% of the amount of the lien in a cash deposit with the title company and the title company has deleted such lien from the down date endorsement the Borrower.

36) The Bond Owner must have received evidence that the requirements of **Section 4.7** have been met.

37) Proof in form and substance satisfactory to Bondholder's Representative that the required permits building and otherwise, and authorizations from all appropriate Governmental Authorities necessary or required in connection with the Rehabilitation of the Project have been obtained, or will be obtained when they become necessary (such as a will issue letter), together with copies of all other required governmental permits.

38) Bond Owner must have received and approved a pro forma operating statement for the Project and evidence of market conditions for the use of the Project.

39) An Appraisal of the Project, reflecting the market value of the Project and will include the contributing value of Capital Contributions to be made in connection with the Low Income Housing Tax Credit, reflecting a Loan to Value Ratio of not more than 80% (as restricted and as stabilized as is and including value of the Capital Contribution), and a projected Loan to Value Ratio for the Permanent Term of not more than 80% (as restricted and as stabilized).

40) Evidence that there is sufficient parking for the intended use of the Project identity and experience of the management company, together with all management contracts, development agreements, operating agreements, franchise agreements, or other contractual arrangements affecting the operation of the Project.

41) Evidence that (a) the Project and all planned improvements and intended uses will fully comply with all applicable deed restrictions, laws, regulations, and zoning requirements; and (b) evidence there are no pending proceedings, either administrative, legislative, or judicial, which would in any manner adversely affect that status of zoning with respect to the Project or any part thereof.

42) A marketing plan and marketing budget for the Project.

43) A market study or any market survey data prepared for Borrower and a physical needs assessment prepared by a party acceptable to Bond Owner, and in a scope and manner acceptable to Bond Owner.

44) An agreement from the Contractor, consenting to the assignment of the Construction Contract and the Plans and Specifications to Trustee, and providing for the subordination of all statutory and contractual liens and claims of that Contractor against the Project.

45) An agreement from the Architect, consenting to the assignment of the Architecture Contract Bond Owner and the Plans and Specifications to Trustee, and providing for the subordination of all statutory and contractual liens and claims of that Architect against the Project.

46) The Plans and Specifications (which shall have been approved, as applicable, by the Credit Agreement, the Investor Limited Partner and by the Bond Owner's construction consultant) and all applicable departments of the Bond Owner, and which shall in any event comply, as applicable, with the Americans with Disabilities Act, as amended.

47) Bond Owner shall have received and approved evidence no portion of the Project is in any “wetlands” or is located on or over a ground fault.

47) Bond Owner shall have received and approved certificates of a reporting service acceptable to Bond Owner, reflecting the results of a search of the central and local Uniform Commercial Code records made not earlier than thirty (30) days prior to the date hereof, showing no filings against Borrower or any of the collateral for the Bond Loan except those, if any, approved by Bond Owner or to be paid in connection with the Bond Closing Date.

48) Bond Owner shall have received and approved evidence (such as a notice of determination) that a 50% property tax exemption is available to the Project based on the ownership of Nautical Affordable Housing, Inc. in the General Partner.

(b) Initial Disbursement and Subsequent Disbursements.

After the Bonds have been purchased, the Bond Owner is not required to approve any disbursements by the Trustee of any Loan proceeds from the Project Fund or release of any other of Borrower’s Sources if:

1) Any of the items set forth in subsection **1(a)** above, which was not satisfied as a condition of closing, has not been satisfied or specifically waived by the Bond Owner in writing as a condition of making disbursements.

2) The Bond Owner fails to receive (i) a Draw Request (as defined below) accompanied by such documentation and information as the Bond Owner may require, (ii) any other documentation or information that the Bond Owner may require under **Section 2** of this Disbursement Schedule, or the Bond Owner considers any such Draw Request, documentation or information to be unacceptable. Without limiting the foregoing, if the Draw Request is for amounts in the Project Fund, the Draw Request shall be accompanied by a completed, signed Requisition in the form attached to the Indenture as **Exhibit A** and if the disbursement is from the Revenue Fund, such disbursement request shall be accompanied by a completed, signed Requisition in the form of the appropriate Exhibit attached to the Indenture.

3) With respect to any advance or disbursement for hard costs, Bond Owner shall not have received an AIA Document, completed by each appropriate Contractor and certified by the Architect (if required by Bond Owner);

4) With respect to any advance for soft costs (including contingencies), Bond Owner shall not have received all vouchers, invoices, and other evidence required by Bond Owner;

5) Borrower shall not have delivered to Bond Owner and its construction consultant, for their approval, evidence (which shall include a report of an inspection by its construction consultant) that (i) construction is proceeding in a manner to assure completion of the Improvements by the Bond Owner’s Required Completion Date; (ii) the amount theretofore invested by Borrower in the Land and the Improvements, together with the Borrower’s Sources remaining for the development of the Improvements, are adequate to meet all costs incurred and to be incurred in connection with the Improvements; and (iii) that Rehabilitation of the Project has



been substantially in accordance with the Plans and in accordance with the Bond Loan Documents, which shall include, without limitation, any other due diligence with respect to the Project required by Bond Owner's construction consultant;

6) Bond Owner shall not have received, at Borrower's cost and expense, a satisfactory "downdate endorsement" and all other endorsements if or as required by Bond Owner to the Title Policy in connection with the advance as disbursed;

7) If and to the extent required by the Bond Owner, prior to the pouring of a slab and upon completion of that slab, Borrower shall not have delivered a current survey evidencing the intended and actual location of the slab, showing no encroachment. If and to the extent required by Bond Owner, Borrower shall have delivered a slab survey, if the proceeds of the advance are for, among other things, costs associated with the slab to the Improvements, showing, among other things, no encroachments on or over any boundary line, easement, setback line, or other restricted area;

8) Any part of the Project then subject to the Bond Mortgage is materially damaged and not repaired, unless the Bond Owner receives funds from the Borrower or insurance proceeds sufficient to pay for all repairs in a timely manner in accordance with the terms of the Bond Mortgage.

9) Any part of the Project then subject to the Bond Mortgage, or any interest in any of it, is affected by eminent domain or condemnation proceedings.

10) The Bond Loan is "out of balance" and the Borrower fails to timely comply with any demand by the Bond Owner to deposit funds, and/or the Bond Owner does not consent to any revised Budget proposed by the Borrower.

11) A Default or an Event of Default is continuing.

12) A default has occurred and is continuing under any of the Requirements.

13) The Investor Limited Partner has failed to contribute its Capital Contribution when all of the conditions set forth in the Partnership Agreement for the specific capital contribution are satisfied.

14) Funds shall not have been expended by Borrower as approved by the Bond Owner or any uncured material default exists under any liens or encumbrances (other than Permitted Encumbrances).

15) Prior to the first disbursement for hard costs, a copy of a filed Affidavit of Commencement, in the form of **Schedule N** attached hereto, as filed within 30 days after commencement of Rehabilitation of the Project with the County Clerk of Shelby County, Texas, and satisfying the requirements of the Texas Property Code (which shall evidence that commencement of Rehabilitation of the Project began after the date the Bond Mortgage was recorded) is not submitted to Bond Owner;

16) If received by the Borrower at the time, the Bond Owner shall not have received original recorded counterparts of each Regulatory Agreement (if then issued), Mortgage, the Assignment, and the related financing statements, and copies of all documents relating to the conveyance of the land relating to the Project to the Borrower, including, without limitation, the recorded lease to the Borrower, in a manner satisfactory to the Bond Owner.

17) The Borrower fails to satisfy any other conditions to funding set forth in the Bond Loan Documents and required by the Bond Owner and such failure is continuing.

18) A Default or Event of Default is then continuing.

(c) Final Hard Cost Disbursement.

The Bond Owner is not required to approve the final disbursement for payment of hard costs (including for Retainage) of Loan proceeds by the Trustee from the Project Fund or other funding source until all of the following conditions are satisfied:

1) The Project must be fully completed in accordance with the Plans and Specifications and all Requirements in all material respects.

2) Forty-one (41) days have elapsed after the later of (i) “completion” of the Improvements, as defined in and required by Section 53.106 of the Texas Property Code, or (ii) the date of filing with the county clerk of Shelby County of an Affidavit and Certificate of Completion (the “**Affidavit of Completion**”), executed by Borrower, the Contractor, and Architect, in the form of **Schedule O** attached hereto, or (iii) the date Borrower has otherwise fully and completely satisfied the requirements of Section 53.106 of the Texas Property Code, including, without limitation, providing a copy of any such affidavit to all parties, and within the time periods, required by such Section 53.106.

3) The Bond Owner must receive evidence that all certificates of occupancy or other permits necessary for occupancy of all of the Project have been obtained from the appropriate governmental authorities.

4) The Bond Owner must receive a final Draw Request, accompanied by written certification by the Architect and the Contractor that the Project as completed conform to the Plans and Specifications and all Requirements, (including, without limitation, an AIA G 704 Certificate of Substantial Completion with respect to the Project executed by the Architect) and by such other documentation and information as the Bond Owner may require under **Section 2** of this Disbursement Schedule.

5) The Borrower must provide endorsements to or a rewrite of the Bond Owner’s title insurance policy insuring lien free completion of the Project as well as first lien priority of the final disbursement.

6) The Bond Owner must receive and approve complete as built plans and specifications for the completed Project certified by the Architect as being complete and accurate.

7) The Bond Owner must receive and approve an ALTA as built survey of the completed Project without any encroachments or exceptions of any kind except as acceptable to the Bond Owner, satisfying the requirements of **Schedule L**, prepared by a licensed surveyor, certified to the Bond Owner and the title insurer.

8) Lien releases (on the applicable form set forth in **Schedule R**) from Contractor Architect, and such other persons or entities as the Bond Owner may reasonably require under the circumstances to satisfy Bond Owner that the Project has been completed lien-free and that the costs of all materials furnished and labor performed in connection with such renovation have been paid in full subject to Retainage.

9) No Material Adverse Change or Effect shall have occurred and be existing. No default shall have occurred and be continuing under any of the Bond Loan Documents and no event shall have occurred that upon notice or the passage of time would become such a default.

10) An affidavit of bills paid and/or lien release, in a form reasonably acceptable to Bond Owner, executed by the Contractor.

11) No Default or Event of Default shall have occurred and be continuing.

## 2. Draw Requests.

Before the Bond Owner becomes obligated to make any disbursements from the Capital Contribution Account (if then on deposit with the Bond Owner) or approve any Requisitions made on the Project Fund, it must receive a written request signed by the Borrower or the Borrower's agent designated in **Section 7** of this Disbursement Schedule, using a form acceptable to the Bond Owner ("**Draw Request**"), accompanied by such documentation and information as the Bond Owner may reasonably require (if the Draw Request requests amounts in the Project Fund, the Draw Request shall be accompanied by a fully completed, signed Requisition). If the Bond Owner approves a Requisition, the Bond Owner will then submit the Requisition to the Trustee. In each Draw Request, the Borrower shall request disbursement for one or more specified line item(s) of the Budget. Each Draw Request shall be accompanied by the items required pursuant to Section 6.2 of the Indenture (which may include, without limitation, the approval of the Issuer). In addition, if an Event of Default is then continuing, each Draw Request shall be accompanied by checks (to be drawn on the Disbursement Checking Account) made out to each of the Borrower's merchants, vendors, materialmen, suppliers, laborers, subcontractors, and other appropriate parties in the amount of the funds owed to such parties after appropriate adjustment for any retainages. The Bond Owner shall not be obligated to fund any Draw Request earlier than ten (10) Business Days after receipt of a complete supporting package. Borrower may submit Draw Requests to the Bond Owner no more frequently than once each calendar month, unless the Bond Owner has given its prior written consent in each instance.

With each Draw Request, the Borrower shall submit to the Bond Owner such items of information and documentation, including invoices, canceled checks, lien waivers on the applicable form attached as **Schedule R**, and other evidence as may be required by the Bond

Owner to show that the Borrower is in compliance with the Bond Loan Documents. All such items must be acceptable in form and substance to the Bond Owner.

Each Draw Request shall constitute the Borrower's representation and warranty to the Bond Owner that:

All conditions to the closing and delivery of the Bond set forth in the Indenture and the Financing Agreement have occurred or have been waived in writing by Bond Owner and all other required parties, and all conditions to the initial disbursement of Bond proceeds have occurred or have been waived by Bond Owner.

The Bond Loan is "in balance" as defined in the Agreement.

All of the documentation submitted with the Draw Request is genuine and unaltered.

All disbursements made to date as well as those being currently requested were and will be in strict compliance with the Budget, unless the Borrower has notified the Bond Owner in writing to the contrary and the Bond Owner has approved such deviation.

The funds requested by the Draw Request (whether from the Capital Contribution Account or the Project Fund) will pay in full all invoices received by the Borrower or by the Contractor to date for labor, materials, and services furnished in connection with the Rehabilitation of the Project Fund (net of applicable retainage).

The Borrower has caused or will promptly cause the amounts requested by the Draw Request to be paid to the respective individuals or entities for which such amounts were requested.

All amounts disbursed by the Bond Owner pursuant to each previous Draw Request have been paid in the amounts and to the respective individuals or entities for which such amounts were requested.

The payments made pursuant to the Draw Request are for Qualified Project Costs and/or Qualified Project Reimbursements.

### 3. Disbursement Amounts.

For each line item of the Budget, the Bond Owner shall approve Requisitions and/or make disbursements of Borrower's Sources in amounts which, when totaled, do not exceed the maximum allocation of funds for that line item, as shown in the Cost Breakdown, taking into account all prior disbursements, any reallocations of Borrower's Sources made by the Bond Owner and all applicable Retainage requirements (or made by the Borrower and reported to the Bond Owner if the approval of the Bond Owner is not required), the Borrower may at any time and from time to time, by written notice to the Bond Owner, reallocate from the construction contingency item in the Budget to other items of hard construction costs an aggregate amount equal to the same percentage of the original amount of the construction contingency line item as the then percentage of completion (as determined by the Bond Owner's inspector) of the work to be performed under

the Construction Contract. Whenever the portion of the work to be performed under the Construction Contract represented by any line item of the Budget has been completed to the reasonable satisfaction of the Bond Owner and all costs represented by that line item have been paid in full and statutory lien waivers on the applicable form attached as **Schedule R** obtained from the Contractor and all subcontractors and others who or which are to be paid from that line item, the Borrower may at any time and from time to time, by written notice to the Bond Owner, reallocate unused funds from that line item to any other one or more line items. If at any time the Bond Owner is holding the Borrower's Funds in the Capital Contribution Account, or deposits of the Excess Project Cash Reserves, or in the Borrower's Funds Account, the Bond Owner shall make all disbursements first from such funds until they are exhausted, in the manner provided in **Section 7** of this Disbursement Schedule. On the first day of each month occurring from and after the date hereof (whether or not the Bond Owner disburses or is obligated to disburse or approves a Requisition to disburse any of the proceeds of the Bond Loan and whether or not the Bond Owner releases or is obligated to release any funds from the Capital Contribution Account), the Borrower shall pay to the Bond Owner a Construction Inspection Fee set forth in **Section 5.18** per inspection. In the event that the Bond Owner permits the Borrower to make more than one Draw Request in a month, the Borrower shall pay to the Bond Owner the fees for such additional inspection.

Notwithstanding the preceding paragraph, the Borrower shall not be entitled to reallocate from any line item to pay any additional costs resulting from a change which would necessitate the Bond Owner's approval under **Section 5.11** or other Section of this Agreement unless and until the Bond Owner's approval has been given (as required).

4. Disbursements of Certain Costs Not Requiring Retainage.

For each line item of the Budget other than hard costs, if otherwise approved, the Bond Owner shall make one or more disbursements to the Borrower or for its account in the amount applied for in Borrower's Draw Request, without retention for Retainage.

5. Disbursements of Costs Requiring Retainage.

Retainage shall be withheld from each disbursement from the Project Fund and from the Capital Contribution Account for payment of artisans and mechanics or any other party who performs labor or service for Rehabilitation of the Project under a subcontract with Contractor, or such other general contractor approved by the Bond Owner shall be withheld until all conditions to the Bond Owner's final disbursement have been satisfied.

The Borrower, at its option, may request disbursement of the Retainage before requesting the final disbursement of Borrower's Sources, provided that all conditions to the final disbursement have been satisfied.

6. The Borrower's Funds.

At all times when the Bond Owner is holding Borrower's Funds in the Borrower's Funds Account or in the Capital Contribution Account, the Bond Owner shall make all disbursements first from Borrower's Funds until they are exhausted, subject however to the condition that 95% of the proceeds of the Bond proceeds be spent on Qualified Project Costs and/or Qualified Project Reimbursements.

7. Disbursement Procedures.

(a) Disbursements.

Disbursements of all of Borrower's Sources shall be made to the Disbursement Checking Account, except as otherwise provided in the Agreement or as otherwise agreed in writing by the Bond Owner and the Borrower, and delivered to the Trustee.

(b) Authorized Signers.

All Draw Requests and other documents in connection with the administration of the Bond Loan must be signed by a duly authorized representative of the Borrower listed in **Schedule D-1**.

(c) The Developer Fee.

The Developer Fee is payable only to the extent and at the times specified in the Budget, notwithstanding anything contrary contained in the Partnership Agreement or any other document executed in connection with the Partnership Agreement; provided, however, this provision does not authorize the Borrower to pay any Developer Fee earlier than provided for in the Partnership Agreement.

Notwithstanding anything herein to the contrary, until the Stabilized Occupancy Date, no Developer Fees or overhead shall be paid; provided, however, that notwithstanding the foregoing, if no Event of Default is then existing (or would result from that payment), Developer Fees may be then paid from the Capital Contributions as follows:

1) On the Bond Closing Date, up to \$156,903.00 of budgeted Developer Fees may be paid from the first Capital Contribution set forth in **Schedule J**.

2) Upon Substantial Completion of the Improvements, up to \$239,114.00 of budgeted Developer Fees may be paid from the second Capital Contribution set forth in **Schedule J**.

3) On the Stabilized Occupancy Date, up to \$475,000.00 of budgeted Developer Fees may be paid from the third Capital Contribution set forth in **Schedule J**.

4) In connection with the issuance of the Forms 8609, as provided in the Partnership Agreement, up to \$175,000.00, as provided in the Partnership Agreement, of the budgeted developer fee may be paid from the fourth installment as provided in the Partnership Agreement. [***BORROWER/EQUITY TO CONFIRM***]

All other remaining developer fees (if any) shall be deferred and may be paid on or after the Stabilized Occupancy Date from NOI. Notwithstanding the foregoing, in no event may developer fee or overhead be paid in an amount that would exceed the amount permitted under the Partnership Agreement or in any other way violate the Partnership Agreement.

**SCHEDULE D-1**

**AUTHORIZED SIGNERS**

Christopher A. Akbari

Tim Nolan

**SCHEDULE E**

**PRO FORMA SCHEDULE**

Construction Commencement: After the date of Bond Closing and before the date that is thirty (30) days after Bond Closing

Substantial Completion: \_\_\_\_\_ ( ) months from the Agreement Commencement Date, as may be extend pursuant to the definition of Bond Owner's Required Completion Date

Deadline For Stabilized Occupancy Date: June 1, 2024 (or as may be extended under **Section 4.2(e)**)



## SCHEDULE F

### CONDITIONS RELATING TO RESERVE ACCOUNTS

(a) Establishment of Reserve Accounts. In conjunction with Section 6.8 of the Indenture, on or before the Stabilized Occupancy Date, the Trustee shall establish under the Indenture (i) a replacement reserve (the “**Replacement Reserve Account**”); (ii) a real estate taxes and issuance reserve account (the “**Real Estate Taxes and Insurance Reserve**”); and (iii) an operating reserve account (the “**Operating Reserve Account**”) (each, a “**Reserve Account**,” and collectively, the “**Reserve Accounts**”). Each of the Reserve Accounts shall be under the sole dominion and control of the Trustee for collateral purposes (but, notwithstanding anything herein to the contrary, the administration of the Reserve Accounts, including withdrawals therefrom, in each case, shall be subject to the terms and provisions of the Partnership Agreement, and in connection therewith, Bond Owner will authorize Trustee to make withdrawals from Reserve Accounts as provided for in this Agreement and as provided for in the Partnership Agreement). The foregoing shall be the same reserves as required by the Partnership Agreement.

(b) Timing of Reserve Deposits.

(A) Initial Reserve Deposits. On or before the Stabilized Occupancy Date, the Borrower shall pay to the Trustee at the Bond Owner as provided for in the Indenture, for deposit into each of the below Reserve Accounts maintained by Trustee at the Bond Owner (each an “**Initial Reserve Deposit**”), the following:

(i) Real Estate Taxes and Insurance Reserve Account. The Borrower shall pay to the Trustee for deposit into the Bond Owner the Bond Mortgage Real Estate Taxes and Insurance Reserve Account (as such term is defined below) an Bond Owner Initial Reserve Deposit equal to a prorated amount for property taxes, if any, owed with respect to the Project, as determined by the Bond Owner in its reasonable discretion, whether or not such property taxes are due and payable, for the period from the first day of the applicable tax period through and including the Stabilized Occupancy Date.

(ii) Replacement Reserve Account. Annual deposits of \$300.00 per unit beginning after the Stabilized Occupancy Date (increasing annually by 3%) shall be funded on a monthly basis.).

(iii) Operating Reserve Account. There shall be a deposit of at least \$523,785.00 into the Operating Reserve Account (the “**O.R. Initial Deposit**”) (which will be funded from the third installment of the Capital Contribution listed in **Schedule J** payable on the Stabilized Occupancy Date) in accordance with the terms of the Partnership Agreement.

(c) Reserve Deposits. On each date that a deposit into a Reserve Account (each, a “**Reserve Deposit**”) is due, the Borrower shall pay or transfer existing Borrower Sources (to the extent available for that purpose) or NOI to fund such Reserve Deposit to the Trustee or the Investor Limited Partner, as applicable, for deposit into the applicable Reserve Account located at

the Bond Owner. The Bond Owner may, upon written request from the Borrower, waive any requirement for the payment of a Reserve Deposit to a Reserve Account by notice to the Borrower and the Trustee; provided, however, that any such waiver by the Bond Owner of a requirement that the Borrower pay such Reserve Deposit to a Reserve Account may be revoked by the Bond Owner, in the Bond Owner's sole and absolute discretion, at any time upon notice in writing to the Borrower and the Trustee.

(i) Real Estate Taxes and Insurance Reserve Account. If and to the extent required by the Bond Owner, the Borrower shall make monthly deposits (each, a "**Monthly T&I Deposit**") into Real Estate Taxes and Insurance Reserve Account each in an amount equal to (a) the sum of (i) the aggregate anticipated annual premiums, for all insurance policies required to be maintained pursuant to the Bond Loan Documents, due in the next succeeding twelve (12) months; and (ii) the sum of the anticipated annual real property taxes, personal property taxes, intangibles taxes, and assessments for the Project due in the next succeeding twelve (12) months (if any), divided by (b) twelve (12).

(ii) Replacement Reserve Account. The Borrower shall make monthly deposits of \$2,500.00 each, into the Replacement Reserve Account Bond Owner (each, a "**Monthly Replacement Reserve Deposit**") within fifteen (15) days after the end of each month in an amount equal to one-twelfth of the amounts set forth in **Schedule F-1** attached hereto, as such amounts may be adjusted from time to time in accordance with the terms of this Agreement.

(iii) Auto-Debit. Without limiting any other term of this Agreement, Borrower authorizes Bond Owner to auto-debit each Reserve Account for the purposes set forth in this Agreement on the 10<sup>th</sup> day of each calendar month.

(iv) Replacement Reserve Account. On a monthly basis, on each Payment Date, beginning with the first Payment Date occurring after the Stabilized Occupancy Date (or such earlier date as may be required by the Partnership Agreement), the Borrower shall transfer to the Trustee for deposit into the Monthly Replacement Reserve Account an amount equal to one-twelfth of the amounts set forth in **Schedule F-1** attached hereto, as such amounts may be adjusted from time to time in accordance with the terms of this Agreement. The foregoing shall fund the Replacement Reserve Account, as provided in Section 6.8(1)(b) of the Indenture. The Bond Owner may, in the Bond Owner's reasonable discretion, by notice to the Borrower and the Trustee, adjust the amount of the Monthly Replacement Reserve Deposit, from time to time, to an amount sufficient, in the Bond Owner's reasonable judgment, to maintain adequate balances to pay for all Eligible Replacement Items (as such term is defined below) necessary to keep the Project in good order and repair. Notwithstanding the foregoing, in the event the Bond Owner shall at any time increase the Monthly Replacement Reserve Deposit to an amount exceeding the then existing Monthly Replacement Reserve Deposit amount, the Borrower may, at its election, request that the Bond Owner obtain, at the Borrower's sole cost and expense, an Engineering Report from an engineer to be selected by the Bond Owner in its reasonable discretion, in which case the deposit to the Replacement Reserve Account shall be adjusted by the Bond Owner based on such Engineering Report; provided, however, that in no event shall the Reserve Deposit to the Replacement Reserve Account be decreased below the

amount set forth above in (B)(ii). For purposes hereof, “**Engineering Report**” means an engineering report of the Property from an engineer approved by the Bond Owner and dated as of a date acceptable to the Bond Owner, which report shall, among other things, (i) conform to all requirements of the Bond Owner and (ii) certify that the Property is in compliance with all applicable requirements of the Americans with Disabilities Act of 1990, as amended from time to time.

(e) Permitted Investments, Earnings, Charges, and Annual Accounting.

(i) Investment in Permitted Investments. Moneys held by the Trustee in the Reserve Account shall be invested by the Trustee in accordance with Section 7.1 of the Indenture. The Borrower agrees that it shall include all interest, earnings, or profits on Permitted Investments of funds on deposit in any Reserve Account as its income (and, if the Borrower is a partnership or other pass-through entity, the partners, members, or beneficiaries of the Borrower, as the case may be), and shall be the owner of such accounts for federal and applicable state and local tax purposes, except to the extent that the Trustee retains such interest, earnings, or profits for its own account in accordance with the provisions of this Agreement. The Borrower shall have no right whatsoever to direct the investment of the proceeds in any Reserve Account, except as provided for in the Indenture.

(ii) Earnings. All interest, earnings, or profits on the Permitted Investments of funds in any of the Reserve Accounts shall be deposited into the applicable Reserve Account, provided that the Trustee may, upon direction to do so by the Bond Owner, retain for the account of any of the Holders, pursuant to the Indenture, any such interest, earnings, or profits on any or all of the Reserve Accounts during the occurrence and continuance of an Event of Default.

(f) Assignment to Issuer of Reserve Accounts and Rights and Claims.

(i) Assignment of Reserve Accounts. The Borrower hereby assigns to the Issuer and grants to the Issuer a security interest in the Reserve Accounts as additional security for all of the Borrower’s obligations under this Agreement and the other Bond Loan Documents.

(ii) Assignment of Rights and Claims. The Borrower assigns to the Issuer all rights and claims the Borrower may have against (1) all persons or entities claiming amounts due for taxes, utilities, rent or insurance, or (2) all persons or entities supplying labor or materials in connection with any Repair; provided, however, that the Trustee (on behalf of Issuer solely at the direction of the Bond Owner) may not pursue any such right or claim unless an Event of Default exists under any of the Bond Loan Documents.

(g) Application of Reserve Accounts Upon an Event of Default. If any Event of Default occurs (subject to applicable notice and cure periods), then the Borrower shall immediately lose all of its rights to receive disbursements from the Reserve Accounts unless and until the date on which such Event of Default is cured or all amounts secured by the Bond Mortgage and the other Bond Loan Documents have been paid in full and the lien of the Bond Mortgage and the other Bond Loan Documents, as appropriate, have been released. Upon the occurrence of any

Event of Default (subject to applicable notice and cure periods, the Trustee may, upon receipt of direction of the Bond Owner so to do, use the Reserve Accounts or any portion thereof) for any purpose, including but not limited to (i) repayment of any indebtedness secured by the Bond Mortgage and the other Bond Loan Documents, including but not limited to principal prepayments and the prepayment premium applicable to such full or partial prepayment (as applicable); provided, however, that such application of funds shall not cure or be deemed to cure any Event of Default, (ii) reimbursement of the Trustee and/or the Bond Owner for all reasonable losses, fees, costs, and expenses (including, without limitation, reasonable legal fees) suffered or incurred by the Trustee or the Bond Owner, as applicable, as a result of such Event of Default, (iii) payment of any reasonable amount expended in exercising all rights and remedies available to the Trustee and/or the Bond Owner at law or in equity or under this Agreement or under any of the other Bond Loan Documents, or (iv) to the payment of any item for which payment is required or permitted from any of the Reserve Accounts pursuant to the terms of this Agreement. Nothing in this Agreement shall obligate the Trustee to apply, or the Bond Owner to direct the Trustee to apply all or any portion of the Reserve Accounts on account of any Event of Default by the Borrower or to pay the indebtedness secured by the Bond Mortgage or any of the other Bond Loan Documents or in any specific order of priority.

(h) Disbursements. The Trustee shall disburse, to the extent of amounts on deposit in the Real Estate Tax and Insurance Reserve Account, directly to each person owed any portion of the water and sewer assessments and frontage charges, taxes, if any, assessments, if any, and insurance premiums, the total sum owed to such Person. Such disbursements shall be made by the Trustee (i) so as to coincide in frequency with the regular billing cycle of such person, and (ii) on or before the date that each such payment is due.

(i) Additional Amounts. The Bond Owner may require the Borrower to pay to the Trustee in advance, additional amounts for taxes, if any, charges, premiums, assessments, if any, and Impositions in connection with the Borrower or the Project which the Bond Owner shall reasonably deem necessary. Unless otherwise provided by applicable law, the Bond Owner may require payments for such other amounts to be paid by the Borrower in a lump sum or periodic installments, at the Bond Owner's option.

(j) Excess Amounts and Deficiencies. If the amount held in the Tax and Insurance Reserve Account at the time of the annual accounting thereof shall exceed the amount deemed necessary by the Bond Owner to provide for the payment of water and sewer assessments and frontage charges, taxes, if any, assessments, if any, Impositions, and insurance premiums, as they fall due, such excess shall be credited against future monthly Reserve Deposits to the Real Estate Tax and Insurance Reserve Account. If at any time the amount held in the Real Estate Tax and Insurance Reserve Account shall be less than the amount deemed necessary by the Bond Owner to pay water and sewer assessments and frontage charges, if any, taxes, if any, assessments, if any, Impositions, and insurance premiums, the Borrower shall pay to Trustee any amount necessary to make up the deficiency within thirty (30) days after written notice from Bond Owner to the Borrower requesting payment thereof.

(k) Remaining Amounts. Upon payment in full of all amounts owed by the Borrower under or otherwise secured by any of the Bond Loan Documents, all remaining amounts on deposit, if any, in the Real Estate Tax and Insurance Reserve Account shall be distributed to the Borrower.

(h) Disbursements from the Replacement Reserve Account.

(i) Disbursements for Replacements. Upon written request from the Borrower and satisfaction of the requirements set forth in this Agreement, including all Replacement Reserve Disbursement Conditions (as such term is defined below), the Trustee shall disburse amounts from the Replacement Reserve Account, subject to the Bond Owner's approval as set forth below, to pay for the actual costs of replacing Eligible Replacement Items in connection with the Improvements. For purposes hereof, "Eligible Replacement Items" means Capital Improvement Items and other substantial items approved by the Bond Owner in its reasonable judgment, but does not include maintenance and repairs made during the normal course of business, including broken windows, roof repairs and maintenance, landscaping, office equipment, interior painting, fire-damaged equipment, building additions, and any repair or maintenance item. For purposes hereof, "Capital Improvement Items" means items recognized as capital improvements in accordance with generally accepted accounting practices that require an outlay of funds for acquisition or improvement of a fixed asset which can be depreciated over its useful life and extends the life or increases the productivity of the Improvements (including without limitation, the items listed in **Schedule F-2**).

(ii) The Bond Owner's Approval: Replacement Reserve Disbursement Conditions. Any disbursement from the Replacement Reserve Account for costs incurred by the Borrower for Eligible Replacement Items is subject to the Bond Owner's prior approval, provided that the Bond Owner shall have no obligation to approve the Trustee's disbursement of any such amounts to the Borrower unless all of the following conditions (the "**Replacement Reserve Disbursement Conditions**") have been satisfied as determined by the Bond Owner in its reasonable discretion (or have been waived in writing by the Bond Owner):

(1) The Bond Owner shall have received a written request signed by the Borrower together with such documentation and information as the Bond Owner may require. Each such request shall be in form and substance acceptable to the Bond Owner, and shall include such items of information and documentation, including invoices, canceled checks, lien waivers on the applicable form attached as **Schedule R** and other evidence as the Bond Owner may require to show (a) that the requested funds are for Eligible Replacement Items; (b) the cost of all Eligible Replacement Items requested, and (c) that the Borrower is in compliance with the Bond Loan Documents.

(2) The Improvements shall not have been materially damaged.

(3) The Land and Improvements or any interest therein shall not have been materially affected by eminent domain or condemnation proceedings.

(4) The Borrower shall have provided such title insurance policy endorsements as the Bond Owner may reasonably require to insure first lien priority of the Bond Loan, as well as such other matters relating to the Eligible Replacement Items as the Bond Owner may specify.

(5) No Default or Event of Default shall exist.

(iii) No Acknowledgment. The Bond Owner's approval of disbursements from the Replacement Reserve Account or other acknowledgment of completion of any repair or replacement in any manner satisfactory to the Bond Owner shall not be deemed an acknowledgment that the repair or replacement has been completed in accordance with applicable building, zoning, or other codes, ordinances, statutes, laws, regulations, or requirements of any governmental or quasi-governmental agency.

(iv) No Disbursements for Routine Maintenance. The Trustee shall not be obligated to make, and the Bond Owner shall not be obligated to approve disbursements from the Replacement Reserve Account to reimburse the Borrower for the costs of routine maintenance to the Project or leasing commissions.

(v) Use Upon Event of Default. Upon any Event of Default which continues beyond any applicable cure period, the Bond Owner may in its sole and absolute discretion, use funds in the Replacement Reserve Account (or any portion thereof exclusive of PH Subaccount funds) for any purpose, including but not limited to (i) repayment of any indebtedness secured by the Bond Mortgage, including but not limited to principal prepayments and the prepayment premium applicable (if any) to such full or partial prepayment (as applicable); provided, however, that such application of funds shall not cure or be deemed to cure any Default or Event of Default; (ii) reimbursement of the Bond Owner for all losses (excluding consequential damages) and reasonable expenses (including, without limitation, reasonable legal fees) suffered or incurred by the Bond Owner as a result of such Default or Event of Default; (iii) repair or replacement of Capital Improvements; or (iv) payment of any amount expended in exercising (and exercise) all rights and remedies available to Lender at law or in equity or under this Agreement or under any of the other Bond Loan Documents.

(vi) Remaining Deposits. Upon payment in full of all amounts owed by the Borrower under or otherwise secured by any of the Bond Loan Documents, all amounts remaining on deposit, if any, in the Replacement Reserve Account shall be distributed to the Borrower.

(i) Disbursements from Operating Reserve Account. Amounts on deposit in the Operating Reserve Account shall be disbursed subject to and in accordance with the terms of the Partnership Agreement.

(j) Indemnification. The Borrower hereby indemnifies, defends, and holds the Trustee and the Bond Owner, and their respective affiliates, and the officers, directors, employees, and agents of each of them, harmless for, from and against any and all actual or threatened liabilities, claims, actions, causes of action, judgments, orders, damages (excluding consequential damages), costs, expenses, fines, penalties and losses (including sums paid in settlement of claims and all reasonable consultant, expert and legal fees and expenses of the Trustee's and the Bond Owner's counsel), and any resulting damages, harm or injuries to the person or property of any third parties (collectively, "**Claims**"), directly or indirectly arising out of, resulting from, or in any way connected with (a) any repairs or replacements made by the Borrower or the performance of

Eligible Replacement Items, (b) unpaid taxes, utility bills, rent, or insurance premiums owed by the Borrower, and/or (c) the holding or investment of the Reserve Accounts, excepting those arising out of, or resulting, solely from the gross negligence or willful misconduct of the Trustee or the Bond Owner, as applicable.

The indemnification of the Trustee and the Bond Owner as provided in this **Section (j)** shall remain in full force and effect if any such Claims directly or indirectly result from, arise out of, or relate to, or is asserted to have resulted from arisen out of or related to, the sole or contributory negligence of any of the Trustee and/or the Bond Owner.

(k) **No Impairment.** Nothing in this **Schedule F** shall, in any manner whatsoever, alter, impair, or affect the obligations of the Borrower or relieve the Borrower of any of its obligations to make payments and perform all of its obligations required under the Bond Loan Documents.

(l) **No Withdrawals.** Notwithstanding anything herein or on the Partnership Agreement to the contrary, except to fund a cash flow deficiency in accordance with the Partnership Agreement (or as otherwise expressly permitted by the Partnership Agreement), no withdrawals will be made from the Operating Reserve Account unless and until the Bond Loan is fully and finally paid.

**SCHEDULE F-1**

**REPLACEMENT RESERVE DEPOSIT REQUIREMENTS**

\$30,000.00 annually (\$300.00 per unit per year), payable in monthly deposits of \$2,500 each

(adjusting by increasing 3% per year)



**SCHEDULE F-2**  
**REPLACEMENTS**

Carpeting/floor coverings

HVAC units

Roofs

Hot water heaters

Furnaces

Parking lot paving (excluding patching)

Appliances (except to the extent appliance replacement is the obligation of the residents per the terms of the resident lease)

Window Coverings

Exterior Painting/Ceiling and Tuck Pointing

Doors

Windows

Plumbing fixtures

Tubs

Sinks

Fencing

Cabinets

Light Fixtures

Furniture

Exterior Railing

Floor Sealant

## **SCHEDULE G**

### **LIST OF PLANS AND SPECIFICATIONS**

As previously provided to and approved by the Bond Owner (a copy of the Plans and Specifications is on file with the Bond Owner).

**SCHEDULE H-1**

**INSURANCE REQUIREMENTS AT ALL TIMES BEFORE THE BOND MORTGAGE  
STABILIZED OCCUPANCY DATE**

<b>Flood Insurance</b>	<b>Builder's All-Risk Insurance</b>	<b>Workmen's Compensation and General Liability Insurance for the Contractor</b>	<b>Hazard Insurance</b>	<b>Windstorm Insurance</b>
Required at the slab draw.	Required at the slab draw. The amount of insurance must equal the replacement cost value as determined by the insurer, cost approach in the current appraisal, or cost breakdown for the Bond Loan. The insurer must have a Best Guide rating not less than "A". Bond Owner must be shown as the Bond Mortgagee, lienholder, loss payee, or equivalent.	The contractor's certificate of insurance must denote statutory worker's compensation coverage and general liability coverage in the following amounts: <ul style="list-style-type: none"> <li>• \$2MM per occurrence</li> <li>• \$5MM in aggregate</li> </ul>	Required at completion of construction. The amount of insurance must equal the replacement cost value as determined by the insurer, cost approach in the current appraisal, or cost breakdown for the Bond Loan.	Required in a manner satisfactory to Bond Owner.

**SCHEDULE H-2**

**INSURANCE REQUIREMENTS AT ALL TIMES AFTER THE STABILIZED OCCUPANCY DATE**

<b>Flood Insurance</b>	<b>Multi-Peril Hazard Insurance</b>	<b>Commercial General Liability Insurance for the Borrower</b>	<b>Business Interruption/Rent Loss Insurance</b>	<b>Windstorm Insurance</b>
<p>Required if located in flood zone A or V; in amount equal to the lesser of the Bond Loan amount (including fees and insurance premiums financed) or the appraised value of the collateral.</p>	<p>At a minimum, the amount of insurance must equal the amount of the Bond Loan.</p> <p>Bond Owner must be shown as the Bond Mortgagee, lienholder, loss payee, or equivalent.</p> <p>The insurer must have a Best Guide rating of not less than "A".</p>	<p>The borrower must maintain adequate coverage considering the nature of their business, past claims and potential future claims.</p> <p>The minimum requirements are:</p> <ul style="list-style-type: none"> <li>• \$2MM per occurrence</li> <li>• \$5MM in aggregate</li> </ul> <p>The insurer must have a Best Guide rating of not less than "A".</p>	<p>Required: the insurance must cover a minimum of six months of net operating income, based on historical performance.</p>	<p>Required in a manner satisfactory to Bond Owner.</p>

## SCHEDULE I

### STABILIZED OCCUPANCY CONDITIONS

(a) Conditions to Final Disbursement Met. (i) the amount of the Permanent Loan or (ii) the conditions to the Bond Owner's consent to the final disbursement of Bond proceeds shall have been met or waived by the Bond Owner.

(b) Outstanding Balance; Principal Paydown. The outstanding principal balance of the Bond Loan shall not exceed the lesser of (i) the amount of the Permanent Loan or (ii) the amount which will meet the Debt Service Coverage Ratio test pursuant to paragraph **(j)** of this **Schedule I** (and Borrower shall have made a Resizing Payment as needed).

(c) Completion of Construction. The Improvements shall be Substantially Completed on or before the Bond Owner's Required Completion Date (as may be extended) in accordance with terms of this Agreement, and shall have provided Bond Owner with a Certificate of Occupancy, Affidavit of Completion, Completion Affidavit, or other evidence of completion acceptable to the Bond Owner. The Borrower shall provide the Bond Owner satisfactory evidence that all costs associated with such construction (other than the deferred development fee) have been paid in full, and that the Property is subject to no liens, conditional sales contracts, or other encumbrances or interests except for Permitted Encumbrances or as approved in writing by the Bond Owner.

(d) Certificate of Occupancy. The Improvements has received a final certificate of occupancy or other governmental permits and consents required in order to permit occupancy of all units within the Improvements by residential tenants.

(e) Lien-Free Completion. In addition to and without limiting (c) above, all labor and material shall have been delivered in connection with the planned Rehabilitation of the Project in accordance with the Plans and Specifications, and the Bond Owner shall have received evidence to its reasonable satisfaction (which may be in the form of an endorsement to the Title Policy) that no mechanics, materialmen's, or other liens or claims have been or may be asserted in connection with such work, or that such liens or claims are covered by a bond posted for such purposes.

(f) Compliance with Plans and Specifications. The Architect shall have certified that such work has been completed in substantial compliance with the Plans and Specifications.

(g) Good Condition and Repair. The Bond Owner shall be satisfied that the Property, including any construction on it, has been well maintained and is in good condition and repair, except for any insured casualty which is being repaired as provided in the Bond Loan Documents.

(h) Title Endorsements. The Trustee shall have received, at the Borrower's sole cost and expense, an endorsement under Rule P-8.b(2) of the Texas State Board of Insurance, deleting the "pending disbursements," and mechanics," and materialmen's lien exceptions from the Title Policy. (Receipt by the Trustee of such endorsement as a condition to the Bond Owner's consent to the final disbursement of Bond proceeds from Retainage will satisfy this condition.)

(i) 85% Occupancy. For each day of the immediately preceding three-month period, the Occupancy Requirement shall have been satisfied and all units occupied by residential tenants, shall be in compliance with each Regulatory Agreement, and those tenants shall be paying rent with no offset, at not less than the pro forma rents for the Project approved prior to the Bond Closing Date by the Bond Owner.

