



**RBA: Marshall Bond Issuance**  
**CITY OF AUSTIN**  
**RECOMMENDATION FOR BOARD ACTION**

**AGENDA ITEM NO: 2**  
**AGENDA DATE: 02/10/2011**  
**PAGE: 1 OF 3**

**SUBJECT:** Approve a resolution authorizing the issuance of Austin Housing Finance Corporation Multi-family Housing Revenue Bonds, in an amount not to exceed an aggregate principal amount of six million dollars in the form and substance of a trust indenture, a loan agreement, a regulatory agreement with respect to the project, and approve other matters in connection with the transaction to provide financing for the acquisition and rehabilitation of the Marshall Apartments, 1401 East 12<sup>th</sup> Street and 1157 Salina Street, to be owned and operated by MARSHALL AFFORDABLE PARTNERS, LTD, an affiliate of Summit Housing Partners, Inc., Montgomery, AL, and authorize the Austin Housing Finance Corporation General Manager and the Austin Housing Finance Corporation Treasurer to execute the necessary documents to issue the bonds and close the transaction.

**AMOUNT & SOURCE OF FUNDING:** All bond issuance fees to be paid by the Applicant, Marshall Affordable Partners, Ltd.

**FISCAL NOTE:** There is no unanticipated fiscal impact. A fiscal note is not required.

**REQUESTING**

**DEPARTMENT:** Austin Housing Finance Corporation

**FOR MORE INFORMATION CONTACT:** Elizabeth A. Spencer, Treasurer, Austin Housing Finance Corporation, 974-3182

**PRIOR BOARD ACTION:** On December 9, 2010 the Austin Housing Finance Corporation Board approved an inducement resolution, set a public hearing date, and approved negotiation and execution for Rental Housing Development Assistance financing.

**PRIOR COUNCIL ACTION:**

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**BELOW LINE LANGUAGE**

**The Applicant**

Marshall Affordable Partners, Ltd. is an affiliate of Summit Housing Partners, Inc. ("Summit") which owns and operates affordable and workplace housing with approximately 13,500 units in 87 apartment communities in nine states. Summit's business model is to acquire, rehabilitate, and operate Project-Based Section 8 or Low-Income Housing Tax Credit properties.

### **Request**

If approved, this action will authorize:

- The issuance of up to six million dollars in Austin Housing Finance Corporation (AHFC) Multifamily Housing Revenue Bonds (Marshall Apartments) Series 2011;
- AHFC's Bond Counsel to prepare the form and substance of a trust indenture for the issue in addition to a regulatory agreement with respect to the project and other matters in connection with the transaction;
- Execution of a loan agreement with Marshall Affordable Partners, Ltd.; and
- Specific named representatives of the AHFC to execute the necessary documents to issue the bonds and close the transaction.

The bonds to be issued are repayable only from rents generated by the apartment complex and for which the full faith and credit of the City of Austin or the Austin Housing Finance Corporation is not pledged.

The primary public purpose of this financing will be to help preserve the supply of Project-Based Section 8 housing in Austin. Project-Based Section 8 properties receive rental subsidies directly from the U.S. Department of Housing and Urban Development (HUD) for a defined period of time. As identified in the City's 2008 Affordable Housing Preservation Study, approximately 1,350 affordable subsidized units in Austin have agreements with HUD that expire in 2011, including the Marshall Apartments. Upon acquisition of the property, Marshall Affordable Partners, Ltd. will apply to HUD for a renewal of the direct rent subsidy payments.

### **AHFC as Bond Issuer**

- Since 1982, AHFC has issued 25 series of multi-family housing revenue bonds totaling \$226,275,000. These multi-family bonds have financed 33 multi-family properties, creating 6,582 low- and moderate-income rental units.
- The issuance of \$6 million dollars in revenue bonds will generate an issuer's fee to the AHFC of approximately \$30,000 (one-half of 1 percent of the amount of bonds issued).
- AHFC received a \$5,000 application fee from the Applicant.
- AHFC will receive approximately \$1,560 annually as a monitoring fee over the life of the bonds. The fee is calculated at .0003 times the amount of bonds issued.

### **Project Characteristics**

- Marshall Apartments is a Project-Based Section 8 property consisting of 100 units in two locations: 1401 East 12<sup>th</sup> Street (40 units) and 1157 Salina Street (60 units). Project-Based Section 8 properties receive a direct subsidy from the U.S. Department of Housing and Urban Development (HUD) for each unit for a specified period of time, up to 20 years. "Project-Based" means the HUD subsidy stays with the unit and is not portable for the resident to use elsewhere as is the case with the Housing Choice Voucher Program (formerly called "Section 8") administered by public housing authorities.
- The apartments were constructed in 1968 and consist of one, two, three and four-bedroom units. Each of the four-bedroom units has two baths.

- As of September 2010, the property was 98 percent occupied with a waiting list. No relocation of tenants will be necessary during renovations which are expected to be complete by November 1, 2011 and will include:
  - replacement of appliances with Energy Star-rated appliances;
  - replacement of windows with “low-e” windows;
  - new flooring; and
  - new kitchen and bathroom cabinets and bathroom fixtures.

**Population Served**

Incomes are capped at 50 percent of Median Family Income (MFI), currently \$36,900 for a family of four. However, the information provided states that all current tenants have incomes at or below 30 percent MFI, \$22,150 for a family of four.

**RESOLUTION NO. \_\_\_\_\_-AHFC\_\_\_\_\_**

**RESOLUTION AUTHORIZING THE ISSUANCE, SALE, AND DELIVERY OF MULTIFAMILY HOUSING REVENUE BONDS (GNMA COLLATERALIZED MORTGAGE LOAN—MARSHALL APARTMENTS) SERIES 2011; APPROVING AND AUTHORIZING THE EXECUTION AND DELIVERY OF RELATED DOCUMENTS; AND AUTHORIZING REPRESENTATIVES OF THE AUSTIN HOUSING FINANCE CORPORATION TO EXECUTE DOCUMENTS.**

**WHEREAS**, Austin Housing Finance Corporation (Corporation) has been duly created and organized by action of the City Council of Austin, Texas (Sponsoring Governmental Unit) under the provisions of the Texas Housing Finance Corporations Act, Chapter 394, Texas Local Government Code (Act), to finance the costs of residential ownership and development that will provide decent, safe and sanitary housing for persons of low and moderate income at prices they can afford; and

**WHEREAS**, the Act authorizes the Corporation to issue bonds to defray, in whole or in part, the development costs of a residential development; and

**WHEREAS**, the Board of Directors of the Corporation (Board) has determined to authorize the issuance of the Corporation's Multifamily Housing Revenue Bonds (Marshall Apartments) Series 2011 (Bonds), in accordance with the terms of a Trust Indenture (Indenture) by and between the Corporation and the trustee named in the Trust Indenture (Trustee), to obtain funds to finance the Project (defined below), in accordance with the Constitution and laws of the State of Texas; and

**WHEREAS**, the Corporation desires to use the proceeds of the Bonds to fund a mortgage loan to Marshall Affordable Partners, Ltd.( Borrower), in order to finance the costs of acquisition and rehabilitation of a residential rental project containing units occupied by persons of low and moderate income, as determined by the Corporation, as required by Section 142(d) and

145 of the Code, and described in Exhibit D attached to this resolution (Project) located within the City of Austin; and

**WHEREAS**, the Corporation, the Borrower, the Trustee and the lender named herein (Lender) will execute and deliver a Loan Agreement (Loan Agreement) pursuant to which the Corporation agrees to lend funds to the Borrower to enable the Borrower to finance the Project; and

**WHEREAS**, it is also anticipated that the Borrower will execute and deliver a mortgage, as defined in the Indenture, pursuant to which the Borrower will grant a lien upon and security interest in the Project in favor of the Lender as security for, among other things, the repayment of the Loan; and

**WHEREAS**, the Board has further determined that the Corporation will enter into a Bond Purchase Agreement, with Merchant Capital, LLC, or an affiliate (Underwriter) and the Borrower; and

**WHEREAS**, the Board has determined that the Corporation, the Trustee and the Borrower will execute a Regulatory Agreement, defined in the Indenture, for the Project which will be filed of record in the real property records of the county in which the Project is located; and

**WHEREAS**, the Board has further determined that the Corporation will sell the Bonds to the Underwriter, pursuant to the terms in the Indenture and the Bond Purchase Agreement; and

**WHEREAS**, the Board has examined proposed forms of the Indenture, the Loan Agreement, the Bond Purchase Agreement and the Regulatory Agreement, all of which are attached to and comprise a part of this Resolution; has found the form and substance of such documents to be satisfactory and proper and the recitals contained to be true, correct and complete; and has determined to authorize the issuance of the Bonds, the execution and delivery of the documents and the taking of such other actions as may be necessary or convenient in connection with this transaction;

**NOW THEREFORE,**

**BE IT RESOLVED BY THE BOARD OF THE AUSTIN HOUSING FINANCE CORPORATION:**

Section 1.1 - Issuance, Execution and Delivery of the Bonds. The issuance of the Bonds is authorized in accordance with the conditions in the Indenture, and, upon execution and delivery of the Indenture, the authorized representatives of the Corporation named in the Resolution each are authorized to execute and attest to the Bonds and to deliver the Bonds to the Attorney General of the State of Texas for approval, the Comptroller of Public Accounts of the State of Texas for registration and the Trustee for authentication (to the extent required in the Indenture), and then to deliver the Bonds to the Underwriter. The interest rate for the Bonds will not exceed the maximum amount allowed under Texas law and the aggregate principal amount will not exceed \$6,000,000.

Section 1.2 - Approval, Execution and Delivery of the Indenture. The form and substance of the Indenture, which is attached in substantially final form, are approved, and the authorized representatives of the Corporation named in this Resolution each are authorized to execute and attest to the Indenture and to deliver the Indenture to the Trustee.

Section 1.3 - Approval, Execution and Delivery of the Loan Agreement and Regulatory Agreement. The form and substance of the Loan Agreement and the Regulatory Agreement, which are attached in substantially final form, are approved, and the authorized representatives of the Corporation named in this Resolution each are authorized to execute, attest to and to affix the Corporation's seal to the Loan Agreement and the Regulatory Agreement.

Section 1.4 - Approval, Execution, and Delivery of the Bond Purchase Agreement. The sale of the Bonds is approved, the form and substance of the Bond Purchase Agreement, which is attached in substantially final form, are approved solely with respect to the Bonds, and the authorized representatives of the Corporation named in this resolution each are authorized to execute and attest to the Bond Purchase Agreement, and to deliver the Bond Purchase Agreement to the Borrower and the Underwriter.

Section 1.5 - Approval of Corporation Information for Official Statement. In connection with the offering of the Bonds, the Board authorizes the use of the information pertaining to the Corporation in substantially the form that has been presented to the Board at the meeting at which this Resolution was adopted; provided that, by adoption of this Resolution the Corporation does not accept responsibility for the content of the Official Statement except for the information specifically approved by this Section

Section 1.6 - Execution and Delivery of Other Documents. The authorized representatives of the Corporation named in this Resolution each are authorized to execute, attest to, and to affix the Corporation's seal to such other agreements, commitments, assignments, bonds, certificates, contracts, documents, instruments, releases, financing statements, letters of instruction, notices of acceptance, written requests and other papers as may be necessary or convenient to carry out or assist in carrying out the purposes of this Resolution.

Section 1.7 - Exhibits Incorporated. All the terms and provisions of each of the documents listed below as an exhibit are incorporated into and made a part of this Resolution for all purposes:

Exhibit A - Indenture

Exhibit B - Loan Agreement

Exhibit C - Regulatory Agreement

Exhibit D – Corporation Information for Official Statement

Exhibit E - Bond Purchase Agreement

Section 1.8 - Power to Revise Form of Documents. The authorized representatives of the Corporation named in this Resolution each are authorized to make or approve such revisions in the form of the exhibits as, in the judgment of the authorized representative, and in the opinion of McCall, Parkhurst & Horton L.L.P., Bond Counsel to the Corporation, may be necessary or convenient to carry out, or assist in carrying out, the purpose of this Resolution, the approval to be evidenced by the execution of the documents by the authorized representatives of the Corporation named in this Resolution.

Section 1.9 - Authorized Representatives. The President, Vice President, Treasurer, Secretary, General Counsel, and General Manager are named as authorized representatives of the Corporation for purposes of executing, attesting to, affixing the Corporation's seal to, and delivering the documents and instruments referred to in this Resolution.

Section 1.10 - Meeting. The meeting was held on February 10, 2011 and a quorum was present. The meeting was held in accordance with the Corporation's bylaws.

**ADOPTED:** \_\_\_\_\_, 2011

**ATTEST:** \_\_\_\_\_

Shirley A. Gentry  
Secretary



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**TRUST INDENTURE**

Dated as of \_\_\_\_\_, 2011

by and between

AUSTIN HOUSING FINANCE CORPORATION  
as Issuer

and

\_\_\_\_\_,  
as Trustee

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Relating to

\$\_\_\_\_\_  
Austin Housing Finance Corporation  
Multifamily Housing Revenue Bonds  
(Marshall Apartments),  
Series 2011

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## **TRUST INDENTURE**

**THIS TRUST INDENTURE** is made and entered into as of \_\_\_\_\_, 2011, by and between the **AUSTIN HOUSING FINANCE CORPORATION**, a housing finance corporation created and organized under Chapter 394 of the Texas Local Government Code (the “Issuer”) and \_\_\_\_\_, a national banking association organized and existing under and by virtue of the laws of the United States of America and being qualified to accept and administer the trusts hereby created, as Trustee (the “Trustee”). All capitalized, undefined terms used herein shall have the meanings ascribed to them in Article I of this Indenture.

## **WITNESSETH:**

**WHEREAS**, Chapter 394 of the Texas Local Government Code, as amended, is herein referred to as the Act; and

**WHEREAS**, the Issuer has been duly created, established and authorized to transact business and exercise its powers, all under and pursuant to the Texas Housing Finance Corporations Act, Chapter 394 of the Texas Local Government Code, as amended (the “Act”), which authorizes the Issuer to issue revenue bonds for the purpose of financing the development of multifamily rental housing for persons of low and moderate income; and

**WHEREAS**, the Issuer desires to make a loan in the aggregate principal amount of \$\_\_\_\_\_ (the “Loan”) to Marshall Affordable Partners, Ltd., an Alabama limited partnership (the “Borrower”), to provide financing for the Project (as hereinafter defined), located within the City of Austin, Texas (the “City”), all for the public purpose of assisting persons of low and moderate income within the State of Texas to afford the costs of decent, safe and sanitary housing; and

**WHEREAS**, the Borrower has requested that the Issuer provide financial assistance to the Borrower in order to enable the Borrower to acquire, refinance, rehabilitate and equip a multifamily rental housing facility located within the jurisdiction of the Issuer at 1157 Salina Street and 1401 East 12th Street Austin, Texas known as Marshall Apartments (the “Project”); and

**WHEREAS**, pursuant to and in accordance with the Act, the Issuer desires to provide funds to finance the acquisition, rehabilitation and equipping of the Project by issuing its Multifamily Housing Revenue Bonds (Marshall Apartments), Series 2011 (the “Series 2011 Bonds” and, together with any Additional Bonds that may be issued hereunder, the “Bonds”) pursuant to this Indenture; and

**WHEREAS**, all acts and proceedings required by law necessary to make the Bonds, when executed by the Issuer, authenticated and delivered by the Trustee and duly issued as provided in this Indenture, the valid, binding and legal limited obligations of the Issuer, and to constitute this Indenture a valid and binding agreement for the uses and purposes herein set forth, in accordance with its terms, have been done and taken; and the execution and delivery of this Indenture have been in all respects duly authorized.

## **GRANTING CLAUSES**

**NOW, THEREFORE**, 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 for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, to secure the payment of the principal of, premium, if any, and interest on the Bonds according to their tenor and effect and to secure the performance and observance by the Issuer of all the covenants expressed or implied herein and in the Bonds, does hereby bargain, sell, convey, mortgage,

assign, pledge and grant, a security interest in the Trust Estate to the Trustee, and its successors in trust and assigns forever, for the securing of the performance of the obligations of the Issuer hereinafter set forth, including all of the Issuer's right, title and interest in and to the following property:

#### **GRANTING CLAUSE FIRST**

The Loan Agreement, the Note, the HAP Assignment and the Mortgage, including all extensions and renewals of the terms thereof, if any (except for Reserved Rights of the Issuer), including, but not limited to, Loan Payments made by the Borrower pursuant to the Loan Agreement and the present and continuing right to make claim for, collect, receive and receipt for any of the sums, amounts, income, revenues, issues and profits and any other sums of money payable or receivable under the Loan Agreement, the Note, the HAP Assignment and the Mortgage, to bring actions and proceedings thereunder or for the enforcement thereof, and to do any and all things which the Issuer is or may become entitled to do under the Loan Agreement, the Note, the HAP Assignment and the Mortgage;

#### **GRANTING CLAUSE SECOND**

All moneys and securities and interest earnings from time to time held by the Trustee under the terms of this Indenture (except amounts on deposit in the Rebate Fund and except that moneys and securities on deposit in the Funds and Accounts established with respect to the Bonds shall be held solely for the Holders of the Bonds);

#### **GRANTING CLAUSE THIRD**

Any and all other property rights and interests of every kind and nature from time to time hereafter by delivery or by writing of any kind granted, bargained, sold, alienated, demised, released, conveyed, assigned, transferred, mortgaged, pledged, hypothecated or otherwise subjected hereto, as and for additional security herewith, by the Issuer or any other person 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 subject to the terms hereof; and

#### **GRANTING CLAUSE FOURTH**

All the right, title, and interest of the Issuer in and to all proceeds (cash and noncash) of any or all of the foregoing, including, without limiting the generality of the foregoing, all inventory, accounts, chattel paper, documents, equipment, instruments, farm products, consumer goods, and general intangibles constituting proceeds acquired with cash proceeds of any or all of the foregoing.

**TO HAVE AND TO HOLD** all and singular the Trust Estate, whether now owned or hereafter acquired, to the Trustee and its respective successors in trust and assigns forever;

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

**PROVIDED, HOWEVER**, that if the Issuer, its successors or assigns, shall well and truly pay, or cause to be paid, the principal of, premium, if any, and interest on the Bonds due or to become due thereon, at the times and in the manner mentioned in the Bonds and as provided in Article VII hereof according to the true intent and meaning thereof, and shall cause the payments to be made as required under Article IV hereof, or shall provide, as permitted hereby, for the payment thereof in accordance with Article VII hereof, 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 disburse or cause to be disbursed to the Trustee all sums of money due or to become due in accordance with the terms and provisions hereof, then upon such final payments or deposits as provided in Article VII hereof, this Indenture and the rights hereby granted shall cease, terminate and be void.

**THIS TRUST INDENTURE FURTHER WITNESSETH**, and it is expressly declared, that all Bonds issued and secured hereunder are to be issued, authenticated and delivered and all of the Trust Estate is to be dealt with and disposed of, under, upon and subject to the terms, conditions, stipulations, covenants, agreements, trusts, uses and purposes hereinafter expressed, and the Issuer has agreed and covenanted, and does hereby agree and covenant, with the Trustee and with the respective Holders, from time to time, of the Bonds, or any part thereof, as follows:

## **ARTICLE I.**

### **DEFINITIONS AND INTERPRETATION**

**Section 1.01. Definitions.** Unless the context otherwise requires, the following words and phrases shall, for all purposes of this Indenture and of the Loan Agreement and of any supplement or amendment hereto or thereto, have the following meanings:

“Account” or “Accounts” means any one or more, as the case may be, of the named and unnamed accounts established within any Fund.

“Act” means Chapter 394 of the Texas Local Government Code, as now in effect and as it may from time to time hereafter be amended or supplemented.

“Additional Bonds” means the additional parity Bonds authorized to be issued by the Issuer pursuant to the terms and conditions of Section 2.13 of this Indenture.

“Additional Loan Payments” means that portion of the Loan Payments described in subsection (b)(ii) of Section 3.2 of the Loan Agreement.

“Administration Expenses” means (i) the Ordinary Trustee’s Fees and Expenses, (ii) the Rebate Analyst Fee, (iii) the Rating Agency Fee and (iv) the Issuer’s Fees and Expenses.

“Administration Fund” means the trust fund by that name established pursuant to Section 5.01 hereof.

“Affiliate” means any Person (a) directly or indirectly controlling, controlled by, or under common control with the Borrower; or (b) a majority of the members of the Directing Body of which are members of the Directing Body of the Borrower. For purposes of this definition, control means with respect to: (a) a corporation having stock, the ownership, directly or indirectly, of more than 50% of the securities (as defined in Section 2(1) of the Securities Act of 1933, as amended) of any class or classes, the holders of which are ordinarily, in the absence of contingencies, entitled to elect a majority of the directors of such corporation; (b) a not for profit corporation not having stock, having the power to elect or appoint, directly or indirectly, a majority of the members of the Directing Body of such corporation; or (c) any other entity, the power to direct the management of such entity through the ownership of at least a majority of its voting securities or the right to designate or elect at least a majority of the members of its Directing Body, by contract or otherwise. For the purposes of this definition, “Directing Body” means with respect to: (a) a corporation having stock, such corporation’s board of directors and owners, directly or indirectly, of more than 50% of the securities (as defined in Section 2(1) of the Securities Act of 1933, as amended) of any class or classes, the holders of which are ordinarily, in the absence of contingencies,

entitled to elect a majority of the directors of such corporation (both of which groups will be considered a Directing Body); (b) a not for profit corporation not having stock, such corporation's members if the members have complete discretion to elect the corporation's directors, or the corporation's directors if the corporation's members do not have such discretion; or (c) any other entity, its governing body or board. For the purposes of this definition, all references to directors and members will be deemed to include all entities performing the function of directors or members however denominated.

"Amend" and "Amendment," as used in Article XI hereof, refer to any amendment, modification, alteration or supplement to any Bond Document, or any waiver of any provision thereof.

"Annual Debt Service" means, for any period, the scheduled principal and interest payment requirement with respect to all Outstanding Bonds, or all Outstanding Bonds of one or more Series, as applicable, for such period.

"Annual Evaluation Date" means each December 31, commencing December 31, 2011.

"Applicable Percentage" means, for any measuring period, the percentage by which the total Management Fee and total Asset Management Fee would need to have been excluded from Operating Expenses in such period to satisfy the Coverage Test on the most recent date of calculation; provided that the Applicable Percentage will be rounded to the next highest multiple of 5% but may not exceed 50%.

"Architect" means any architect, engineer or firm of architects or engineers which is Independent and which is appointed by the Borrower for the purpose of passing on questions relating to the design and construction of any particular facility, has all licenses and certifications necessary for the performance of such services, and has a favorable reputation for skill and experience in performing similar services in respect of a facility of a comparable size and nature of the Project.

"Asset Manager" means \_\_\_\_\_, and its successors and assigns.

"Asset Management Agreement" means the Asset Management Agreement dated \_\_\_\_\_, 2011 between the Asset Manager and the Borrower, or any substitute agreement providing for asset management services, in each case as amended and supplemented from time to time.

"Asset Management Fee" means the fee payable to the Asset Manager pursuant to the Asset Management Agreement.

"Audited Financial Statements" means the financial statements prepared for each Fiscal Year for the Project prepared in accordance with generally accepted accounting principles and examined by a Certified Public Accountant.

"Authorized Denominations" means \$5,000 principal amount and any integral multiple of \$5,000 in excess thereof.

"Available Moneys" means (i) moneys held by the Trustee under this Indenture for a period of at least 123 days and not commingled with any moneys so held for less than said period and during which period no petition in bankruptcy was filed by or against, and no receivership, insolvency, assignment for the benefit of creditors or other similar proceedings has been commenced by or against, the Issuer or the Borrower, unless such petition or proceeding was dismissed and all applicable appeal periods have expired without an appeal having been filed, (ii) Project Revenues held by the Trustee (iii) investment income derived from the investment of moneys described in clause (i) and (ii), (iv) proceeds of obligations issued to refund the Bonds, or (v) any moneys with respect to which an opinion of nationally recognized bankruptcy counsel has been received by the Trustee to the effect that payments by the



Trustee in respect of the Bonds, as provided in this Indenture, derived from such moneys should not constitute transfers avoidable under 11 U.S.C. § 547(b) and recoverable from the Holders under 11 U.S.C. § 550(a) should the Issuer or the Borrower be the debtor in a case under Title 11 of the United States Code, as amended.

“Basic Loan Payments” means that portion of the Loan Payments described in Subsection 3.2(b)(i) of the Loan Agreement.

“Beneficial Owner” means the Person owning the Beneficial Ownership Interest in the Bonds, as evidenced to the satisfaction of the Trustee.

“Beneficial Ownership Interest” means the right to receive payments and notices with respect to the Bonds held in a book-entry system.

“Bond Counsel” means initially, McCall, Parkhurst & Horton L.L.P or any Independent Counsel of nationally recognized standing in matters pertaining to the validity of, and exclusion from gross income for federal income tax purposes of interest on, obligations issued by states and political subdivisions, familiar with the transactions contemplated under this Indenture, and appointed by the Issuer.

“Bond Documents” means this Indenture and the Borrower Documents.

“Bond Fund” means each trust fund by that name created with respect to a Series of Bonds pursuant to Section 5.01 hereof.

“Bond Obligation” means the outstanding principal amount of the Bonds.

“Bond Payment Date” means any Interest Payment Date, any Principal Payment Date and any other date on which the principal of, premium, if any, or interest on the Bonds is to be paid to the Holders thereof, whether upon redemption, at maturity or upon acceleration of maturity of the Bonds.

“Bonds” means collectively the Series 2011 Bonds and any Additional Bonds.

“Bond Year” means the period from and including the date of issuance of the Series 2011 Bonds through \_\_\_\_\_, 2011, and thereafter each year beginning on \_\_\_\_\_ 1 and ending on the earlier of the following \_\_\_\_\_ or the maturity of the Series 2011 Bonds (whether by redemption, acceleration or otherwise).

“Borrower” means Marshall Affordable Partners, Ltd., an Alabama limited partnership organized and existing under the laws of the State of Alabama, and its successors and assigns under Sections 6.2 and 6.3 of the Loan Agreement.

“Borrower Documents” means the Loan Agreement, the Mortgage, the Series 2011 Note, the Regulatory Agreement, the Continuing Disclosure Agreement, the Tax Agreement, the HAP Contract, the HAP Assignment, the Management Agreement, the Asset Management Agreement, and together with all other documents or instruments executed by the Borrower evidencing or securing the Borrower’s Indebtedness under the Loan Agreement, in each case as the same may be amended or supplemented from time to time.

“Borrower Representative” means each person at the time designated to act on behalf of the Borrower by written certificate furnished to the Issuer and the Trustee on behalf of the Borrower containing the specimen signature of such person and any designated alternates.

“Borrower’s Tax Certificate” means the Borrower’s Tax Letter of Representation delivered to the Issuer by the Borrower on the Closing Date in which the Borrower certifies to various facts relating to the Development that bear on the exclusion of interest on the Bonds from gross income for purposes of federal income taxation. “Budget” means the budget described in Section 6.9 of the Loan Agreement.

“Business Day” means any day other than a (i) Saturday, (ii) Sunday, (iii) day on which banking institutions in (a) any city in which the designated corporate trust or principal operations offices of the Trustee (such city being initially \_\_\_\_\_) are located, (b) the State of Texas or (c) the City of New York, New York, are authorized or obligated by law or executive order to be closed, or (iv) day on which the New York Stock Exchange is closed.

“Certified Public Accountant” means any Person who is Independent, appointed by the Borrower, actively engaged in the business of public accounting and duly licensed as a Certified Public Accountant under the laws of the State.

“Clearing Agency” means any clearing agency under federal law operating and maintaining, with its participants or otherwise, a book-entry system to record Beneficial Ownership Interests in the Bonds, and to effect transfers of book-entry interests of the Bonds in book-entry form, which initially shall be The Depository Trust Company.

“Closing Date” means the date of initial issuance and delivery of the Bonds.

“Code” means the Internal Revenue Code of 1986, as amended, and the Treasury Regulations thereunder, or any successor to the Internal Revenue Code of 1986, as amended. Reference to any particular Code section shall, in the event of such successor Code, be deemed to be reference to the successor to such Code section.

“Compliance Certificate” means a certificate of a Borrower Representative stating that, as of the date of such certificate, the Borrower is in compliance with all requirements of the Borrower Documents (with such exceptions as shall be acceptable to the Issuer).

“Condemnation Award” means the total condemnation proceeds paid by the condemner as a result of condemnation or eminent domain proceedings with respect to all or any part of the Project or of any settlement or compromise of such proceedings.

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

“Consultant” means a Person who is Independent, appointed by the Borrower, and who is nationally recognized as being expert as to matters for which its certificate or advice is required or contemplated.

“Continuing Disclosure Agreement” means the Continuing Disclosure Agreement dated November \_\_, 2010 between the Borrower, the Dissemination Agent and the Trustee.

“Controlled Group” means a group of entities directly or indirectly controlled by the same entity or group of entities. An entity or group of entities (the “controlling entity”) directly controls another entity (the “controlled entity”), in general, if it possesses either of the following rights or powers and the rights or powers are discretionary and non-ministerial:

(a) The right or power both to approve and to remove without cause a controlling portion of the governing body of the controlled entity; or

(b) The right or power to require the use of funds or assets of the controlled entity for any purpose of the controlling entity.

A controlling entity indirectly controls all entities controlled, directly or indirectly, by an entity controlled by such controlling entity.

“Controlling Holders” means in the case of consent or direction to be given hereunder, the Holders of the majority in aggregate principal amount of the Outstanding Bonds.

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

“Costs of Issuance Account” means the account by that name in the Project Fund created pursuant to Section 5.01 hereof.

“Coverage Test” means that the Debt Service Coverage Ratio for the relevant period was equal to or greater than 1.\_\_\_\_ to 1 on all Outstanding Bonds.

“Dated Date” means \_\_\_\_\_, 2011.

“Debt Service” means the principal and redemption price of and interest due on any Series of Bonds on any given Interest Payment Date.

“Debt Service Coverage Ratio” means, for any period, the ratio obtained by dividing Net Income Available for Debt Service for such period by the Annual Debt Service for such period, expressed as a percentage, in each case, as calculated by the Borrower and certified to the Trustee in writing and supported by the Audited Financial Statements described in Section 6.8 of the Loan Agreement from time to time.

“Debt Service Requirements” means for a specified period:

(i) amounts needed to pay scheduled payments of principal of the Bonds during such period, including payments for mandatory sinking fund redemption pursuant to Section 3.03 hereof;

(ii) amounts needed to pay interest on the Bonds payable during such period;

(iii) to the extent not duplicative of (i) or (ii) above, amounts paid during such period to restore the amounts on deposit in the Debt Service Reserve Fund to the Debt Service Reserve Requirement; and

(iv) amounts needed to pay the Administration Expenses during such period.

“Debt Service Reserve Fund” means the trust fund of that name created with respect to the Series 2011 Bonds pursuant to Section 5.01 hereof.

“Debt Service Reserve Requirement” means the lesser of (a) 10% of the original face amount of the Series 2011 Bonds and any Additional Bonds, (b) 125% of the average annual debt service on the Series 2011 Bonds and any Additional Bonds and (c) the Maximum Annual Debt Service on the Series 2011 Bonds and any Additional Bonds in any Bond Year, provided, however, that the amount of principal

due in any Bond Year will be determined, in the case of Bonds subject to mandatory sinking fund redemption by the principal amount of Bonds to be redeemed by mandatory sinking fund redemption in such Bond Year. The amount of the initial Debt Service Requirement is \$\_\_\_\_\_.

“Default” under the Loan Agreement means any of the events described in Section 7.1 of the Loan Agreement.

“Default Rate” with respect to the Loan and Bonds means the interest rate on the applicable Loan or Series of Bonds plus 2% per annum, and with respect to any other amounts due means 10% per annum.

“Designated Office” means, when referring to the Trustee or Paying Agent, means the office where the Trustee or Paying Agent, as applicable, maintains its designated corporate trust department, which as of the date of this Indenture, shall be the address provided in Section 12.07.

“Dissemination Agent” means the Trustee, or any successor, as Dissemination Agent under the Continuing Disclosure Agreement.

“Eligible Tenants” means, with respect to the dwelling units in the Project covered by the HAP Contract, persons who qualify for housing assistance under Section 8 of the United States Housing Act of 1937, as amended, in accordance with published standards of HUD and who qualify for housing assistance at the Project pursuant to the HAP Contract.

“Environmental Laws” means Comprehensive Environmental Response, Compensation and Liability Act of 1980 (“CERCLA”), Public Law No. 96-510, 94 Stat. 1613, the Resource Conservation and Recovery Act (“RCRA”), the National Environmental Policy Act of 1969, as amended (42 U.S.C. § 4321 et seq.); the Solid Waste Disposal Act (42 U.S.C. §§ 6901 et seq.); CERCLA; the Hazardous Material Transportation Act, as amended (49 U.S.C. §§ 1801 et seq.); the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. §§ 136 et seq.); RCRA; the Toxic Substance Control Act, as amended (15 U.S.C. §§ 2601 et seq.); the Clean Water Act; the Clean Air Act, as amended (42 U.S.C. §§ 7401 et seq.); the Federal Water Pollution Control Act, as amended (33 U.S.C. §§ 1251 et seq.); the Federal Coastal Zone Management Act, as amended (16 U.S.C. §§ 1451 et seq.); the Occupational Safety and Health Act, as amended (29 U.S.C. §§ 651 et seq.); the Safe Drinking Water Act, as amended (42 U.S.C. §§ 300(f) et seq.), and any other federal, state, or local law, statute, ordinance, and regulation, now or hereafter in effect, and in each case as amended or supplemented from time to time, and any applicable judicial or administrative interpretation thereof, including, without limitation, any applicable judicial or administrative order, consent decree, or judgment applicable to the Mortgaged Property relating to the regulation and protection of human health and safety and/or the environment and natural resources (including, without limitation, ambient air, surface water, groundwater, wetlands, land surface or subsurface strata, wildlife, aquatic species, and/or vegetation), including all amendments to such Acts, and any and all regulations promulgated thereunder, and all analogous local or state counterparts or equivalents, and any transfer of ownership notification or approval statutes, and any federal, state or local statute, law, ordinance, code, rule, regulation, order or decree, regulating, relating to or imposing liability or standards of conduct concerning any petroleum, petroleum byproduct (including but not limited to, crude oil, diesel oil, fuel oil, gasoline, lubrication oil, oil refuse, oil mixed with other waste, oil sludge, and all other liquid hydrocarbons, regardless of specific gravity) natural or synthetic gas, products and/or hazardous substance or material, toxic or dangerous waste, substance or material, pollutant or contaminant, as may now or at any time hereafter be in effect.

“Equipment” means the equipment, machinery, furnishings and other personal property located on the Mortgaged Property and all replacements, substitutions, and additions thereto

“Event of Default” means any occurrence or event specified in Section 8.01 hereof.

“Extraordinary Expenses” means all reasonable expenses properly incurred by the Trustee and any Co-Trustee under this Indenture, other than Ordinary Expenses.

“Extraordinary Services” means all services rendered by the Trustee and any Co-Trustee under this Indenture, other than Ordinary Services.

“Extraordinary Trustee’s Fees and Expenses” means the fees, expenses and disbursements payable to the Trustee and Paying Agent pursuant to Section 9.04 hereof, during any Fiscal Year in excess of Ordinary Trustee’s Fees and Expenses, including but not limited to, reasonable counsel fees and expenses, reasonable fees of other third party professionals, and any costs of sending notices pursuant to the terms and conditions of the Bond Documents, including but not limited to, Section 3.06 hereof.

“Favorable Opinion of Bond Counsel” means, with respect to any action the taking of which requires such an opinion, an unqualified opinion of Bond Counsel addressed to the Issuer and the Trustee to the effect that such action will not, in and of itself, cause interest on the Series 2011 Bonds to be includible in gross income for federal income tax purposes (subject to the inclusion of any exceptions contained in the opinion delivered upon the original issuance of the Series 2011 Bonds).

“Fiduciary” means the Trustee and any Paying Agent.

“Fiscal Year” means a period of twelve (12) consecutive months ending on December 31, except that the first Fiscal Year shall begin on the Closing Date and end on December 31, 2011.

“Fitch” means Fitch Ratings, Inc., a corporation organized and existing under the laws of the State of New York, its successors and assigns.

“Force Majeure” means, without limitation, the following: acts of nature; strikes or other industrial disturbances; acts of public enemies; orders or restraints of any kind of the government of the United States of America or of the State or of any of their subdivisions, departments, agencies or officials, or of any civil or military authority; insurrections; riots; landslides; earthquakes; fires; floods; explosions; and any other cause or event not reasonably within the control of the Borrower, but only to the extent such cause or event is not within the control of the Borrower.

“Fund” or “Funds” means any one or more, as the case may be, of the separate trust funds created and established in Article V of this Indenture.

“Governing Body” means (a), with respect to the Issuer, the Board of Directors of the Issuer, or any governing body that succeeds to the functions of the Board of Directors of the Issuer, and (b) with respect to the Borrower, its \_\_\_\_\_.

“Government Obligations” means direct obligations of, and obligations the principal of and interest on which are unconditionally guaranteed as to timely payment by, the United States of America.

“Gross Revenues” means, for the applicable period:

(a) all rents, income, receipts, royalties, revenues, issues, profits, damages and other income of any nature now due or which may become due to the Borrower or to which the Borrower may now or hereafter (including any income of any nature becoming due during any redemption period) become entitled to, or make demand or claim for, arising or issuing from or out of the leases or from or out of the lease, occupancy or license of the use of the Project, or any part thereof, including but not limited to, rent or payments derived from all leases of the Project, or any part thereof (provided, that any security or other refundable deposits held under leases shall be held and utilized by the Borrower in accordance with the

terms of the leases), now or hereafter entered into, and all bonuses, royalties, parking or common area maintenance contributions, tax or insurance contributions, deficiency rents and liquidated damages following default in any lease, excluding any gifts, grants, bequests, donations and contributions made to the Borrower, security deposits of tenants not applied to rent or other charges and disbursements to the Borrower from any Fund held under this Indenture, which disbursements are not subject to the lien and security interest of this Indenture;

(b) investment income with respect to any money held by the Trustee in the funds and accounts established hereunder (except the Rebate Fund); and

(c) all amounts realized by the Trustee pursuant to the exercise of the rights and remedies under the Mortgage.

“HAP Assignment” means the Assignment and Pledge of Housing Assistance Payments Contract and Payments, dated as of the date hereof, between the Borrower and the Trustee, as supplemented or amended, pledging and assigning certain rights and interests under the HAP Contract.

“HAP Contract” means that certain Housing Assistance Payments Basic Renewal Contract dated \_\_\_\_\_, 2011, among HUD, the Borrower and the Administrator, as amended and supplemented, for all 360 units of the Project.

“HAP Payments” means those moneys payable under the HAP Contract with respect to the Project.

“Hazardous Substances” means any petroleum or petroleum products and their by-products, flammable explosives, radioactive materials, toxic chemicals and substances, radon, asbestos in any form that is or could become friable, urea formaldehyde foam insulation and polychlorinated biphenyls (PCB), asbestos-containing materials (ACMs), lead-containing or lead-based paint (LBP), radon, medical waste and other bio-hazardous materials and any chemicals, pollutants, materials or substances defined as or included in the definition of “hazardous substances” as defined pursuant to the federal Comprehensive Environmental Response, Compensation and Liability Act, “regulated substances” within the meaning of subtitle I of the federal Resource Conservation and Recovery Act and words of similar import under applicable Environmental Laws.

“Holder” or “Bondholder” means the Person or Persons in whose name any Bond is registered on the registration records for the Bonds maintained by the Trustee as registrar.

“HUD” means the United States Department of Housing and Urban Development and its successors and assigns.

“Indebtedness” means (a) all indebtedness, whether or not represented by bonds, debentures, notes, or other securities, for the repayment of money borrowed, (b) all deferred indebtedness for the payment of the purchase price of properties or assets purchased, (c) all guaranties, endorsements (other than endorsements in the ordinary course of business), assumptions, and other contingent obligations in respect of, or to purchase or to otherwise acquire, indebtedness of others, (d) all indebtedness secured by the Mortgage, pledge, security interest, or lien existing on property owned which is subject to such Mortgage, pledge, security interest, or lien, whether or not the indebtedness secured thereby has been assumed, (e) all capitalized lease obligations, (f) all unfunded amounts under a loan agreement, letter of credit, or other credit facility for which such Person would be liable, if such amounts were advanced under the credit facility, (g) all amounts required to be paid by the Borrower as a guaranteed payment to partners or members or a preferred or special dividend, including any mandatory redemption of shares or interests, (h) all unfunded pension funds, or welfare or pension benefit plans or liabilities, and (i) all

obligations (calculated on a net basis) of the Borrower under derivatives in the form of interest rate swaps, credit default swaps, total rate of return swaps, caps, floors, collars and other interest hedge agreements, in each case whether the Borrower is liable contingently or otherwise, as obligor, guarantor or otherwise, or in respect of which obligations the Borrower otherwise assures a creditor against loss; provided, however, that for the purpose of computing Indebtedness, there will be excluded any particular Indebtedness if, upon or prior to the maturity thereof, there has been deposited with the proper depository in trust the necessary funds (or Government Obligations not callable or pre-payable by the issuer thereof) for the payment, redemption, or satisfaction of such Indebtedness, and thereafter such funds and such Government Obligations so deposited will not be included in any computation of the assets of the Borrower and the income derived from such funds and such direct obligations of the United States of America so deposited will not be included in any computation of the income of the Borrower.

“Indenture” means this Trust Indenture, as amended or supplemented from time to time.

“Independent” means, with respect to Counsel or any Consultant, a person who is not a member of the governing body of the Issuer or the Borrower and is not an officer or employee of the Issuer or the Borrower and which is not a partnership, corporation or association having a partner, director, officer, member or substantial stockholder who is a member of the governing body of the Issuer or the Borrower or who is an officer or employee of the Issuer or the Borrower; provided, however, that the fact that such person is retained regularly by or transacts business with the Issuer shall not make such person an employee within the meaning of this definition.

“Initial Bond” means the initial bond registered by the Comptroller and subsequently canceled and replaced by definitive bonds pursuant to this Indenture.

“Insurance Consultant” means a Consultant having the skill and expertise necessary to evaluate the insurance needs of multifamily rental housing and which may be a broker or agent with which the Borrower or Issuer transacts business.

“Insurance Proceeds” means the total proceeds of insurance paid by an insurance company under the policies of insurance required to be procured by the Borrower pursuant to the Loan Agreement.

“Interest Account” means each trust account by that name in the Bond Fund created with respect to each Series of Bonds pursuant to Section 5.01 hereof.

“Interest Payment Date” means each January 1 and July 1, commencing January 1, 2012, until the final Principal Payment Date of the Series 2011 Bonds.

“Interest Period” for any Bonds means initially the period from the Dated Date to but not including the first Interest Payment Date and thereafter the period from and including each Interest Payment Date to but not including the next Interest Payment Date or other date on which interest is required to be paid on such Bonds.

“Interest Requirement” for any Bonds means an amount equal to the interest that would be due and payable on such Bonds on the Interest Payment Date next succeeding the date of determination (assuming that no principal of such Bonds is paid or redeemed between such date and the next succeeding Interest Payment Date) multiplied by a fraction the numerator of which is one and the denominator of which is the number of whole calendar months in the Interest Period in which such date occurs.

“Investment Securities” means any of the following obligations or securities, to the extent permitted by applicable law:

- (i) Government Obligations;
- (ii) Commercial paper having, at the time of investment or contractual commitment to invest therein, a rating from the Rating Agency, from which a rating is available in the highest investment category granted thereby;
- (iii) Repurchase and reverse repurchase agreements collateralized with Government Obligations, including those of the Trustee or any of its affiliates;
- (iv) Investment in money market mutual funds having a rating in the highest investment category granted thereby from the Rating Agency, including, without limitation any mutual fund for which the Trustee or an affiliate of the Trustee serves as investment manager, administrator, shareholder servicing agent, and/or custodian or subcustodian, notwithstanding that (A) the Trustee or an affiliate of the Trustee receives fees from funds for services rendered, (B) the Trustee collects fees for services rendered pursuant to this Indenture, which fees are separate from the fees received from such funds, and (C) services performed for such funds and pursuant to this Indenture may at times duplicate those provided to such funds by the Trustee or an affiliate of the Trustee; and
- (v) Demand deposits, including interest bearing money market accounts, time deposits, trust funds, trust accounts, overnight bank deposits, interest-bearing deposits, and certificates of deposit or bankers acceptances of depository institutions, including the Trustee or any of its affiliates, rated in the “AA” long-term ratings category or higher by the Rating Agency.

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

“Issuer’s Fees and Expenses” means the annual prorated amount payable January 20 of each year beginning January 20, 2012 to the Issuer for its ordinary monitoring fees and expenses under the Indenture during the Qualified Project Period in an amount equal to not less than the greater of (a) .0003 times the amount of Bonds Outstanding on January 20, (b) \$12 times the number of units in the Project, or (c) \$1,200 per year..

“Issuer Representative” means the person or persons at the time designated to act on behalf of the Issuer by written certificate furnished to the Trustee and the Borrower containing the specimen signatures of such person or persons and signed by the Mayor or Clerk of the Issuer. Such certificate may designate an alternate or alternates.

“Loan” means the loan evidenced by the Series 2011 Note from the Borrower to the Trustee financed by the Issuer in the aggregate principal amount of \$\_\_\_\_\_.

“Loan Agreement” means the Loan Agreement of even date herewith among the Issuer, Trustee and the Borrower, as amended and supplemented from time to time.

“Loan Payments” means, collectively, the “Basic Loan Payments” and the “Additional Loan Payments” as described in Section 3.2 of the Loan Agreement.

“Long-Term Indebtedness” means any Indebtedness other than Short-Term Indebtedness.

“Mail” means either (i) first class mail by the United States Postal Service, postage prepaid, to the Holders at their respective addresses which appear on the registration books of the Paying Agent on the



date of mailing, or (ii) actual delivery to the Holders or their representatives evidenced by receipt signed by such Holders or their representatives.

“Management Agreement” means the Management Agreement dated \_\_\_\_\_, 2011, between the Manager and the Borrower, or any substitute agreement providing for the management, maintenance and operation of the Project, in each case as amended and supplemented from time to time.

“Management Consultant” means a Consultant possessing significant management consulting experience in matters pertaining to owning and operating multifamily residential rental housing facilities.

“Management Fee” means the fee paid to the Manager pursuant to the Management Agreement.

“Manager” means \_\_\_\_\_, or any subsequent third-party management company with experience in managing similar properties and their successors and assigns meeting the requirements of Section 4.7 of the Loan Agreement and any subcontractor as manager of the Project.

“Material Adverse Effect” means (a) a material adverse change in the financial condition of the Borrower or the Project; or (b) any event or occurrence of whatever nature which would materially and adversely change (i) the Borrower’s ability to perform its obligations under the Loan Agreement or any other Borrower Documents; or (ii) the Holders’ or the Trustee’s security interests in the security pledged hereunder.

“Maximum Annual Debt Service” means as of any date of calculation the highest principal and interest payment requirements with respect to all Outstanding Bonds for any succeeding Fiscal Year, but excluding the period ending on the final Principal Payment Date of the Bonds.

“Modifications” means modifications, repairs, renewals, improvements, replacements, alterations, additions, enlargements, or expansions in, on, or to the Project (other than routine repair or maintenance), including any and all machinery, furnishings, and equipment therefor.

“Moody’s” means Moody’s Investors Service, a corporation organized and existing under the laws of the State of Delaware, its successors and their assigns.

“Mortgage” means the Mortgage, Assignment of Rents and Security Agreement of even date herewith, from the Borrower for the benefit of the Trustee, securing the Loan and certain additional amounts due and owing under the Loan Agreement with respect to the Bonds, as amended and supplemented from time to time.

“Mortgaged Property” means all property subject to the lien of the Mortgage and this Indenture.

“Needs Assessment Analysis” means the analysis and report required as set forth in Section 4.12 of the Loan Agreement.

“Net Cash Flow” means all Project Revenues, after deduction of (i) Operating Expenses and (ii) Debt Service Requirements and (iii) amounts paid to the Repair and Replacement Fund.

“Net Income Available for Debt Service” means, for any period of determination thereof, Project Revenues for such period, plus all interest earnings on moneys held in Funds and Accounts which are transferred to the Revenue Fund pursuant to Article VI hereof, minus (i) total Operating Expenses incurred or payable by the Borrower for such period, (ii) all required deposits to the Insurance and Tax Escrow Fund and the Repair and Replacement Fund for such period, (iii) any profits or losses which would be regarded as extraordinary items under generally accepted accounting principles, (iv) gain or loss on the extinguishment of Indebtedness, (v) contributions, (vi) proceeds of Additional Bonds and any other

Permitted Indebtedness, (vii) Net Proceeds, and (viii) the proceeds of any sale, transfer or other disposition of all or any portion of the Project by the Borrower.

“Net Proceeds,” when used with respect to any Insurance Proceeds or Condemnation Award, means the gross proceeds from such Insurance Proceeds or Condemnation Award, less all expenses (including reasonable attorneys’ fees of the Borrower or the Trustee and any extraordinary fees and expenses of the Trustee) incurred in the realization thereof.

“No-Arbitrage Certificate” means the No-Arbitrage Certificate executed and issued by the Issuer, dated the Closing Date.

“Note” means the Series 2011 Note and any promissory note issued in connection with Additional Bonds.

“Operating Account” means, the demand deposit bank account maintained by the Borrower pursuant to Section 4.3 of the Loan Agreement on which the Borrower or its authorized agent writes checks to pay Operating Expenses.

“Operating Expenses” means, for any period, expenses paid or budgeted to be paid in connection with the operation and maintenance of the Project (determined on a cash basis) during such period including the Management Fee and payments into the Insurance and Tax Escrow Fund and the Repair and Replacement Fund in the amount of the Replacement Reserve Requirement, but excluding (i) Debt Service Requirements, (ii) any loss or expense resulting from or related to any extraordinary and nonrecurring items, (iii) any losses or expenses related to the sale of assets, the proceeds of which sale are not included in Project Revenues pursuant to clause (ii) of the definition thereof, (iv) expenses paid from operational reserves, including the Operations and Maintenance Reserve Requirement, and (v) expenses paid from the Repair and Replacement Fund. For purposes of calculating the Debt Service Coverage Ratio, Operating Expenses will not include the Subordinate Management Fee, the Asset Management Fee and the Subordinate Asset Management Fee.

“Operating Fund” means the trust fund by that name created pursuant to Section 5.01 hereof.

“Operating Requirement” means all Operating Expenses, exclusive of amounts to be deposited to or payable from the Administration Fund, Insurance and Tax Escrow Fund, Operations and Maintenance Reserve Fund or Repair and Replacement Fund, projected to be payable in such month in accordance with the Budget.

“Operating and Maintenance Expenses” means, in the aggregate, for any period, all current expenses of the ownership, operation and maintenance of the Project for such period, as determined on an accrual basis, including but not limited to (a) any trustee, servicing, administration and other fees due in connection with the Bonds, developer fee and Investor Limited Partner asset management fee, and (b) all deposits to the reserves established under the Indenture, but excluding, however, depreciation, amortization and other non-cash expenses with respect to such period.

“Operations and Maintenance Reserve Fund” means the trust fund by that name created pursuant to Section 5.01 hereof.

“Operations and Maintenance Reserve Requirement” means \$\_\_\_\_\_.

“Ordinary Expenses” means those reasonable expenses incurred in the ordinary course of business, by a trustee, a registrar, an authenticating agent and a paying agent under instruments similar to this Indenture, excluding Extraordinary Expenses.

“Ordinary Services” means those services normally rendered by a trustee, a registrar, an authenticating agent and a paying agent under instruments similar to this Indenture, excluding Extraordinary Services.

“Ordinary Trustee’s Fees and Expenses” means the amount payable by the Borrower to the Trustee pursuant to the Loan Agreement for its ordinary services hereunder, in an amount equal to \$3,000, payable annually in advance in an annual installment on each January 20, commencing January 20, 2012; Such amount includes the fees of the Trustee in its capacity as Dissemination Agent under the Continuing Disclosure Agreement.

“Outstanding” or “outstanding” with respect to Bonds means, as of any given date, all Bonds which have been authenticated and delivered by the Trustee under this Indenture, except:

- (a) Bonds cancelled at or prior to such date or delivered to or acquired by the Trustee or Paying Agent on or prior to such date for cancellation;
- (b) Bonds deemed to be paid in accordance with Article VII of this Indenture; and
- (c) Bonds in lieu of which other Bonds have been authenticated under Section 2.09 or 2.10 hereof.

“Parity Indebtedness” means the Indebtedness permitted to be secured by the Borrower pursuant to Section 6.12 of the Loan Agreement.

“Paying Agent” means any paying agent, initially the Trustee, appointed by the Issuer pursuant to Section 9.17 hereof, or any successor appointed hereunder.

“Permitted Encumbrances” means, with respect to the Project, the Mortgage and (a) the lien of current real property taxes (if any), ground rents, water charges, sewer rents and assessments not yet due and payable, (b) covenants, conditions and restrictions, rights of way, easements and other matters of public record, none of which, individually or in the aggregate, materially interferes with the current use of the Project or the security intended to be provided by the Mortgage or with the Borrower’s ability to pay its obligations when they become due or materially and adversely affects the value of the Project, (c) the Regulatory Agreement, and (d) the exceptions (general and specific) set forth in the title insurance policy or appearing of record, none of which, individually or in the aggregate, materially interferes with the current use of the Project or the security intended to be provided by the Mortgage or with the Borrower’s ability to pay its obligations when they become due or materially and adversely affects the value of the Project.

“Permitted Indebtedness” means (i) payment and other liabilities payable under the Loan Agreement or the Series 2011 Note, (ii) liabilities of the Borrower under the Mortgage, and (iii) Indebtedness of the Borrower allowed pursuant to Section 6.12 of the Loan Agreement incurred in the ordinary course of business.

“Person” or “person” means an individual, a corporation, a partnership, an association, a joint stock company, a trust, any unincorporated organization, a governmental body, any other political subdivision, municipality or authority or any other group or entity.

“Potential Default” means any event which with the passage of time or the giving of notice, or both, would constitute an Event of Default under this Indenture or a Default under the Loan Agreement.

“Principal Account” means the trust account by that name within the Bond Fund created with respect to a Series of Bonds pursuant to Section 5.01 hereof.

“Principal Payment Date” means the maturity date of the Bonds and any date for mandatory sinking fund redemption of the Bonds pursuant to Section 3.03 hereof.

“Principal Requirement” for any Bonds means an amount equal to the regularly scheduled principal that is due and payable on such Bonds on the Bond Payment Date next succeeding the date of determination, whether by maturity or by mandatory sinking fund redemption pursuant to Section 3.03 hereof, multiplied by a fraction the numerator of which is one and the denominator of which is the number of whole calendar months in the period commencing on the last date of payment of regularly scheduled principal (or the date of issuance of such Bonds, if no principal has been paid) and ending on the next Bond Payment Date for payment of regularly scheduled principal.

“Project” means the Site, together with the improvements constructed thereon, consisting of a 100-unit residential rental facility and related support facilities, including all buildings, structures and improvements now or hereafter constructed thereon, and all fixtures, machinery, equipment, furniture, furnishings and other personal property hereafter attached to, located in, or used in connection with any such structures, buildings or improvements, and all additions, substitutions and replacements thereto, whether now owned or hereafter acquired. The term “Project” does not include property owned by others, including the Manager of the Project or residents thereof.

“Project Fund” means the trust fund by that name created pursuant to Section 5.01.

“Project Revenues” means for any period, all cash operating and non-operating revenues of the Project, including HAP Payments and Unrestricted Contributions, less (i) any extraordinary and nonrecurring items (including any real property tax refunds), (ii) income derived from the sale of assets not in the ordinary course of business which is permitted under the Bond Documents, (iii) security, cleaning or similar deposits of tenants until applied or forfeited, (iv) Net Proceeds of Insurance Proceeds or Condemnation Awards, but including as Project Revenues (1) any such Net Proceeds resulting from business interruption insurance or other insurance or condemnation proceeds retained by the Borrower and (2) amounts received by the Borrower or the Trustee pursuant to any payment guaranty, operating guaranty or similar agreement with respect to the Project.

“Qualified Insurer” has the meaning provided in Section 5.2 of the Loan Agreement.

“Qualified Project Costs” shall have the meaning given to such term in the Regulatory Agreement. “Counsel” means an attorney or firm of attorneys duly admitted to practice law before the highest court of any state and not unsatisfactory to the Trustee.

“Rating Agency” means S&P, Moody’s or Fitch, or any other nationally recognized rating agency if such agency currently has a rating in effect with respect to the Bonds. The initial Rating Agency shall be Standard & Poor’s.

“Rating Agency Fee” means any fee required to be paid to a Rating Agency to maintain a rating on the Bonds, and initially means the annual surveillance fee of \$1,500 payable by the Borrower to the initial Rating Agency.

“Rebate Analyst” means a Certified Public Accountant, financial analyst or Bond Counsel, or any firm of the foregoing, or a financial institution (which may include the Trustee) experienced in making the arbitrage and rebate calculations required pursuant to Section 148 of the Code and retained by the Borrower to make the computations and give the directions required pursuant to the Tax Agreement.

“Rebate Analyst Fee” means a fee paid for each rebate calculation (which are to be made every fifth year, if required).

“Rebate Fund” means the trust fund by that name created pursuant to Section 5.01 hereof.

“Record Date” means the fifteenth day (whether or not a Business Day) of the calendar month preceding any applicable Interest Payment Date.

“Related Person” means any member of the same Controlled Group as the Issuer or the Borrower.

“Repair and Replacement Fund” means the trust fund by that name established pursuant to Section 5.01 hereof.

“Replacement Reserve Requirement” means an amount equal to the greater of (i) \$300 per unit per year or (ii) the amount required by the HAP Contract, as increased pursuant to any Needs Assessment Analysis required by Section 4.12 of the Loan Agreement.

“Regulatory Agreement” means the Regulatory and Land Use Restriction Agreement, dated as of even date herewith, among the Issuer, the Borrower, and the Trustee, as amended and supplemented from time to time.

“Reserved Rights” of the Issuer means (a) the right of the Issuer to amounts payable to it pursuant to Section 3.2(b)(ii)(3) of the Loan Agreement, (b) all rights which the Issuer or its officers, officials, agents or employees may have under this Indenture and the Borrower Documents to indemnification by the Borrower and by any other persons and to payments and reimbursements for fees or expenses incurred by the Issuer itself, or its officers, officials, agents or employees; (c) the right of the Issuer to receive notices, reports or other information, make determinations and grant approvals hereunder and under the other Bond Documents, including rights to notice and reporting requirements and restrictions on transfer of ownership, its right to inspect and audit its books, records and premises of the Borrower of the Project; (d) all rights of the Issuer to enforce the representations, warranties, covenants and agreements of the Borrower pertaining in any manner or way, directly or indirectly, to the requirements of the Act or of the Issuer, and set forth in any of the Bond Documents or in the Tax Agreement or in any other certificate or agreement executed by the Borrower; (e) all rights of the Issuer in connection with any amendment to or modification of the Bond Documents; and (f) all enforcement remedies with respect to the foregoing.

“Resolution” means the Resolution of the Issuer adopted on February 10, 2011, authorizing the issuance of the Bonds and approving the documents related thereto.

“Responsible Officer,” when used with respect to the Trustee, means any corporate trust officer or assistant corporate trust officer or any other officer of the Trustee within its corporate trust department customarily performing functions similar to those performed by any of the above designated officers, and also means, with respect to a particular corporate trust matter, any other officer to whom such matter is referred because of such person’s knowledge of and familiarity with the particular subject.

“Restoration” means the restoration, replacement, repair or rebuilding of the Project as a result of an event for which Condemnation Awards or Insurance Proceeds are received with respect to the Project, as provided in Section 5.3 of the Loan Agreement.

“Restoration Plans” has the meaning provided in Section 5.3 of the Loan Agreement.

“Revenue Fund” means the trust fund by that name created pursuant to Section 5.01 hereof.

“S&P” means Standard & Poor’s Rating Services, a division of The McGraw-Hill Companies, Inc., a corporation organized and existing under the laws of the State of New York, its successors and their assigns.

“Series” means any series of Bonds issued pursuant to this Indenture.

“Series 2011 Bonds” means \$\_\_\_\_\_ aggregate principal amount of the Issuer’s Multifamily Housing Revenue Bonds (Marshall Apartments), Series 2011.

“Series 2011 Note” means the note executed by the Borrower in favor of the Trustee on behalf of the Holders evidencing the Loan of the proceeds of the Series 2011 Bonds.

“Servicer” means any mortgage banking company or financial institution engaged pursuant to Section 9.22 hereof to service the Loan.

“Short-Term Indebtedness” means any Indebtedness maturing not more than 365 days after it is incurred or which is payable on demand, except for any such Indebtedness which is renewable or extendable at the sole option of the debtor to a date more than 365 days after it is incurred, or any such Indebtedness, which, although payable within 365 days, constitutes payments required to be made on account of Indebtedness expressed to mature more than 365 days after it was incurred.

“Site” means the real property on which the Project is located.

“Special Projects” mean projects located in the City of Austin, Texas or projects that directly benefit residents of the City of Austin, Texas and which receives the written approval of the Issuer. The definition may also include: (a) first-time homeowners counseling, (b) first-time down payment and closing cost assistance, (c) single and multi-family rental developments, (d) social service, educational and counseling services for Borrower residents in Austin, Texas, (e) actions taken to prevent Events of Default, (f) actions taken to maintain or enhance the value of the Development or (g) programs to aid and assist low-income tenants. Projects listed in the second sentence hereof do not require the written approval of the Issuer.

“Special Projects Funds” mean, with respect to a fiscal year, the amount equal to 9.5% times the difference of Gross Revenues from the sum of (1) Operating and Maintenance Expenses, (2) resident services expenses and (3) payments on Borrower’s equity investment, and/or promissory note scheduled payments of principal and interest on indebtedness.

“Special Redemption Account” means each trust account by that name within the Bond Fund created with respect to a Series of Bonds pursuant to Section 5.01 hereof.

“State” means the State of Texas.

“Subordinate Asset Management Fee” means, for any period, an amount equal to the Applicable Percentage of the Asset Management Fee with respect to such period.

“Subordinate Management Fee” means, for any period, an amount equal to the Applicable Percentage of the Management Fee with respect to such period.

“Supplemental Indenture” means any Amendment to this Indenture entered into in accordance with Article XI hereof.

“Surplus Cash” means the amount on deposit in the Surplus Fund in excess of \$\_\_\_\_\_.

“Surplus Cash Maintenance Amount” means with respect to a Quarterly Evaluation Date, the dollar amount by which Net Income Available for Debt Service for the 12 month period ending on such Quarterly Evaluation Date would have needed to be increased to satisfy the Coverage Tests if the respective coverage factors were increased by .15; provided that the respective increases in coverage factors shall be .05, if determined on the basis of audited financial statements and the Coverage Tests are determined or certified as correct by a Certified Public Account.

“Surplus Fund” means the trust fund by that name created pursuant to Section 5.01 hereof.

“Tax Agreement” means, together, the Borrower’s Tax Certificate and the No-Arbitrage Certificate.

“Tax-Exempt Bonds” means the Series 2011 Bonds and any Additional Bonds that as originally issued were the subject of an opinion of Bond Counsel to the effect that the interest thereon is excluded from the gross income of the Holders thereof for federal income tax purposes.

“Test Period” means the twelve month period ending with the most recent month for which quarterly financial statements or Audited Financial Statements have been delivered to the Trustee pursuant to Section 6.8(a) of the Loan Agreement; provided that with respect to Fiscal Year 2010 the period shall begin on \_\_\_\_\_ 1, 2011, and end December 31, 2011.

“Title Policy” means title insurance in the form of an ALTA mortgagee’s title policy issued by a title insurance company acceptable to the Underwriter and Trustee in the face amount of at least the principal amount of Series 2011 Bonds insuring that the Trustee has a first priority valid lien in the Mortgaged Property subject only to Permitted Encumbrances.

“Trust Estate” means the property conveyed to the Trustee hereunder, including all of the Issuer’s right, title and interest in and to the property described in the Granting Clauses hereof.

“Trustee” means \_\_\_\_\_ or any successors or assigns hereunder.

“Underwriter” means Merchant Capital, L.L.C.

“Unrestricted Contributions” means contributions that are not restricted in any way that would prevent their application to the payment of Debt Service on Indebtedness of the Borrower.

## **Section 1.02. Rules of Construction.**

(a) The singular form of any word used herein, including the terms defined in Section 1.01, shall include the plural, and vice versa, unless the context otherwise requires. The use herein of a pronoun of any gender shall include correlative words of the other genders.

(b) All references herein to “Articles,” “Sections” and other subdivisions hereof are to the corresponding Articles, Sections or subdivisions of this Indenture as originally executed; and the words “herein,” “hereof,” “hereunder” and other words of similar import refer to this Indenture as a whole and not to any particular Article, Section or subdivision hereof.

(c) The headings or titles of the several Articles and Sections hereof, and any table of contents appended to copies hereof, shall be solely for convenience of reference and shall not affect the meaning, construction or effect, of this Indenture.

(d) The parties acknowledge that each party, the Borrower, and their respective counsel have participated in the drafting and revision of this Indenture, the Loan Agreement and

the Regulatory Agreement. Accordingly, the parties agree that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Indenture, the Loan Agreement or the Regulatory Agreement or any amendment or supplement or exhibit hereto or thereto.

(e) References to the Tax-Exempt Bonds as “tax-exempt” or to the “tax-exempt status” of the Tax-Exempt Bonds, refer to the exclusion of interest on the Tax-Exempt Bonds from gross income for federal income tax purposes pursuant to Section 103(a) of the Code, irrespective of such forms of taxation as alternative minimum tax, environmental tax, or branch profits tax on foreign corporations, as is consistent with the approach taken in Section 59(i) of the Code.

**Section 1.03. Content of Certificates and Opinions** Every certificate or opinion with respect to compliance with a condition or covenant provided for in this Indenture or the Loan Agreement shall include (a) a statement that the person or persons making or giving such certificate or opinion have read such covenant or condition and the definitions herein relating thereto; (b) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such certificate or opinion are based; (c) a statement that, in the opinion of the signers, they have made or caused to be made such examination or investigation as is necessary to enable them to express an informed opinion as to whether or not such covenant or condition has been complied with; and (d) a statement as to whether, in the opinion of the signers, such condition or covenant has been complied with.

Any such certificate or opinion made or given by an officer of the Issuer may be based, insofar as it relates to legal matters, upon a certificate or opinion of or representations by counsel, unless such officer knows that the certificate or opinion or representations with respect to the matters upon which his or her certificate or opinion may be based as aforesaid are erroneous, or in the exercise of reasonable care should have known that the same were erroneous. Any such certificate or opinion made or given by counsel may be based, insofar as it relates to factual matters (with respect to which information is in the possession of the Issuer), upon the certificate or opinion of or representations by an officer of the Issuer, unless such counsel knows that the certificate or opinion or representations with respect to the matters upon which his or her opinion may be based as aforesaid are erroneous, or in the exercise of reasonable care should have known that the same were erroneous.

## **ARTICLE II.**

### **THE SERIES 2011 BONDS**

**Section 2.01. Authority for and Issuance of Series 2011 Bonds; Interest on the Series 2011 Bonds.** There is hereby authorized under this Indenture the Series 2011 Bonds which shall bear interest from their Dated Date at the interest rates per annum and shall mature (such maturity not to exceed forty years from the Closing Date) in the respective principal amounts and bear interest, payable on each Interest Payment Date at the respective rates per annum as set forth in the following tables:



Series 2011 Bonds

<u>Maturity Due</u>	<u>Amount</u>	<u>Interest Rate</u>
_____ 1, 20__	\$ _____	____%
_____ 1, 20__	\$ _____	____%
_____ 1, 20__	\$ _____	____%

The total combined aggregate principal amount of Series 2011 Bonds that may be issued and Outstanding hereunder is expressly limited to \$\_\_\_\_\_, except as provided in Section 2.09 hereof. The Series 2011 Bonds are designated “Austin Housing Finance Corporation Multifamily Housing Revenue Bonds (Marshall Apartments), Series 2011.” No Bonds may be issued under the provisions of this Indenture except in accordance with this Article.

The Bonds shall be issuable only as fully registered Bonds without coupons, in Authorized Denominations. The Bonds shall be numbered separately from R-1 consecutively upward.

The Series 2011 Bonds shall be dated the Dated Date. The Bonds shall bear interest from the Interest Payment Date preceding the date of authentication thereof, unless the date of such authentication shall be after a Record Date, in which case they shall bear interest from the next succeeding Interest Payment Date succeeding the Record Date; provided that if, as shown by the records of the Paying Agent, interest on the Bonds shall be in default, Bonds shall bear interest from the date to which interest has been paid in full on the Bonds, or if no interest has been paid on the Bonds, from their Dated Date. Bonds authenticated on or before the first Record Date following the Closing Date shall bear interest from the Dated Date.

The principal of and premium, if any, on the Bonds shall be payable, when due, in lawful money of the United States of America at the Designated Office of the Trustee upon presentation and surrender of the Bonds. Payment of interest on the Bonds shall be made on each Interest Payment Date to the Holder thereof as of the Record Date, by check or draft mailed by the Trustee on such Interest Payment Date to the Holder at its address as it appears on the registration books maintained by or on behalf of the Trustee or at such other address as is furnished to the Trustee in writing by such Holder prior to such Record Date. Payment of interest on any Bonds may, upon written request to the Trustee of any Holder of Bonds in an aggregate principal amount of at least \$500,000, be transmitted by wire transfer of immediately available funds on the Interest Payment Date to such Holder to the bank account number at a bank located within the continental United States on file with the Trustee as of the Record Date. Any such wire transfer request shall continue in force until revoked in writing by such Holder to the Trustee, and to be effective as to any interest payment such revocation must be received by the Trustee prior to the applicable Record Date.

**Section 2.02. Interest on Bonds.** Interest accrued on the Bonds during each Interest Period shall be paid on the following Interest Payment Date. Interest on the Bonds shall be computed on the basis of a 360-day year of twelve 30-day months.

**Section 2.03. Execution.** No Bond shall be valid or obligatory for any purpose or be entitled to any security or benefit under this Indenture unless and until such Bond has been (i) duly registered by the Comptroller by the execution of a registration certificate of the Comptroller substantially in the form as set forth herein and appearing on the Initial Bond or (ii) authenticated by the Trustee by the execution of the Trustee’s certificate of authentication substantially in the form set forth in Exhibit A to this Indenture and appearing on the Bonds, other than the Initial Bond. The registration certificate of the

Comptroller shall be manually executed by said Comptroller (or a deputy designated in writing to act for said Comptroller) and the seal of the Comptroller shall be impressed, or placed in facsimile, on the registration certificate. The execution of the registration certificate shall be conclusive evidence that the Initial Bond has been duly issued under this Indenture and that the holder thereof is entitled to the benefits of this Indenture. Upon receipt of the Initial Bond by the Issuer, with the registration certificate thereon so executed and sealed as aforesaid, the Issuer shall deliver such Initial Bond to the Trustee. The Trustee, upon satisfaction of the conditions specified below, shall cancel the Initial Bond and shall deliver the definitive Bonds to the initial purchasers thereof or their designee, in substitution of the Initial Bond. The certificate of authentication of the Trustee appearing on any Bond shall be deemed to have been duly executed by the Trustee if manually signed by an authorized signatory of the Trustee. It shall not be required that the same signatory of the Trustee sign the certificate of authentication on all of the Bonds.

In case any officer of the Issuer whose signature or whose facsimile signature shall appear on the Bonds shall cease to be such officer before the authentication of such Bonds, such signature or the facsimile signature thereof shall nevertheless be valid and sufficient for all purposes the same as if he or she had remained in office until authentication; and any Bond may be signed on behalf of the Issuer by such persons as are at the time of execution of such Bond proper officers of the Issuer, even if, at the date of this Indenture, any such person was not such officer.

**Section 2.04. Limited Obligations.** NOTWITHSTANDING ANYTHING HEREIN CONTAINED TO THE CONTRARY, ANY OBLIGATION WHICH THE ISSUER MAY INCUR UNDER THIS INDENTURE OR UNDER ANY INSTRUMENT EXECUTED IN CONNECTION HERewith WHICH SHALL ENTAIL THE EXPENDITURE OF MONEY SHALL NOT BE A GENERAL OBLIGATION OF THE ISSUER BUT SHALL BE A SPECIAL LIMITED OBLIGATION PAYABLE SOLELY FROM THE TRUST ESTATE. THE BONDS SHALL CONSTITUTE A VALID CLAIM OF THE RESPECTIVE BONDHOLDERS THEREOF AGAINST THE TRUST ESTATE, WHICH IS PLEDGED TO SECURE THE PAYMENT OF THE PRINCIPAL OF, PREMIUM, IF ANY, AND INTEREST ON THE BONDS AND WHICH SHALL BE UTILIZED FOR NO OTHER PURPOSE, EXCEPT AS EXPRESSLY AUTHORIZED IN THIS INDENTURE. THE BONDS, TOGETHER WITH INTEREST THEREON, SHALL BE SPECIAL LIMITED OBLIGATIONS OF THE ISSUER GIVING RISE TO NO CHARGE AGAINST THE ISSUER'S GENERAL CREDIT AND PAYABLE SOLELY FROM, AND CONSTITUTE CLAIMS OF THE BONDHOLDERS THEREOF AGAINST ONLY, THE TRUST ESTATE. THE BONDS, THE PREMIUM, IF ANY, AND THE INTEREST THEREON SHALL NOT BE DEEMED TO CONSTITUTE DEBT OF THE ISSUER (EXCEPT TO THE EXTENT OF THE TRUST ESTATE), THE STATE OR ANY POLITICAL SUBDIVISION THEREOF, AND NONE OF THE ISSUER, THE STATE OR ANY POLITICAL SUBDIVISION THEREOF SHALL BE LIABLE THEREON, NOR IN ANY EVENT SHALL THE BONDS BE PAYABLE OUT OF ANY FUNDS OR PROPERTIES OTHER THAN THOSE SPECIFICALLY PLEDGED THERETO. THE ISSUER HAS NO TAXING POWER.

**Section 2.05. Form of Bonds.** The Series 2011 Bonds shall be substantially in the forms set forth in Exhibit A hereto with such variations, omissions and insertions as are permitted or required by this Indenture.

**Section 2.06. Delivery of Series 2011 Bonds.** Upon the execution and delivery of this Indenture, the Issuer shall execute and deliver the Series 2011 Bonds to the Trustee, and the Trustee shall authenticate the Series 2011 Bonds and shall deliver them to the original purchasers thereof as directed by the Issuer in the request described in (c) below.

Prior to the delivery of any of the Series 2011 Bonds against payment therefore, the Trustee shall have received the following:

- (a) 1. A certified copy of the Resolution;
- (b) Original executed counterparts of this Indenture, the Loan Agreement, the Mortgage, the Series 2011 Note, the Regulatory Agreement, the HAP Assignment and the Continuing Disclosure Agreement;
- (c) A request and authorization to the Trustee on behalf of the Issuer and signed by an Issuer Representative to authenticate and deliver the Series 2011 Bonds as set forth therein;
- (d) Receipt of the Title Policy or a commitment to issue the Title Policy, in form and substance acceptable to the Underwriter;
- (e) Evidence of insurance coverage required by Section 5.1 of the Loan Agreement;
- (f) The rating letter from the Rating Agency, showing the rating of “\_\_\_” for the Series 2011 Bonds, and which rating is in effect on the Closing Date;
- (g) Opinions of Counsel to Borrower in form and substance satisfactory to the Underwriter and Bond Counsel;
- (h) An approving opinion of Bond Counsel;
- (i) Internal Revenue Service Form 8038 completed by the Issuer with respect to the Bonds;
- (j) 11. the opinion of the Attorney General of the State of Texas approving the Bonds; and
- (k) Such other documents as may reasonably be requested by the Underwriter.

**Section 2.07. Mutilated, Lost, Stolen or Destroyed Bonds.** In the event any Bond is mutilated, lost, stolen or destroyed, the Issuer may execute and the Trustee may authenticate and deliver a new Bond of the same Series and of like date, maturity and denomination as the Bond mutilated, lost, stolen or destroyed; provided that, in the case of any mutilated Bond, such mutilated Bond shall first be surrendered to the Trustee, and, in the case of any lost, stolen or destroyed Bond, there shall be first furnished to the Trustee evidence of such loss, theft or destruction satisfactory to the Trustee, together with indemnity to the Issuer and the Trustee satisfactory to them, in their sole discretion. In the event any such Bond shall be about to mature or have matured or been called for redemption, instead of issuing a duplicate Bond, the Issuer may pay the same without surrender thereof. The Issuer and the Trustee may charge the Holder of such Bond their reasonable fees and expenses incurred pursuant to this Section.

All duplicate Bonds issued and authenticated pursuant to this Section 2.08 shall constitute original, contractual obligations of the Issuer to the extent provided in this Indenture (whether or not lost, stolen or destroyed Bonds be at any time found by anyone) and shall be entitled to equal and proportionate rights and benefits hereunder as all other Outstanding Bonds issued hereunder.

**Section 2.08. Registration and Transfer of Bonds; Persons Treated as Holders.** The Issuer shall cause books for the registration and for the transfer of the Bonds as provided in this Indenture to be kept by the Trustee. At reasonable times and under reasonable regulations established by the Trustee and subject to applicable law providing to the contrary, such list may be inspected and copied by the Issuer, the Borrower or the Holders of \$1,000,000 or more in aggregate Bond Obligation, or a designated representative of such Holders.

Promptly following surrender for transfer of any Bond at its Designated Office, the Trustee shall enter the name and address of the transferee upon the registration books of the Issuer and shall deliver to the transferee a new fully authenticated and registered Bond or Bonds in the name of the transferee, such new Bond or Bonds to be of the same Series, of Authorized Denominations and of the same maturity and for the aggregate principal amount which the new Holder is entitled to receive. In addition, promptly following surrender of any Bond at the Designated Office of the Trustee, duly endorsed in blank, such Bond may at the option of the Holder thereof, be exchanged for a Bond or Bonds in an equal aggregate principal amount of the applicable Series of Authorized Denominations and of the same form and tenor of the Bond being exchanged.

All Bonds presented for transfer, exchange, redemption or payment shall (if so required by the Issuer or the Trustee) be accompanied by a written instrument or instruments of transfer, in form and with guaranty of signature as set forth in the form of Bond applicable to each Series or as may be satisfactory to the Trustee, duly executed by the Holder.

The Trustee also may require payment from the Holder of a sum sufficient to cover any tax or other governmental fee or charge that may be imposed in relation thereto. Such taxes, fees and charges shall be paid before any such new Bond shall be delivered. The cost of printing Bonds and any services rendered or expenses incurred by the Trustee in connection with any transfer shall be paid by the Borrower.

The Issuer, the Trustee and the Trustee shall not be required (a) to issue or register the transfer of any Bonds during any period beginning on a Record Date with respect thereto and ending at the close of business on the Business Day preceding the next Interest Payment Date or (b) to transfer any Bonds selected, called or being called for redemption in whole or in part.

Bonds delivered upon any transfer as provided herein, or as provided in Section 2.08 hereof, shall be valid limited obligations of the Issuer, evidencing the same debt as the Bonds surrendered, shall be secured by this Indenture and shall be entitled to all of the security and benefits hereof to the same extent as the Bonds surrendered.

The Issuer, the Borrower and the Trustee may treat the person in whose name a Bond is registered on the registration books maintained by the Trustee as the absolute owner thereof for all purposes, whether or not such Bond shall be overdue, and shall not be bound by any notice to the contrary.

**Section 2.09. Cancellation of Bonds.** Whenever any Outstanding Bond shall be delivered to the Trustee for cancellation pursuant to this Indenture, upon payment of the principal amount thereof and interest thereon, for replacement pursuant to Section 2.08 hereof, for transfer or exchange pursuant to Section 2.09 hereof or otherwise, such Bond shall be cancelled and destroyed by the Trustee and, upon written request of the Issuer, counterparts of a certificate of destruction evidencing such destruction shall be furnished by the Trustee to the Issuer.

**Section 2.10. Temporary Bonds.** Pending preparation of definitive Bonds, there may be executed, and upon request of the Issuer, the Trustee shall authenticate and deliver, in lieu of definitive Bonds and subject to the same limitations and conditions, temporary typewritten, printed, engraved or lithographed bonds, in the form of registered Bonds without coupons in Authorized Denominations, substantially in the form of Exhibit A.

If temporary Bonds shall be issued, the Issuer shall cause the definitive Bonds to be prepared and to be executed, authenticated and delivered to the Trustee not later than 14 days following the delivery or reissuance of such temporary Bonds, and the Trustee, upon presentation to it at its Designated Office of any temporary Bond, shall cancel the same and deliver in exchange therefor at the place designated by the

Holder, without charge to the Holder, a definitive Bond or Bonds of the same Series in an equal aggregate principal amount, of the same maturity and bearing interest at the same rate or rates as the temporary Bond surrendered. Until so exchanged, the temporary Bonds shall in all respects be entitled to the same benefit and security of this Indenture as the definitive Bonds of such Series to be issued and authenticated hereunder.

**Section 2.11. Book-Entry Form.** Notwithstanding anything herein to the contrary, the Bonds shall initially be issued as typewritten bonds and held in book-entry form on the books of the Clearing Agency. The Issuer and any Fiduciary may, in connection herewith, do or perform or cause to be done or performed any acts or things not adverse to the rights of the holders of the Bonds, as are necessary or appropriate to accomplish or recognize such book-entry form Bonds.

(a) So long as the Bonds remain and are held in book-entry form on the books of a Clearing Agency, then (1) any such Bond may be registered upon the books kept by the Trustee in the name of such Clearing Agency, or any nominee thereof, including CEDE & Co., as nominee of The Depository Trust Company; (2) the Clearing Agency in whose name such Bonds are so registered shall be, and the Issuer and any Fiduciary may deem and treat such Clearing Agency as, the absolute owner and holder of such Bond for all purposes of this Indenture, including, without limitation, the receiving of payment of the principal of, premium, if any, and interest on such Bond and the receiving of notice and giving of consent; (3) neither the Issuer nor any Fiduciary shall have any responsibility or obligation hereunder to any direct or indirect participant, within the meaning of Section 17A of the Securities Exchange Act of 1934, as amended, of such Clearing Agency, or any person on behalf of which, or otherwise in respect of which, any such participant holds any interest in any Bond, including, without limitation, any responsibility or obligation hereunder to maintain accurate records of any interest in any Bond or any responsibility or obligation hereunder with respect to the receiving of payment of principal, premium, if any, or interest on any Bond, the receiving of notice or the giving of consent; and (4) the Clearing Agency is not required to present any Bond called for partial redemption prior to receiving payment so long as the Trustee and the Clearing Agency have agreed to the method for noting such partial redemption.