(j) Debt Service Coverage Ratio. The Debt Service Coverage Ratio for the Project shall be not less than 1.15:1.00 for each of the three calendar months ending prior to the Stabilized Occupancy Date (using the greater of actual expenses adjusted for accruals and extraordinary items or bank pro-forma expenses), rents at the lesser of actual rents achieved adjusted for concessions or bank pro-forma rents and shall meet such other debt service coverage ratio requirements as required by the Partnership Agreement. In the event that the Project does not satisfy this item (j), the Borrower shall redeem the Bond by making a Resizing Payment in accordance with **Section 4.2(f)** of this Agreement and Section 4.1 of the Indenture in a principal amount such that, after taking into consideration such prepayment, the Debt Service Coverage Ratio is at least 1:15:1.00, or as otherwise required to comply with the Partnership Agreement.

(k) No Default. No Default or Event of Default shall have occurred and be continuing.

(l) No Material Adverse Change. There shall be no Material Adverse Change in the Borrower's financial condition, or the project which materially impairs the Borrower's intended use of the Project or the Borrower's ability to repay the Bond Loan.

(m) Representations. All of the Borrower's representations in Article 2 of the Agreement must be true in all material respects, and the Borrower shall have delivered to the Trustee and the Bond Owner a certificate to that effect.

(n) Insurance Requirements. The Borrower shall provide to the Bond Owner policies of insurance in accordance with **Section 5.6**.

(o) Reserve Requirements. The Borrower shall have complied with all of the reserve requirements in **Schedule F**.

(p) Survey. If required by the Bond Owner, the Borrower shall have delivered to the Bond Owner an ALTA (other survey acceptable to the Bond Owner and Title Company as-built survey of the Land and Improvements in form and substance reasonably satisfactory to the Bond Owner, certified by a licensed land surveyor and showing the location of all boundary lines, easements, rights of way, and other matters affecting the Land.

(q) Compliance. Full compliance with all requirements of the Credit Agency, including, without limitation, building requirements and approved income limitations and unit breakdowns and any other set-aside requirements.

(r) LTV. A Loan to Value Ratio not to exceed 80%. Borrower shall have paid to Bond Owner all fees then due and payable by the Borrower under this Agreement or any other Bond Loan Document on or before the Stabilized Occupancy Date.

(s) Equity. Evidence that the Borrower has received the required Capital Contributions due under the Partnership Agreement or will be funded concurrently with the Stabilized Occupancy Date in a manner satisfactory to the Bond Owner.

(t) HAP Contract. The fully executed HAP Contract, together with an assignment thereof as security for financing for the Bond Loan (and a consent to that assignment by HUD).

(u) Miscellaneous. The Borrower shall have furnished to the Bond Owner such other information as the Bond Owner may reasonably request to assist the Bond Owner in determining whether the Stabilized Occupancy Conditions have been satisfied.

**SCHEDULE J**

**EQUITY FUNDING SCHEDULE**

**INVESTOR CAPITAL CONTRIBUTION SCHEDULE**

<b><u>INSTALLMENT</u></b>	<b><u>EVENT<sup>1/</sup></u></b>	<b><u>AMOUNT</u></b>	<b><u>PURPOSE</u></b>
1 <sup>2/</sup>	Investment Closing	\$ 881,589	Pay costs of closing, then pay \$156,000.00 of budgeted developer fees, and then pay costs of construction
2 <sup>2/</sup>	C/O	\$ 2,057,041	Pay construction item construction items subject to a pending construction draw, then pay the outstanding principal balance of the Bond Loan (and the Bonds) down to an amount not to exceed \$ _____, then pay budgeted Developer Fee up to \$239,114, then pay any remaining amounts to the Bond Note
3 <sup>2/</sup>	Stabilization/ Conversion	\$ 2,763,630	Pay budgeted projected items (if any), to pay Loan to amount of Permanent Mortgage Loan (or such lesser amount or amounts required for Lease Stabilization), then fund operating reserve of \$523,785, then pay developer fee of \$475,000 and as

<sup>1/</sup> The funding, timing and amount of the contributions will be made in accordance with the terms and conditions of the Partnership Agreement.

<sup>2/</sup> to be funded into the Capital Contribution Account.



			otherwise provided in Partnership Agreement
4	Form 8609	\$ 175,000.00	Pay developer fees as provided in the Partnership Agreement.
TOTAL CONTRIBUTION		\$ 5,877,260.00	

**SCHEDULE K**

**TITLE INSURANCE REQUIREMENTS**

The following are Bond Owner’s Title Insurance requirements with respect to the Bond Loan secured by the Land.

- A. Title policies are required on loans \$100,000 or more (loans more than \$250,000 if home equity) other than real estate taken as abundance of caution. This includes 1<sup>st</sup> or 2<sup>nd</sup> liens.
- B. Title searches are required on loans less than \$100,000 or home equity loans less than or equal to \$250,000.

**Title Insurer**

The Title Insurance Company issuing the Title Insurance Policy must be evidenced on the Bond Owner’s approved list and authorized to do business in the jurisdiction where the Land is located. The following Title Insurance Companies are pre-approved by the Bond Owner:

Chicago Title Insurance	Lawyers Title Insurance Corporation
Commonwealth Land Title Insurance Company	Old Republic Title Insurance Company
Fidelity National Title Insurance Company	Stewart Title Guaranty Company
First American Title Insurance Company	Ticor Title Insurance Company
LandAmerica	Transnation Title Insurance Company

**Policy Amount**

The policy amount of the title insurance must be in the amount of the Bond Loan or in the amount we are considering value if additional collateral.

**Effective Date**

The mortgagee loan policy coverage shall be effective on the Bond Closing Date. However such policy, when issued, shall be dated as of the date of the recordation of the Bond Mortgage or the Bond Closing Date, whichever is later. Where recordation of the Bond Mortgage occurs after the Bond Closing Date, the mortgagee loan policy will not include any matters arising subsequent to the Bond Closing Date and prior to the date of recordation of the insured Bond Mortgage.

### **Named Insured**

“CommunityBank of Texas, N.A., and its successors and/or assigns as their interests may appear.”

### **Mortgagee Loan Policy Forms**

The loan policy must be issued using: (i) the 1970 American Land Title Association (ALTA) standard form (as amended October 17, 1970 and October 17, 1984), or (ii) if the 1970 ALTA form may not legally be issued in the state where the Land is located, then the 1992 ALTA form, or (iii) if the ALTA 1970 and ALTA 1992 forms may not legally be issued in the state where the Land is located, then the form commonly used in the state where the Land is located, providing similar coverage acceptable to Loan Officer. Any creditors’ rights exception or exclusion must be deleted by endorsement or written waiver to the extent available under state law. If not available, Loan Officer will accept the New York form of creditors’ rights exclusion.

### **Additional Endorsements**

The mortgagee loan policy shall include such additional title endorsements requested by and in form satisfactory to, Loan Officer, including those which are customary in the state in which the Land is located.

### **Legal Description**

If a survey is required, the legal description must conform to the survey. If no survey is required then (i) if the Land consists of lots or parts of lots on a subdivision map or other recorded plat, the legal description must include the name of the map or plat and the recorded map or plat number and other recording information, if any, and (ii) if the Land consists of more than one parcel, the mortgagee loan policy must insure that all parcels are contiguous. Any appurtenant easement that benefits the Land should be shown in the legal description and affirmatively insured.

### **Tax and Parcel Numbers**

The mortgagee loan policy should include separate parcel or tax identification number(s) for the Land, as available, to insure that the real property taxes and assessments for the Land are properly assessed. If not provided with the preliminary report or title commitment, the Closing Department should be provided with a Tax Exemption Agreement or its equivalent for the Land prior to the Bond Closing Date.

### **Mortgage Tax/Documentary Stamp Tax**

The mortgagee loan policy will need to insure that all mortgage, recording, documentary stamp or other similar taxes have been or shall be paid at the time of the Bond Closing Date and prior to the recording of the Mortgage.

### **Title Exceptions**

**Standard Exceptions.** Standard exceptions (such as for matters not shown on the public records) must be deleted.

**Taxes and Assessments.** The mortgagee loan policy must expressly insure that all taxes, assessments or other lienable items that become delinquent within 60 days after the Bond Closing Date are paid on or before the Bond Closing Date.

**Survey.** The standard survey exception, if any, to the mortgagee loan policy must be deleted and if a survey is required to delete such exception, then delete with delivery of survey acceptable to the title insurance company.

**Tenants in Possession.** Exceptions for parties in possession should be deleted; provided, however, if the title company is unable to delete this exception, the exception should be modified to read as follows: “the rights of tenants in possession, as tenants only, under prior unrecorded leases.”

**Affirmative Insurance.** The mortgagee loan policy must affirmatively insure that (i) the improvements do not encroach upon the listed easements, (ii) there are no encroachments of such improvements upon any neighboring property or street, and (iii) no improvements located on neighboring property or street encroach upon the Land.

**Blanket Easements.** To the extent available in the State of Texas, the mortgagee loan policy must provide affirmative insurance against any loss resulting from the exercise by the holder of a blanket easement of its right to use or maintain that easement.

**Easements and Other Restrictive Agreements.** Exceptions for easements, restrictive agreements and other similar agreements must be approved by Loan Officer and/or insured against by endorsement or affirmative insurance.

**Mechanics’ or Materialman’s Liens.** The mortgagee loan policy must contain no exception for any filed mechanics’ or material suppliers’ liens.

**Oil, Gas Water and Mineral Rights.** Exceptions for outstanding oil, gas, water and mineral rights are generally acceptable if there is no right of surface entry within a satisfactory number of feet from the improvement.

### **Title Endorsements**

- a. First Loss – T14
- b. Last Dollar – T15
- c. Restrictions, Encroachment, Mineral Endorsement – T19
- d. Access – T23

- e. Contiguity – T25
- f. Variable Rate – T33
- g. Revolving Credit – T35
- h. Environmental – T36
- i. Down Date – Required on Loans to bring loan current with each construction draw and evidence any mechanic liens that have been filed of record which affects the Bank's lien status.
- j. T-19.2 endorsement on residential properties or have the borrower sign a surface waiver (unless residence located within the jurisdiction of a municipality that has an ordinance banning drilling)
- k. T-19.3 endorsement on commercial properties or have the borrower sign a surface waiver (necessary where there are outstanding mineral interests)

Note: T-19.2 & T-19.3 endorsements are required because the mineral interest is superior to the fee interest in property, which gives the mineral interest owner the right to use the surface of the property for mineral exploration and extraction without the fee owner's consent and without liability for damages.

The Bond Owner retains the right to require additional endorsements as maybe deemed necessary or required under the loan documents.

## SCHEDULE L

### SURVEY REQUIREMENTS

1. **The following are Bond Owner's survey requirements. Loan Officer may accept other than an ALTA/NSPS Land Title Survey, provided that such survey is acceptable to the title insurance company issuing the mortgagee loan policy sufficient to delete the survey exception.**

#### Requirements

- A. Surveys are required on loans \$100,000 or more (home equity loans \$250,000 or more) on loans secured by real estate other than real estate taken as abundance of caution.
- B. The survey must be dated within 30 days of the Bond Closing Date and must be prepared in accordance with then current ALTA/NSPS standards for the applicable survey class by land use and location.
- C. Survey must bear the caption "ALTA/NSPS LAND TITLE SURVEY."
- D. Plat of survey must be based on the results of an instrument survey made, dated and certified by a licensed civil engineer or registered surveyor within 90 days of the Bond Closing Date.
- E. Survey must show the following:
  - 1. Relation of the point of beginning of the Land to the monument from which it is fixed;
  - 2. Location by courses and distances of the Land covered by the Bond Loan;
  - 3. Area of the Land;
  - 4. Height of all buildings above grade;
  - 5. Substantial visible improvements other than buildings (i.e., signs, swimming pools, parking areas, etc.);
  - 6. Any building line established by plat, other recorded document or local zoning ordinance, including, without limitation, all setback, side yard and rear yard lines;
  - 7. Line and width of the streets abutting the Land, as well as the line and width of the rights-of-way within which such streets exist;
  - 8. All structures and improvements on the Land with the horizontal lengths of all sides and their relation by distance to all boundary lines of the Land, servient easements, established building lines and street lines;
  - 9. Location and dimensions of any encroachments by the improvements on the Land onto any adjacent property, street, alley or easements located on the Land, and by improvements on any adjacent property, street or alley onto the Land;
  - 10. Encroachments on the Land and/or any appurtenant easement and their extent in feet and inches;
  - 11. All easements appurtenant to the Land and if the easements benefit the Land and are to be insured, the Survey must include a separate metes and bounds description for each such appurtenant easement;

12. Number and location of parking spaces on the Land, including designated handicapped parking spaces and a delineation of the number of compact spaces. If the Land has underground parking, the furthest extent of such underground parking should be noted on the survey;
13. Location of utilities serving the Land, including points of ingress to and egress from the Land of such utilities within the Land, however, the location of underground utility lines which serve only the Land is not required to be shown;
14. An indication of access (such as curb cuts and driveways) to adjoining streets and highways and the status of such roadways as public or private;
15. Monuments placed (or a reference monument) at all major corners of the boundary of the Land;
16. Legend of all symbols and abbreviations used on the survey;
17. Vicinity map showing the Land surveyed in reference to nearby highway(s) or major street intersection(s);
18. Observable evidence of cemeteries;
19. Names of adjoining property owners that appear of record;
20. If the survey is drawn on more than one sheet, matching lines must be provided and the same scale must be used;
21. Any evidence of visible discrepancies, conflicts, shortages in area or boundary line conflicts; and
22. Significant observations not otherwise defined.

### **Legal Description Requirements**

- A. The description of the Land shown on the survey must conform to the legal description shown in the commitment for a mortgagee's title insurance policy for the Land.
- B. **Metes and Bounds.** A metes and bounds description must comply with the following standards:
  1. The beginning point should be established by a monument located at the beginning point or by reference to a nearby monument, and
  2. Distances, bearings and angles should be taken from a recent instrument survey or recently recertified instrument survey by a licensed civil engineer or registered surveyor;
  3. Curved courses must be described by data including the length of arc, the radius of circle for the arc, and the chord distance and bearing;
  4. Where a survey course is part of a dedicated public street or road line, the course may be described by indicating the distance and direction the course takes along the street line from the end of the previous course, if commonly accepted by institutional mortgage Loan Officers in the area where the Land is located;

## SURVEYOR'S CERTIFICATE

The undersigned, being a registered surveyor of the State of \_\_\_\_\_, certifies to (i) COMMUNITYBANK OF TEXAS, N.A., together with its successors and assigns, (ii) [TITLE COMPANY] and (iii) CENTER 818 COTTON FORD ROAD, LP, as follows:

1. This map or plat and the survey on which it is based were made in accordance with the "Minimum Standard Detail Requirements for ALTA/NSPS Land Title Surveys," jointly established and adopted by ALTA and NSPS in 2022 and includes Items 1 through 4, 6 through 11 and 13 through 16 of Table A thereof and was prepared pursuant to the accuracy standards (adopted by ALTA and NSPS) of a Class A Survey, as defined therein [current Texas Surveyors Association Standards and Specifications for a Category 1A, Condition \_\_\_\_\_ Survey] [or equivalent].
2. This survey, which was established by a transit-tape (instrument) field survey actually made on the ground by me or under my supervision pursuant to the record description, is true, correct and accurate as to the metes and bounds description, boundaries and areas of the subject property and the location and number of parking spaces, size, location, dimension and type of buildings and improvements thereon (if any), including sidewalks, curbs, parking areas and fences) and as to the other matters shown hereon, it shows the location and dimension of all improvements, rights-of-way, easements and any other matters affecting the subject property.
3. **[Except as shown on the survey,]** there are no visible easements or rights of way of which the undersigned has been advised.
4. **[Except as shown on the survey and set forth as a Field Note,]** there are no party walls and no observable, above ground encroachments (a) by the buildings, structures or other improvements on the subject property upon adjoining properties, streets, alleys, easements, or rights of way, or (b) by the buildings, structures or other improvements on any adjoining properties, streets, or alleys upon the subject property.
5. The location of each easement, right of way, servitude, and other matter (above or below ground) affecting the subject property and listed in Title Insurance Commitment No. \_\_\_\_\_ dated \_\_\_\_\_, \_\_\_\_\_, issued by [Title Company] with respect to the subject property, has been shown on the survey, together with appropriate recording references, to the extent that such matters can be located. All matters that cannot be located have been listed hereon as a Field Note. The property shown on the survey is the property described in that title commitment.
6. All required building setback lines on the subject property are located as shown hereon, and the location of all improvements (if any) on the subject property are in accordance with minimum setback provisions and restrictions of record referenced in the Title Insurance Commitment and/or required by zoning and building ordinances applicable in the State, City and County in which the subject property is situated.
7. The survey correctly shows: (a) the zoning classification for the subject property, (b) the permitted uses within such classification; and (c) the sources of such information.



8. The subject property has direct access to and from, and adequate ingress to and egress from the subject property is provided by, a duly dedicated and accepted public street or highway known as \_\_\_\_\_.
9. **[Except as shown on the survey and set forth as a Field Note,]** the subject property does not serve any adjoining property for drainage, utilities, structural support or ingress or egress.
10. The record description of the subject property forms a mathematically closed figure. **[If not, so state.]**
11. **[Except as shown on the survey,]** no portion of the property shown on the survey lies within a Special Flood Hazard Area, as described on the Flood Insurance Rate Map for the community in which the subject property is located. **[The survey correctly indicates the zone designation of any area shown as being within a Special Flood Hazard Area.]**
12. The undersigned expressly understands and agrees that: (a) this Certificate is made to induce COMMUNITYBANK OF TEXAS, N.A. (together with its successors and assigns, "Loan Officer") to extend credit secured by a deed of trust, deed to secure debt or mortgage lien covering the subject property and to induce **[TITLE COMPANY]** ("Title Company") to issue a policy of title insurance insuring the validity and priority of such lien; (b) both Loan Officer and Title Company are entitled to rely upon this plat of survey as being true and accurate in all respects and upon this Certificate as being true and accurate; and (c) the consideration paid to the undersigned for the preparation and certification of such survey has been paid, in part, for the benefit of Loan Officer and Title Company and in anticipation of their reliance hereon.

(Surveyor's Seal)

(Signature of Surveyor)

Registered Surveyor,  
 State of \_\_\_\_\_  
 Registered No. \_\_\_\_\_  
 Date of Survey \_\_\_\_\_  
 Date of Last Revision \_\_\_\_\_

[If the certificate is attached to, rather than typed or otherwise reproduced on the face of, the survey, add a paragraph specifically identifying the survey (such as by date, property description, and survey number) to which the certificate relates.]

**SCHEDULE M**  
**TAX CREDIT ALLOCATION**

**SCHEDULE N**

**AFFIDAVIT OF COMMENCEMENT**

THE STATE OF TEXAS                                     §  
                                                                        §  
 COUNTY OF SHELBY                                     §

BEFORE ME, the undersigned authority, on this day personally appeared \_\_\_\_\_, \_\_\_\_\_ of THE ITEX GROUP MANAGEMENT, LLC, a Texas limited liability company, manager of ITEX ADVISORS, LLC, a Texas limited liability company, manager of CENTER 818 COTTON FORD ROAD GP, LLC, a Texas limited liability company, general partner of CENTER 818 COTTON FORD ROAD, LP, a Texas limited partnership ("**Owner**"), and \_\_\_\_\_, \_\_\_\_\_ of \_\_\_\_\_ ("**Original Contractor**"), known to me to be the persons whose names are subscribed below, and who, being by me first duly sworn, did each on his or her oath state as follows:

1. The Owner is the lessor of the real property (the "**Land**") situated in Shelby County, Texas, more particularly described in **Exhibit "A"**, attached hereto and made a part hereof for all purposes, on which building and other related improvements (the "**Improvements**") are being constructed or renovated.

2. The address of Owner is:  
  
 CENTER 818 COTTON FORD ROAD, LP  
 c/o The Itex Group, LLC  
 9 Greenway Plaza, Suite 1000  
 Houston, Texas 77046

3. The address of Original Contractor is:  
  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

4. The name and address of any other original contractor, presently known, after reasonable inquiry, to the Affiants, to the Owner or to the Original Contractor, that is furnishing, or will furnish, labor, service, or materials, for the Rehabilitation of the Project, and the nature of such labor, service or materials, is as follows:

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

5. Work on the Improvements (including the first delivery of materials and equipment to the Land in connection with the Improvements) actually commenced on \_\_\_\_\_, 200\_\_ at \_\_\_\_\_ o'clock \_\_.m.

6. This affidavit has been jointly made by Owner and Original Contractor by and through an authorized representative of each, the same being the undersigned Affiants. This affidavit may be executed in identical counterparts, each of which shall be deemed an original, and all of which, collectively, shall constitute one affidavit.

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

OWNER:

CENTER 818 COTTON FORD ROAD, LP, a Texas limited partnership

By: Center 818 Cotton Ford Road GP, LLC, a Texas limited liability company, its General Partner

By: ITEX Advisors, LLC, a Texas limited liability company, its Manager

By: The ITEX Group Management, LLC, a Texas limited liability company, its Manager

By: \_\_\_\_\_  
Christopher A. Akbari,  
its Manager

CONTRACTOR:

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



**SCHEDULE O**

**AFFIDAVIT AND CERTIFICATE OF COMPLETION**

THE STATE OF TEXAS                                 §  
                                                                  §  
COUNTY OF SHELBY                                 §

BEFORE US, the undersigned authorities, on this day personally appeared \_\_\_\_\_ of \_\_\_\_\_ ("**Architect**"), \_\_\_\_\_ of \_\_\_\_\_ ("**Original Contractor**"), and \_\_\_\_\_ of THE ITEX GROUP MANAGEMENT, LLC, a Texas limited liability company, manager of ITEX ADVISORS, LLC, a Texas limited liability company, manager of CENTER 818 COTTON FORD ROAD GP, LLC, a Texas limited liability company, general partner of CENTER 818 COTTON FORD ROAD, LP, a Texas limited partnership ("**Owner**"), known by us to be the persons whose names are subscribed below, and who, being by first duly sworn, did on their oath state and certify as follows:

1. Owner, whose address is c/o The ITEX Group, LLC, 9 Greenway Plaza, Suite 1000, Houston, Texas 77046 is the owner of the real property situated in Shelby County, Texas, more particularly described on **Exhibit "A"**, on which real property certain Improvements (herein so called) were constructed and furnished under the original contract with the Original Contractor, whose address is \_\_\_\_\_.
2. The Improvements under the original contract between the Owner and the Original Contractor (including all on-site and off-site Improvements) have been completed in accordance with the approved Plans and Specifications listed on the attached **Exhibit "B"**.
3. After reasonable investigation, to the best of their knowledge, (a) the Project complies with all applicable restrictive covenants, building codes, permit requirements, and all other applicable laws, ordinances, codes, rules and regulations and (b) no hazardous or toxic substances or materials, as defined under any state, local or federal law have been used on-site in constructing the Improvements or incorporated into the Project, other than in compliance with applicable law.
4. All utility services necessary for the proper operation of the Improvements for its intended purpose are connected to and in sufficient capacity at the Project, including water supply, storm and sanitary sewer facilities and gas (if the Plans and Specifications require the Improvements to be served by gas), electricity and telephone facilities (in the case of Owner, this statement being made to the best of Owner’s knowledge).
5. After reasonable investigation, to the best of our knowledge, the condition of the soil of the Project is adequate to support the Improvements.
6. The Improvements are ready for immediate occupancy (in the case of Owner, this statement being made to the best of Owner’s knowledge).

Architect did and does hereby additionally state and certify as follows:

(a) Design and as built conditions for the Project are such that no drainage or surface or other water other than normal surface drainage will drain across or rest upon either the Project or land of others; and

(b) None of the Improvements creates or will create an encroachment over, across or upon any of the Project boundary lines, building liens, setbacks, rights-of-way or easements, and no buildings or other Improvements on adjoining land create such an encroachment.

Borrower did and does hereby additionally state and certify as follows: All roads and rights-of-way necessary for the utilization of the Project for its intended purposes have been completed or acquired.

AFFIANT "ARCHITECT"

OWNER:

CENTER 818 COTTON FORD ROAD, LP, a Texas limited partnership

By: Center 818 Cotton Ford Road GP, LLC, a Texas limited liability company, its General Partner

By: ITEX Advisors, LLC, a Texas limited liability company, its Manager

By: The ITEX Group Management, LLC, a Texas limited liability company, its Manager

By: \_\_\_\_\_  
Christopher A. Akbari,  
its Manager

STATE OF \_\_\_\_\_ §

COUNTY OF \_\_\_\_\_ §

This instrument was acknowledged before me on \_\_\_\_\_, 202\_\_, by Christopher A. Akbari, Manager of The Itex Group Management, LLC, a Texas limited liability company, on behalf of said limited liability company, manager of ITEX Advisors, LLC, a Texas limited liability company, manager of Center 818 Cotton Ford Road GP, LLC, a Texas limited liability company, general partner of CENTER 818 COTTON FORD ROAD, LP, a Texas limited partnership.

(S E A L)

\_\_\_\_\_  
Notary Public



State of \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

AFFIANT "ORIGINAL CONTRACTOR":

\_\_\_\_\_

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

SUBSCRIBED AND SWORN BEFORE ME  
on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_  
by \_\_\_\_\_.

\_\_\_\_\_  
Notary Public, State of Texas

SCHEDULE P

**CONVERSION CERTIFICATE**

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

CENTER 818 COTTON FORD ROAD, LP  
c/o The Itex Group, LLC  
9 Greenway, Site 2250  
Houston, Texas 77046

Re: Financing Agreement (the “**Agreement**”) dated as of June 1, 2022, to be effective as of the date of delivery of this Agreement, by and among CENTER 818 COTTON FORD ROAD, LP (the “**Borrower**”), Texas Department of Housing and Community Affairs (“**Issuer**”), and COMMUNITYBANK OF TEXAS, N.A. (“**Bond Owner**”)

whom it may concern:

All requirements in **Schedule I** to the Agreement necessary for the occurrence of the Stabilized Occupancy Date, have been satisfied or waived and the Bond Loan has been converted to the Permanent Term.

COMMUNITYBANK OF TEXAS, N.A.

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

SCHEDULE Q

OWNERSHIP INTEREST CERTIFICATION

**Control Prong**

Complete the following information for one individual with significant responsibility for managing the legal entity listed above, such as:

- *An executive officer or senior manager (e.g., Chief Executive Officer, Chief Financial Officer, Chief Operating Officer, Managing Member, General Partner, President, Vice President, Treasurer); or*
- *Any other individual who regularly performs similar functions.*

(If appropriate, an individual listed under the section above may also be listed in this section.)

Name	Date of Birth	Address (Residential or Business Street Address)	For U.S. Persons: Social Security Number <sup>1</sup>

ID Type \_\_\_\_\_ State/Country of Issuance \_\_\_\_\_

ID Number \_\_\_\_\_ Date of Issuance \_\_\_\_\_ Expiration Date \_\_\_\_\_

---

**Ownership Prong**

Complete the following information for each individual, if any, who, directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise, owns 20 percent or more of the equity interests of the legal entity listed above:

(If no individual meets this definition, please write "Not Applicable.")

Owner #1

Name	Date of Birth	Address (Residential or Business Street Address)	For U.S. Persons: Social Security Number <sup>1</sup>	Ownership Percentage

ID Type \_\_\_\_\_ State/Country of Issuance \_\_\_\_\_

ID Number \_\_\_\_\_ Date of Issuance \_\_\_\_\_ Expiration Date \_\_\_\_\_

<sup>1</sup> In lieu of a passport number, Non-U.S. Persons may also provide an Individual Taxpayer Identification Number (ITIN), an alien identification card number, or number and country of issuance of any other government-issued document evidencing nationality or residence and bearing a photograph or similar safeguard.

## Control Prong

Complete the following information for one individual with significant responsibility for managing the legal entity listed above, such as:

- An executive officer or senior manager (e.g., Chief Executive Officer, Chief Financial Officer, Chief Operating Officer, Managing Member, General Partner, President, Vice President, Treasurer); or
- Any other individual who regularly performs similar functions.

(If appropriate, an individual listed under the section above may also be listed in this section.)

Name	Date of Birth	Address (Residential or Business Street Address)	For U.S. Persons: Social Security Number <sup>1</sup>

ID Type \_\_\_\_\_ State/Country of Issuance \_\_\_\_\_

ID Number \_\_\_\_\_ Date of Issuance \_\_\_\_\_ Expiration Date \_\_\_\_\_

## Ownership Prong

Complete the following information for each individual, if any, who, directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise, owns 20 percent or more of the equity interests of the legal entity listed above:

(If no individual meets this definition, please write "Not Applicable.")

Owner #1

Name	Date of Birth	Address (Residential or Business Street Address)	For U.S. Persons: Social Security Number <sup>1</sup>	Ownership Percentage

ID Type \_\_\_\_\_ State/Country of Issuance \_\_\_\_\_

ID Number \_\_\_\_\_ Date of Issuance \_\_\_\_\_ Expiration Date \_\_\_\_\_

<sup>1</sup> In lieu of a passport number, Non-U.S. Persons may also provide an Individual Taxpayer Identification Number (ITIN), an alien identification card number, or number and country of issuance of any other government-issued document evidencing nationality or residence and bearing a photograph or similar safeguard.

Owner #2

Name	Date of Birth	Address (Residential or Business Street Address)	For U.S. Persons: Social Security Number <sup>1</sup>	Ownership Percentage

ID Type \_\_\_\_\_ State/Country of Issuance \_\_\_\_\_  
 ID Number \_\_\_\_\_ Date of Issuance \_\_\_\_\_ Expiration Date \_\_\_\_\_

Owner #3

Name	Date of Birth	Address (Residential or Business Street Address)	For U.S. Persons: Social Security Number <sup>1</sup>	Ownership Percentage

ID Type \_\_\_\_\_ State/Country of Issuance \_\_\_\_\_  
 ID Number \_\_\_\_\_ Date of Issuance \_\_\_\_\_ Expiration Date \_\_\_\_\_

Owner #4

Name	Date of Birth	Address (Residential or Business Street Address)	For U.S. Persons: Social Security Number <sup>1</sup>	Ownership Percentage

ID Type \_\_\_\_\_ State/Country of Issuance \_\_\_\_\_  
 ID Number \_\_\_\_\_ Date of Issuance \_\_\_\_\_ Expiration Date \_\_\_\_\_

Owner #5

Name	Date of Birth	Address (Residential or Business Street Address)	For U.S. Persons: Social Security Number <sup>1</sup>	Ownership Percentage

ID Type \_\_\_\_\_ State/Country of Issuance \_\_\_\_\_  
 ID Number \_\_\_\_\_ Date of Issuance \_\_\_\_\_ Expiration Date \_\_\_\_\_

<sup>1</sup> In lieu of a passport number, Non-U.S. Persons may also provide an Individual Taxpayer Identification Number (ITIN), an alien identification card number, or number and country of issuance of any other government-issued document evidencing nationality or residence and bearing a photograph or similar safeguard.

I, \_\_\_\_\_ (name of natural person opening account), hereby certify, to the best of my knowledge, that the information provided above is complete and correct. In addition, the above-listed legal entity hereby agrees to promptly notify the bank upon any change in the information provided above.

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

SCHEDULE R

CONDITIONAL WAIVER AND RELEASE ON FINAL PAYMENT

Project \_\_\_\_\_

Job No. \_\_\_\_\_

On receipt by the signer of this document of a check from \_\_\_\_\_ (maker of check) in the sum of \$ \_\_\_\_\_ payable to \_\_\_\_\_ (payee or payees of check) and when the check has been properly endorsed and has been paid by the bank on which it is drawn, this document becomes effective to release any mechanic's lien right, any right arising from a payment bond that complies with a state or federal statute, any common law payment bond right, any claim for payment, and any rights under any similar ordinance, rule, or statute related to claim or payment rights for persons in the signer's position that the signer has on the property of \_\_\_\_\_ (owner) located at \_\_\_\_\_ (location) to the following extent: \_\_\_\_\_ (job description).

This release covers the final payment to the signer for all labor, services, equipment, or materials furnished to the property or to \_\_\_\_\_ (person with whom signer contracted).

Before any recipient of this document relies on this document, the recipient should verify evidence of payment to the signer.

The signer warrants that the signer has already paid or will use the funds received from this final payment to promptly pay in full all of the signer's laborers, subcontractors, materialmen, and suppliers for all work, materials, equipment, or services provided for or to the above referenced project up to the date of this waiver and release.

Date \_\_\_\_\_

\_\_\_\_\_ (Company name)

By \_\_\_\_\_ (Signature)

\_\_\_\_\_ (Title)

STATE OF TEXAS           §

COUNTY OF \_\_\_\_\_ §

This instrument was acknowledged before me on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_ (name), \_\_\_\_\_ (job title) of \_\_\_\_\_ (company name).

\_\_\_\_\_  
NOTARY PUBLIC, STATE OF TEXAS

**CONDITIONAL WAIVER AND RELEASE ON PROGRESS PAYMENT**

Project \_\_\_\_\_

Job No. \_\_\_\_\_

On receipt by the signer of this document of a check from \_\_\_\_\_ (maker of check) in the sum of \$\_\_\_\_\_ payable to \_\_\_\_\_ (payee or payees of check) and when the check has been properly endorsed and has been paid by the bank on which it is drawn, this document becomes effective to release any mechanic's lien right, any right arising from a payment bond that complies with a state or federal statute, any common law payment bond right, any claim for payment, and any rights under any similar ordinance, rule, or statute related to claim or payment rights for persons in the signer's position that the signer has on the property of \_\_\_\_\_ (owner) located at \_\_\_\_\_ (location) to the following extent: \_\_\_\_\_ (job description).

This release covers a progress payment for all labor, services, equipment, or materials furnished to the property or to \_\_\_\_\_ (person with whom signer contracted) as indicated in the attached statement(s) or progress payment request(s), except for unpaid retention, pending modifications and changes, or other items furnished.

Before any recipient of this document relies on this document, the recipient should verify evidence of payment to the signer.

The signer warrants that the signer has already paid or will use the funds received from this progress payment to promptly pay in full all of the signer's laborers, subcontractors, materialmen, and suppliers for all work, materials, equipment, or services provided for or to the above referenced project in regard to the attached statement(s) or progress payment request(s).

Date \_\_\_\_\_

\_\_\_\_\_ (Company name)

By \_\_\_\_\_ (Signature)

\_\_\_\_\_ (Title)

STATE OF TEXAS

§  
§  
§

COUNTY OF \_\_\_\_\_

This instrument was acknowledged before me on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_ (name), \_\_\_\_\_ (job title) of \_\_\_\_\_ (company name).

\_\_\_\_\_  
NOTARY PUBLIC, STATE OF TEXAS

**NOTICE:**

**This document waives rights unconditionally and states that you have been paid for giving up those rights. It is prohibited for a person to require you to sign this document if you have not been paid the payment amount set forth below. If you have not been paid, use a conditional release form.**

**UNCONDITIONAL WAIVER AND RELEASE ON FINAL PAYMENT**

Project \_\_\_\_\_

Job No. \_\_\_\_\_

The signer of this document has been paid in full for all labor, services, equipment, or materials furnished to the property or to \_\_\_\_\_ (person with whom signer contracted) on the property of \_\_\_\_\_ (owner) located at \_\_\_\_\_ (location) to the following extent: \_\_\_\_\_ (job description). The signer therefore waives and releases any mechanic's lien right, any right arising from a payment bond that complies with a state or federal statute, any common law payment bond right, any claim for payment, and any rights under any similar ordinance, rule, or statute related to claim or payment rights for persons in the signer's position.

The signer warrants that the signer has already paid or will use the funds received from this final payment to promptly pay in full all of the signer's laborers, subcontractors, materialmen, and suppliers for all work, materials, equipment, or services provided for or to the above referenced project up to the date of this waiver and release.

Date \_\_\_\_\_

\_\_\_\_\_ (Company name)

By \_\_\_\_\_ (Signature)

\_\_\_\_\_ (Title)

STATE OF TEXAS §

§

COUNTY OF \_\_\_\_\_ §

This instrument was acknowledged before me on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_ (name), \_\_\_\_\_ (job title) of \_\_\_\_\_ (company name).

\_\_\_\_\_  
NOTARY PUBLIC, STATE OF TEXAS



NOTICE:

This document waives rights unconditionally and states that you have been paid for giving up those rights. It is prohibited for a person to require you to sign this document if you have not been paid the payment amount set forth below. If you have not been paid, use a conditional release form.

UNCONDITIONAL WAIVER AND RELEASE ON PROGRESS PAYMENT

Project \_\_\_\_\_

Job No. \_\_\_\_\_

The signer of this document has been paid and has received a progress payment in the sum of \$ \_\_\_\_\_ for all labor, services, equipment, or materials furnished to the property or to \_\_\_\_\_ (person with whom signer contracted) on the property of \_\_\_\_\_ (owner) located at \_\_\_\_\_ (location) to the following extent: \_\_\_\_\_ (job description). The signer therefore waives and releases any mechanic's lien right, any right arising from a payment bond that complies with a state or federal statute, any common law payment bond right, any claim for payment, and any rights under any similar ordinance, rule, or statute related to claim or payment rights for persons in the signer's position that the signer has on the above referenced project to the following extent:

This release covers a progress payment for all labor, services, equipment, or materials furnished to the property or to \_\_\_\_\_ (person with whom signer contracted) as indicated in the attached statement(s) or progress payment request(s), except for unpaid retention, pending modifications and changes, or other items furnished.

The signer warrants that the signer has already paid or will use the funds received from this progress payment to promptly pay in full all of the signer's laborers, subcontractors, materialmen, and suppliers for all work, materials, equipment, or services provided for or to the above referenced project in regard to the attached statement(s) or progress payment request(s).

Date \_\_\_\_\_  
\_\_\_\_\_  
(Company name)  
By \_\_\_\_\_ (Signature)  
\_\_\_\_\_  
(Title)

STATE OF TEXAS           §  
                                          §  
COUNTY OF \_\_\_\_\_ §

This instrument was acknowledged before me on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_ (name), \_\_\_\_\_ (job title) of \_\_\_\_\_ (company name).

\_\_\_\_\_  
NOTARY PUBLIC, STATE OF TEXAS

REGULATORY AND LAND USE RESTRICTION AGREEMENT

Among

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS,  
as Issuer,

WILMINGTON TRUST, NATIONAL ASSOCIATION,  
a national banking association,  
as Trustee,

and

CENTER 818 COTTON FORD ROAD, LP,  
a Texas limited partnership,  
as Borrower

Dated as of June 1, 2022

Relating to

\$10,100,000  
Texas Department of Housing and Community Affairs  
Multifamily Housing Mortgage Revenue Bonds  
(Union Acres Project)  
Series 2022

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## REGULATORY AND LAND USE RESTRICTION AGREEMENT

THIS REGULATORY AND LAND USE RESTRICTION AGREEMENT (as amended, modified or supplemented from time to time, this “Agreement” or this “Regulatory Agreement”) dated as of June 1, 2022 is among the **TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS** (together with its successors and assigns, the “Issuer” or “Department”), a public and official agency of the State of Texas (the “State”), **WILMINGTON TRUST, NATIONAL ASSOCIATION**, a national banking association organized and existing under the laws of the United States of America, as trustee under the hereinafter defined Indenture (together with any successor trustee under the Indenture described below and their respective successors and assigns, the “Trustee”) and **CENTER 818 COTTON FORD ROAD, LP**, a Texas limited partnership (together with its permitted successors and assigns, the “Borrower”).

### RECITALS

WHEREAS, pursuant to the Act (as hereinafter defined), the Issuer is authorized to issue the Bonds (as hereinafter defined) and to use the proceeds thereof to provide monies to aid in financing the acquisition, equipping and rehabilitation of residential rental property for dwelling units in the State; and

WHEREAS, the Borrower has requested the assistance of the Issuer in financing a multifamily residential rental housing development located on the real property described in Exhibit A hereto (as defined herein, the “Development Site”) and described in Exhibit B-1 hereto (as defined herein, the “Development Facilities” and, together with the Development Site, the “Development”), and, as a condition to such assistance, the Borrower has agreed to enter into this Regulatory Agreement, setting forth certain restrictions with respect to the Development; and

WHEREAS, the Issuer has determined to assist in the financing of the Development by issuing its Multifamily Housing Mortgage Revenue Bonds (Union Acres Project), Series 2022 in the aggregate principal amount of \$10,100,000 (the “Bonds”), and loaning the proceeds of such Bonds to the Borrower, upon the terms and conditions set forth in the Financing Agreement (as hereinafter defined); and

WHEREAS, in order for interest on the Bonds to be excludable from gross income for federal income tax purposes under the Code (as defined herein), and in order to comply with the Act, the use and operation of the Development must be restricted in certain respects; and

WHEREAS, the Issuer, the Trustee and the Borrower have determined to enter into this Regulatory Agreement in order to set forth certain terms and conditions relating to the acquisition, equipping, rehabilitation and operation of the Development and in order to ensure that the Development will be acquired, rehabilitated, used and operated in accordance with the Code and the Act.

NOW, THEREFORE, in consideration of the premises and the mutual representations, covenants and undertakings set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Issuer, the Trustee and the Borrower hereby agree as follows:

Section 1. Definitions and Interpretation. In addition to terms defined above, capitalized terms have the respective meanings assigned to them in this Section 1 or as elsewhere defined in this Regulatory Agreement, in the Indenture, in the Financing Agreement or in the Tax Exemption Agreement, unless the context in which they are used clearly requires otherwise:

“Act” means Chapter 2306, Texas Government Code, as amended from time to time.

“**Agreement**” or “**Regulatory Agreement**” means this Regulatory and Land Use Restriction Agreement, as it may be amended from time to time.

“**Annual Income**” means the anticipated annual income of a person (together with the anticipated annual income of all persons that intend to reside with such person in one Unit) calculated pursuant to Section 8 of the Housing Act, as required by Section 142(d) of the Code.

“**Available Unit**” means a Unit (except for any Unit reserved for a resident manager, security personnel or maintenance personnel that is reasonably required for the Development) that has been leased at least once after becoming available for occupancy; provided that (a) a residential unit that is unoccupied on the later of (i) the date the Development is acquired by the Borrower or (ii) the Closing Date is not an “Available Unit” and does not become an “Available Unit” until it has been leased for the first time after such date, and (b) a residential unit that is not available for occupancy due to renovations is not an “Available Unit” and does not become an “Available Unit” until it has been leased for the first time after the renovations are completed.

“**Bond Counsel**” means any counsel nationally recognized as having an expertise in connection with the excludability of interest on obligations of states and local governmental units from gross income for federal income tax purposes and who is appointed by the Issuer, and initially means Bracewell LLP.

“**Bond Owner**” means CommunityBank of Texas, N.A.

“**Closing Date**” means the date upon which the Bonds are issued and delivered in exchange for the proceeds representing the purchase price of the Bonds paid by the original purchasers thereof.

“**Code**” means the Internal Revenue Code of 1986, as amended, and, with respect to a specific section thereof, such reference shall be deemed to include (a) the Regulations promulgated under such section, (b) any successor provision of similar import hereafter enacted, (c) any corresponding provision of any subsequent and successor Internal Revenue Code and (d) the regulations promulgated under the provisions described in (b) and (c).