(b) If either (a) the Issuer receives notice from the Clearing Agency which is currently the registered owner of the Bonds to the effect that such Clearing Agency is unable or unwilling to discharge its responsibility as a Clearing Agency for the Bonds or, (b) the Issuer elects with the prior written consent of the Borrower to discontinue its use of such Clearing Agency as a Clearing Agency and the Issuer fails to establish a securities depository/book-entry system relationship with another Clearing Agency, then the Issuer and any Fiduciary each shall do or perform or cause to be done or performed all acts or things, not adverse to the rights of the holders of the Bonds, as are necessary or appropriate to discontinue use of such Clearing Agency as a Clearing Agency for the Bonds and to transfer the ownership of each of the Bonds to such person or persons, including any other Clearing Agency, as the holder of the Bonds may direct in accordance with this Indenture. Any expenses of such discontinuance and transfer, including expenses of printing new certificates to evidence the Bonds, shall be paid by the Borrower.

(c) So long as the Bonds remain and are held in book-entry form on the books of a Clearing Agency, the Trustee shall be entitled to request and rely upon a certificate or other written representation from the Clearing Agency or any participant or indirect participant with respect to the identity of any Holders as of a record date selected by the Trustee. For purposes of determining whether the consent, advice, direction or demand of an owner of a Bond has been obtained, the Trustee shall be entitled to treat the Holders as the owner or Beneficial Owner of such Bonds and any consent, request, direction, approval, objection or other instrument of such Holder may be obtained in the same fashion described in Article X hereof.

The book-entry system may also be discontinued with respect to the Bonds, at the direction of the Issuer or the Borrower, and at the Borrower's expense, and the Issuer and the Trustee will cause the delivery of Bond certificates to such Beneficial Owners of the Bonds, registered in the names of such Beneficial Owners as are specified to the Trustee by the Clearing Agency in writing, in the event the Bonds, are no longer rated in one of the three highest rating categories by a Rating Agency.

When the book-entry system is not in effect, all references herein to the Clearing Agency will be of no further force or effect.

**Section 2.12. Additional Bonds.** So long as no Event of Default has then occurred and is continuing, the Issuer at the request of a Borrower Representative may issue Additional Bonds for the purpose of (i) financing the costs of making such Modifications as the Borrower may deem necessary or desirable, (ii) financing the cost of completing any Modifications, (iii) refunding any Bonds, and (iv) in each such case, paying the costs of the issuance and sale of the Additional Bonds, paying capitalized or funded interest and such other costs reasonably related to the financing as shall be agreed upon by the Borrower and the Issuer. The terms of such Additional Bonds, the purchase price to be paid therefor, and manner in which the proceeds therefrom are to be disbursed shall be determined by the Borrower and the sale of any Additional Bonds shall be the sole responsibility of the Borrower. The Borrower, the Trustee and the Issuer shall enter into an amendment to the Loan Agreement to provide for additional Basic Loan Payments in an amount at least sufficient to pay principal of, premium, if any, and interest on the Additional Bonds when due and to provide for any additional terms or changes to the Loan Agreement required because of such Additional Bonds. The Issuer and the Trustee shall enter into such amendments or supplements to this Indenture as are required to effect the issuance of the Additional Bonds. An amount equal to the Debt Service Reserve Requirement with respect to the Additional Bonds shall be deposited in the Debt Service Reserve Fund at the time of delivery of the Additional Bonds.

As a condition for the issuance of Additional Bonds, (i) such Additional Bonds shall be rated in a rating category that is not lower than the underlying rating (*i.e.*, the rating of the Outstanding Bonds without giving effect to any credit enhancement) of the Series of Bonds of the same parity as such Additional Bonds, and (ii) prior to the issuance of such Additional Bonds, the Rating Agency then rating the Outstanding Bonds shall deliver a Confirmation of Rating stating that the issuance of the Additional Bonds will not result in a qualification, downgrade or withdrawal of the then current ratings on the Series 2011 Bonds.

**Section 2.13. Delivery of Additional Bonds.** Upon the execution and delivery in each instance of an appropriate indenture supplemental hereto, the Issuer shall execute and deliver to the Trustee and the Trustee shall register and authenticate Additional Bonds and deliver them to the purchaser or purchasers as may be directed by the Issuer, as hereinafter in this Section 2.14 provided. Prior to the delivery by the Trustee of any such Additional Bonds, there shall be filed with the Trustee:

(a) a valid and effective amendment to the Loan Agreement, pursuant to Section 11.04 hereof, providing for the inclusion within the Project of any real estate and interests therein and any buildings, structures, facilities, machinery, equipment, and related property to be acquired by purchase or construction from the proceeds of the Additional Bonds and providing for an increase in the Basic Loan Payment obligations of the Borrower, which shall be evidenced by a promissory note of the Borrower, and providing any other changes in connection with the issuance of Additional Bonds;

(b) a valid and effective supplemental indenture providing for the issuance of such new series of Additional Bonds and securing such Additional Bonds by the lien and security interest of the Trust Estate;

(c) a valid and effective amendment to the Mortgage subjecting to the lien of the Mortgage any and all real estate and interests therein and any buildings, structures, facilities, and related property acquired by purchase or construction from proceeds of such Additional Bonds and assigning and pledging to the Issuer and the Trustee the Borrower's interest in the leases, rents, issues, profits, revenues, income, receipts, moneys, royalties, rights and benefits thereof and therefrom and granting a security interest to the Issuer in the Borrower's interest in the machinery, equipment, and related property acquired by purchase or construction from the proceeds of the Additional Bonds, in any inventory then or thereafter located at the real estate or interests therein and any buildings, structures, facilities, and related property to be acquired by purchase or construction from the proceeds of the Additional Bonds, and in the accounts, documents, chattel paper, instruments, and general intangibles arising in any manner from the Borrower's operation of any real estate or interests therein and any buildings, structures, facilities, machinery, equipment, and related property to be acquired by purchase or construction from the proceeds of the Additional Bonds;

(d) a copy of a resolution of its Governing Body theretofore adopted and approved authorizing the execution and delivery of the supplemental indenture, amendment to the Loan Agreement, promissory note, amendment to the Mortgage and issuance of the Additional Bonds;

(e) a request and authorization to the Trustee on behalf of the Issuer, signed by the Mayor of the Issuer or such other officers of the Issuer as are designated by the Governing Body of the Issuer, to authenticate and deliver the Additional Bonds to the purchaser or purchasers therein identified upon payment to the Trustee, for the account of the Issuer, of a specified sum plus any accrued interest; the proceeds of the Additional Bonds shall be paid over to the Trustee and deposited to the credit of the Bond Fund or to such other funds as are provided and created by the supplemental indenture;

(f) a certificate signed by an officer of the Borrower to the effect that no Event of Default under this Indenture or any Borrower Document has then occurred and is continuing;

(g) certification from the Borrower and proforma calculations demonstrating that the Coverage Test will continue to be satisfied after giving effect to the issuance of the Additional Bonds;

(h) an Favorable Opinion of Bond Counsel with respect to the Outstanding Tax-Exempt Bonds and the Additional Bonds;

(i) the items required by Section 2.13 of this Indenture;

(j) an endorsement of the Title Policy, which endorsement includes any additional real property made subject to the Mortgage and increases the face amount of the policy to an amount equal to the principal amount of the Outstanding Bonds and the Additional Bonds; and

(k) such other documents as the Trustee may require to evidence compliance with any of the Bond Documents.

**Section 2.14. Parity Indebtedness.** The Issuer and Trustee acknowledge that pursuant to Section 6.12 of the Loan Agreement, under certain circumstances the Borrower is permitted to incur Parity Indebtedness that is secured by a lien on and security interests in all or any portion of the Project or the Project Revenues, secured on an equal and ratable basis with the then Outstanding Bonds under the Mortgage.

## ARTICLE III.

### REDEMPTION OR PURCHASE OF SERIES 2011 BONDS

**Section 3.01. Mandatory Redemption of Series 2011 Bonds.** Series 2011 Bonds shall be called for redemption (1) in whole or in part in the event the Project or any portion thereof is damaged or destroyed or taken in a condemnation proceeding and Net Proceeds resulting therefrom are to be applied to the payment of the Series 2011 Note as provided in Section 5.3 of the Loan Agreement, which Net Proceeds are to be used to redeem Series 2011 Bonds at the election of the Borrower made pursuant to Section 5.3 of the Loan Agreement, (2) in whole in the event the Borrower exercises its option to terminate the Loan Agreement pursuant to Article VIII thereof (and cause all of the Series 2011 Bonds to be redeemed as provided in said Article III), (3) in whole or in part from proceeds of the Title Policy pursuant to Section 3.9 of the Loan Agreement, or (4) in whole in the event the Borrower is required to prepay the Loan following a “Default” under the Loan Agreement.

If called for redemption at any time pursuant to (1) through (4) above, the Series 2011 Bonds of a Series to be redeemed shall be subject to redemption by the Issuer prior to maturity, in whole at any time or (in the case of redemption pursuant to clause (1) or (3) above) in part at any time (less than all of such Series 2011 Bonds to be selected in accordance with the provisions of Section 3.05 hereof) at a redemption price equal to 100% of the principal amount thereof plus accrued interest to the redemption date; such redemption date, to be a date determined by the Borrower and in the case of redemption pursuant to (4) above, to be the earliest practicable date, following acceleration of amounts due under the Loan.

**Section 3.02. Optional Redemption of Series 2011 Bonds.** The Series 2011 Bonds maturing on and after \_\_\_\_ 1, 20\_\_, in whole or in part at any time, at a redemption price equal to 100% if the principal amount of Series 2011 Bonds being redeemed plus accrued interest.

Moneys used to pay premium, if any, on the Series 2011 Bonds to be redeemed must constitute Available Moneys.

**Section 3.03. Mandatory Sinking Fund Redemption.**

(a) The Series 2011 Bonds maturing \_\_\_\_\_ 1, 20\_\_ are subject to mandatory sinking fund redemption at a redemption price equal to 100% of the principal amount thereof plus accrued interest on January 1 and July 1 of each year and in the principal amounts shown below:

<u>Date</u>	<u>Amount</u>	<u>Date</u>	<u>Amount</u>
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(b) The Series 2011 Bonds maturing \_\_\_\_ 1, 20\_\_ are subject to mandatory sinking fund redemption at a redemption price equal to 100% of the principal amount thereof plus accrued interest on January 1 and July 1 of each year and in the principal amounts shown below:

<u>Date</u>	<u>Amount</u>	<u>Date</u>	<u>Amount</u>
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(c) The Series 2011 Bonds maturing \_\_\_\_\_ 1, 20\_\_ are subject to mandatory sinking fund redemption at a redemption price equal to 100% of the principal amount thereof plus accrued interest on January 1 and July 1 of each year and in the principal amounts shown below:

<u>Date</u>	<u>Amount</u>	<u>Date</u>	<u>Amount</u>
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**Section 3.04.     [Reserved]**

**Section 3.05.     Selection of Bonds to Be Redeemed.** Bonds may be redeemed only in Authorized Denominations. If less than all of the Bonds are being redeemed: (i) the principal amount of the Bonds to be redeemed shall be designated by the Borrower in writing to the Trustee and (ii) the particular Bonds of the Series or portions thereof to be redeemed shall be selected by the Trustee by lot or in such manner as the Trustee in its discretion may deem proper. If it is determined that less than all of the principal amount represented by any Bond is to be called for redemption, then, following notice of intention to redeem such principal amount, the Holder thereof shall surrender such Bond to the Trustee on or before the applicable redemption date for (a) payment on the redemption date to such Holder of the redemption price of the amount called for redemption and (b) delivery to such Holder of a new Bond or Bonds of such Series in the aggregate principal amount of the unredeemed balance of the principal amount of such Bond, which shall be an Authorized Denomination. A new Bond of such Series representing the unredeemed balance of such Bond shall be issued to the Holder thereof, without charge therefor. If the Holder of any Bond or integral multiple of the Authorized Denomination selected for redemption shall fail to present such Bond to the Trustee for payment and exchange as aforesaid, such Bond shall, nevertheless, become due and payable on the date fixed for redemption to the extent of the amount called for redemption (and to that extent only), and interest shall cease to accrue from the date fixed for redemption.

**Section 3.06.     Notice of Redemption.**

(a) In the event any of the Bonds are called for redemption, the Trustee shall give notice, in the name of the Issuer, of the redemption of such Bonds, which notice shall (i) specify the Bonds to be redeemed, the redemption date, the redemption price and the place or places where amounts due upon such redemption will be payable (which shall be the Designated Office

of the Trustee) and, if less than all of the Bonds are to be redeemed, the numbers of the Bonds, and the portions of the Bonds, to be so redeemed, (ii) state any condition to such redemption, including but not limited to a statement that redemption is conditional upon receipt by the Trustee of sufficient moneys to redeem the Bonds, including any redemption premium and (iii) state that on the redemption date, and upon the satisfaction of any such condition, the Bonds to be redeemed shall cease to bear interest. Such notice may set forth any additional information relating to such redemption. Such notice shall be given by Mail to the Holders of the Bonds to be redeemed, at least thirty (30) days but no more than sixty (60) days prior to the date fixed for redemption. If a notice of redemption shall be unconditional, or if the conditions of a conditional notice of redemption shall have been satisfied, then upon presentation and surrender of the Bonds so called for redemption at the place or places of payment, such Bonds shall be redeemed.

(b) The Trustee may give any other or additional redemption notice as it deems necessary or desirable, but it is not obligated to give or provide any additional notice or information.

(c) Any Bonds which have been duly selected for redemption and which are deemed to be paid in accordance with Article VII hereof shall cease to bear interest on the specified redemption date.

**Section 3.07. Payment of Redemption Price.** For the redemption of any of the Bonds of a Series, the Issuer shall cause to be deposited in the Special Redemption Account of the applicable Bond Fund, whether out of Project Revenues or any other moneys constituting the Trust Estate, including Net Proceeds available for such purpose pursuant to Article VIII of the Loan Agreement, or otherwise, an amount sufficient to pay the principal of, premium, if any, and interest to become due on the date fixed for such redemption. The obligation of the Issuer to cause any such deposit to be made hereunder shall be reduced by the amount of moneys in such Special Redemption Account available for and used on such redemption date for payment of the principal of, premium, if any, and accrued interest on the Bonds to be redeemed.

**Section 3.08. No Partial Redemption After Default.** Anything herein to the contrary notwithstanding, if there has occurred and is continuing an Event of Default described in Section 8.01(a), (b) or (c) hereof, there shall be no redemption of less than all of the Bonds Outstanding.

## **ARTICLE IV.**

### **GENERAL COVENANTS**

**Section 4.01. Payment of Bonds; Limited Obligations.**

(a) The Issuer covenants that it will promptly pay the principal of, premium, if any, and interest on every Bond issued under this Indenture at the place, on the dates and in the manner provided herein and in the Bonds, provided that the principal, premium, if any, and interest on the Bonds are payable by the Issuer solely from the Trust Estate, and nothing in the Bonds or this Indenture shall be considered as assigning or pledging any other funds or assets of the Issuer other than the Trust Estate.

(b) Each and every covenant made herein by the Issuer is predicated upon the condition that neither the Issuer, the State nor any political subdivision of the State shall in any event be liable for the payment of the principal of, premium, if any, or interest on any of the Bonds or for the performance of any pledge, obligation or agreement undertaken by the Issuer except to the extent that moneys pledged herein are sufficient therefor.

**Section 4.02. Performance of Covenants; Authority; Due Execution.** The Issuer covenants that it will faithfully perform or cause to be performed at all times any and all covenants, undertakings, stipulations and provisions to be performed by the Issuer contained in this Indenture and the other Bond Documents, in any and every Bond executed, authenticated and delivered hereunder and in all of its proceedings pertaining hereto. The Issuer covenants that it is duly authorized under the laws of the State, including particularly the Act, to issue the Bonds, to execute this Indenture and to pledge the amounts hereby pledged in the manner and to the extent herein set forth. The Issuer further covenants that all action on its part for the issuance of the Bonds and the execution and delivery of the Bond Documents have 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 and hereof.

**Section 4.03. Instruments of Further Assurance.** The Issuer covenants that it will do, execute, acknowledge and deliver, or cause to be done, executed, acknowledged and delivered, such indentures supplemental hereto and such further acts, instruments and transfers as the Trustee may reasonably require for the better assuring, transferring, pledging, assigning and confirming to the Trustee all and singular the rights assigned hereby and the amounts pledged hereby to the payment of the principal of, premium, if any, and interest on the Bonds. The Issuer covenants and agrees that, except as herein and in the Mortgage provided, neither it nor the Borrower will sell, convey, assign, pledge, encumber or otherwise dispose of any part of the Trust Estate.

**Section 4.04. Recording and Filing; Further Instruments.**

(a) The Trustee shall cooperate with the Issuer and the Borrower so that, at the request of the Issuer or the Borrower, the Issuer or the Borrower shall cause to be recorded or filed, at the Borrower's expense, all necessary financing statements, including continuation statements, related to this Indenture, the Regulatory Agreement, the HAP Assignment and the Mortgage and all supplements hereto and thereto, and such other documents as may be necessary to be kept and filed in such manner and in such places as may be required by law in order to perfect, preserve and protect fully the security of the Holders and the rights of the Trustee hereunder.

(b) The Issuer shall (or shall cause the Borrower to), upon the reasonable request of the Trustee, from time to time execute and deliver such further instruments and take such further action as may be reasonable and as may be required to effectuate the purposes of this Indenture or any provision hereof; provided, however, that no such instruments or actions shall pledge the general credit, the full faith or the taxing power of the Issuer, the State or any political subdivision thereof.

**Section 4.05. Tax Covenants.** The Issuer shall not use or permit the use of any proceeds of Bonds or any other funds of the Issuer, directly or indirectly, to acquire any securities or obligations, and shall not use or permit the use of the Project Revenues in any manner, and shall not take or permit to be taken any other action or actions, which would cause any Tax-Exempt Bond to be an "arbitrage bond" within the meaning of Section 148 of the Code, or which would otherwise affect, the exclusion of interest on the Tax-Exempt Bonds from gross income of the recipients thereof for federal income tax purposes.

The Issuer shall at all times do and perform all acts and things permitted by law and necessary or desirable to assure that interest paid by the Issuer on the Tax-Exempt Bonds shall, for federal income tax purposes, be excluded from the gross income of the recipients thereof. In furtherance of this covenant, the Issuer, the Trustee and the Borrower shall execute, deliver and perform the Tax Agreement, which is by this reference incorporated herein and made a part hereof as if set forth herein in full, and by its acceptance of this Indenture, the Trustee acknowledges receipt of the Tax Agreement and acknowledges its incorporation herein by reference.

Notwithstanding any provision of this Indenture, the Regulatory Agreement or the Loan Agreement to the contrary, unless otherwise specifically agreed in the Tax Agreement or in a separate written agreement, the Trustee shall not be liable or responsible for any calculation or determination which may be required in connection with, or for the purpose of complying with, Section 148 of the Code, or any successor statute or any regulation, ruling or other judicial or administrative interpretation thereof, including, without limitation, the calculation of amounts required to be paid to the United States of America or the determination of the maximum amount which may be invested in nonpurpose obligations having a yield higher than the yield on the Bonds, and the Trustee shall not be liable or responsible for monitoring the compliance by the Borrower or the Issuer with any of the requirements of Section 148 of the Code or any applicable regulation, ruling or other judicial or administrative interpretation thereof except as specifically provided in the Tax Agreement.

**Section 4.06. No Disposition of Trust Estate, Project or Project Revenues.** Except as permitted by this Indenture (including specifically in connection with the discharge of the lien of this Indenture in accordance with Article VII hereof), the Issuer shall not sell, lease, pledge, assign or otherwise encumber or dispose of its interest in the Trust Estate. Except as described in the Loan Agreement and the Mortgage, the Issuer will not, and will not permit the Borrower to, sell, lease, pledge, assign or otherwise encumber or dispose of the Project or Project Revenues.

**Section 4.07. Access to Books.** All books and documents in the possession of the Issuer or the Trustee relating to the Project, the Project Revenues and the Trust Estate shall at all reasonable times be open to inspection by the Trustee, the Issuer, the Borrower and the Holders of at least \$100,000 of the Bonds.

**Section 4.08. Reserved.**

**Section 4.09. Trustee to Retain Information.** So long as any of the Bonds shall be outstanding, the Trustee shall retain all certificates, requisitions, financial statements and other written information furnished to it by or on behalf of the Borrower or any other person under the Loan Agreement and any other agreement or instrument pertaining to the Bonds and shall make such documentation available to the Issuer, the Borrower, the Rating Agency, or any Holder for review after reasonable written notice during regular business hours at the Designated Office of the Trustee. The Trustee shall permit such reviewers to take copies of all or any part of such documentation, subject to their payment of such copying and handling charges as the Trustee may impose.

## **ARTICLE V.**

### **DEPOSIT OF BOND PROCEEDS; FUNDS AND ACCOUNTS; REVENUES**

**Section 5.01. Creation of Funds and Accounts.** There are hereby created by the Issuer and ordered established the following Funds and Accounts to be held by the Trustee:

- (a) A Bond Fund and therein a Principal Account, an Interest Account and a Special Redemption Account with respect to each Series of Bonds;
- (b) The Debt Service Reserve Fund;
- (c) A Project Fund and therein a Costs of Issuance Account;

- (d) A Revenue Fund;
- (e) A Rebate Fund;
- (f) An Operating Fund;
- (g) An Operations and Maintenance Reserve Fund;
- (h) An Insurance and Tax Escrow Fund;
- (i) A Repair and Replacement Fund;
- (j) A Surplus Fund; and
- (k) An Administration Fund.

**Section 5.02. Deposit of Proceeds.** Upon initial execution and delivery of the Bonds, the proceeds of the Bonds shall be deposited as follows:

(a) all of the proceeds of the Bonds other than deposits to the Debt Service Reserve Fund as provided in (b) and (c) below and deposits to the Interest Accounts of the Bond Fund as provided in (d) and (e) below, shall be deposited into the Project Fund, and \$\_\_\_\_\_ of such amount from proceeds of the Series 2011 Bonds shall be set aside within the Costs of Issuance Account therein;

(b) \$\_\_\_\_\_ received from the sale of the Series 2011 Bonds shall be deposited in the Debt Service Reserve Fund; and

(c) \$\_\_\_\_\_ received from the sale of the Series 2011 Bonds shall be deposited in the Series 2011 Interest Account of the Bond Fund.

**Section 5.03. Disbursements from the Project Fund.**

(a) The Trustee shall disburse moneys in the Costs of Issuance Account in the Project Fund to pay the Costs of Issuance upon receipt of a written requisition of the Borrower to the Trustee which states (i) that such amount is to be paid to persons, firms or corporations identified therein, and (ii) that such amount is properly payable as a Cost of Issuance hereunder. On the date six months after the Closing Date, the Trustee shall pay any remaining balance in the Costs of Issuance Account to the Project Fund.

(b) On the Closing Date, amounts on deposit in the Project Fund shall be applied to payment of the costs of acquiring the Project by disbursement thereof in accordance with one or more requisitions of the Borrower to the Trustee in the form set forth as Exhibit B to the Loan Agreement.

(c) Amounts on deposit in the Project Fund shall be applied to payment of the costs of renovating the Project by disbursement thereof in accordance with one or more requisitions of the Borrower to the Trustee within 30 days of receipt of such requisition substantially in the form set forth as Exhibit B to the Loan Agreement.

(d) Net Proceeds of any Insurance Proceeds or Condemnation Awards deposited in the Project Fund pursuant to Section 5.4 of the Loan Agreement shall be applied as provided in Section 5.3 and 5.4 of the Loan Agreement.

(e) Any amounts remaining in the Project Fund on the date that is three (3) years from the Closing Date shall be deposited in the Interest Account of the Bond Fund unless otherwise required by the Tax Agreement.

**Section 5.04. Revenue Fund.**

(a) There shall be deposited in the Revenue Fund (i) all Loan Payments and other amounts paid to the Trustee under the Loan Agreement (other than prepayments required to redeem Bonds pursuant to Sections 3.01 or 3.02 hereof, which shall be deposited in the related Special Redemption Account), (ii) all other amounts required to be so deposited pursuant to the terms hereof or of the Tax Agreement, including investment earnings to the extent provided in Article VI, (iii) any amounts derived from the Loan Agreement or the Mortgage to be applied to payment of amounts intended to be paid from the Revenue Fund, (iv) all Project Revenues, and (v) such other moneys as are delivered to the Trustee by or on behalf of the Issuer or the Borrower with directions for deposit of such moneys in the Revenue Fund.

(b) Moneys on deposit in the Revenue Fund shall be disbursed on the 15<sup>th</sup> day of each month in the following order of priority:

(1) To the respective Interest Accounts for the Bonds, the applicable Interest Requirement for such Series of Bonds for the previous calendar month, together with an amount equal to any unfunded Interest Requirement for any prior month and to the holder of any Parity Indebtedness an amount equal to the interest due in such month, together with an amount equal to any unfunded interest for any prior month;

(2) To the respective Principal Accounts for the Bonds, an amount equal to the applicable Principal Requirement for such Series of Bonds, together with an amount equal to any unfunded Principal Requirement from any prior month and to the holder of any Parity Indebtedness an amount equal to the principal due in such month, together with an amount equal to any unfunded principal for any prior month;

(3) To the Debt Service Reserve Fund, the amount, if any, required to be paid into the Debt Service Reserve Fund pursuant to Section 3.2(e) of the Loan Agreement to restore the amounts on deposit therein to the Debt Service Reserve Requirement;

(4) Subject to Section 5.10 hereof, for transfer to the Insurance and Tax Escrow Fund, an amount equal to one-twelfth of the amount budgeted by the Borrower for the current year for annual premiums for insurance required to be maintained pursuant to the Loan Agreement and for annual real estate taxes or other charges for governmental services for the current year, as provided in the Budget, provided that distribution by the Trustee to the Insurance and Tax Escrow Fund in respect of the first date or dates on which premiums for insurance and taxes or other payments described above are payable will be made in amounts equal to the respective quotients obtained by dividing the sum of (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;

(5) To the Operating Fund, an amount equal to such month's Operating Requirement (less any amounts to be paid to the Manager for its Management Fee pursuant to (10) below), together with such additional Operating Expenses requested in writing by a Borrower Representative pursuant to and after satisfaction of the conditions specified in Section 4.3 of the Loan Agreement;

(6) Subject to the provisions of Section 5.11 hereof, for transfer to the Repair and Replacement Fund, commencing with the month of \_\_\_\_\_, an amount equal to the one-twelfth of the Replacement Reserve Requirement;

(7) Subject to the provisions of Section 5.12 hereof, for transfer to the Administration Fund, an amount equal to one-sixth (1/6) of the Administration Expenses (other than the Rebate Analyst Fee) scheduled to be due and payable on or before the next succeeding Interest Payment Date;

(8) To the Administration Fund, the amount of any Rebate Analyst Fee then due;

(9) To the Rebate Fund, to the extent of any deposit required to be made thereto pursuant to the Tax Agreement;

(10) To the Manager, the Management Fee other than any Subordinate Management Fee;

(11) To the Asset Manager, the Asset Management Fee other than any Subordinate Asset Management Fee; and

(12) To the Surplus Fund, all remaining amounts.

Failure to deposit sufficient Project Revenues to make the deposits described above shall not, in itself, constitute an Event of Default hereunder.

#### **Section 5.05. Bond Fund.**

(a) There shall be deposited into the respective Principal Accounts of the Bond Fund (i) moneys transferred to such Principal Accounts from the Revenue Fund pursuant to Section 5.04 hereof; (ii) moneys transferred from the Operations and Maintenance Reserve Fund pursuant to Section 5.05(f) hereof; (iii) moneys transferred from the Surplus Fund pursuant to Section 5.13 hereof in respect of principal payable on the Bonds; (iv) moneys transferred from the Repair and Replacement Fund pursuant to Section 5.11 hereof in respect of principal payable on the Bonds; (v) moneys transferred from the Debt Service Reserve Fund pursuant to Section 5.06 hereof in respect of principal payable on the Bonds, and (vi) any other amounts deposited with the Trustee with directions from the Borrower to deposit the same in the applicable Principal Account of the Bond Fund.

(b) There shall be deposited into the respective Interest Accounts of the Bond Fund (i) all accrued interest, if any, on the sale and delivery of the Series 2011 Bonds (ii) moneys transferred to such Interest Account from the Revenue Fund pursuant to Section 5.04 hereof; (iii) moneys transferred from the Operations and Maintenance Reserve Fund pursuant to Section 5.05(f) hereof; (iv) moneys transferred from the Surplus Fund pursuant to Section 5.13 hereof in respect of interest payable on the Bonds, (v) moneys transferred from the Repair and Replacement Fund pursuant to Section 5.11 hereof in respect of interest payable on the Bonds;

(vi) moneys transferred from the Debt Service Reserve Fund pursuant to Section 5.06 hereof in respect of interest payable on the Bonds, and (vii) any other amounts deposited with the Trustee with directions from the Borrower to deposit the same in the applicable Interest Account of the Bond Fund.

(c) There shall be deposited in the Special Redemption Account of the applicable Bond Fund (i) any Net Proceeds of Insurance Proceeds or Condemnation Awards to be transferred to special Redemption Account pursuant to Section 5.16 hereof, and (ii) all other payments made by or on behalf of the Issuer with respect to the redemption of Bonds pursuant to Sections 3.01 or 3.02 hereof. Amounts on deposit in each Special Redemption Account shall be used to pay the redemption price of Bonds of the related Series being redeemed.

(d) Except as otherwise provided herein, moneys in each Principal Account shall be used for the payment of principal of the Bonds of the applicable Series as the same shall become due and payable on any Principal Payment Date, including a Principal Payment Date resulting from the redemption of the Bonds pursuant to Section 3.03 hereof.

(e) Except as otherwise provided herein, moneys in each Interest Account shall be used for the payment of interest on such Bonds as the same becomes due and payable on any Bond Payment Date.

(f) If on any Interest Payment Date, the amount on deposit in Series 2011 Bond Fund Accounts is insufficient to make the payments or deposits described in (a) or (b) above, the Trustee shall make up any such shortfall by transferring amounts from the following Funds in the following order:

- (1) the Surplus Fund;
- (2) the Operations and Maintenance Reserve Fund;
- (3) the Repair and Replacement Fund;
- (4) the Debt Service Reserve Fund; and
- (5) the Operating Fund.

(g) Any balance in the Bond Fund on each Interest Payment Date after making the transfers required above in this Section 5.05 shall be transferred to the Revenue Fund.

**Section 5.06. Debt Service Reserve Fund.**

(a) There shall be deposited in the Debt Service Reserve Fund (i) all moneys transferred to the Debt Service Reserve Fund pursuant to Section 5.02 hereof, (ii) moneys transferred from the Revenue Fund pursuant to Section 5.04 hereof, and (iii) any other moneys received by the Trustee with directions from such party to deposit the same in the Debt Service Reserve Fund.

(b) Amounts on deposit in the Debt Service Reserve Fund shall be used to make the payments required pursuant to Section 5.04(b)(3) or (4) after the transfer of any amounts from the Surplus Fund pursuant to Section 5.13 hereof and the Repair and Replacement Fund pursuant to Section 5.11 hereof, if the amounts on deposit in the Revenue Fund are insufficient therefor.



(c) Amounts on deposit in the Debt Service Reserve Fund shall be transferred to the Principal Account of the related Bond Fund at the direction of the Borrower Representative for the purpose of paying the last maturing principal of the Bonds on a Principal Payment Date or, if all the Bonds are being redeemed, to the Special Redemption Account of a Bond Fund for redemption of Bonds.

(d) If the Debt Service Reserve Requirement is reduced or eliminated in accordance with the definition thereof, the amounts on deposit in the Debt Service Reserve Fund in excess of the Debt Service Reserve Requirement shall, at the written direction of a Borrower Representative delivered to the Trustee, be either (i) transferred to the Special Redemption Account to be used to redeem Bonds pursuant to Section 3.02 hereof, (ii) transferred to the Principal or Interest Account to pay the principal of and/or interest on the Bonds as it becomes due, or (iii) if no Bonds remain outstanding, either transferred to the Revenue Fund and applied as provided in Section 5.04 hereof, or used for any other purpose directed in writing by a Borrower Representative, which, in the opinion of a Favorable Opinion of Bond Counsel delivered to the Issuer and the Trustee, complies with the Act and will not adversely affect the exclusion from gross income of the recipients thereof of the interest on the Tax-Exempt Bonds for federal income tax purposes.

(e) All interest income derived from the investment of amounts on deposit in the Debt Service Reserve Fund shall be retained in the Debt Service Reserve Fund until the amount on deposit therein shall be equal to the Debt Service Reserve Fund Requirement, and thereafter shall be deposited into the Revenue Fund.

#### **Section 5.07. Rebate Fund**

a. A special Rebate Fund is hereby established by the Borrower. Such fund shall be for the sole benefit of the United States of America and shall not be subject to the claim of any other Person, including without limitation the Bondholders. The Rebate Fund is established for the purpose of complying with Section 148 of the Code and the Regulations promulgated pursuant thereto. In furtherance of the foregoing, the Borrower will satisfy its obligations under Section 148(f) of the Code as set forth in subsections (b), (e) and (f) hereof, unless the Borrower certifies in writing to the Trustee that it is exempt from the requirements thereof because it has met or expects to meet one of the exceptions available under such section of the Code.

b. At the close of the fifth "Bond Year," the Borrower shall cause the Rebate Analyst to compute the amount of "Excess Earnings," if any, for the period beginning on the date of delivery of the Tax-Exempt Bonds and ending at the close of such "Bond Year" and transfer to the Trustee for deposit to the Rebate Fund an amount equal to the difference, if any, between the amount then in the Rebate Fund and the Excess Earnings so computed. The term "Bond Year" means with respect to the Tax-Exempt Bonds each five-year period ending on the anniversary of the date of delivery of the Tax-Exempt Bonds. If, at the close of any Bond Year, the amount in the Rebate Fund exceeds the amount that would be required to be paid to the United States of America under paragraph (d) below if the Tax-Exempt Bonds had been paid in full, such excess may be, upon written direction of the Borrower to the Trustee, transferred from the special Rebate Fund and paid to the Borrower to be used for such purposes for which, or to be redeposited to such fund from which, such amounts were originally derived.

c. In general, "Excess Earnings" or "Rebate Amount" for any period of time means the sum of

(i) the excess of –

(A) the aggregate amount earned during such period of time on all “Nonpurpose Investments,” within the meaning of Section 1.148-1(b) of the Regulations (including gains on the disposition of such obligations) in which Gross Proceeds of the issue are invested (other than amounts attributable to an excess described in this subparagraph (c)(i)), over

(B) the amount that would have been earned during such period of time if the Yield on such Nonpurpose Investments (other than amounts attributable to an excess described in this subparagraph (c)(i)) had been equal to the yield on the issue, plus

(ii) any income during such period of time attributable to the excess described in subparagraph (c)(i) above.

d. The Trustee shall pay to the United States of America from the Rebate Fund at least once every five years an amount that ensures that at least 90 percent of the Excess Earnings, as calculated by the Rebate Analyst, from the date of delivery of the Tax-Exempt Bonds to the close of the period for which the payment is being made will have been paid. The Trustee shall pay to the United States of America from the Rebate Fund not later than 60 days after the Tax-Exempt Bonds have been paid in full 100 percent of the amount then required to be paid under Section 148(f) of the Code as a result of Excess Earnings.

e. The amounts to be computed, paid, deposited or disbursed under this Section shall be determined by the Rebate Analyst acting on behalf of the Borrower within ten days after each successive anniversary date of the date of issuance of the Tax-Exempt Bonds. By such date, the Rebate Analyst shall also notify, in writing, the Trustee and the Borrower of the determinations the Borrower has made and the payment to be made pursuant to the provisions of this Section. Upon written request of any registered owner of Tax-Exempt Bonds, the Borrower shall furnish to such registered owner of Tax-Exempt Bonds a certificate (supported by reasonable documentation, which may include calculation by Bond Counsel or by some other service organization) showing compliance with this Section and other applicable provisions of Section 148 of the Code.

f. The Trustee shall maintain a record of the periodic determinations by the Borrower or Rebate Analyst of the tentative Rebate Amount for a period beginning on the first anniversary date of the issuance of the Tax-Exempt Bonds and ending on the date three years after the final retirement of the Tax-Exempt Bonds. Such records shall state each such anniversary date and summarize the manner in which the tentative Rebate Amount, if any, was determined. This provision shall not be applicable if all Gross Proceeds of the Tax-Exempt Bonds are expended within 180 days of the date of the delivery of the Tax-Exempt Bonds, which fact the Borrower shall confirm to the Trustee by its written certificate.

g. If the Trustee shall declare the principal of the Tax-Exempt Bonds and the interest accrued thereon immediately due and payable as the result of an Event of Default specified in the Indenture, or if the Tax-Exempt Bonds are optionally or mandatorily prepaid or redeemed prior to maturity as a whole in accordance with their terms, any amount remaining in the Project Fund representing proceeds of the Bonds, the Interest Account of the Bond Fund, the Principal Account of the Bond Fund and the Redemption Fund shall be transferred to the special Rebate Fund to the extent that the amount therein is less than the tentative Rebate Amount computed by the Rebate Analyst as of the date of such acceleration or redemption, and the balance of such amount shall be used immediately by the Trustee for the purpose of paying principal of and interest on the Tax-Exempt Bonds when due. In furtherance of such intention, the Issuer hereby authorizes and directs the Authorized Issuer Representative, to execute any documents, certificates or reports required by the Code and to make such

elections, on behalf of the Issuer, which may be permitted by the Code as are consistent with the purpose for the issuance of the Tax-Exempt Bonds.

**Section 5.08.      Operating Fund.** The Trustee shall deposit in the Operating Fund (i) moneys transferred from the Reserve Fund in the amounts and on the dates described in Section 5.04 hereof, (ii) any transfers from the Operating Account received by the Trustee for deposit in the Operating Fund and (iii) any other amounts required to be deposited into the Operating Fund hereunder or under the Loan Agreement or the Mortgage and delivered to the Trustee with instructions to deposit the same therein. Except when an Event of Default under Section 8.01(a) or 8.01(b) of this Indenture or a Default under the Loan Agreement has occurred and is continuing, the Trustee shall transfer amounts deposited in the Operating Fund to the Operating Account promptly following such deposits. If an Event of Default under this Indenture has occurred and is continuing, the Trustee shall not make such transfers to the Operating Account and the Borrower will not be entitled to request withdrawals from funds on deposit in the Operating Fund, and the Trustee may determine to pay Operating Expenses of the Project directly, without receipt of direction from the Borrower and in such event is to rely on the annual Budget prepared by the Borrower in connection with the Project.

**Section 5.09.      Operations and Maintenance Reserve Fund.**

(a) The Trustee shall deposit in the Operations and Maintenance Reserve Fund (i) moneys transferred from the Revenue Fund in the amounts and on the dates described in Section 5.04 hereof and (ii) any other amounts required to be deposited into the Operations and Maintenance Reserve Fund hereunder or under the Loan Agreement and delivered to the Trustee with instructions to deposit the same therein.

(b) Amounts on deposit in the Operations and Maintenance Reserve Fund shall be used to pay (i) maintenance and repair costs to the Project which are not capital expenditures payable from the Repair and Replacement Fund and (ii) Operating Expenses in excess of amounts specified in the Budget. The Trustee shall disburse moneys in the Operations and Maintenance Reserve Fund to the Operating Account to pay such maintenance and repair costs and Operating Expenses upon receipt of a written direction of the Borrower Representative which states the purpose for such disbursement and the persons to which such amounts are to be paid. All interest income derived from the investment of amounts on deposit in the Operations and Maintenance Reserve Fund shall be retained in the Operations and Maintenance Reserve Fund until the amount on deposit therein shall be equal to the Operations and Maintenance Reserve Requirement, and thereafter shall be deposited into the Revenue Fund.

**Section 5.10.      Insurance and Tax Escrow Fund.**

(a) The Trustee shall deposit in the Insurance and Tax Escrow Fund (i) moneys transferred from the Revenue Fund in the amounts and on the dates described in Section 5.04 hereof and (ii) any other amounts required to be deposited into the Insurance and Tax Escrow Fund hereunder or under the Loan Agreement or the Mortgage and delivered to the Trustee with instructions to deposit the same therein. Moneys on deposit in the Insurance and Tax Escrow Fund shall be disbursed by the Trustee to the Borrower to pay, or as reimbursement for the payment of, taxes, assessments, and insurance premiums with respect to the Project, as hereinafter provided.

(b) Upon presentation to the Trustee by the Borrower of a requisition accompanied by copies of bills or statements for the payment of such taxes, assessments, and premiums, when due, the Trustee will, not more frequently than once a month, pay to the Borrower to provide for the payment of, or as reimbursement for the payment of, such taxes, assessments, and premiums,

from moneys then on deposit in the Insurance and Tax Escrow Fund. If the total amount on deposit in the Insurance and Tax Escrow Fund shall not be sufficient to pay to or to pay or reimburse the Borrower in full for the payment of such taxes, assessments and premiums, then the Borrower shall pay the excess amount of such taxes, assessments, and premiums directly. Repair and Replacement Fund.