“**Compliance Monitoring Rules**” means the rules published by the Issuer in Title 10, Part 1, Chapter 10, Subchapter F of the Texas Administrative Code.

“**Development**” means the Development Facilities and the Development Site.

“**Development Amenities**” means the amenities for which the Development was awarded points by the Issuer, pursuant to Section 2306.359 of the Texas Government Code, during the Private Activity Bond Program application scoring process, as more fully set forth in Exhibit B-2 hereto.

“**Development Facilities**” means the multifamily housing structures and related buildings and other improvements on the Development Site as more fully set forth in Exhibit B-1 hereto, and all fixtures and other property owned by the Borrower and located on, or used in connection with, such buildings, structures and other improvements constituting the Development.

“**Development Site**” means the parcel or parcels of real property described in Exhibit A, which is attached hereto and by this reference incorporated herein, and all rights and appurtenances appertaining thereunto.

“**Eligible Tenants**” means (a) individuals and families of low, very low and extremely low income, (b) families of moderate income (in each case in the foregoing clauses (a) and (b) as such terms are defined

by the Issuer under the Act), and (c) Persons with Special Needs, in each case, with an Annual Income not in excess of 140% of the area median income; provided that all Low-Income Tenants are Eligible Tenants.

**“Favorable Opinion of Bond Counsel”** means, with respect to any action, or omission of an action, the taking or omission of which requires such an opinion, an unqualified written opinion of Bond Counsel to the effect that such action or omission does not adversely affect the Federal Tax Status of the Bonds under existing law (subject to the inclusion of any customary exceptions acceptable to the recipient thereof).

**“Federal Tax Status”** means, as to the Bonds, the status under existing law of the interest on the Bonds as excludable from gross income for federal income tax purposes (subject to any exceptions contained in the opinion of Bond Counsel delivered upon the original issuance of the Bonds).

**“Financing Agreement”** means the Financing Agreement of even date herewith among the Issuer, the Bond Owner and the Borrower, as it may be amended, modified, supplemented or restated from time to time to the extent permitted by the Indenture.

**“Housing Act”** means the United States Housing Act of 1937, as amended, or a successor thereto.

**“HUD”** means the United States Department of Housing and Urban Development or its successors.

**“Indenture”** means the Trust Indenture of even date herewith between the Issuer and the Trustee, relating to the issuance of the Bonds, and any indenture supplemental thereto.

**“Loan”** means the loan of the proceeds of the Bonds made by the Issuer to the Borrower as evidenced by the Note.

**“Loan Documents”** means the Security Instrument, the Note, the Financing Agreement, this Regulatory Agreement, the Tax Exemption Agreement, and any and all other instruments and other documents evidencing, securing, or otherwise relating to the Loan.

**“Low-Income Tenant”** means a tenant whose Annual Income is 60% or less of the Multifamily Tax Subsidy Program Income Limit, as determined under Sections 142(d)(2)(B) and (E) of the Code and in accordance with this Regulatory Agreement. If all the occupants of a Unit are students (as defined for the purposes of Section 152(f)(2) of the Code) no one of whom is entitled to file a joint return under Section 6013 of the Code, such occupants will not qualify as Low-Income Tenants unless such students meet the qualifications under Section 42(i)(3)(D) of the Code.

**“Low-Income Unit”** means a Unit that is included as a Unit satisfying the requirements of the Set Aside.

**“Mortgage Loan”** has the meaning set forth in the Indenture.

**“Multifamily Tax Subsidy Program Income Limit”** (or successor term) means the income limits provided by HUD pursuant to Section 142(d) of the Code.

**“Multifamily Tax Subsidy Program Imputed Income Limitation”** means the income limitation which would apply to individuals occupying the Unit if the number of individuals occupying the Unit were as follows: (i) in the case of a Unit which does not have a separate bedroom, 1 individual; or (ii) in the case of a Unit which has 1 or more separate bedrooms, 1.5 individuals for each separate bedroom.

“**Note**” has the meaning set forth in the Indenture.

“**Persons with Special Needs**” means persons who (a) are considered to be individuals having a disability under State or federal law, (b) are elderly, meaning 62 years of age or more or of an age specified by the applicable federal program, (c) are designated by the governing board of the Issuer as experiencing a unique need for decent, safe housing that is not being met adequately by private enterprise, or (d) are legally responsible for caring for an individual described by clauses (a), (b) or (c) above and meet the income guidelines established by the governing board of the Issuer.

“**Qualified Project Period**” means, with respect to the Development, the period beginning on the first day on which 10 percent of the Units are occupied (which date may be the Closing Date) and ending on the latest of (a) the date that is 15 years after the date on which 50 percent of the Units are occupied (which date may be the Closing Date), (b) the first day on which no tax-exempt private activity bond (as that phrase is used in section 142(d)(2) of the Code) issued with respect to the Development is outstanding for federal income tax purposes, or (c) the date on which any assistance provided with respect to the Development under Section 8 of the Housing Act terminates.

“**Regulations**” means the applicable proposed, temporary or final Treasury Regulations promulgated under the Code or, to the extent applicable to the Code, under the Internal Revenue Code of 1954, as such regulations may be amended or supplemented from time to time.

“**Related Person**” has the meaning set forth in section 144(a)(3) of the Code. A person is a “Related Person” to another person if the relationship between such persons would result in a disallowance of losses under sections 267 or 707(b) of the Code or such persons are members of the same controlled group of corporations (as defined in section 1563(a) of the Code, except that “more than 50 percent” is substituted for “at least 80 percent” each place it appears therein).

“**Replacement Reserve**” means the Replacement Reserve Account required to be established by the Financing Agreement.

“**Security Instrument**” means Construction and Permanent Deed of Trust, Security Agreement, Assignment of Leases and Rents, and Fixture Filing from the Borrower, as the grantor, in favor of Issuer, as the beneficiary, as the same may be supplemented, amended or modified.

“**Set Aside**” means the requirement that at least 40% of the Available Units be occupied or held vacant for occupancy at all times by Low-Income Tenants.

“**State Conversion Date**” has the meaning given to the term “Construction Term Maturity Date” in the Indenture.

“**State Reserve Period**” means, with respect to the Development, the period beginning on the State Conversion Date and ending on the earliest of the following dates: (a) the date of any involuntary change in ownership of the Development; (b) the date on which the Borrower suffers a total casualty loss with respect to the Development or the date on which the Development becomes functionally obsolete, if the Development cannot be or is not restored; (c) the date on which the Development is demolished; (d) the date on which the Development ceases to be used as multifamily rental property; or (e) the end of the State Restrictive Period.

“**State Restrictive Period**” means, with respect to the Development, the period beginning on the first day on which the Borrower takes legal possession of the Development and ending on the latest of (a) the date that is 35 years (as a result of the Borrower’s election to extend the affordability period) after

the first day of the State Restrictive Period, (b) the first date on which no tax-exempt private activity bond issued with respect to the Development is outstanding for federal income tax purposes, and (c) the date on which any assistance provided with respect to the Development from the federal government terminates.

“**Tax Exemption Agreement**” means the Tax Exemption Certificate and Agreement of even date herewith among the Issuer, the Trustee and the Borrower, as in effect on the Closing Date and as it may thereafter be amended, supplemented or restated in accordance with its terms.

“**Tenant Income Certification**” means a certification form available on the Issuer’s website at the time of submission used to certify income and other matters executed by the household members of each Unit in the Development.

“**Unit**” means a residential accommodation containing separate and complete facilities for living, sleeping, eating, cooking and sanitation located within the Development; provided that, a unit will not fail to be treated as a Unit merely because it is a single-room occupancy unit (within the meaning of Section 42 of the Code).

“**Unit Status Report**” means the certified residential rental housing program compliance report with respect to the Development to be filed by the Borrower with the Issuer electronically through the filing system available on the Issuer’s website in the form available on the Issuer’s website at the time of submission of the report or in such other form as the Issuer may reasonably prescribe in writing to the Borrower pursuant to Section 4(e) hereof.

Unless the context clearly requires otherwise, as used in this Regulatory Agreement, words of the masculine, feminine or neuter gender include each other gender, and words of the singular number include the plural number, and vice versa. This Regulatory Agreement and all the terms and provisions hereof are to effectuate the purposes set forth herein and to sustain the validity hereof.

The defined terms used in the preamble and recitals of this Regulatory Agreement have been included for convenience of reference only, and the meaning, construction and interpretation of all defined terms are to be determined by reference to this Section 1, notwithstanding any contrary definition in the preamble or recitals hereof. The titles and headings of the sections of this Regulatory Agreement have been inserted for convenience of reference only and are not to be considered a part hereof and do not in any way modify or restrict any of the terms or provisions hereof and are not to be considered or given any effect in construing this Regulatory Agreement or any provisions hereof or in ascertaining intent, if any question of intent arises.

Section 1A. Acquisition, Equipping and Rehabilitation of the Development. The Borrower hereby represents, covenants and agrees as follows:

(a) The statements made in the various certificates delivered by the Borrower to the Issuer or the Trustee or both, including specifically the representations and expectations set forth in the Tax Exemption Agreement, are true and correct in all material respects as and when made.

(b) The Borrower will submit to the Issuer and the Trustee evidence of construction completion as required in the Financing Agreement, and attached as Schedule O thereto, within 30 days of completion. The Borrower will also submit a request for final construction inspection to the Issuer, in the format prescribed by the Issuer as required pursuant to Title 10, Part 1, Chapter 10, Subchapter F of the Texas Administrative Code. The Borrower further agrees to cause the architect of record to submit a certification that the Development was rehabilitated in compliance



with all applicable laws and the engineer of record (if applicable) must submit a certification that the Development was rehabilitated in compliance with design requirements.

(c) The Borrower will take or not fail to take, as is applicable, all actions necessary to cause the proceeds of the Bonds to be applied in a manner consistent with the requirements of the Indenture, the Financing Agreement, the Tax Exemption Agreement and this Regulatory Agreement. The Borrower acknowledges that such requirements have been designed for the purpose of ensuring compliance with the provisions of the Act or the Code applicable to the Borrower and the Development.

(d) The Borrower is a qualified “housing sponsor” as defined in the Act.

Section 2. Tax-Exempt Status of the Bonds. The Borrower will not take any action or omit to take any action which, if taken or omitted, respectively, would adversely affect the Federal Tax Status of the Bonds. With the intent not to limit the generality of the foregoing, the Borrower covenants and agrees:

(a) That the Development will be owned, managed and operated as a “qualified residential rental project” within the meaning of Section 142(d) of the Code, on a continuous basis during the Qualified Project Period. In particular, the Borrower covenants and agrees, continuously during the Qualified Project Period, as follows:

(i) that the Development will be owned, managed and operated as a “qualified residential rental project” comprised of residential Units and facilities functionally related and subordinate thereto, in accordance with Section 142(d) of the Code;

(ii) that each Unit will contain complete facilities for living, sleeping, eating, cooking and sanitation, e.g., a living area, a sleeping area, bathing and sanitation facilities, and cooking facilities equipped with a cooking range, refrigerator and sink, all of which are separate and distinct from other Units; provided that, a Unit will not fail to meet these requirements merely because it is a single-room occupancy unit (within the meaning of Section 42 of the Code);

(iii) that the land and the facilities that are part of the Development will be functionally related and subordinate to the Units comprising the Development and will be of a character and size that is commensurate with the character and size of the Development;

(iv) that at no time will any of the Units be utilized (A) on a transient basis by being leased or rented for a period of less than six months (unless the Unit serves as a single room occupancy unit or transitional housing for the homeless (as described in Section 42(i)(3)(B) of the Code), in which case such lease may be on a month-to-month basis) or (B) as a hotel, motel, dormitory, fraternity house, sorority house, rooming house, hospital, sanitarium, nursing home, rest home, or trailer park or court used on a transient basis;

(v) that the Development will consist of one or more proximate buildings or structures, together with any functionally related and subordinate facilities containing one or more similarly constructed Units, all of which (A) will be located on a single tract of land or two or more parcels of land that are contiguous except for the interposition of a road, street, stream or similar property or their boundaries meet at one or more points,

(B) will be owned by the same person for federal income tax purposes, and (C) will be financed pursuant to a common plan;

(vi) that substantially all of the Development will consist of similarly constructed Units together with functionally related and subordinate facilities for use by Development tenants at no additional charge, such as swimming pools, other recreational facilities, parking areas, and other facilities that are reasonably required for the Development, such as heating and cooling equipment, trash disposal equipment, and Units for resident managers, security personnel or maintenance personnel;

(vii) that at no time will any Unit in any building or structure in the Development that contains fewer than five Units be occupied by the Borrower;

(viii) that each Unit will be rented or available for rental on a continuous basis to Eligible Tenants (subject to the limitations and exceptions contained in this Regulatory Agreement, the Tax Exemption Agreement and the Financing Agreement) at all times during the longer of (A) the remaining term of the Bonds or (B) the Qualified Project Period, that the Borrower will not give preference in renting Units to any particular class or group of persons, other than Persons with Special Needs, Low-Income Tenants and other Eligible Tenants as provided herein, and that at no time will any portion of the Development be exclusively reserved for use by a limited number of nonexempt persons in their trades or businesses;

(ix) that except, if applicable, during the 12-month “transition period” beginning on the Closing Date, as provided under Revenue Procedure 2004-39, 2004-2 C.B. 49, the Development will meet the Set Aside. For the purposes of this Section 2(a)(ix), a vacant Unit that was most recently occupied by a Low-Income Tenant is treated as rented and occupied by a Low-Income Tenant until reoccupied, at which time the character of such Unit must be redetermined. No tenant qualifying as a Low-Income Tenant will be denied continued occupancy of a Unit because, after the Tenant Income Certification, such tenant’s Annual Income increases to exceed the qualifying limit for Low-Income Tenants; provided, however, that, should a Low-Income Tenant’s Annual Income, as of the most recent determination thereof, exceed 140% of the then applicable income limit for a Low-Income Tenant of the same family size and such Low-Income Tenant constitutes a portion of the Set Aside, then such tenant will only continue to qualify for so long as no Unit of comparable or smaller size in the same building (within the meaning of Section 42 of the Code) is rented to a tenant that does not qualify as a Low-Income Tenant;

(x) that the Borrower will obtain, complete and maintain on file (A) Tenant Income Certifications and supporting documentation from each Low-Income Tenant dated immediately prior to the initial occupancy of such Low-Income Tenant in the Development and (B) thereafter, annual certification regarding, at a minimum, information regarding household composition and student status in the form available on the Issuer’s website; provided that, if any Units in the Development are ever made available to tenants who are not Low-Income Tenants, then the Borrower will obtain, complete and maintain annual Tenant Income Certifications in accordance with Section 142(d)(3)(A) of the Code. The Borrower will obtain such additional information as may be required in the future by Section 142(d) of the Code, as the same may be amended from time to time, or in such other form and manner as may be required by applicable rules, rulings, policies,

procedures, Regulations or other official statements now or hereafter promulgated, proposed or made by the Department of the Treasury or the Internal Revenue Service with respect to obligations that are tax-exempt private activity bonds described in Section 142(d) of the Code. The Borrower will make a diligent and good-faith effort to determine that the income information provided by an applicant in any certification is accurate by taking steps required under Section 142(d) of the Code pursuant to provisions of the Housing Act. As part of the verification, the Borrower will document income and assets in accordance with HUD Handbook 4350.3 and the Issuer's Compliance Monitoring Rules;

(xi) that, on or before each March 31, the Borrower will submit to the Secretary of the Treasury, with a copy provided to the Issuer, the completed Internal Revenue Service Form 8703 or such other annual certification required by the Code to be submitted to the Secretary of the Treasury as to whether the Development continues to meet the requirements of Section 142(d) of the Code; and

(xii) that the Borrower will prepare and submit the Unit Status Report in the form available on the Issuer's website at the time of such submission to the Issuer (via the electronic filing system available on the Issuer's website) in accordance with Section 4(e) hereof.

(b) That the Borrower will maintain complete and accurate records pertaining to the Low-Income Units and will permit, at all reasonable times during normal business hours and upon reasonable notice, and subject to the rights of tenants in lawful possession, any duly authorized representative of the Issuer, the Trustee, the Department of the Treasury or the Internal Revenue Service to enter upon the Development Site to examine and inspect the Development and to inspect and photocopy the books and records of the Borrower pertaining to the Development, including those records pertaining to the occupancy of the Low-Income Units. The Borrower will retain all records maintained in accordance with this Section 2 until the date that is three years after the end of the Qualified Project Period.

(c) That, as of the Closing Date, at least 50% of the Units are occupied. The Borrower will provide to the Trustee and the Issuer on the Closing Date a certificate in the form attached hereto as Exhibit E certifying the dates on which (i) 10% of the Units were occupied, and (ii) 50% of the Units were occupied.

(d) That the Borrower will prepare and submit to the Issuer and the Trustee, within 60 days prior to the last day of the Qualified Project Period, a certificate setting forth the date on which the Qualified Project Period will end, which certificate must be in recordable form; however, failure to deliver such certificate shall not extend the Qualified Project Period.

Anything in this Agreement to the contrary notwithstanding, it is expressly understood and agreed by the parties hereto that the Issuer and the Trustee may rely conclusively on the truth and accuracy of any certificate, opinion, notice, representation or instrument made or provided by the Borrower in order to establish the existence of any fact or statement of affairs solely within the knowledge of the Borrower, and which is required to be noticed, represented or certified by the Borrower hereunder or in connection with any filings, representations or certifications required to be made by the Borrower in connection with the issuance and delivery of the Bonds.

Section 3. Modification of Tax and State Restrictive Covenants. The Borrower, the Trustee and the Issuer hereby agree as follows:

(a) During the Qualified Project Period and the State Restrictive Period, to the extent any amendments to the Act or the Code, in the written opinion of Bond Counsel filed with the Issuer, the Trustee and the Borrower, impose requirements upon the ownership or operation of the Development more restrictive than those imposed by this Regulatory Agreement, this Regulatory Agreement will be deemed to be automatically amended to impose such additional or more restrictive requirements. The parties hereto hereby agree to execute such amendment hereto as is necessary to document such automatic amendment hereof to be effective for the duration of such more restrictive requirements. In addition, this Regulatory Agreement will be amended to the extent required by, and in accordance with, the Financing Agreement.

(b) During the Qualified Project Period and the State Restrictive Period, to the extent that the Act, the Code, or any amendments thereto, in the written opinion of Bond Counsel filed with the Issuer, the Trustee and the Borrower, impose requirements upon the ownership or operation of the Development less restrictive than imposed by this Regulatory Agreement, this Regulatory Agreement may be amended or modified to provide such less restrictive requirements but only by written amendment signed by the Issuer, the Trustee and the Borrower and upon receipt of a Favorable Opinion of Bond Counsel.

(c) All costs, including fees and out-of-pocket expenses actually incurred by the Issuer and the Trustee, in connection with compliance with the requirements of this Section will be paid by the Borrower and its successors in interest.

Section 4. Housing Development During the State Restrictive Period. The Issuer and the Borrower hereby recognize and declare their understanding and intent that the Development is to be owned, managed and operated as a “housing development,” as such term is defined in Section 2306.004(13) of the Act, and in compliance with applicable restrictions and limitations as provided in the Act and the rules of the Issuer until the expiration of the State Restrictive Period.

To the same end, the Borrower hereby represents, covenants and agrees as follows during the State Restrictive Period:

(a) except for Units occupied or reserved for a resident manager, security personnel and maintenance personnel that are reasonably required for the Development, to assure that 100% of the Units are reserved for Eligible Tenants and in accordance with the Borrower’s election under Section 1372.0321 of the Texas Government Code, 50% of the Units are reserved for tenants whose combined Annual Income is not more than 50% of the Multifamily Tax Subsidy Program Income Limit and the remaining 50% of the Units are reserved for tenants whose combined Annual Income is not more than 60% of the Multifamily Tax Subsidy Program Income Limit;

(b) to assure that the provisions of Sections 2(a)(viii) and 2(a)(ix) hereof continue in full force and effect until the end of the State Restrictive Period;

(c) to obtain a Tenant Income Certification from each tenant in the Development (other than resident managers, security personnel and maintenance personnel) not later than the date of such tenant’s initial occupancy of a Unit in the Development, and, if required as described in Section 2(a)(x) hereof, at least annually thereafter in the manner as described in Section 2(a)(x) hereof, and to maintain a file of all such Tenant Income Certifications, together with all supporting documentation, for a period of not less than three years after the end of the State Restrictive Period;

(d) to obtain from each tenant in the Development (other than resident managers, security personnel and maintenance personnel), at the time of execution of the lease pertaining to

the Unit occupied by such tenant, a written certification, acknowledgment and acceptance in such form provided by the Issuer to the Borrower from time to time that (i) such lease is subordinate to the Security Instrument and this Regulatory Agreement, (ii) all statements made in the Tenant Income Certification submitted by such tenant are accurate, (iii) the family income and eligibility requirements of this Regulatory Agreement and the Financing Agreement are substantial and material obligations of tenancy in the Development, (iv) such tenant will comply promptly with all requests for information with respect to such requirements from the Borrower, the Trustee and the Issuer, and (v) failure to provide accurate information in the Tenant Income Certification or refusal to comply with a request for information with respect thereto will constitute a violation of a substantial obligation of the tenancy of such tenant in the Development;

(e) to cause to be prepared and submitted to the Issuer (via the electronic filing system available on the Issuer's website) by the tenth calendar day of each January, April, July and October or other schedule as determined by the Issuer with written notice to the Borrower, a certified quarterly Unit Status Report in a form available on the Issuer's website at the time of submission or in such other form as the Issuer may reasonably prescribe in writing to the Borrower with the first quarterly report due on the first quarterly reporting date after leasing activity commences;

(f) to the extent legally permissible and upon reasonable notice to permit any duly authorized representative of the Issuer or the Trustee to inspect the books and records of the Borrower pertaining to the Development or the incomes of Development tenants, including but not limited to tenant files, during regular business hours and to make copies therefrom if so desired and file such reports as are necessary to meet the Issuer's requirements;

(g) that the Borrower is qualified to be a "housing sponsor" as defined in the Act and will comply with all applicable requirements of the Act, including submitting (via the electronic filing system available on the Issuer's website) the Annual Owner's Compliance Report to the Issuer in the form available on the Issuer's website at the time of submission by April 30 of each year, commencing April 30, 2024;

(h) to provide social services which must meet the minimum point requirement and be chosen from the list of Tenant Supportive Services attached hereto as Exhibit C in the manner provided in such Exhibit, or from any additional supportive services added to the Issuer's rules at any future date that are of similar value to the service it is intending to replace as agreed to in writing by the Issuer. The Borrower must maintain documentation satisfactory to the Issuer of social services provided and such documentation will be reviewed during onsite visits beginning with the second onsite review and must be submitted to the Issuer upon request. The Borrower must provide the social services throughout the State Restrictive Period;

(i) to comply with Title 10, Part 1, Chapter 10, Subchapter F of the Texas Administrative Code and other Issuer rules regarding affirmative marketing and written policies and procedures, as such requirements may be amended from time to time;

(j) to maintain the property in compliance with HUD's Uniform Physical Condition Standards and to provide regular maintenance to keep the Development sanitary, safe and decent and to comply with the requirements of Section 2306.186 of the Texas Government Code; provided, however, that the Issuer must first provide notice of any default or breach to the Borrower and the Lender, and the Borrower will have 30 days to cure such default or breach;

(k) to renew any available rental subsidies which are sufficient to maintain the economic viability of the Development pursuant to Section 2306.185(c) of the Texas Government Code;

(l) the Borrower is not a party to and will not enter into a contract for the Development with, a housing developer that (i) is on the Issuer's debarred list, including any parts of that list that are derived from the debarred list of HUD; (ii) breached a contract with a public agency; or (iii) misrepresented to a subcontractor the extent to which the Borrower has benefited from contracts or financial assistance that has been awarded by a public agency, including the scope of the Borrower's participation in contracts with the agency and the amount of financial assistance awarded to the Borrower by the agency;

(m) to cooperate fully with the Issuer with respect to its compliance and oversight requirements and to cause the manager of the Development to so comply;

(n) to ensure that Units intended to satisfy the Set Aside under Section 2(a)(ix) hereof and the reservation of Units under Section 4(a) hereof will be distributed evenly throughout the Development and will include a reasonably proportionate amount of each type of Unit available in the Development;

(o) to ensure that the Development conforms to the federal Fair Housing Act; and

(p) to pay to the Issuer the Issuer Compliance Fee (as defined in the Indenture).

Section 4.A. Repairs and Maintenance Required by State Law. The Borrower will maintain the Replacement Reserve required by and created pursuant to the Financing Agreement or a similar account for the longer of: (a) the period of time required pursuant to the Financing Agreement, or (b) the State Reserve Period as required by Section 2306.186 of the Texas Government Code.

Section 4.B. Development Amenities. The Borrower hereby represents, covenants and agrees that the Development will include the Development Amenities as described in Exhibit B-2 attached hereto.

Section 5. Maximum Allowable Gross Rents. During the State Restrictive Period, the Borrower hereby represents, covenants and agrees that in consideration for and as required by the reservation granted under Chapter 1372 of the Texas Government Code, as amended, the maximum monthly rent charged by the Borrower for 50% of the Units shall not exceed 30% of the 50% applicable Multifamily Tax Subsidy Program Imputed Income Limitation applicable to such Unit. The maximum monthly rent charged by the Borrower for each of the remaining 50% of the Units shall not exceed 30% of the 60% applicable Multifamily Tax Subsidy Program Imputed Income Limitation applicable to such Unit. For purposes of the preceding, the amount of the income limitation for any period shall not be less than such limitation applicable, taking into consideration the gross rent floor provided in accordance with Revenue Procedure 94-57. Such initial maximum allowable gross rents are set forth in Exhibit D attached hereto and will be annually redetermined by the Issuer and published on its website. The Borrower agrees to comply with the Issuer's Compliance Monitoring Rules regarding utility allowances.

Section 6. Persons With Special Needs. The Borrower represents, covenants and warrants that during the State Restrictive Period, it will make at least 5% of the Units within the Development available for occupancy by Persons with Special Needs.

Section 7. Consideration. The Issuer has issued the Bonds to provide funds to make the Loan to finance the Development, all for the purpose, among others, of inducing the Borrower to acquire,

rehabilitate, equip and operate the Development. In consideration of the issuance of the Bonds by the Issuer, the Borrower has entered into this Regulatory Agreement and has agreed to restrict the uses to which the Development can be put on the terms and conditions set forth herein.

Section 8. Reliance. The Issuer, the Trustee and the Borrower hereby recognize and agree that the representations and covenants set forth herein may be relied upon by all Persons interested in the legality and validity of the Bonds, and in the excludability of interest on the Bonds from gross income for federal income tax purposes under existing law. In performing their duties and obligations hereunder, the Borrower, the Issuer and the Trustee may rely upon statements and certificates of the Low-Income Tenants or Eligible Tenants and the Issuer and the Trustee may rely upon (i) statements and certifications by the Borrower; (ii) audits of the books and records of the Borrower pertaining to the Development; and (iii) with respect to the Trustee, any other information provided to the Trustee, pursuant to this Regulatory Agreement. In addition, the Issuer, the Borrower and the Trustee may consult with counsel, and the opinion of such counsel will be full and complete authorization and protection in respect of any action taken or suffered by the Issuer, the Borrower or the Trustee hereunder in good faith and in conformity with such opinion. In determining whether any default by the Borrower exists under this Regulatory Agreement, the Trustee is not required to conduct any investigation into or review of the operations or records of the Borrower and may rely on any written report, notice or certificate or other information delivered to the Trustee, as required by this Regulatory Agreement, by any Person retained to review the Borrower's compliance with this Regulatory Agreement or by the Borrower or the Issuer with respect to the occurrence or absence of a default unless it has actual knowledge that the report, notice or certificate is erroneous or misleading.

Section 9. Development in Shelby County. The Borrower hereby represents that the Development is located entirely within Shelby County, Texas.

Section 10. Sale or Transfer of the Development or Change in General Partner.

(a) The Borrower covenants and agrees not to sell, transfer or otherwise dispose of the Development, prior to the expiration of the Qualified Project Period (other than pursuant to the lease of Units to Eligible Tenants), without (i) providing 30 days prior written notice to the Issuer, (ii) complying with any applicable provisions of this Regulatory Agreement, the Financing Agreement, the Tax Exemption Agreement and other Loan Documents and (iii) obtaining the prior written consent of the Issuer. Such consent of the Issuer will not be unreasonably withheld and will be given if the following conditions to the sale or other disposition are met or waived in writing by the Issuer: (A) there is delivered to the Trustee and the Issuer a written opinion of independent legal counsel reasonably satisfactory to the Trustee and the Issuer, addressed to the Trustee and the Issuer, concluding that the transferee has duly assumed all of the rights and obligations of the Borrower under this Regulatory Agreement, the Financing Agreement, the Tax Exemption Agreement and the other Loan Documents and that each of the documents executed by the transferee in connection therewith has been duly authorized, executed and delivered by the transferee and is a valid and enforceable obligation of the transferee, subject to customary qualifications, (B) the Issuer receives a Favorable Opinion of Bond Counsel, with a copy to the Trustee and the Borrower, which opinion will be furnished at the expense of the Borrower or the transferee, (C) the Issuer receives a transfer fee equal to \$1,000, (D) the proposed purchaser or assignee executes any document requested by the Issuer with respect to assuming the obligations of the Borrower under this Regulatory Agreement, the Financing Agreement, the Tax Exemption Agreement and the other Loan Documents, (E) the Issuer has performed a previous participation review on the proposed purchaser or assignee or any affiliated party, the results of which are satisfactory to the Issuer in accordance with Title 10, Part 1, Chapter 1, Subchapter C, Section

1.301, Texas Administrative Code, and the Issuer does not further have any reason to believe the proposed purchaser or assignee is incapable, financially or otherwise, of complying with, or may be unwilling to comply with, the terms of all agreements and instruments binding on such proposed purchaser or assignee relating to the Development, including but not limited to this Regulatory Agreement, the Financing Agreement, the Tax Exemption Agreement, the Security Instrument and other Loan Documents, (F) the transferee has met the requirements in Title 10, Part 1, Chapter 10, Subchapter E, Section 10.406, Texas Administrative Code, and (G) the Borrower or transferee have paid any and all fees or expenses of Bond Counsel incurred in association with its review and drafting of documents relating to the transfer. The foregoing provisions do not apply to transfer by foreclosure or deed in lieu of foreclosure or other similar involuntary transfers, but such provisions apply to any transfer subsequent to such involuntary transfers. Notwithstanding anything to the contrary contained herein, the following shall be permitted and shall not require the prior written approval of Issuer or Trustee, provided that written notice thereof has been provided to the Issuer: (a) the transfer by Investor Limited Partner of its non-Controlling interest in Borrower in accordance with the terms of Borrower's Organizational Documents, (b) the removal of the general partner of Borrower in accordance with the Organizational Documents and the temporary replacement thereof with Investor Limited Partner or any of its affiliates, (c) the transfer of ownership interests in Investor Limited Partner, (d) upon the expiration of the tax credit compliance period, the transfer of the interests of Investor Limited Partner in Borrower to Borrower's general partner or any of its affiliates, and (e) any amendment to the Organizational Documents to memorialize the transfers or removal described above. For the purposes of the preceding sentence, "Control" or "Controlling" has the meaning given to such term in Title 10, Part 1, Subchapter A, Section 11.1, Texas Administrative Code. The Borrower hereby expressly stipulates and agrees that any sale, transfer or other disposition of the Development in violation of this subsection will be ineffective to relieve the Borrower of its obligations under this Regulatory Agreement. Upon any sale, transfer or other disposition of the Development in compliance with this Regulatory Agreement, the Borrower so selling, transferring or otherwise disposing of the Development will have no further liability for obligations under the Financing Agreement, this Regulatory Agreement or any other Loan Document arising after the date of such disposition. The foregoing notwithstanding, the duties of the Borrower as set forth in the Financing Agreement, this Regulatory Agreement or any other Loan Document with respect to matters arising prior to the date of such sale, transfer or other disposition will not terminate upon the sale, transfer or other disposition of the Development.

(b) No transfer of the Development will release the Borrower from its obligations under this Regulatory Agreement arising prior to the date of such transfer, but any such transfer in accordance with this Regulatory Agreement will relieve the Borrower of further liability for obligations under the Financing Agreement and this Regulatory Agreement arising after the date of such transfer.

(c) Except as set forth in Section 10(a) above, the Borrower will not change its general partner by transfer, sale or otherwise without the prior written consent of the Issuer in accordance with Title 10, Part 1, Chapter 10, Subchapter E, Section 10.406, Texas Administrative Code. A change in the Borrower's general partner includes any transfer of any controlling ownership interest in the general partner other than by death or incapacity.

Section 11. Term. This Regulatory Agreement and all and each of the provisions hereof will become effective upon its execution and delivery, will remain in full force and effect for the periods provided herein and, except as otherwise provided in this Section, will terminate in its entirety at the end of the State Restrictive Period, it being expressly agreed and understood that the provisions hereof are



intended to survive the retirement of the Bonds, discharge of the Loan, termination of the Financing Agreement and defeasance or termination of the Indenture; provided, however, that the provisions related to the Qualified Project Period that are not incorporated into the State Restrictive Period will terminate in their entirety at the end of the Qualified Project Period.

The terms of this Regulatory Agreement to the contrary notwithstanding, the requirements set forth herein will terminate, without the requirement of any consent by the Issuer or the Trustee, and be of no further force and effect in the event of involuntary noncompliance with the provisions of this Regulatory Agreement caused by fire, seizure, requisition, change in a federal or State law or an action of a federal agency after the Closing Date which prevents the Issuer or the Trustee from enforcing the provisions hereof, or foreclosure or transfer of title by deed in lieu of foreclosure or other similar involuntary transfer, condemnation or a similar event, but only if, within a reasonable period thereafter, either the Bonds are retired in full or amounts received as a consequence of such event are used to provide a “qualified residential rental project” that meets the requirements of the Code and State law including, but not limited to, the provisions set forth in Sections 1A through 6, 10, 11 and 12 of this Regulatory Agreement. The provisions of the preceding sentence will cease to apply and the requirements referred to therein will be reinstated if, at any time during the Qualified Project Period, after the termination of such requirements as a result of involuntary noncompliance due to foreclosure, transfer of title by deed in lieu of foreclosure or similar event, the Borrower or any Related Person obtains an ownership interest in the Development for federal income tax purposes or for the purposes of State law.

Notwithstanding any other provision of this Regulatory Agreement, this Regulatory Agreement may be terminated upon agreement by the Issuer, the Trustee and the Borrower upon receipt of a Favorable Opinion of Bond Counsel.

Upon the termination of the terms of this Regulatory Agreement, the parties hereto agree to execute, deliver and record appropriate instruments of release and discharge of the terms hereof; provided, however, that the execution and delivery of such instruments are not necessary or a prerequisite to the termination of this Regulatory Agreement in accordance with its terms. All costs, including fees and expenses, of the Issuer and the Trustee incurred in connection with the termination of this Regulatory Agreement will be paid by the Borrower and its successors in interest.

Section 12. Covenants to Run With the Land. The Borrower hereby subjects the Development (including the Development Site) to the covenants, reservations and restrictions set forth in this Regulatory Agreement. The Issuer, the Trustee and the Borrower hereby declare that the covenants, reservations and restrictions set forth herein are covenants running with the land and will pass to and be binding upon the Borrower’s successors in title to the Development; provided, however, that upon the termination of this Regulatory Agreement said covenants, reservations and restrictions will expire. Each and every contract, deed or other instrument hereafter executed covering or conveying the Development or any portion thereof prior to the termination of this Regulatory Agreement will conclusively be held to have been executed, delivered and accepted subject to such covenants, reservations and restrictions, regardless of whether such covenants, reservations and restrictions are set forth in such contract, deed or other instrument.

No breach of any of the provisions of this Regulatory Agreement will impair, defeat or render invalid the lien of any mortgage, deed of trust or like encumbrance made in good faith and for value encumbering the Development or any portion thereof.

Section 13. Burden and Benefit. The Issuer, the Trustee and the Borrower hereby declare their understanding and intent that the burden of the covenants set forth herein touch and concern the land in that the Borrower’s legal interest in the Development is rendered less valuable thereby. The Issuer, the Trustee

and the Borrower hereby further declare their understanding and intent that the benefit of such covenants touch and concern the land by enhancing and increasing the enjoyment and use of the Development by Low-Income Tenants and Eligible Tenants and by furthering the public purposes for which the Bonds were issued.

Section 14. Uniformity; Common Plan. The covenants, reservations and restrictions hereof will apply uniformly to the entire Development in order to establish and carry out a common plan for the use, development and improvement of the Development Site.

Section 15. Default; Enforcement by the Trustee and Issuer. If the Borrower defaults in the performance or observance of any covenant, agreement or obligation of the Borrower set forth in this Regulatory Agreement, and if such default remains uncured by the Borrower for a period of 60 days after written notice thereof has been given by the Issuer or the Trustee to the Borrower and the Investor Limited Partner at the Notice Addresses set forth in the Indenture, then the Trustee, acting on its own behalf or on behalf of the Issuer and after being indemnified as provided in the Indenture, will declare an “Event of Default” to have occurred hereunder; provided, however, that, if the default stated in the notice is of such a nature that it cannot be corrected within 60 days, such default will not constitute an Event of Default hereunder and will not be declared an Event of Default so long as (i) the Borrower institutes corrective action within said 60 days and diligently pursues such action until the default is corrected and (ii) the Borrower delivers to the Issuer and the Trustee a Favorable Opinion of Bond Counsel. The Issuer hereby agrees that any cure of any Event of Default hereunder made or tendered by the Investor Limited Partner shall be deemed to be cure by the Borrower, and shall be accepted or rejected by the Issuer on the same basis as if made or tendered by the Borrower.

Following the declaration of an Event of Default hereunder, the Trustee or the Issuer, each subject to being indemnified to its satisfaction with respect to the costs and expenses of any proceeding, may, at its option, take any one or more of the following steps:

- (a) by mandamus or other suit, action or proceeding at law or in equity, including injunctive relief, require the Borrower to perform its obligations and covenants hereunder or enjoin any acts or things which may be unlawful or in violation of the rights of the Issuer or the Trustee hereunder;
- (b) have access to and inspect, examine and make copies of all of the books and records of the Borrower pertaining to the Development during regular business hours following reasonable notice; and
- (c) take such other action at law or in equity as may appear necessary or desirable to enforce the obligations, covenants and agreements of the Borrower hereunder.

The Borrower hereby agrees that specific enforcement of the Borrower’s agreements contained herein is the only means by which the Issuer and the Trustee may obtain the benefits of such agreements made by the Borrower herein, and the Borrower therefore agrees to the imposition of the remedy of specific performance against it in the case of any Event of Default by the Borrower hereunder. In addition, if the Issuer succeeds in an action for specific performance of an obligation, covenant or agreement of the Borrower contained herein, it is entitled to the relief provided in Section 16(b) hereof to the extent provided in that provision.

All rights and remedies herein given or granted are cumulative, nonexclusive and in addition to any and all rights and remedies that the parties may have or may be given by reason of any law, statute, ordinance, document or otherwise. Notwithstanding the availability of the remedy of specific performance

provided for in this Section, promptly upon determining that a violation of this Regulatory Agreement has occurred, the Issuer will to the extent that it has actual knowledge thereof, by notice in writing, use its best efforts to inform the Trustee and the Borrower (provided that the failure to notify will not adversely affect the Issuer's or the Trustee's rights under this Regulatory Agreement) that a violation of this Regulatory Agreement has occurred.

It is specifically declared that this Regulatory Agreement or obligations hereunder may not be enforced by tenants or prospective tenants of the Development (except as described in Section 16 below) or, except as specifically provided in the Indenture, by the owners of the Bonds.

Section 16. Enforcement of Certain Provisions by Tenants and other Private Parties.

(a) During the existence of an Event of Default hereunder with respect to Sections 4(i), 4(j) and 5 hereof only, a tenant of the Development or any private party may, at its option by mandamus or other suit, including injunctive relief, require the Borrower to perform its obligations and covenants under Sections 4(i), 4(j) and 5 hereof.

(b) If the Issuer, a tenant of the Development, or any private party brings an action to enforce the obligations and covenants of the Borrower under Sections 4(i), 4(j) and 5 hereof, such party has the right to recover attorney's fees directly from the Borrower, without recourse to the Development, if such party is successful in an action seeking enforcement of the obligations and covenants of the Borrower hereunder. This is the only monetary relief a tenant of the Development or other private parties may receive under this Regulatory Agreement and any such recovery is subject to the provisions set forth in Section 15 above.

Section 17. The Trustee. The Trustee will act only as specifically provided herein, in the Indenture and in the Tax Exemption Agreement. Subject to the right of the Trustee to be indemnified as provided herein, in the Financing Agreement and in the Indenture, the Trustee agrees to act as the agent of and on behalf of the Issuer when requested in writing by the Issuer to do so, and any act required to be performed by the Issuer as herein provided will be deemed taken if such act is performed by the Trustee. The Trustee is entering into this Regulatory Agreement solely in its capacity as Trustee under the Indenture, and the duties, powers, rights and obligations of the Trustee in acting hereunder will be subject to the provisions of the Indenture and the Tax Exemption Agreement, all of which are incorporated by reference herein. The incorporated provisions of the Indenture and the Tax Exemption Agreement are intended to survive the retirement of the Bonds, discharge of the Loan, termination of the Financing Agreement and defeasance or termination of the Indenture and the Tax Exemption Agreement.

Subject to the Trustee's rights under the Indenture, the Trustee will, at the direction of the Issuer, take reasonable actions to enforce compliance by the Borrower with the terms of this Regulatory Agreement. The Trustee may conclusively rely on certificates, reports or other information delivered to the Trustee, in accordance with this Regulatory Agreement, without independent investigation and the Trustee's responsibility to review and monitor compliance hereunder will not extend beyond the Trustee's receipt of the certificates, reports, and other documents required to be submitted to the Trustee pursuant to this Regulatory Agreement.

The Trustee may resign or be removed only as provided in Sections 10.6 or 10.7, respectively, of the Indenture. Such resignation or removal will not be effective until a successor Trustee satisfying the requirements of the Indenture is appointed and has accepted its appointment. The Trustee's right to indemnification provided in the Financing Agreement will survive the resignation or removal of the Trustee and the termination of this Regulatory Agreement.

Upon discharge of the Indenture, the Borrower will pay to the Trustee a fee, in an amount mutually agreed upon by the Borrower and the Trustee at the time of such discharge, for the performance of the Trustee's duties under this Agreement through the date upon which all of the Bonds are to be paid in full. After the date upon which all of the Bonds have been paid in full, the Trustee shall no longer have any duties or responsibilities under this Regulatory Agreement and all references to the Trustee in this Regulatory Agreement shall be deemed references to the Issuer.

Section 18. Recording and Filing. The Borrower will cause this Regulatory Agreement, and all amendments and supplements hereto and thereto, to be recorded and filed in the real property records of Shelby County, Texas and in such other places as the Issuer may reasonably request. A file-stamped copy of this Regulatory Agreement and, prior to the date upon which all of the Bonds have been paid in full, all amendments and supplements thereto will be delivered to the Trustee. The Borrower will pay all fees and charges incurred in connection with any such recording. This Regulatory Agreement is subject to and subordinate to all matters of record as of the date hereof.

Section 19. Reimbursement of Expenses. Notwithstanding any prepayment of the Loan and notwithstanding a discharge of the Indenture and the Tax Exemption Agreement, throughout the term of this Regulatory Agreement, the Borrower will continue to pay to the Issuer and the Trustee all fees and reimbursement for all expenses actually incurred thereby required to be paid to the Issuer and the Trustee by the Borrower pursuant to the Financing Agreement and the Tax Exemption Agreement.

Section 20. Governing Law. This Regulatory Agreement is governed by the laws of the State of Texas. The Trustee's rights, duties, powers and obligations hereunder are governed in their entirety by the terms and provisions of this Regulatory Agreement, the Financing Agreement, the Indenture and the Tax Exemption Agreement.

Section 21. Amendments. Subject to the provisions of Section 3 hereof, this Regulatory Agreement may be amended only by a written instrument executed by the parties hereto (except that after discharge of the Indenture, consent of the Trustee will not be required), or their successors in title, and duly recorded in the real property records of Shelby County, Texas, and only upon receipt by the Issuer (with a copy to the Trustee and the Borrower) of a Favorable Opinion of Bond Counsel and an opinion of Bond Counsel that such action is not contrary to the provisions of the Act.

Section 22. Notices. Any notice required to be given hereunder to the Issuer, the Trustee, the Investor Limited Partner and the Borrower will be given in the manner and to the address (or facsimile numbers) set forth in the Indenture.

Section 23. Severability. If any provision of this Regulatory Agreement is held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining portions hereof will not in any way be affected or impaired thereby.

Section 24. Multiple Counterparts. This Regulatory Agreement may be simultaneously executed in multiple counterparts, all of which constitute one and the same instrument, and each of which is deemed to be an original.

Section 25. Authorization to Act for Issuer. To the extent allowed by law, the Issuer hereby authorizes the Borrower to take on behalf of the Issuer all actions required or permitted to be taken by it hereunder, or under the Indenture and the Financing Agreement and to make on behalf of the Issuer all elections and determinations required or permitted to be made by the Issuer hereunder or under the Indenture and the Financing Agreement. In addition, the Issuer hereby authorizes the Borrower to exercise, on behalf of the Issuer, any election with respect to the Bonds pursuant to the Code or the Regulations, and

the Issuer agrees to cooperate with the Borrower and execute any form of statement required by the Code or the Regulations to perfect any such election.

IN WITNESS WHEREOF, the Issuer, the Trustee and the Borrower have executed this Regulatory Agreement by duly authorized representatives, all as of the date first above written.

**TEXAS DEPARTMENT OF HOUSING AND  
COMMUNITY AFFAIRS, as Issuer**

By: \_\_\_\_\_  
Name: James B. "Beau" Eccles  
Title: Secretary to the Board

ACKNOWLEDGMENT

STATE OF TEXAS            §  
                                          §  
COUNTY OF TRAVIS       §

On this the \_\_\_\_\_ day of \_\_\_\_\_, 2022 personally appeared James B. "Beau" Eccles, Secretary to the Governing Board of the Texas Department of Housing and Community Affairs, a public and official agency of the State of Texas, who acknowledged that he executed the foregoing instrument for the purposes therein contained and in the capacity stated on behalf of said entity.

\_\_\_\_\_  
Notary Public Signature

My Commission expires: \_\_\_\_\_

(Personalized Seal)

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

By: \_\_\_\_\_  
Name: Dayna L. Smith  
Title: Vice President

ACKNOWLEDGMENT

STATE OF \_\_\_\_\_ §  
                                                                  §  
COUNTY OF \_\_\_\_\_ §

On this the \_\_\_\_\_ day of \_\_\_\_\_, 2022 personally appeared Dayna L. Smith, a Vice President of Wilmington Trust, National Association, a national banking association, who acknowledged that she executed the foregoing instrument for the purposes therein contained and in the capacity stated on behalf of said entity.

\_\_\_\_\_  
Notary Public Signature

My Commission expires: \_\_\_\_\_

(Personalized Seal)

**CENTER 818 COTTON FORD ROAD, LP,**  
a Texas limited partnership

By: Center 818 Cotton Ford Road GP, LLC, a Texas limited liability company, its General Partner

By: ITEX Advisors, LLC, a Texas limited liability company, its Manager

By: The ITEX Group Management, LLC, a Texas limited liability company, its Manager

By: \_\_\_\_\_  
Christopher A. Akbari,  
Manager

ACKNOWLEDGMENT

STATE OF \_\_\_\_\_ §  
                                                          §  
COUNTY OF \_\_\_\_\_ §

On this the \_\_\_\_\_ day of \_\_\_\_\_, 2022 personally appeared Christopher A. Akbari, Manager of The ITEX Group Management, LLC, a Texas limited liability company, Manager of ITEX Advisors, LLC, a Texas limited liability company, Manager of Center 818 Cotton Ford Road GP, LLC, a Texas limited liability company, General Partner of Center 818 Cotton Ford Road, LP, a Texas limited partnership, who acknowledged that he executed the foregoing instrument for the purposes therein contained and in the capacity stated on behalf of said entities.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

\_\_\_\_\_  
Notary Public Signature

My Commission expires: \_\_\_\_\_

(Personalized Seal)



EXHIBIT A  
PROPERTY DESCRIPTION

[TO COME].

EXHIBIT B-1

DESCRIPTION OF DEVELOPMENT

Borrower: Center 818 Cotton Ford Road, LP, a Texas Limited Partnership

Development: The Development is a 100-unit affordable, multifamily housing development known as Union Acres, located at 818 Cotton Ford Road, Center, Shelby County, Texas 75935. It consists of fifty (50) residential apartment buildings with approximately 84,292 net rentable square feet. The unit mix will consist of:

12	one-bedroom/one-bath units
24	two-bedroom/one-bath units
30	three-bedroom/one-bath units
30	four-bedroom/two-bath units
4	five-bedroom/two-bath units
100	Total Units

Unit sizes will range from approximately 522 square feet to approximately 1,150 square feet.

## EXHIBIT B-2

### DEVELOPMENT AMENITIES

“Development Amenities” means the amenities for which the Development was awarded points by the Issuer, pursuant to Section 2306.359 of the Texas Government Code, during the Private Activity Bond Program pre-application scoring process.

Development Common Amenities must include at least fourteen (14) points selected from the following list which are grouped primarily for organizational purposes. The Borrower is not required to select a specific number of amenities from each section. The Borrower may change, from time to time, the amenities offered; however, the overall points must remain the same. The tenant must be provided written notice of the elections made by the Borrower.

(i) Community Space for Resident Supportive Services includes:

(I) Except in Applications where more than 10% of the units in the proposed Development are Supportive Housing SRO Units, an Application may qualify to receive half of the points required under §11.101(b)(5)(A)(i)-(vi) by electing to provide a High Quality Pre-Kindergarten (HQ Pre-K) program and associated educational space at the Development Site. To receive the points the Applicant must commit to all of items (-a-) - (-c-) of this subclause.

(-a-) Space and Design. The educational space for the HQ Pre-K program must be provided on the Development Site and must be a suitable and appropriately designed space for educating children that an independent school district or open-enrollment charter school can utilize to establish and operate a HQ Pre-K program. This space includes at a minimum a bathroom and large closet in the classroom space; appropriate design considerations made for the safety and security of the students; including limited and secure ingress and egress to the classroom space; and satisfaction of the requirements of all applicable building codes for school facilities. The Applicant must provide in the Application a copy of the current school facility code requirements applicable to the Development Site and Owner and Architect certifications that they understand the associated space and design requirements reflected in those code requirements. The Application must also include acknowledgement by all lenders, equity providers and partners that the Application includes election of these points.

(-b-) Educational Provider. The Applicant must enter into an agreement, addressing all items as described in subitems (-1-) - (-5-) below, and provide evidence of such agreement to the Department on or before submission of the Cost Certification.

(-1-) The agreement must be between the Borrower and any one of the following: a school district; open- enrollment charter school; or Education Service Center. Private schools and private childcare providers, whether nonprofit or for profit, are not eligible parties, unless the private school or private childcare provider has entered into a partnership with a school district or open-enrollment charter school to provide a HQ Pre-K program in accordance with Texas Education Code Chapter 29, Subchapter E-1.

(-2-) The agreement must reflect that at the Development Site the educational provider will provide a HQ Pre-K program, in accordance with Texas Education Code Chapter 29, Subchapter E-1, at no cost to residents of the proposed Development and that is available for general public use, meaning students other than those residing at the Development may attend.

(-3-) Such agreement must reflect a provision that the option to operate the HQ Pre-K program in the space at the Development Site will continue to be made available to the school or provider until such time as the school or provider wishes to withdraw from the location. This provision will not limit the Borrower's right to terminate the agreement for good cause.

(-4-) Such agreement must set forth the responsibility of each party regarding payment of costs to use the space, utility charges, insurance costs, damage to the space or any other part of the Development, and any other costs that may arise as the result of the operation of the HQ Pre-K program.

(-5-) The agreement must include provision for annual renewal, unless terminated under the provisions of item (-c-).

(-c-) If an education provider who has entered into an agreement becomes defunct or elects to withdraw from the agreement and provision of services at the location, as provided for in subitem (-b-)(-3-) of this subclause, the Borrower must notify the Texas Commissioner of Education at least 30 days prior to ending the agreement to seek out any other eligible parties listed in subitem (-b-)(-1-) of this subclause above. If another interested open-enrollment charter school or school district is identified by the Texas Commissioner of Education or the Borrower, the Borrower must enter into a subsequent agreement with the interested open-enrollment charter school or school district and continue to offer HQ Pre-K services. If another interested provider cannot be identified, and the withdrawing provider certifies to the Department that their reason for ending the agreement is not due to actions of the Borrower, the Borrower will not be considered to be in violation of its commitment to the Department. If the Borrower is not able to find a provider, they must notify the Commissioner annually of the availability of the space.

(II) Multifunctional learning and care center(s) or conference room(s) with the appropriate furnishings to deliver the Resident Supportive Services pertaining to classes or care for children and selected by the Development Owner. The room(s) devoted to meeting this requirement must equal 15 square feet times the total number of Units, but need not exceed 2,000 square feet in total. This space must be separate from any other community space but may include a full kitchen. The room(s) must include storage space, such as closets or cabinetry (4 points).

(III) Multifunctional learning and care center(s) or conference room(s) with the appropriate furnishings to deliver the Resident Supportive Services pertaining to classes or care for adults and selected by the Development Owner. The room(s) devoted to meeting this requirement must equal 10 square feet times the total number of Units, but need not exceed 1,000 square feet in total. This space must be separate from any other community space but may include a full kitchen. The room(s) must include storage space, such as closets or cabinetry (2 points).

(IV) Service provider office in addition to leasing offices (1 point).

(ii) Safety amenities include:

(I) Controlled gate access for entrance and exit areas, intended to provide access that is limited to the Development's tenancy (1 point).

(II) Secured Entry (applicable only if all Unit entries are within the building's interior) (1 point).

(III) Twenty-four hour, seven days a week monitored camera/security system in each building. Monitoring may be on-site or off-site (2 points).

(IV) Twenty-four hour, seven days a week recorded camera / security system in each building (1 point).

(V) The provision of a courtesy patrol service that, at a minimum, answers after-hour resident phone calls regarding noise and crime concerns or apartment rules violations and that can dispatch to the apartment community a courtesy patrol officer in a timely manner (3 points).

(iii) Health/ Fitness / Play amenities include:

(I) Accessible walking/jogging path, equivalent to the perimeter of the Development or a length that reasonably achieves the same result, separate from a sidewalk and in addition to required accessible routes to Units or other amenities (1 point).

(II) Furnished fitness center. Equipped with a variety of fitness equipment (at least one item for every 40 Units). Choose from the following: stationary bicycle, elliptical trainer, treadmill, rowing machine, universal gym, multi-functional weight bench, stair-climber, dumbbell set, or other similar equipment. Equipment shall be commercial use grade or quality. Fitness center must be located indoors or be a designated room with climate control and allow for after-hours access. (1 point).

(III) Furnished fitness center. Equipped with a variety of fitness equipment (at least one item for every 20 Units). Choose from the following: stationary bicycle, elliptical trainer, treadmill, rowing machine, universal gym, multi-functional weight bench, stair-climber, dumbbell set, or other similar equipment. Equipment shall be commercial use grade or quality. Fitness center must be located indoors or be a designated room with climate control and allow for after-hours access. (2 points).

(IV) One Children's Playscape Equipped for five to 12 year olds, or one Tot Lot (2 points). Must be covered with a shade canopy or awning, intended to keep equipment cool, and provide shade and ultraviolet protection. This item can only be selected if clause (V) of this subparagraph is not selected.

(V) Two Children's Playscapes Equipped for five to 12 year olds, two Tot Lots, or one of each (4 points). Must be covered with a shade canopy or awning, intended to keep equipment cool, and provide shade and ultraviolet protection. This item can only be selected if clause (IV) of this subparagraph is not selected.

(VI) Horseshoe pit; putting green; shuffleboard court; pool table; ping pong table; or similar equipment in a dedicated location accessible to all residents to play such games (1 point).

(VII) Swimming pool (3 points).

(VIII) Splash pad/water feature play area (1 point).

(IX) Sport Court or field (including, but not limited to, Tennis, Basketball, Volleyball, Soccer or Baseball Field) (2 points).

(iv) Design / Landscaping amenities include:

(I) Full perimeter fencing that contains the parking areas and all amenities (excludes guest or general public parking areas) (2 points).

(II) Enclosed community sun porch or covered community porch/patio (1 point).

(III) Dog Park area that is fully enclosed (the perimeter fencing may be used for part of the enclosure) and intended for tenant owned dogs to run off leash (requires that the Development allow dogs) (1 point).

(IV) Shaded rooftop or structural viewing deck of at least 500 square feet (2 points).

(V) Porte-cochere (1 point).

(VI) Lighted pathways along all accessible routes (1 point).

(VII) a resident-run community garden with annual soil preparation and mulch provided by the Borrower and access to water (which may be subject to local water usage restrictions) (1 point).

(v) Community Resources include:

(I) Gazebo, covered pavilion, or pergola with sitting area (seating must be provided) (1 point).

(II) Community laundry room with at least one washer and dryer for every 40 Units (2 points).

(III) Barbecue grill and picnic table with at least one of each for every 50 Units (1 point). Grill must be permanently installed (no portable grills).

(IV) Business center with workstations and seating internet access, 1 printer and at least one scanner which may be integrated with the printer, and either 2 desktop computers or laptops available to check-out upon request (2 points).

(V) Furnished Community room (2 points).

(VI) Library with an accessible sitting area (separate from the community room) (1 point).

- (VII) Activity Room stocked with supplies (Arts and Crafts, board games, etc.) (2 points).
- (VIII) Community Dining Room with full or warming kitchen furnished with adequate tables and seating (3 points).
- (IX) Community Theater Room equipped with a 52 inch or larger screen or projection with surround sound equipment; DVD player or a streaming service at no cost to residents; and seating (3 points).
- (X) High-speed Wi-Fi with advanced telecommunications capacity as determined under 47 U.S.C. 1302 with coverage throughout the clubhouse or community building (1 point).
- (XI) High-speed Wi-Fi with advanced telecommunications capacity as determined under 47 U.S.C. 1302 with coverage throughout the Development (2 points).
- (XII) Bicycle parking that allows for, at a minimum, one bicycle for every five Units, within reasonable proximity to each residential building that allows for bicycles to be secured with lock (lock not required to be provided to tenant) (1 point).
- (XIII) Package Lockers or secure package room. Automated Package Lockers or secure package room provided at a location within the complex that can be accessed by residents 24/7 and at no charge to the resident. To qualify, there would need to be at least one locker for every eight residential units (2 points).
- (XIV) Recycling Service (includes providing a storage location and service for pick-up) (1 point).
- (XV) Community car vacuum station (1 point).

Unit, Development Construction and Energy and Water Efficiency Features. The Development must include at least nine (9) points selected from the following list. Rehabilitation Developments will start with a base score of five (5) points. At least two (2) points must be selected from clause (iii) Energy and Water Efficiency Features. The development must maintain the points associated with those amenities by maintaining the amenity selected or providing substitute amenities with equal or higher point values.

(i) Unit Features include:

- (I) Covered entries (0.5 point);
- (II) Nine foot ceilings in living room and all Bedrooms (at minimum) (1 point);
- (III) Microwave ovens (0.5 point);
- (IV) Self-cleaning or continuous cleaning ovens (0.5 point);
- (V) Storage room or closet, of approximately 9 square feet or greater, separate from and in addition to Bedroom, entryway or linen closets and which does not need to be in the Unit but must be on the Property site (0.5 point);
- (VI) Covered patios or covered balconies (0.5 point);

(VII) High Speed Internet service to all Units (can be wired or wireless; required equipment for either must be provided) (1 point);

(VIII) Built-in (recessed into the wall) shelving unit (0.5 point);

(IX) Breakfast Bar (a space, generally between the kitchen and dining area, that includes an area for seating although actual seating such as bar stools does not have to be provided) (0.5 point);

(X) Walk-in closet in at least one Bedroom (0.5 point);

(XI) 48-inch upper kitchen cabinets (1 point);

(XII) Kitchen island (0.5 points);

(XIII) Kitchen pantry with shelving (may include the washer/dryer unit for Rehabilitation Developments only) (0.5 point).

(XIV) Natural stone or quartz countertops in kitchen and bath (1 point);

(XV) Double vanity in at least one bathroom (0.5 point); and

(XVI) Hard floor surfaces in over 50% of unit NRA (0.5 point).

(ii) Development Construction Features include:

(I) Covered parking (may be garages or carports, attached or freestanding) and include at least one covered space per Unit (1.5 points);

(II) Thirty year roof (0.5 point);

(III) Greater than 30% stucco or masonry (includes stone, cultured stone, and brick but excludes cementitious and metal siding) on all building exteriors; the percentage calculation may exclude exterior glass entirely (2 points);

(IV) Electric Vehicle Charging Station (0.5 points);

(V) An Impact Isolation Class (IIC) rating of at least 55 and a Sound Transmission Class (STC) rating of 60 or higher in all Units, as certified by the architect or engineer of record (3 points); and

(VI) Green Building Features. Points under this item are intended to promote energy and water conservation, operational savings and sustainable building practices. Four (4) points may be selected from only one of the categories described in items (-a-) - (-d-) of this subclause. If the Development involves scattered sites, there must be green building features incorporated into each site in order to qualify for these points.

(-a-) Enterprise Green Communities. The Development must incorporate all mandatory and optional items applicable to the construction type (i.e. New Construction, Rehabilitation, etc.) as provided in the most recent version of the



Enterprise Green Communities Criteria found at  
<http://www.greencommunitiesonline.org>.

(-b-) Leadership in Energy and Environmental Design (LEED). The Development must incorporate, at a minimum, all of the applicable criteria necessary to obtain a LEED Certification, regardless of the rating level achieved (i.e., Certified, Silver, Gold or Platinum).

(-c-) ICC/ASHRAE - 700 National Green Building Standard (NGBS). The Development must incorporate, at a minimum, all of the applicable criteria necessary to obtain a NGBS Green Certification, regardless of the rating level achieved (i.e. Bronze, Silver, Gold, or Emerald).

(-d-) 2018 International Green Construction Code.

(iii) Energy and Water Efficiency Features include:

(I) Energy-Star or equivalently rated refrigerator with icemaker (0.5 point);

(II) Energy-Star or equivalently rated laundry equipment (washers and dryers) for each individual Unit; must be front loading washer and dryer in required accessible Units (2 points);

(III) Recessed LED lighting or LED lighting fixtures in kitchen and living areas (1 point);

(IV) Energy-Star or equivalently rated ceiling fans in all Bedrooms (0.5 point);

(V) EPA WaterSense or equivalent qualified toilets in all bathrooms (0.5 point);

(VI) EPA WaterSense or equivalent qualified showerheads and faucets in all bathrooms (0.5 point);

(VII) 15 SEER HVAC, or in Region 13, an efficient evaporative cooling system. For Rehabilitation (excluding Reconstruction) where such systems are not being replaced as part of the scope of work, a radiant barrier in the attic is provided (1 point);

(VIII) 16 SEER HVAC, for New Construction or Rehabilitation (1.5 points); and

(IX) A rainwater harvesting/collection system or locally approved greywater collection system (0.5 points).

## EXHIBIT C

### TENANT SUPPORTIVE SERVICES

The tenant supportive services to be provided must include at least eight (8) points selected from the following list which are grouped primarily for organizational purposes. The Borrower is not required to select a specific number of services from each section. The Borrower may change, from time to time, the services offered; however, the overall points as selected at Application must remain the same. Should the Department's rules in subsequent years provide different services than those listed below, the Borrower may be allowed to select services listed therein upon written consent from the Issuer, and any services selected must be of similar value to the service the Borrower is intending to replace. The services provided should be those that will directly benefit the Target Population of the Development. Tenants must be provided written notice of the elections made by the Borrower.

(A) Transportation Supportive Services include:

- (i) shuttle, at least three days a week, to a grocery store and pharmacy or a major, big-box retailer that includes a grocery store and pharmacy, OR a daily shuttle, during the school year, to and from nearby schools not served by a school bus system for children who live at the Development (3.5 points); and
- (ii) monthly transportation to community/social events such as mall trips, community theatre, bowling, organized tours, etc. (1 point).

(B) Children Supportive Services include:

- (i) provide a High Quality Pre-Kindergarten (HQ Pre-K) program and associated educational space at the Development Site meeting the requirements of §11.101(b)(5)(C)(i)(I). (Half of the points required under §11.101(b)(7)); and
- (ii) Twelve hours of weekly, organized, on-site services provided to K-12 children by a dedicated service coordinator or third-party entity. Services include after-school and summer care and tutoring, recreational activities, character building programs, mentee opportunities, test preparation, and similar activities that promote the betterment and growth of children and young adults (3.5 points).

(C) Adult Supportive Services include:

- (i) Four hours of weekly, organized, on-site classes provided to an adult audience by persons skilled or trained in the subject matter being presented, such as English as a second language classes, computer training, financial literacy courses, health education courses, certification courses, GED preparation classes, resume and interview preparatory classes, general presentations about community services and resources, and any other course, class, or presentation that may equip residents with new skills that they may wish to develop (3.5 points);
- (ii) annual income tax preparation (offered by an income tax prep service) or IRS-certified VITA (Volunteer Income Tax Assistance) program (offered by a qualified individual) that also emphasizes how to claim the Earned Income Tax Credit (1 point);
- (iii) contracted career training and placement partnerships with local worksource offices, culinary programs, or vocational counseling services; may include resident training programs that train and hire residents for job opportunities inside the development in areas like leasing, tenant services, maintenance, landscaping, or food and beverage operation (2 points); and

(iv) external partnerships for provision of weekly substance abuse meetings at the Development Site (1 point).

(D) Health Supportive Services include:

(i) food pantry consisting of an assortment of non-perishable food items and common household items (i.e. laundry detergent, toiletries, etc.) accessible to residents at least on a monthly basis or upon request by a resident. While it is possible that transportation may be provided to a local food bank to meet the requirement of this resident service, the resident must not be required to pay for the items they receive at the food bank (2 points);

(ii) annual health fair provided by a health care professional (1 point);

(iii) weekly exercise classes (offered at times when most residents would be likely to attend) (2 points); and

(iv) contracted onsite occupational or physical therapy services for Elderly Developments or Developments where the service is provided for Persons with Disabilities and documentation to that effect can be provided for monitoring purposes (2 points).

(E) Community Supportive Services include:

(i) partnership with local law enforcement or local first responders to provide quarterly on-site social and interactive activities intended to foster relationships with residents (such activities could include playing sports, having a cook-out, swimming, card games, etc.) (2 points);

(ii) Notary Services during regular business hours (§2306.6710(b)(3)) (1 point);

(iii) twice monthly arts, crafts, and other recreational activities (e.g. Book Clubs and creative writing classes) (1 point);

(iv) twice monthly on-site social events (i.e. potluck dinners, game night, sing-a-longs, movie nights, birthday parties, holiday celebrations, etc.) (1 point);

(v) specific service coordination services offered by a qualified Owner or Developer, qualified provider or through external, contracted parties for seniors, Persons with Disabilities or Supportive Housing (3 points);

(vi) weekly home chore services (such as valet trash removal, assistance with recycling, furniture movement, etc., and quarterly preventative maintenance including light bulb replacement) for Elderly Developments or Developments where the service is provided for Persons with Disabilities and documentation to that effect can be provided for monitoring purposes (2 points);

(vii) any of the programs described under Title IV-A of the Social Security Act (42 U.S.C. §§601, et seq.) which enables children to be cared for in their homes or the homes of relatives; ends the dependence of needy families on government benefits by promoting job preparation, work and marriage; prevents and reduces the incidence of unplanned pregnancies; and encourages the formation and maintenance of two-parent families (1 point);

(viii) a part-time resident services coordinator with a dedicated office space at the Development or a contract with a third-party to provide the equivalent of 15 hours or more of weekly resident supportive services at the Development (2 points); and

(ix) provision, by either the Development Owner or a community partner, of an education tuition- or savings-match program or scholarships to residents who may attend college (2 points).

EXHIBIT D

INITIAL MAXIMUM RENTS

The maximum monthly rent charged by the Borrower for 50% of the Units shall not exceed 30% of the 50% applicable Multifamily Tax Subsidy Program Imputed Income Limitation applicable to such Unit. The maximum monthly rent charged by the Borrower for each of the remaining 50% of the Units shall not exceed 30% of the 60% applicable Multifamily Tax Subsidy Program Imputed Income Limitation applicable to such Unit. For purposes of the preceding, the amount of the income limitation for any period shall not be less than such limitation applicable, taking into consideration the gross rent floor provided in accordance with Revenue Procedure 94-57.

The following rents, including utilities allowances, are based on the 2021 Multifamily Tax Subsidy Program Income Limits that were issued April, 2021, and are adjusted annually. A utility allowance must be deducted from these rents to determine maximum allowable rents.

A. 50% rent limits:

<u>Bedroom Size</u>	<u>Rent Limit</u>
1-Bedroom	\$571
2-Bedroom	\$686
3-Bedroom	\$791
4-Bedroom	\$883
5-Bedroom	\$975

B. 60% rent limits:

<u>Bedroom Size</u>	<u>Rent Limit</u>
1-Bedroom	\$686
2-Bedroom	\$823
3-Bedroom	\$950
4-Bedroom	\$1,060
5-Bedroom	\$1,170

EXHIBIT E



TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

www.tdhca.state.tx.us

Greg Abbott  
GOVERNOR

**BOARD MEMBERS**  
Leo Vasquez, *Chair*  
Paul A. Braden, *Vice Chair*  
Brandon Batch, *Member*  
Anna Maria Farias, *Member*  
Kenny Marchant, *Member*  
Ajay Thomas, *Member*

**Multi Family Mortgage Revenue Bond  
Qualified Project Period**

The Texas Department of Housing and Community Affairs require the information in Sections A and B below to compute the Qualified Project Period for Mortgage Revenue Bond properties. Please complete the form as the appropriate dates are identified. Upload this form in TDHCA's Compliance Monitoring Tracking System (CMTS) to the attention of Sussette Kenney immediately after the property reaches the 50% Occupancy Date.

Section A

Property Name	
Address	
Contact Name	
Contact Phone #	

Section B

Initial Bond Closing Date	
Date First Unit Occupied	
10% Occupancy Date	
50% Occupancy Date	
50% Occupancy Date + 15 years	

Signature \_\_\_\_\_ Date \_\_\_\_\_

Printed Name \_\_\_\_\_ Title \_\_\_\_\_



## PROMISSORY NOTE

\$10,100,000.00

June [ ], 2021

FOR VALUE RECEIVED, CENTER 818 COTTON FORD ROAD, LP, a Texas limited partnership (the "Borrower"), promises to pay in lawful money of the United States of America to the order of the TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS, a public and official agency of the State of Texas, its successors or assigns (the "Issuer"), the principal sum of Ten Million One Hundred Thousand and No/100 Dollars (\$10,100,000.00), with interest thereon from the date of delivery hereof at the rates per annum on the outstanding principal balance hereon from time to time as provided with respect to the Bonds in the hereinafter referred to Indenture. Terms not otherwise defined in this Note shall have the respective meanings as set forth in the Indenture or in the Financing Agreement (as defined herein).

The principal and interest on this Note shall be payable at the times and in the amounts determined as provided in **Section 4.2** of the Financing Agreement dated as of June 1, 2022, among the Borrower, the Issuer and CommunityBank of Texas, N.A. (the "Financing Agreement"), with the final payment of all outstanding principal and interest on this Note to be paid on June 1, 2039. Both principal and interest under this Note shall be payable at the Payment Office of Wilmington Trust, National Association, a national banking association (the "Trustee") at 15950 North Dallas Parkway, Suite 550, Dallas, Texas 75248. The Borrower may make prepayments upon this Note as provided in **Section 10.1** of the Financing Agreement.

If any payment required under this Note is not paid within ten (10) days after such payment is due, then the Borrower shall pay to the Issuer, promptly and without demand, a late charge equal to five percent (5.0%) of the amount of such payment to compensate the unpaid party for administrative expenses and other costs of delinquent payments. This late charge may be assessed without notice, shall be immediately due and payable and shall be in addition to all other rights and remedies available to the Issuer. This late charge shall be in addition to any interest due as a result of interest then accruing on the Bond Outstanding at the Default Rate, if applicable.

This Note is made pursuant to the Financing Agreement wherein, among other things, the Issuer has agreed to loan to the Borrower and the Borrower has agreed to accept a loan in the aggregate principal amount of \$10,100,000, being the proceeds from the sale of the Issuer's Multifamily Housing Mortgage Revenue Bonds (Union Acres Project) Series 2022 in the principal amount of \$10,100,000 (the "Bonds"), said proceeds to be disbursed to the Borrower from time to time in accordance with the provisions of the Financing Agreement. The Bonds are being issued by the Issuer pursuant to a Trust Indenture dated as of June 1, 2022, between the Issuer and the Trustee (the "Indenture").

If an Event of Default as described in **Section 11.1** of the Financing Agreement then exists, all unpaid principal of and accrued and unpaid interest on this Note may be declared to be forthwith due and payable in the manner and with the effect provided in the Financing Agreement. Failure to exercise this option shall not constitute a waiver of the right to exercise the same in the event of any subsequent occurrence of an Event of Default.

The indebtedness evidenced by this Note is secured by a Construction and Permanent Deed of Trust, Security Agreement, Assignment of Leases and Rents and Fixture Filing dated as of June 1, 2022, and by certain other personal property collateral.

The obligations of the Borrower to make Basic Payments, Additional Charges, and payment of any other amounts due under the Financing Agreement shall be absolute and unconditional, and the Borrower shall make such payments without abatement, diminution, or deduction regardless of any cause or circumstances whatsoever including, without limitation, any defense, setoff, recoupment, or counterclaim which the Borrower may have or assert against the Issuer, the Trustee, or any other person and/or entity; provided that the Bond Loan and all obligations of the Borrower (other than the Unassigned Issuer's Rights) under the Bond Loan Documents shall be nonrecourse as and to the extent provided in **Section 11.10** of the Financing Agreement after the delivery of the Conversion Certificate and the occurrence of the Stabilized Occupancy Date.

If this Note shall be placed in the hands of an attorney or attorneys for collection, the Borrower agrees to pay, in addition to the amount due hereon, the reasonable costs and expenses of collection, including reasonable attorneys' fees. All parties to this Note, whether principal, surety, guarantor or endorser, hereby waive presentment for payment, demand, protest, notice or protest and notice of dishonor.

Executed as of the date first above written.

*[SIGNATURE NEXT PAGE]*

CENTER 818 COTTON FORD ROAD, LP, a  
Texas limited partnership

By: Center 818 Cotton Ford Road GP, LLC, a  
Texas limited liability company, its General  
Partner

By: ITEX Advisors, LLC, a Texas  
limited liability company, a  
Manager

By: The ITEX Group Management, LLC,  
a Texas limited liability company, a  
Manager

By: \_\_\_\_\_  
Christopher A. Akbari, its  
Manager



**RECORDING REQUESTED BY:**

WHEN RECORDED MAIL TO:

Wayne Yaffee  
Greenberg Traurig LLP  
1000 Louisiana, Suite 1700  
Houston, Texas 77002

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**CONSTRUCTION AND PERMANENT DEED OF TRUST,  
SECURITY AGREEMENT, ASSIGNMENT OF LEASES AND RENTS  
AND FIXTURE FILING**

**THE PROMISSORY NOTE SECURED BY THIS DEED OF TRUST MAY PROVIDE FOR A VARIABLE RATE OF INTEREST AND/OR A BALLOON PAYMENT AT MATURITY.**

**NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM THIS INSTRUMENT BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.**

Loan Amount: \$10,100,000.00

Property Address: 818 Cotton Ford Road, Center, Texas \_\_\_\_\_

THIS CONSTRUCTION AND PERMANENT DEED OF TRUST, SECURITY AGREEMENT, ASSIGNMENT OF LEASES AND RENTS AND FIXTURE FILING ("**Deed of Trust**"), is made as of June 1, 2022, by CENTER 818 COTTON FORD ROAD, LP, a Texas limited partnership, whose address is c/o The ITEX Group, LLC, 9 Greenway Plaza, Suite 1250, Houston, Texas 77046, File No. \_\_\_\_\_ ("**Trustor**") to Joe F. West (the "**Trustee**"), to be effective as of the date of delivery of that certain Financing Agreement (the "**Financing Agreement**") of even date herewith among Trustor, Beneficiary (as defined below), and CommunityBank of Texas, N.A., as Bond Owner ("**Bond Owner**"), for the benefit of TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS, a public and official agency of the State of Texas, whose address is P.O. Box 13941, Austin, Texas 78711 ("**Beneficiary**"), in connection with the \$10,100,000.00 Multifamily Housing Mortgage Revenue Bonds (Union Acres Project) Series 2022 (the "**Bonds**"), issued by Beneficiary pursuant to that certain Trust Indenture (the "**Indenture**") of even date herewith between Beneficiary, as issuer, and Wilmington Trust, National Association, as trustee ("**Bond Trustee**"). Beneficiary will assign its rights under this Deed of Trust to Bond Trustee as provided for in the Indenture and the Bond Trustee, in that capacity, as all the rights of the Beneficiary under this Deed of Trust (and Bond Trustee shall only act for and on behalf of Beneficiary under this Deed of Trust at the written direction of Bond Owner).

1. **GRANTING CLAUSE.** Trustor, in consideration of the acceptance by Trustee of the trust hereunder, and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and in order to secure the obligations described in Section 3 below, irrevocably grants, bargains, sells, and conveys to Trustee and its successors in trust and assigns, forever, in trust, with power of sale, all of Trustor's estate, right, title, interest, claim and demand in and to the property listed below and the land in the City of Center, County of Shelby, State of Texas, described on **Exhibit A** attached hereto, whether now existing or hereafter acquired (all of the property described in all parts of this **Section 1** and all additional property, if any, described in **Section 2** is herein called the "**Property**"):
  - 1.1 **Property and Appurtenances.** The Property and all tenements, hereditaments, rights-of-way, easements, appendages and appurtenances thereto belonging or in any way appertaining, including without limitation all of the right, title and interest of Trustor in and to any avenues, streets, ways, alleys, vaults, strips or gores of land adjoining the Property, all rights to water, water stock, drains, drainage and air rights relating to the Property, and all claims or demands of Trustor either in law or in equity in possession or expectancy of, in and to any of the aforesaid; and
  - 1.2 **Improvements and Fixtures.** All buildings, structures and other improvements now or hereafter erected on the property described in **Section 1.1** above (the "**Improvements**"), and all facilities, fixtures, machinery, apparatus, installations, goods, equipment, inventory, furniture and other property of whatsoever nature (including without limitation all heating, ventilating, air conditioning, plumbing, generating and electrical equipment, all elevators and escalators, all sprinkler systems, all engines and motors, all lighting, laundry, cleaning, life safety, fire prevention and fire extinguishing equipment, all ducts and compressors, all refrigerators, stoves, washers, dryers, dishwashers and other appliances, attached cabinets, partitions, rugs, carpets and draperies, all screens and other window treatments, all pool equipment and supplies, all communications equipment, all building materials and supplies, and all construction forms, tools and equipment), now or hereafter located in or used or procured for use in connection with that property, it being the intention of the parties that all property of the character hereinabove described which is now owned or hereafter acquired by Trustor and which is affixed or attached to, stored upon or used in connection with the property described in **Section 1.1** above shall be, remain or become a portion of that property and shall be covered by and subject to the lien of this Deed of Trust, together with all contracts, agreements, permits, plans, specifications, drawings, surveys, engineering reports and other work products relating to the construction of the existing or any future improvements on the Property, any and all rights of Trustor in, to or under any architect's contracts or construction contracts

relating to the construction of the existing or any future improvements on the Property, and any performance and/or payment bonds issued in connection therewith, together with all trademarks, trade names, copyrights, computer software and other intellectual property used by Trustor in connection with the Property; and

- 1.3 Enforcement and Collection. Any and all rights of Trustor without limitation to make claim for, collect, receive and receipt for any and all rents, income, revenues, issues, royalties, and profits, including mineral, oil and gas rights and profits, insurance proceeds of any kind (whether or not Beneficiary, or Bond Trustee, on its behalf, requires such insurance and whether or not Beneficiary, or Bond Trustee, on its behalf, is named as an additional insured or loss payee of such insurance), condemnation awards and other moneys, payable or receivable from or on account of any of the Property, including interest thereon, or to enforce all other provisions of any other agreement (including those described in **Section 1.2** above) affecting or relating to any of the Property, to bring any suit in equity, action at law or other proceeding for the collection of such moneys or for the specific or other enforcement of any such agreement, award or judgment, in the name of Trustor or otherwise, and to do any and all things which Trustor is or may be or become entitled to do with respect thereto, provided, however, that no obligation of Trustor under the provisions of any such agreements, awards or judgments shall be impaired or diminished by virtue hereof, nor shall any such obligation be imposed upon Trustee or Beneficiary (or Bond Trustee, on its behalf); and
- 1.4 Accounts and Income. Any and all rights of Trustor in any and all accounts, deposit accounts, rights to payment, contract rights, chattel paper, documents, instruments, licenses, contracts, agreements and general intangibles relating to any of the Property, including, without limitation, income and profits derived from the operation of any business on the Property or attributable to services that occur or are provided on the Property or generated from the use and operation of the Property; and
- 1.5 Leases. All of Trustor's rights as landlord in and to all existing and future leases and tenancies, whether written or oral and whether for a definite term or month to month or otherwise, now or hereafter demising all or any portion of the property described in **Sections 1.1** and **1.2** above, including all renewals and extensions thereof and all rents, deposits and other amounts received or receivable thereunder. In accepting this Deed of Trust neither Beneficiary nor Trustee or any other party assumes any liability for the performance of any such lease; and
- 1.6 Books and Records. All books and records of Trustor relating to the foregoing in any form and all computer software necessary or useful to reading such books and records; and

- 1.7 Permits. To the extent assignable, all permits, licenses, franchises, certificates, and other rights and privileges obtained in connection with the Property and the Improvements (including, without limitation, any form of reservation for utility capacity that may be granted by any governmental subdivision); and
- 1.8 Tax Credits. To the extent a security interest can be granted under applicable law, all right, title, and interest of Trustor in and to any Low-Income Housing Tax Credit (as that term is used in Section 42 of the Internal Revenue Code of 1986, as amended) relating to the Property and the use thereof;
- 1.9 HAP Contract. All right, title and interest of Trustor under any now existing or hereafter executed HAP Contract by and between HUD and Trustor, and all renewals and extensions of of the foregoing.
- 1.10 Other Rights. All timber, crops, and to the extent assignable, all letter of credit rights, investment property, environmental site assessments and soils tests, and arising from or by virtue of any transactions relating to the Property.

2. SECURITY AGREEMENT, ASSIGNMENT OF LEASES AND RENTS AND CONSTRUCTION MORTGAGE.

- 2.1 Security Agreement. To the extent any of the property described in Section 1 is personal property, Trustor, as debtor, grants to Beneficiary, as secured party, a security interest therein and in all products and proceeds of any thereof, pursuant to the Uniform Commercial Code of the State of Texas and any other applicable Uniform Commercial Code (collectively, the "UCC"), on the terms and conditions contained herein, to secure the obligations described in Section 3 below. Trustor hereby authorizes Beneficiary (and Bond Trustee, on its behalf) to file any financing statement, fixture filing or similar filing to perfect the security interests granted in this Deed of Trust without Trustor's signature.
- 2.2 Fixture Filing. This Deed of Trust constitutes a fixture filing by Beneficiary (or Bond Trustee, on its behalf), as secured party, and Trustor, as debtor, under the UCC. This Deed of Trust as a fixture filing covers any and all fixtures included within the list of property described in Section 1 of this Deed of Trust and any goods and other personal property that are now or hereafter will become a part of the Property as fixtures. For the purposes of this fixture filing, the respective addresses of Beneficiary and Trustor are set forth in the first paragraph of this Deed of Trust, such fixtures are affixed or to be affixed to the Property and Improvements described in Section 1 of this Deed of Trust, and this Deed of Trust, including this fixture filing, is

recorded or to be recorded in the real estate records of the County in which the Property is located.

### 2.3 Collateral Assignment of Leases and Rents.

- (a) Collateral Assignment. Trustor hereby collaterally grants, transfers, conveys, sells, sets over and assigns to Lender all of Trustor's right, title and interest now existing and hereafter arising in and to the leases, subleases, concessions, licenses, franchises, occupancy agreements, tenancies, subtenancies and other agreements, either oral or written, now existing and hereafter arising which affect the Property, Trustor's interest therein or any Improvements located thereon, together with any and all security deposits, guaranties of the lessees' or tenants' obligations (including any and all security therefor), and other security under any such leases, subleases, concessions, licenses, franchises, occupancy agreements, tenancies, subtenancies and other agreements, and all supporting obligations, letters of credit (whether tangible or electronic) and letter of credit rights guaranteeing or supporting any of the foregoing (all of the foregoing, and any and all extensions, modifications and renewals thereof, shall be referred to, collectively, as the "**Leases**"), and hereby gives to and confers upon Lender the right to collect all the income, rents, issues, profits, royalties and proceeds from the Leases and any and all prepaid rent and security deposits thereunder (collectively, the "**Rents**"). The term "**Rents**" includes, but is not limited to, all minimum rents, additional rents, percentage rents, deficiency rents, service fees, common area maintenance charges, lease termination payments, purchase option payments, refunds of any type, prepayment of rents, settlements of litigation, settlements of past due rents, and liquidated damages following default, and all proceeds payable under any policy of insurance covering loss of rents, together with any and all rights and claims of any kind that Trustor may have against any tenant under the Leases or any other occupant of the Property. This Deed of Trust is intended by Beneficiary (or Bond Trustee, on its behalf) and Trustor to create and shall be construed to create a collateral assignment and grant a security interest to Beneficiary (or Bond Trustee, on its behalf) of all of Trustor's right, title and interest in and to the Leases and the Rents as security for the payment of any indebtedness or the performance of any obligations under the Bond Loan Documents (as defined below). Trustor irrevocably appoints Beneficiary (or Bond Trustee, on its behalf at the direction of Bond Owner) its true and lawful attorney at the option of Beneficiary (or Bond Trustee, on its behalf at the direction of Bond Owner) at any time an Event of Default (as defined below) exists and remains uncured to demand, receive and

enforce payment, to give receipts, releases and satisfactions and to sue, either in the name of Trustor or in the name of Beneficiary (or Bond Trustee, on its behalf), for all such Rents and apply the same to the obligations secured by this Deed of Trust.