(a) The Trustee shall deposit into the Repair and Replacement Fund (i) moneys transferred from the Revenue Fund in the amounts and on the dates described in Section 5.04 hereof and (ii) any other amounts required to be deposited into the Repair and Replacement Fund hereunder or under the Loan Agreement or the Mortgage and delivered to the Trustee with instructions to deposit the same therein. The Trustee shall apply moneys on deposit in the Repair and Replacement Fund upon request of the Borrower, but no more frequently than once a month, to pay to or to reimburse the Borrower for paying the cost of replacements or items of extraordinary maintenance or repair which may be required to keep the Project in sound condition, including but not limited to, replacement of appliances, major floor covering replacement, replacement or repair of any roof or other structural component of the Project, maintenance (including painting) to exterior surfaces and major repairs to or replacements of heating, air conditioning, plumbing and electrical systems, landscaping, storm water drainage, repairs to common area amenities and any other extraordinary costs required for the repair or replacement of the Project not properly payable from the Revenue Fund but in any case only if there are no funds available in the Project Fund for such purpose.

(b) Upon presentation to the Trustee by the Borrower of a requisition accompanied by a summary of the amount for which payment or reimbursement is sought and, for requests for a particular line item of disbursement in excess of \$25,000, copies of bills or statements for the payment of the costs of such repair and replacement (provided that the Trustee shall have no duty or obligation to review or approve such bills or statements), the Trustee will pay to the Borrower the amount of such repair and replacement costs from moneys then on deposit in the Repair and Replacement Fund, provided no Event of Default shall then exist hereunder. If the total amount on deposit in the Repair and Replacement Fund shall not be sufficient to pay all of such repair and replacement costs when they shall become due, then funds in the Operations and Maintenance Fund may be disbursed until exhausted, and then the Borrower shall pay the excess amount of such costs directly (which Borrower monies may be reimbursed from monies available in the Repair and Replacement Fund at a later date when they become available).

(c) The Repair and Replacement Fund will also be used to remedy any deficiency in the Bond Fund on any Interest Payment Date after exhaustion of the Surplus Fund, without any prior consents.

**Section 5.11. Administration Fund.** The Trustee shall deposit in the Administration Fund (i) moneys transferred from the Revenue Fund pursuant to Section 5.04 hereof, and (ii) any other amounts required to be deposited in the Administration Fund hereunder or under the Loan Agreement or the Mortgage with instructions to deposit the same therein. The Trustee shall disburse amounts in the Administration Fund necessary for payment of Administration Expenses then due automatically to the parties due such payment upon presentation of an invoice for payment from such requesting party without any approval of the Borrower.

**Section 5.12. Surplus Fund.**

(a) The Trustee shall deposit, into the Surplus Fund, amounts provided in Section 5.04(b)(17) hereof and any other amounts delivered to it with instructions to deposit the same in

the Surplus Fund. Moneys in the Surplus Fund shall be applied each month, when needed, for the following purposes and in the following manner:

(i) transferred to the Interest Account for the Series 2011 Bonds to pay interest on the Series 2011 Bonds to the extent amounts on deposit in such Interest Account are insufficient therefor;

(ii) transferred to the Principal Account for the Series 2011 Bonds to pay principal on Series 2011 Bonds to the extent amounts on deposit in such Principal Account are insufficient therefor;

(iii) transferred to the Revenue Fund to the extent of any deficiency in the amounts needed to fully make all transfers from the Revenue Fund pursuant to Section 5.04 hereof (other than to the Surplus Fund);

(iv) transferred to or upon the direction of the Borrower Representative for deposit into the Operating Account for the payment of Operating Expenses when the Borrower certifies to the Trustee that there are not sufficient moneys in the Operating Fund or Operating Account to pay Operating Expenses;

(v) paid to the Trustee an amount equal to any unpaid Extraordinary Trustee's Fees and Expenses then due;

(vi) transferred to the Operations and Maintenance Reserve Fund an amount sufficient to restore such Fund to the Operations and Maintenance Reserve Requirement; and

(vii) (a) to the Manager, any Subordinate Management Fee, and (b) to the Asset Manager, any Subordinate Asset Management Fee; provided, however, such payments shall not be made unless the Borrower Representative has provided a certificate to the Trustee showing that the Coverage Test (determined by including the Subordinate Management Fee and the Subordinate Asset Management Fee in Operating Expenses) has met the requirements as provided in Section 6.8 of the Loan Agreement for the most recent Test Period and the Trustee has confirmed the accuracy of the mathematical calculation of the Debt Service Coverage Ratio in such certificate.

(b) If on or after any December 31, commencing December 31, 2011, the Trustee receives a certificate signed by a Borrower Representative stating that the Borrower has satisfied the Coverage Test (determined by including the Management Fee, the Asset Management Fee and the Subordinate Asset Management Fee in Operating Expenses and as shown in a report by a Certified Public Accountant delivered by the Borrower to the Trustee pursuant to Section 6.8(a) of the Loan Agreement) for the Fiscal Year ending on such December 31, upon which the Trustee may conclusively rely, no Event of Default, or event which with the passage of time or the giving of notice or both would constitute an Event of Default, has occurred and is continuing, and the Debt Service Reserve Requirement and the required Repair and Replacement Fund and Operations and Maintenance Reserve Fund deposits have been fully funded, then within two Business Days after written request by the Borrower to the Trustee, the Trustee shall disburse up to an amount equal to the Surplus Cash to the Borrower.

(c) Notwithstanding anything to the contrary herein, the Trustee shall not make disbursements to the Borrower pursuant to subsections 5.13(b) hereof unless the Trustee has

received the various financial reports and certificates then due as set forth in Section 6.8 of the Loan Agreement.

**Section 5.13. Bonds Not Presented for Payment.** In the event any Bonds shall not be presented for payment when the principal thereof becomes due on any Bond Payment Date, if moneys sufficient to pay such Bonds are held by the Trustee, the Trustee shall segregate and hold such moneys in trust, without liability for interest thereon, for the benefit of Holders of such Bonds who shall, except as provided in the following paragraph, thereafter be restricted exclusively to such funds for the satisfaction of any claim of whatever nature on their part under this Indenture or relating to said Bonds.

All moneys deposited with the Trustee for the payment of principal of, premium, if any, or interest on the Bonds and not claimed for two years after they become payable or distributable shall be paid by the Trustee to the Issuer. In such event, the Trustee and the Borrower shall be relieved of all liability with respect to such moneys and payment for such Bonds and the Holder of such Bonds shall look solely to the Issuer for such payment.

**Section 5.14. Moneys Held in Trust.** All moneys required to be deposited with or paid to the Trustee for deposit into any Fund or Account (other than the Rebate Fund) and all moneys withdrawn from a Bond Fund and held by the Trustee shall be held by the Trustee, in trust, and such moneys (other than moneys held pursuant to Section 5.07 hereof) shall, while so held, constitute part of the Trust Estate and be subject to the lien hereof. Moneys held in a Bond Fund shall constitute a separate trust fund for the Holders of the related Series and shall not constitute property of the Issuer or the Borrower.

**Section 5.15. Payment to the Borrower.** After the right, title and interest of the Trustee in and to the Trust Estate and all covenants, agreements and other obligations of the Issuer to the Holders shall have ceased, terminated and become void and shall have been satisfied and discharged in accordance with Article VII hereof, and all fees, expenses and other amounts payable to the Trustee pursuant to any provision hereof shall have been paid in full, any moneys remaining in the Funds and Accounts hereunder shall be paid or transferred to the Borrower upon its written request; provided that amounts on deposit in the Rebate Fund shall be retained therein to the extent required by the Tax Agreement.

**Section 5.16. Deposit of Extraordinary Revenues.**

(a) Any moneys representing Net Proceeds of Insurance Proceeds or Condemnation Awards upon damage to, destruction of or governmental taking of the Project and deposited with the Trustee pursuant to the Loan Agreement shall be deposited by the Trustee in the Project Fund.

(b) At the direction of the Borrower, the Trustee shall disburse such moneys in the Project Fund as provided in Section 5.3 and 5.4 of the Loan Agreement to enable the Borrower to undertake a restoration of the Project if such restoration is permitted by law; provided that, if the Borrower exercises or is deemed to exercise its option to apply such moneys to the payment of the Series 2011 Note or the conditions of Sections 5.3 and 5.4 of the Loan Agreement are not satisfied, or an excess of such moneys exists after restoration of the Project, such moneys shall be transferred by the Trustee to the Special Redemption Account of the related Bond Fund and applied to redeem or prepay the Bonds pursuant to Article III hereof, in a principal amount equal to the amount so transferred or the next lowest Authorized Denomination of the Bonds.

(c) Title insurance proceeds shall be used to remedy any title defect resulting in the payment thereof or deposited in the Bond Fund for use in redeeming Bonds pursuant to Article III hereof.

(d) The proceeds of any rental loss, use and occupancy or business interruption insurance shall be deposited in the Revenue Fund.

**Section 5.17. Disposition of Balance in Funds.**

After the right, title and interest of the Trustee in and to the Trust Estate and all covenants, agreements and other obligations of the Issuer shall have ceased, terminated and become void and shall have been satisfied and discharged in accordance with this Indenture, and all fees, expenses and other amounts payable to the Trustee or the Issuer pursuant to any provision hereof or in the Loan Agreement shall have been paid in full, seventy-five percent (75%) of any money remaining in the Funds and Accounts, other than the Rebate Fund hereunder shall be paid or transferred to the Borrower upon its written request and twenty-five percent (25%) up to a maximum of \$250,000 (with the excess going to the Borrower) of any revenues in the Funds and Accounts, other than the Rebate Fund hereunder shall be paid or transferred to the Issuer provided that amounts on deposit in the Rebate Fund shall be retained therein to the extent required herein. Provided further, that any transfer of moneys pursuant to this section shall be subject to an opinion of Bond Counsel to the effect that such transfer will not adversely affect the tax-exempt status of the Bonds.

**Section 5.18. Special Projects Fund Usage.**

The following provisions in this Section 5.18 are subject to the application of funds and revenues provided above. To the extent there is a conflict between this Section 5.18 and the other provisions of the Article V, such other provisions shall prevail.

(a) The Borrower covenants that it shall use Special Projects Funds solely for Special Projects and shall cause to be included in its annual audited financial statement or such other document supplied by an independent certified public accountant an itemized statement of the date the Special Projects Funds were used, the Special Project for which the Special Projects Funds were used, and, in the case of tangible property, the location of such property (the "Special Projects Statement"). The Borrower shall not be in default of the covenants set forth in this Section 5.18 if Special Projects Funds continue to be identified as an asset in the audited financial statement; provided however that the Borrower covenants that it will expend all Special Projects Funds on Special Projects within three (3) years of the discharge of all Bonds in accordance with Article VII, the terms of the Indenture. Furthermore, in the event that the Borrower has expended more than Special Projects Funds on Special Projects with revenues of the Development, then there shall be an equitable adjustment in any succeeding year to offset the excess use of Development Revenues on Special Projects.

(b) In the event the Special Projects Statement shows that Special Projects Funds were used for purposes other than Special Projects, the Borrower shall increase the amount of Special Projects Funds for the next succeeding fiscal year by decreasing the agreed upon return on Gross Revenues by the amount of Special Projects Funds that was used for purposes other than Special Projects. In the event that the Special Projects Statement for such next succeeding fiscal year shows that Special Projects Funds were used for purposes other than Special Projects, the Borrower shall in the next succeeding fiscal year make a payment to the Issuer out of Special Projects Funds for such fiscal year in the amount of the non-Special Project uses reported in the immediately preceding Special Projects Statements.

(c) The Issuer, the Borrower, and the Trustee agree that (i) failure by the Borrower to abide by the covenants in this Section 5.18 shall not constitute an Event of Default, but that the Issuer may seek a mandamus action in a court of competent jurisdiction and (ii) money held in the Trust Estate

or otherwise used to pay principal of and interest on the Bonds, to fund reserves herein or pay Operating and Maintenance Expenses shall not be used for any payment relating to this Section 5.18.

## **ARTICLE VI.**

### **INVESTMENTS**

Moneys in all Funds and Accounts established hereunder shall, at the written direction of the Borrower at least two Business Days before the making of such investment (any oral direction to be promptly confirmed in writing), be invested and reinvested by the Trustee in Investment Securities. Subject to the further provisions of this Article, such investments shall be made by the Trustee as directed and designated by the Borrower in a certificate of, or telephonic advice promptly confirmed by a certificate of a Borrower Representative. As long as no Event of Default shall have occurred and be continuing, the Borrower shall have the right to designate the investments to be sold and otherwise to direct the Trustee in the sale or conversion to cash of the investments made with the moneys in any Fund or Account. The Borrower will not direct that any investment be made of any funds which would violate the covenants set forth in Section 4.05 hereof. Unless otherwise confirmed in writing, an account statement delivered by the Trustee to the Borrower shall be deemed written confirmation by the Borrower that the investment transactions identified therein accurately reflect the investment directions given to the Trustee by the Borrower, unless the Borrower notifies the Trustee in writing to the contrary within 30 days after the date of such statement.

Moneys in any fund or account shall be invested in Investment Securities with respect to which payments of principal thereof and interest thereon are scheduled to be paid or are otherwise payable (including Investment Securities payable at the option of the holder) not later than the earlier of (i) the date on which it is estimated that such moneys will be required by the Trustee, or (ii) six (6) months after the date of acquisition thereof by the Trustee.

The Trustee may make any and all such investments through its own banking department or the banking department of any affiliate. All income attributable to moneys deposited in any Fund or Account created hereunder shall be credited to the Revenue Fund, except that income on moneys (i) in the Project Fund shall be credited to the Project Fund, (ii) in the Rebate Fund shall be credited to the Rebate Fund, (iii) in the Debt Service Reserve Fund shall be credited to the Debt Service Reserve Fund to the extent provided in Section 5.06(e) hereof and (iv) in the Operations and Maintenance Reserve Fund shall be credited to the Operations and Maintenance Reserve Fund to the extent provided in Section 5.09 hereof. Any net loss realized and resulting from any such investment shall be charged to the particular fund or account for whose account such investment was made. The Trustee is authorized and directed to sell and reduce to cash funds a sufficient amount of such investments whenever the cash balance in any fund or account is insufficient to make any withdrawal therefrom as required under this Indenture. The Trustee shall not be liable for any depreciation of the value of any investment made pursuant to this Article VI or for any loss resulting from any such investment on the redemption, sale and maturity thereof.

Investment Securities held in the Debt Service Reserve Fund shall be valued at cost on each Interest Payment Date.

The Trustee shall at all times maintain accurate records of deposits into each Fund and Account and the sources of such deposits and such records shall be made available to the Borrower upon reasonable written request..

Notwithstanding anything in this Indenture or the Bond Documents, and subject in all events to the requirements of the Tax Agreement, the amount of Series 2011 Bond proceeds placed in the Operations and Maintenance Reserve Fund may only be invested as permitted by this Indenture at the



written direction of an Borrower Representative to produce a yield which is not greater than the yield on the Series 2011 Bonds or such investments shall consist solely of tax-exempt bonds within the meaning of Section 148(b)(3) of the Code.

## **ARTICLE VII.**

### **DEFEASANCE**

If the Issuer shall pay or cause to be paid to the Holder of any Bond the principal of, premium, if any, and interest due and payable, and thereafter to become due and payable, upon such Bond, or any portion of such Bond in any Authorized Denomination thereof, such Bond or portion thereof shall cease to be entitled to any lien, benefit or security under this Indenture. If the Issuer shall pay or cause to be paid the principal of, premium, if any, and interest due and payable on all Outstanding Bonds, and thereafter to become due and payable thereon, and shall pay or cause to be paid all other sums payable hereunder by the Issuer, including all fees, compensation and expenses of the Trustee and receipt by the Trustee of an opinion of Counsel that all conditions precedent have been complied with, then the right, title and interest of the Trustee in and to the Trust Estate shall thereupon cease, terminate and become void and the Trustee shall release or cause to be released the Trust Estate, the Mortgage and any other documents securing the Bonds or execute such documents so as to permit the Trust Estate, the Mortgage and such other documents to be released.

Any Bond shall be deemed to be paid within the meaning of this Article and for all purposes of this Indenture when (a) payment of the principal of and premium, if any, on such Bond, plus interest thereon to the due date thereof (whether such due date is by reason of maturity or upon redemption as provided herein) either (i) shall have been made or caused to be made in accordance with the terms thereof or (ii) shall have been provided for by any irrevocable deposit with the Trustee in trust and irrevocably set aside exclusively for such payment, (1) funds sufficient to make such payment and/or (2) Governmental Obligations maturing as to principal and interest in such amounts and at such times as will insure the availability of sufficient moneys to make such payment, and (b) all fees, compensation and expenses of the Trustee pertaining to the Bond with respect to which such deposit is made accrued and to accrue until final payment of the Bonds, whether at maturity or upon redemption, shall have been paid or the payment thereof provided for to the satisfaction of the Trustee. At such times as a Bond shall be deemed to be paid hereunder, as aforesaid, such Bond shall no longer be secured by or entitled to the benefits of this Indenture, except for the purposes of any such payment from such funds or Government Obligations.

Notwithstanding the foregoing paragraph, no deposit under clause (a)(ii) of the immediately preceding paragraph shall be deemed a payment of such Bond as aforesaid until the Issuer shall have given the Trustee on behalf of the Issuer, in form satisfactory to the Trustee, irrevocable instructions to notify, as soon as practicable, the Holders in accordance with Section 3.06 hereof, that the deposit required by (a)(ii) above has been made with the Trustee and that said Bond is deemed to have been paid in accordance with this Article VII and stating the maturity or redemption date upon which moneys are to be available for the payment of the redemption price of said Bond, plus interest thereon to the due date thereof; or (b) the maturity of such Bond. In addition to the foregoing, no deposit described in clause (a)(ii) of the immediately preceding paragraph shall be deemed a payment of such Bond until the Borrower has delivered to the Trustee (i) a report of an Independent Certified Public Accountant verifying the sufficiency of the amounts, if any, described in (a)(ii) above to insure payment of said Bond, and (ii) a Favorable Opinion of Bond Counsel addressed to the Issuer and the Trustee to the effect that such deposit will not adversely affect the exclusion of interest on the Tax-Exempt Bonds from the gross income of the recipients thereof for federal income tax purposes.

## ARTICLE VIII.

### DEFAULTS AND REMEDIES

**Section 8.01. Events of Default.** Each of the following events shall constitute an “Event of Default” hereunder with respect to the Bonds:

(a) a failure to pay the principal of or premium, if any, on any of the Bonds when the same shall become due and payable at maturity or upon redemption;

(b) a failure to pay an installment of interest on any of the Bonds when the same shall become due and payable;

(c) a failure by the Issuer to observe and perform any other covenant, condition, agreement or provision (other than as specified in subparagraphs (a) and (b) of this Section) contained in the Bonds or in this Indenture on the part of the Issuer to be observed or performed with respect to the Bonds, which failure shall continue for a period of thirty (30) days after written notice is provided by the Trustee specifying such failure and requesting that it be remedied, shall have been given to the Issuer by the Trustee, which may give such notice in its discretion and shall give such notice at the written request of the Controlling Holders, unless the Trustee, or the Trustee and Holders which requested such notice, as the case may be, shall agree in writing to an extension of such period prior to its expiration; provided, however, that the Trustee, or the Trustee and the Holders of such Bonds, as the case may be, shall be deemed to have agreed to an extension of such period if corrective action is initiated by the Issuer within such period and is being diligently pursued; provided, further that in no event shall such period be extended for more than 180 days after the date of giving of notice of such failure without the consent of the Controlling Holders; or

(d) the occurrence of a “Default” under the Loan Agreement or an “Event of Default” under the Mortgage.

**Section 8.02. Acceleration; Other Remedies.**

(a) Upon the occurrence and continuance of an Event of Default, the Trustee, subject to the provisions of Section 8.04 hereof, may, and at the written request of the Controlling Holders shall, by written notice to the Issuer and the Borrower, declare the Bonds to be immediately due and payable, whereupon such Bonds shall, without further action, become and be immediately due and payable, anything in this Indenture or in the Bonds to the contrary notwithstanding, and the Trustee shall give notice thereof to the Issuer and the Rating Agency, and shall give notice thereof by Mail to Holders the Bonds.

(b) The provisions of the preceding paragraph are subject to the condition that if, after the principal of the Bonds shall have been so declared to be due and payable, and before any judgment or decree for the payment of the moneys due shall have been obtained or entered as hereinafter provided, (i) the Issuer shall, from any payment received from the Borrower for such purpose, deposit with the Trustee a sum sufficient to pay all matured installments of interest on all Bonds and the principal of any and all Bonds which shall have become due otherwise than by reason of such declaration (with interest on such principal and, to the extent permissible by law, on overdue installments of interest, at the Default Rate) and such amount as shall be sufficient to pay Extraordinary Trustee’s Fees and Expenses, and (ii) all Events of Default hereunder with respect to the Bonds other than nonpayment of the principal of such Bonds which shall have become due by said declaration shall have been remedied, then, in every such case, upon the

written consent of the Controlling Holders provided to the Trustee, such Event of Default shall be deemed waived and such declaration and its consequences rescinded and annulled, and the Trustee shall promptly give written notice of such waiver, rescission or annulment to the Issuer and the Rating Agency, and shall give notice thereof by Mail to all Holders of Bonds; but no such waiver, rescission and annulment shall extend to or affect any subsequent Event of Default or impair any right or remedy consequent thereon.

(c) Upon the occurrence and continuance of any Event of Default, then and in every such case the Trustee in its discretion may, and upon the written direction of the Controlling Holders and receipt of indemnity to its satisfaction shall, in its own name and as the Trustee of an express trust, perform any or all of the following:

(i) by mandamus, or other suit, action or proceeding at law or in equity, enforce all rights of the Holders under this Indenture or the applicable Bonds, including without limitation requiring the Issuer or the Borrower to carry out any agreements with or for the benefit of the Holders and to perform its or their duties under the Act, the Loan Agreement, the Mortgage, the Regulatory Agreement and this Indenture, provided that any such remedy may be taken only to the extent permitted under the applicable provisions of the Loan Agreement, the Mortgage, the Regulatory Agreement or this Indenture, as the case may be;

(ii) bring suit upon the Bonds;

(iii) by action or suit in equity enjoin any acts or things which may be unlawful or in violation of the rights of the Holders of Bonds;

(iv) foreclose the Mortgage; or

(v) file proofs of claim in any bankruptcy or insolvency proceedings related to the Issuer, the Borrower or the Project, necessary or appropriate to protect the interests of the Trustee or the Holders of the Bonds.

(d) Notwithstanding anything herein to the contrary, neither the Holders of the Bonds nor the Trustee acting on behalf of the Holders of the Bonds shall have any right, and hereby waive any right, to institute a proceeding under the Bankruptcy Code seeking to adjudge the Issuer or the Borrower insolvent or a bankrupt or seeking a reorganization of the Issuer or the Borrower.

Upon instituting any such proceeding, the Trustee shall be entitled, as a matter of right, to the appointment of a receiver of the Project and other assets pledged under this Indenture or the Mortgage, pending resolution of such proceeding. The Trustee shall have the right to decline to follow any direction of any Bondholder that in the sole discretion of the Trustee would be unjustly prejudicial to the Trustee, that would expose the Trustee to unreasonable liability or financial exposure or that is not in accordance with law or the provisions of this Indenture. The Trustee shall be entitled to rely without further investigation or inquiry upon any written direction given by the Holders of the majority of the Bond Obligation, and shall not be responsible for the propriety of or be liable for the consequences of following any such direction. Notwithstanding anything to the contrary contained herein, the Trustee shall not be required to foreclose the Mortgage or bid on behalf of the Holders at any foreclosure sale (a) if, in the Trustee's sole discretion, such action would subject the Trustee to personal liability for the cost of investigation, removal and/or remedial activity with respect to Hazardous Substances, (b) if the presence of any Hazardous Substances on the property subject to the Mortgage results in such property having no or nominal value or (c) if as a result of any such action, the Trustee would be considered to hold title to or

to be a “mortgagee-in-possession,” “owner” or “operator” of the Project within the meaning of the Comprehensive Environmental Responsibility Cleanup and Liability Act of 1980, as amended, unless the Trustee has previously determined, based on a report prepared by an environmental audit consultant acceptable to the Trustee, that (i) the Project is in compliance with applicable environment laws and (ii) there are not circumstances present at the Project relating to the use, management or disposal of any Hazardous Substances for which investigation, testing, monitoring, containment, clean-up or remediation could be required under any federal, State or local law or regulation. It is acknowledged and agreed that the Trustee has no authority to manage, own or operate the Project, or any portion thereof, except as necessary to exercise remedies upon an Event of Default.

**Section 8.03. Restoration to Former Position.** In the event that any proceeding taken by the Trustee to enforce any rights under this Indenture shall have been discontinued or abandoned for any reason, or shall have been determined adversely to the Trustee, then the Issuer, the Trustee and the Holders shall be restored to their former positions and rights hereunder, respectively, and all rights, remedies and powers of the Trustee shall continue as though no such proceeding had been taken.

**Section 8.04. Cure by Holders.** Any Holder of Bonds may, but shall not be obligated to, cure an Event of Default under this Indenture, including the advancing of funds (“Advanced Funds”) to the Trustee for payments required under this Indenture, or to indemnify the Trustee under Sections 9.04 and 9.06 hereof. Any Advanced Funds are to be applied by the Trustee in accordance with the instructions of the Holder providing the same; provided, however, that such Holder shall not have a right or interest in the Advanced Funds that is superior to any right or interest any other party has under this Indenture.

**Section 8.05. Controlling Holders’ Right to Direct Proceedings.** Anything in this Indenture to the contrary notwithstanding, the Controlling Holders shall have the right, by an instrument in writing executed and delivered to the Trustee, to direct the time, method and place of conducting all remedial proceedings available to the Trustee under this Indenture or exercising any trust or power conferred on the Trustee by this Indenture.

**Section 8.06. Limitation on Holders’ Right to Institute Proceedings.** Unless otherwise provided for in this Indenture, no Holder shall have any right to institute any suit, action or proceeding in equity or at law for the execution of any trust or power hereunder, or any other remedy hereunder or on said Bonds, unless such Holder previously shall have given to the Trustee written notice of an Event of Default as hereinabove provided and unless also the Holders of not less than a majority of the Bond Obligation shall have made written request of the Trustee to do so after the right to institute said suit, action or proceeding under Section 8.02 hereof shall have accrued, and shall have afforded the Trustee a reasonable opportunity to proceed to institute the same in either its or their name, and the Trustee shall not have complied with such request within a reasonable time. No one or more of the Holders of the Bonds shall have any right in any manner whatever by its or their action to affect, disturb or prejudice the security of this Indenture, or to enforce any right hereunder or under the Bonds, except in the manner herein provided, and all suits, actions and proceedings at law or in equity shall be instituted, had and maintained in the manner herein provided and for the equal benefit of all Holders of Bonds. Notwithstanding anything to the contrary, the furnishing of indemnity to the Trustee as provided in Section 9.06 hereof is hereby declared in every such case, at the option of the Trustee, to be a condition precedent to the institution of said suit, action or proceeding by the Trustee.

**Section 8.07. No Impairment of Right to Enforce Payment.** Notwithstanding any other provision in this Indenture, the right of any Holder of a Bond to receive payment of the principal of and interest on such Bond, on or after the respective due dates expressed therein, or to institute suit for the enforcement of any such payment on or after such respective date, shall not be impaired or affected without the consent of such Holder.

**Section 8.08. Proceedings by Trustee Without Possession of Bonds.** All rights of action under this Indenture or under any of the Bonds secured hereby which are enforceable by the Trustee may be enforced by it without the possession of any of the Bonds, or the production thereof at the trial or other proceedings relative thereto, and any such suit, action or proceeding instituted by the Trustee shall be brought in its name for the equal and ratable benefit of the Holders of Bonds, subject to the provisions of this Indenture.

**Section 8.09. No Remedy Exclusive.** No remedy herein conferred upon or reserved to the Trustee or to Holders is intended to be exclusive of any other remedy or remedies, and each and every such remedy shall be cumulative, and shall be in addition to every other remedy given hereunder, or now or hereafter existing at law or in equity or by statute; provided, however, that any conditions set forth herein to the taking of any remedy to enforce the provisions of this Indenture or the Bonds shall also be conditions to seeking any remedies under any of the foregoing pursuant to this Section.

**Section 8.10. No Waiver of Remedies.** No delay or omission of the Trustee or of any Holder to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver of any such default, or an acquiescence therein; and every power and remedy given by this Article to the Trustee and to the Holders, respectively, may be exercised from time to time and as often as may be deemed expedient.

**Section 8.11. Application of Moneys.**

(a) If an Event of Default occurs with respect to the Bonds, any moneys held in any Fund or Account hereunder (excluding the Rebate Fund) or received by any receiver or by the Trustee, by any receiver or by any Holder pursuant to any right given or action taken under the provisions of this Article, after payment of (i) the fees, expenses, liabilities or advances payable to or incurred or made by the Trustee or any Holder, (ii) the costs and expenses of the proceedings resulting in the collection of such moneys, and (iii) Operating Expenses of the Project as determined to be appropriate by the Trustee (and the Trustee may, in its discretion, rely on the Budget to make such determination), shall be deposited in the Revenue Fund; and all moneys so deposited in the Revenue Fund during the continuance of an Event of Default (other than moneys for the payment of Bonds which have matured or otherwise become payable prior to such Event of Default or for the payment of interest due prior to such Event of Default) shall be applied (except as otherwise provided in Section 5.05 hereof with respect to moneys deposited in a Bond Fund for the benefit of the Holders of a particular Series of Bonds) as follows:

(i) Unless the principal of all the Bonds shall have been declared due and payable, all such moneys shall be applied (A) first, to the payment to the Persons entitled thereto of all installments of interest then due on the Bonds on a parity and pro rata basis with interest on overdue installments, if lawful, at the Default Rate, in the order of maturity of the installments of such interest and, if the amount available shall not be sufficient to pay in full any particular installment of interest, then to the payment ratably, according to the amounts due on such installment of interest on the Bonds on a parity and pro rata basis; and (B) second, to the payment to the Persons entitled thereto of the unpaid principal of any of the Bonds on a parity and pro rata basis which shall have become due (other than the Bonds called for redemption the payment of which money is held pursuant to the provisions of this Indenture) with interest on such Bonds at the Default Rate from the respective dates upon which they became due and, if the amount available shall not be sufficient to pay in full the Bonds due on any particular date, together with such interest, then to the payment ratably, according to the amount of principal and interest due on such date, in each case to the persons entitled thereto, without any discrimination or privilege of all installments of interest then due on the

Bonds, with interest on overdue installments, if lawful, at the Default Rate, in the order of maturity of the installments of such interest and, if the amount available shall not be sufficient to pay in full any particular installment of interest, then to the payment ratably;

(ii) If the principal of all the Bonds shall have been declared due and payable, all such moneys shall be applied to the payment of the principal and interest then due and unpaid upon the Bonds on a parity and pro rata basis, with interest on overdue interest, if lawful, and principal, as aforesaid at the Default Rate, without preference or priority of principal over interest or interest over principal, or of any installment of interest over any other installment of interest, or of any Bond over any other Bond, ratably, according to the amounts due respectively for principal and interest, to the persons entitled thereto without any discrimination or privilege;

(iii) If the principal of all the Bonds shall have been declared due and payable, and if such declaration shall thereafter have been rescinded and annulled under the provisions of this Article, then, subject to the provisions of clause (ii) of this Section 8.11(a) which shall be applicable in the event that the principal of all the Bonds shall later become due and payable, the moneys shall be applied in accordance with the provisions of clause (i) of this Section 8.11(a).

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

**Section 8.12. Severability of Remedies.** It is the purpose and intention of this Article to provide rights and remedies to the Trustee and the Holders which may be lawfully granted under the provisions of the Act, but should any right or remedy herein granted be held to be unlawful, the Trustee and the Holders shall be entitled, as above set forth, to every other right and remedy provided in this Indenture and by law.

**Section 8.13. Notice of Event of Default.** If an Event of Default occurs and continues for five (5) Business Days after the Trustee has received written notice of the same as provided in Section 9.05 hereof, then the Trustee shall give notice thereof by Mail to the Holders, the Borrower, the Issuer and the Rating Agency.

## **ARTICLE IX.**

### **TRUSTEE**

**Section 9.01. Acceptance of Trusts.** The Trustee hereby accepts the trusts imposed upon them by this Indenture, and agree to perform said trusts, but only upon and subject to the following express terms and conditions set forth in this Article IX:

(a) The Trustee, before the occurrence of an Event of Default and after the curing of all Events of Default which may have occurred, undertakes to perform such duties and only such duties as are specifically set forth in this Indenture. In case an Event of Default has occurred (which has not been cured or waived), the Trustee shall exercise such of the rights and powers vested in it by this Indenture, and use the same degree of care and skill in their exercise, as a prudent person would exercise or use under the circumstances in the conduct of his or her own affairs.

(b) The Trustee shall not be accountable for the use of any Bonds authenticated or delivered hereunder. The Trustee may buy, sell, own and deal in any of the Bonds secured hereby with the same rights which they would have were they not the Trustee.

(c) The Trustee shall not withhold unreasonably their consent, approval or action to any reasonable request of the Issuer, provided that any such consent, approval or action is permitted by this Indenture. 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 owner of any Bond shall be conclusive and binding upon all future Holders of the same Bond and upon Bonds, issued in exchange therefor or in place thereof.

(d) As to the existence or nonexistence of any fact or as to the sufficiency or validity of any instrument, paper or proceeding, the Trustee shall be entitled to rely upon a certificate signed by an Issuer Representative or a Borrower Representative as sufficient evidence of the facts therein contained, and before the occurrence of a default of which the Trustee has notice as provided in Section 9.05 hereof, shall also be at liberty to accept a similar certificate to the effect that any particular dealing, transaction or action is necessary or expedient, but may, at their discretion, secure such further evidence deemed necessary or advisable, but shall not be bound to secure the same. The Trustee may accept a certificate signed on behalf of the Issuer to the effect that a resolution in the form therein set forth has been adopted by the Issuer as conclusive evidence that such resolution has been duly adopted, and is in full force and effect.

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

(f) 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 herein conveyed, including all books, papers and records of the Issuer or the Borrower pertaining to the revenues and receipts relating to the Project or the Bonds, and to take such memoranda from and in regard thereto as may be desired.

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

(h) The Trustee shall not be under any duty or obligation to perform any act that would cause them to incur any expense or liability or to institute or defend any suit in respect of this Indenture or to advance any of its own moneys, unless they are provided with indemnification satisfactory to them for the reimbursement of all expenses to which they may be put and to protect them against all liability, except all liability which is adjudicated to have resulted from their negligence or willful misconduct by reason of any action so taken.

(i) The Trustee shall not be required to enter, take possession of or take any other action with respect to the Project or the Site thereof unless they shall have first received

assurances and indemnity satisfactory to them that the Trustee will not be subject to liability for, among other things, the existence of, or contamination by environmentally hazardous substances or other discharges, emissions or releases with respect to the Project or the Site thereof.

(j) The Trustee shall have no responsibility, opinion or liability with respect to any information, statements or recitals in any offering memorandum or other disclosure material prepared or distributed with respect to the issuance of the Bonds.

(k) The Trustee's rights to immunities and protection from liability hereunder and its rights to payment of its fees and expenses shall survive their resignation or removal and final payment or defeasance of the Bonds.

(l) The Trustee shall not be under any obligation to effect or maintain insurance or to renew any policies of insurance or to inquire as to the sufficiency of any policies of insurance carried by the Borrower, or to report, or make or file claims or proof of loss for, any loss or damage insured against or which may occur. The Trustee may rely on any certification provided by the Borrower pursuant to Section 5.5 of the Loan Agreement with respect to satisfaction of the insurance requirements of the Loan Agreement and the Mortgage, and shall have no responsibility for assuring compliance with such insurance requirements, but shall notify the Issuer, the Borrower and the Rating Agency if it has not received the certification required by said Section 5.5 of the Loan Agreement.

(m) All moneys received by the Trustee need not be segregated except to the extent required by law.

(n) The Trustee may execute any of the trusts or powers hereof and perform any of its duties by or through attorneys, agents, receivers or employees, and shall be entitled to advice of counsel concerning all matters of the trusts hereof and the actions or duties hereunder, and may in all cases pay such reasonable compensation to all such attorneys, agents, receivers and employees as may be employed in connection with the trusts hereof. The Trustee may act upon the opinion or advice of any attorney who may be the attorney or attorneys for the Issuer or the Borrower.

(o) The Trustee agrees to provide to the Rating Agency all information if reasonably requested by the Rating Agency.

(p) The Trustee shall provide to the Issuer and the Rating Agency copies of written notices it has received or produced with respect to any Event of Default, the occurrence of any casualty or material damage or loss or any condemnation proceedings concerning the Project, the resignation or removal of the Trustee and the appointment of a successor trustee, or any amendments or supplements to this Indenture or the Loan Agreement.

(q) The Trustee shall not be liable for any action taken or omitted by the Trustee in good faith at the direction of the Controlling Holders as to the time, method and place of conducting any proceedings for any remedy available to the Trustee or the exercising of any power conferred by this Indenture.

(r) Whether or not therein expressly so provided, every provision of this Indenture relating to the conduct of, or affecting the liability of, or affording protection to the Trustee shall be subject to the provisions of this Section 9.01.



(s) The Trustee agrees to accept and act upon instructions or directions pursuant to this Indenture 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's 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 directions 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 9.02. No Responsibility for Recitals.** The recitals, statements and representations contained in this Indenture or in the Bonds, save only the Trustee's authentication upon the Bonds, shall be taken and construed as made by and on the part of the Issuer, and not by the Trustee, and the Trustee does not assume, nor shall it have, any responsibility or obligation for the correctness of any thereof.

**Section 9.03. Limitations on Liability.** The Trustee may execute any of the trusts or powers hereof and perform the duties required of them hereunder by or through attorneys, agents, receivers or employees selected by them, and shall be entitled to advice of counsel concerning all matters of trust and its duty hereunder and to obtain the opinion of Counsel acceptable to the Trustee prior to taking action hereunder, and may in all cases pay such reasonable compensation to all such attorneys, agents, receivers or employees as is deemed necessary in connection with the performance of the Trustee's duties under this Indenture, and the Trustee shall not be answerable for the default or misconduct of any such attorney, agent or employee selected by it with reasonable care. The Trustee may act upon the advice of any attorney approved by the Trustee in the exercise of reasonable care, and the Trustee shall not be responsible for any loss or damage resulting from any action or non-action in good faith reliance upon such opinion or advice. Without limitation, the Trustee shall be entitled to the benefit of the foregoing sentence with respect to the delegation to the Trustee's duties hereunder with respect to payment of principal, premium, if any, or interest on, or redemption of, the Bonds, the authentication and delivery thereof, and exchange and transfer thereof. The Trustee shall not be answerable for the exercise of any discretion or power under this Indenture or for anything whatsoever in connection with the trust created hereby, except only for their own negligence or willful misconduct.

**Section 9.04. Compensation, Expenses and Advances.** The Trustee shall be entitled to reasonable compensation for their services rendered hereunder (not limited by any provision of law in regard to the compensation of the trustee of an express trust) and to reimbursement for their actual out-of-pocket expenses (including counsel fees and expenses and any fees, expenses, payments, indemnification reserves or other security which may be incurred in connection with the appointment or designation of a separate trustee for all or part of the Bonds) reasonably incurred in connection therewith, except as a result of their negligence or willful misconduct. The Issuer agrees that it will, but solely from the Trust Estate as provided herein, pay to the Trustee such compensation and reimbursement of expenses and advances. The Trustee shall have, in addition to any other rights hereunder, a lien and claim, for the payment of their compensation and the reimbursement of their expenses and any advances made by them, as provided in this Section, upon the moneys which are on deposit in the appropriate funds and accounts created herein, subject to the requirements hereof for other applications of such funds and accounts, and

the Trustee may withdraw the same from such funds and accounts when the same become due and payable, to the extent available for such purpose.

**Section 9.05. Notice of Events of Default.** The Trustee shall not be required to take notice, or be deemed to have notice, of any default or Event of Default under this Indenture, other than an Event of Default under clause (a) or (b) of Section 8.01 hereof, unless a Responsible Officer of the Trustee shall have received actual knowledge or shall have been specifically notified in writing of such default or Event of Default by the Issuer, the Borrower or by the Holders of at least 25% of the Bond Obligation. The Trustee may, however, at any time, in its discretion, and shall, upon the request of at least 25% of the Bond Obligation, require of the Borrower full information and advice as to the performance of any of the covenants, conditions and agreements contained herein.

**Section 9.06. Action by Trustee.** The Trustee shall be under no obligation to take any action in respect of any default or Event of Default hereunder or toward the execution or enforcement of any of the trusts hereby created, or to institute, appear in or defend any suit or other proceeding in connection therewith, and if in their opinion such action may tend to involve it in expense or liability, unless furnished, from time to time as often as it may require, with security and indemnity satisfactory to them; but the foregoing provisions are intended only for the protection of the Trustee, and, shall not affect any discretion or power given by any provisions of this Indenture to the Holders or to the Trustee to take action in respect of any default or Event of Default without such notice or request from the Holders, or without such security or indemnity.

**Section 9.07. Good Faith Reliance.** The Trustee shall be protected and shall incur no liability in acting or proceeding in good faith, reasonably exercised, upon any resolution, notice, telex or facsimile transmission, request, consent, waiver, certificate, statement, affidavit, voucher, bond, requisition or other paper or document which it shall in good faith believe to be genuine and to have been passed or signed by the proper board, body or person or to have been prepared and furnished pursuant to any of the provisions of this Indenture or the other Bond Documents, or upon the written opinion of any attorney, engineer, accountant or other expert reasonably believed by the Trustee to be qualified in relation to the subject matter, and the Trustee shall be under no duty to make any investigation or inquiry as to the qualification of such person or any statements contained or matters referred to in any such instrument, but may accept and rely upon the same as conclusive evidence of the truth and accuracy of such statements.

**Section 9.08. Dealings in Bonds or with the Issuer or the Borrower.** The Trustee may in good faith, reasonably exercised, buy, sell, own, hold and deal in any of the Bonds issued hereunder, and may join in any action which any Holder may be entitled to take with like effect as if it did not act in any capacity hereunder. The Trustee, in its individual capacity, either as principal or agent, may also engage in or be interested in any financial or other transaction with the Issuer or the Borrower, and may act as depositary, trustee or agent for any committee or body of Holders secured hereby or other obligations of the Issuer or the Borrower as freely as if it did not act in any capacity hereunder.

**Section 9.09. Resignation of Trustee.** The Trustee may resign and be discharged of the trusts created by this Indenture by executing an instrument in writing resigning such trust and specifying the date when such resignation shall take effect, and filing the same with the Issuer, and the Borrower, and by giving notice of such resignation by Mail, not less than fifteen (15) days prior to such resignation date, to all Holders. Such resignation shall only take effect on the day a successor Trustee shall have been appointed as hereinafter provided. If the Trustee shall determine, in its sole discretion, that acting simultaneously as Trustee for the Holders of the Bonds of different Series may result in a breach of its fiduciary duty, or the appearance of such a breach, the Trustee may resign and be discharged of the trusts created by this Indenture with respect to any Series of Bonds, but not all Series of Bonds, in the same manner described in this Section.

**Section 9.10. Removal of Trustee.** The Trustee may be removed at anytime by the Borrower or by the Holders of not less than a majority of the Bond Obligation with the consent of the Borrower (not to be unreasonably withheld), by filing with the Trustee so removed, and with the Issuer an instrument or instruments in writing appointing a successor, executed by a Borrower Representative if the Trustee has been removed by the Borrower (and notice thereof given by Mail to the Holders and the Issuer), or executed by said Holders of Bonds if the Trustee was removed by said Holders; provided that the Borrower may not remove the Trustee, and the consent of the Borrower shall not be required (in the case of removal by the Holders), if an Event of Default has occurred and is continuing hereunder or a Default has occurred and is continuing under the Loan Agreement.

**Section 9.11. Appointment of Successor Trustee.** If at any time the Trustee shall resign, be removed, or be dissolved, or if its property or affairs shall be taken under the control of any State or federal court or administrative body because of insolvency or bankruptcy, or for any other reason become incapable of acting, then a vacancy shall forthwith and ipso facto exist in the office of Trustee and the Borrower, with written notice to the Issuer, shall promptly appoint a successor Trustee. Any such appointment shall be made by a written instrument executed by a Borrower Representative. The Issuer shall direct the successor Trustee to give notice of such appointment by Mail, at least once within 30 days of such appointment, to all Holders. Copies of such instrument shall be promptly delivered by the Issuer to the predecessor Trustee and to the Trustee so appointed.

If, in a proper case, no appointment of a successor Trustee shall be made pursuant to the preceding paragraph within 90 days after the receipt by the Issuer and the Borrower of the Trustee's notice of resignation given pursuant to Section 9.09 or of removal of the Trustee pursuant to Section 9.10, the retiring Trustee, at the expense of the Borrower, or any Holder may apply to any court of competent jurisdiction to appoint a successor Trustee. The court may thereupon, after such notice, if any, as such court may deem proper and prescribe, appoint a successor Trustee.

Any new Trustee so appointed as presented in this Section 9.11 shall immediately and without further act be superseded by a Trustee appointed in the manner above provided.

**Section 9.12. Qualifications of Trustee.** The Trustee and every successor Trustee, if any, (a) shall be a bank or trust company duly organized under the laws of the United States or any state thereof authorized by law to perform all the duties imposed upon it by this Indenture, (b) shall at the time of appointment have (or in the case of a corporation or trust company included in a bank holding company system, the related bank holding company shall have) trust assets under management of at least \$50,000,000, and (c) shall be permitted under the Act to perform the duties of Trustee.

**Section 9.13. Judicial Appointment of Successor Trustee.** If at any time the Trustee shall resign and no appointment of a successor Trustee shall be made pursuant to the foregoing provisions of this Article prior to the date specified in the notice of resignation as the date when such resignation is to take effect, the resigning Trustee may forthwith apply to a court of competent jurisdiction for the appointment of a successor Trustee. If no appointment of a successor Trustee shall be made pursuant to the foregoing provisions of this Article within six (6) months after a vacancy shall have occurred in the office of Trustee, any Holder may apply to any court of competent jurisdiction to appoint a successor Trustee. Such court may thereupon, after such notice, if any, as it may deem proper and prescribe, appoint a successor Trustee.

**Section 9.14. Acceptance of Trusts by Successor Trustee.** Any successor Trustee appointed hereunder shall execute, acknowledge and deliver to the Issuer an instrument accepting such appointment hereunder, and thereupon such successor Trustee, without any further act, deed or conveyance, shall become duly vested with all the estates, property, rights, powers, trusts, duties and obligations of its predecessor in the trust hereunder, with like effect as if originally named Trustee herein.

Upon request of the Trustee and the payment of the predecessor Trustee's fees and expenses hereunder, such predecessor Trustee and the Issuer shall execute and deliver an instrument transferring to such successor Trustee all the estates, property, rights, powers and trusts hereunder of such predecessor Trustee and, subject to the provisions of Section 9.04 hereof, such predecessor Trustee shall pay over to the successor Trustee all moneys and other assets at the time held by it hereunder, and such predecessor Trustee shall assign its beneficial interest in the Mortgage to the successor Trustee and record said assignment in the same manner as the Mortgage were recorded.

**Section 9.15. Successor by Merger or Consolidation.** Any corporation into which any Trustee hereunder may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which any Trustee hereunder shall be a party, or any corporation succeeding to the business of the Trustee, or any company to which the either Trustee may sell or transfer all or substantially all of its corporate trust business, provided such corporation meets the qualifications contained in Sections 9.12 or 9.18 hereof, as appropriate, shall be a successor Trustee under this Indenture, without the execution or filing of any paper or any further act on the part of the parties hereto, anything in this Indenture to the contrary notwithstanding.

**Section 9.16. Intervention in Litigation of the Issuer.** 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 the Holders, the Trustee, if permitted by the court having jurisdiction in the premises, may intervene and shall intervene, upon receipt of indemnity satisfactory to it, at the written request of Holders of at least a majority of the Bond Obligation.

**Section 9.17. Paying Agent.** The Issuer hereby appoints the Trustee as the paying agent for the Bonds.

**Section 9.18. Qualifications of Paying Agent; Resignation; Removal.** Any Paying Agent (a) shall be a bank or trust company, duly organized under the laws of the United States of America or any state thereof authorized by law to perform all the duties imposed upon it by this Indenture, and (b) shall at the time of appointment have (or in the case of a corporation or trust company included in a bank holding company system, the related bank holding company shall have), trust assets under management of at least \$50,000,000. Any Paying Agent may at any time resign and be discharged of the duties and obligations created by this Indenture by giving at least sixty (60) days' notice to the Issuer, the Borrower and the Trustee. The Paying Agent may be removed at any time at the direction of the Borrower or the Holders of a majority in principal amount of the Bond Obligation with the consent of the Borrower (not to be unreasonably withheld), with written notice to the Issuer, by an instrument signed by the Borrower or such Holders, as applicable, and filed with the Paying Agent and the Trustee. In the event of the resignation or removal of any Paying Agent, said Paying Agent shall pay over, assign and deliver any moneys held by it in such capacity to its successor or, if there be no successor, to the Trustee. Successor Paying Agents shall be appointed in accordance with the provisions of Section 9.17 hereof.

**Section 9.19. Several Capacities: Duty to Cooperate.** Anything in this Indenture to the contrary notwithstanding, the same entity must serve hereunder as the Trustee and the Paying Agent.

**Section 9.20. Additional Duties.** Notwithstanding any provisions hereof to the contrary, the Trustee shall have the following duties:

- (i) The Trustee shall provide the Rating Agency such information within its possession as the Rating Agency shall reasonably require from time to time in order to maintain the Rating on the Bonds;

(ii) Subject to Article III hereof, the Trustee shall continue to perform its function hereunder without regard to the insufficiency of payment of its fees, provided that nothing herein shall negate the Trustee's right to compensation and indemnification hereunder as provided in the Loan Agreement; and

(iii) The Trustee shall provide to the Underwriter upon its request a list of the names and addresses of the registered Holders of all Bonds then outstanding at the sole cost and expense of the Underwriter.

**Section 9.21. Notice to Rating Agency.** The Trustee shall notify the Rating Agency of (1) the occurrence of an Event of Default or a Default of which the Trustee has actual notice, (2) the occurrence of any monetary or other material default under the Loan of which the Trustee has notice, (3) any change in the identity of the Trustee, (4) any amendments, modifications, or changes to this Indenture, the Loan Agreement, the HAP Contract or the Bonds, including any extension of principal or modification of interest or redemption premium due on any of the Bonds, in each case only in the event the Trustee has actual notice, (5) any draws on the Debt Service Reserve Fund, (6) any damage, destruction or condemnation of the Project of which the Trustee has actual notice, (7) any change or proposed change in the structure or identity of the Issuer of which the Trustee has actual knowledge, (8) the initiation of any foreclosure action taken with respect to the Project by or on the Trustee's behalf, (9) any unscheduled reduction in HAP Payments, (10) any notifications of proposed terminations of the HAP Contract or reduction in HAP Payments, (11) the giving of notice of the call for redemption of any Bonds, (12) any change in the investment of funds subject to the lien of this Indenture, (13) any defeasance of the Bonds hereunder, or (14) any change in the Manager.

**Section 9.22. Arbitrage and Tax Matters.**

(a) Notwithstanding any provision of this Indenture or the Loan Agreement to the contrary, the Trustee shall not be liable or responsible for any calculation or determination which may be required in connection with or for the purpose of complying with Section 148 or any applicable Treasury regulation (the "Arbitrage Rules"), including, without limitation, the calculation of amounts required to be paid to the United States under the provisions of the Arbitrage Rules, the maximum amount which may be invested in "nonpurpose obligations" as defined in the Code and the fair market value of any investment made under this Indenture, it being understood and agreed that the sole obligation of the Trustee with respect to investments of funds hereunder shall be to invest the moneys received by the Trustee pursuant to the written instructions of the Borrower given in accordance with the provisions of this Indenture. The Trustee shall have no responsibility for determining whether or not the investment made pursuant to the written direction of the Borrower or any of the instructions received by the Trustee under this Indenture comply with the requirements of the Arbitrage Rules and shall have no responsibility for monitoring the obligations of the Borrower or the Issuer for compliance with the provisions of this Indenture with respect to the Arbitrage Rules.

(b) Notwithstanding anything contained in this Indenture, or in any other instrument to the contrary, the Trustee shall not be under any duty to evaluate, verify or otherwise independently confirm the compliance of any instruction it receives from the Borrower, the Issuer, Bond Counsel or any rebate analyst for compliance with the requirements of Sections 103(a) or 148 of the Code or any applicable provisions of this Indenture.

**Section 9.23. Survival.**

(a) The rights of the Trustee to payment under this Indenture shall survive the Trustee's resignation or removal, the discharge of this Indenture and defeasance of the Bonds.

(b) Notwithstanding anything in this Indenture or any of the Bond Documents to the contrary, the rights, protections, indemnities and immunities afforded to the Trustee hereunder shall survive the resignation or removal of any such party and the payment in full or defeasance of the Bonds.

**Section 9.24. Servicing the Loan; Servicing Agreement.** The Issuer and the Trustee acknowledge that the Trustee will be responsible for servicing and administering the Loan in its capacity as Trustee hereunder and subject to the limitations and other provisions set forth in this Article IX, but that Controlling Holders may direct the Trustee to enter into a Servicing Agreement with a Servicer to perform such functions with respect to the servicing of the Loan as may be set forth in such Servicing Agreement. Such functions may include, without limitation: assuring the maintenance of insurance as required by the Loan Agreement and the payment of premiums therefor; inspection of the Project; review of the Borrower's compliance with the Regulatory Agreement; monitoring the procedures for the collection of Project Revenues and their remittance to the Trustee; and review of the Borrower's obligations under the Borrower Documents to assure compliance with the terms thereof by the Borrower.

## **ARTICLE X.**

### **EXECUTION OF INSTRUMENTS BY HOLDERS AND PROOF OF OWNERSHIP OF BONDS**

Any request, direction, consent or other instrument in writing required or permitted by this Indenture to be signed or executed by Holders or on their behalf by an attorney-in-fact may be in any number of concurrent instruments of similar tenor and may be signed or executed by Holders in person or by an agent or attorney-in-fact appointed by an instrument in writing or as provided in the Bonds. Proof of the execution of any such instrument and of the ownership of Bonds shall be sufficient for any purpose of this Indenture and shall be conclusive in favor of the Trustee with regard to any action taken by it under such instrument if made in the following manner:

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

(b) The ownership of Bonds shall be proved by the registration books kept under the provisions of Section 2.09 hereof.

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

## **ARTICLE XI.**

### **MODIFICATION OF BOND DOCUMENTS**

**Section 11.01. Limitations.** Neither this Indenture nor any of the Borrower Documents shall be Amended in any respect subsequent to the Closing Date except as provided in and in accordance with and subject to the provisions of this Article. Notwithstanding any provisions of this Article, the Tax Agreement and the Regulatory Agreement may be Amended pursuant to the provisions thereof, and the

Tax Agreement and the Regulatory Agreement shall be Amended to the extent required by such documents.

**Section 11.02. Supplemental Indentures Without Holder Consent.** The Issuer and the Trustee may, from time to time and at any time, without the consent of but with prompt notice to the Holders and the Rating Agency, enter into Supplemental Indentures as follows:

- (a) to cure any formal defect, omission, inconsistency or ambiguity in this Indenture;
- (b) to add to the covenants and agreements of the Issuer in this Indenture other covenants and agreements, or to surrender any right or power reserved or conferred upon the Issuer if such surrender shall not, in the judgment of the Trustee, materially adversely affect the interests of the Holders, the Trustee being authorized to rely on an opinion of Counsel with respect thereto;
- (c) to confirm, as further assurance, any pledge of or lien on the Loan Agreement or of any other moneys, securities or funds subject to the lien of this Indenture;
- (d) to comply with the requirements of the Trust Indenture Act of 1939, as from time to time amended;
- (e) to preserve the exclusion of interest on the Tax-Exempt Bonds from gross income for federal income tax purposes, as set forth in a Favorable Opinion of Bond Counsel;
- (f) to provide for any Amendment specifically authorized or required by any provision of this Indenture;
- (g) in connection with any Additional Bonds or Parity Indebtedness; or
- (h) with respect to any other Amendment which does not have a material adverse effect on the Holders of the Bonds.

**Section 11.03. Supplemental Indentures Requiring Holders' Consent.** Except for any Supplemental Indenture entered into pursuant to Section 11.02 hereof, subject to the terms and provisions contained in this Section and not otherwise, Holders of not less than a majority of the Bond Obligation affected thereby shall have the right from time to time to consent to and approve the execution and delivery by the Issuer and the Trustee of any Supplemental Indenture deemed necessary or desirable by the Issuer for the purposes of modifying, altering, amending, supplementing or rescinding, in any particular, any of the terms or provisions contained in this Indenture; provided, however, that, unless approved in writing by all Holders of Bonds affected thereby, nothing herein contained shall permit, or be construed as permitting, (i) a change in the times, amounts or currency of payment of the principal of or interest on any Outstanding Bond or a reduction in the principal amount or redemption price of any Outstanding Bond or the rate of (ii) the creation of a claim or lien upon, or a pledge of, the Trust Estate ranking prior to or on a parity with the claim, lien or pledge created by this Indenture or (iii) a reduction in the aggregate Bond Obligation the consent of the Holders of which is required for any such Supplemental Indenture or which is required, under Section 11.05 hereof, for any modification, alteration, amendment or supplement to any Borrower Documents.

**Section 11.04. Amendment of Borrower Documents Without Holder Consent.** Without the consent of but with notice to the Holders, the Trustee may consent to any Amendment of any Borrower Document from time to time as follows:

(a) to cure any formal defect, omission, inconsistency or ambiguity in such Borrower Document;

(b) to add to the covenants and agreements of the Issuer or the Borrower in such document other covenants and agreements, or to surrender any right or power reserved or conferred upon the Issuer or the Borrower, if such surrender shall not, in the judgment of the Trustee, materially adversely affect the interests of the Holders, the Trustee being authorized to rely on an opinion of Counsel with respect thereto;

(c) to confirm, as further assurance, any lien on or pledge of the Project or the revenues therefrom or of any other property, moneys, securities or funds subject to the Mortgage or any other security for the Loan Agreement;

(d) to preserve the exclusion of interest on the Tax-Exempt Bonds from gross income for federal income tax purposes, as set forth in an opinion of Bond Counsel;

(e) to make changes required to obtain or maintain the rating on the Bonds from the Rating Agency;

(f) to provide for any Amendment specifically authorized or required by any provision of any Borrower Document;

(g) in connection with any Additional Bonds or Party Indebtedness; or

(h) with respect to any other Amendment which does not have a material adverse effect on the Holders of the Bonds.

**Section 11.05. Procedures for Amendments.** If at any time the Trustee shall be requested to enter into any Supplemental Indenture pursuant to Section 11.02 or to consent to any Amendment pursuant to Section 11.05, the Trustee shall cause notice of the proposed Supplemental Indenture or other Amendment to be given by Mail to all Holders. Such notice shall set forth with particularity the nature of the proposed Supplemental Indenture or other Amendment and shall state that a copy thereof is on file at the office of the Trustee for inspection by all Holders. Within two (2) years after the date of the first giving of such notice, the Issuer and the Trustee may enter into such Supplemental Indenture or the Trustee may consent to such Amendment in substantially the form described in such notice, but only if there shall have first been delivered to the Trustee (i) the required consents, in writing, of Holders and (ii) the opinion of Bond Counsel required by Section 11.07 hereof.

If Holders of not less than the amount of Bond Obligation required by Section 11.03 or 11.05, as applicable, shall have consented to and approved the execution and delivery thereof as herein provided, no Holder shall have any right to object to the execution and delivery of such Supplemental Indenture or other Amendment, or 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 and delivery thereof, or to enjoin or restrain the Issuer or the Trustee from executing and delivering or consenting to the same or from taking or permitting any action pursuant to the provisions thereof.

**Section 11.06. Opinions; Certificate.** The Trustee shall not enter into or consent to any Amendment of any provision of any Bond Document unless there shall have been delivered to the Issuer and the Trustee an opinion of Bond Counsel stating that such Amendment is authorized or permitted by the Act and the applicable Bond Documents and such Amendment will not adversely affect the exclusion of interest on the Tax-Exempt Bonds from the gross income of the recipients thereof for federal income tax purposes. In addition, the Trustee (i) may obtain, and shall be protected in relying on, an opinion of



Counsel to the effect that such Amendment is authorized or permitted by this Indenture and complies with the terms hereof; and (ii) may require, as a condition to entering into or consenting to any such Amendment, a Compliance Certificate from the Borrower.

**Section 11.07. Effect of Amendments; Other Consents.** Upon the execution and delivery of any Supplemental Indenture or any Amendment to a Borrower Document pursuant to the provisions of this Article, this Indenture or such Borrower Document shall be, and be deemed to be, modified and amended in accordance therewith, and the respective rights, duties and obligations under the Bond Documents of the Issuer, the Trustee, the Borrower and all Holders shall thereafter be determined, exercised and enforced under the Bond Documents subject in all respects to such modifications and amendments.

Notwithstanding anything herein to the contrary, (i) the Trustee shall not be required to enter into or consent to any Amendment of any Bond Document which, in the sole judgment of the Trustee, might adversely affect the rights, obligations, powers, privileges, indemnities, immunities or other security provided the Trustee herein or therein; and (ii) except as otherwise required hereby, the Trustee shall not enter into or consent to any Amendment of any Bond Document which affects the rights or obligations of the Borrower or the Issuer unless the Borrower or the Issuer enters into or consents to such Amendment.

## **ARTICLE XII.**

### **MISCELLANEOUS**

**Section 12.01. Successors of the Issuer.** In the event of the dissolution or transfer of functions of the Issuer, all the covenants, stipulations, promises and agreements in this Indenture contained, by or on behalf of, or for the benefit of, the Issuer, shall bind or inure to the benefit of the successors of the Issuer from time to time and any entity, officer, board, commission, agency or instrumentality to whom or to which any power or duty of the Issuer shall be transferred.

**Section 12.02. Parties in Interest.** Except as herein otherwise specifically provided, nothing in this Indenture expressed or implied is intended or shall be construed to confer upon any person, firm or corporation other than the Issuer, the Borrower, the Trustee and the Holders any right, remedy or claim under or by reason of this Indenture, this Indenture being intended to be for the sole and exclusive benefit of the Issuer, the Borrower, the Trustee and the Holders.

**Section 12.03. Severability.** In case any one or more of the provisions of this Indenture or of any Borrower Document or of the Bonds shall, for any reason, be held to be illegal or invalid, such illegality or invalidity shall not affect any other provisions of this Indenture, such Borrower Document or such Bonds, and this Indenture, the Borrower Documents and the Bonds shall be construed and enforced as if such illegal or invalid provisions had not been contained herein or therein.

**Section 12.04. No Personal Liability.** No covenant or agreement contained in the Bonds or in this Indenture shall be deemed to be the covenant or agreement of any official, director, officer, agent or employee of the Issuer or the Trustee in his or her individual capacity, and neither the members of the Issuer or the Trustee nor any 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.

**Section 12.05. Counterparts.** This Indenture may be executed in any number of counterparts, each of which, when so executed and delivered, shall be an original; but such counterparts shall together constitute but one and the same Indenture.

**Section 12.06.     Governing Law.** The laws of the State shall govern the construction and enforcement of this Indenture and of all the Bonds issued hereunder.

**Section 12.07.     Notices.** Except as otherwise provided in this Indenture, all notices, certificates, requests, requisitions or other communications by the Issuer or the Trustee pursuant to this Indenture shall be in writing and shall be sufficiently given and shall be deemed given when mailed by overnight delivery by a nationally recognized service provider (such as Federal Express or United Parcel Service) registered mail, postage prepaid, or by facsimile transmission which produces receipt of transmission, addressed as follows:

To the Issuer: Austin Housing Finance Corporation  
P.O. Box 1088  
Austin, Texas 78767-1088  
Attention: Housing Development Manager

To the Trustee: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: Corporate Trust Department  
Telephone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_

To the Borrower: Marshall Affordable Partners, Ltd.  
c/o Summit Asset Management, L.L.C.  
105 Tallapoosa Street, Suite 300  
Montgomery, Alabama 36014  
Attention: Daniel Hughes

with copy to: Balch & Bingham, L.L.P.  
105 Tallapoosa Street, Suite 300  
Montgomery, Alabama 36104  
Attention: Walter H. C. McKay

(d) if to the Investor  
Limited Partner at: Marshall Affordable Partners, Ltd.  
c/o Summit Asset Management, L.L.C.  
105 Tallapoosa Street, Suite 300  
Montgomery, Alabama 36014  
Attention: Daniel Hughes

To the Manager:

To the Asset Manager:

A copy of any communication given by or to the Borrower shall also be sent, as provided above, to the Manager at the address designated by the Manager in writing to each of the parties listed above. Any of the foregoing may, by notice given hereunder to each of the others, designate any further or different addresses to which subsequent notices, certificates, requests or other communications shall be sent hereunder or under the Loan Agreement.

**Section 12.08. Holidays.** If the date for making any payment or the last date for performance of any act or the exercising of any right, as provided in this Indenture, shall not be a Business Day, such payment may, unless otherwise provided in this Indenture, be made or act performed or right exercised on the next succeeding Business Day with the same force and effect as if done on the nominal date provided in this Indenture, and no interest shall accrue for the period after such nominal date.

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**IN WITNESS WHEREOF**, the Issuer has caused this Indenture to be executed by its duly authorized officers, respectively, and the Trustee has caused this Indenture to be executed on its behalf by its duly authorized officer, all as of the day and year first above written.

ISSUER

**AUSTIN HOUSING FINANCE CORPORATION**

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

Attest:

\_\_\_\_\_  
Secretary

[Signature Page of Indenture]

TRUSTEE

\_\_\_\_\_, as Trustee

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

[Signature Page of Indenture]

**EXHIBIT A**

**[FORM OF SERIES 2011 BOND]**

NOTICE: Unless this certificate is presented by an authorized representative of The Depository Trust Company to the Issuer or its agent for registration of transfer, exchange or payment, and any certificate issued is registered in the name of Cede & Co. or such other name as requested by an authorized representative of The Depository Trust Company and any payment is made to Cede & Co., ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL since the registered owner hereof, Cede & Co., has an interest herein.

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**UNITED STATES OF AMERICA**

**AUSTIN HOUSING FINANCE CORPORATION**

**MULTIFAMILY HOUSING REVENUE BONDS  
(MARSHALL APARTMENTS),  
SERIES 2011**

**THIS BOND AND THE ISSUE OF WHICH IT FORMS A PART ARE NOT  
GENERAL OBLIGATIONS OF THE ISSUER BUT ARE LIMITED  
OBLIGATIONS PAYABLE SOLELY FROM THE MONEYS AND PROPERTIES  
PLEDGED FOR PAYMENT THEREOF.**

<u>Maturity Date:</u>	<u>Dated Date:</u>	<u>Interest Rate:</u>	<u>CUSIP No.:</u>
_____	_____, 2011	_____%	_____

REGISTERED OWNER: Cede & Co.

PRINCIPAL AMOUNT:

The **AUSTIN HOUSING FINANCE CORPORATION** (the “Issuer”), a housing finance corporation under the laws of the State of Texas (the “State”), for value received, promises to pay, subject to the provisions hereof and of the Indenture, to the Registered Owner named above on the Maturity Date specified above, or upon earlier redemption as described herein, the Principal Amount shown above and to pay interest on the unpaid principal amount hereof at the Interest Rate specified above until payment of the principal or redemption price hereof has been made. Interest on this Bond is payable on each January 1 and July 1, commencing January 1, 2012 (each such date being hereinafter referred to as an “Interest Payment Date”) and on any other date on which payment of principal of this Bond is due. Interest hereon will be computed on the basis of a 360-day year of twelve 30-day months.

Any term used herein as a defined term but not defined herein shall be as defined in the Indenture.

This Bond is payable in lawful money of the United States of America. The principal of and premium, if any, on this Bond is payable at the Designated Office of the Trustee in \_\_\_\_\_, upon presentation and surrender of this Bond.

This Bond is one of a duly authorized issue of revenue bonds of the Issuer, aggregating \$\_\_\_\_\_ in principal amount, designated as "Austin Housing Finance Corporation Multifamily Housing Revenue Bonds (Marshall Apartments), Series 2011 (the "Series 2011 Bonds"). (the Series 2011 Bonds or "Bonds). The Bonds are issued under and pursuant to the laws of the State, Chapter 394 of the Texas Local Government Code, as amended (the "Act"), and a Trust Indenture dated as of \_\_\_\_\_, 2011 (as amended and supplemented from time to time, the "Indenture"), between the Issuer and \_\_\_\_\_ (the "Trustee").

**NOTWITHSTANDING ANYTHING HEREIN CONTAINED TO THE CONTRARY, ANY OBLIGATION WHICH THE ISSUER MAY INCUR UNDER THIS BOND OR UNDER ANY INSTRUMENT EXECUTED IN CONNECTION HERewith WHICH SHALL ENTAIL THE EXPENDITURE OF MONEY SHALL NOT BE A GENERAL OBLIGATION OF THE ISSUER BUT SHALL BE A SPECIAL LIMITED OBLIGATION PAYABLE SOLELY FROM THE TRUST ESTATE. THE BONDS SHALL CONSTITUTE A VALID CLAIM OF THE RESPECTIVE BONDHOLDERS THEREOF AGAINST THE TRUST ESTATE, WHICH IS PLEDGED TO SECURE THE PAYMENT OF THE PRINCIPAL OF, PREMIUM, IF ANY, AND INTEREST ON THE BONDS AND WHICH SHALL BE UTILIZED FOR NO OTHER PURPOSE, EXCEPT AS EXPRESSLY AUTHORIZED IN THE INDENTURE. THE BONDS, TOGETHER WITH INTEREST THEREON, SHALL BE SPECIAL LIMITED OBLIGATIONS OF THE ISSUER GIVING RISE TO NO CHARGE AGAINST THE ISSUER'S GENERAL CREDIT AND PAYABLE SOLELY FROM, AND CONSTITUTE CLAIMS OF THE BONDHOLDERS THEREOF AGAINST ONLY, THE TRUST ESTATE. THE BONDS, THE PREMIUM, IF ANY, AND THE INTEREST THEREON SHALL NOT BE DEEMED TO CONSTITUTE DEBT OF THE ISSUER (EXCEPT TO THE EXTENT OF THE TRUST ESTATE), THE STATE OR ANY POLITICAL SUBDIVISION THEREOF, AND NONE OF THE ISSUER, THE STATE OR ANY POLITICAL SUBDIVISION THEREOF SHALL BE LIABLE THEREON, NOR IN ANY EVENT SHALL THE BONDS BE PAYABLE OUT OF ANY FUNDS OR PROPERTIES OTHER THAN THOSE SPECIFICALLY PLEDGED THERETO. THE ISSUER HAS NO TAXING POWER.**

Reference is hereby made to the Indenture for a description of the rights, duties and obligations of the Issuer, the Trustee and the Holders of the Bonds, the terms upon which the Bonds are issued, a description of the property and interests pledged for the payment of the Bonds, the relative claims of the various Series of Bonds against such property and interests, the terms upon which such property and interest are pledged and the terms and conditions upon which the Bonds will be deemed to be paid, at or prior to maturity or redemption of the Bonds, if any, upon the making of provision for the payment thereof in the manner set forth in the Indenture. The terms and provisions contained in the Indenture are hereby incorporated herein by reference and the Holder of this Bond, by purchase hereof, assents to all of such terms and provisions.

The Bonds are being issued for the purpose of providing financing for the acquisition, rehabilitation and equipping of a 100 unit residential rental housing facility currently located in Austin, Texas (the "Project"), to make deposits to reserve funds established with respect to the Bonds, and to pay costs in connection with the issuance of the Bonds. The proceeds of the Bonds are being used by the Issuer to finance a loan ("Loan") by the Issuer to Marshall Affordable Partners Ltd. (the "Borrower"), a limited partnership organized and existing under the laws of the State of Alabama, pursuant to a Loan Agreement dated as of \_\_\_\_\_, 2011 (as amended and supplemented from time to time, the "Loan

Agreement”) between the Issuer and the Borrower. Pursuant to the Loan Agreement, the Borrower is obligated to make payments sufficient to pay principal of, premium, if any, and interest on the Bonds, which obligation is evidenced by a promissory note (the “Note”) with respect to each series of Bonds. The liability of the Borrower under the Loan Agreement is limited as provided therein.

The Loan is secured by a mortgage lien on and security interest in the Project (the “Mortgage”).

UNDER THE INDENTURE, THE ISSUER HAS PLEDGED ALL AMOUNTS ON DEPOSIT IN THE FUNDS AND ACCOUNTS ESTABLISHED SOLELY WITH RESPECT TO THE SERIES 2011 BONDS TO THE PAYMENT OF THE SERIES 2011 BONDS. UNDER THE INDENTURE, THE ISSUER HAS PLEDGED ALL AMOUNTS ON DEPOSIT IN THE REMAINING FUNDS AND ACCOUNTS (EXCEPT FOR THE REBATE FUND) TO THE PAYMENT OF THE BONDS.

The Bonds are subject to extraordinary, optional and mandatory redemption as provided for in the Indenture.

Reference is hereby made to the Indenture and the Loan Agreement, copies of which are on file with the Trustee, for the provisions, among others, with respect to the nature and extent of the security, the rights, duties and obligations of the Issuer, the Borrower, the Trustee and the Holders of the Bonds, the terms upon which this Bond is issued, and the terms and conditions upon which this Bond will be deemed to be paid, at or prior to maturity or prepayment of this Bond, upon the making of provision for the payment hereof in the manner set forth in the Indenture, to all of the terms and conditions of which the Holder of this Bond hereby assents. The Holder of this Bond, by the acceptance hereof, is deemed to have agreed and consented to the terms and provisions of the Indenture and the Loan Agreement.

It is hereby certified, recited and declared that all acts, conditions and things required by the Constitution and laws of the State to exist, to have happened and to have been 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 regular and due form as required by law.

**NO RECOURSE SHALL BE HAD FOR THE PAYMENT OF THE PRINCIPAL OF OR PREMIUM, IF ANY, OR INTEREST ON THIS BOND AGAINST ANY PAST, PRESENT OR FUTURE OFFICER, MEMBER, EMPLOYEE OR AGENT 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, 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 will not be entitled to any security or benefit under the Indenture, or be valid or become obligatory for any purpose, until the Trustee has authenticated this Bond by the execution of the Certificate of Authentication inscribed hereon.



**IN WITNESS WHEREOF**, the Issuer has caused this Bond to be executed in its name and on its behalf by the manual or facsimile signature of the Treasurer of the Issuer and attested by the manual or facsimile signature of the Secretary of the Issuer.

**AUSTIN HOUSING FINANCE CORPORATION**

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

Attest:

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

[Signature Page of Series 2011 Bond]

**REGISTRATION CERTIFICATE OF  
COMPTROLLER OF PUBLIC ACCOUNTS**

OFFICE OF THE COMPTROLLER  
OF PUBLIC ACCOUNTS

§  
§  
§  
§

REGISTER NO. \_\_\_\_\_

THE STATE OF TEXAS

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

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

\_\_\_\_\_  
Comptroller of Public Accounts  
of the State of Texas

**CERTIFICATE OF AUTHENTICATION**

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

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

\_\_\_\_\_, as Trustee

By: \_\_\_\_\_  
Authorized Signatory

## ASSIGNMENT

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

---

(Please print or typewrite Name and Address,  
including Zip Code, and Federal Taxpayer Identification or  
Social Security Number of Assignee)

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

---

Attorney to register the transfer of the within Bond on the books kept for registration thereof, with full power of substitution in the premises.

Dated: \_\_\_\_\_

Signature guaranteed by:

---

NOTICE: Signature must be guaranteed by a member firm of the New York Stock Exchange or a commercial bank or trust company.

---

NOTICE: The signature to this Assignment must correspond with the name as it appears on the face of the within Bond in every particular, without alteration or enlargement or any change whatsoever.

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**LOAN AGREEMENT**

Dated as of \_\_\_\_\_, 2011

by and among

AUSTIN HOUSING FINANCE CORPORATION,

---

and

MARSHALL AFFORDABLE PARTNERS, LTD.

---

---

Relating to

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

Austin Housing Finance Corporation  
Multifamily Housing Revenue Bonds  
(Marshall Apartments),  
Series 2011

The interest of the Austin Housing Finance Corporation in this Loan Agreement (except for Reserved Rights of the Issuer) has been assigned to \_\_\_\_\_ (the "Trustee") under the Trust Indenture of even date herewith, and is subject to the security interest of the Trustee.

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## LOAN AGREEMENT

THIS **LOAN AGREEMENT**, dated as of \_\_\_\_\_, 2011 (as amended and supplemented, this “Loan Agreement”), among the **AUSTIN HOUSING FINANCE CORPORATION**, a Texas Public non-profit corporation organized and operated under Texas Local Government Code Chapter 399 (together with its successors, the “Issuer”), \_\_\_\_\_, as Trustee (the “Trustee”), a national banking association organized and existing under and by virtue of the laws of the United States of America and **MARSHALL AFFORDABLE PARTNERS, LTD.**, a limited partnership created and existing under the laws of the State of Alabama (together with its successors, the “Borrower”); the general partner of which is \_\_\_\_\_, a \_\_\_\_\_ corporation, and its successors and assigns (the “General Partner”).

### WITNESSETH:

**WHEREAS**, the Borrower has requested the assistance of the Issuer to finance the acquisition, refinancing, rehabilitation and equipping of a multifamily rental housing development known as Marshall Apartments, located in Austin, Texas (as more particularly defined herein, the “Project”); and

**WHEREAS**, in order to provide such assistance, the Issuer has provided for the issuance, pursuant to a Trust Indenture of even date herewith (as amended and supplemented, the “Indenture”), between the Issuer and the Trustee of the Series 2011 Bonds identified in the Indenture; and

**WHEREAS**, under this Loan Agreement, the Issuer shall lend the proceeds of the Series 2011 Bonds to the Borrower and the Borrower is obligated to make loan payments sufficient to pay the principal of, premium, if any, and interest on the Series 2011; and

**WHEREAS**, in order to evidence the obligation to make loan payments sufficient to pay the principal of, premium, if applicable, and interest on the Series 2011 pursuant to this Loan Agreement, the Borrower has agreed to execute and deliver to the Issuer a promissory note in original principal amounts equal to the principal amounts of the Series 2011 Bonds;

**NOW, THEREFORE**, for and in consideration of the mutual agreements hereinafter contained, the parties hereto agree as follows:

## ARTICLE I.

### DEFINITIONS AND INTERPRETATION

**Section 1.1. Definitions.** All terms used herein and defined in the Indenture or in the Regulatory Agreement of even date herewith (as amended and supplemented, the “Regulatory Agreement”), among the Issuer, the Borrower and the Trustee, shall have the meanings ascribed to them in the Indenture or in the Regulatory Agreement, as applicable.

### Section 1.2. Rules of Construction.

(a) The singular form of any word used herein, including the terms defined in Section 1.01 of the Indenture, shall include the plural, and vice versa. The use herein of a word of any gender shall include correlative words of all genders.

(b) Unless otherwise specified, references to Articles, Sections and other subdivisions of this Loan Agreement are to the designated Articles, Sections and other

subdivisions of this Loan Agreement as originally executed. The words “hereof,” “herein,” “hereunder” and words of similar import refer to this Loan Agreement as a whole.

(c) The headings or titles of the several articles and sections, and the table of contents appended to copies hereof, shall be solely for convenience of reference and shall not affect the meaning, construction or effect of the provisions hereof.

(d) The parties acknowledge that each party, the Manager and their respective counsel have participated in the drafting and revision of this Loan Agreement, the Indenture and the Regulatory Agreement. Accordingly, the parties agree that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Loan Agreement, the Indenture or the Regulatory Agreement or any amendment or supplement or exhibit hereto or thereto.

## **ARTICLE II.**

### **REPRESENTATIONS**

**Section 2.1. Representations and Covenants of the Issuer.** The Issuer is a housing finance corporation under the Act.

(a) The Issuer has lawful power and authority under the laws of the State, including, without limitation, the Act, acting through its governing board, to enter into the transactions described in this Loan Agreement and to carry out its obligations hereunder. By proper action of its governing board, the Issuer has been duly authorized to execute and deliver this Loan Agreement, acting by and through its duly authorized officers.

(b) The issuance of the Series 2011 Bonds will further the public purposes of the Act.

(c) To finance by means of the Mortgage to the Borrower the costs of acquiring, rehabilitating and equipping the Project, including certain costs of issuance of the Series 2011 Bonds, the Issuer proposes to issue the Series 2011 Bonds in the aggregate principal amount of \$\_\_\_\_\_. The Series 2011 Bonds are to be issued under and secured by the Indenture, pursuant to which certain property will be pledged and assigned to the Trustee as security for payment of the principal or purchase price of, premium, if any, and interest on the Series 2011 Bonds as set forth in the Indenture.

(d) To the best of its knowledge, 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 described herein.

(e) No litigation or administrative action of any nature has been served on and is now pending against the Issuer (i) seeking to restrain or enjoin the execution and delivery of the Indenture, this Loan Agreement or the Regulatory Agreement, or in any manner questioning the proceedings or authority relating thereto or otherwise affecting the validity of the Series 2011 Bonds, or (ii) as to the existence or authority of the Issuer or that of its present or former members or officers and, to the best knowledge of the Issuer, none of the foregoing are threatened.

(f) The Issuer will not knowingly take or permit to be taken any action that would adversely affect the excludability from gross income, for federal income tax purposes, of the interest payable on the Series 2011 Bonds.

(g) The Issuer will, at the expense of the Borrower, take such action or actions from time to time, including amendment of this Loan Agreement, as may be necessary, as stated in a Favorable Opinion of Bond Counsel acceptable to the Issuer, to comply fully with all applicable rules, rulings, policies, procedures, regulations or other official statements promulgated or proposed by the Department of the Treasury or the Internal Revenue Service from time to time pertaining to (a) obligations on which the interest is tax-exempt under Section 103 of the Code and (b) the provisions, therefore, of Section 142(d) of the Code. The Issuer will not take, or permit to be taken on its behalf, any action that would cause the interest payable on the Series 2011 Bonds to cease to be excludable, for federal income purposes under Section 103 of the Code, and it will take, at the sole cost and expense of the Borrower, such action as may be necessary in the Opinion of Series 2011 Bond Counsel to continue such exclusion from gross income.

(h) 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 LEGAL REQUIREMENTS.