- (b) **Revocable License to Collect.** Notwithstanding the foregoing assignment of Rents, so long as no Event of Default remains uncured, Trustor shall have a revocable license, to collect all Rents, and to retain the same. Upon the occurrence and during the continuation of any Event of Default, Trustor's license to collect and retain Rents shall terminate automatically and without the necessity for any notice.
- (c) **Collection and Application of Rents by Beneficiary.** While any Event of Default remains uncured: (i) Beneficiary (or Bond Trustee, on its behalf) may at any time, without notice, in person, by agent or by court-appointed receiver, and without regard to the adequacy of any security for the obligations secured by this Deed of Trust, enter upon any portion of the Property and/or, with or without taking possession thereof, in its own name sue for or otherwise collect Rents (including past due amounts); and (ii) upon written demand by Beneficiary (or Bond Trustee, on its behalf) therefor, Trustor shall promptly deliver to Beneficiary (or Bond Trustee, on its behalf) all prepaid rents, deposits relating to Leases or Rents, and all other Rents then held by or thereafter collected by Trustor, whether prior to or during the continuance of any Event of Default. Any Rents collected by or delivered to Beneficiary (or Bond Trustee, on its behalf) may be applied by Beneficiary (or Bond Trustee, on its behalf) against the obligations secured by this Deed of Trust, and all expenses, including attorneys' fees and disbursements, in such order as Beneficiary (or Bond Trustee, on its behalf based on firection by Bond Owner) shall determine in its sole and absolute discretion. No application of Rents against any obligation secured by this Deed of Trust or other action taken by Beneficiary (or Bond Trustee, on its behalf) under this Section 2.3 shall be deemed or construed to cure or waive any Event of Default, or to invalidate any other action taken in response to such Event of Default, or to make Beneficiary (or Bond Trustee, on its behalf) a mortgagee-in-possession of the Property.
- (d) **Direction to Tenants.** Trustor hereby irrevocably authorizes and directs the tenants under all Leases to pay all amounts owing to Trustor thereunder to Beneficiary (or Bond Trustee, as the case may be) following receipt of any written notice from Beneficiary (or Bond Trustee, on its behalf) that states that an Event of Default remains uncured and that all such amounts are to be paid to Beneficiary (or

Bond Trustee, on its behalf). Trustor further authorizes and directs all such tenants to pay all such amounts to Beneficiary (or Bond Trustee, on its behalf) without any right or obligation to inquire as to the validity of Beneficiary's (or Bond Trustee's as the case may be) notice and regardless of the fact that Trustor has notified any such tenants that Beneficiary's (or Bond Trustee's as the case may be) notice is invalid or has directed any such tenants not to pay such amounts to Beneficiary (or Bond Trustee, on its behalf).

- (e) **No Obligation to Perform.** Neither Beneficiary (nor Bond Trustee, as its assignee) nor Trustee shall have any obligation to exercise any right given to either of them under this Deed of Trust. Nothing contained herein shall operate or be construed to obligate Beneficiary (or Bond Trustee, as its assignee) or Trustee to perform any obligations of Trustor under any agreement or lease (including, without limitation, any obligation arising out of any covenant of quiet enjoyment therein contained in the event the lessee under any such lease shall have been joined as a party defendant in any action to foreclose and the estate of such lessee shall have been thereby terminated). Prior to actual entry into and taking possession of the Property by Beneficiary (or Bond Trustee, on its behalf), this Deed of Trust shall not operate to place upon Beneficiary (or Bond Trustee, on its behalf) any responsibility for the operation, control, care, management or repair of the Property or any portion thereof, and the execution of this Deed of Trust by Trustor shall constitute conclusive evidence that all responsibility for the operation, control, care, management and repair of the Property is and shall be that of Trustor, prior to such actual entry and taking of possession.
  
- (f) **Terms of Assignment of Rents; Collection and Application of Rents.** Notwithstanding the foregoing, the transfer and assignment of the Rents provided for in this Deed of Trust is a collateral assignment subject to the terms of Section 64 of the Texas Property Code. Notwithstanding anything in the foregoing to the contrary or any other provision hereof or in any of the Bond Loan Documents to the contrary, all provisions related to the collateral assignment of rents are subject to the terms, provisions, and conditions of the Texas Assignment of Rents Act ("**TARA**"), as codified in Tex. Prop. Code, Chapter 64, as the same may be amended, modified or supplemented from time to time. To the extent that specific terms and requirements of this Deed of Trust or any other Bond Loan Document, including the Financing Agreement, conflict with the specific terms and requirements of TARA, (i) to the extent such terms and requirements of TARA may be superseded by an agreement between the parties, the specific terms and requirements of this

Deed of Trust or the other Bond Loan Documents hereby supersedes such specific terms and requirements of TARA; and (ii) to the extent that such terms and requirements of TARA cannot be superseded by an agreement between the parties, the specific terms and requirements of TARA shall control, and the parties further agree that all other terms and requirements of this Deed of Trust or the other Bond Loan Documents shall not otherwise be impaired or superseded thereby and shall remain in full force and effect.

2.4 Construction Mortgage. This Deed of Trust shall constitute a “construction mortgage” under Section 9.334(h) and Section 2A.309 of the UCC.

3. OBLIGATIONS SECURED. This Deed of Trust is given for the purpose of securing:

3.1 Performance and Payment. The payment and performance of (A) the obligations contained herein and the payment of (i) \$10,100,000.00 with interest thereon and all other amounts payable according to the terms of a promissory note dated June \_\_, 2022, made by Trustor, payable to Beneficiary or order, with a maturity date of June 1, 2039, and (ii) any and all extensions, renewals, modifications or replacements of (i) above, whether the same be in greater or lesser amounts (collectively, (i) and (ii) shall be referred to herein as the “**Bond Note**”), which Bond Note may provide for one or more of the following: (a) a fixed rate of interest; and (b) a balloon payment at maturity, and (B) the performance of the covenants and agreements of Borrower contained in the Financing Agreement, the Bond Note, this Deed of Trust, and any other documents now or in the future executed by Borrower, any guarantor or any other person evidencing, governing and/or securing the Bond Note, as such documents may be amended from time to time (the “**Bond Loan Documents**”). The loan evidenced by the Bond Note and secured by this Deed of Trust shall be referred to as the “**Bond Loan**”, and will be made as set forth in the Financing Agreement, the Bond Loan will convert from a construction loan to a permanent loan upon the terms and subject to the conditions set forth in the Financing Agreement, and this Deed of Trust will continue to secure any and all obligations described in this **Section 3** following such conversion without any loss of the priority of the lien created hereby or other effect whatsoever.

3.2 Future Advances. The repayment of any and all sums advanced or expenditures made by Beneficiary subsequent to the execution of this Deed of Trust for the maintenance or preservation of the Property or advanced or expended by Beneficiary (or Bond Trustee, on its behalf) pursuant to any provision of this Deed of Trust subsequent to its execution, together with interest thereon.



4. WARRANTIES AND COVENANTS OF TRUSTOR. Trustor warrants, covenants, and agrees:

4.1 Warranties.

- (a) Trustor has full power and authority to grant the Property to Trustee and warrants the Property to be free and clear of all liens, charges, and other encumbrances except Permitted Encumbrances (as defined below). "**Permitted Encumbrances**" means the liens, easements, and encumbrances of title described on **Exhibit "B"** attached hereto, to the extent each is valid, subsisting and affects title to the Property and all other liens otherwise permitted by the Financing Agreement.
- (b) None of the Property is used principally or at all for agricultural or farming purposes.
- (c) The Property is free from damage and no matter has come to Trustor's attention (including, but not limited to, knowledge of any construction defects or nonconforming work) that would materially impair the value of the Property as security.
- (d) The Bond Loan is primarily for commercial, industrial or business purposes and is not primarily for personal, family or household purposes.

4.2 Preservation of Lien. Trustor will preserve and protect the priority of this Deed of Trust as a first lien on the Property. If Trustor fails to do so, Beneficiary (or Bond Trustee, on its behalf) may take any and all steps necessary or appropriate to do so and all sums expended by Beneficiary (or Bond Trustee, on its behalf, or by Bond Owner, as the case may be) in so doing shall be treated as part of the obligations secured by this Deed of Trust, shall be paid by Trustor upon demand by Beneficiary (or Bond Trustee, on its behalf) and shall bear interest at the highest rate borne by any of the obligations secured by this Deed of Trust.

4.3 Construction. Trustor will (i) commence construction of the Improvements promptly following execution and recordation of this Deed of Trust (and otherwise in accordance with the Financing Agreement), (ii) continue such construction in an expeditious manner and not cease or substantially cease productive construction work thereof without the prior written consent of Beneficiary (or Bond Trustee, on its behalf), (iii) complete the Improvements within the period of time specified in the Financing Agreement and as required by the Financing Agreement, and (iv) comply with all other terms and conditions of the Financing Agreement.

4.4 Repair and Maintenance of Property. Trustor will keep the Property in good condition and repair, which duty shall include but is not limited to continual cleaning, painting, landscaping, repairing and refurbishing of the Property; will complete and not remove or demolish, alter, or make additions to any building or other improvement which is part of the Property without the express written consent of Beneficiary (or Bond Trustee, on its behalf); will underpin and support when necessary any such building or other improvement and protect and preserve the same; will complete or restore promptly and in good and workmanlike manner any such building or other improvement which may be damaged or destroyed and pay when due all claims for labor performed and materials furnished therefor; will not commit, suffer or permit any act upon the Property in violation of law; and will do all other acts which from the character or use of the Property may be reasonably necessary for the continued operation of the Property in a safe and legal manner, the specific enumerations herein not excluding the general.

4.5 Insurance.

(a) Insurance. Trustor shall, at its sole cost and expense, obtain and maintain (i) title insurance (in the form of a commitment, binder or policy as Beneficiary, Bond Trustee as its assignee, or the Bond Owner may require), (ii) insurance required by the terms of the Financing Agreement, (iii) name the owner of the Property as either the name insured on the policy or as an additional named insured on an endorsement to the policy, and (iv) be endorsed to be payable to Beneficiary (or Bond Trustee, on its behalf) as Beneficiary insured and loss payee. Trustor shall deliver the policies of insurance to Beneficiary (or Bond Trustee, on its behalf) promptly as issued; and, if Trustor fails to do so, Beneficiary (or Bond Trustee, on its behalf), at its option, may procure such insurance required by the terms of the Financing Agreement, at Trustor's expense. All renewal and substitute policies of insurance shall be delivered at the office of the Beneficiary (or Bond Trustee, on its behalf), premiums paid, at least thirty (30) days before termination of policies theretofore delivered to Beneficiary (or Bond Trustee, on its behalf). In case of loss, the proceeds of the insurance policies shall be collected and applied as set forth in **Section 4.5(e)** below. If any loss shall occur at any time when an Event of Default exists, Beneficiary (or Bond Trustee, on its behalf) shall be entitled to the benefit of all insurance held by or for any Trustor, to the same extent as if it had been made payable to Beneficiary (or Bond Trustee, on its behalf), and upon foreclosure hereunder, Beneficiary (or Bond Trustee, on its behalf) shall become the owner thereof.

- (b) Insurance Survey. During the last thirty (30) days of every third year computed from the date hereof, Trustor will have an insurance survey of the Property made. Notwithstanding anything in the Financing Agreement to the contrary, Trustor shall at these times obtain such additional coverages or make such increases in the amounts of existing coverage as may be requested by Beneficiary (or Bond Trustee, on its behalf) on the basis of such survey.
- (c) General Provisions. Beneficiary (or Bond Trustee, on its behalf) reserves the right, in its reasonable discretion, to increase the amount of the required coverages, require insurance against additional risks, or withdraw approval of any insurance company at any time. Trustor shall deliver to Beneficiary (or Bond Trustee, on its behalf) an original of all policies of insurance and shall obtain renewals of any policies which expire and deliver evidence of such renewals to Beneficiary (or Bond Trustee, on its behalf) no later than ten (10) days prior to the expiration date of the policy being replaced. All policies and renewals thereof shall contain provision for thirty (30) days' notice to Beneficiary (or Bond Trustee, on its behalf) prior to any cancellation thereof or material change thereto. In the event of any loss covered by such policies, Trustor shall give immediate written notice to the insurance carrier and to Beneficiary (or Bond Trustee, on its behalf). Trustor hereby authorizes and empowers Beneficiary (or Bond Trustee, on its behalf) as attorney-in-fact for Trustor to make proof of loss, to adjust and compromise any claim under insurance policies, to appear in and prosecute any action arising from such insurance policies, to collect and receive insurance proceeds, and to deduct therefrom Beneficiary's (Bond Trustee's, as its assignee, or Bond Owner's) expenses incurred in the collection of such proceeds; provided, however, that nothing contained in this **Section 4.5(c)** shall require Beneficiary (or Bond Trustee, as its assignee, or Bond Owner) to incur any expense or take any action hereunder. Notwithstanding any of the foregoing, neither Trustee nor Beneficiary (nor Bond Trustee, as its assignee, nor Bond Owner) shall be responsible for any such insurance or for the collection of any insurance moneys, or for any insolvency of any insurer or insurance underwriter. Any and all unexpired insurance shall inure to the benefit of and pass to the purchaser of the Property at any trustee's or sheriff's sale held hereunder. Trustor shall provide any increase in existing coverage, or any additional coverage, that Beneficiary (or Bond Trustee, as its assignee, or Bond Owner) may in its reasonable discretion require.
- (d) Damage and Destruction.

- (i) Trustor's Obligations. In the event of any damage to or loss or destruction of the Property, Trustor shall: (i) promptly notify Beneficiary, Bond Trustee, and Bond owner of such event if the damage to or loss or destruction of the Property is of a value in excess of \$75,000; (ii) take such steps as shall be necessary to preserve any undamaged portion of the Property; and (iii) unless otherwise instructed by Beneficiary (or Bond Trustee, on its behalf) shall, regardless of whether the insurance proceeds, if any, shall be sufficient for the purpose, promptly commence and diligently pursue to completion the restoration, replacement and rebuilding (collectively, "**Restoration**") of the Property as nearly as possible to its value, condition and character immediately prior to such damage, loss or destruction and in accordance with the plans and specifications approved, and with other provisions for the preservation of the security hereunder established, by Beneficiary (or Bond Trustee, on its behalf), which approval shall not be unreasonably withheld or delayed.
- (ii) Beneficiary's Rights: Application of Proceeds. In the event that any portion of the Property is so damaged, destroyed or lost, and any such damage, destruction or loss is covered in whole or in part, by insurance described in **Section 4.5(a)**, whether or not such insurance is specifically required by the terms of this Deed of Trust, then the following provisions shall apply:
- (a) If an Event of Default (as defined below) has occurred hereunder and is continuing: (A) Beneficiary (or Bond Trustee, on its behalf) may, but shall not be obligated to, make proof of loss to any insurer if not made promptly by Trustor, and Beneficiary (or Bond Trustee, on its behalf) is hereby authorized and empowered by Trustor to settle, adjust or compromise any claims for damage, destruction or loss thereunder unless the proposed amount of proceeds from such claims exceeds the then outstanding amount of the indebtedness secured hereby, and (B) each insurance company concerned is hereby authorized and directed to make payment therefor directly to Beneficiary (or Bond Trustee, on its behalf), to be applied, at Beneficiary's (or Bond

Trustee's, as its assignee, or Bond Owner) option, to the indebtedness secured hereby in such order as Beneficiary (or Bond Trustee, on its behalf) may determine, in its sole discretion or to be held by Beneficiary (or Bond Trustee, on its behalf) for future application to the obligations secured hereby. Unless otherwise required by law, any application to the indebtedness secured hereby by Beneficiary (or Bond Trustee, on its behalf) of such payments shall not, by itself, cure or waive any Event of Default hereunder or notice of default under this Deed of Trust or invalidate any act done pursuant to such notice or waive any collateral encumbered hereby or otherwise securing the Bond Note.

(b) If no Event of Default hereunder has occurred and is continuing, and if the amount of proceeds from any claim for damage, destruction or loss is reasonably expected to be \$75,000.00 or less, Trustor shall be entitled to receive all such proceeds and shall apply such proceeds to the Restoration of that portion of the Property so damaged, destroyed or lost to as nearly the same condition, character and value as may have existed prior to such damage, destruction or loss, with such changes or alterations as may be required to conform to applicable law.

(c) If such proceeds are reasonably expected to exceed \$75,000, and if an Event of Default has not occurred hereunder and is not continuing, Beneficiary (or Bond Trustee, on its behalf) shall apply all such insurance proceeds to the Restoration of the damaged portion of the Property, and such Restoration shall be accomplished as provided in this **Section 4.5(d)(2)(c)** so long as such Restoration can, in the reasonable judgment of Beneficiary (or Bond Trustee, as its assignee, or Bond Owner), be completed (A) no later than two (2) years prior to the maturity date of the Bond Note, (B) within one (1) year after the date of the casualty, and (C) in such a manner so that the Property will have a value at least equal to its value prior to the casualty. Otherwise, Beneficiary (or Bond Trustee, on its behalf) may elect in its sole discretion to apply all such insurance proceeds to reduction of the indebtedness secured hereby.

- (e) Disbursement of Insurance Proceeds. Insurance proceeds held by Beneficiary (or the Bond Trustee under the Indenture as the case may be) for Restoration shall be disbursed from time to time as the Restoration progresses by Beneficiary (or the Bond Trustee under the Indenture as the case may be) (or at Bond Trustee's election, at the direction of Bond Owner, by a disbursing or escrow agent who shall be selected by Bond Trustee and whose fees shall be paid by Trustor), upon delivery to Beneficiary, Bond Trustee, and to the Bond Owner of the following: (i) evidence reasonably satisfactory to Beneficiary (or Bond Trustee, on its behalf) of the estimated cost of Restoration; (ii) funds (or assurances reasonably satisfactory to Beneficiary, or Bond Trustee, on its behalf, that such funds are available) sufficient in addition to the proceeds of insurance to complete and fully pay for the Restoration; and (iii) such architect's certificates, waivers of lien, contractor's sworn statements, title insurance endorsements, plats of survey and such other evidences of cost, payment and performance as Beneficiary (or Bond Trustee, on its behalf) may reasonably require and approve. No payment made prior to the final completion of Restoration shall exceed ninety percent of the value of the work performed from time to time, as such value shall be determined by Beneficiary (or Bond Trustee, on its behalf) in its reasonable judgment. Prior to commencement of the work, and from time to time thereafter, if so requested by Beneficiary (or the Bond Trustee, as its assignee, or the Bond Owner), Trustor shall deposit with Beneficiary (or the Bond Trustee as the case may be) an amount of funds in excess of the insurance proceeds which, together with such proceeds, shall at all times be at least sufficient in the reasonable judgment of Beneficiary (or Bond Trustee, on its behalf) to pay the entire unpaid cost of the Restoration, free and clear of all liens or claims of lien. Funds so deposited by Trustor shall be disbursed prior to the disbursement of any insurance proceeds. Any surplus which remains out of insurance proceeds held by Beneficiary (or Bond Trustee, on its behalf) after payment of all costs of the Restoration shall be paid to Trustor. No interest shall be allowed to Trustor on account of any insurance proceeds or other funds held by Beneficiary (or the Bond Trustee under the Indenture, as the case may be). Proceeds of insurance held by Beneficiary (or Bond Trustee under the Indenture as the case may be) for Restoration shall be held in a blocked non-interest bearing account with Beneficiary (or the Bond Trustee under the Indenture, as the case may be) over which Beneficiary (or the Bond Trustee and Bond Owner as assignee and designee) has sole possession, authority and control, in which Beneficiary has a perfected first-priority security interest to secure the indebtedness secured by this Deed of Trust,

and otherwise on terms and conditions satisfactory to Beneficiary (or Bond Trustee, on its behalf) in its sole discretion. Notwithstanding the above, if an Event of Default occurs prior to full disbursement of the insurance proceeds and any other funds held by (or the Bond Trustee under the Indenture, as the case may be) to be disbursed to Trustor any undisbursed portion of the insurance proceeds or other such funds may, at Beneficiary's (or the Bond Trustee and Bond Owner as assignee and designee) option, be applied against the indebtedness secured by this Deed of Trust, whether or not then due, in such order and manner as Beneficiary (or the Bond Trustee and Bond Owner as assignee and designee) shall select.

- (f) Effect on the Indebtedness. Any reduction in the indebtedness secured hereby resulting from the application to the indebtedness secured hereby of insurance proceeds pursuant to this Deed of Trust shall be deemed to take effect only on the date of receipt by Beneficiary (or Bond Trustee, on its behalf) of such proceeds and application thereof to the indebtedness secured hereby; provided that, if, prior to the receipt by Beneficiary (or Bond Trustee, on its behalf) of such proceeds, the Property shall have been sold in connection with a trustee's sale under, or foreclosure of this Deed of Trust, or shall have been transferred by deed in lieu of foreclosure of this Deed of Trust, notwithstanding any limitation on Trustor's liability contained herein or in the Bond Note, Beneficiary (or Bond Trustee, on its behalf) shall have the right to receive the same to the extent of any deficiency following such sale or conveyance, together with reasonable attorneys' fees and disbursements incurred by Beneficiary, Bond Trustee, and/or Bond Owner in connection with the collection thereof.
- (g) Insured. Beneficiary (or Bond Trustee, on its behalf) may secure the insurance only in its own name and may insure only its interest in the Property, and in connection with Beneficiary (or Bond Trustee, on its behalf) securing any such insurance, without in any way limiting another term or provision of this Deed of Trust or of the Financing Agreement, the following notice is given and delivered pursuant to §307.052 of the Texas Finance Code:

**NOTICE:**

- (A) TRUSTOR IS REQUIRED TO: (i) KEEP THE PROPERTY INSURED AGAINST DAMAGE IN THE AMOUNT SET FORTH IN THIS DEED OF TRUST OR ANY OTHER LOAN DOCUMENT; (ii) PURCHASE THE INSURANCE FROM AN**

**INSURER THAT IS AUTHORIZED TO DO BUSINESS IN THE STATE OF TEXAS OR AN ELIGIBLE SURPLUS LINES INSURER; AND (iii) NAME THE BENEFICIARY (OR BOND TRUSTEE, ON ITS BEHALF) AS THE PERSON TO BE PAID UNDER THE POLICY IN THE EVENT OF LOSS;**

- (B) TRUSTOR MUST, IF REQUIRED BY BENEFICIARY (OR BOND TRUSTEE, ON ITS BEHALF), DELIVER TO BENEFICIARY (OR BOND TRUSTEE, ON ITS BEHALF) A COPY OF THE POLICY AND PROOF OF THE PAYMENT OF THE PREMIUMS; AND**
- (C) IF TRUSTOR FAILS TO MEET ANY REQUIREMENT LISTED IN CLAUSE (A) OR (B) ABOVE, BENEFICIARY (OR BOND TRUSTEE, ON ITS BEHALF) MAY OBTAIN COLLATERAL PROTECTION INSURANCE ON BEHALF OF TRUSTOR AT TRUSTOR'S EXPENSE.**

If there is any irreconcilable inconsistency between Section 5.6 of the Financing Agreement and Section 4.5 of this Deed of Trust, Section 5.6 of the Financing Agreement, as applicable, shall control.

- 4.6 Right of Inspection. Subject to the terms of the Financing Agreement, Trustor shall permit Beneficiary, Bond Trustee, and Bond Owner or their agents or independent contractors (including, but not limited to, appraisers, environmental consultants and construction consultants), at all reasonable times and after reasonable notice, to enter upon and inspect the Property.
- 4.7 Preservation of Licenses, Etc. Trustor shall observe and comply with all requirements necessary to the continued existence and validity of all rights, licenses, permits, privileges, franchises and concessions relating to any existing or presently contemplated use of the Property, including but not limited to any zoning variances, special exceptions and nonconforming use permits.
- 4.8 Further Assurances. Trustor will, at its expense, from time to time execute and deliver any and all such instruments of further assurance and other instruments and do any and all such acts, or cause the same to be done, as Trustee or Beneficiary (or Bond Trustee, on its behalf) deems necessary or advisable to grant to Trustee the Property or to carry out more effectively the purposes of this Deed of Trust.
- 4.9 Legal Actions. Trustor will appear in and defend any action or proceeding before any court or administrative body purporting to affect the security hereof or the rights or powers of Beneficiary (or Bond Trustee, on its behalf) or Trustee; and will pay all costs and expenses, including cost of evidence of title, title insurance premiums and any fees of attorneys, appraisers, environmental inspectors and others, incurred by Beneficiary (or by Bond Trustee, as its assignee, or by Bond Owner, as the case may be) or Trustee,



in a reasonable sum, in any such action or proceeding in which Beneficiary (or Bond Trustee, on its behalf) or Trustee appear, and in any suit brought by Beneficiary (or Bond Trustee, on its behalf) or Trustee to foreclose this Deed of Trust and in any trustee's sale under this Deed of Trust.

- 4.10 Taxes and Assessments. Trustor will pay all taxes, assessments, standby fees, homeowners' or condominium association assessments and other impositions (collectively, "**Impositions**") levied or assessed against any of the Mortgaged Property by any governmental authority or any other person, before the Impositions become delinquent, and Trustor will provide receipts of all Impositions payments to Beneficiary (or Bond Trustee, on its behalf) promptly upon request. If Trustor fails to do so, Beneficiary (or Bond Owner, as the case may be on its own behalf or through the Bond Trustee) may pay them, together with all costs and penalties thereon, at Trustor's expense; provided, however, that Trustor may contest in good faith in accordance with the terms and conditions of the Financing Agreement, in lieu of paying such taxes and assessments as they become due and payable, by appropriate proceedings, contest the validity thereof (to the extent and as provided for in the Financing Agreement). Pending such contest, Trustor shall not be deemed in default hereunder because of such nonpayment if, prior to delinquency of the asserted tax or assessment, Trustor furnishes Beneficiary (or Bond Trustee, on its behalf) an indemnity bond secured by a deposit in cash or other security acceptable to Beneficiary (and/or Bond Owner, as the case may be), or with a surety acceptable to Beneficiary (and/or Bond Owner, as the case may be), in the amount of the tax or assessment being contested by Trustor plus a reasonable additional sum to pay all costs, interest and penalties that may be imposed or incurred in connection therewith, conditioned that such tax or assessment, with interest, cost and penalties, be paid as herein stipulated, and if Trustor promptly pays any amount adjudged by a court of competent jurisdiction to be due, with all costs, penalties and interest thereon, on or before the date such judgment becomes final; provided that in any event the tax, assessment, penalties, interest and costs shall be paid prior to the date on which any writ or order is issued under which the Property may be sold in satisfaction thereof. Any irreconcilable inconsistency between this **Section 4.10** and the Financing Agreement shall be governed by the Financing Agreement.
- 4.11 Expenses. Trustor will pay all costs, fees and expenses reasonably incurred by Beneficiary, Bond Trustee, Bond Owner, or Trustee in connection with this Deed of Trust.
- 4.12 Repayment of Expenditures. Trustor will pay immediately and without demand all amounts secured by this Deed of Trust, other than principal of and interest on the Bond Note, with interest from date of expenditure at the

default rate of interest specified in the Indenture (the “Default Rate”) and the repayment thereof shall be secured hereby.

- 4.13 Financial & Operating Information. Trustor will furnish to Beneficiary (or Bond Owner, as the case may be, as provided in the Financing Agreement) financial statements and balance sheets of Trustor, the Property, and the entities and individuals otherwise obligated and liable for repayment of the Bond Note as required by the Financing Agreement.
- 4.14 Sale, Transfer or Encumbrance of Property or Beneficial Interest in Trustor. Trustor understands that in making the Bond Loan, Beneficiary (or Bond Trustee, on its behalf) is relying to a material extent upon the business expertise and/or net worth of Trustor and, if Trustor is also an entity, its partners or principals and upon the continuing interest which Trustor and/or its partners or principals will have in the Property and in Trustor, respectively, and the transfer of possession of the Property or any portion thereof or interest therein, or a change in the individual or entity operating and managing the Property or Trustor may significantly and materially alter or reduce Beneficiary’s security for the Bond Note. Accordingly, in the event: (a) Trustor sells, conveys, further encumbers (whether superior or subordinate to the lien of this Deed of Trust and whether by mortgage, deed of trust, assignment of rents or other security device) or alienates the Property or any part thereof (including an installment contract of sale), or suffers the title or any interest therein to be divested or encumbered, whether voluntarily or involuntarily, by operation of law or otherwise, or leases with an option to purchase, or changes or permits to be changed the primary character or use of the Property, or drills or extracts or enters into a lease for the drilling for or extracting of any mineral of any kind or character on the Property; or (b) Trustor is a partnership and the interest of any general partner of Trustor is sold, transferred, assigned or hypothecated or the equity position in the partnership is changed in any manner whatsoever, except (i) transfers to family members or family trusts, including transfers by reason of demise of a general partner, other than transfers by the sole remaining general partner or (ii) the removal of the general partner or Trustor pursuant to the Amended and Restated Agreement of Limited Partnership of Trustor (the “**Partnership Agreement**”) and the replacement by Investor Limited Partner (as defined in the Financing Agreement and hereafter used) of such removed general partner with an affiliate of the Investor Limited Partner or the Special Limited Partner (as defined in the Financing Agreement); or (c) Trustor is a corporation and more than ten percent (10%) of the voting corporate stock thereof is sold, transferred, assigned or hypothecated; or (d) Trustor is a trust, limited liability company or other form of entity not specifically mentioned herein and there is a change of ten percent (10%) or more of the beneficial interest of such entity; or (e) Trustor or any of its partners, shareholders, officers, principals,

managers or directors shall agree to do any of the foregoing acts without such agreement being conditioned upon Beneficiary's consent; then, unless that transfer is otherwise expressly permitted by the Financing Agreement, the same shall be deemed to increase the risk of Beneficiary and Beneficiary (or Bond Trustee, on its behalf) may then, or at any time thereafter, declare the entire indebtedness secured hereby immediately due and payable. In each instance in which a sale, transfer or other conveyance of the Property in violation of this **Section 4.14** occurs and regardless of whether Beneficiary (or Bond Trustee, on its behalf) elects to accelerate the maturity date of the Bond Note, Trustor and its successors shall be jointly and severally liable to Beneficiary for the payment of a transfer fee (the "**Transfer Fee**") of one percent (1.00%) of the unpaid principal balance of the Bond Note as of the date of such sale, transfer or other conveyance. Such fee shall be payable on demand, shall bear interest from ten (10) days after such demand to and including the date of collection at the Default Rate, and shall be secured by this Deed of Trust. Beneficiary's (or Bond Trustee's, on its behalf) waiver of such fee in whole or in part for any one sale, transfer or other conveyance shall not preclude the imposition thereof in any other transaction.

4.15 Information for Participants. Trustor agrees to furnish such information and confirmation as may be required from time to time by Beneficiary, Bond Trustee, and Bond Owner on request of potential loan participants and agrees to make adjustments in this Deed of Trust, the Bond Note, and the other documents evidencing or securing the Bond Loan to accommodate such participants' requirements, provided that such requirements do not vary the economic terms of the Bond Loan.

4.16 Trustor Existence.

(a) If Trustor is a corporation, Beneficiary is making the Bond Loan in reliance on Trustor's continued existence, ownership and control in its present corporate form. Trustor will not alter such corporate structure, ownership or control without the prior written consent of Beneficiary (or Bond Trustee, on its behalf), and will do all things necessary to preserve and maintain said corporate existence and to insure its continuous right to carry on its business, including but not limited to, filing within the prescribed time all corporate tax returns and reports, and paying when due all such taxes.

(b) If Trustor is a partnership, Beneficiary is making the Bond Loan in reliance on the continued existence of Trustor partnership and upon the business and financial reputation of Trustor partnership as a business entity and each of the general partners thereof. Therefore, the general partners of Trustor hereby agree that they will take no action to dissolve Trustor partnership and will do all things within their

power to prevent the dissolution and winding up of Trustor partnership, notwithstanding the death, withdrawal or expulsion of any general partner. They further agree that, without the prior written consent of Beneficiary (or Bond Trustee, on its behalf), none of the general partners of Trustor will withdraw or be removed as a general partner of Trustor, except if substituted by an entity owned and controlled by an affiliate of Investor Limited Partner or Special Limited Partner pursuant to Section 6.5 of the Partnership Agreement. The withdrawal or expulsion of any general partner from Trustor partnership shall not in any way affect the liability of the withdrawing or expelled general partner hereunder or on the Bond Note. Notwithstanding the foregoing, any change in the structure of Trustor or the ownership of the Property to which Beneficiary's (to the Bond Trustee's, on its behalf) consent has been given as set forth in **Section 4.14** above shall not be a violation of this Section.

- (c) If Trustor is a limited liability company, Beneficiary is making the Bond Loan in reliance on Trustor's continued existence, ownership and control in its present limited liability company form. Trustor will not alter such limited liability company structure, ownership or control without the prior written consent of Beneficiary (or Bond Trustee, on its behalf) and will do all things necessary to preserve and maintain said limited liability company existence and to insure its continuous right to carry on its business.

#### 4.17 Tax and Insurance Reserves.

- (a) Taxes and Other Impositions. Trustor will pay all taxes, assessments, standby fees, homeowners' or condominium association assessments and other impositions (collectively, "**Impositions**") levied or assessed against any of the Property by any governmental authority or any other person, before the Impositions become delinquent, and Trustor will provide receipts of all Impositions payments to Beneficiary (or Bond Trustee, on its behalf) promptly upon request. If Trustor fails to do so, Beneficiary (through funding of the Bond Owner) may pay them, together with all costs and penalties thereon, at Trustor's expense; provided, however, that Trustor may contest in good faith in accordance with the terms and conditions of the Financing Agreement, in lieu of paying such taxes and assessments as they become due and payable, by appropriate proceedings, the validity thereof (to the extent and as provided for in the Financing Agreement). Pending such contest, Trustor shall not be deemed in default hereunder because of such nonpayment if, prior to delinquency of the asserted tax or assessment, Trustor

furnishes Beneficiary (or Bond Trustee, on its behalf) an indemnity bond secured by a deposit in cash or other security acceptable to Beneficiary (or Bond Owner, on its behalf), or with a surety acceptable to Beneficiary (or Bond Owner, on its behalf), in the amount of the tax or assessment being contested by Trustor plus a reasonable additional sum to pay all costs, interest and penalties that may be imposed or incurred in connection therewith, conditioned that such tax or assessment, with interest, cost and penalties, be paid as herein stipulated, and if Trustor promptly pays any amount adjudged by a court of competent jurisdiction to be due, with all costs, penalties and interest thereon, on or before the date such judgment becomes final; provided that in any event the tax, assessment, penalties, interest and costs shall be paid prior to the date on which any writ or order is issued under which the Property may be sold in satisfaction thereof. Any irreconcilable inconsistency between this **Section 4.17(a)** and the Financing Agreement shall be governed by the Financing Agreement.

- (b) Deposits. (i) Prior to the Stabilized Occupancy Date (as defined in the Financing Agreement and hereafter used), if requested to do so by Beneficiary (or Bond Trustee, on its behalf), which request will only be made during the continuance of an Event of Default, and (ii) on and after the Stabilized Occupancy Date, without the necessity of request by Beneficiary (or Bond Trustee, on its behalf) or the continuance of an Event of Default, in each event, Trustor will deposit with Beneficiary (or the Bond Trustee under the Indenture as the case may be) each month an amount equal to (i) 1/12 of the annual premiums for all insurance required under this Deed of Trust, and (ii) 1/12 of the annual Impositions to become due in connection with the Property, as estimated by Beneficiary (or Bond Trustee, on its behalf). At least 15 days before any Impositions would become delinquent or any insurance premium is due, Trustor will deliver to Beneficiary (or Bond Trustee, on its behalf) a statement showing the amount of Impositions or premium due and the party or governmental authority to which the amount is payable. If funds on deposit with Beneficiary (or Bond Trustee, on its behalf) are insufficient to make all payments due, Trustor will deposit with Beneficiary (or Bond Trustee, on its behalf) the amount of any deficiency. Beneficiary (or the Bond Trustee under the Indenture as the case may be) will hold deposited funds on behalf of Trustor for payment of Impositions and insurance, but if an Event of Default then exists, Beneficiary (or Bond Trustee, on its behalf) may apply deposited funds to payment of the indebtedness secured by this Deed of Trust.
- (c) Any transfer in fee of all or a part of the Property shall automatically transfer to the grantee all or a proportionate part of Trustor's rights and interest in the fund accumulated hereunder.

#### 4.18 Leases.

- (a) Trustor covenants and agrees, at Trustor's sole cost and expense:
- (i) Trustor shall, in all respects, promptly and faithfully keep, perform and comply with all of the terms, provisions, covenants, conditions and agreements in each of the agreements pursuant to which any tenant of any part of the Property is occupying the Property (the "Leases") to be kept, performed and complied with by the lessor therein, and will require, demand and strictly enforce, by all available means, the prompt and faithful performance of and compliance with all of the terms, provisions, covenants, conditions and agreements in the Leases to be performed and complied with by the lessees therein, and enforce, to

the extent consistent with reasonable and prudent management of the Property, the available remedies for nonperformance by the tenants of the obligations of the tenants contained in the Leases.

- (ii) Trustor shall exercise Trustor's best efforts to keep all portions of the Property that are currently subject to Leases leased at all times at rentals as required to maintain all low income housing tax credits ("LIHTCs"), if any, for the Property.
- (iii) Trustor shall deliver to Beneficiary a fully executed, counterpart original of each and every Lease if requested to do so.
- (iv) Trustor shall execute and record such additional assignments of any Lease or specific subordinations of any Lease to the Deed of Trust, in form and substance acceptable to Beneficiary (or Bond Owner, as the case may be), as Beneficiary (or Bond Owner, as the case may be) may request.
- (v) Trustor shall promptly deposit and maintain all security deposits or other deposits received by Trustor from tenants in a segregated trust account in a federally insured bank or savings and loan association, and shall notify and direct in writing each and every present or future tenant or occupant of the Property or any part thereof that any security deposit or other deposit heretofore delivered to Trustor has been retained by Trustor or assigned and delivered to Beneficiary (or Bond Trustee, on its behalf) as the case may be.
- (vi) Trustor shall not receive or collect any rents from any present or future tenant of the Property or any part thereof in advance in excess of one (1) month's rent of such tenant or collect a security deposit in excess of two (2) months' rent.
- (vii) Trustor shall not, except with the prior written consent of Beneficiary (or Bond Trustee, as instructed by Bond Owner): (i) enter into any Lease after the date of this Deed of Trust except in the form of Lease approved in writing by Beneficiary (or Bond Trustee, on its behalf) and with tenants meeting the income requirements required to maintain all the LIHTCs; (ii) execute any

other assignment relating to any of the Leases; (iii) discount any rent or other sums due under the Leases or collect the same in advance except as set forth above; (iv) terminate, modify or amend any of the terms of the Leases or in any manner release or discharge any tenant from any obligations thereunder except as reasonably required for prudent management of the Property or as may be necessary to maintain all the LIHTCs; (v) consent to any assignment or subletting by any tenant except to the extent consistent with reasonable and prudent management of the Property; or (vi) subordinate or agree to subordinate any of the Leases to any other deed of trust or encumbrance.

#### 4.19 Hazardous Waste.

- (a) For purposes of this Deed of Trust, “hazardous substance” means any hazardous or toxic substances, materials or wastes, including, but not limited to, those substances, materials, and wastes listed in the United States Department of Transportation Hazardous Materials Table (49 CFR 172.101) or by the Environmental Protection Agency as hazardous substances (40 CFR Part 302) and amendments thereto, or such substances, materials and wastes which are or become regulated under any applicable local, state or federal law including, without limitation, any material, waste or substance which is (i) petroleum, (ii) asbestos, (iii) poly-chlorinated biphenyls, (iv) designated as a “hazardous substance” pursuant to Section 311 of the Clean Water Act, 33 U.S.C. §1251 et seq. (33 U.S.C. §1321) or listed pursuant to Section 307 of the Clean Water Act (33 U.S.C. §1317), (v) defined as a “hazardous waste” pursuant to Section 1004 of the Resource Conservation and Recovery Act, 42 U.S.C. §6903 (“RCRA”), or (vi) defined as a “hazardous substance” pursuant to Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §9601, et seq. (42 U.S.C. §9601) (“CERCLA”), all as amended, replaced or succeeded, and any other substance or matter defined as a toxic or hazardous substance or material or pollutant or contaminant or waste under any other federal, state or local laws, ordinances or regulations or under any reported decision of a state or federal court, or any substance or matter imposing liability for clean-up costs or expenses on any person or entity under any statutory or common law theory; provided, however, “hazardous substance” shall not mean de minimis or otherwise acceptable amounts of substances retained or stored for



household or office usage that are properly used and stored at the Property.

- (b) To Trustor's best knowledge and after due and diligent inquiry, Trustor represents and warrants that neither Trustor nor to the best of its knowledge any previous owner or user of the Property has used, generated, stored or disposed of above, in, on, under or around the Property any hazardous substance and that there is not now, nor have there ever been tanks or facilities on, under or at the Property which contained materials which, if known to be present in soils or ground water, would require cleanup, removal or some other remedial action under any federal, state or local law or regulation. Trustor hereby covenants and agrees that Trustor will not conduct, permit or authorize the generation, transportation, storage, treatment or disposal at the Property of any hazardous substance, and neither Trustor nor any agent, servant or employee shall generate, store, bury or dispose of any hazardous substance on or in a location that will adversely affect the Property. Trustor shall promptly and diligently comply with all requirements of federal, state or local laws, statutes, ordinances or regulations, or court or administrative orders or decrees, or private agreements pertaining to hazardous substances.
- (c) If the presence, release, threat of release, placement on or in the Property, or the generation, transportation, storage, treatment or disposal at the Property of any hazardous substance: (i) gives rise to liability (including but not limited to, a response action, remedial action or removal action) under RCRA, CERCLA, state toxic waste laws, or otherwise, or (ii) causes a significant public health effect, or (iii) pollutes or threatens to pollute the environment, Trustor shall, at its sole expense, promptly take any and all remedial and removal action necessary to clean up the Property and mitigate exposure to liability arising from the hazardous substance, whether or not required by law.
- (d) Trustor shall promptly give Beneficiary, Bond Trustee, and Bond owner: (i) written notice and a copy of any notice or correspondence it receives from any federal, state or other government authority regarding hazardous substances on the Property or hazardous substances which affect or will affect the Property, (ii) written notice of any knowledge or information Trustor obtains regarding hazardous substances on the Property or hazardous substances which will affect the Property or expenses or losses incurred or expected to be incurred by Trustor or any government agency to study, assess, contain or remove any hazardous substances on or

near the Property, and (iii) written notice of any knowledge or information Trustor obtains regarding the release or discovery of hazardous substances on the Property or on other property owned by Trustor or for which Trustor is or may be responsible.