**Section 2.2. Representations and Covenants of the Borrower.** The Borrower makes the following representations and covenants:

(a) The Borrower is a limited partnership duly formed and validly existing under the laws of Alabama and is duly qualified to conduct its business in the State, has the power to enter into the Borrower Documents and the Mortgage to which it is a party and the transactions contemplated thereby and to perform its obligations thereunder and by proper action has duly authorized the execution and delivery of such Borrower Documents and such Mortgage and the performance of its obligations thereunder.

(b) The Borrower intends to operate the Project, or to cause it to be operated, as a facility meeting all the requirements of the Act and Section 142(d) of the Code for so long as required by the Act and the Code.

(c) The Borrower has obtained or will timely obtain all consents, approvals, permits, authorizations and orders of any governmental or regulatory agency that are required to be obtained by the Borrower as a condition precedent to the issuance of the Bonds, the execution and delivery of the Borrower Documents and the Mortgage to which it is a party or the performance by the Borrower of its obligations thereunder, or that were or are required for the acquisition, construction, equipping and/or operation of the Project.

(d) No litigation at law or in equity or proceeding before any governmental agency involving the Borrower is pending or, to the Borrower's knowledge, threatened in which any liability of the Borrower is not adequately covered by insurance or in which any judgment or

order would have a material adverse effect upon the business or assets of the Borrower or would affect its existence or authority to do business, the construction, improving or operation of the Project, or the validity of any Borrower Document or any Mortgage documents to which it is a party or the performance of its obligations thereunder.

(e) The Borrower is not in default in the payment of the principal of or interest on any of its indebtedness for borrowed money and is not in material default under any instrument under and subject to which any indebtedness has been incurred, and no event has occurred and is continuing that, under the provisions of any such agreement, with the lapse of time or the giving of notice, or both, would constitute an event of default by the Borrower thereunder.

(f) The Borrower is not in default under or in violation of, and the execution, delivery and compliance by the Borrower with the terms and conditions of the Borrower Documents to which it is a party do not and will not conflict with or constitute or result in a default by the Borrower in any material respect under or violate, (i) the Borrower's organizational documents, (ii) any agreement or other instrument to which the Borrower is a party or by which it or its assets are bound, or (iii) to the best of its knowledge, any constitutional or statutory provision or order, rule, regulation, decree or ordinance of any court, government or governmental authority having jurisdiction over the Borrower or its property, and no event has occurred and is continuing which, with the lapse of time or the giving of notice, or both, would constitute or result in such a default or violation.

(g) [Reserved.]

(h) The Borrower has filed or caused to be filed all federal, state and local tax returns that are required to be filed or has obtained appropriate extensions therefor, and has paid or caused to be paid all taxes as shown on said returns or on any assessment received by it, to the extent that such taxes have become due.

(i) The Borrower will have fee simple title to the real property and will have absolute ownership of the personal property comprising the Project, and there are no liens or encumbrances against such property other than the liens contemplated by the Mortgage and those certain matters shown in the owner's title policy.

(j) The Borrower acknowledges, represents and warrants that it understands the nature and structure of the transactions relating to the financing of the Project; that it is familiar with the provisions of all of the documents and instruments relating to such financing to which it or the Issuer is a party or of which it is a beneficiary; that it understands the risks inherent in such transactions, including, without limitation, the risk of loss of the Project; and that it has not relied on the Issuer or its counsel for any guidance or expertise in analyzing the financial or other consequences of the transactions contemplated by this Loan Agreement and the Indenture or otherwise relied on the Issuer or its counsel in any manner.

(k) There has been no material adverse change in the financial condition, prospects, or business affairs of the Borrower subsequent to the date on which the Issuer granted its resolution approving the issuance of the Bonds.

(l) The Indenture has been submitted to the Borrower for examination, and the Borrower acknowledges, by execution of this Loan Agreement, that it has reviewed the Indenture and will be bound by its terms as applicable.

(m) The Project will be located wholly within the City.

(n) During the term of this Loan Agreement, the Borrower will maintain its existence and good standing, and will not terminate, dissolve, or dispose of all or substantially all of its assets. The Borrower will, so long as the Bonds are outstanding, maintain its existence as a single asset entity.

(o) Any financial statement relating to the Project which has been furnished by the Borrower, or any affiliate in all material respects of the Borrower to the Issuer or its agents, counsel or independent contractors, is true and correct and presents fairly the financial condition of the Borrower or such affiliate of the Borrower as of its date in accordance with generally accepted accounting principles, and, since the date of such financial statement, there has not been any material adverse change, financial or otherwise, in the condition of the Borrower or such affiliate of the Borrower, and there has not been any transaction entered into by the Borrower or such affiliate of the Borrower other than transactions in the ordinary course of business, and neither the Borrower nor such affiliate has any material contingent obligations which are not otherwise disclosed in its respective financial statement.

(p) The Borrower certifies, based upon the pro forma budget, that the revenues from the Project will be sufficient to pay the principal of, premium, if any, and interest on the Bonds and all other obligations under the Borrower Documents to which the Borrower is a party and that the Borrower has not incurred any indebtedness for borrowed money (other than in the ordinary course of business) other than under this Loan Agreement and the Mortgage.

(q) Compliance with Applicable Laws. As of the Closing Date, to the best of Borrower's knowledge the Project complies in all material respects with all applicable building and zoning, health, environmental and safety ordinances and laws, and all other applicable laws, rules and regulations.

(r) Utility Services. All utility services necessary for the operation of the Project are available to the Project, including water supply, storm and sanitary sewer facilities, and gas, electric and telephone facilities.

(s) Condition of Project. The Project is not, as of the Closing Date, damaged or injured as a result of any fire, explosion, accident, flood or other casualty.

(t) Factual Representations. Any certificate with respect to factual or financial matters signed by an officer of the Borrower and delivered to the Issuer or the Trustee shall be deemed a representation and warranty by the Borrower as to the statements made therein.

**Section 2.3. Special Arbitrage Certifications.** The Issuer covenants not to cause or direct any moneys on deposit in any Fund or Account to be used in a manner which would cause the Series 2011 Bonds to be classified as “arbitrage bonds” within the meaning of Section 148 of the Code, and the Borrower certifies and covenants to and for the benefit of the Issuer and the Holders that so long as there are any Series 2011 Bonds Outstanding, moneys on deposit in any Fund or Account in connection with the Tax-Exempt Bonds, whether such moneys were derived from the proceeds of the sale of the Series 2011 Bonds or from any other source, will not be used in a manner which will cause the Series 2011 Bonds to be classified as “arbitrage bonds” within the meaning of Section 148 of the Code. In furtherance of this covenant, the Issuer and the Borrower have entered into the Tax Agreement and covenant to comply with all of the terms and conditions thereof.

**Section 2.4. Tax Exempt Status of Bonds.** The Borrower covenants to take such action as is required of it so that the Series 2011 Bonds are, and to refrain from any action which would cause the Series 2011 Bonds to not be, obligations described in Section 103 of the Code, the interest on which is not includable in the "gross income" of the holder (other than the income of a "substantial user" of the Project or a "related person" within the meaning of Section 147(a) of the Code) for purposes of federal income taxation. In particular, but not by way of limitation thereof, the Borrower covenants as follows:

(a) to take such action to assure that the Series 2011 Bonds are "exempt facility bonds", as defined in Section 142(a) of the Code, at least 95 percent of the proceeds of which are used to provide "qualified residential rental projects" (within the meaning of said Section 142(a)(7) of the Code) or property functionally related and subordinate to such facilities;

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

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

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

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

(c) to refrain from taking any action that would result in the Series 2011 Bonds being "federally guaranteed" within the meaning of Section 149(b) of the Code;

(d) to refrain from using any portion of the proceeds of the Series 2011 Bonds, directly or indirectly, to acquire or to replace funds which were used, directly or indirectly, to acquire investment property (as defined in Section 148(b)(2) of the Code) which produces a materially higher yield than the yield on the Series 2011 Bonds over the term of the Series 2011 Bonds, other than investment property acquired with --

(1) proceeds of the Series 2011 Bonds invested for a reasonable temporary period equal to 3 years or less until such proceeds are needed for the purpose for which the Series 2011 Bonds are issued,

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

(3) amounts deposited in any reasonably required reserve or replacement fund to the extent such amounts do not exceed 10 percent of the stated principal amount (or, in the case of Series 2011 Bonds issued at a discount), the issue price of the Series 2011 Bonds;

(e) to otherwise restrict the use of the proceeds of the Series 2011 Bonds or amounts treated as proceeds of the Series 2011 Bonds, as may be necessary, to satisfy the requirements of Section 148 of the Code (relating to arbitrage);

(f) to use no more than two percent of the gross proceeds of the Series 2011 Bonds for the payment of costs of issuance;

(g) to use no portion of the proceeds of the Series 2011 Bonds to provide any airplane, sky-box or other private luxury box, health club facility, facility primarily used for gambling, or store the principal business of which is the sale of alcoholic beverages for consumption off premises;

(h) to comply with the limitations imposed by Section 147(c) of the Code (relating to the limitation on the use of proceeds to acquire land) and Section 147(d) of the Code (relating to restrictions on the use of Series 2011 Bond proceeds to acquire existing buildings, structures or other property);

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

(j) to provide to the Trustee, at such time as required by the Trustee, all information required by the Trustee with respect to Nonpurpose Investments not held in any fund under the Indenture; and

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

(l) The Issuer agrees to submit such closing documents for the Series 2011 Bonds, in accordance with the rules of the Texas Bond Review Board, as may be necessary, or to take such other action as reasonably required, to cause the Texas Bond Review Board to provide the certificate of allocation for the Series 2011 Bonds under Section 146 of the Code.

(m) The Issuer and Borrower understand that the term "proceeds" includes "disposition proceeds" as defined in the Regulations and, in the case of refunding Series 2011 Bonds, Transferred Proceeds (if any) and proceeds of the refunded Series 2011 Bonds expended prior to the date of issuance of the Series 2011 Bonds. It is the understanding of the Issuer and the Borrower that the covenants contained in this Agreement are intended to assure compliance with the Code and Regulations. In the event that the Code is changed or regulations or rulings are hereafter promulgated, which modify or expand provisions of the Code, as applicable to the Series 2011 Bonds, the Issuer and the Borrower will not be required to comply with any covenant contained herein to the extent that such failure to comply, in the opinion of nationally-recognized Bond Counsel, will not adversely affect the exemption from federal income taxation of interest on the Series 2011 Bonds under Section 103 of the Code. In the event that the Code is changed or regulations or rulings are hereafter promulgated, which impose additional requirements which are applicable to the Series 2011 Bonds, the Issuer and the Borrower each agrees to comply with the additional requirements to the extent necessary, in the opinion of nationally-recognized Bond Counsel, to preserve the exemption from federal income taxation of interest on the Series 2011 Bonds under Section 103 of the Code. In furtherance of such intention, the Issuer hereby authorizes and directs the authorized Issuer representative to execute any documents, certificates or reports required by the Code and to make such elections, on behalf of the Issuer, which may be permitted by the Code as are consistent with the purpose for the issuance of the Series 2011 Bonds.

(n) The Issuer and the Borrower covenant that the property constituting the Project will not be sold or otherwise disposed in a transaction resulting in the receipt by the Issuer and

the Borrower of cash or other compensation, unless (i) the Series 2011 Bonds are retired or (ii) the Issuer and the Borrower obtain an opinion of nationally-recognized Bond Counsel that such sale or other disposition will not adversely affect the tax-exempt status of the Series 2011 Bonds.

**Section 2.5. Regulatory Agreement.** In order to maintain the exclusion of interest on the Series 2011 Bonds from gross income for purposes of federal income taxation and to assure compliance with the Act and certain additional requirements of the Issuer, the Borrower hereby agrees that it shall, concurrently with or before the execution and delivery of the Bonds, execute and deliver and cause to be recorded the Regulatory Agreement with respect to the Project. The Borrower shall comply with every other term of the Regulatory Agreement. The Borrower agrees to cause any amendments to the Regulatory Agreement to be recorded in the appropriate official public records.

### **ARTICLE III.**

#### **ISSUANCE OF BONDS; LOAN TO BORROWER; RELATED OBLIGATIONS**

**Section 3.1. Issuance of Bonds: Deposit of Proceeds.** To provide funds to assist the Borrower in financing the acquisition, rehabilitation and equipping of the Project, the Issuer, concurrently with the execution and delivery of this Loan Agreement, and upon satisfaction of the conditions to the delivery of the Bonds set forth in Section 2.07 of the Indenture, shall issue, sell and deliver the Bonds and will deposit the proceeds of the Bonds with the Trustee in accordance with Section 5.02 of the Indenture.

#### **Section 3.2. The Loan; Basic Loan Payments; and Additional Payments.**

(a) The Loan. The Issuer agrees, upon the terms and conditions herein, to lend to the Borrower the proceeds received by the Issuer from the sale of the Bonds by causing such proceeds to be deposited with the Trustee for disposition as provided in the Indenture. The obligation of the Issuer to make the Loan shall be deemed fully discharged upon the deposit of the proceeds of the Bonds with the Trustee. The Loan shall be evidenced by the Note.

(b) Deposit of Project Revenues; Loan Payments; Basic Loan Payments; and Additional Loan Payments. The Borrower shall cause all Project Revenues to be deposited with the Trustee upon receipt by the Borrower or the Manager. In addition, the Borrower shall instruct the Administrator to deposit the revenues generated pursuant to the HAP Contract to be wired directly from the Administrator to the Trustee for deposit into the Revenue Fund. The Project Revenues shall be used to pay the Basic Loan Payments and the Additional Loan Payments, as provided in this Section 3.2(b), in such lawful money of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts.

(i) Basic Loan Payments. The Project Revenues shall be used to pay, as Basic Loan Payments, the following amounts:

(1) on or before the 15<sup>th</sup> day of each month, commencing \_\_\_\_\_, 2011, until such time as the principal of and the premium, if any, and interest on, the Bonds shall have been paid in full, or provisions made for such full payment in accordance with the provisions of the Indenture, to the Trustee for deposit in the respective Interest Accounts in the Bond Fund provided for in the Indenture,



a sum equal to the Interest Requirement on then Outstanding Bonds for such month; and

(2) on or before the 15<sup>th</sup> day of each month, commencing \_\_\_\_\_, 2011, to the Trustee for deposit in the respective Principal Accounts in the Bond Fund, a sum equal to the Principal Requirement on then Outstanding Bonds for such month.

The monthly installments of Basic Loan Payments described in (1) and (2) above payable by the Borrower under this Loan Agreement are expected to equal in the aggregate an amount that, with other funds in the respective Bond Fund Accounts then available for the payment of principal and interest on the Series 2011 Bonds, shall be sufficient to provide for the payment in full of the interest on, premium, if any, and principal on the Series 2011 Bonds as they become due and payable.

Except as otherwise provided in the Indenture, the Project Revenues shall also be used to pay, as Basic Loan Payments, to the Trustee for deposit in the Bond Funds, such amounts as shall, together with any other money available therefor, be sufficient to pay all amounts, if any, required to redeem each Series of Bonds pursuant to the provisions of Article III of the Indenture, together with any related redemption premium associated therewith, all such payments to be made to the Trustee, for deposit into the related Bond Fund Accounts on or before the date such money are required by said provisions of the Indenture.

(ii) Additional Loan Payments. The Project Revenues shall from time to time also be used to pay, as Additional Loan Payments, amounts sufficient to pay the following costs and expenses (to the extent such costs and expenses are not paid from the proceeds of the sale of the Bonds):

(1) the Ordinary Trustee's Fees and Expenses and Extraordinary Trustee's Fees and Expenses, and all other fees and other costs of the Trustee, including without limitation, fees and expenses of counsel to the Trustee, payable to the Trustee for services or indemnity under the Indenture and the Borrower Documents (including services in connection with the administration and enforcement thereof and compliance therewith);

(2) all fees and other costs incurred for services of such agents, attorneys and independent accountants as are employed by the Issuer, the Borrower, the General Partner or the Trustee to perform services required pursuant to this Loan Agreement or the Indenture;

(3) the Issuer's Fees and Expenses and all other fees and costs of the Issuer, including without limitation fees and expenses of counsel to the Issuer, not otherwise paid under this Loan Agreement or the Indenture, related to the issuance of the Bonds or in connection with its administration and enforcement of, and compliance with or interpretation of, this Loan Agreement, the Mortgage, the Indenture, the Regulatory Agreement, and the Tax Agreement, or otherwise in connection with the Project and the Bonds;

(4) all amounts advanced by the Issuer or the Trustee under authority of this Loan Agreement or the Indenture that the Borrower is obligated to repay;

(5) any amounts required to be deposited in the Debt Service Reserve Fund in order to satisfy the Debt Service Reserve Requirement pursuant to Section 5.04 of the Indenture; and should funds be withdrawn from the Debt Service Reserve Fund, the Borrower shall restore the difference between the amount on deposit in the Debt Service Reserve Fund and the Debt Service Reserve Requirement from the next available deposits of Project Revenues and other deposits to the Revenue Fund made in accordance with the Indenture;

(6) amounts sufficient to maintain balances in the Repair and Replacement Fund, the Insurance and Tax Escrow Fund and the Operations and Maintenance Reserve Fund, equal to the amounts required pursuant to the Indenture;

(7) all fees and expenses of the Rebate Analyst, to provide the rebate calculations required under the Tax Agreement, and if a deposit is required to be made to the Rebate Fund as a result of any calculation made pursuant to the Tax Agreement, the Borrower shall cause to be paid from Project Revenues the amount of such deposit in accordance with the terms of the Indenture;

(8) amounts required to be deposited in the Operating Fund sufficient to pay the Operating Expenses of the Project, as provided for in the Budget;

(9) the Rating Agency Fee;

(10) the fees and expenses of any Servicer engaged pursuant to Section 9.24 of the Indenture; and

(11) the costs and expenses associated with any audit of the Series 2011 Bonds by the Internal Revenue Service.

(iii) Revenue Fund. As security for its obligations to make the payments required in subsections (i) and (ii) above, the Borrower shall pay (or cause the Manager or HUD to pay) all Project Revenues from the Project to the Trustee for deposit in the Revenue Fund in accordance with the first paragraph of this Section 3.2(b).

All Additional Loan Payments shall be made by the Borrower to the Trustee for payment to the Person or Persons entitled to such payments in the order specified in Section 5.04 of the Indenture.

(iv) Miscellaneous. In the event the Borrower shall fail to pay, or fail to cause to be paid, any Loan Payments as required by this Section 3.2(b) (except to the extent amounts due under 3.2(b) are paid from amounts on deposit in a Debt Service Reserve Fund, the Repair and Replacement Fund or the Surplus Fund), the payment not paid shall continue as an obligation hereunder of the Borrower until the unpaid amount shall have been fully paid, and the Borrower shall pay, or cause to be paid, the same with interest thereon from the date of non-payment until the date so paid at the Default Rate.

The requirement that interest be paid at the Default Rate shall be in addition to and not in lieu of any other remedy that may exist for the failure of the Borrower to make the payments required in this Section 3.2.

The Borrower shall pay, or cause to be paid, in accordance with the terms of this Section 3.2, the Loan Payments without any further notice thereof except as may be specifically required by this Section 3.2(b).

The Borrower shall be permitted to distribute, free and clear of any and all liens or encumbrances on, or right to recovery of, such funds hereunder, to the General Partner or any other Person any funds properly disbursed to the Borrower from the Surplus Fund under the Indenture.

**Section 3.3. Obligations Unconditional; Limited Recourse.** The obligations of the Borrower to make the payments required in Section 3.2 and other Sections hereof and to perform and observe the other agreements contained herein shall be absolute and unconditional and shall not be subject to any defense or any right of setoff, counterclaim or recoupment arising out of any breach by the Issuer or the Trustee of any obligation to the Borrower whether hereunder or otherwise, or out of any Indebtedness or liability at any time owing to the Borrower by the Issuer or the Trustee. Until such time as the principal of, premium, if any, and interest on the Bonds shall have been fully paid or provision for the payment thereof shall have been made in accordance with the Indenture, the Borrower (a) will not suspend or discontinue any payments provided for in Section 3.2 hereof, (b) will perform and observe all other agreements contained in this Loan Agreement, and (c) except as provided in Article VIII hereof, will not terminate this Loan Agreement for any cause, including, without limiting the generality of the foregoing, failure of the Borrower to complete the acquisition, rehabilitation and equipping of the Project, the occurrence of any acts or circumstances that may constitute failure of consideration, destruction of or damage to the Project, the taking by eminent domain of title to or temporary use of any or all of the Project, commercial frustration of purpose, any change in the tax or other laws of the United States of America or of the State or any political subdivision of either or any failure of the Issuer or the Trustee to perform and observe any agreement, whether express or implied, or any duty, liability or obligation arising out of or connected with this Loan Agreement or otherwise.

Notwithstanding the foregoing or any other provision or obligation to the contrary contained in this Loan Agreement or any other Bond Document, with the exception of all indemnities provided in the Bond Documents, which such indemnities shall be a general obligation of the Borrower, (i) the liability of the Borrower under this Loan Agreement and the other Bond Documents to any person or entity, including, but not limited to, the Trustee or the Issuer and their successors and assigns, is limited to the Borrower's interest in the Project, the Project Revenues and the amounts held in the funds and accounts created under the Indenture or other Bond Documents or any rights of the Borrower under any guarantees relating to the Project, and such persons and entities shall look exclusively thereto, to such other security as may from time to time be given for the payment of obligations arising out of this Loan Agreement or any other agreement securing the obligations of the Borrower under this Loan Agreement; and (ii) from and after the date of this Loan Agreement, no deficiency or other personal judgment, nor any order or decree of specific performance (other than pertaining to this Loan Agreement, any agreement pertaining to the Project or any other agreement securing the Borrower's obligations under this Loan Agreement), shall be rendered against the Borrower nor any member of the Borrower, the assets of the Borrower (other than the Borrower's interest in the Project, this Loan Agreement, amounts held in the funds and accounts created under the Bond Documents, any rights of the Borrower under the Bond Documents or any rights of the Borrower under any guarantees relating to the Project), its officers, directors or members (including specifically the General Partner) or their heirs, personal representatives, successors, transferees assigns, as the case may be, the partners holding ownership interests in the Borrower, or the officers, directors or employees of the partners in any action or proceeding arising out of this Loan Agreement and the

Indenture or any agreement securing the obligations of the Borrower under this Loan Agreement, or any judgment, order or decree rendered pursuant to any such action or proceeding.

**Section 3.4. Assignment of Issuer's Rights.** As security for the payment of the Bonds, the Issuer in the Indenture assigns to the Trustee certain of the Issuer's rights under this Loan Agreement, including the right to receive payments hereunder (except for any deposits to the Rebate Fund and the Reserved Rights), and the Borrower hereby assents to such assignment and agrees to make payments directly to the Trustee, without defense or set off by reason of any dispute between the Borrower and the Issuer or the Trustee. By virtue of such assignment and certain obligations of the Borrower to the Trustee, the Trustee shall have the right to enforce the obligations of the Borrower hereunder, subject to the limitations hereof, including the limitations in Section 3.3.

**Section 3.5. Borrower Required to Pay if Project Fund Insufficient.** In the event the moneys in the Project Fund available for payment of the amounts described in Section 5.03 of the Indenture are insufficient to pay such amounts in full, the Borrower agrees to pay such insufficiency. The Issuer does not make any warranty, either express or implied, that the moneys which will be paid into the Project Fund and which, under the provisions of this Loan Agreement, will be available for payment of the Qualified Project Costs, will be sufficient to pay all the costs which will be incurred in that connection. The Borrower agrees that if after exhaustion of the moneys in the Project Fund, the Borrower will pay any portion of the such Qualified Project Costs pursuant to the provisions of this Section, it will not be entitled to any reimbursement therefor from the Issuer or from the Trustee or from the Holders of any of the Bonds, nor will it be entitled to any diminution of the loan payments payable under Section 3.2 hereof. The obligation of the Borrower to complete the construction of the Project will survive any termination of this Loan Agreement.

**Section 3.6. Security for Payments Under the Series 2011 Bonds.** Contemporaneously with the issuance of the Series 2011 Bonds, as security for the payment of the Bonds, the Issuer will execute and deliver the Indenture, under the terms of which all of the right, title, interest, and remedies of the Issuer in this Loan Agreement (except the Reserved Rights), the Note and the Mortgage, together with all revenues and amounts to be received and all property to be held by the Issuer thereunder, will be assigned and will be the subject of a grant of a security interest to the Trustee and will be pledged as security for, among other things, the payment of the Bonds. The Borrower hereby consents to such assignment and grant of a security interest and hereby agrees that its obligations to make all payments under this Loan Agreement will be absolute and will not be subject to any defense, except payment, or to any right of setoff, counterclaim, or recoupment arising out of any breach by the Issuer of any obligation to the Borrower, whether hereunder or otherwise, or arising out of any Indebtedness or liability at any time owing to the Borrower by the Issuer. The Borrower further agrees that all Basic Loan Payments required to be made under this Loan Agreement will be paid directly to the Trustee for the account of the Issuer. The Trustee will have all rights and remedies herein accorded to the Issuer (except for Reserved Rights), but shall not have assumed any obligation of the Issuer hereunder or under any of the Bond Documents, and any reference herein to the Issuer will be deemed, with the necessary changes in detail, to include the Trustee, and the Trustee and the Bondholders are deemed to be and are third party beneficiaries of the representations, covenants, and agreements of the Borrower (but not any obligation) herein contained. Pursuant to the Indenture, the lien on the real property included in the Project and the security interest in the personal property included in the Project granted to the Issuer pursuant to the Mortgage will be assigned to the Trustee as security for the payment of the Bonds.

**Section 3.7. Warranty of Title.** The Borrower warrants that (a) it has acquired, or simultaneously with the issuance of the Series 2011 Bonds will acquire, good and marketable fee simple title to the Mortgage Property, (b) the Borrower is or will be the legal owner of all real and personal

property included in the Project, and (c) the Project is and will be free from all adverse claims, security interests, and encumbrances, other than Permitted Encumbrances.

**Section 3.8. Title Insurance.** The Borrower, prior to or simultaneously with the issuance of the Series 2011 Bonds, will furnish the Title Policy. The Borrower will furnish within the time limit specified in any binder an original of the Title Policy. The mortgagee's title policy will insure that the Trustee has a valid lien on the real property described in Exhibit "A" to the Mortgage subject only to Permitted Encumbrances. There will be deleted from the Title Policy the standard exceptions for discrepancies, encroachments, overlaps, conflicts in boundary lines, servitudes, shortages in area, or other matters which would be disclosed by an accurate survey and inspection of the Mortgaged Property, for mechanics' and materialmen's liens, or for rights or claims of parties in possession and easements or claims of easements not shown by the public records. The Title Policy will contain the standard zoning endorsement. In lieu of the standard zoning endorsement the Borrower may provide an opinion of Independent Counsel to the effect that the Project is properly zoned or evidence of proper zoning from appropriate government officials. Any Net Proceeds payable either to the Issuer or the Borrower under the Title Policy will be subject to the lien of the Indenture, will be paid to the Trustee, and held by the Trustee in the Insurance and Condemnation Fund, and, at the Borrower's written direction, will be either (a) used to acquire or construct replacement or substitute property within the area of operation of the Issuer for that to which title has been lost, or (b) used to redeem Bonds pursuant to Section 3.02 of the Indenture on the earliest date Bonds can be redeemed at par. Any proceeds of the Title Policy remaining after the Bonds are no longer Outstanding will be paid to the Borrower.

**Section 3.9. Borrower's Covenants Regarding Title.** The Borrower agrees to protect, preserve, and defend its interest in the Project and its title thereto, to appear and defend such interest and title in any action or proceeding affecting or purporting to affect the Project, the liens of the Mortgage thereon, or any of the rights of the Trustee thereunder, and to pay on demand all costs and expenses reasonably incurred by the Trustee in or in connection with any such action or proceeding, including reasonable attorneys' fees, whether any such action or proceeding progresses to judgment and whether brought by or against the Trustee. The Trustee will be reimbursed for any such costs and expenses in accordance with the provisions of Section 6.13 hereof. If the Borrower does not take the action contemplated herein, the Trustee or Issuer may, but will not be under any obligation to, appear or intervene in any such action or proceeding and retain counsel therein and defend the same or otherwise take such action therein as it may be advised and may settle or compromise the same and, in that behalf and for any of such purposes, may expend and advance such sums of money as it may deem necessary, and such sums will be an advance payable in accordance with Section 6.13 hereof.

#### **ARTICLE IV.**

#### **THE PROJECT**

**Section 4.1. Acquisition of the Project.** The Borrower's interest in any land, buildings and equipment acquired with the proceeds of the Bonds or amounts deposited in the Project Fund shall be a part of the Project, shall belong to and be the property of the Borrower, and shall be subject to this Loan Agreement.

The Borrower agrees that it will acquire the Project prior or immediately upon issuance of the Bonds, substantially in accordance with the description set forth in Exhibit A hereto, and the Borrower agrees to use its best efforts to cause the acquisition of the Project to be completed as of the Closing Date and rehabilitation and equipping of the Project to be completed as soon as practicable and with all reasonable dispatch following the Closing Date.

**Section 4.2. Disbursement of Project Fund.** Amounts in the Project Fund shall be disbursed by the Trustee as provided in the Indenture, upon delivery by the Borrower to the Trustee of a requisition, substantially in the form attached hereto as Exhibit B, executed by a Borrower Representative setting forth the nature of the amounts to be paid and the name of the payee and certifying that the amounts being paid are Qualified Project Costs. The execution of each requisition submitted for disbursements by the Borrower shall constitute the certification, warranty, and agreement of the Borrower as follows:

(i) the Project is free and clear of all liens and encumbrances except Permitted Encumbrances;

(ii) all evidence, statements, and other writings required to be furnished under the terms of this Loan Agreement and the Indenture are true and omit no material fact, the omission of which may make them misleading;

(iii) all moneys previously disbursed have been used solely to pay for costs allowed by the Agreement, and the Borrower has written evidence to support this item of warranty;

(iv) none of the items for which payment is requested have formed the basis for any payment previously made from the Project Fund; and

(v) all bills for labor, materials, and fixtures used, or on hand and to be used, in the construction of the Project have been paid.

**Section 4.3. Operating Expenses.** The Borrower agrees to pay when due all Operating Expenses of the Project. The Borrower agrees to review and approve invoices for such Operating Expenses on a timely basis. The Borrower (or the Manager) shall be entitled to request the disbursement from the Operating Fund of the monthly Operating Requirements by the Trustee to fund the costs of operating the Project as provided pursuant to Section 5.08 of the Indenture.

The Borrower shall establish and maintain an Operating Account in a federally insured financial institution. Moneys provided to the Borrower from the Operating Fund pursuant to Section 5.04(b)(1) of the Indenture shall be held in the Operating Account and used by the Borrower or the Manager to pay Operating Expenses. On each Interest Payment Date, amounts on deposit in the Operating Account in excess of the amount needed to pay or be reserved to pay actual Operating Expenses shall be transferred by the Borrower to the Trustee for deposit in the Revenue Fund. Any balance in the Operating Account at such time that transfers from the Operating Fund to the Operating Account are not permitted pursuant to Section 5.08 of the Indenture shall be promptly transferred by the Borrower to the Trustee for deposit in the Operating Fund.

If actual Operating Expenses and other actual disbursements with respect to the Project in any month exceed amounts budgeted therefor for that month, the Borrower may requisition from the Operations and Maintenance Reserve Fund or the Surplus Fund the amount of such excess in the manner provided in Section 5.04(b)(1) of the Indenture. However, if there are two such requests by the Borrower in any fiscal quarter that are in excess of 10% of the amounts budgeted therefor in any month, then (i) the Borrower must notify the Trustee, the Underwriter and the Rating Agency; and (ii) the Borrower must prepare or cause the Manager to prepare a report that describes the reasons for the additional expenses and the circumstances surrounding the additional expenses. If the Borrower ascertains that the actual expenses with respect to the Project in any month will continue to exceed amounts budgeted therefor for that month, then the Borrower will prepare or cause the Manager to prepare a revised Budget for the upcoming 12-month period which reflects the actual Operating Expenses in connection with the Project.

**Section 4.4. Rate Covenant; Coverage.** The Borrower shall fix, charge and collect, or cause to be fixed, charged and collected rents, fees and charges in connection with the operation and maintenance of the Project such that for each Fiscal Year beginning on or after January 1, 2012, the Debt Service Coverage Ratio will not be less than the applicable Coverage Test, determined as of the end of each such Fiscal Year based on and supported by Audited Financial Statements.

**Section 4.5. Failure to Meet Rate Covenant; Retention of Management Consultant.** If the Coverage Test in any Fiscal Year beginning on or after January 1, 2012, as set forth in the certificate delivered pursuant to Section 6.8(a) hereof, is not satisfied, the Borrower shall retain a Management Consultant. Payment of the Management Consultant shall be deemed an Operating Expense. The Management Consultant shall prepare recommendations with respect to the operations of the Project and the sufficiency of the rates, fees and charges imposed by the Borrower.

The Management Consultant's report shall (a) include the projection of the Project Revenues, Operating Expenses and Net Cash Flow on a quarterly basis for not less than the next two Fiscal Years, and (b) make such recommendations to the Borrower as the Management Consultant believes are appropriate to enable the Borrower to increase the Debt Service Coverage Ratio to satisfy the Coverage Test for the current calendar year. If, in the judgment of the Management Consultant, it is not possible for the Borrower to meet such requirements, the report of the Management Consultant shall so indicate and shall project the Debt Service Coverage Ratio which could be achieved if the recommendations of the Management Consultant are followed. Continuous retention of a Management Consultant during the years that are the subject of the Management Consultant's report shall not be required, however, if a Borrower Representative delivers a certificate to the Trustee, within 45 days after the end of each calendar quarter, setting forth the actual results for such quarter (which may be based on unaudited financial statements) and such results show that the Debt Service Coverage Ratio is projected by the Management Consultant is being met. The Borrower shall, to the extent lawful and feasible, follow the recommendations of the Management Consultant.

Failure of the Borrower to satisfy the Coverage Test covenant constitutes a Default under this Loan Agreement only if (i)(a) the Borrower fails to engage the Management Consultant or, (b) to the extent that the Trustee and the Rating Agency agree with such recommendations, the Borrower fails to implement its reasonable recommendations, to the extent possible and to the extent consistent with the charitable mission of the General Partner, as required by this Loan Agreement, or (ii) the Debt Service Coverage Ratio is less than 1.05 to 1 for all of the Bonds then Outstanding for the current Fiscal Year.

**Section 4.6. Maintenance and Modification of Project; Removal of Equipment.** The Borrower agrees that during the term of this Loan Agreement it will at its own expense (i) keep the Project in a safe condition, (ii) keep the buildings and all other improvements forming a part of the Project in good repair and in good operating condition, making from time to time, subject to the provisions of this Section 4.6, all necessary and proper repairs thereto and renewals and replacements thereof, including external and structural repairs, renewals, and replacements, and (iii) use the Equipment in the regular course of its business only, within the normal capacity of the Equipment, without abuse, and in a manner contemplated by the manufacturer thereof, and cause the Equipment to be maintained in accordance with the manufacturer's then currently published standard maintenance contract and recommendations. The Borrower may, also at its own expense, from time to time make any Modifications to the Project it may deem desirable for its business purposes that do not, in the opinion of an Independent Architect filed with the Trustee, adversely affect the operation or value of the Project, and provided further, that such Modifications shall not cause the Debt Service Coverage Ratio to fall below the required Coverage Test for any Series of Bonds. Modifications to the Project so made by the Borrower will be on the Mortgaged Property, will become a part of the Project, and will become subject to the lien of the Mortgage. Any contract for such Modifications which is in an amount in excess of \$500,000 will

be made only by a contractor who furnishes performance and labor and material payment bonds in the full amount of such contract, made by the contractor thereunder as the principal and a surety company or companies rated "A" or higher by A. M. Best & Company, Inc. Such bonds must name the Borrower, the Issuer, and the Trustee as obligees, and all Net Proceeds received under such bonds will be paid over to the Trustee and deposited in the Project Fund to be applied to the completion of the Modifications. Such money held by the Trustee in the Project Fund will be invested from time to time, as provided in Section VI of the Indenture.

The Borrower will execute a conditional assignment directing the architect who has prepared any plans and specifications for any Modifications to make available to the Trustee a complete set of the plans and specifications, which assignment will be effective only upon an Event of a Default hereunder by the Borrower. Each construction contract executed by the Borrower for construction of any Modifications must contain a provision that, or by separate agreement such contractors must agree that, upon a Default by the Borrower hereunder, such contracts with the contractors and/or sub-contractors will be deemed assigned to the Trustee should the Trustee so direct and in which case the Trustee will be responsible for the carrying out of all the terms and conditions thereof in place of the Borrower in such contracts. The Borrower covenants to include such conditional assignments in all contracts and subcontracts executed for work to be performed on the Mortgaged Property.

The Borrower further agrees that at all times during the construction of Modifications which cost in excess of \$100,000, the construction contract for such Modifications must be on a "guaranteed maximum price" basis and the Borrower must maintain or cause to be maintained in full force and effect Builder's Risk-Completed Value Form insurance to the full insurable value of such Modifications. The Borrower will not permit any mechanics' or materialmen's or other statutory liens to be perfected or remain against the Project for labor or materials furnished in connection with any Modifications so made by it, provided that it will not constitute a Default hereunder upon such lien being filed, if the Borrower notifies promptly the Trustee, in writing, of any such liens, and the Borrower in good faith and in accordance with applicable law contests promptly such liens in the same manner as is provided for the contest of Impositions in Section 4.9 hereof; and in such event the Borrower may permit the items so contested to remain undischarged and unsatisfied during the period of such contest and any appeal therefrom.

The Borrower will not do or permit others under its control to do any work in or about the Project or related to any repair, rebuilding, restoration, replacement, alteration of, or addition to the Project, or any part thereof, unless the Borrower has first procured and paid for all requisite municipal and other governmental permits and authorizations. All such work must be done in a good and workmanlike manner and in compliance with all applicable building, zoning, and other laws, ordinances, governmental regulations, and requirements and in accordance with the requirements, rules, and regulations of all insurers under the policies required to be carried under the provisions of Article V hereof.

If no Event of Default under this Loan Agreement has happened and is continuing, in any instance where the Borrower in its discretion determines that any items of Equipment or parts thereof have become inadequate, obsolete, worn out, unsuitable, undesirable, or unnecessary, the Borrower may remove such items of Equipment or parts thereof from the Mortgaged Property and sell, trade in, exchange, or otherwise dispose of them (as a whole or in part) without any responsibility or accountability to the Issuer therefor, provided that the Borrower will:

(a) Substitute and install anywhere in the Project items of replacement equipment or related property having equal or greater value or utility (but not necessarily having the same function) in the operation of the Project for the purpose for which it is intended, provided such removal and substitution will not impair the nature of the Project, all of which replacement equipment or related property will be



free of all liens, security interests, and encumbrances (other than Permitted Encumbrances), will become subject to the security interest of the Mortgage, and will be held by the Borrower on the same terms and conditions as the items originally constituting Equipment, or

(b) In the case of: (i) the sale of any such Equipment, (ii) the trade-in of such Equipment for other machinery, furnishings, equipment, or related property not to become part of the Equipment and subject to the security interest of the Mortgage, or (iii) any other disposition thereof, the Borrower will pay to the Trustee the proceeds of such sale or disposition or an amount equal to the credit received upon such trade-in for deposit into the Bond Fund. In the case of the sale, trade-in, or other disposition of any such Equipment to the Borrower, or an Affiliate, the Borrower will pay to the Trustee an amount equal to the greater of the amounts and credits received therefor or the fair market value thereof at the time of such sale, trade-in, or other disposition (as certified by the Borrower, with evidence of the basis therefor) for deposit into the Bond Fund.

Except to the extent that amounts are deposited into the Bond Fund as provided in the preceding subsection (b), the removal from the Project of any portion of the Equipment pursuant to the provisions of this Section will not entitle the Borrower to any abatement or diminution of the Basic Loan Payments payable under Section 3.2 hereof.

If prior to such removal and disposition of items of Equipment from the buildings and the Mortgaged Property, the Borrower has acquired and installed machinery, furnishings, equipment, or related property with its own funds which become part of the Equipment and subject to the security interest of the Indenture and which have equal or greater utility, but not necessarily the same functions, as the Equipment to be removed, the Borrower may take credit to the extent of the amount so spent by it against the requirement that it either substitute and install other machinery and equipment having equal or greater value or that it make payment to the Trustee for deposit into the Bond Fund.

The Borrower will promptly provides written notice to the Trustee each such removal, substitution, sale, or other disposition referred to in subsection (b) of the Section and will pay to the Trustee such amounts as are required by the provisions of subsection (b) of this Section to be paid promptly into the Bond Fund after the sale, trade-in, or other disposition requiring such payment; provided, that no such report and payment need be made until the amount to be paid into the Bond Fund on account of all such sales, trade-ins, or other dispositions not previously reported in the aggregate has a value of at least \$50,000. All amounts deposited in the Bond Fund pursuant to this Section 4.6 will be used to redeem Bonds pursuant to Section 3.02 of the Indenture on the earliest date Bonds can be redeemed at par. The Borrower will not remove, or permit the removal of, any of the Equipment from the buildings or Mortgaged Property except in accordance with the provisions of this Section 4.6. The Trustee is not responsible for verifying or validating any amounts received pursuant to this Section 4.6.

The Borrower will pay or cause to be paid, during the term of this Loan Agreement, before the same respectively become delinquent, all PILOT Payments provided that with respect to special assessments or other governmental charges that may lawfully be paid in installments over a period of years, the Borrower shall be obligated to pay only such installments as are required to be paid during the term of this Loan Agreement.