- (e) In the event Beneficiary (or Bond Trustee, on its behalf) requires, from time to time, Trustor to implement an operations and maintenance plan because of the presence or potential presence of asbestos, or lead containing paint or other hazardous substances on the Property, Trustor shall implement and follow the requirements of any such operations and maintenance plan, maintain records of such compliance at the Property and make such records immediately available to Beneficiary (or Bond Trustee, on its behalf) upon request by Beneficiary (or Bond Trustee, on its behalf).
- (f) Trustor shall permit Beneficiary, Bond Trustee, and Bond Owner or their agents or independent contractors to conduct environmental inspections and analyses of the Property at all reasonable times and to enter upon the Property for that purpose.
- (g) The Beneficiary (or Bond Trustee, on its behalf, or Bond Owner, as the case may be) (by their its officers, employees and agents) at any time and from time to time may contract for the services of persons or entities (the "**Site Reviewers**") to perform environmental site assessments ("**Site Assessments**") on all or any part of the Property to determine the existence of any environmental condition which under any Environmental Law might result in any liability, cost or expense to the owner, occupier or operator of any of the Property. The Site Reviewers are authorized to enter upon all or any part of the Property to conduct Site Assessments. The Site Reviewers are further authorized to perform both above and below the ground testing for environmental damage or the presence of hazardous substances on the Property and such other test on the Property as the Site Reviewers, the Beneficiary (or Bond Trustee, on its behalf, or Bond Owner as the case may be) may deem necessary. The Beneficiary (or Bond Trustee, on its behalf) shall not be responsible for any negligence or misconduct of any Site Reviewer. The Trustor agrees to supply to the Site Reviewers, such historical and operational information regarding the Property as may be reasonably requested to facilitate the Site Assessments and will make available for meetings with the Site Reviewers appropriate personnel having knowledge of such matters. The results of Site Assessments shall be furnished by the Site Reviewers to Trustor, and Beneficiary, Bond Trustee, an Bond Owner upon request. The cost of performing Site Assessments shall be paid by Trustor. The Beneficiary (nor Bond

Trustee nor Bond Owner) shall not have a duty, however, to visit or observe the Property or to conduct tests, and no site visit, observation, or testing by the Site Reviewer engaged by it shall impose any liability on the Beneficiary, Bond Trustee, or the Bond Owner. In no event shall any site visit, observation or testing by any Site Reviewer be a representation by the Beneficiary, Bond Trustee, or the Bond Owner that hazardous substances are or are not present in, on or under the Property, or that there has been or shall be compliance with environmental law. None of Beneficiary, Bond Trustee, or the Bond Owner owes a duty of care to protect Trustor or any other party against, or to inform Trustor or any other party of, any hazardous substances or any other adverse condition affecting the Property. The Beneficiary, Bond Trustee, or the Bond Owner may, in their discretion, disclose to Trustor or any other party any report or findings made as a result of, or in connection with, any site visit, observation or testing by the Site Reviewer engaged by it. Trustor understands and agrees that the Beneficiary, Bond Trustee, or the Bond Owner may in their discretion disclose to Trustor or any other party any report or findings made as a result of, or in connection with, any site visit, observation or testing by the Site Reviewer engaged by it. Trustor understands and agrees that the Beneficiary, Bond Trustee, or the Bond Owner each makes no representation or warranty to Trustor or any other party regarding the truth, accuracy, or completeness of any such report or findings that may be disclosed in a Site Assessment. Trustor also understands that, depending on the results of a Site Assessment which are disclosed to Trustor, Trustor may have a legal obligation to notify one or more environmental agencies of the results and that such reporting requirements are site-specific. The Beneficiary, Bond Trustee, or the Bond Owner may each disclose any Site Assessment to potential buyers in connection with default proceedings hereunder and the Trustor acknowledges that any such disclosure, depending upon the results of a Site Assessment, may affect the amount of money that may be realized in such default proceedings.

- (h) **REGARDLESS OF WHETHER ANY SITE ASSESSMENTS ARE CONDUCTED HEREUNDER, IF ANY EVENT OF DEFAULT SHALL HAVE OCCURRED AND BE CONTINUING OR ANY REMEDIES IN RESPECT OF THE MORTGAGED PROPERTY ARE EXERCISED BY BENEFICIARY (OR BOND TRUSTEE, ON ITS BEHALF), TRUSTEE SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS BENEFICIARY, BOND TRUSTEE< BOND OWNER AND TRUSTEE FROM ANY AND ALL LIABILITIES (INCLUDING STRICT LIABILITY), ACTIONS, DEMANDS, PENALTIES, LOSSES, COSTS OR EXPENSES (INCLUDING,**

WITHOUT LIMITATION, ATTORNEYS' FEES AND EXPENSES, AND REMEDIAL COSTS), SUITS, COSTS OF ANY SETTLEMENT OR JUDGMENT AND CLAIMS OF ANY AND EVERY KIND WHATSOEVER WHICH MAY NOW OR IN THE FUTURE (WHETHER BEFORE OR AFTER THE RELEASE OF THIS DEED OF TRUST) BE PAID, INCURRED OR SUFFERED BY OR ASSERTED AGAINST BENEFICIARY, BOND TRUSTEE, AND/OR BOND OWNER OR TRUSTEE BY ANY PERSON OR ENTITY OR GOVERNMENTAL AGENCY FOR, WITH RESPECT TO, OR AS A DIRECT OR INDIRECT RESULT OF, THE PRESENCE ON OR UNDER, OR THE ESCAPE, SEEPAGE, LEAKAGE, SPILLAGE, DISCHARGE, EMISSION OR RELEASE FROM THE MORTGAGED PROPERTY OF ANY HAZARDOUS MATERIALS OR ANY HAZARDOUS MATERIALS CONTAMINATION OR ARISE OUT OF OR RESULT FROM THE ENVIRONMENTAL CONDITION OF THE MORTGAGED PROPERTY OR THE APPLICABILITY OF ANY GOVERNMENTAL REQUIREMENTS RELATING TO HAZARDOUS MATERIALS (INCLUDING, WITHOUT LIMITATION, CERCLA OR ANY FEDERAL, STATE OR LOCAL SO-CALLED "SUPERFUND" OR "SUPERLIEN" LAWS, STATUTE, LAW, ORDINANCE, CODE, RULE, REGULATION, ORDER OR DECREE), REGARDLESS OF WHETHER OR NOT CAUSED BY OR WITHIN THE CONTROL OF OR DETERMINED TO BE DUE TO THE NEGLIGENCE OF TRUSTOR, BENEFICIARY, BOND TRUSTEE, BOND OWNER, OR TRUSTEE. THE REPRESENTATIONS, COVENANTS, WARRANTIES AND INDEMNIFICATIONS CONTAINED IN THIS SECTION 4.19 SHALL SURVIVE THE RELEASE OF THIS DEED OF TRUST. NOTWITHSTANDING ANY OF THE FOREGOING TO THE CONTRARY, IN NO EVENT SHALL THE FOREGOING INDEMNIFICATION EXTEND TO ANY ACT OR OMISSION BY TRUSTEE, BOND TRUSTEE, BOND OWNER, OR BENEFICIARY WITH RESPECT TO ANY MORTGAGED PROPERTY SUBSEQUENT TO BENEFICIARY (OR ITS DESIGNEE) BECOMING THE OWNER OF SUCH MORTGAGED PROPERTY AND WITH RESPECT TO WHICH MORTGAGED PROPERTY SUCH LIABILITY, ACTION, DEMAND, PENALTY, LOSS, COST OR EXPENSE ARISES SUBSEQUENT TO THE ACQUISITION OF TITLE THERETO BY BENEFICIARY (OR ITS DESIGNEE).

- (i) Beneficiary (or Bond Trustee, on its behalf) shall have the right but not the obligation, prior or subsequent to an Event of Default, without in any way limiting Beneficiary's (or Bond Trustee's on its behalf at the direction of Bond Owner) other rights and remedies under this Deed of Trust, to enter onto the Mortgaged Property or to take such

other actions as it deems necessary or advisable to clean up, remove, resolve or minimize the impact of, or otherwise deal with, any hazardous substances or hazardous substances contamination on the Mortgaged Property following receipt of any notice from any person or entity asserting the existence of any hazardous substances or hazardous substances contamination pertaining to the Mortgaged Property or any part thereof which, if true, could result in an order, suit, imposition of a lien on the Mortgaged Property, or other action and/or which, in Beneficiary's sole opinion, could jeopardize Beneficiary's (or Bond Trustee's on its behalf at the direction of Bond Owner) security under this Deed of Trust. All costs and expenses paid or incurred by Beneficiary, Bond Owner, or Bond Trustee in the exercise of any such rights shall be Indebtedness secured by this Deed of Trust and shall be payable by Trustee upon demand.

- 4.20 Affordable Housing Restrictions. Trustor shall perform and satisfy, after applicable notice and cure rights, each and every covenant, agreement, term and condition of any use restriction, regulatory agreement, grant, subsidy, application, reservation, allocation or other restriction relating to the Property or affecting the use or occupancy of the Property, including without limitation, the terms and conditions of any allocation or reservation of LIHTCs by the Texas Department of Housing and Community Affairs ("TDHCA") to Trustor or the Property.
- 4.21 Credit Enhancement. Trustor acknowledges that Beneficiary (or Bond Trustee, on its behalf) may have considered other collateral or assets of Trustor or its constituents in determining the creditworthiness of Trustor or its constituents, or the viability of the Property as an affordable housing project. Those other collateral or assets may include, without limitation, letters of credit issued by a financial institution reasonably acceptable to Beneficiary (or Bond Trustee, on its behalf), rental guaranties or payment contracts issued by the federal Department of Housing and Urban Development, or a local municipality or governmental entity, or LIHTCs reserved or allocated by TDHCA for the benefit of the Property. Upon Beneficiary's (or Bond Trustee's on its behalf) request, Trustor shall promptly furnish to Beneficiary (or Bond Trustee, on its behalf), in such form as it may request, financial or other information, including reporting documents or monitoring reports, that Trustor may have or that Trustor may be able to obtain in connection with these other collateral or assets.

5. DEFAULT.

- 5.1 Event of Default. An Event of Default under and as defined in the Financing Agreement shall constitute an "**Event of Default**" for purposes of this Deed of Trust.

## 5.2 Beneficiary's and Trustee's Right to Perform.

- (a) Upon the occurrence of any Event of Default, Beneficiary (or Bond Owner as the case may be) or Trustee, but without the obligation so to do and without releasing Trustor from any obligations hereunder, may: make any payments or do any acts required of Trustor hereunder in such manner and to such extent as either may deem necessary to protect the security hereof, Beneficiary, Bond Trustee, Bond Owner, or Trustee being authorized to enter upon the Property for such purposes; commence, appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary (or Bond Trustee, on its behalf) or Trustee; pay, purchase, contest or compromise any encumbrance, charge or lien in accordance with the following paragraph; and in exercising any such powers, pay necessary expenses, employ counsel and pay a reasonable fee therefor. All sums so expended shall be payable on demand by Trustor, be secured hereby (except as otherwise provided in this Deed of Trust) and bear interest at the Default Rate of interest specified in the Bond Note from the date advanced or expended until repaid.
- (b) Beneficiary, Bond Owner, Bond Trustee, or Trustee in making any payment herein and hereby authorized, in the place and stead of the Trustor, in the case of a payment of Impositions, and other governmental or municipal charges, fines, impositions or liens asserted against the Property, may make such payment in reliance on any bill, statement or estimate procured from the appropriate public office without inquiry into the accuracy of the bill, statement or estimate or into the validity of any tax, assessment, sale, forfeiture, tax lien or title or claim thereof; in the case of any apparent or threatened adverse claim of title, lien, statement of lien, encumbrance, deed of trust, claim or charge Beneficiary (or Bond Trustee, on its behalf) or Trustee, as the case may be, shall be the sole judge of the legality or validity of same; and in the case of a payment for any other purpose herein and hereby authorized, but not enumerated in this paragraph, such payment may be made whenever, in the sole judgment and discretion of Trustee or Beneficiary (or Bond Owner on its behalf as the case may be), as the case may be, such advance or advances shall seem necessary or desirable to protect the full security intended to be created by this Deed of Trust, provided further, that in connection with any such advance, Beneficiary (or Bond Trustee, on its behalf) at its option may and is hereby authorized to obtain a continuation report of title prepared by a title insurance company, the cost and expenses of

which shall be repayable by the Trustor without demand and shall be secured hereby.

5.3 Exercise of Specific Remedies. If an Event of Default shall occur, Beneficiary (or the Bond Trustee under the Indenture, or Bond Owner, as the case may be) may exercise any one or more of the following remedies, without notice:

- (a) Acceleration. Beneficiary (or Bond Trustee at the direction of Bond Owner) may declare the indebtedness secured hereby immediately due and payable, without notice, whereupon the same shall become immediately due and payable. Trustor hereby waives notice of intent to accelerate and notice of acceleration.
- (b) Enforcement of Assignment of Rents and Leases. Prior or subsequent to taking possession of any portion of the Property or taking any action with respect to such possession, Beneficiary (or Bond Trustee, on its behalf solely at the direction of Bond Owner) may:
  - (1) collect and/or sue for the Rents in Beneficiary's own name, give receipts and releases therefor, and after deducting all expenses of collection, including attorneys' fees and expenses, apply the net proceeds thereof to any indebtedness secured hereby as Beneficiary (or Bond Trustee, on its behalf) may elect;
  - (2) make, modify, enforce, cancel, terminate or accept surrender of any Leases, evict tenants, adjust the Rents, maintain, decorate, refurbish, repair, clean, and make space ready for renting, and otherwise do anything Beneficiary (or Bond Trustee, on its behalf) deems advisable in connection with the Property;
  - (3) apply the Rents so collected to the operation and management of the Property, including the payment of management, brokerage and attorneys' fees and expenses, and/or to any indebtedness secured hereby; and
  - (4) require Trustor to transfer all security deposits and records thereof to Beneficiary (or Bond Trustee, on its behalf) together with all original counterparts of the Leases.
- (c) Foreclosure. Beneficiary (or Bond Trustee, on its behalf solely at the direction of Bond Owner) may require the Trustee to sell all or part of the Property, at public auction, to the highest bidder, for cash, at

the door of the county courthouse of the county in Texas in which such Property or any part thereof is situated or at the area of the county courthouse designated by the Commissioners Court of said county, or if the Property is located in more than one county such sale may be made at the courthouse in any county in which the Property is situated. The sale shall take place at such area of the courthouse as shall be properly designated from time to time by the Commissioners Court (or, if not so designated by the Commissioners Court, at such other area in the courthouse as may be provided in the notice of sale hereinafter described) of the specified county, between the hours of 10:00 o'clock a.m. and 4:00 o'clock p.m. (the commencement of such sale to occur within three hours following the time designated in the hereinafter described notice of sale as the earliest time at which such sale shall occur, if required by applicable law) on the first Tuesday of any month, after giving notice of the time, place and terms of said sale (including the earliest time at which such sale shall occur) and of the property to be sold, in the manner hereinafter described. Notice of a sale of all or part of the Property by the Trustee shall be given by posting written notice thereof at the courthouse door (or other area in the courthouse as may be designated for such public notices) of the county in which the sale is to be made, and by filing a copy of the notice in the office of the County Clerk of the county in which the sale is to be made at least twenty-one (21) days preceding the date of the sale, and if the property to be sold is in more than one county, a notice shall be posted at the courthouse door (or other area in the courthouse as may be designated for such public notices) and filed with the County Clerk of each county in which the property to be sold is situated. In addition, Beneficiary (or Bond Trustee, on its behalf) shall, at least twenty-one (21) days preceding the date of sale, serve written notice of the proposed sale by certified mail on Trustor and each debtor obligated to pay the debt secured hereby according to the records of Beneficiary (or Bond Trustee, on its behalf). Service of such notice shall be completed upon deposit of the notice, enclosed in a postpaid wrapper, properly addressed to such debtor at the most recent address as shown by the records of Beneficiary (or Bond Trustee, on its behalf), in a post office or official depository under the care and custody of the United States Postal Service. The affidavit of any person having knowledge of the facts to the effect that such service was completed shall be prima facie evidence of the fact of service. Any notice that is required or permitted to be given to Trustor may be addressed to Trustor at Trustor's address as stated above. Any notice that is to be given by certified mail to any other debtor may, if no address for such other debtor is shown by the records of Beneficiary (or Bond Trustee, on its behalf), be addressed to such



other debtor at the address of Trustor, as is shown by the records of Beneficiary (or Bond Trustee, on its behalf). Notwithstanding the foregoing provisions of this paragraph, notice of such sale given in accordance with the requirements of the applicable laws of the State of Texas in effect at the time of such sale shall constitute sufficient notice of such sale. Trustee may sell all or any portion of the Property, together or in lots or parcels, and may execute and deliver to the purchaser or purchasers of such property good and sufficient deeds of conveyance of fee simple title with covenants of general warranty made on behalf of Trustor. In no event shall Trustee be required to exhibit, present or display at any such sale any of the personalty described herein to be sold at such sale. On the direction of the Beneficiary, Bond Owner, Bond Trustee, Trustee, or his successor or substitute, is hereby authorized and empowered to appoint any one or more persons as his attorney(s)-in-fact to act as Trustee under him and in his name, place and stead, such appointment to be evidenced by a written instrument executed by Trustee, or his successor or substitute, to perform any one or more act or acts necessary or incidental to any sale under the power of sale hereunder, including, without limitation, the posting and filing of any notices, the conduct of the sale and the execution and delivery of any instruments conveying the Property as a result of the sale, but in the name and on behalf of Trustee, or his successor or substitute; and all acts done or performed by said attorney(s)-in-fact shall be valid, lawful and binding as if done or performed by Trustee, or his successor or substitute. Trustee making such sale shall receive the proceeds thereof and shall apply the same as follows: (i) first, he shall pay the reasonable expenses of Trustee and a reasonable Trustee's fee or commission; (ii) second, he shall pay, so far as may be possible, the indebtedness secured hereby, discharging first that portion of the indebtedness secured hereby arising under the covenants or agreements herein contained and not evidenced by the Bond Note; (iii) third, he shall pay the residue, if any, to the persons legally entitled thereto. Payment of the purchase price to Trustee shall satisfy the obligation of the purchaser at such sale therefor, and such purchaser shall not be responsible for the application thereof. The sale or sales by Trustee of less than the whole of the Property shall not exhaust the power of sale herein granted, and Trustee is specifically empowered to make successive sale or sales under such power until the whole of the Property shall be sold; and if the proceeds of such sale or sales of less than the whole of the Property shall be less than the aggregate of the indebtedness secured hereby and the expenses thereof, this Deed of Trust and the lien, security interest and assignment hereof shall remain in full force and effect as to the unsold portion of the Property just as though no sale or

sales had been made; provided, however, that Trustor shall never have any right to require the sale or sales of less than the whole of the Property, but Beneficiary (or Bond Trustee, on its behalf) shall have the right, at its sole election, to request Trustee to sell less than the whole of the Property. If default is made hereunder, the holder of the sum of the indebtedness secured hereby, or any part thereof on which the payment is delinquent shall have the option to proceed with foreclosure in satisfaction of such item either through judicial proceedings or by directing Trustee to proceed as if under a full foreclosure, conducting the sale as herein provided without declaring the entire indebtedness secured hereby due, and if sale is made because of default of an installment, or a part of an installment, such sale may be made subject to the unmatured part of the indebtedness secured hereby; and it is agreed that such sale, if so made, shall not in any manner affect the unmatured part of the indebtedness secured hereby, but as to such unmatured part of the indebtedness secured hereby, this Deed of Trust shall remain in full force and effect as though no sale had been made under the provisions of this paragraph. Several sales may be made hereunder without exhausting the right of sale for any unmatured part of the Indebtedness. At any such sale (1) Trustor hereby agrees, in their own behalf and in behalf of their heirs, executors, administrators, successors, personal representatives and assigns, that any and all recitals made in any deed of conveyance given by Trustee with respect to the identity of Beneficiary (or Bond Trustee, on its behalf), the occurrence or existence of any default, the acceleration of the maturity of any of the indebtedness secured hereby, the request to sell, the notice of sale, the giving of notice to all debtors legally entitled thereto, the time, place, terms, and manner of sale, and receipt, distribution and application of the money realized therefrom, or the due and proper appointment of a substitute Trustee, and, without being limited by the foregoing, with respect to any other act or thing having been duly done by Beneficiary (or Bond Trustee, on its behalf) or by Trustee hereunder, shall be taken by all courts of law and equity as prima facie evidence that the statements or recitals state facts and are without further question to be so accepted, and Trustor hereby ratifies and confirms every act that Trustee or any substitute Trustee hereunder may lawfully do in the premises by virtue hereof, and (2) the purchaser may disaffirm any easement granted, or rental, lease or other contract made, in violation of any provision of this Deed of Trust, and may take immediate possession of the Property free from, and despite the terms of, such grant of easement and rental or lease contract. Beneficiary (or Bond Owner, as the case may be) may bid and become the purchaser of all or any part of the Property at any trustee's or foreclosure sale hereunder,

and the amount of Beneficiary's (or Bond Owner's, as the case may be) successful bid may be credited on the indebtedness secured hereby.

- (d) Lawsuits. Beneficiary (or Bond Trustee, on its behalf) may proceed by a suit or suits in equity or at law, whether for the specific performance of any covenant or agreement herein contained or in aid of the execution of any power herein granted, or for any foreclosure hereunder or for the sale of the Property under the judgment or decree of any court or courts of competent jurisdiction.
- (e) Entry on Property. Upon occurrence of an Event of Default hereunder, Beneficiary (or Bond Owner, as the case may be) may enter into and upon and take possession of all or any part of the Property, and may exclude Trustor, and all persons claiming under Trustor, and their agents or servants, wholly or partly therefrom; and, holding the same, Beneficiary (or Bond Owner, as the case may be) may use, administer, manage, operate, and control the Property and may exercise all rights and powers of Trustor in the name, place and stead of Trustor, or otherwise, as the Beneficiary (and Bond Owner) shall deem best; and in the exercise of any of the foregoing rights and powers Beneficiary (nor Bond Owner) shall not be liable to Trustor for any loss or damage thereby sustained unless due solely and exclusively to the willful misconduct or gross negligence of Beneficiary, Bond Trustee, and/or Bond Owner or their representatives.
- (f) Trustee or Receiver. Beneficiary (or Bond Trustee, on its behalf) may make application to a court of competent jurisdiction, as a matter of strict right and without notice to Trustor or regard to the adequacy of the Property for the repayment of the indebtedness secured hereby, for appointment of a receiver of the Property, and Trustor does hereby irrevocably consent to such appointment. Any such receiver shall have all the usual powers and duties of receivers in similar cases, including the full power to rent, maintain and otherwise operate the Property upon such terms as may be approved by the court, and shall apply the Rents in payment of the indebtedness secured hereby.
- (g) Additional Remedies.
  - (1) Have a receiver appointed as a matter of right on an ex parte basis without notice to Trustor and without regard to the sufficiency of the Property or any other security for the indebtedness secured hereby and, without the necessity of posting any bond or other security, such receiver shall take

possession and control of the Property and shall collect and receive all of the rents, issues and profits thereof.

- (2) Foreclose this Deed of Trust pursuant to a judicial foreclosure proceeding or otherwise realize upon the Property.
- (3) Cause Trustee to exercise its power of sale.
- (4) Sue on the Bond Note as permitted under applicable law.

provided, however, that in no event will any action be taken by or on behalf of Beneficiary (or Bond Trustee, on its behalf) which violates Section 42 (h)(6)(E)(ii) of the U.S. Internal Revenue Code of 1986, as amended, regarding prohibitions against evicting, terminating tenancy or increasing rent of tenants for a period of three (3) years after acquisition of a building by foreclosure or deed-in-lieu of foreclosure, if applicable.

- 5.4 Tenancy at Will. In the event of a trustee's sale hereunder and if at the time of such sale Trustor or any other party occupies the portion of the Property so sold or any part thereof, such occupant shall immediately become the tenant of the purchaser at such sale, which tenancy shall be a tenancy from day to day, terminable at the will of either tenant or landlord, at a reasonable rental per day based upon the value of the portion of the Property so occupied, such rental to be due and payable daily to the purchaser. An action of forcible detainer shall lie if the tenant holds over after a demand in writing for possession of such Property.
- 5.5 Beneficiary's Right to Perform. Upon Trustor's failure to make a payment or perform an act required by the Bond Loan Documents, then at any time thereafter, and without notice to or demand upon Trustor and without waiving or releasing any other right, remedy or recourse, Beneficiary (or Bond Owner, as the case may be) may (but shall not be obligated to) make such payment or perform such act for the account of and at the expense of Trustor, and shall have the right to enter upon the Property for such purpose and to take all such action as it may deem necessary or appropriate.
- 5.6 Reimbursement of Expenditure. If Beneficiary, the Bond Owner, and/or the Bond Trustee under the Indenture, shall expend any money chargeable to Trustor or subject to reimbursement Trustor under the terms of the Bond Loan Documents, Trustor shall repay the same immediately at the place where the Bond Note is payable, together with interest thereon at the Default Rate provided for in the Bond Note.
- 5.7 Other Rights. Beneficiary (or the Bond Trustee under the Indenture or the Bond Owner as the case may be) may exercise any and all other rights, remedies and recourses granted under the Bond Loan Documents now or

hereafter existing in equity or at law for the protection and preservation of the Property.

- 5.8 Waivers. Trustor waives all suretyship defenses that may lawfully be waived, including but not limited to notice of acceptance of this Deed of Trust, notice of the incurrence, acquisition or subordination of any indebtedness secured hereby, credit extended, collateral received or delivered or other action taken in reliance on this Deed of Trust, notices and all other demands and notices of any description. With respect to both indebtedness secured hereby and the Property, Trustor assents to any extension or postponement of the time of payment or any other indulgence, to any substitution, exchange or release of or failure to perfect Beneficiary's security interest or lien in any of the Property, to the addition or release of any person primarily or secondarily liable, to the acceptance of partial payment thereon and the settlement, compromising or adjusting of any thereof, all in such manner and at such time or times as Beneficiary (or Bond Trustee, on its behalf) may deem advisable. To the extent not prohibited by applicable law, Trustor further waives (i) diligence and promptness in preserving liability of any person on the indebtedness secured hereby, and in collecting or bringing suit to collect the indebtedness secured hereby; (ii) all rights, if any, of Trustor under Rule 31, Texas Rules of Civil Procedure, or Chapter 43 of the Texas Civil Practice and Remedies Code, or Section 17.001 of the Texas Civil Practice and Remedies Code; (iii) to the extent Trustor is subject to the Texas Business Organizations Code ("TBOC"), compliance by Beneficiary (or Bond Trustee, on its behalf) with Section 152.306(b) of TBOC; (iv) notice of extensions, renewals, modifications, rearrangements and substitutions of the indebtedness; (v) failure to pay any of the indebtedness, as it matures, any other default, adverse change in any obligor's or any Trustor's financial condition, release or substitution of collateral, subordination of Beneficiary's rights in any collateral, and every other notice of every kind. Nothing in this Deed of Trust is intended to waive or vary the duties of Beneficiary or the rights of Trustor or any obligor in violation of Section 9.602 of the UCC.
- 5.9 No Waiver. By accepting payment of any sum secured hereby after its due date, Beneficiary (or Bond Trustee, on its behalf) does not waive its right either to require prompt payment when due of all other sums so secured or to declare an Event of Default for failure to do so.
- 5.10 Remedies Cumulative. The rights and remedies accorded by this Deed of Trust shall be in addition to, and not in substitution of, any rights or remedies available under now existing or hereafter arising applicable law. All rights and remedies provided for in this Deed of Trust or afforded by law or equity are distinct and cumulative and may be exercised concurrently, independently or successively. The failure on the part of Beneficiary (or

Bond Trustee, on its behalf) to promptly enforce any right hereunder shall not operate as a waiver of such right and the waiver of any default shall not constitute a waiver of any subsequent or other default. Beneficiary (or Bond Trustee, on its behalf) shall be subrogated to the claims and liens of those whose claims or liens are discharged or paid with the Bond Loan proceeds.

6. CONDEMNATION. All judgments, decrees and awards for injury or damage to the Property, and all awards pursuant to proceedings for condemnation thereof, are hereby assigned in their entirety to Beneficiary. All proceeds of such judgments, decrees, and awards shall be applied and subject to the terms of Sections 6.2, 6.3, and 6.4 of the Financing Agreement.
7. TRUSTEE.
  - 7.1 General Powers and Duties of Trustee. At any time or from time to time, without liability therefor and without notice and without affecting the liability of any person for the payment of the indebtedness secured hereby, upon written request of Beneficiary (or Bond Trustee, on its behalf), payment of its own fees and presentation of this Deed of Trust and the Bond Note for endorsement (in case of full reconveyance or release, for cancellation or retention), Trustee may (i) consent to the making of any map or plat of the Property; (ii) join in granting any easement or creating any restriction thereon; (iii) join in any subordination or other agreement affecting this Deed of Trust or the lien or charge thereof; or (iv) reconvey, without warranty, all or any part of the Property.
  - 7.2 Reconveyance or Release. Upon written request of Beneficiary (or Bond Trustee, on its behalf) stating that all sums secured hereby have been paid, and upon payment of its fees, Trustee shall reconvey or release, without warranty, the Property then held hereunder. The recitals in any reconveyance or release executed under this Deed of Trust of any matters of fact shall be conclusive proof of the truthfulness thereof.
  - 7.3 Reassignment of Security Interest. At the request of Beneficiary (or Bond Trustee, on its behalf), Trustee shall reassign, terminate or release to Beneficiary (or Bond Trustee, on its behalf) the security interest created hereby and after such reassignment, termination or release, Beneficiary (or Bond Trustee, on its behalf) shall have the right, upon the occurrence or continuance of any Event of Default, to realize upon the personal property subject to this Deed of Trust, independent of any action of Trustee, pursuant to the UCC.
  - 7.4 Acceptance of Trust. Trustee accepts this trust when this Deed of Trust, duly executed and acknowledged, is made a public record as provided by law. Trustee is not obligated to notify any party hereto except Beneficiary (or Bond Trustee, on its behalf) of pending sale under any other deed of

trust or of any action or proceeding in which Trustor, Beneficiary (or Bond Trustee, on its behalf) or Trustee shall be a party unless brought by Trustee.

- 7.5 Reliance. Trustee, upon presentation to it of an affidavit signed by Beneficiary (or Bond Trustee, on its behalf) setting forth facts showing a default by Trustor under this Deed of Trust, is authorized to accept as true and conclusive all facts and statements therein, and to act thereon hereunder, provided however, Beneficiary (or Bond Trustee, on its behalf) shall not be required to present any such affidavit to Trustee.
- 7.6 Replacement of Trustee. Beneficiary (or Bond Trustee, on its behalf solely at the direction of Bond Owner) may, from time to time, with or without cause, appoint another trustee in place and stead of Trustee herein named, and thereupon Trustee herein named shall be discharged and the trustee so appointed shall be substituted as Trustee hereunder, with the same effect as if originally named Trustee herein.
- 7.7 **INDEMNIFICATION OF TRUSTEE. EXCEPT FOR NEGLIGENCE OR WILLFUL MISCONDUCT, TRUSTEE SHALL NOT BE LIABLE FOR ANY ACT OR OMISSION OR ERROR OF JUDGMENT. TRUSTEE MAY RELY ON ANY DOCUMENT BELIEVED BY HIM IN GOOD FAITH TO BE GENUINE. ALL MONEY RECEIVED BY TRUSTEE SHALL, UNTIL USED OR APPLIED AS HEREIN PROVIDED, BE HELD IN TRUST, BUT NEED NOT BE SEGREGATED (EXCEPT TO THE EXTENT REQUIRED BY LAW), AND TRUSTEE SHALL NOT BE LIABLE FOR INTEREST THEREON. TRUSTOR HEREBY INDEMNIFIES TRUSTEE AGAINST ALL LIABILITY AND EXPENSES THAT HE MAY INCUR IN THE PERFORMANCE OF HIS DUTIES HEREUNDER.**

8. NOTICES.

- 8.1 Trustee. Any notice or demand upon Trustee may be given or made at its address set forth above and below.

Trustor and Beneficiary. Any notice to or demand upon Trustor (including any notice of default or notice of sale) or notice to or demand upon Beneficiary (or Bond Trustee, on its behalf) shall be deemed to have been sufficiently made for all purposes when sent, addressed to the recipient at its address set forth above or to such other address as the recipient may have directed by notice in accordance herewith, via (i) United States first class mail, (ii) personal messenger, (iii) nationally recognized overnight delivery service, or (iv) facsimile, with a hard copy to follow by United States first class mail. Beneficiary (or Bond Trustee, on its behalf) shall cause a copy of any notice to Trustor to be sent to the following addresses; however, Beneficiary's (or Bond Trustee's on its behalf) failure to cause such copy to be sent shall not affect the validity of any attempted enforcement of Beneficiary's remedies under the Bond Loan Documents, nor shall Beneficiary (or Bond Trustee, on its behalf) be liable for any such failure:

RBC Community Investments, LLC  
600 Superior Avenue, Suite 2300  
Cleveland, Ohio 44114  
Attention: President and General Counsel

Nixon Peabody, LLP  
Exchange Place, 53 State Street  
Boston, MA 02109  
Attention: Roger Holmes

Wilmington Trust, National Association  
15950 North Dallas Parkway  
Suite 550  
Dallas, Texas 75248  
Attention: Dayna L. Smith

Copies of all notices provided hereunder shall be simultaneously provided to

CommunityBank of Texas, N.A.,  
5999 Delaware, Beaumont, Texas 77706-7607  
Attention: Stephen W. Rose

8.2 Waiver of Notice. The giving of notice may be waived in writing by the person or persons entitled to receive such notice, either before or after the time established for the giving of such notice.

9. MODIFICATIONS. Upon written request of any party then liable for any sum secured hereby, Beneficiary (and Bond Trustee, on its behalf) reserves the right to



extend the term, or otherwise modify the terms, hereof or of the Bond Note as Beneficiary (or Bond Trustee, on its behalf) and such person may from time to time deem appropriate and any such change shall not operate to release, in any manner, the liability of the original Trustor or Trustor's successors in interest.

10. SUCCESSORS AND ASSIGNS. All provisions herein contained shall be binding upon and inure to the benefit of the respective successors and assigns of the parties.
11. GOVERNING LAW; SEVERABILITY. This Deed of Trust shall be governed by the law of the State of Texas. In the event that any provision or clause of this Deed of Trust or the Bond Note conflicts with applicable law, the conflict shall not affect other provisions of this Deed of Trust or the Bond Note which can be given effect without the conflicting provision and to this end the provisions of this Deed of Trust and the Bond Note are declared to be severable.
12. TRUSTOR'S RIGHT TO POSSESSION. Trustor may be and remain in possession of the Property for so long as it is not in default hereunder or under the terms of the Bond Note and Trustor may, while it is entitled to possession of the Property, use the same.
13. MAXIMUM INTEREST. Trustor and Beneficiary (or Bond Trustee, on its behalf) intend to conform strictly to applicable usury laws. Therefore, the total amount of interest (as defined under applicable law) contracted for, charged or collected under the Bond Note or this Deed of Trust will never exceed the highest amount permitted by applicable law. If Beneficiary (or Bond Trustee, on its behalf) contracts for, charges or receives any excess interest, it will be deemed a mistake. Any unlawful contract or charge will be automatically reformed to conform to applicable law, and if Beneficiary (or Bond Trustee, on its behalf) has received excess interest, Beneficiary (or Bond Trustee, on its behalf) will either refund the excess to Trustor or credit the excess on the unpaid amounts owing under the Bond Note or this Deed of Trust. All amounts constituting interest will be spread throughout the full term of the Debt in determining whether interest exceeds lawful amounts.
14. ATTORNEYS' FEES AND OTHER EXPENSES. In the event of any default under this Deed of Trust, or in the event that any dispute arises relating to the interpretation, enforcement or performance of any obligation secured by this Deed of Trust, Beneficiary (or Bond Trustee, on its behalf) shall be entitled to collect from Trustor on demand all fees and expenses incurred in connection therewith, including but not limited to fees of attorneys, accountants, appraisers, environmental inspectors, consultants, expert witnesses, arbitrators, mediators and court reporters. Without limiting the generality of the foregoing, Trustor shall pay all such costs and expenses incurred in connection with: (a) arbitration or other alternative dispute resolution proceedings, trial court actions and appeals; (b) bankruptcy or other insolvency proceedings of Trustor, any guarantor or other

party liable for any of the obligations secured by this Deed of Trust or any party having any interest in any security for any of those obligations; (c) judicial or nonjudicial foreclosure on, or appointment of a receiver for, any of the Property; (d) post-judgment collection proceedings; (e) all claims, counterclaims, cross-claims and defenses asserted in any of the foregoing whether or not they arise out of or are related to this Deed of Trust; (f) all preparation for any of the foregoing; and (g) all settlement negotiations with respect to any of the foregoing.

15. **TIME OF ESSENCE.** Time is of the essence under this Deed of Trust and in the performance of every term, covenant and obligation contained herein.
16. **FIXTURE FILING.** This Deed of Trust constitutes a financing statement, filed as a fixture filing in the real estate records of the county of the state in which the real property described in Exhibit A is located, with respect to any and all fixtures included within the list of improvements and fixtures described in **Section 1.2** of this Deed of Trust and to any goods or other personal property that are now or hereafter will become a part of the Property as fixtures.
17. **WAIVERS.** Trustor waives all suretyship defenses that may lawfully be waived, including but not limited to notice of acceptance of this Deed of Trust, notice of the incurrence, acquisition or subordination of any amounts secured hereby, credit extended, collateral received or delivered or other action taken in reliance on this Deed of Trust, notices and all other demands and notices of any description. With respect to both any amounts secured hereby and the Property, Trustor assents to any extension or postponement of the time of payment or any other indulgence, to any substitution, exchange or release of or failure to perfect Beneficiary's security interest or lien in any of the Property, to the addition or release of any person primarily or secondarily liable, to the acceptance of partial payment thereon and the settlement, compromising or adjusting of any thereof, all in such manner and at such time or times as Beneficiary (or Bond Trustee, on its behalf) may deem advisable.
18. **WAIVER AND FAIR MARKET VALUE DETERMINATION. NOTWITHSTANDING THE PROVISIONS OF SECTIONS 51.003, 51.004, AND 51.005 OF THE TEXAS PROPERTY CODE (AS THE SAME MAY BE AMENDED FROM TIME TO TIME), AND TO THE EXTENT PERMITTED BY LAW, TRUSTOR AGREES THAT BENEFICIARY (OR BOND TRUSTEE, ON ITS BEHALF) SHALL BE ENTITLED TO SEEK A DEFICIENCY JUDGMENT FROM TRUSTOR AND ANY OTHER PARTY OBLIGATED ON THE INDEBTEDNESS SECURED HEREBY EQUAL TO THE DIFFERENCE BETWEEN THE AMOUNT OWING ON THE INDEBTEDNESS SECURED HEREBY AND THE AMOUNT FOR WHICH THE PROPERTY WAS SOLD PURSUANT TO A JUDICIAL OR NONJUDICIAL FORECLOSURE SALE. TRUSTOR EXPRESSLY RECOGNIZES THAT THIS SECTION CONSTITUTES A WAIVER OF THE ABOVE-CITED PROVISIONS OF THE TEXAS PROPERTY CODE WHICH WOULD OTHERWISE PERMIT TRUSTOR AND OTHER PERSONS AGAINST WHOM RECOVERY OF**

**DEFICIENCIES IS SOUGHT (EVEN ABSENT THE INITIATION OF DEFICIENCY PROCEEDINGS AGAINST THEM) TO PRESENT COMPETENT EVIDENCE OF THE FAIR MARKET VALUE OF THE PROPERTY AS OF THE DATE OF FORECLOSURE AND OFFSET AGAINST ANY DEFICIENCY THE AMOUNT BY WHICH THE FORECLOSURE SALE PRICE IS DETERMINED TO BE LESS THAN SUCH FAIR MARKET VALUE. TRUSTOR FURTHER RECOGNIZES AND AGREES THAT THIS WAIVER CREATES AN IRREFUTABLE PRESUMPTION THAT THE FORECLOSURE SALE PRICE IS EQUAL TO THE FAIR MARKET VALUE OF THE PROPERTY FOR PURPOSES OF CALCULATING DEFICIENCIES OWED BY GUARANTOR, TRUSTOR AND OTHERS AGAINST WHOM RECOVERY OF A DEFICIENCY IS SOUGHT.** Alternatively, in the event this waiver is determined by a court of competent jurisdiction to be unenforceable, the following shall be the basis for the finder of fact's determination of the fair market value of the Property as of the date of the foreclosure sale in proceedings governed by Sections 51.003, 51.004, and 51.005 of the Texas Property Code (as amended from time to time):

- 18.1 The Property shall be valued in an "as is" condition as of the date of the foreclosure sale, without any assumption or expectation that the Property will be repaired or improved in any manner before a resale of the Property after foreclosure;
- 18.2 The valuation shall be based upon an assumption that the foreclosure purchaser desires a prompt resale of the Property for cash promptly (but no later than twelve months) following the foreclosure sale;
- 18.3 All reasonable closing costs customarily borne by the seller in a commercial real estate transaction should be deducted from the gross fair market value of the Property, including, without limitation, brokerage commissions, title insurance, a survey of the Property, tax proration, attorneys' fees, and marketing costs;
- 18.4 The gross fair market value of the Property shall be further discounted to account for any estimated holding costs associated with maintaining the Property pending sale, including, without limitation, utility expenses, property management fees, taxes, and assessments (to the extent not accounted for in **Section 18.3** immediately above), and other maintenance expenses; and

Any expert opinion testimony given or considered in connection with a determination of the fair market value of the Property must be given by persons having at least five (5) years' experience in appraising property similar to the Property and who have conducted and prepared a complete written appraisal of the Property taking into consideration the factors set forth above.

19. **NO ORAL AGREEMENTS.** THIS WRITTEN AGREEMENT AND THE OTHER LOAN DOCUMENTS REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS BETWEEN THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.
20. **MISCELLANEOUS.** Whenever the context so requires the singular number includes the plural herein, and the impersonal includes the personal. The headings to the various sections have been inserted for convenient reference only and shall not modify, define, limit or expand the express provisions of this Deed of Trust. This Deed of Trust, the Bond Note and the other Loan Documents constitute the final expression of the entire agreement of the parties with respect to the transactions set forth therein. No party is relying upon any oral agreement or other understanding not expressly set forth in the Bond Loan Documents. The Bond Loan Documents may not be amended or modified except by means of a written document executed by the party sought to be charged with such amendment or modification. Notwithstanding anything herein to the contrary, Trustor acknowledges and agrees that the rights of Beneficiary under this Deed of Trust have been assigned to under the Indenture to Bond Trustee and notwithstanding anything herein to the contrary, Bond Trustee shall only act at the direction of the Bond Owner under this Deed of Trust.
21. [Reserved]
22. **EXTENDED LOW-INCOME HOUSING COMMITMENT.** The Beneficiary (or Bond Trustee, on its behalf) agrees that the lien of this Deed of Trust shall be subordinate to any extended low-income housing commitment (as such term is defined in Section 42 (h)(6)(B) of the Internal Revenue Code) (the "Extended Use Agreement") recorded against the Property; provided that such Extended Use Agreement, by its terms, must terminate upon foreclosure under this Deed of Trust or upon a transfer of the Property by instrument in lieu of foreclosure or comparable conversion of the Bond Loan, in accordance with Section 42 (h)(6)(E) of the Internal Revenue Code. The Trustor acknowledges and agrees that any default, Event of Default, or breach (however such terms may be defined) under the Extended Use Agreement that would have a material adverse effect on the LIHTCs, the Trustor, or the Beneficiary (or Bond Trustee, on its behalf or the Bond Owner, as the case may be) shall be an Event of Default under this Deed of Trust and that any costs, damages or other amounts, including reasonable attorneys' fees incurred by the Beneficiary (or Bond Trustee, on its behalf) as a result of an Event of Default by the Trustor and any amounts paid to cure any default under the Extended Use Agreement, shall be an obligation of the Trustor and become a part of the indebtedness secured by this Deed of Trust.
23. **VENUE AND JURISDICTION.** THE EXCLUSIVE VENUE FOR THIS DEED OF TRUST SHALL BE THE STATE OF TEXAS. NOTWITHSTANDING ANYTHING

TO THE CONTRARY SET FORTH IN THIS DEED OF TRUST, THE UNDERSIGNED AND ANY PARTY ACCEPTING THIS DEED OF TRUST HEREBY AGREE THAT THE STATE AND FEDERAL COURTS LOCATED IN SHELBY COUNTY, TEXAS SHALL HAVE EXCLUSIVE JURISDICTION AND VENUE WITH RESPECT TO ALL ACTIONS BROUGHT BY OR AGAINST ANY PARTY UNDER OR PURSUANT TO THIS DEED OF TRUST, AND THE UNDERSIGNED AND ANY PARTY ACCEPTING THIS DEED OF TRUST HEREBY CONSENT TO THE EXCLUSIVE JURISDICTION OF SUCH COURTS.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

CENTER 818 COTTON FORD ROAD, LP, a  
Texas limited partnership

By: Center 818 Cotton Ford Road GP, LLC,  
a Texas limited liability company, its  
General Partner

By: ITEX Advisors, LLC, a Texas  
limited liability company, a  
Manager

By: The ITEX Group Management,  
LLC, a Texas limited liability  
company, a Manager

By: \_\_\_\_\_  
Christopher A. Akbari, its  
Manager

STATE OF \_\_\_\_\_ §  
                                                          §  
COUNTY OF \_\_\_\_\_ §

This instrument was acknowledged before me on \_\_\_\_\_, 2022, by Christopher A. Akbari, Manager of The Itex Group Management, LLC, a Texas limited liability company, on behalf of said limited liability company, manager of ITEX Advisors, LLC, a Texas limited liability company, manager of Center 818 Cotton Ford Road GP, LLC, a Texas limited liability company, general partner of CENTER 818 COTTON FORD ROAD, LP, a Texas limited partnership.

(S E A L)

\_\_\_\_\_  
Notary Public  
State of \_\_\_\_\_

My Commission Expires:  
\_\_\_\_\_

**EXHIBIT A**  
LEGAL DESCRIPTION

## **EXHIBIT "B"**

This conveyance is made and accepted subject to the following Permitted Encumbrances:

1. Shortages in area.
2. Standby fees, taxes and assessments by any taxing authority for the year 2022, and subsequent years, and subsequent taxes and assessments by any taxing authority for prior years due to change in land usage or ownership, but not those taxes or assessments for prior years because of an exemption granted to a previous owner of the property under Section 11.13, Texas Tax Code.
3. The following matters and all terms of the documents creating or offering evidence of the matters:



[Union Acres]

PREPARED BY, AND AFTER  
RECORDING RETURN TO:

Greenberg Traurig LLP  
1000 Louisiana, Suite 1700  
Houston, Texas 77002  
Attention: Wayne A. Yaffee, Esq.

ASSIGNMENT OF DEED OF TRUST AND LOAN DOCUMENTS

KNOW ALL PERSONS BY THESE PRESENTS:

That **TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS**, a public and official agency of the State of Texas (herein designated as the "Assignor"), is made as of June 1, 2022, to be effective as of the date of delivery of the Financing Agreement described in Schedule 2, for and in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, does by these presents assign to the "Assignee" designated on Schedule 1 attached hereto (herein designated as the "Assignee") without recourse, warranty or representation of Assignor and excluding the Unassigned Issuer's Rights of Assignor as provided in the Trust Indenture between Assignor and Assignee dated as of June 1, 2022, to be effective as of the date of delivery of the Agreement, all of the Assignor's right, title and interest in and to, subject to the reserved rights stated therein, (i) the instruments ("Assigned Instruments") described on Schedule 1 attached hereto, and (ii) all other documents, instruments, rights and privileges described on Schedule 2 attached hereto to the extent Assignor has an interest in the same.

TOGETHER with the Promissory Note described in the Assigned Instruments, and the money due and to become due thereon, with the interest thereon (but excluding the Unassigned Issuer's Rights), TO HAVE AND TO HOLD the same unto the said Assignee forever, subject only to all the provisions contained therein, AND the said Assignor hereby constitutes and appoints the Assignee as the Assignor's true and lawful attorney, irrevocable in law or in equity, in the Assignor's name, place and stead, but at Borrower's cost and expense, to have, use and take all lawful ways and means for the recovery of all of the said money and interest; and in case of payment, to discharge the same as fully as the Assignor might or could if these presents were not made.

In all references herein to any parties, persons, entities or corporations the use of any particular gender on the plural or singular number is intended to include the appropriate gender or number as the text of the within instrument may require.

**IN WITNESS WHEREOF**, the said Assignor has hereunto set its hand or caused these presents to be signed by its proper corporate officer as of the date first set forth above.

TEXAS DEPARTMENT OF HOUSING AND  
COMMUNITY AFFAIRS, a public and official  
agency of the State of Texas

By: \_\_\_\_\_  
Name: James B. "Beau" Eccles  
Title: Secretary to Board

STATE OF TEXAS )  
 )  
COUNTY OF TRAVIS )

Before me, \_\_\_\_\_, on this day personally appeared James B. "Beau" Eccles, known to me to be the person whose name is subscribed to the foregoing instrument, and known to me to be the Secretary to Board of TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS, a public and official agency of the State of Texas, and acknowledged to me that he executed said instrument for the purposes and consideration therein expressed.

Given under my hand and seal of office this \_\_\_ day of \_\_\_\_\_, 2022.

\_\_\_\_\_  
Notary Public

(SEAL)

My Commission Expires:

\_\_\_\_\_

SCHEDULE 1  
TO  
ASSIGNMENT OF DEED OF TRUST AND LOAN DOCUMENTS

"ASSIGNEE" (AND ADDRESS):

Wilmington Trust, National Association,  
as Trustee under that certain Trust Indenture  
dated as of June 1, 2022  
15950 North Dallas Parkway, Suite 550  
Dallas, Texas 75248

ASSIGNED INSTRUMENTS:

1. Promissory Note by Center 818 Cotton Ford Road, LP, a Texas limited partnership ("Borrower"), to Assignor made on June \_\_, 2022, to be effective as of the date of delivery of the Financing Agreement, in the original principal sum of \$10,100 000.00.
2. Construction and Permanent Deed of Trust, Security Agreement, Assignment of Leases and Rents and Fixture Filing, made as of June 1, 2022, to be effective as of the date of delivery of the Financing Agreement from Borrower for the benefit of Assignor, which Instrument was recorded as Clerk's File No. \_\_\_\_\_ on \_\_\_\_\_, 2022, in the office of the County Clerk of Shelby County, Texas and which encumbers the real property (and improvements thereon) which is particularly described in the attached Exhibit A.

SCHEDULE 2  
TO  
ASSIGNMENT OF DEED OF TRUST AND BOND LOAN DOCUMENTS

Each of the following are made as of June 1, 2022, to be effective as of the date of delivery of the Financing Agreement.

1. The Financing Agreement among the Assignor, Borrower and CommunityBank of Texas. N.A.
2. Payment and Performance Guaranty (The ITEX Group, LLC, ITEX Partners, LLC, ITEX Development, LLC, and Christopher A. Akbari).
3. Collateral Assignment of Rights to Tax Credits and Partnership Interests.
4. Any and all other Bond Loan Documents or Bond Documents (each as defined in the Financing Agreement) in connection with the transaction whereby proceeds of the Assignor's Multifamily Housing Mortgage Revenue Bonds (Union Acres Project) Series 2022 in the amount of \$10,100,000.00 have been loaned by Assignor to Borrower.

EXHIBIT A

Property

**TAX EXEMPTION CERTIFICATE AND AGREEMENT**

Dated as of

June 1, 2022

among

**Texas Department of Housing and Community Affairs,**  
as Issuer

and

**Wilmington Trust, National Association,**  
as Trustee

and

**Center 818 Cotton Ford Road, LP,**  
as Borrower

regarding

**\$10,100,000**

**Texas Department of Housing and Community Affairs**  
**Multifamily Housing Mortgage Revenue Bonds**  
**(Union Acres Project)**  
**Series 2022**

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## TAX EXEMPTION CERTIFICATE AND AGREEMENT

THIS TAX EXEMPTION CERTIFICATE AND AGREEMENT (this “Agreement”) dated as of June 1, 2022, but effective as of the Issue Date of the Bonds (as defined below) is among the **Texas Department of Housing and Community Affairs** (together with its successors and assigns, the “Issuer”), a public and official agency of the State (as defined herein), **Wilmington Trust, National Association**, a national banking association organized and existing under the laws of the United States of America, as Trustee under the hereinafter defined Indenture (together with any successor Trustee under the Indenture described below and their respective successors and assigns, the “Trustee”), and **Center 818 Cotton Ford Road, LP**, a Texas limited partnership (together with its permitted successors and assigns, the “Borrower”) and is entered into in connection with the issuance of the \$10,100,000 Texas Department of Housing and Community Affairs Multifamily Housing Mortgage Revenue Bonds (Union Acres Project) Series 2022 (the “Bonds”). The representations of facts and circumstances and the covenants of the Issuer made herein are made in part for purposes of fulfilling the requirements set forth in section 1.148-2(b)(2) of the Regulations (as defined herein).

### RECITALS

WHEREAS, the Governing Board of the Issuer has determined to authorize the issuance of the Bonds pursuant to and in accordance with the terms of an Indenture (as defined herein) by and between the Issuer and the Trustee for the purpose of obtaining funds to finance the Project (as defined herein), all under and in accordance with the Constitution and laws of the State (as defined herein); and

WHEREAS, the Issuer desires to use the Proceeds (as defined herein) of the Bonds to fund a mortgage loan to the Borrower (i.e., the Bond Loan, as defined herein) upon the terms and conditions set forth in the Financing Agreement (as defined herein) in order to finance costs of the Project; and

WHEREAS, the Issuer and the Borrower desire that interest on the Bonds be excludable from gross income for federal income tax purposes under the Code (as defined herein); and

WHEREAS, the purpose of executing this Agreement is to set forth various facts, certifications, covenants, representations, and warranties regarding the Bonds and the Project and to establish the expectations of the Issuer, the Borrower, and the Trustee as to future events regarding the Bonds, the Project, and the use and investment of Proceeds of the Bonds.

NOW THEREFORE, in consideration of the premises and the mutual representations, covenants and undertakings set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the undersigned do hereby certify, covenant, represent, and agree on behalf of the Issuer, the Borrower, and the Trustee (but not in their individual capacities), respectively, as follows:

1. **Definitions.** Each capitalized term used in this Agreement has the meaning ascribed to such term below or has the meaning or is the amount, as the case may be, specified for such term in this Agreement or in Exhibits to this Agreement and for all purposes hereof has the meaning or is in the amount therein specified. All capitalized terms used but not defined herein,

to the extent that such terms are defined in the Indenture, the Financing Agreement, or the Regulatory Agreement for all purposes hereof have the meanings therein specified. All such terms defined in the Code or Regulations that are not defined herein will for all purposes hereof have the same meanings as given to those terms in the Code and Regulations unless the context clearly requires otherwise.

**“Bond Counsel”** means any counsel nationally recognized as having an expertise in connection with the excludability of interest on obligations of states and local governmental units from gross income for federal income tax purposes, and initially shall mean Bracewell LLP.

**“Bond Fund”** means the “Bond Fund” established pursuant to the Indenture, with the “Interest Account,” “Principal Account,” and “Redemption Account” therein.

**“Bond Loan”** means the loan of Proceeds of the Bonds from the Issuer to the Borrower pursuant to the terms of the Financing Agreement.

**“Bond Year”** means each one-year period that ends on the day selected by the Borrower in a certificate provided to the Issuer and the Trustee. The first and last bond years may be short periods. If no day is selected by the Borrower before the earlier of the final maturity date of the Bonds or the date that is five years after the Issue Date of the Bonds, a bond year will end on each anniversary of the Issue Date of the Bonds and on the final maturity date of the Bonds.

**“Code”** means the Internal Revenue Code of 1986, as amended, and, with respect to a specific section thereof, such reference is deemed to include (a) the Regulations promulgated under such section, (b) any successor provision of similar import hereafter enacted, (c) any corresponding provision of any subsequent Internal Revenue Code and (d) the regulations promulgated under the provisions described in (b) and (c).

**“Computation Date”** means each Installment Computation Date and the Final Computation Date.

**“Costs of Issuance Fund”** means the “Costs of Issuance Fund” established pursuant to the Indenture.

**“Costs of Issuance”** means costs to the extent incurred in connection with, and allocable to, the issuance of an issuance of obligations within the meaning of section 147(g) of the Code. For example, Costs of Issuance include the following costs, but only to the extent incurred in connection with, and allocable to, the borrowing: underwriters’ spread; counsel fees; financial advisory fees; fees paid to an organization to evaluate the credit quality of an issue; trustee fees; paying agent fees; bond registrar, certification and authentication fees; accounting fees; printing costs for bonds and offering documents; public approval process costs; engineering and feasibility study costs; guarantee fees, other than qualified guarantees; and similar costs.

**“Favorable Opinion of Bond Counsel”** means, with respect to any action, or omission of an action, the taking or omission of which requires such an opinion, an unqualified written opinion of Bond Counsel to the effect that such action or omission does not adversely affect the excludability from gross income for federal income tax purposes of interest payable on the Bonds under existing law (subject to the inclusion of any exceptions contained in the opinion of Bond

Counsel delivered upon the original issuance of the Bonds or other customary exceptions acceptable to the recipient thereof).

“**Final Computation Date**” means the date on which the final payment in full of the Bonds is made.

“**Financial Advisor**” means Stifel, Nicolaus & Company, Incorporated.

“**Financing Agreement**” means the Financing Agreement among the Issuer, the Purchaser, and the Borrower, dated as of June 1, 2022.

“**Form 8038**” means IRS Form 8038, Information Return for Tax-Exempt Private Activity Bond Issues.

“**Gross Proceeds**” means any Proceeds and any Replacement Proceeds.

“**Indenture**” means the Indenture by and between the Issuer and the Trustee, dated as of June 1, 2022.

“**Installment Computation Date**” means the last day of the fifth Bond Year and each succeeding fifth Bond Year.

“**Investment Proceeds**” has the meaning set forth in section 1.148-1(b) of the Regulations and, generally, consist of any amounts actually or constructively received from investing Proceeds.

“**IRS**” means the Internal Revenue Service.

“**Issue Date**” means, with respect to an issue of obligations, the first date on which an issuer receives the purchase price in exchange for delivery of the evidence of indebtedness representing any obligation.

“**Issue Price**” has the meaning ascribed to it in section 1.148-1(f) of the Regulations.

“**Median Gross Income for the Area**” means, with respect to the Project, the median income for the households in the area which includes the standard metropolitan statistical area in which the Project is located, as determined from time to time by the Secretary of HUD, under Section 8 of the Housing Act (or if such program is terminated, median income determined under the program in effect immediately before such termination), in each case as adjusted for family size.

“**Minor Portion**” means that portion of the Gross Proceeds of the Bonds that does not exceed in the aggregate \$100,000.

“**Net Proceeds**” means Sale Proceeds, less the portion of any Sale Proceeds invested in a reasonably required reserve or replacement fund.

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

**“Official Intent Date”** means October 14, 2021.

**“Original Issue Discount”** means the excess of the Stated Redemption Price at Maturity over the Issue Price.

**“Original Issue Premium”** means the excess of the Issue Price over the Stated Redemption Price at Maturity.

**“Other Funds”** means, collectively, the “Mortgage Recovery Fund” and the “Servicing Fund” established pursuant to the Indenture.

**“Permitted Investments”** has the meaning set forth in the Indenture.

**“Placed in Service”** has the meaning set forth in section 1.150-2(c) of the Regulations and means, with respect to a facility, the date on which, based on all the facts and circumstances, (a) the facility reaches a degree of completion that will permit its operation at substantially its design level, and (b) the facility is, in fact, in operation at such level.

**“Pre-Issuance Accrued Interest”** has the meaning set forth in section 1.148-1(b) of the Regulations and, generally, means amounts representing interest that accrued on an obligation for a period not greater than one year before its Issue Date but only if those amounts are paid within one year after the Issue Date.

**“Preliminary Expenditures”** are described in section 1.150-2(f)(2) of the Regulations and include architectural, engineering, surveying, soil testing, reimbursement bond issuance and similar costs that are incurred prior to commencement of acquisition, construction or rehabilitation of a project, but do not include land acquisition, site preparation and similar costs incident to the commencement of construction or rehabilitation.

**“Proceeds”** has the meaning set forth in section 1.148-1(b) of the Regulations and, generally, means any Sale Proceeds and Investment Proceeds.

**“Project”** means an approximately 100-unit multifamily housing development located at 818 Cotton Ford Road, Center, Shelby County, Texas 75935.

**“Project Fund”** means the “Project Fund” established pursuant to the Indenture.

**“Purchaser”** means CommunityBank of Texas, N.A..

**“Qualified Administrative Costs”** are those costs of issuing, carrying or repaying the Bonds, and any underwriter’s discount. Qualified Administrative Costs do not include the costs of issuing, carrying or repaying the Bond Loan.

**“Qualified Project Costs”** means costs of the Project that meet the following requirements:

(a) The costs are chargeable to a capital account with respect to the Project for federal income tax purposes, or would be so chargeable either with a proper election by the Borrower or but for the proper election by the Borrower to deduct those amounts; provided, however, that only such portion of the interest accrued on the Bonds during, and fees for a “qualified guarantee” (within the meaning of section 1.148-4 of the Regulations) attributable to the period of, the rehabilitation of the Project will constitute Qualified Project Costs as bear the same ratio to all such interest or fees, as applicable, as the Qualified Project Costs bear to all costs of the Project.

(b) If any portion of the Project is being constructed or rehabilitated by the Borrower or a Related Person to the Borrower (whether as a general contractor or a subcontractor), such costs include only (i) the actual out-of-pocket costs incurred by the Borrower or such Related Person in constructing or rehabilitating the Project (or any portion thereof), (ii) any reasonable fees for supervisory services actually rendered by the Borrower or such Related Person (but excluding any profit component) and (iii) any overhead expenses incurred by the Borrower or such Related Person that are directly attributable to the work performed on the Project and do not include, for example, intercompany profits resulting from members of an affiliated group (within the meaning of section 1504 of the Code) participating in the rehabilitation of the Project or payments received by such Related Person due to early completion of the Project (or any portion thereof).

(c) The costs are not Costs of Issuance.

(d) (i) The costs were paid no earlier than 60 days prior to the Official Intent Date and (ii) the reimbursement allocation is made no later than 18 months after the later of (A) the date the expenditure was paid and (B) the date the Project is Placed in Service or abandoned, but in no event more than three years after the original expenditure is paid; provided that such limitations do not apply to any amount not in excess of \$100,000 or to Preliminary Expenditures that do not exceed 20 percent of the Sale Proceeds of the Bonds.

**“Qualified Project Period”** means, with respect to the Project, the period beginning on the first day on which 10 percent of the Units are occupied (which date may be the Issue Date of the Bonds) and ending on the latest of (a) the date that is 15 years after the date on which 50 percent of the Units are occupied (which date may be the Issue Date of the Bonds), (b) the first day on which no tax-exempt private activity bond (as that phrase is used in section 142(d)(2) of the Code) issued with respect to the Project is outstanding for federal income tax purposes or, (c) the date on which any assistance provided with respect to the Project under Section 8 of the Housing Act terminates.

**“Qualifying Tenant”** means a tenant whose Annual Income is 60 percent or less of Median Gross Income for the Area, as determined under sections 142(d)(2)(B) and (E) of the Code. If all the occupants of a Unit are students (as defined under section 152(f)(2) of the Code), no one of whom is entitled to file a joint return under section 6013 of the Code, such occupants are not Qualifying Tenants, unless such students meet the qualifications under section 42(i)(3)(D) of the Code.

**“Rebate Amount”** has the meaning set forth in section 1.148-3(b) of the Regulations and, generally, means the excess, as of any date, of the future value of all receipts on Nonpurpose Investments over the future value of all payments on Nonpurpose Investments all as determined in accordance with section 1.148-3 of the Regulations.

**“Rebate Analyst”** means a Person that is (a) qualified and experienced in the calculation of rebate payments under section 148 of the Code, (b) chosen by the Borrower, and (c) engaged for the purpose of determining the amount of required deposits, if any, to the Rebate Fund.

**“Rebate Fund”** means the “Rebate Fund” established pursuant to the Indenture.

**“Regulations”** means the applicable proposed, temporary or final Treasury Regulations promulgated under the Code or, to the extent applicable to the Code, under the Internal Revenue Code of 1954, as such regulations may be amended or supplemented from time to time.

**“Regulatory Agreement”** means the Regulatory and Land Use Restriction Agreement, among the Issuer, the Trustee, and the Borrower, dated as of June 1, 2022.

**“Related Party”** means, in reference to a governmental unit or a 501(c)(3) organization, any member of the same controlled group, and, in reference to a person that is not a governmental unit or a 501(c)(3) organization, a Related Person.

**“Related Person”** has the meaning set forth in section 144(a)(3) of the Code. A person is a “Related Person” to another person if the relationship between such persons would result in a disallowance of losses under sections 267 or 707(b) of the Code or such persons are members of the same controlled group of corporations (as defined in section 1563(a) of the Code, except that “more than 50 percent” is substituted for “at least 80 percent” each place it appears therein).

**“Replacement Proceeds”** has the meaning set forth in section 1.148-1(c) of the Regulations and, generally, consist of amounts that have a sufficiently direct nexus to an issue of obligations or the governmental purpose of an issue of obligations to conclude that the amounts would have been used for that governmental purpose if the Proceeds were not used or to be used for that governmental purpose.

**“Revenue Fund”** means the “Revenue Fund” established pursuant to the Indenture.

**“Sale Proceeds”** has the meaning set forth in section 1.148-1(b) of the Regulations and, generally, consist of any amounts actually or constructively received from the sale (or other disposition) of any obligation, including amounts used to pay underwriters’ discount or compensation and accrued interest other than Pre-Issuance Accrued Interest. Sale Proceeds also include amounts derived from the sale of a right that is associated with any obligation and that is described in section 1.148-4(b)(4) of the Regulations.

**“State”** means the State of Texas.

**“Stated Redemption Price at Maturity”** means the amount fixed by the last modification of the purchase agreement and includes interest and other amounts payable at that time (other than

any interest based on a fixed rate and payable unconditionally at fixed periodic intervals of one year or less during the entire term of the debt instrument).

**“Substantial User”** has the meaning given to such term in section 1.103-11(b) of the Regulations, and generally includes any person who regularly uses a part of a facility in its trade or business and (i) such facility, or part thereof, is specifically constructed, reconstructed, or acquired for such person or (ii) such person (A) receives more than five percent of the total revenue derived by all users of such facility as gross revenue or (B) occupies more than five percent of the entire usable area of the facility.

**“Unit”** means a residential accommodation containing separate and complete facilities for living, sleeping, eating, cooking and sanitation; provided that, a residential accommodation will not fail to be treated as a “Unit” merely because it is a single-room occupancy unit (within the meaning of section 42 of the Code).

**“Weighted Average Maturity”** means the sum of the products of the Issue Price and the number of years to maturity (taking into account mandatory redemptions) of an obligation, divided by the aggregate Sale Proceeds of such obligation.

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

**“Yield Reduction Payments”** means amounts paid in accordance with section 1.148-5(c) of the Regulations that are treated as payments that reduce the Yield on an investment.

**“40-60 Test”** means the requirement set forth in section 142(d)(1)(B) of the Code providing that 40 percent or more of the Units in the Project be occupied by individuals whose income is 60 percent or less of the Median Gross Income for the Area.

## 2. Authorized Representatives.

(a) **Issuer.** The undersigned representative of the Issuer represents that such representative (i) is charged, along with others, with the responsibility for the Bonds and, as such, the undersigned is familiar with the facts herein certified and is authorized on behalf of the Issuer to execute and deliver this Agreement and (ii) is aware of the provisions of sections 103 and 142 through 150, inclusive, of the Code. To the extent that the representations, expectations, certifications, covenants and warranties set forth herein are based on information and data accumulated and analyzed by Issuer personnel and consultants to the Issuer, the undersigned representative of the Issuer has reviewed such representations, expectations, certifications, covenants and warranties with such personnel and consultants to confirm their completeness and accuracy.

(b) Borrower. The undersigned representative of the Borrower represents that such representative (i) is a duly chosen, qualified and acting officer or other representative of the Borrower, which will be the owner of the Project and, as such, the undersigned is familiar with the facts herein certified and is authorized on behalf of the Borrower to execute and deliver this Agreement and (ii) is aware of the provisions of sections 103 and 142 through 150, inclusive, of the Code. To the extent that the representations, expectations, certifications, covenants and warranties set forth herein are based on information and data accumulated and analyzed by Borrower personnel and consultants to the Borrower, the undersigned representative of the Borrower has reviewed such representations, expectations, certifications, covenants and warranties with such personnel and consultants to confirm their completeness and accuracy.

(c) Trustee. The undersigned representative of the Trustee represents that such representative is a duly chosen, qualified and acting officer or other representative of the Trustee and is authorized on behalf of the Trustee to execute and deliver this Agreement.

3. Reasonable Expectations. The Issuer and the Borrower hereby affirm that the facts and estimates that are set forth in this Agreement are accurate and the expectations that are set forth in this Agreement are reasonable in light of such facts and estimates. There are no other facts or estimates that would materially change such expectations. The Issuer has also relied, to the extent appropriate, on the (a) Certificate of Purchaser attached hereto as Exhibit A and (b) the Certificate of Financial Advisor attached hereto as Exhibit B. The undersigned representatives of the Issuer and the Borrower are aware of no fact, estimate or circumstance that would create any doubt regarding the accuracy or reasonableness of all or any portion of the representations set forth in such certificates.

4. Reliance on Borrower's Representations and Covenants. Except as otherwise indicated in this Agreement, the representations, expectations, certifications, covenants and warranties of the Issuer concerning the use and investment of the Proceeds of the Bonds and certain other matters described in this Agreement are based solely upon representations, expectations, certifications, covenants and warranties of the Borrower, as set forth in this Agreement or in the Exhibits attached hereto. In relying upon such representations, expectations, certifications, covenants and warranties of the Borrower, the Issuer has not made any independent investigations of the matters pertaining thereto. The Issuer is not aware of any facts or circumstances that would cause it to question the accuracy or reasonableness of any representation, expectations, certifications, covenants and warranties of the Borrower made in this Agreement or in the Exhibits attached hereto.

5. Completeness of Borrower Information. The Borrower has supplied or caused to be supplied to Bond Counsel all documents, instruments and written information requested by Bond Counsel, and all such documents, instruments and written information supplied by or on behalf of the Borrower at the request of Bond Counsel, which have been reasonably relied upon by Bond Counsel in rendering its opinion with respect to the excludability from gross income for federal income tax purposes of the interest on the Bonds, are true and correct in all material respects, do not contain any untrue statement of a material fact and do not omit to state any material fact necessary to be stated therein to make the information provided therein, in light of the circumstances under which such information was provided, not misleading, and the Borrower is



not aware of any other pertinent information for which Bond Counsel has not asked. After due investigation, there is no information not obtained, or any investigation or inspection not heretofore pursued, that would be relevant or material to the certifications set forth below.

6. General Requirements Relating to Issuance of the Bonds.

(a) Governmental Purpose. The Borrower has applied to the Issuer and been approved for the Bond Loan to be made from the Proceeds of the Bonds. The proceeds of the Bond Loan (and, thus, the Proceeds of the Bonds) will be used to finance a portion of the costs of the Project.

(b) Public Hearing and Approval. As required under section 147(f) of the Code, the Issuer hosted a public hearing on March 24, 2022, regarding the Bonds and the Project and for which there was reasonable public notice. The Attorney General of the State approved the issuance of the Bonds.

(c) Volume Cap. The Issuer has received from the Texas Bond Review Board a reservation of State private activity bond volume cap in an amount no less than the aggregate principal amount of the Bonds (or if greater, the Issue Price of the Bonds) for the purpose of issuing the Bonds to finance the Project.

(d) Issue. There are no other obligations that (i) are sold at substantially the same time as the Bonds (i.e., less than 15 days apart), (ii) are sold pursuant to the same plan of financing with the Bonds, and (iii) will be paid out of substantially the same source of funds as the Bonds.

(e) Form 8038. The Borrower has examined the completed Form 8038 with respect to the Bonds, including accompanying schedules and statements, and, to the best of the Borrower's knowledge and belief, the information in Parts IV and V, which was furnished by the Borrower, is true, correct, and complete. The Issuer will cause Form 8038 with respect to the Bonds to be filed timely with the IRS.

(f) Substantial User. No person that was a Substantial User of the Project at any time during the five-year period before the Issue Date of the Bonds or any Related Person to such Substantial User will (i) receive (directly or indirectly) more than five percent of the Proceeds of the Bonds for such user's interest in the Project and (ii) will be a Substantial User of the Project at any time during the five-year period after the Issue Date of the Bonds. For purposes of this subparagraph, a user that is a governmental unit within the meaning of section 1.103-1 of the Regulations is disregarded.

(g) Program Covenant. Neither the Borrower nor any Related Party of the Borrower is, or will be, a party to any agreement, formal or informal, pursuant to which it will purchase any of the Bonds in an amount related to the amount of the Bond Loan made to the Borrower unless the Borrower or such Related Party provides a Favorable Opinion of Bond Counsel to the Issuer.

(h) No Federal Guarantee. Neither the Issuer nor the Borrower will take any action that would result in all or any portion of the Bonds being treated as federally guaranteed within the meaning of section 149(b)(2) of the Code.

(i) Borrower's EIN. The Borrower represents that the Borrower's EIN is [\_\_\_\_\_].

7. Sale Proceeds of the Bonds. The amount of Sale Proceeds received by the Issuer from the sale of the Bonds is \$10,100,00, which represents the Stated Redemption Price at Maturity of the Bonds. The Sale Proceeds of the Bonds will be loaned to the Borrower and deposited as follows:

(a) The amount of \$[\_\_\_\_\_] will be deposited in the Project Account of the Project Fund and used to pay costs of the Project. The aggregate amount of the costs of the Project is anticipated to exceed such amount. Any costs of the Project not financed out of Proceeds of the Bonds will be financed out of the Borrower's available funds.

(b) The amount of \$[\_\_\_\_\_] will be deposited in the Cost of Issuance Fund and disbursed to pay Costs of Issuance on the Bonds.

8. Pre-Issuance Accrued Interest. There is no Pre-Issuance Accrued Interest on the Bonds.

9. Use of Proceeds of the Bonds.

(a) Qualified Project Costs. At least 95 percent of the Net Proceeds of the Bonds actually expended will be used to pay or reimburse Qualified Project Costs. Not more than five percent of the Net Proceeds of the Bonds will be expended for or allocated to costs of the Project that are not Qualified Project Costs.

For purposes of this subparagraph (a) the Project includes only: (i) those portions of buildings included in the Project that are (A) separate and complete facilities for living, sleeping, eating, cooking and sanitation that will be used on other than a transient basis by one or more persons and that will be available on a regular basis for use by members of the general public and will be rented, or available for rental, on a continuous basis during the Qualified Project Period, and (B) facilities in building areas that are functionally related and subordinate thereto, such as centrally located machinery and equipment and common areas in a typical apartment building (but not including any health club facilities, except a facility that will be available only to tenants and their guests with no separate fee to be paid for the use of such facility); and (ii) land and other facilities that are properly allocable to such living facilities, such as parking areas and recreational areas for occupants of the living facilities.

Further, all of the allocable functionally related and subordinate land areas, facilities, and building areas taken into account in determining Qualified Project Costs under this subparagraph (a) are of a character and size commensurate with the number and size of the living facilities and are not functionally related and subordinate to, or properly allocable to, any other facilities.

(b) Additional Limitations.

(i) Costs of Issuance. Costs of Issuance in an amount of \$[ ] are expected to be paid out of the Net Proceeds of the Bonds. The Costs of Issuance financed out of Net Proceeds of the Bonds will not exceed in the aggregate two percent of the Sale Proceeds of the Bonds (i.e., \$[202,000]). Costs of Issuance in excess of two percent of Sale Proceeds of the Bonds will be paid by the Borrower from sources other than Net Proceeds of the Bonds.

(ii) Acquisition of Existing Property. No portion of the Net Proceeds of the Bonds will be used to pay or reimburse the cost of acquiring any property or an interest therein unless, (i) the first use of such property is pursuant to such acquisition, except for land, or (ii) the rehabilitation expenditures with respect to any building and the equipment therefor equal or exceed 15 percent of the portion of the cost of acquiring such building and equipment financed with the Net Proceeds of the Bonds (with respect to structures other than buildings, this clause shall be applied by substituting 100 percent for 15 percent). For purposes of the preceding sentence, the term “rehabilitation expenditures” shall have the meaning set forth in section 147(d)(3) of the Code. If the Project has two or more buildings, the provisions regarding rehabilitation expenditures are to be applied on a project-wide basis. Net Proceeds of the Bonds in the amount of \$[ ] will be used to acquire the Project, and the rehabilitation expenditures with respect to the Project will equal or exceed 15 percent of such amount (i.e., \$[ ]).

(iii) Limitation on Land Acquisition. Less than 25 percent of the Net Proceeds of the Bonds will be used (directly or indirectly) to acquire land (or an interest therein) and no portion of the Net Proceeds of the Bonds will be used (directly or indirectly) for farming purposes. For this purpose, an amount is considered used for the acquisition of land (or an interest therein) to the extent of that portion of the acquisition cost of the Project that is properly allocable for all federal income tax purposes to the land component (including interests in land) of the Project. Net Proceeds of the Bonds in the amount of \$[ ] are expected to be used (directly or indirectly) to acquire land (or an interest therein), and such amount is less than 25 percent of the Net Proceeds of the Bonds (i.e., \$[2,525,000]).

(iv) Prohibited Facilities. None of the Proceeds of the Bonds will be used to acquire, construct, or equip, and no portion of the Project will be, an airplane, a skybox or any other type of luxury box, a health club facility, a facility primarily used for gambling, or a store the principal business of which is the sale of alcoholic beverages for consumption off premises; provided that, any fitness room functionally related to and subordinate to the Project for use by tenants of the Project or their guest is not considered a health club facility for purposes of this subparagraph.

(v) Payments to Related Persons. Any amount of Proceeds of the Bonds paid to a Related Person to the Borrower or any affiliated person that is not a

Related Person to the Borrower will not exceed an arm's-length charge that is the amount that would be charged to a person other than the Borrower. Further, any amount of Proceeds of the Bonds paid to a Related Person to the Borrower or any affiliated person that is not a Related Person to the Borrower would be paid under the same circumstances by a person other than the Borrower to such affiliated person or entity. Notwithstanding the foregoing, in no event will amounts of Proceeds of the Bonds that are paid to a Related Person to the Borrower be treated as spent until such amounts are spent on capital expenditures by such Related Person.

(vi) No Working Capital. Except for an amount that does not exceed five percent of the Sale Proceeds of the Bonds (and that is directly related to the Project), the Proceeds of the Bonds will only be expended for (A) costs that would be chargeable to the capital account of the Project if the Issuer's income were subject to federal income taxation; (B) interest on the Bonds in an amount that does not cause the aggregate amount of interest paid on the Bonds to exceed that amount of interest on the Bonds that is attributable to the period that commences on the Issue Date of the Bonds and ends on the later of (1) the date that is three years from the Issue Date of the Bonds or (2) the date that is one year after the date on which the Project is Placed in Service; and/or (C) fees for a qualified guarantee of the Bonds or payment for a qualified hedge on the Bonds.

(vii) No Pooling. The Proceeds of the Bonds are not being used directly or indirectly to make or finance loans to two or more ultimate unrelated borrowers.

(viii) Weighted Average Economic Life. The Weighted Average Maturity of the Bonds, as calculated by the Financial Advisor as set forth in Exhibit B hereto, is [WAM] years. The weighted average reasonably expected economic life of the portion of the Project financed with Proceeds of the Bonds is at least [WAM/1.2] years. Thus, the Weighted Average Maturity of the Bonds is not more than 120 percent of the weighted average reasonably expected economic life of the portion of the Project financed with Proceeds of the Bonds. Such weighted average reasonably expected economic life is determined in accordance with the following assumptions: (A) the weighted average is determined by taking into account the respective costs of each asset, excluding land; (B) the reasonably expected economic life of an asset is determined as of the later of (1) the Issue Date of the Bonds or (2) the date on which such asset is originally Placed in Service (or expected to be Placed in Service); and (C) the economic lives for the itemized assets are the useful lives that would have been used for depreciation purposes under section 167 of the Code prior to the enactment of the ACRS system under section 168 of the Code (i.e., the mid-point lives under the Class Life Asset Depreciation Range System of section 167(m) of the Code where applicable and the guideline lives under Revenue Procedure 62-21, 1962-2 C.B. 418, in the case of structures). The Borrower hereby covenants not to make any changes to the Project that would, at the time made, cause the remaining Weighted Average Maturity of the Bonds to be more than 120 percent of the remaining weighted average estimated economic life of the portion of the Project financed with Proceeds of the Bonds.

(c) Reimbursement. [The Borrower expects that it will use Proceeds of the Bonds in the amount of approximately \$[ ] to reimburse itself for expenditures paid prior to the Issue Date of the Bonds.] Other than (i) an amount not greater than \$100,000 and/or (ii) Preliminary Expenditures up to an amount not in excess of 20 percent of the Issue Price of the Bonds, no portion of the Proceeds of the Bonds will be disbursed to reimburse the Issuer, the Borrower or any Related Person to the Borrower for any expenditures paid or incurred prior to the date that is 60 days before the Official Intent Date, which is the date on which the Issuer adopted a resolution describing the Project, stating the maximum principal amount of obligations expected to be issued for the Project and stating the Issuer's reasonable expectation that expenditures for costs of the Project would be reimbursed with Proceeds of an obligation. Such resolution was not an official intent declared as a matter of course or in an amount substantially in excess of the amount expected to be necessary for the Project. Neither the Issuer nor the Borrower has engaged in a pattern of failure to reimburse actual original expenditures covered by official intents. Such reimbursed portion will be treated as spent for purposes of the "Funds—Project Fund" subparagraph herein and the "Compliance with Yield Reduction and Rebate Requirements; Rebate Fund" paragraph herein.

(d) Allocations and Accounting. The Borrower will prepare a final allocation of the Proceeds of the Bonds to expenditures not later than 18 months after the later of the date the original expenditure is made or the date the Project is Placed in Service, but in no event later than the date that is 60 days after the fifth anniversary of the Issue Date of the Bonds or the retirement of the Bonds, if earlier; provided that, if such allocation is made pursuant to a reimbursement expenditure described above, such reimbursement allocation will in no event be made later than the date that is three years after the date each such original expenditure is paid. The Borrower hereby elects to consistently allocate the expenditure of Proceeds of the Bonds to Qualified Project Costs of the Project. No Proceeds of the Bonds will be allocated to any expenditures to which Proceeds of any other tax-exempt obligations have heretofore been allocated.

10. Issue Price. In accordance with section 1.148-1(f)(2)(iv) of the Regulations, the Issuer hereby identifies in its books and records maintained for the Bonds the rule the Issuer will use to determine the Issue Price for each maturity of the Bonds as follows the rule set forth in the second sentence of section 1.148-1(f)(2)(i) of the Regulations, i.e. the Issue Price is the price paid by the single buyer. Based on the representations set forth in Exhibit A hereto, the aggregate Issue Price of the Bonds is \$10,100,000.

11. Yield on the Bonds. The Issuer and the Borrower hereby represent, covenant and agree as follows:

(a) The Yield on the Bonds is the discount rate that, when used in computing the present value as of the Issue Date of the Bonds, of all unconditionally payable payments of principal and interest on the Bonds, produces an amount equal to the present value, using the same discount rate, of the Issue Price of the Bonds plus any Pre-Issuance Accrued Interest as of the Issue Date of the Bonds.

(b) The Yield on the Bonds is calculated by treating the outstanding stated principal amounts payable on the mandatory redemption dates as payments on such dates because the Stated Redemption Price at Maturity of such Bonds does not exceed the Issue Price of the Bonds by more than one-fourth of one percent multiplied by the product of the Stated Redemption Price at Maturity and the number of years to the date of the Weighted Average Maturity (determined by taking into account the mandatory redemption schedule) of the Bonds.

(c) Neither the Issuer nor the Borrower has entered into any hedging transaction with respect to the Bonds, and each covenants not to enter into a hedging transaction with respect to the Bonds unless there is first received a Favorable Opinion of Bond Counsel.

12. Yield on the Bond Loan. The Issuer and the Borrower hereby represent, covenant and agree as follows:

(a) The Bond Loan is allocated to the Bonds. The Yield on the Bond Loan is computed using the same compounding interval and financial conventions used to compute the Yield on the Bonds. For the purposes of this Agreement, the Yield on the Bond Loan is the discount rate that, when used in computing the present value as of the Issue Date of the Bonds of all receipts with respect to the Bond Loan, produces an amount equal to the present value, using the same discount rate, of the aggregate payments with respect to the Bond Loan as of the Issue Date of the Bonds. The aggregate payments made to the Borrower with respect to the Bond Loan include no payments other than the “purchase price” of the Bond Loan. The purchase price of the Bond Loan is the amount loaned to the Borrower by the Issuer on the Issue Date of the Bonds, i.e. \$10,100,000.

(b) The Bond Loan is a purpose investment that the Issuer intends to treat as a “program investment” within the meaning of section 1.148-1 of the Regulations, because it is part of a governmental program (i) that involves the origination or acquisition of purpose investments; (ii) in which at least 95 percent of the cost of the purpose investments acquired under the program represents one or more loans to a substantial number of persons representing the general public, states or political subdivisions, organizations exempt from tax under section 501(c)(3) of the Code, persons who provide housing and related facilities, or any combination of the foregoing; (iii) in which at least 95 percent of the receipts from the purpose investments are used to pay principal, interest, or redemption prices on issues that financed the program, to pay or reimburse administrative costs of those issues or of the program, to pay or reimburse anticipated future losses directly related to the program, to finance additional purpose investments for the same general purposes of the program, or to redeem and retire governmental obligations at the next earliest possible date of redemption; and (iv) in which the program documents prohibit any obligor on a purpose investment financed by the program or any “related party,” within the meaning of section 1.150-1(b) of the Regulations, to that obligor from purchasing bonds of an issue that finance the program in an amount related to the amount of the purpose investment acquired from that obligor. The Issuer has not waived the right to treat the Bond Loan as a program investment.