**Section 4.7. Management of the Project.** The Borrower shall initially retain the Manager identified in the Indenture to manage the Project pursuant to the Management Agreement. Any change in the Management Agreement or the Manager must be to the reasonable satisfaction of the Trustee. The fees of the Manager shall be payable solely from available moneys in the Revenue Fund established in the Indenture and from other moneys of the Borrower. Each Manager for the Project and the fees payable to the Manager shall be subject to approval by the Trustee; provided that no Person shall be engaged by the

Borrower or approved by the Trustee as the Manager (other than the initial Manager named in the Indenture) unless such Person (i) shall have at least five (5) years of demonstrated experience in the management and leasing of affordable residential rental housing facilities, including having not less than 500 units under management subject to restrictions similar to those contained in the Regulatory Agreement and (ii) have its employees bonded for not less than the \$500,000 as required by Section 5.1(h) hereof. The Borrower shall instruct the Manager that all Project Revenues collected by the Manager shall be remitted to the Trustee not later than three (3) Business Days following receipt and shall be subject to cancellation by the Trustee at any time without the payment of any penalty or liability upon the occurrence of a Default under this Loan Agreement. In the event any Management Agreement is terminated, the Borrower shall manage the Project itself until such time as it can engage a qualified successor Manager to manage the Project in accordance with the provisions of this Section. The Borrower shall so engage a successor Manager on the earliest practicable date. Any successor Management Agreement shall have substantially the same terms, tenor and fee structure as the Management Agreement originally entered into with the Manager identified in the Indenture, and shall be subject to the provision of Section 4.8 hereof regarding forbearance of fees. Prior to entering into a contract with any successor Manager, the Borrower must first deliver to the Trustee (i) a Favorable Opinion of Bond Counsel regarding the proposed Management Agreement and (ii) a certificate of the proposed successor manager stating that it has reviewed, understands, and will comply with the restrictions contained in the Regulatory Agreement.

**Section 4.8. Forbearance and Subordination of Fees.** The Borrower hereby agrees that it, any Manager or member of the Borrower shall forbear from taking any management, administration, development or other fees, or any portions thereof, in the event and to the extent that moneys in the Revenue Fund are insufficient in any month to make all current and deferred deposits (other than deposits to the Surplus Fund) provided in the Indenture, that the payment of such fees be made and in accordance with Section 5.04 of the Indenture. The Borrower agrees that any management agreement entered into with respect to the Project during the term of this Loan Agreement shall be subject to this Section and shall contain provisions consistent herewith.

**Section 4.9. Taxes and Impositions.**

(a) Subject to paragraph (c) of this Section 4.9, the Borrower agrees to pay, prior to delinquency, all real property taxes and assessments, general and special, and all other taxes and assessments of any kind or nature whatsoever, which are assessed or imposed upon the Project, or become due and payable, and which create, may create or appear to create a lien upon the Project, or any part thereof, or upon any personal property, equipment or other facility used in the operation or maintenance thereof (all of which taxes, assessments and other governmental and non-governmental charges of like nature are hereinafter referred to as "Impositions"); provided, however, that if, by law, any such Imposition is payable, or may at the option of the taxpayer be paid, in installments, the Borrower may pay the same together with any accrued interest on the unpaid balance of such Imposition in installments as the same become due and before any fine, penalty, interest or cost may be added thereto for the nonpayment of any such installment and interest. Payments made by the Trustee on behalf of the Borrower from funds held under the Indenture in the Insurance and Tax Escrow Fund shall, to the extent of such payments, discharge the Borrower's obligations hereunder.

(b) If at any time after the date hereof there shall be assessed or imposed (i) a tax or assessment on the Project in lieu of or in addition to the Impositions payable by the Project pursuant to subparagraph (a) hereof or (ii) a license fee, tax or assessment imposed on the Trustee and measured by or based, in whole or in part, upon the amount of the outstanding Note, then all such taxes, assessments or fees shall be deemed to be included within the term

“Impositions,” as defined in subparagraph (a) hereof, and the Borrower shall pay and discharge the same as herein provided with respect to the payment of Impositions.

(c) Subject to the applicable State law provisions, the Borrower shall have the right before any delinquency occurs to contest or object to the amount or validity of any Imposition by appropriate legal proceedings, but this shall not be deemed or construed in any way as relieving, modifying, or extending the Borrower’s covenant to pay any such Imposition at the time and in the manner provided in this Section 4.9, unless the Borrower has given prior written notice to the Trustee of the Borrower’s intent to so contest or object to an Imposition, and unless, at the Trustee’s sole option, (i) the Borrower shall demonstrate to the Trustee’s satisfaction that the legal proceedings shall conclusively operate to prevent the sale of the Project, or any part thereof, to satisfy such Imposition prior to final determination of such proceedings; (ii) the Borrower shall furnish a good and sufficient bond or surety as requested by and satisfactory to the Trustee; or (iii) the Borrower shall have provided a good and sufficient undertaking as may be required or permitted by law to accomplish a stay of such proceedings.

(d) The Borrower shall deposit with the Trustee amounts sufficient to pay the annual Impositions as set forth in the Budget to be next due on the Project, in accordance with the provisions of the Indenture. The Borrower further agrees to cause all bills, statements or other documents relating to Impositions to be sent or mailed directly to the Trustee. Upon receipt of such bills, statements or other documents, and provided the Borrower has deposited sufficient funds pursuant to this Section 4.9(d), the Trustee shall, so long as no Event of Default has occurred, pay such amounts as may be due thereunder out of the funds so deposited. If any time and for any reason the funds so deposited are or will be insufficient to pay such amounts as may then or subsequently be due, the Trustee shall notify the Borrower, and the Borrower shall immediately deposit an amount equal to such deficiency with, or as directed by, the Trustee. If the Borrower fails to deposit sums sufficient to fully pay such Impositions at least 30 days before delinquency thereof, the Trustee may, at the Trustee’s election, but without any obligation to do so, advance any amounts required to make up the deficiency, which advances, if any, shall be secured by the Mortgage and shall be repayable to the Trustee as herein elsewhere provided.

(e) The Borrower covenants and agrees not to suffer, permit or initiate the joint assessment of the real and personal property or any other procedure whereby the lien of the real property taxes and the lien of the personal property taxes shall be assessed, levied or charged to the related Project as a single lien.

**Section 4.10. Utilities.** The Borrower shall pay, or cause to be paid, when due, all utility charges which are incurred for the benefit of the Project or which may become a charge or lien against the Project for gas, electricity, water or sewer services furnished to the Project and all other taxes, assessments or charges of a similar nature, whether public or private, affecting the Project or any portion thereof, whether or not such taxes, assessments or charges are liens thereon.

**Section 4.11. Hazardous Waste Covenant.** In addition to and without limitation of all other representations, warranties and covenants made by the Borrower under this Loan Agreement, the Borrower further represents, warrants and covenants that the Borrower will not use Hazardous Substances on, from or affecting the Project in any manner which violates Environmental Laws, and that to the best of the Borrower’s knowledge, no tenant, subtenant, prior tenant or prior subtenant have used Hazardous Substances on, from, or affecting the Project in any manner which violates any Environmental Law. Without limiting the foregoing, the Borrower shall not cause or permit the Project or any part thereof to

be used to generate, manufacture, refine, transport, treat, store, handle, dispose of, transfer, produce or process Hazardous Substances, except in compliance with all Environmental Laws, nor shall the Borrower cause or knowingly permit, as a result of any intentional act or omission on the part of the Borrower or any tenant or subtenant, a release of Hazardous Substances onto the Project. The Borrower shall comply with and require compliance by all tenants and subtenants with all Environmental Laws and shall obtain and comply with, and require that all tenants and subtenants obtain and comply with, any and all approvals, registrations or permits required thereunder. The Borrower shall conduct and complete all investigations, studies, sampling and testing, and all remedial, removal and other action required by a governmental authority under any applicable Environmental Law to clean up and remove all Hazardous Substances on, from or affecting the Project in accordance with all applicable federal, State and local laws, ordinances, rules and regulations. The Borrower shall defend, indemnify and hold harmless the Issuer, the Underwriter, and the Trustee from and against any claims, demands, penalties, fines, liabilities, settlements, damages, costs or expenses of whatever kind or nature, known or unknown, contingent or otherwise, arising out of, or in any way related to, (a) the presence, disposal, release or threatened release of any Hazardous Substances which are on or from the Project which affect the soil, water, vegetation, buildings, personal property, persons, animals or otherwise, (b) any personal injury (including wrongful death) or property damage (real or personal) arising out of or related to such Hazardous Substances on or from the Project, and/or (c) any violation of laws, orders, regulations, requirements or demands of government authorities, or written requirements of the Issuer and the Trustee, which are based upon or in any way related to such Hazardous Substances, including, without limitation, reasonable attorney and consultant fees, investigation and laboratory fees, court costs and litigation expenses. In the event the Project is foreclosed upon, or a deed in lieu of foreclosure is tendered, the Borrower shall deliver the Project in a manner and condition that shall conform with all applicable federal, State and local laws, ordinances, rules or regulations affecting the Project. The provisions of this paragraph shall be in addition to any and all other obligations and liabilities the Borrower may have to the Issuer and the Trustee at common law or under the Bond Documents, and shall survive the termination of this Loan Agreement and defeasance of the Bonds.

The indemnifications and protections set forth in this Section shall be extended, with respect to the Issuer, to its directors, officers, employees, agents and persons under the Issuer's control or supervision, with respect to the Trustee and the Underwriter, to any of their respective directors, officers, employees, agents and persons under their control or supervision.

Anything to the contrary in this Loan Agreement notwithstanding, the covenants of the Borrower contained in this Section shall remain in full force and effect after the termination of this Loan Agreement and the defeasance of the Bonds until the later of (i) the expiration of the period stated in the applicable statute of limitations during which a claim or cause of action may be brought and (ii) payment in full or the satisfaction of such claim or cause of action and of all expense and charges incurred by the Issuer or the Trustee relating to the enforcement of the provisions herein specified.

For the purposes of this Section, the Borrower shall not be deemed an employee, agent or servant of the Issuer or person under the Issuer's control or supervision.

**Section 4.12. Needs Assessment Analysis.** The Borrower will contract for a Needs Assessment Analysis to be prepared with respect to the Project every 5 years from the date of this Loan Agreement and then will submit copies of the report to the Trustee and the Rating Agency. The Needs Assessment Analysis must be conducted and prepared by a consulting engineer reasonably acceptable to the Trustee that, in the objective and reasonable opinion of the Borrower, is experienced in conducting needs assessment analysis for multifamily residential rental projects. Such Needs Assessment Analysis shall identify the major maintenance requirements (including the replacement of machinery and appliances), for the next 5 years and the estimated costs thereof and include recommendations for (i) the

monthly amount to be deposited to the Repair and Replacement Fund and (ii) the Replacement Reserve Requirement. The Borrower shall revise the Replacement Reserve Requirement and instruct the Trustee accordingly based on the recommendation of the consulting engineer and the Borrower shall promptly implement any recommendations contained in the Needs Assessment Analysis to the maximum extent practicable.

**Section 4.13. Trade Payables Covenant.** The Borrower covenants (the “Trade Payables Covenant”) that, commencing with the first full fiscal quarter following the issuance of the Series 2011 Bonds, it shall maintain at least 80% of its trade accounts payable at less than 60 days, provided that any trade account payable that is the subject of a bona fide dispute, the resolution of which is being diligently pursued by the Borrower, shall be excluded from such computation. For the purposes of this subparagraph (c) “trade accounts” means those trade accounts payable with respect to the operation of the Project as determined by generally accepted accounting principles.

(i) *Testing Compliance.* Compliance with the Trade Payables Covenant shall be tested by the Borrower: (A) quarterly based on the Borrower’s unaudited financial statements required pursuant to Section 6.8(a) hereof, and (B) annually based on the Borrower’s audited financial statements required pursuant to Section 6.07 hereof.

(ii) *Failure to Meet Trade Payables Covenant.* If the Trade Payables Covenant is not met for any quarter or Fiscal Year, and is not remedied within 30 days, the Borrower shall, within 60 days of receipt of the report showing such deficiency, complete a report setting forth in detail the reasons for such deficiency and shall adopt a specific plan setting forth steps designed to meet the Trade Payables Covenant by the end of the second quarter following the date such report and plan are required. If at the end of such second quarter the Borrower is still not in compliance with the Trade Payables Covenant, the Borrower shall employ a Management Consultant. The Management Consultant shall prepare recommendations with respect to the operations of the Project such that the Borrower will comply with the Trade Payables Covenant. No Event of Default shall occur if the Borrower’s plan and, if required, the Management Consultant’s recommendations, are delivered and followed pursuant to this section.

**Section 4.14. HAP Contract.** The Borrower agrees to (i) comply with the terms and provisions of the HAP Contract; (ii) allow all renewal options of the HAP Contract to go into effect automatically as provided therein and waive the right to cancel the HAP Contract to the extent necessary to keep the HAP Contract in force for the term of the HAP Contract; (iii) apply promptly for “Special Additional Adjustments” of “Contract Rents” under the HAP Contract to the extent that the Borrower incurs increased actual and necessary expenses of operating and maintaining the Project and is entitled to such adjustments; (iv) not consent to a modification or amendment of the HAP Contract (other than an amendment to increase rents) without the prior written approval of the Trustee (any such approval to be granted if such modification or amendment does not, in the judgment of the Trustee in reliance on an Opinion of Counsel, impair the security for the Bonds); (v) operate the units in the Project exclusively for Eligible Tenants, as that term is defined in the HAP Contract, and in compliance with all HUD rules and regulations which are or may become applicable to the Project; and (vi) use its best efforts to keep the units in the Project occupied by Eligible Tenants in order to avoid any reduction in the HAP Payments under the HAP Contract. The Borrower further covenants that it will take all actions necessary to maintain, affirm and seek extensions of the HAP Contract including, but not limited to, any actions necessary to affirm and assume the HAP Contract in the event of a voluntary or involuntary (e.g., trustee sale, foreclosure sale and deed in lieu of foreclosure) transfer of the Project. To this end, the Borrower agrees to assume and affirm in writing the HAP Contract in form satisfactory to HUD simultaneously with any such transfer and to immediately furnish to the Trustee a copy of such written assumption and affirmation.

The Borrower covenants to submit appropriate forms to the counterparty to the HAP Contract by the twentieth day of each month requesting HAP Payments pursuant to the HAP Contract for the next calendar month and the Trustee agrees to cooperate with the Borrower requests in this regard. The Borrower will direct that such payments be made directly to the Trustee, and the Trustee will deposit such payments into the Revenue Fund. The Borrower will furnish a copy of each request to the Trustee at the time it is submitted.

The Borrower covenants to seek all available renewal options under the terms of the HAP Contract.

## **ARTICLE V.**

### **INSURANCE; DAMAGE, DESTRUCTION AND CONDEMNATION; USE OF NET PROCEEDS**

**Section 5.1. Required Insurance.** The Borrower shall procure and maintain continuously in effect during the term of this Loan Agreement policies of insurance with respect to the Project insuring against such hazards and risks and in such amounts as are customary for a prudent owner of properties comparable to those comprising the Project. Without limiting the generality of the foregoing, the Borrower shall maintain the following insurance with one or more reputable insurance companies meeting the requirements set forth in section 5.2 hereof with respect to the Project:

(a) insurance against loss or damage to the Project by fire and any of the risks covered by insurance of the type now known as “fire and extended coverage” in an amount not less than the greater of (i) the full replacement cost of the Project and or (ii) the outstanding principal amount of the Bonds, and with a deductible from the loss payable for any casualty; the policies of insurance carried in accordance with this subparagraph (a) shall contain the “Replacement Cost Endorsement;”

(b) business interruption or loss of rent insurance in an amount equal to the greater of: (A) an amount equal to the maximum scheduled principal and interest payments on the Note during any twelve month period, or (B) the gross amount of annual rentals projected (or, if greater, actual) for the Project based upon the projected (or, if greater, actual) occupancy of the Project; provided that such coverage shall be increased annually on each anniversary date of the policy to comply with the provisions with this Section 5.1(b).

(c) comprehensive general liability insurance (including coverage for elevators and escalators, if any, on the Project and, if any construction of new improvements occurs after execution of this Loan Agreement, completed operations coverage for two years after construction of any improvements has been completed) on an “occurrence basis” against claims for “personal injury,” including, without limitation, bodily injury, death or property damage occurring on, in or about the Project and the adjoining streets, sidewalks and passageways, such insurance to afford immediate minimum protection to a limit in no event less than \$1,000,000 with respect to personal injury or death to any one or more persons or damage to property;

(d) workers’ compensation insurance (including employer’s liability insurance) for all employees of the Borrower engaged on or with respect to the Project in such amount as is required by law;

(e) during the course of any construction or repair of the Project, builder’s completed value risk insurance against “all risks of physical loss” during construction or repair, with

deductibles as are common in similar policies obtained by prudent owners of property similar in use to the Project and located in the same area in which the Project is located, in non-reporting form, at the Borrower's option covering the total value of work performed and equipment, supplies and materials furnished; such policy of insurance shall contain the "permission to occupy upon completion of work or occupancy" endorsement;

(f) boiler and machinery insurance covering pressure vessels, air tanks, boilers, machinery, pressure piping, heating, air conditioning and elevator equipment and escalator equipment, provided any improvements contain equipment of such nature, and insurance against loss of occupancy or use arising from any breakdown of the same, in such amounts as are commonly obtained by prudent owners of property similar in use to the Project and located in the same area in which the Project is located;

(g) flood insurance if the Project is in an area identified as a special flood hazard area pursuant to the Flood Disaster Protection Act of 1973, as amended, or other applicable law, unless the Project has been removed from the area by application, with such insurance to be at least the amount available under the National Flood Insurance Act of 1968;

(h) fidelity bonds or employee dishonesty insurance in an amount not less than \$500,000 covering all officers, agents, and employees of the Borrower responsible for causing the proceeds of Bonds to be disbursed and covering all officers, agents, and employees of the Manager responsible for handling Project Revenues; and

(i) such other insurance, in such amounts and against such hazards and risks, as is commonly obtained by prudent owners of property similar in use to the Project and located in the same area in which the Project is located.

All policies of insurance required by the terms of this Loan Agreement shall contain an endorsement or agreement by the insurer that any loss shall be payable in accordance with the terms of such policy, notwithstanding any act or negligence of the Borrower which might otherwise result in forfeiture of said insurance and the further agreement of the insurer waiving all rights of setoff, counterclaim or deductions against the Borrower.

**Section 5.2. Delivery of Insurance Policies; Payment of Premiums.** All policies of insurance provided for in Section 5.1 shall be issued by companies licensed to do business in the State, and such insurance companies must have an "A" rating or higher A. M. Best & Company, Inc. (a "Qualified Insurer"). Such policies shall be at least in amounts as required by the provisions of this Loan Agreement. All policies of insurance shall name the Trustee as a named insured and shall have attached thereto a lender's loss payable endorsement for the benefit of the Trustee, which endorsement indicates that all insurance proceeds are payable directly to the Trustee. The Borrower shall furnish the Trustee with an original or certified copies of certificates of insurance for all required insurance.

The Borrower shall not obtain (i) any umbrella or blanket liability or casualty insurance policy unless, in each case, the Trustee's interest is included therein as provided in this Loan Agreement and such policy is issued by a Qualified Insurer, or (ii) separate insurance concurrent in form or contributing in the event of loss with that required in Section 5.1 to be furnished by, or which may be reasonably required to be furnished by, the Borrower. In the event the Borrower obtains separate insurance or an umbrella or a blanket policy, the Borrower shall notify the Trustee of the same and shall cause certified copies of each policy to be delivered as required in Section 5.1. Any blanket policy shall specifically allocate to the Project the amount of coverage from time to time required hereunder and shall otherwise

provide the same protection as would a separate policy insuring only the Project in compliance with the provisions of Section 5.1.

Thirty days prior to the expiration of each such policy, the Borrower shall furnish the Trustee with evidence satisfactory to the Trustee of the reissuance of a policy continuing insurance in force, as required by this Loan Agreement. All such policies shall contain a provision that such policies will not be canceled or materially amended in any manner, including without limitation, amended to reduce the scope or limits of coverage, without twenty days' prior written notice to the Trustee and shall provide that no claims shall be paid thereunder without at least ten days' prior written notice to the Trustee. In all cases, the Borrower shall immediately give notice to the Trustee of any notice received by the Borrower of any expiration, cancellation or modification of, or material reduction of coverage under, any such policy. The Borrower shall not consent to any material amendment to or the cancellation of any such policy.

In the event the Borrower fails to provide, maintain, keep in force or deliver and furnish to the Trustee the certificates of insurance required by this Loan Agreement or make the deposits required hereunder, the Trustee may, but is not required to do so, procure such insurance as provided for in Section 5.01, and the Borrower will immediately pay all premiums thereon promptly upon demand by the Trustee (to the extent such amounts are not paid from moneys in the Insurance and Tax Escrow Fund held under the Indenture), and, until such payment is made by the Borrower, the amount of all such premiums shall be secured by this Loan Agreement.

The Borrower shall deposit with the Trustee, in accordance with Sections 5.04 and 5.10 of the Indenture, amounts sufficient to pay when due estimated aggregate annual insurance premiums on all policies of insurance required by this Loan Agreement. Such amounts shall be disbursed as provided in the Indenture.

Upon occurrence of a Default, the Trustee may, at any time at the Trustee's option, apply, or cause to be applied, any sums or amounts received pursuant hereto, or as rents or income of the Project or otherwise, to the payment of principal and interest of the Bonds or other amounts payable under the Indenture in such manner and order as the Trustee may elect. The receipt, use or application of any such sums by the Trustee hereunder shall not be construed to affect any of the rights or powers of the Trustee under the terms of the Bond Documents or any of the obligations of the Borrower under the Bond Documents.

**Section 5.3. Insurance Proceeds.** After the occurrence of any casualty to the Project, or any part thereof, the Borrower shall give prompt written notice thereof to the Trustee and each insurer and promptly submit a claim to insurer for payment of insurance proceeds; the Borrower shall provide the Trustee with a copy of such claim.

(a) All Insurance Proceeds with respect to the Project shall be paid to the Trustee, and each insurer is hereby authorized and directed to make payment for any such loss directly to the Trustee instead of payment to the Borrower. Any Insurance Proceeds shall be applied as provided in this Section 5.03 and Section 5.17 of the Indenture. Damage or destruction of the Project shall not affect the lien of the Mortgage or the obligations of the Borrower hereunder, and the Trustee is authorized, at the Trustee's option, to compromise and settle all loss claims on said policies if not adjusted promptly by the Borrower.

(b) Notwithstanding the application of Insurance Proceeds to the payment of a portion of the Bonds pursuant to the Indenture, any unpaid portion of the Bonds shall remain in full force and effect, and the Borrower shall not be excused in the payment thereof. If any act or occurrence of any kind or nature on which insurance was not obtained or obtainable shall



result in damage to or loss or destruction of the Project, the Borrower shall give immediate notice thereof to the Borrower and, unless otherwise so instructed by the Trustee, shall promptly, at the Borrower's sole cost and expense, whether or not the Insurance Proceeds are adequate to cover such cost and expense, restore, repair, replace and rebuild the Project as nearly as possible to its value, condition and character immediately prior to such damage, loss or destruction, in accordance with plans and specifications submitted to and approved by the Trustee, provided that such Restoration, repair, replacement and rebuilding is permitted by law.

(c) Except as provided below, nothing contained in this Loan Agreement shall be deemed to excuse the Borrower from repairing or maintaining the Project, as provided herein. The application or release by the Trustee of any Insurance Proceeds shall not cure or waive any Default or notice of default under this Loan Agreement or invalidate any act done pursuant to such notice. If the Insurance Proceeds are not applied to the Restoration of the Project, the Borrower shall not be required to restore, rebuild, replace or repair the portion of the Project damaged or destroyed, and the failure to do so shall not constitute a Default under this Loan Agreement.

(d) All net of Insurance Proceeds shall be applied at the option of the Borrower either (i) to the payment of the Bonds in accordance with the Indenture, or (ii) to the Restoration of the Project (if permitted by law, and to the extent not permitted by law, such Insurance Proceeds shall be applied to the payment of the Bonds), except that (A) the proceeds of any loss of rents insurance shall be deposited in the Revenue Fund under the Indenture and applied as therein provided and (B) any surplus proceeds shall be applied to the payment of the Bonds.

(e) Unless the Borrower exercises its option to apply the Insurance Proceeds to the payment of the Bonds in accordance with the provisions of the Indenture, and so long as any Bonds shall be outstanding and unpaid, and whether or not Insurance Proceeds are sufficient or available therefor, the Borrower shall promptly commence and complete with all reasonable diligence that Restoration of the Project as nearly as possible to the same value and revenue producing capacity which existed immediately prior to such loss or damage in accordance with plans and specifications prepared by an Independent Architect and approved by HUD (so long as the HAP Contract is in effect) and \_\_\_\_\_ ("Restoration Plans"), and in compliance with all legal requirements. Any Restoration shall be effected in accordance with procedures to be first submitted to and approved by the Trustee as provided in Section 5.1 hereof. The Borrower shall pay all costs of such Restoration to the extent not paid from net proceeds of Insurance Proceeds available therefor pursuant to Section 5.1 hereof. If such Restoration is not permitted by law, the Insurance Proceeds shall be applied to the payment of the Bonds.

(f) To exercise the option provided in paragraph (e) above, within thirty (30) days following the deposit of Insurance Proceeds or awards in accordance with the provisions of the Indenture, the Borrower shall give written notice of the option it has selected to the Trustee. If such notice is to exercise the option of prepaying the Bonds, the Trustee shall apply the Net Proceeds of such Insurance Proceeds in the manner provided in Section 5.17 of the Indenture. If such notice is to exercise the option of Restoration or if no such notice is received, the provisions of paragraph (e) above shall control.

#### **Section 5.4. Disbursement of Insurance Proceeds and Condemnation Awards.**

(a) All Net Proceeds of Insurance Proceeds and/or Condemnation Awards received by the Trustee as provided in Section 5.3 hereof shall be applied as provided in this Section.

(b) If no Default shall exist hereunder and if the Borrower has elected Restoration and such Restoration is permitted by law, all Net Proceeds shall be deposited in the Project Fund and disbursed in accordance with the provisions of Section 5.03 of the Indenture to pay or reimburse the Borrower for the payment of the costs, fees and expenses incurred for the Restoration of the Project as required under Section 5.3 hereof; provided that no distribution of Net Proceeds for Restoration shall be made until the Trustee shall have received the following:

(i) Restoration Plans and procedures for the Restoration of the Project as required by Section 5.3(e) hereof.

(ii) Evidence satisfactory that the Project Revenues (including the proceeds of any loss of rent insurance and other funds irrevocably committed to the payment of such amounts) to be received during, and after completion of, the Restoration of the Project in accordance with the approved Restoration Plans, will be sufficient and available to make all payments and deposits when due hereunder, including without limitation to pay all principal, premium, if any, and interest on the Bonds when due, to make all required deposits into the Funds and Accounts required by Section 5.04 of the Indenture, to pay all other Operating Expenses of the Project, and to pay the debt service on any Indebtedness (other than the Bonds) then outstanding or to be incurred in connection with such Restoration.

(iii) Construction schedules and budgets and independently verified estimates and other evidence (including, if required by the Trustee, stipulated sum or guaranteed maximum cost construction contracts) to establish the total amount of the costs, fees and expenses necessary to complete the Restoration of the Project in accordance with the approved Restoration Plans, and of the time period required to complete such Restoration.

(iv) A certificate from an independent architect or contractor appointed by the Borrower and acceptable to the Trustee upon which the Trustee may conclusively rely that the Net Proceeds available therefor together with funds deposited with the Trustee, or irrevocably committed by or on behalf of the Borrower, shall be sufficient to fully pay all costs, fees and expenses necessary for the Restoration of the Project in accordance with the approved Restoration Plans and all legal requirements, free and clear of all mechanic's liens and other liens or claims for lien which are not Permitted Encumbrances.

(v) A waiver of any rights of subrogation from any insurer under any Insurance Policy which, at any time claims that no liability exists as to the Borrower or the owner or insured under such Insurance Policies.

(vi) Such architect's and engineer's certificates, waivers of lien, contractor's sworn statements, title insurance endorsements, surveys, opinions of counsel and such other evidences of cost, payment and performance as the Trustee may reasonably require and upon which it may conclusively rely.

(c) If, within sixty (60) days after the receipt of such Net Proceeds, the Borrower shall fail to furnish sufficient funds and the other items required by paragraph (b) of this Section or if any other Default shall then exist or shall occur hereunder at any time (whether before or after the commencement of such Restoration) the Trustee shall declare the entire

principal balance of the Bonds or any portion thereof to be immediately due and payable and to avail itself of any and all remedies afforded hereunder upon a Default and whether or not the Bonds shall be so accelerated such Net Proceeds, or any portion thereof, then held by the Trustee or other depository hereunder may be applied as provided in the Indenture.

(d) No payment made prior to the final completion of the Restoration of the Project in accordance with the approved Restoration Plans shall exceed 90% of the value of the work performed from time to time, as such value shall be evidenced by an Independent architect's or contractor's certificate to that effect, delivered to the Trustee, upon which the Trustee may conclusively rely; and at all times the undisbursed balance of such proceeds remaining in the hand of the Trustee or such other depository, together with funds deposited or irrevocably committed to the satisfaction of the Trustee by or on behalf of the Borrower to pay the cost of such Restoration, shall be sufficient to pay the entire unpaid cost of the Restoration free and clear of all liens or claims for lien, other than any Permitted Encumbrances evidenced by an Independent architect's or contractor's certificate to that effect, delivered to the Trustee, upon which the Trustee may conclusively rely.

(e) Any surplus which may remain out of such Net Proceeds after payment of all costs, fees and expenses (including expenses of the Trustee and its counsel, agents, experts or other consultants retained in connection with such Restoration) of such Restoration shall be applied to the redemption of Bonds as provided in Section 5.05 of the Indenture.

(f) The Borrower shall make written monthly progress reports to the Trustee as to the status of construction and compliance with the budget prepared in connection with the Restoration of the Project.

#### **Section 5.5. Report of Insurance Consultant; Insurance Commercially Unavailable.**

(a) The insurance required to be maintained pursuant to this Article V shall be subject to the annual review of the Insurance Consultant, and the Borrower agrees that it will follow any recommendations of the Insurance Consultant. In order to establish compliance with this Article V, the Borrower agrees that it will deliver to the Trustee at or prior to the Closing Date and then annually thereafter within five months after the end of each Fiscal Year, a report of the Insurance Consultant setting forth a description of the insurance maintained, or caused to be maintained pursuant to this Article V and then in effect (including any alternative plan as permitted by Section 5.5(b) hereof) and stating whether, in the opinion of the Insurance Consultant, such insurance, the manner of providing such insurance and any reductions or eliminations of the amount of any insurance coverage during the Fiscal Year covered by such report comply with the requirements of this Article V and adequately protect the Project and the Borrower's operations.

(b) In the event that any insurance required by Sections 5.1 hereof is commercially unavailable at a reasonable cost, the Borrower, upon notice to the Trustee, may provide such substitute coverage, if any, as is recommended by the Insurance Consultant at a reasonable cost. The Borrower shall make a continuing good faith effort to secure the insurance required by Section 5.1 hereof, and if the insurance becomes commercially available at a reasonable cost, the Borrower shall acquire such insurance upon expiration of the substitute insurance or as otherwise recommended by the Insurance Consultant.

**Section 5.6. Obligation to Continue Payments.** If prior to full payment of the Bonds (or provision for payment thereof in accordance with the provisions of the Indenture) the Project or any

portion thereof is destroyed (in whole or in part) or is damaged by fire or other casualty, or title to, or the temporary use of, the Project or any portion thereof shall be taken under the exercise of the power of eminent domain by any governmental body or any person, firm or corporation acting under governmental authority, the Borrower shall nevertheless be obligated to continue to pay the amounts specified in Section 3.2 hereof.

**Section 5.7. Insufficiency of Net Proceeds.** If, in accordance with this Loan Agreement, the Borrower elects to repair, restore or replace the Project and the Net Proceeds are insufficient to pay in full the cost of any Restoration, the Borrower will nonetheless complete the work and will pay any cost in excess of the amount of the Net Proceeds held by the Trustee. The Borrower agrees that if by reason of any such insufficiency of the Net Proceeds, the Borrower shall make any payments pursuant to the provisions of this Section, the Borrower shall not be entitled to any reimbursement therefor from the Issuer, the Trustee, or the Holders, nor shall the Borrower be entitled to any diminution of the amounts payable under Section 3.2 hereof.

**Section 5.8. Cooperation of Issuer.** The Issuer shall cooperate fully with the Borrower at the expense of the Borrower in filing any proof of loss with respect to any insurance policy covering the casualties described in Section 5.1 hereof and in the prosecution or defense of any prospective or pending condemnation proceeding with respect to the Project or any part thereof or any property of the Borrower in connection with which the Project is used and will, to the extent it may lawfully do so, permit the Borrower to litigate in any proceeding resulting therefrom in the name and on behalf of the Issuer. In no event will the Issuer voluntarily settle, or consent to the settlement of, any proceeding arising out of any insurance claim or any prospective or pending condemnation proceeding with respect to the Project or any part thereof without the written consent of the Borrower Representative.

## **ARTICLE VI.**

### **OTHER AGREEMENTS**

**Section 6.1. Successor to Issuer.** The Issuer will do all things in its power to maintain its existence or assure the assumption of its obligations hereunder and under the Indenture by any corporation or political subdivision succeeding to its powers under the Act.

**Section 6.2. Assignment, Selling and Leasing.** Except as otherwise provided in the Mortgage, after the completion of the acquisition, rehabilitation and equipping of the Project as described in Section 4.1 hereof, this Loan Agreement may be assigned and the Project sold or leased (other than by reason of foreclosure or deed in lieu of foreclosure), as a whole, by the Borrower only as permitted by Section 6.3 hereof or subject to each of the following conditions:

(a) The assignee, purchaser or lessee shall assume the obligations of the Borrower hereunder and under the other Borrower Documents, in writing in form and substance reasonably satisfactory to the Trustee to the extent of the interest assigned or sold.

(b) The assignee, purchaser or lessee shall deliver an opinion of Independent Counsel in form and substance reasonably satisfactory to the Trustee that the assumption described in (a) above is a valid and enforceable obligation of the assignee, purchaser or lessee.

(c) The Borrower shall, within ten days after the delivery thereof, furnish or cause to be furnished to the Issuer and the Trustee a true and complete copy of each assignment, assumption of obligation, or contract of sale, as the case may be.

(d) The Borrower shall provide a Favorable Opinion of Bond Counsel to the effect that such assignment, sale or lease does not adversely affect the exclusion from gross income of the recipients thereof of interest on the Series 2011 Bonds for federal income tax purposes.

(e) No Default with respect to the Bonds Outstanding after such assignment, sale or lease shall have occurred and be continuing hereunder or under any other Borrower Document, unless such Default is cured or waived in connection with such assignment, sale or lease, and the Borrower shall deliver a Compliance Certificate to that effect.

(f) Compliance with the requirements of the Regulatory Agreement, including any consents required thereunder;

(g) The Rating Agency shall have provided a Confirmation of Rating on the Bonds with respect to such assignment, sale or lease.

(h) The assignee, purchaser or lessee must deliver an opinion of Independent Counsel to the effect that, regardless of the assumption described above, a valid and enforceable first lien on and perfected security interest in the Project and other collateral securing the Bonds will remain and any such assignments and other documents executed for purposes of this Section 6.2 are valid delivered and enforceable obligations of such parties enforceable in accordance with their terms.

It is hereby expressly stipulated and agreed that any disposition of the Project by the Borrower in violation of this Section will be null, void and without effect, will cause a reversion of title to the transferor Borrower, and will be ineffective to relieve the Borrower of its obligations under this Loan Agreement, the Regulatory Agreement and any other document, agreement or instrument evidencing or securing the Borrower's obligations thereunder. The Borrower will include, verbatim or by incorporation by reference, all requirements and restrictions contained in this Loan Agreement and the Regulatory Agreement in any deed or other documents transferring any interest in the Project to any other person or entity to the end that such transferee has notice of and is bound by such restrictions, and will obtain the express written assumption of this Loan Agreement and the Regulatory Agreement by any such transferee.

**Section 6.3. Continued Existence.** The Borrower agrees that during the term of this Loan Agreement it will maintain its existence, will continue to be a nonprofit limited liability company in good standing in the State, will not dissolve or otherwise dispose of all or substantially all of its assets and will not consolidate with or merge into another legal entity or permit one or more other legal entities to consolidate with or merge into it; provided that the Borrower may, without violating the agreement contained in this Section, consolidate with or merge into another legal entity, or permit one or more legal entities to consolidate with or merge into it, or sell or otherwise transfer to another legal entity all or substantially all of its assets as an entirety and thereafter dissolve; provided (i) that a Favorable Opinion of Bond Counsel is provided regarding such acquisition, consolidation, merger or transfer; (ii) that if the surviving, resulting or transferee legal entity, as the case may be, is not the Borrower, then such legal entity shall be a legal entity organized and existing under the laws of one of the states of the United States of America, shall be a single purpose entity whose only business operations shall be operation of the Project and whose only assets and liabilities shall be the Project (and assets and liabilities related thereto) and the Borrower Documents and permitted debt hereunder, and shall assume in writing in form and substance satisfactory to the Issuer all of the obligations of the Borrower under this Loan Agreement and the other Borrower Documents; (iii) that in the opinion of Independent Counsel, this Loan Agreement shall be a valid and enforceable obligation of such surviving, resulting or transferee entity; (iv) that no Default has occurred and is continuing hereunder; (v) that prior to such acquisition, consolidation, merger

or transfer, the Borrower shall furnish a Compliance Certificate to the Issuer and the Trustee; and (vi) that the Trustee shall have consented to such transfer pursuant to the Regulatory Agreement, unless such consent is not required pursuant to said section.

**Section 6.4. Indemnification.** TO THE FULLEST EXTENT PERMITTED BY LAW, THE BORROWER AGREES TO INDEMNIFY, HOLD HARMLESS AND DEFEND THE TRUSTEE, AND EACH OF THEIR RESPECTIVE OFFICERS, GOVERNING MEMBERS, DIRECTORS, OFFICIALS, EMPLOYEES, ATTORNEYS AND AGENTS (COLLECTIVELY, THE “*INDEMNIFIED PARTIES*”), AGAINST ANY AND ALL LOSSES, DAMAGES, CLAIMS, ACTIONS, LIABILITIES, COSTS AND EXPENSES OF ANY CONCEIVABLE NATURE, KIND OR CHARACTER (INCLUDING, WITHOUT LIMITATION, REASONABLE ATTORNEYS’ FEES, LITIGATION AND COURT COSTS, AMOUNTS PAID IN SETTLEMENT AND AMOUNTS PAID TO DISCHARGE JUDGMENTS) TO WHICH THE INDEMNIFIED PARTIES, OR ANY OF THEM, MAY BECOME SUBJECT UNDER FEDERAL OR STATE SECURITIES LAWS OR ANY OTHER STATUTORY LAW OR AT COMMON LAW OR OTHERWISE, ARISING OUT OF OR BASED UPON OR IN ANY WAY RELATING TO THE FOLLOWING:

(i) THE BOND DOCUMENTS OR THE EXECUTION OR AMENDMENT THEREOF, OR IN CONNECTION WITH TRANSACTIONS CONTEMPLATED THEREBY, INCLUDING THE SALE, RESALE OR REMARKETING OF THE BONDS;

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

(iii) 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;

(iv) ANY VIOLATION OF ANY ENVIRONMENTAL LAW, RULE OR REGULATION WITH RESPECT TO, OR THE RELEASE OF ANY TOXIC SUBSTANCE FROM, THE PROJECT OR ANY PART THEREOF;

(v) THE DEFEASANCE AND/OR REDEMPTION, IN WHOLE OR IN PART, OF THE BONDS;

(vi) ANY UNTRUE STATEMENT OR MISLEADING STATEMENT OR ALLEGED UNTRUE STATEMENT OR ALLEGED MISLEADING STATEMENT OF A MATERIAL FACT MADE 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 OMISSION OR ALLEGED OMISSION FROM ANY OFFERING

STATEMENT OR DOCUMENT FOR THE BONDS OF ANY MATERIAL FACT WITH RESPECT TO THE BORROWER OR THE PROJECT NECESSARY TO BE STATED THEREIN IN ORDER TO MAKE THE STATEMENTS THEREIN MADE BY THE BORROWER, IN THE LIGHT OF THE CIRCUMSTANCES UNDER WHICH THEY WERE MADE, NOT MISLEADING; OR

(vii) THE TRUSTEE'S ACCEPTANCE OR ADMINISTRATION OF THE TRUST OF THE INDENTURE, OR THE EXERCISE OR PERFORMANCE OF ANY OF ITS POWERS OR DUTIES THEREUNDER OR UNDER ANY OF THE DOCUMENTS RELATING TO THE BONDS TO WHICH IT IS A PARTY; EXCEPT IN THE CASE OF THE FOREGOING INDEMNIFICATION OF THE LENDER, THE TRUSTEE OR ANY OF THEIR RESPECTIVE OFFICERS, MEMBERS, DIRECTORS, OFFICIALS, ATTORNEYS AND AGENTS, TO THE EXTENT SUCH DAMAGES ARE CAUSED BY THE NEGLIGENCE OR WILLFUL MISCONDUCT OF SUCH INDEMNIFIED PARTY. IN THE EVENT THAT ANY ACTION OR PROCEEDING IS BROUGHT AGAINST ANY INDEMNIFIED PARTY WITH RESPECT TO WHICH INDEMNITY MAY BE SOUGHT HEREUNDER, THE BORROWER, UPON WRITTEN NOTICE FROM THE INDEMNIFIED PARTY, SHALL ASSUME THE INVESTIGATION AND DEFENSE THEREOF, INCLUDING THE EMPLOYMENT OF COUNSEL SELECTED BY THE INDEMNIFIED PARTY, AND SHALL ASSUME THE PAYMENT OF ALL EXPENSES RELATED THERETO, WITH FULL POWER TO LITIGATE, COMPROMISE OR SETTLE THE SAME IN ITS SOLE DISCRETION; PROVIDED THAT THE INDEMNIFIED PARTY SHALL HAVE THE RIGHT TO REVIEW AND APPROVE OR DISAPPROVE ANY SUCH COMPROMISE OR SETTLEMENT. EACH INDEMNIFIED PARTY SHALL HAVE THE RIGHT TO EMPLOY SEPARATE COUNSEL IN ANY SUCH ACTION OR PROCEEDING AND PARTICIPATE IN THE INVESTIGATION AND DEFENSE THEREOF, AND THE BORROWER SHALL PAY THE REASONABLE FEES AND EXPENSES OF SUCH SEPARATE COUNSEL; HOWEVER, SUCH INDEMNIFIED PARTY MAY ONLY EMPLOY SEPARATE COUNSEL AT THE EXPENSE OF THE BORROWER IF IN ITS JUDGMENT A CONFLICT OF INTEREST EXISTS BY REASON OF COMMON REPRESENTATION OR IF ALL PARTIES COMMONLY REPRESENTED DO NOT AGREE AS TO THE ACTION (OR INACTION) OF COUNSEL.