(c) The receipts from the Borrower with respect to the Bond Loan include interest and principal payments with respect to the Bond Loan and the Qualified Administrative Costs paid by the Borrower, and the Qualified Administrative Costs paid by the Borrower have been taken into account, as provided by section 1.148-5(e) of the Regulations, for purposes of computing the yield on the Bond Loan. Because the Issuer intends to treat the Bond Loan as a “program investment” within the meaning of section 1.148-1 of the Regulations, the Qualified Administrative Costs do not include the costs or expenses paid, directly or indirectly, to purchase, carry, sell, or retire the Bond Loan, which include amounts paid directly to the Issuer as set forth in Exhibit C hereto.

13. Investment of Proceeds Pending Expenditure; No Arbitrage.

(a) Investment Proceeds. Amounts on deposit in the Bond Fund and the Project Fund may be comprised of Proceeds of the Bonds and amounts that are not Proceeds of the Bonds or any tax-exempt obligation. If Proceeds of the Bonds and amounts that are not Proceeds of the Bonds are commingled, the Borrower will take into account for purposes of its covenant to comply with the arbitrage and rebate requirements that Proceeds of the Bonds and amounts that are not Proceeds of the Bonds have been commingled as an investment. Investment Proceeds resulting from the investment of any Proceeds of the Bonds pending expenditure of such Proceeds for costs of the Project will be used to pay Qualified Project Costs or, if not used to pay Qualified Project Costs, such amounts will be treated as “bad costs.”

(b) Minor Portion and Yield Reduction Payments. All Gross Proceeds of the Bonds will be invested in accordance with the “Funds” paragraph herein. To the extent such amounts remain on hand following the periods set forth in the “Funds” paragraph herein or exceed the limits set forth in the “Funds” paragraph herein, such amounts will be invested at a restricted Yield as set forth in such paragraph; provided, however, that an amount not to exceed the Minor Portion may be invested at a Yield that is higher than the Yield on the Bonds and, provided further, that, if permitted by section 1.148-5(c) of the Regulations, the Yield restriction requirements may be satisfied by making Yield Reduction Payments to the federal government.

(c) Bonds Are Not Hedge Bonds. Not more than 50 percent of the Proceeds of the Bonds will be invested in Nonpurpose Investments having a substantially guaranteed Yield for four years or more. Further, at least 85 percent of the spendable Proceeds of the Bonds are reasonably expected to be used to carry out the governmental purposes of the Bonds within the three-year period beginning on the Issue Date of the Bonds.

(d) No Arbitrage. On the basis of the facts, estimates and circumstances set forth in this Agreement, it is expected by the Issuer and the Borrower that the Gross Proceeds of the Bonds will not be used in a manner that would cause the Bonds to be “arbitrage bonds” within the meaning of section 148 of the Code. To the best of the knowledge and belief of the undersigned representatives of the Issuer and the Borrower, there are no other facts, estimates or circumstances that would materially change such expectations. Except as provided in the Indenture and the Financing Agreement, the Borrower will not pledge or otherwise encumber, or permit the pledge or encumbrance of,

any money, investment, or investment property as security for payment of any amounts due under the Financing Agreement or the note relating to the Bond Loan, will not establish any segregated reserve or similar fund for such purpose and will not prepay any such amounts in advance of the redemption date of an equal principal amount of the Bonds, unless in each case there will have been delivered a Favorable Opinion of Bond Counsel. The Borrower will not, at any time prior to the final maturity of the Bonds, direct or permit the Trustee to invest Gross Proceeds of the Bonds in any investment (or to use Gross Proceeds of the Bonds to replace money so invested), if as a result of such investment the Yield of all investments acquired with Gross Proceeds (or with money replaced thereby) on or prior to the date of such investment exceeds the Yield of the Bonds to stated maturity, except as permitted by section 148 of the Code. The Issuer and the Borrower further covenant and agree that each will comply with and will take all action reasonably required to ensure that the Trustee complies with all applicable requirements of section 148 of the Code relating to the Bonds and the interest thereon.

(e) [Guaranteed Investment Contract. Proceeds of the Bonds may be deposited in a guaranteed investment contract (the “GIC”). If Proceeds of the Bonds are co-mingled as an investment in the GIC, the Borrower will take into account for purposes of its covenant to comply with the rebate requirement that proceeds of the Bonds and amounts that are not proceeds of the Bonds have been co-mingled as an investment in the GIC and will comply with the requirements of section 1.148-5(d)(6)(iii) of the Regulations.]

14. Covenants of Trustee Relating to Investment of Proceeds. The Trustee will invest funds held under the Indenture in accordance with the respective terms of the Indenture and this Agreement, which covenant will extend throughout the term of the Bonds, to all funds and accounts created under the Indenture and this Agreement and all moneys on deposit to the credit of any fund or account. Should the Issuer or the Borrower deliver notice (in the manner required under the Indenture or the Financing Agreement, as applicable) to the Trustee (it being understood that neither the Issuer nor the Borrower has an obligation to so deliver) or should the Trustee receive an opinion of Bond Counsel to the effect that any proposed investment or other use of Proceeds of the Bonds would cause the Bonds to become “arbitrage bonds” within the meaning of section 148 of the Code, then the Trustee will comply with any written direction of the Borrower regarding such investment or use so as to prevent the Bonds from becoming an “arbitrage bond.” The Issuer and the Borrower agree that, in complying with the provisions set forth under this paragraph, the Trustee will be deemed to have complied with such provisions and will have no liability to the extent the Trustee materially follows the written directions of the Borrower or the Issuer.

15. Compliance with Yield Reduction and Rebate Requirements; Rebate Fund.

(a) Covenant to Comply with Rebate Requirements. The Issuer and the Borrower covenant to comply with the requirement that (i) if Gross Proceeds of the Bonds have been invested at a Yield that is “materially higher” than the Yield on the Bonds and Yield Reduction Payments are permitted under section 1.148-5(c)(3) of the Regulations, Yield Reduction Payments be made to the federal government and (ii) “rebateable arbitrage earnings” on the investment of the Gross Proceeds of the Bonds, within the meaning of section 148(f) of the Code, be rebated to the federal government.



(b) Rebate Fund. The Indenture established the Rebate Fund, which will be maintained and held in trust by the Trustee and which will be disbursed and applied only as herein authorized in this “Compliance with Yield Reduction and Rebate Requirements; Rebate Fund” paragraph. Notwithstanding anything herein to the contrary, all provisions of the Indenture relating to the general administration of the funds created thereunder will apply to the Rebate Fund, and the Trustee is afforded all the rights, protections and immunities otherwise accorded to it thereunder as if the provisions set forth in this “Compliance with Yield Reduction and Rebate Requirements; Rebate Fund” paragraph were set forth in the Indenture.

(c) Delivery of Documents and Money by Borrower on Computation Dates. The Borrower will deliver to the Trustee and the Issuer, within 55 days after each Computation Date:

(i) (A) a statement, signed by an officer or other authorized representative of the Borrower, stating the Rebate Amount as of such Computation Date and the amount of any Yield Reduction Payments due, and (B) a copy of the report prepared by the Rebate Analyst in connection therewith;

(ii) (A) if such Computation Date is an Installment Computation Date, an amount that, together with any amount then held for the credit of the Rebate Fund, is equal to at least 90 percent of the Rebate Amount and Yield Reduction Payments due as of such Installment Computation Date, less any “previous rebate payments” (determined in accordance with section 1.148-3(f)(1) of the Regulations), made to the United States of America or (B) if such Computation Date is the Final Computation Date, an amount that, together with any amount then held for the credit of the Rebate Fund, is equal to the Rebate Amount and Yield Reduction Payments due as of such Final Computation Date, less any “previous rebate payments” (determined in accordance with section 1.148-3(f)(1) of the Regulations) made to the United States of America; and

(iii) an IRS Form 8038-T, Arbitrage Rebate, Yield Reduction and Penalty in Lieu of Arbitrage Rebate (“Form 8038-T”) properly signed and completed as of such Computation Date.

(d) Administration of Rebate Fund and Payment of Rebate.

(i) The Trustee will deposit or transfer to the credit of the Rebate Fund, pursuant to written direction from the Borrower, each amount delivered to the Trustee by the Borrower for deposit thereto and each amount directed by the Borrower to be transferred thereto. Within five days after each receipt or transfer of funds to the Rebate Fund, the Trustee will withdraw such funds from the Rebate Fund and pay such funds to the United States of America. The Trustee may conclusively rely on the instructions of the Borrower with regard to any actions to be taken by it pursuant to this paragraph and will have no liability for any consequences of any failure of the Borrower to perform its duties or obligations or to supply accurate or sufficient instructions. Except as specifically provided herein,

the Trustee will have no duty or responsibility with respect to the Rebate Fund or the Borrower's duties and responsibilities with respect thereto except to follow the Borrower's specific written instructions related thereto.

(ii) Moneys and securities held by the Trustee in the Rebate Fund will not be deemed funds of the Bonds and are not pledged or otherwise subject to any security interest in favor of the owners of the Bonds to secure the Bonds or any other obligations.

(iii) Moneys in the Rebate Fund will be separately invested and reinvested by the Trustee, at the written direction of the Borrower, in Permitted Investments, subject to the Code. The Trustee will sell and reduce to cash a sufficient amount of such Permitted Investments whenever the cash balance in the Rebate Fund is insufficient for its purposes. In the absence of written direction from the Borrower, the Trustee will not be responsible or liable for keeping the moneys held as part of the Rebate Fund fully invested.

(iv) The Borrower will provide to the Trustee and the Trustee will keep such records of the results of the computations made pursuant to this paragraph for a period of three years after the last Bond and any tax-exempt obligations issued to refinance the Bonds is retired. The Trustee will keep and make available to the Issuer and the Borrower such records concerning the investments of Gross Proceeds of the Bonds and the investments of earnings from those investments as may be requested by the Issuer or the Borrower in order to enable the Borrower to make the computations required under section 148(f) of the Code.

(e) Correction of Underpayments. If the Borrower discovers or is notified as of any date that any amount required to be paid to the United States of America pursuant to this Agreement has not been paid as required or that any payment paid to the United States of America pursuant to this Agreement has failed to satisfy any requirement of section 148(f) of the Code or section 1.148-3 of the Regulations (whether or not such failure is due to any default by the Borrower, the Issuer, or the Trustee), the Borrower will (i) deliver to the Trustee (for deposit to the Rebate Fund) and cause the Trustee to pay to the United States of America from the Rebate Fund (A) the Rebate Amount or Yield Reduction Payments due that the Borrower failed to pay, plus any interest specified in section 1.148-3(h)(2) of the Regulations, if such correction payment is delivered to and received by the Trustee within 175 days after such discovery or notice, or (B) if such correction payment is not delivered to and received by the Trustee within 175 days after such discovery or notice, the amount determined in accordance with clause (A) of this subparagraph plus the 100 percent penalty required by section 1.148-3(h)(1) of the Regulations, and (ii) deliver to the Trustee and the Issuer a Form 8038-T completed as of such date. If such Rebate Amount or Yield Reduction Payments, together with any penalty and/or interest due, is not paid to the United States of America in the amount and manner and by the time specified in the Regulations, the Borrower will take such steps as are necessary to prevent the Bonds from becoming "arbitrage bonds" within the meaning of section 148 of the Code.

(f) Identification of Rebate Analyst. The Borrower confirms that the contact information for the initial Rebate Analyst for the Bonds is:

Name:  
Address:  
Telephone:  
E-mail:

If the Borrower determines to engage the services of a different Rebate Analyst, the Borrower will provide the name and contact information for such entity to the Issuer within thirty days of engagement.

(g) Fees and Expenses. The Borrower agrees to pay all of the fees and expenses of Bond Counsel, the Rebate Analyst, and any other necessary consultant employed by the Borrower, the Trustee, or the Issuer in connection with computing the Rebate Amount and the Yield Reduction Payments; provided that nothing herein will be construed as the Trustee being responsible for creating, preparing or reviewing any of the computations contemplated under this Agreement.

(h) No Diversion of Rebatable Arbitrage. The Borrower will not indirectly pay any amount otherwise payable to the federal government pursuant to the foregoing requirements to any person other than the federal government by entering into any investment arrangement with respect to the Gross Proceeds of the Bonds that is not purchased at fair market value (as defined in section 1.148-5(d)(6)(iii) of the Regulations) or includes terms that the Borrower would not have included if the Bonds were not subject to section 148(f) of the Code.

(i) Amounts Not Required in Certain Circumstances.

(i) Notwithstanding the foregoing, the Borrower will not be required to perform the obligations set forth in this “Compliance with Yield Reduction and Rebate Requirements; Rebate Fund” paragraph, except for the obligation to retain accounting records and the payment of expenses as described herein, if (A) the Gross Proceeds of the Bonds have not been invested at a Yield that is “materially higher” than the Yield on the Bonds and therefore is not required to pay Yield Reduction Payments and/or (B) the Borrower has not earned any rebatable arbitrage and, therefore, is not subject to the rebate obligation set forth in section 148(f) of the Code. To the extent that the Borrower will not be required to perform such obligations, the Borrower will send written notice to the Trustee and the Issuer within 55 days after the applicable Computation Date.

(ii) Notwithstanding anything to the contrary in this Agreement requiring a payment to be made based on the Rebate Analyst’s calculations showing a rebate being due, no payment will be made by the Trustee to the United States of America if the Borrower furnishes to the Issuer and the Trustee a Favorable Opinion of Bond Counsel. In such event, the Borrower will be entitled to withdraw funds

from the Rebate Fund to the extent provided in such Favorable Opinion of Bond Counsel.

(j) Trustee Reliance on Written Directions. The Issuer and the Borrower agree that, in complying with the provisions set forth under this paragraph, the Trustee will be deemed to have complied with such provisions and will have no liability to the extent it materially follows the written directions of the Borrower, the Issuer, or the Rebate Analyst.

16. Funds.

(a) Project Fund. All of the Proceeds of the Bonds in the Project Fund are expected to be invested and disbursed as described in the Indenture to pay costs of the Project. The Borrower (i) reasonably expects to allocate at least 85 percent of the Net Proceeds of the Bonds to expenditures on capital projects of the Project prior to the date that is three years after the Issue Date of the Bonds, (ii) has incurred, or reasonably expects to incur within six months after the Issue Date of the Bonds, a binding obligation to a third party that is not subject to any contingencies within the control of the Borrower pursuant to which the Borrower is obligated to expend at least five percent of the Net Proceeds of the Bonds on capital projects of the Project, and (iii) reasonably expects that the acquisition, rehabilitation, and equipping of the Project will proceed with due diligence to completion and the Net Proceeds of the Bonds are reasonably expected to be expended on the Project with reasonable dispatch; therefore, all of such amounts may be invested without regard to Yield restriction. Any amounts not so expended prior to the applicable dates set forth in the preceding sentence will thereafter be invested at a Yield that is not “materially higher” than the Yield on the Bonds, except as set forth in the “Investment of Proceeds Pending Expenditure; No Arbitrage—Minor Portion and Yield Reduction Payments” subparagraph herein.

(b) Revenue Fund. Amounts on deposit in the Revenue Fund will be used for the purposes and in the order set forth in Section 6.3 of the Indenture. There is no assurance that amounts on deposit in the Revenue Fund will be available to pay debt service on the Bonds.

(c) Bond Fund. Amounts on deposit in the Bond Fund, including the accounts therein, will be used for the purposes set forth in Section 6.4 of the Indenture. The Bond Fund will be used primarily to (i) achieve a proper matching of payments made pursuant to the Financing Agreement and debt service on the Bonds within each Bond Year or (ii) to effect a redemption of the Bonds. Any amounts in the Bond Fund held for longer than 13 months will be invested in obligations the Yield on which is not “materially higher” than the Yield on the Bonds, except as set forth in the “Investment of Proceeds Pending Expenditure; No Arbitrage—Minor Portion and Yield Reduction Payments” subparagraph herein.

(d) Costs of Issuance Fund. Amounts on deposit in the Costs of Issuance Fund will be used for the purpose of paying Costs of Issuance, as set forth in Section 6.9 of the Indenture. Amounts remaining in the Costs of Issuance Fund after the payment of all Costs of Issuance, and in any event not later than six months following the Issue Date of the

Bonds, will be (i) if derived from proceeds of the Bonds, transferred to the Project Fund or (ii) if derived from sources other than proceeds of the Bonds, transferred to the Borrower or used as directed by the Borrower, as the case may be. There is no assurance that amounts on deposit in the Costs of Issuance Fund will be available to pay debt service on the Bonds.

(e) Rebate Fund. The Rebate Fund will be used in the event the Borrower is required to pay rebatable arbitrage earnings to the federal government, as described in the “Compliance with Yield Reduction and Rebate Requirements; Rebate Fund” paragraph above. Amounts on deposit in the Rebate Fund are not subject to the lien of the Indenture; accordingly, there is no assurance that amounts on deposit, if any, in the Rebate Fund will be available to pay debt service on the Bonds.

(f) Other Funds. There is no assurance that amounts on deposit, if any, in the Other Funds will be available to pay debt service on the Bonds.

17. Replacement Proceeds. The Issuer and the Borrower hereby represent as follows:

(a) No Sinking Funds. Other than the Bond Fund, there is no debt service fund, redemption fund, reserve fund, replacement fund, or similar fund reasonably expected to be used directly or indirectly to pay principal or interest on the Bonds.

(b) No Pledged Funds. Other than amounts in the Bond Fund, there is no amount that is directly or indirectly pledged to pay principal or interest on the Bonds, or to a guarantor of the Bonds, such that such pledge provides reasonable assurance that such amount will be available to pay principal or interest on the Bonds if the Issuer encounters financial difficulty. For purposes of this certification, an amount is treated as so pledged if it is held under an agreement to maintain the amount at a particular level for the direct or indirect benefit of the holders or the guarantor of the Bonds.

(c) No Other Replacement Proceeds. There are no other Replacement Proceeds allocable to the Bonds because the Issuer reasonably expects that the term of the Bonds will not be longer than is reasonably necessary for the governmental purpose of the Bonds. Furthermore, even if the Bonds were outstanding longer than necessary for the purpose of the Bonds, no Replacement Proceeds will arise because the Issuer reasonably expects that no amounts will become available during the period that the Bonds remain outstanding longer than necessary based on the reasonable expectations of the Issuer as to the amounts and timing of future revenues. The Bonds would be issued to achieve the governmental purpose of the Bonds independent of any arbitrage benefit as evidenced by the expectation that the Bonds reasonably would have been issued if the interest on the Bonds were not excludable from gross income (assuming that the hypothetical taxable interest rate would be the same as the actual tax-exempt interest rate and that tax credits issued under section 42 of the Code would be available in connection therewith).

18. Not an Abusive Transaction. The Issuer and the Borrower hereby represent as follows:

(a) General. A device has not been and will not be employed in connection with the issuance of the Bonds to obtain a material financial advantage (based on arbitrage)

apart from savings attributable to lower interest rates. Furthermore, no action taken in connection with the Bonds is or will be an abusive arbitrage device by having the effect of (i) enabling the Issuer or the Borrower to exploit, other than during an allowable temporary period, the difference between tax-exempt and taxable interest rates to obtain a material financial advantage (including as a result of an investment of any portion of the Gross Proceeds of the Bonds over any period of time, notwithstanding that, in the aggregate, the Gross Proceeds of the Bonds are not invested in higher yielding investments over the term of the Bonds) and (ii) overburdening the tax-exempt bond market by issuing more bonds, issuing bonds earlier or allowing bonds to remain outstanding longer than is otherwise reasonably necessary to accomplish the governmental purposes of the Bonds, based on all the facts and circumstances. Specifically, (A) the primary purpose of each transaction undertaken in connection with the issuance of the Bonds is a bona fide governmental purpose; (B) each action taken in connection with the issuance of the Bonds would reasonably be taken to accomplish the governmental purposes of the Bonds if the interest on the Bonds were not excludable from gross income for federal income tax purposes (assuming the hypothetical taxable interest rate would be the same as the actual tax-exempt interest rate on the Bonds); and (C) the Proceeds of the Bonds will not exceed by more than a Minor Portion the amount reasonably anticipated to be necessary to accomplish the governmental purposes of the Bonds and will in fact not be substantially in excess of the amount of Proceeds allocated to expenditures for the governmental purposes of the Bonds.

(b) No Sinking Fund. No portion of the Bonds has a term that has been lengthened primarily for the purpose of creating a sinking fund or similar fund with respect to the Bonds.

(c) No Window. No portion of the Bonds has been structured with maturity dates the primary purpose of which is to make available released revenues that will enable the Issuer to avoid transferred proceeds or to make available revenues that may be invested to be ultimately used to pay debt service on another issue of obligations.

(d) No Disposition. No portion of the Project is reasonably expected to be disposed of while the Bonds are outstanding.

19. The Project. The Borrower hereby represents and covenants as follows:

(a) The Project will be comprised of (i) Units, all of which will be rented to individuals or families for residential occupancy and none of which will be owner-occupied (other than any functionally related and subordinate Units used by management for the purpose of housing any reasonably required resident managers, security personnel or maintenance personnel for the Project) and (ii) facilities, all of which are functionally related and subordinate to the aforementioned Units (i.e., facilities that are of a size and character commensurate with the size and character of such Units). All Units are similarly constructed and offer fixtures of similar quality. All amenities that are part of the Project will be made available to all residential tenants and their guests on an equal basis, regardless of the rent charged for the Unit occupied by the residential tenant.

(b) There has been and will be no substantial deviation from the description and location of the Project and the Borrower, operator or manager set forth in the notice of hearing published with respect to the Bonds for purposes of satisfying the requirements of section 147(f) of the Code.

(c) The Project will be designed and equipped and will be owned, maintained and operated on a continuous basis in accordance with the Financing Agreement and the Regulatory Agreement. For purposes of this subparagraph, each of the enumerated types of facilities includes the interior furnishings of such facility (including the facility's plumbing, electrical and decorating costs) and the structural components required for the facility (including the facility's walls, ceilings and special enclosures). Each such enumerated type of facility includes only those normal components of the structure in which it is located, such as the structure's structural supports, to the extent that those components are required because of the facility. The recreational facilities, if any, included as part of the Project will be available only to residential tenants and their guests and no separate fee will be required for the use of such facilities.

(d) Except to the extent that any Unit is a single room occupancy unit under section 42 of the Code, each Unit will contain separate and complete facilities for living, sleeping, eating, cooking and sanitation. Specifically, each Unit will contain a living area, a sleeping area, bathing and sanitation facilities and cooking facilities equipped with a cooking range, full-size refrigerator and sink, all of which are separate and distinct from the facilities included in other Units.

(e) Parking spaces included in the Project are functionally related and subordinate to the Units included in the Project in that they are no greater in number than is normally appropriate for a residential rental facility that is of the size of the Project. Only tenants, prospective tenants, guests of tenants, employees of the Borrower, and employees of the manager are expected to use these parking spaces.

(f) If the Project contains a clubhouse, exercise or similar recreational facility, such facility exists as a tenant amenity and may be used by any tenant free of any separate charge and will be constructed for the exclusive use of tenants of the Project and their guests. Such facility, if any, is of a character and size commensurate with the character and size of the Project and will not be open to the general public on a membership basis.

(g) The Project will not include any nonresidential or commercial space, including particularly, without limitation, any other space or facility not described in this paragraph. Costs relating to the acquisition, construction and equipping of any nonresidential space developed in connection with the Project (including any costs of land acquisition allocable thereto) will be allocated to sources other than the Bonds.

(h) No continual or frequent skilled or unskilled nursing services will be available at the Project, although the tenants will be permitted to engage such services from providers that are not affiliated with the Borrower or the manager. Thus, neither the Borrower nor the manager, nor any Related Person to either the Borrower or the manager, will provide any assistance to any tenant in connection with his or her activities of daily

living, other than concierge and valet services. The Project will not be licensed as a convalescent or nursing home, continuing care facility, personal care facility, special care facility or other assisted living facility under State law.

(i) On the Closing Date, at least 50 percent of the Units in the Project are occupied.

20. Tenant Income Certifications. The Borrower hereby represents and covenants as follows:

(a) The Borrower will obtain and maintain tenant income certifications in a form that satisfies the requirements of section 1.103-8(b)(8) of the Regulations demonstrating that the 40-60 Test is met with respect to the occupied Units continuously throughout the Qualified Project Period. [The Borrower expects that more than 10 percent of the Units in the Project will remain occupied throughout the rehabilitation of the Project and, as such, compliance with the 40-60 Test will not be required during the twelve-month “transition period” beginning on the Issue Date of the Bonds, as set forth in Revenue Procedure 2004-39, 2004 C.B. 49.]

(b) The Borrower will ensure that each person who is intended to be a Qualifying Tenant will sign and deliver to the Borrower or a manager of the Project a tenant income certification in the form required by the Regulatory Agreement. In addition, the Borrower will ensure that such person will provide whatever other information, documents or certifications are deemed necessary to substantiate the tenant income certification.

(c) The Borrower will timely file, or take such actions as are necessary to cause any other person who is properly treated as the “operator” for purposes of section 142(d)(7) of the Code to file timely, the annual certifications described in section 142(d)(7) of the Code (currently, IRS Form 8703, Annual Certificate of Residential Rental Project).

(d) For a period of at least three years after the date the Bonds are retired, a tenant income certification in the form required by the Regulatory Agreement will at all times be maintained on file at the applicable location for the Project with respect to each Qualifying Tenant who resides or has resided in a Unit.

21. Form of Lease. The Borrower will ensure that the term of a lease of any Unit will be for a term of not less than six months, subject to the provision that any lease may be terminated if the tenant’s physical condition no longer permits full-time residence in the Project; provided, however, that the form of lease to be utilized by the Borrower in renting any Units to a person who is intended to be a Qualifying Tenant will provide for termination of the lease and consent by such person to immediate eviction in accordance with applicable law for failure to qualify as a Qualifying Tenant as a result of any material misrepresentation made by such person with respect to the tenant income certification.

22. Change in Use. The Borrower acknowledges that any failure to satisfy the applicable requirements of sections 103 and 142 through 150, inclusive, of the Code, including the 40-60 Test, with respect to the Project will be treated as a change in use for purposes of section 150(b)(2) of the Code with the result that no deduction will be allowed for federal income tax



purposes for interest paid by the Borrower with respect to the portion of the Bond Loan that is allocable to Proceeds of the Bonds that accrues during the period beginning on the first day of the taxable year in which the Project fails to meet such requirements and ending on the date that the Project meets such requirements.

On the earlier of (a) the date on which the Borrower reasonably determines that the Project will not be completed or (b) the date on which the Project is Placed in Service, the Borrower will identify the amount of unspent Net Proceeds of the Bonds, if any, and will use such amount to redeem or, if not permitted by the terms of the Bonds, defease the Bonds, all in accordance with the requirements of section 1.142-2 of the Regulations, the Indenture and the Financing Agreement, as applicable, including the requirement that, if a defeasance is necessary, timely written notice be provided to the IRS.

23. Cashflow Sufficiency. The Borrower reasonably expects that the cash flow from the Project on an annual basis (excluding cash generated from the investment of nonoperating funds or other investment funds maintained by the Borrower) will be sufficient to pay annual debt service on the Bond Loan during each year. Accordingly, the Borrower expects that debt service on the Bond Loan will not be paid, directly or indirectly, from non-operating or other investment funds maintained by the Borrower or any Related Person to the Borrower. Except for the funds described in the “Funds” paragraph above, the Borrower does not expect to create or establish, or otherwise set aside or dedicate, any fund or account that is expected to be used to pay principal of, or interest on, the Bonds or to be pledged, directly or indirectly, to the payment of principal of, or interest on, the Bonds. Investment Proceeds of the Bonds and amounts earned from the investment of such Investment Proceeds will not be commingled with other receipts or revenues of the Borrower.

24. Post-Issuance Compliance Procedures. The Issuer has implemented written post-issuance tax compliance procedures regarding federal tax compliance that include provisions to ensure that all nonqualified bonds are remediated according to the requirements under the Code and Regulations and to monitor the requirements of section 148 of the Code. A copy of the Issuer’s then-current post-issuance tax compliance procedures is and will be available on the Issuer’s website during the term of this Agreement. If the Issuer’s website is not available, a copy of the then-current post-issuance tax compliance procedures will be made available to the Borrower, upon request. The Borrower agrees to take such actions as required therein to be taken by the Borrower to maintain compliance with requirements in the Code. In the event that the terms of the Issuer’s post-issuance tax compliance procedures conflict with the terms of this Agreement, the terms of this Agreement will control.

25. Record Retention. The Borrower and the Trustee (to the extent the Trustee received such records in accordance with the terms of the Bond Documents) will retain or cause to be retained all pertinent and material records relating to any formal elections made for purposes of federal income tax law; the use of the Project; the investment, use and expenditure of the Proceeds of the Bonds; and the calculation of rebate in connection with the Bonds until three years after the Bonds, including any tax-exempt obligations issued to refinance the Bonds, are redeemed or paid at maturity, or such shorter period as authorized by subsequent guidance issued by the Department of the Treasury, if applicable. All records will be kept in a manner that ensures their complete access throughout the retention period. For this purpose, it is acceptable that such records are kept

either as hardcopy books and records or in an electronic storage and retrieval system, provided that such electronic system includes reasonable controls and quality assurance programs that assure the ability of the Issuer to retrieve and reproduce such books and records in the event of an examination of the Bonds by the IRS.

26. Examination by IRS. The Borrower acknowledges that, in the event of an examination by the IRS of the exclusion of interest on the Bonds from the gross income of the owners thereof for federal tax purposes, the Issuer will likely be treated as the “taxpayer”, and the Borrower agrees to respond in a commercially reasonable manner on behalf of, and at the direction of, the Issuer (and in consultation with the Trustee, who will have the right to participate in all related proceedings (including tax court challenges and appeals)) to such examination and to pay the costs of the counsel selected by the Issuer to provide a defense regarding the exclusion of the interest on the Bonds from the gross income of the owners thereof for federal income tax purposes. THE BORROWER WILL INDEMNIFY AND HOLD HARMLESS THE ISSUER AND THE TRUSTEE AGAINST ANY AND ALL COSTS, LOSSES, CLAIMS, DAMAGES, OR LIABILITY OF, OR RESULTING FROM, SUCH AN EXAMINATION AND THE SETTLEMENT THEREOF BY THE ISSUER AND THE TRUSTEE (INCLUDING THE COST OF THE ISSUER’S AND THE TRUSTEE’S LEGAL COUNSEL), EXCEPT AS A RESULT OF THE WILLFUL MISCONDUCT, BAD FAITH, OR FRAUD OF THE ISSUER (WITH RESPECT TO INDEMNIFICATION OF THE ISSUER) OR THE GROSS NEGLIGENCE, WILLFUL MISCONDUCT, BAD FAITH, OR FRAUD OF THE TRUSTEE (WITH RESPECT TO INDEMNIFICATION OF THE TRUSTEE).

27. Term. The obligations of the Issuer, the Borrower and the Trustee, under this Agreement will survive the defeasance and discharge of the Bonds for as long as such matters are relevant to the exclusion from gross income of interest on the Bonds for federal income tax purposes.

28. Amendments.

(a) To the extent any amendments to the Code or the Regulations, which, as a matter of law, are applicable to the Project and, in the written opinion of Bond Counsel filed with the Issuer, the Trustee and the Borrower, impose requirements upon the ownership or operation of the Project more restrictive than those imposed by this Agreement, this Agreement will be deemed to be automatically amended to impose such additional or more restrictive requirements. The parties hereto hereby agree to execute such amendment hereto as will be necessary to document such automatic amendment hereof.

(b) To the extent that the Code or the Regulations, or any amendments thereto, which, as a matter of law, are applicable to the Project and, in the written opinion of Bond Counsel filed with the Issuer, the Trustee and the Borrower, impose requirements upon the ownership or operation of the Project less restrictive than imposed by this Agreement, this Agreement may be amended or modified to provide such less restrictive requirements but only by written amendment signed by the Issuer, the Trustee and the Borrower and upon receipt of a Favorable Opinion of Bond Counsel.

(c) All reasonable costs, including fees and out-of-pocket expenses actually incurred by the Issuer and the Trustee, in connection with an amendment to this Agreement will be paid by the Borrower and its successors in interest.

29. Remedies. The Issuer, the Trustee, and the Borrower each hereby agrees that the remedies available under Section 9.3 of the Indenture and Section 11.2 of the Financing Agreement apply upon the occurrence of an Event of Default (as defined under the Indenture or the Financing Agreement, as applicable) resulting from an action or omission of an action by any party hereunder with respect to any provision of this Agreement.

30. Miscellaneous.

(a) Severability. If any provision of this Agreement is ruled invalid by any court of competent jurisdiction, the invalidity of such provision will not affect any of the remaining provisions hereof.

(b) Counterparts. This Agreement may be executed in several counterparts, each of which will be an original and all of which will constitute but one and the same instrument.

(c) Notices. All notices, demands, communications and requests which may or are required to be given hereunder or by any party hereto will be deemed given on the date on which the same will have been mailed by registered or certified mail, postage prepaid, addressed to such parties at the addresses set forth in the Indenture and the Financing Agreement, as applicable.

(d) Successors and Assigns. The terms, provisions, covenants and conditions of this Agreement bind and inure to the benefit of the respective successors and assigns of the Issuer, the Borrower, and the Trustee.

(e) Headings. The headings of this Agreement are inserted for convenience only and will not be deemed to constitute a part of this Agreement.

(f) Governing Law. This Agreement is governed by the laws of the State, without regard to the choice of law rules of the State. Venue for any action under this Agreement will lie within the district courts of the State, and the parties hereto consent to the jurisdiction and venue of any such court and hereby waive any argument that venue in such forums is not convenient.

(g) The Trustee. Every provision of this Agreement relating to the conduct of, or affecting the liability of, or affording protection to, the Trustee shall be expressly subject to the applicable provisions of the Indenture.

[EXECUTION PAGES FOLLOW]

**IN WITNESS WHEREOF**, the Issuer, the Borrower and the Trustee (but, as for the Trustee, it is only agreeing to sections 2(c), 14, 15, and 25 through 30) have caused this Agreement to be executed and delivered by duly authorized officers thereof as of Issue Date of the Bonds.

**TEXAS DEPARTMENT OF HOUSING AND  
COMMUNITY AFFAIRS**, as Issuer

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

Name: Teresa Morales

Title: Director of Multifamily Bonds

**CENTER 818 COTTON FORD ROAD, LP,**  
a Texas limited partnership

By: Center 818 Cotton Ford Road GP, LLC, a Texas  
limited liability company, its General Partner

By: ITEX Advisors, LLC, a Texas limited  
liability company, its Manager

By: The ITEX Group Management, LLC,  
a Texas limited liability company, its  
Manager

By: \_\_\_\_\_  
Christopher A. Akbari,  
Manager

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

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

Name: Danya L. Smith

Title: Vice President

## EXHIBIT A

### CERTIFICATE OF PURCHASER

I, the undersigned officer of CommunityBank of Texas, N.A. (the “Purchaser”), make this certificate in connection with the \$10,100,000 Texas Department of Housing and Community Affairs Multifamily Housing Mortgage Revenue Bonds (Union Acres Project) Series 2022 (the “Bonds”). Each capitalized term used herein has the meaning or is the amount, as the case may be, specified for such term in the Tax Exemption Certificate and Agreement to which this Exhibit A is attached (the “Tax Exemption Agreement”).

1. I hereby certify as follows in good faith as of the Issue Date of the Bonds:

(a) I am the duly chosen, qualified and acting officer of the Purchaser for the office shown below my signature; as such, I am familiar with the facts herein certified and I am duly authorized to execute and deliver this certificate on behalf of the Purchaser. I am the officer of the Purchaser charged, along with other officers of the Purchaser, with responsibility for the Bonds.

(b) The Purchaser is not acting as an Underwriter with respect to the Bonds. The Purchaser has no present intention to sell, reoffer, or otherwise dispose of the Bonds (or any portion of the Bonds or any interest in the Bonds). The Purchaser has not contracted with any person pursuant to a written agreement to have such person participate in the initial sale of the Bonds and the Purchaser has not agreed with the Issuer pursuant to a written agreement to sell the Bonds to persons other than the Purchaser or a Related Party to the Purchaser.

(c) The Purchaser has purchased the Bonds from the Issuer for an aggregate purchase price of \$10,100,000, which price includes no amount of pre-issuance accrued interest.

(d) The Purchaser is not a “related party” to the Borrower within the meaning of section 1.150-1(b) of the Regulations. Specifically, (i) the Purchaser and the Borrower are not part of the same controlled group of corporations (as defined in section 1563(a) of the Code, except that “more than 50 percent” is substituted for “at least 80 percent” each place it appears) and (ii) the relationship between the Purchaser and the Borrower would not result in a disallowance of losses under section 267 of the Code or section 707(b) of the Code.

2. For purposes of this Certificate of Purchaser, the following definitions apply:

(a) “Public” means any person (including an individual, trust, estate, partnership, association, company, or corporation) other than an Underwriter or a Related Party to an Underwriter.

(b) “Related Party” means any two or more persons who are subject, directly or indirectly, to (i) more than 50% common ownership of the voting power or the total

value of their stock, if both entities are corporations (including direct ownership by one corporation of another), (ii) more than 50% common ownership of their capital interests or profits interests, if both entities are partnerships (including direct ownership by one partnership of another), or (iii) more than 50% common ownership of the value of the outstanding stock of the corporation or the capital interest or profits interest of the partnership, as applicable, if one entity is a corporation and the other entity is a partnership (including direct ownership of the applicable stock or interests by one entity of the other).

(c) “Underwriter” means (i) any person that agrees pursuant to a written contract with the Issuer (or with the lead Underwriter to form an underwriting syndicate) to participate in the initial sale of the Bonds to the Public, and (ii) any person that agrees pursuant to a written contract directly or indirectly with a person described in clause (i) of this definition to participate in the initial sale of the Bonds to the Public (including a member of a selling group or a party to a third-party distribution agreement participating in the initial sale of the Bonds to the Public).

The representations set forth in this certificate are limited to factual matters only. Nothing in this certificate represents the Purchaser’s interpretation of any laws, including specifically sections 103 and 148 of the Internal Revenue Code. The undersigned understands that the foregoing information will be relied upon by the Issuer and the Borrower with respect to certain of the representations set forth in the Tax Exemption Agreement and with respect to compliance with the federal income tax rules affecting the Bonds, and by Bracewell LLP in connection with rendering its opinion that the interest on the Bonds is excluded from gross income for federal income tax purposes, the preparation of Internal Revenue Service Form 8038, and other federal income tax advice it may give to the Issuer from time to time relating to the Bonds.

[EXECUTION PAGE FOLLOWS]



EXECUTED as of this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

**COMMUNITYBANK OF TEXAS, N.A.**

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

## EXHIBIT B

### CERTIFICATE OF FINANCIAL ADVISOR

I, the undersigned officer of Stifel, Nicolaus & Company, Incorporated (the “Financial Advisor”), make this certificate in connection with the \$10,100,000 Texas Department of Housing and Community Affairs Multifamily Housing Mortgage Revenue Bonds (Union Acres Project) Series 2022 (the “Bonds”). Each capitalized term used herein has the meaning or is the amount, as the case may be, specified for such term in the Tax Exemption Certificate and Agreement to which this Exhibit B is attached (the “Tax Exemption Agreement”). I hereby certify as follows as of the Issue Date of the Bonds:

1. I am the duly chosen, qualified and acting officer of the Financial Advisor for the office shown below my signature; as such, I am familiar with the facts herein certified and I am duly authorized to execute and deliver this certificate on behalf of the Financial Advisor.

2. The Issue Price plus any Pre-Issuance Interest on the Bonds, based on the representations of the Purchaser in the Certificate of Purchaser attached as Exhibit A to the Tax Exemption Agreement, is not more than \$10,100,000.

3. The Financial Advisor has computed the Yield on the Bonds, based on such Issue Price, to be [Bond Yield] percent. The Financial Advisor has calculated the Yield on the Bond Loan to be [Loan Yield] percent. Accordingly, the Yield on the Bond Loan does not exceed the Yield on the Bonds by more than 1.5 percentage points.

4. For purposes of determining the Yields in paragraph 3 above, the Financial Advisor has performed certain calculations relating to the Bonds and the Bond Loan. Such calculations are attached hereto as Schedule I. The Financial Advisor hereby represents that such calculations are based on assumptions and methodologies provided by Bond Counsel and are in all material respects consistent with the assumptions and methodologies set forth in the “Yield on the Bonds” and “Yield on the Bond Loan” paragraphs of the Tax Exemption Agreement. These calculations include calculations based upon assumptions, information, and estimates obtained from the Borrower and the Issuer, which the Financial Advisor, based on its experience with similar transactions, has no reason to believe are not reasonable in light of the relevant facts and circumstances. To the best of the Financial Advisor’s knowledge, as of the Issue Date of the Bonds, no fact or circumstance has come to the Financial Advisor’s attention that conflicts with the assumptions, information and estimates described in the preceding sentence.

5. As shown in Schedule I attached hereto, the Financial Advisor computed the Weighted Average Maturity of the Bonds, calculated in accordance with the provisions of the Tax Exemption Agreement, to be [WAM] years.

6. The Financial Advisor represents that to the best of its knowledge as of the Issue Date of the Bonds, the statements set forth in paragraphs (a) through (c) of the “Not An Abusive Transaction” paragraph of the Tax Exemption Agreement are true.

The Issuer may rely on the statements made herein in connection with making the representations set forth in the Tax Exemption Agreement and in its efforts to comply with the

conditions imposed by the Code on the exclusion of interest on the Bonds from the gross income of their owners. Bracewell LLP also may rely on this certificate for purposes of its opinion regarding the treatment of interest on the Bonds as excludable from gross income for federal income tax purposes and the preparation of the Form 8038.

[EXECUTION PAGE FOLLOWS]

The foregoing Certificate of Financial Advisor has been duly executed as of the Issue Date of the Bonds.

**STIFEL, NICOLAUS & COMPANY,  
INCORPORATED**

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

*Signature Page to Certificate of Financial Advisor*

**SCHEDULE I**  
**TO CERTIFICATE OF FINANCIAL ADVISOR**

*Schedule I to Certificate of Financial Advisor*

**EXHIBIT D**

**SCHEDULE OF BOND LOAN COSTS**

**Paid Prior to Closing**

Application Fee \$2,000

**Paid at Closing**

Issuer Issuance Fee \$[50,500]

Issuer Administration Fee \$  
(first two years, prorated)

Issuer Compliance Fee \$2,500  
(first year)

**Annual Fees**

Issuer Administrative Fee 0.10% per annum of the aggregate principal  
(beginning June 1, 2024) amount of the Bonds outstanding

Issuer Compliance Fee \$25 per Unit in the Project (excluding any  
(beginning June 1, 2025) market rate units)