(v) THE BORROWER HEREBY COVENANTS AND AGREES AS FOLLOWS: TO PROTECT, INDEMNIFY AND SAVE THE ISSUER AND ITS BOARD MEMBERS, DIRECTORS, COMMISSIONERS, OFFICERS, AGENTS AND EMPLOYEES HARMLESS FROM AND AGAINST ALL LIABILITY, LOSSES, DAMAGES, COSTS, EXPENSES (INCLUDING 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 LOAN 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 (OTHER THAN A FAILURE TO PAY THE PRINCIPAL OF, AND ANY INTEREST AND PREMIUM ON, THE LOAN, THE MORTGAGE NOTE OR THE BONDS), OR (III) ANY CLAIM OR CAUSE OF ACTION AGAINST THE ISSUER THAT SEEKS TO

IMPOSE LIABILITY ON THE ISSUER WITH RESPECT TO THE BONDS, THIS LOAN AGREEMENT, THE REGULATORY AGREEMENT OR THE INDENTURE WHICH EXCEEDS THE LIABILITY OF THE ISSUER AS SET FORTH IN SECTION 3.6 HEREOF, OR (IV) THE PROJECT OR ANY PART THEREOF, OR (V) ANY VIOLATION OF ANY CONTRACT, AGREEMENT OR RESTRICTION RELATING TO THE PROJECT EXCLUDING THE PAYMENT OF THE PRINCIPAL, PREMIUM, IF ANY, AND INTEREST ON THE BONDS, THE MORTGAGE NOTE OR THE MORTGAGE, OR (VI) 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 THE ISSUER, OR ANY OF ITS RESPECTIVE BOARD MEMBERS, DIRECTORS, OFFICERS, AGENTS OR EMPLOYEES, THE BORROWER SHALL DEFEND THE ISSUER OR ANY OF ITS RESPECTIVE BOARD MEMBERS, DIRECTORS, OFFICERS, AGENTS OR EMPLOYEES IN ANY ACTION OR PROCEEDING BROUGHT IN CONNECTION WITH ANY OF THE ABOVE, AND PROVIDE COMPETENT COUNSEL REASONABLY SATISFACTORY TO THE ISSUER; PROVIDED, HOWEVER, THAT THE ISSUER SHALL HAVE THE RIGHT TO EMPLOY SEPARATE COUNSEL IN ANY ACTION DESCRIBED IN THE PRECEDING SENTENCE AT THE EXPENSE OF THE BORROWER;

(i) IT IS THE INTENTION OF THE PARTIES HERETO THAT THE ISSUER AND ITS RESPECTIVE BOARD MEMBERS, DIRECTORS, OFFICERS, AGENTS AND EMPLOYEES SHALL NOT INCUR PECUNIARY LIABILITY BY REASON OF THE TERMS OF THIS LOAN AGREEMENT OR BY REASON OF THE UNDERTAKINGS REQUIRED OF THE ISSUER AND ITS RESPECTIVE BOARD MEMBERS, DIRECTORS, OFFICERS, AGENTS AND EMPLOYEES HEREUNDER IN CONNECTION WITH THE ISSUANCE OF THE BONDS, INCLUDING BUT NOT LIMITED TO THE EXECUTION AND DELIVERY OF THE INDENTURE, THIS LOAN AGREEMENT, THE REGULATORY AGREEMENT, AND ALL OTHER INSTRUMENTS AND DOCUMENTS REQUIRED TO CLOSE THE TRANSACTION; THE PERFORMANCE OF ANY ACT REQUIRED OF THE ISSUER AND ITS RESPECTIVE BOARD MEMBERS, DIRECTORS, OFFICERS, AGENTS AND EMPLOYEES BY THIS LOAN AGREEMENT; OR THE PERFORMANCE OF ANY ACT REQUESTED OF THE ISSUER AND ITS RESPECTIVE COMMISSIONERS, MEMBERS, TRUSTEES, BOARD MEMBERS, DIRECTORS, OFFICERS, AGENTS AND EMPLOYEES BY THE BORROWER OR IN ANY WAY ARISING FROM THE TRANSACTION OF WHICH THIS LOAN 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 LOAN AGREEMENT, THE REGULATORY AGREEMENT AND ALL OTHER INSTRUMENTS AND DOCUMENTS REQUIRED TO CLOSE THE TRANSACTION; NEVERTHELESS, IF THE ISSUER OR ITS RESPECTIVE BOARD MEMBERS, DIRECTORS, OFFICERS, AGENTS AND EMPLOYEES 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 ISSUER AND ITS RESPECTIVE BOARD MEMBERS, DIRECTORS, OFFICERS, AGENTS AND EMPLOYEES 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 THE



ISSUER THE BORROWER SHALL DEFEND THE ISSUER AND ITS RESPECTIVE BOARD MEMBERS, DIRECTORS, OFFICERS, AGENTS AND EMPLOYEES IN ANY SUCH ACTION OR PROCEEDING, AND PROVIDE COUNSEL SATISFACTORY TO THE ISSUER AND THE BORROWER SHALL PAY THE ISSUER'S EXPENSES INCLUDING PAYMENT OF THE COUNSEL USED BY THE ISSUER; PROVIDED, HOWEVER, THAT THE ISSUER SHALL HAVE THE RIGHT TO EMPLOY SEPARATE COUNSEL IN ANY ACTION DESCRIBED IN THE PRECEDING SENTENCE AT THE EXPENSE OF THE BORROWER;

(ii) NOTWITHSTANDING ANY PROVISION OF THIS SECTION 5.10 TO THE CONTRARY, THE ISSUER SHALL BE INDEMNIFIED BY THE BORROWER WITH RESPECT TO LIABILITIES ARISING FROM THE ISSUER'S OWN GROSS NEGLIGENCE, NEGLIGENCE OR BREACH OF CONTRACTUAL DUTY, BUT NOT FOR ANY LIABILITIES ARISING FROM THE ISSUER'S OWN BAD FAITH, FRAUD OR WILLFUL MISCONDUCT.

Notwithstanding any transfer of the Project to another owner in accordance with the provisions of this Loan Agreement, the Borrower shall remain obligated to indemnify each Indemnified Party pursuant to this Section if such subsequent owner fails to indemnify any Party entitled to be indemnified hereunder, unless such Indemnified Party has consented to such transfer and to the assignment of the rights and obligations of the Borrower hereunder.

The rights of any persons to indemnify hereunder and rights to payment of fees and reimbursement of expenses pursuant to Section 4.1 shall survive the final payment or defeasance of the Bonds and in the case of the Trustee any resignation or removal. The provisions of this Section shall survive the termination of this Loan Agreement.

The provisions of this Section and Section 3.2(b)(ii)(1) and (3) shall survive the retirement of the Bonds and the resignation or removal of the Trustee.

## **Section 6.5. Recording and Filing.**

(a) At the time of the issuance of the Bonds, the Borrower will cause the filing of all financing statements necessary to perfect the security interest of the Trustee and the Issuer in the Borrower Documents.

(b) The Trustee agrees that it will cause to be filed all necessary continuation statements within the time prescribed by the State Uniform Commercial Code - Secured Transactions in order to continue the financing statements in connection with the security interests identified in this Loan Agreement or the Indenture filed on or before the Closing Date. The Trustee shall have no duty to determine, at any time, whether the financing statements filed in connection with the security interests identified in this Loan Agreement or otherwise were or remain sufficient to perfect such security interests under applicable law.

(c) Not earlier than 60 days nor later than 30 days before each fifth anniversary date after the Closing Date, the Borrower shall cause an opinion of Counsel to be given to the Trustee to the effect that all security agreements, financing statements, continuation statements, notices and other instruments required by applicable law have been recorded or filed or re recorded or re filed in such manner and in such places as are required by law in order fully to preserve the rights of the Holders and the Trustee in the assignment to the Trustee of certain rights under this Loan Agreement pursuant to the Indenture and in the Project pursuant to the Mortgage.

(d) The Borrower and the Issuer shall execute and deliver all instruments and shall furnish all information and evidence deemed necessary or advisable by such Counsel in order to enable such Counsel to render the opinion referred to in subsection (c) of this Section 6.5. The Borrower shall file and re file and record and re record or cause to be filed and re filed and recorded and re recorded all instruments required to be filed and re filed and recorded and re recorded pursuant to the law of the State and shall continue or cause to be continued the liens of such instruments for so long as the Bonds shall be outstanding, except as otherwise required in this Loan Agreement.

(e) The Borrower will not suffer any liens to exist upon the Project as a result of any claims brought against the Borrower pursuant to a right or interest not existing in connection with or as permitted by this Loan Agreement or the Mortgage.

**Section 6.6. Nonrecourse to Representatives of Issuer.** No deficiency or other personal judgment, nor any order shall be rendered against the Issuer or any members of the Governing Body, employees or officers of the Issuer, their heirs, personal representatives, successors, transferees or assigns, as the case may be, in any action or proceeding arising out of this Loan Agreement or the Indenture or any other Bond Document, or any judgment, order or decree rendered pursuant to any such action or proceeding. Any obligation of the Issuer hereunder is payable by the Issuer solely from the Trust Estate, and nothing in this Loan Agreement shall be considered as assigning or pledging any other funds of the Issuer other than the Trust Estate.

**Section 6.7. Amendment of Borrower Documents.** Neither the Issuer nor the Borrower shall amend, supplement, alter, modify or terminate any Borrower Document, except as otherwise provided in such document, without the prior written consent of the Trustee, which may be given only as provided in Article XI of the Indenture. Nothing in this Section shall prohibit any assignment or transfer otherwise permitted by Section 6.2 or 6.3.

**Section 6.8. Financial Statements and Reports.**

(a) The Borrower shall deliver or cause to be delivered to the Trustee, (i) on or before the 45th day after the end of each calendar quarter, current financial statements prepared on an accrual basis itemizing income and expenses from the Project for the previous quarter, and (ii) within 120 days after the end of each Fiscal Year of the Borrower, Audited Financial Statements of the Borrower prepared on an accrual basis, which shall include a balance sheet, income statement and a statement of sources and uses of funds for the preceding Fiscal Year, together with a certificate prepared by the Certified Public Accountants reporting on said Audited Financial Statements setting forth (A) the calculation of the Debt Service Coverage Ratio for the Fiscal Year reflected in said Audited Financial Statements, (B) the Net Cash Flow, if any, as of the last day of such Fiscal Year, and (C) the percentage of Project Revenues paid to the Manager as fees under the Management Agreement with respect to such Fiscal Year and upon request shall submit quarterly financial statements.

(b) The statements submitted pursuant to clause (a) hereof shall be certified as true and correct by the party submitting such statement and shall be reported upon a public accounting firm selected by the Borrower.

(c) The Borrower will deliver to the Issuer and the Trustee, within 120 days after the end of each Fiscal Year, a written statement signed by a Borrower Representative stating, as to the signer thereof, that (1) a review of the activities of the Borrower during such year and of performance under this Loan Agreement has been made under their supervision, and (2) to the

best of the knowledge of such Borrower Representative, based on such review, the Borrower has fulfilled all of its obligations throughout such year in all material respects, or, if there has been a default in the fulfillment of any such obligation, specifying each such default known to such Borrower Representative and the nature and status thereof.

(d) The Borrower shall provide to each Rating Agency with an outstanding rating on the Bonds and to any Holder of more than \$500,000 of the Bond Obligation copies of any financial statements or other information described in paragraphs (a), and (c) of this Section 6.8. Upon the written request of the Trustee, any Holder of more than \$500,000 of the Bond Obligation, or any Rating Agency with an outstanding rating on the Bonds, the Borrower promptly and at its own expense shall obtain and furnish to the Trustee, such Holder or such Rating Agency any information which the Borrower may be entitled to request and receive under the Management Agreement or any other agreement or arrangement pertaining to the Project.

#### **Section 6.9. Budget.**

(a) On the Closing Date and on or before January 1 of each year for the annual period commencing on the following January 1, the Borrower, shall prepare a Budget of anticipated Project Revenues and Operating Expenses for the succeeding Fiscal Year, and shall submit a copy of such Budget to the Trustee. Such Budget shall show there to be sufficient income to achieve the Coverage Test provided for in Section 5.04(a)(ii) of the Indenture.

(b) The Budget shall be prepared on a cash basis and should provide a proposed budget for the next Fiscal Year in sufficient detail including income and expenses, deposits to the Repair and Replacement Fund and any other required funds and payments of principal and interest on the Bonds. The Budget shall report income on a 30-day lag period and shall not assume any prepayment on the Bonds. The Budget shall demonstrate sufficient cash flow to pay all required expenses, payments of scheduled interest and principal on the Bonds and the funding of any reserves as required in the flow of funds in the Indenture prior to the release of any funds from the Surplus Fund. The Budget shall be certified in writing as true and correct by the Borrower.

(c) The Budget may be amended from time to time, by the Borrower, during the course of the Fiscal Year, and such amendments shall be certified and submitted in the same manner as the Budget. Aggregate increases in a new or amended Budget in the category of costs to be paid or reimbursed from the Revenue Fund shall not exceed 20% on an annual basis unless the Borrower provides to the Trustee a statement of a Certified Public Accountant to the effect that the increase is reasonable under the circumstances.

(d) Notwithstanding the foregoing, the failure of the Borrowers to maintain the Coverage Test or the Borrower to adopt a Budget showing that such ratios will be achieved, shall not constitute a Default hereunder except as set forth in the following paragraph.

(e) Each Budget shall include provision for payment by the Borrower of the costs, fees and expenses payable or incurred under this Loan Agreement and the Indenture including, without limitation, the costs of maintaining the insurance coverage required pursuant to Section 5.1 and all applicable ad valorem taxes (or payment in lieu of taxes), if any, assessed against the Project payable by the Borrower, and all Administration Expenses.

**Section 6.10. Notices of Certain Events.** The Borrower hereby covenants to notify the Issuer and the Trustee in writing of the occurrence of any Default known to it hereunder or any event which, with the passage of time or service of notice, or both, would constitute a Default hereunder, specifying the nature and period of existence of such event and the actions being taken or proposed to be taken with respect thereto. Such notice shall be given promptly, and in no event less than 10 Business Days after the Borrower receives notice or knowledge of the occurrence of any such event. The Borrower further agrees that it will, and will require the Manager to, give prompt written notice to the Trustee if Insurance Proceeds or Condemnation Awards are received with respect to the Project and are not used to repair or replace the Project, which notice shall state the amount of such proceeds or awards.

**Section 6.11. Inspection of Project Books; Right of Access.** At any time during normal business hours upon not less than two Business Days' notice, the Trustee, the Issuer or any Holder of more than \$100,000 of the Bond Obligation may have access to the Project and all books and records of the Borrower pertaining to the Project and shall be permitted to inspect the same, discuss the affairs of the Borrower and the Project with appropriate representatives of the Borrower, the Manager and the Borrower's outside accountants and shall be permitted to make copies of any of such records.

**Section 6.12. Other Indebtedness.** The Borrower shall not incur any Indebtedness with respect to the Project, other than the Loan and other debts permitted or anticipated herein, or incurred in the ordinary course of business which do not give rise to a lien or encumbrance on the Project except for Permitted Encumbrances. In addition, the Borrower is permitted to incur the following:

- (1) Indebtedness incurred as a result of the issuance of Additional Bonds;
- (2) such Short-Term Indebtedness as the Borrower, in its judgment, deems expedient; provided that the aggregate amount of Short-Term Indebtedness outstanding at any time does not exceed ten percent (10%) of the total Operating Expenses of the Borrower for the preceding Fiscal Year; and
- (3) such Long-Term Indebtedness as the Borrower, in its judgment, deems expedient; provided that prior to incurring, assuming, or guaranteeing any Long-Term Indebtedness the Borrower must furnish to the Issuer and the Trustee (i) a Certificate setting forth the terms of such Long-Term Indebtedness and that the incurrence of such Long-Term Indebtedness will not cause the Debt Service Coverage Ratio to fall below the required Coverage Test for any Series of Bonds and (ii) the Confirmation of Rating stating that the incurrence of such Long-Term Indebtedness will not result in a qualification, downgrade or withdrawal of the then current ratings on the Series 2011 Bonds.

The Borrower may secure Indebtedness incurred or assumed pursuant to (3) above by a lien on and security interests in all or any portion of the Project and the Project Revenues, secured on an equal and ratable basis with then Outstanding Bonds; provided, however, the following conditions are satisfied:

(A) The Indebtedness so is being incurred or assumed for any of the same purposes for which Additional Bonds may be issued under Section 8.08 hereof, or for the purpose of refunding or refinancing any Outstanding Bonds or other Indebtedness;

(B) The Indebtedness (other than Additional Bonds) will not be secured by the moneys and investments held in any fund established under the Indenture;

(C) All Modifications to be financed will become part of the Project;

(D) Any agreement for the repayment of such Indebtedness and instruments evidencing or securing the same must provide --

(i) That any Event of Default will be an event of default thereunder,

(ii) That, if any event of default has occurred in respect of such Indebtedness, the holder thereof will be entitled only to such rights to exercise, consent to or direct the exercise of remedies (other than remedies relating to any funds established under the Indenture) as are available to the Trustee, and that all such remedies are, except as otherwise provided in this Loan Agreement, to be exercised solely by the Trustee for the equal and ratable benefit of all Bondholders and all holders of Indebtedness so secured;

(E) If the proposed Indebtedness is further secured by liens on properties and revenues other than the Project and/or the Project Revenues, a lien of equal rank and priority will be granted upon the same properties and revenues to secure the Bonds; and

(F) For the purpose only of being entitled to remedies hereunder and of consenting to or directing actions to be taken in respect to such remedies, the holders of any such Indebtedness will be treated as Bondholders and the Indebtedness held by such persons will be treated as Additional Bonds.

Any Short-Term Indebtedness or any Long-Term Indebtedness which is incurred for the purpose of providing working capital may be secured by a security interest on the Revenues on a parity with the security interest created under the Mortgage with respect to the Bonds, and if so secured, the agreement for the repayment of such Short-Term Indebtedness and instruments evidencing or securing the same shall provide that: (i) any Event of Default shall be an event of default thereunder; and (ii) if any event of default shall have occurred with respect to such Short-Term Indebtedness, the holder thereof shall be entitled only to such rights to exercise, consent to or direct the exercise of remedies as are available to the Trustee, and that all such remedies are, except as otherwise provided in this Loan Agreement, to be exercised solely by the Trustee for the equal and ratable benefit of all holders of Bonds and all holders of Short-Term Indebtedness so secured. Any agreement for the repayment of such Indebtedness and instruments evidencing or securing the same shall provide for notices to be given to the Trustee regarding defaults by the Borrower, and shall specify the rights of the Trustee to pursue remedies upon the receipt of such notice, and the sharing of the rights of the Trustee to control the exercise of remedies with the holder of such Indebtedness. Short-Term Indebtedness or Long-Term Indebtedness which is incurred for the purpose of providing working capital may also be secured by a security interest in Revenues which is subordinate to the security interest created under the Mortgage.

### **Section 6.13. Advances By Trustee.**

(a) In the event the Borrower shall fail to pay, or fail to cause to be paid (including payment from amounts held in the Insurance and Tax Escrow Fund for that purpose), any Impositions required to be paid by the provisions of Section 4.9, or maintain, or cause to be maintained, the full insurance coverage required by the provisions of Section 5.1, the Trustee, without prior notice to the Borrower, may (but shall be under no obligation to) pay such Impositions or obtain or maintain the required policy of insurance, and pay the premium or premiums on the same.

(b) The Borrower shall notify the Trustee any time it is aware of any unsafe or dangerous condition existing at the Project. In the event that the Borrower, any tenant of the Project, or any other Person, shall permit any unsafe or dangerous condition to exist in the Project and the Trustee is notified by any party of such conditions, the Trustee may (but shall be under no obligation to) notify the Borrower in writing of such condition, and if the Borrower shall fail to correct such condition, or cause such condition to be corrected, within 30 calendar

days after receipt of such notice, the Trustee may (but shall be under no obligation to) make the required correction, improvement, or repair.

(c) All amounts so advanced by any Person pursuant to subsection (a) or (b) of this Section shall be promptly reimbursed by the Borrower to the Person making the advance.

**Section 6.14. Continuing Disclosure.** The Borrower and Dissemination Agent have entered into the Continuing Disclosure Agreement. While this Loan Agreement is in effect, the Borrower shall at all times remain party to the Continuing Disclosure Agreement, or if the Continuing Disclosure Agreement terminates, it shall enter into a similar agreement to provide for the dissemination of the financial statements and notices required by Rule 15c2-12 under the Securities Exchange Act of 1934, as amended. The Borrower agrees that while the Bonds are Outstanding, it will perform its obligations under the Continuing Disclosure Agreement. Notwithstanding any other provision of this Loan Agreement, failure of the Borrower to comply with the Continuing Disclosure Agreement shall not be a Default.

**Section 6.15. Related Party Transactions.** The Borrower shall not enter into any transaction, including, without limitation, the purchase, sale, lease, or exchange of property or the rendering of any service, with any Affiliate except in the ordinary course of business and pursuant to the reasonable requirements of the Borrower's business and upon terms found by the governing body of the Borrower to be fair and reasonable and no less favorable to the Borrower than would be obtained in a comparable arm's length transaction with a Person not an Affiliate.

**Section 6.16. Purchase of Tax-Exempt Bonds.** Neither the Borrower nor any Related Person, pursuant to any arrangement, formal or informal, will purchase any of the Bonds, unless the Borrower or such Related Person delivers a Favorable Opinion of Bond Counsel to the Trustee and the Issuer.

**Section 6.17. Release of Certain Land and Subordination; Granting of Easements.** The parties hereto reserve the right at any time and from time to time to (i) effect the release and removal from the Mortgage of any part (or interest in such part) of the Mortgaged Property with respect to which the Borrower proposes to convey fee title to a public utility or public body in order that utility services or public services may be provided to the Project, or to effect the subordination of the lien of the Mortgage to rights granted to a public utility or public body in order that utility services or public services may be provided to the Project, (ii) grant easements, licenses, rights of way (including the dedication of public highways), and other rights or privileges in the nature of easements with respect to any property included in the Project, free from the lien of the Mortgage, or (iii) release existing easements, licenses, rights of way, and other rights or privileges with or without consideration; provided, that if at the time any such release, removal, or grant is made any of the Bonds are Outstanding and unpaid, the Borrower must deposit with the Trustee the following:

- (a) a copy of the such amendment as executed,
- (b) a resolution or action of the Governing Body of the Borrower (i) giving an adequate legal description of that portion of the Mortgaged Property to be released or subordinated, (ii) stating the purpose for which the Borrower desires the release or subordination, (iii) requesting such release or subordination, and (iv) approving an appropriate amendment to the Mortgage,
- (c) a certificate of the Borrower to the effect that the Borrower is not in default under any of the provisions of this Loan Agreement and that neither the Building nor any other improvements are located on a portion of the Mortgaged Property with respect to which the release or subordination is to be granted, accompanied by a plat of survey of the Mortgaged Property certified by a registered surveyor of

the State depicting (i) the boundaries of the portion of the Mortgaged Property with respect to which the release or subordination is to be granted, (ii) all improvements located on the property surveyed and the relation of the improvements by distances to the boundaries of the portion of such property with respect to which the release or subordination is to be granted, and (iii) all easements and rights of way with recording data and instruments establishing the same,

(d) a copy of the instrument conveying the title to or subordinating the lien of the Mortgage in favor of a public utility or public body, and

(e) a certificate of an architect, dated not more than sixty (60) days prior to the date of the release or subordination and stating that, in the opinion of the person signing such certificate, (i) the portion of the Mortgaged Property so proposed to be released or with respect to which the subordination is proposed or with respect to which an easement, license or right of way is proposed to be granted is necessary or desirable in order to obtain utility services or public services to benefit the Project and (ii) the release or subordination so proposed to be made will not impair the usefulness of the Project as a multifamily housing facility and will not destroy the means of ingress thereto and egress therefrom.

If such release or subordination relates to a part of the Mortgaged Property on which transportation or utility facilities are located, the Borrower will retain an easement to use such transportation or utility facilities to the extent necessary for the efficient operation of the Project as a multifamily housing facility. Any money consideration received in connection with the release of any portion of the Mortgaged Property or the subordination of the lien of the Mortgage pursuant to this Section 8.05 will be deposited in the Bond Fund and used to redeem Bonds pursuant to Section 3.02 of the Indenture on the earliest date Bonds can be redeemed at par.

If all of the conditions of this Section are met, the Trustee is authorized to release any such property from the lien of the Mortgage or subordinate such lien or execute and deliver any instrument necessary or appropriate to confirm and grant or release any such easement, license, right of way, or other right or privilege.

No release or conveyance effected under the provisions of this Section will entitle the Borrower to any abatement or diminution of the loan payments payable under Section 3.2 hereof.

## **ARTICLE VII.**

### **DEFAULTS AND REMEDIES**

**Section 7.1. Defaults.** Each of the following shall constitute a “Default” hereunder:

(a) Failure by the Borrower to pay any Basic Loan Payments; provided that failure to make a Basic Loan Payment shall not constitute a Default to the extent that the amounts on deposit in the Surplus Fund, the Bond Fund, the Repair and Replacement Fund and the Debt Service Reserve Fund are sufficient and available to pay principal and interest due on the related Series of Bonds on the next Bond Payment Date.

(b) Failure by the Borrower to make, or cause to be made, any Additional Loan Payment or amounts required to be paid under Sections 3.2(b)(ii), 4.3, 4.9, 4.10, 5.1 and 6.13 on or before the date due.

(c) Failure by the Borrower to meet the Coverage Test covenant if (i)(a) the Borrower fails to engage a Management Consultant or (b) to the extent that the Rating Agency,

if any agrees with such recommendations, the Borrower fails to implement any of the Management Consultant's reasonable recommendations to the extent possible, and to the extent consistent with the charitable mission of the General Partner, as provided in this Loan Agreement; or (ii) the Debt Service Coverage Ratio for the current Fiscal Year is less than 1.05 to 1 with respect to all Bonds then Outstanding

(d) Failure by the Borrower or the General Partner to perform or observe any of its covenants or agreements contained in this Loan Agreement, the Tax Agreement, or the Regulatory Agreement other than as specified in paragraphs (a) through (c) of this Section 7.1, and such failure shall continue for the period and after the notice specified in Section 7.2 hereof.

(e) The dissolution or liquidation of the Borrower or the filing by the Borrower of a voluntary petition in bankruptcy, or adjudication of the Borrower as a bankrupt, or assignment by the Borrower for the benefit of its creditors or the entry by the Borrower into an agreement of composition with its creditors, or the approval by a court of competent jurisdiction of a petition applicable to the Borrower in any proceeding instituted under the provisions of State law or the federal bankruptcy statute, as amended, or under any similar act which may hereafter be enacted. The term "dissolution or liquidation of the Borrower," as used in this Section 7.1(f), shall not be construed to include the cessation of the existence of the Borrower resulting either from a merger or consolidation of the Borrower into or with another entity or a dissolution or liquidation of the Borrower following a transfer of all or substantially all of its assets as an entirety, under the conditions permitting such actions contained in Section 6.3 hereof.

(f) The occurrence or continuance of a "default," a "Default," an "event of Default" or "Event of Default" under the Mortgage, the HAP Assignment, the Regulatory Agreement or the Indenture.

The provisions of (e) of this Section are subject to the following limitation: if by reason of Force Majeure the Borrower is unable in whole or in part to carry out any of its agreements contained herein (other than its obligations contained in Article III hereof), the Borrower shall not be deemed in Default during the continuance of such inability, if, but only if such default is cured as provided in Section 7.2. The Borrower agrees, however, to remedy with all reasonable dispatch the cause or causes preventing the Borrower from carrying out its agreements, provided that, subject to the preceding sentence, the settlement of strikes and other industrial disturbances shall be entirely within the discretion of the Borrower and the Borrower shall not be required to make settlement of strikes, lockouts and other industrial disturbances by acceding to the demands of the opposing party or parties when such course is in the judgment of the Borrower unfavorable to the Borrower.

The Trustee shall not be deemed to have knowledge of any Default hereunder other than a Default under clause (a) or (b) hereof, unless a Responsible Officer of the Trustee shall have received actual knowledge or shall have been specifically notified in writing of such Default by the Issuer, the Borrower or by the Holders of at least 25% of the Bond Obligation.

**Section 7.2. Notice of Default: Opportunity to Cure.** Except as provided below, no default under Section 7.1(e) hereof shall constitute a Default hereunder until:

(a) The Trustee or the Issuer, by Mail, shall give notice to the Borrower of such default specifying the same; and



(b) The Borrower shall have had thirty (30) days after receipt of such notice to correct the default and shall not have corrected it or, if such default cannot be corrected within thirty (30) days, shall have failed to initiate and diligently pursue appropriate corrective action, provided, that in any event such default must be remedied within 120 days after the date of occurrence thereof.

**Section 7.3. Remedies.** Whenever any Default under Section 7.1 hereof shall have happened and be continuing, any or all of the following remedial steps shall be available:

(a) The Trustee may, and at the written request of the Controlling Holders of the Bonds shall, declare the outstanding principal balance and interest accrued on the Loan and all payments required to be made by the Borrower under Section 3.2 hereof with respect to the Bonds for the remainder of the term of this Loan Agreement to be immediately due and payable, whereupon the same shall become immediately due and payable. Upon any such acceleration of the Loan, the Bonds shall be subject to mandatory redemption as provided in Section 3.01(3) of the Indenture.

(b) The Trustee, for and on behalf of the Issuer, may, and with the consent of the Controlling Holders of the Bonds shall, take whatever action at law or in equity may appear necessary or desirable to collect the payments required to be made by the Borrower under Section 3.2 hereof then due and thereafter to become due, including, without limitation, pursuing remedies under the appropriate Mortgage and the remedies under Section 8.02 of the Indenture.

(c) The Issuer or the Trustee may take whatever action at law or in equity as may be necessary or desirable to enforce performance and observance of any obligation, agreement or covenant of the Borrower under this Loan Agreement.

The provisions of clause (a) of the preceding paragraph, however, are subject to the condition that if, at any time after the Loan shall have been so declared due and payable, and before any judgment or decree for the payment of the moneys due shall have been obtained or entered, there shall have been deposited with the Trustee a sum sufficient to pay all the principal of the Bonds matured prior to such declaration and all matured installments of interest (if any) upon all the Bonds, with interest on such overdue installments of principal as provided herein, and the reasonable expenses of the Trustee, and any and all other Defaults known to the Trustee (other than in the payment of principal of and interest on the Loan due and payable solely by reason of such declaration) shall have been made good or cured to the satisfaction of the Trustee or provision deemed by the Trustee to be adequate shall have been made therefor, then, and in every such case, the Controlling Holders of the Bonds by written notice to the Issuer and to the Trustee, may, on behalf of the Holders of all the Bonds, rescind and annul such declaration and its consequences and waive such default; provided that no such rescission and annulment shall extend to or shall affect any subsequent default, or shall impair or exhaust any right or power consequent thereon.

In case the Trustee or the Issuer shall have proceeded to enforce its rights under this Loan Agreement and such proceedings shall have been discontinued or abandoned for any reason or shall have been determined adversely to the Trustee or the Issuer, then, and in every such case, the Borrower, the Trustee and the Issuer shall be restored respectively to their several positions and rights hereunder, and all rights, remedies and powers of the Borrower, the Trustee and the Issuer shall continue as though no such action had been taken, subject to the results of any such proceedings or any settlement thereof.

The Borrower covenants that, in case a Default shall occur with respect to the payment of the Loan payable under Section 3.2(a) hereof, then, upon demand of the Trustee, the Borrower will pay to the

Trustee the whole amount that then shall have become due and payable under said Section, with interest, to the extent permitted by law, on the amount then overdue at the Default Rate until such amount has been paid.

In case the Borrower shall fail forthwith to pay such amounts upon such demand, the Trustee shall be entitled and empowered to institute any action or proceeding at law or in equity for the collection of the sums so due and unpaid, and may prosecute any such action or proceeding to judgment or final decree, and may enforce any such judgment or final decree against the Borrower and collect in the manner provided by law the moneys adjudged or decreed to be payable.

In case proceedings shall be pending for the bankruptcy or for the reorganization of the Borrower under the federal bankruptcy laws or any other applicable law, or in case a receiver or trustee shall have been appointed for the property of the Borrower or in the case of any other similar judicial proceedings relative to the Borrower, or the creditors or property of the Borrower, then the Trustee shall be entitled and empowered, by intervention in such proceedings or otherwise, to file and prove a claim or claims for the whole amount owing and unpaid pursuant to this Loan Agreement and, in case of any judicial proceedings, to file such proofs of claim and other papers or documents as may be necessary or advisable in order to have the claims of the Trustee allowed in such judicial proceedings relative to the Borrower, its creditors or its property, and to collect and receive any moneys or other property payable or deliverable on any such claims, and to distribute such amounts as provided in the Indenture after the deduction of its charges and expenses. Any receiver, assignee or trustee in bankruptcy or reorganization is hereby authorized to make such payments to the Trustee, and to pay to the Trustee any amount due it for compensation and expenses, including expenses and fees of counsel incurred by it up to the date of such distribution.

**Section 7.4. No Remedy Exclusive.** No remedy herein conferred upon or reserved to the Issuer is intended to be exclusive of any other available remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Loan Agreement or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any Default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right or power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Issuer to exercise any remedy reserved to it in this Article, it shall not be necessary to give any notice, other than such notice as may be required in this Article. Such rights and remedies as are given the Issuer hereunder shall also extend to the Trustee, and the Trustee and the Holders, subject to the provisions of the Indenture, shall be entitled to the benefit of all covenants and agreements herein contained.

**Section 7.5. Attorney's Fees and Expenses.** If a Default hereunder occurs and if the Issuer or the Trustee, or the representative or agent of either, should employ attorneys or incur expenses for the enforcement of any obligation or agreement of the Borrower contained herein or in the other Borrower Documents, the Borrower on demand will pay to the Issuer or the Trustee, as the case may be, the reasonable fees of such attorneys and the reasonable expenses so incurred, including all costs of any and all investigations, proceedings and court appeals.

**Section 7.6. No Additional Waiver Implied by One Waiver.** In the event any agreement contained in this Loan Agreement should be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

## ARTICLE VIII.

### OPTIONS TO TERMINATE AGREEMENT

**Section 8.1. Grant of Option to Terminate.** The Borrower shall have, and is hereby granted, the option to terminate this Loan Agreement as a whole at any time the Borrower declares it will cease to use the Project by reason of:

(a) the damage or destruction of all or a significant portion of the Project (with property damage equal to at least \$100,000) to such extent that, in the reasonable opinion of the Borrower, the Restoration thereof would not be economical;

(b) the condemnation of all or part of the Project or the taking by condemnation of such part, use or control of the Project (with the value of the property so taken or condemned equaling at least \$100,000) as to render it unsatisfactory to the Borrower for its intended use, provided that any temporary taking by condemnation shall not give rise to the option unless, in the Borrower's reasonable opinion, such temporary taking shall render the Project unsatisfactory to the Borrower for its intended use for a period of at least six months;

(c) any changes in the Constitution of the State or the Constitution of the United States or of legislative or administrative action (whether State, federal, or local), by which this Loan Agreement shall become void or unenforceable or impossible of performance in accordance with the intent and purposes hereof; or

(d) the Borrower may also prepay the Loan in whole and terminate this Loan Agreement if the Loan is prepaid in whole and in amounts necessary to redeem the Bonds pursuant to Section 3.02 of the Indenture.

**Section 8.2. Exercise of Option to Terminate.** To exercise such options, the Borrower shall, within 90 days following the event authorizing such termination, if any, give written notice to the Issuer and the Trustee, and shall specify therein the date of termination, which date shall be not less than 50 days nor more than 90 days from the date such notice is mailed, and shall make arrangements satisfactory to the Trustee for the giving of the required notice of redemption of all of the Bonds. In order to exercise such option, the Borrower shall pay, or cause to be paid, on or prior to the applicable redemption date, to the Trustee, an amount equal to the sum of the following:

(a) An amount of money which, when added to the amounts then on deposit under the Indenture and available for such purpose will be sufficient to retire and redeem all the Outstanding Bonds on the earliest possible redemption date after notice as provided in the Indenture, including, without limitation, the principal amount thereof, all interest to accrue to said redemption date; plus

(b) An amount of money equal to the Trustee's fees and expenses under the Indenture accrued and to accrue until such final payment and redemption of the Bonds, including fees and expenses related to such redemption; plus

(c) An amount of money equal to the fees and expenses of the Issuer under this Loan Agreement accrued and to accrue until such final payment and redemption of the Bonds.

## ARTICLE IX.

### MISCELLANEOUS

**Section 9.1. Entire Agreement.** The Bond Documents together constitute the entire agreement and supersede all prior agreements and understandings, both written and oral, between the Issuer and the Borrower with respect to the subject matter hereof.

**Section 9.2. Notices.** All notices, certificates or other communications shall be sufficiently given and shall be deemed given on the second day following the date on which the same have been mailed by first class mail, postage prepaid, addressed as provided in the Indenture. A duplicate copy of each notice, certificate or other communication given hereunder by either the Issuer or the Borrower to the other shall also be given to the Trustee and the Manager.

**Section 9.3. Assignments.** This Loan Agreement may not be assigned by either party without consent of the other except that the Issuer shall assign to the Trustee its rights under this Loan Agreement (except its Reserved Rights) and the Borrower may assign its rights under this Loan Agreement as provided by Sections 6.2 and 6.3 hereof.

**Section 9.4. Severability.** If any provision of this Loan Agreement shall be held or deemed to be or shall, in fact, be illegal, inoperative or unenforceable, the same shall not affect any other provision or provisions herein contained or render the same invalid, inoperative, or unenforceable to any extent whatever.

**Section 9.5. Execution of Counterparts.** This Loan 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 9.6. Rights of Trustee.** The Trustee shall have and be protected by all of the rights, powers, indemnities, privileges, immunities and other protections provided to the Trustee under the Indenture which are hereby incorporated herein by reference.

**Section 9.7. Amendments, Changes and Modifications.** Subsequent to the issuance of Bonds and prior to their payment in full (or provision for payment thereof having been made in accordance with the provisions of the Indenture), this Loan Agreement may not be effectively amended, supplemented, modified, altered or terminated except by an instrument in writing signed by the parties hereto, and only as permitted in Section 6.7 hereof.

**Section 9.8. Governing Law.** This Loan Agreement shall be governed exclusively by and construed in accordance with the applicable laws of the State.

**Section 9.9. Term of Agreement.** This Loan Agreement shall be in full force and effect from the date hereof until the later of (a) such time as all the Bonds shall have been fully paid or provision made for such payment pursuant to Article VII of the Indenture, or (b) such time as the Borrower has paid, or caused to be paid, all amounts payable hereunder.

**Section 9.10. No Liability of Issuer's Officers.** No recourse under or upon any obligation, covenant, or agreement contained in this Loan Agreement, or for any claim based thereon, or under any judgment obtained against the Issuer, or by the enforcement of any assessment or penalty or otherwise or by any legal or equitable proceeding by virtue of any constitution, rule of law or equity, or statute or otherwise or under any other circumstances, under or independent of the Indenture, shall be had against

any member of the Governing Body or officer, as such, past, present, or future of the Issuer, or any, for the payment for or to the Issuer or any receiver thereof, of any sum that may be due and unpaid by the Issuer upon the Bonds. Any and all personal liability of every nature, whether at common law or in equity, or by statute or by constitution or otherwise, of any such member of the Governing Body or officer, as such, to respond by reason of any act or omission on his part or otherwise, for the payment for or to the Issuer or any receiver thereof, of any sum that may remain due and unpaid upon the Bonds, is hereby expressly waived and released as a condition of and in consideration for the execution of this Loan Agreement and the issuance of the Bonds.

**Section 9.11. Receipt of and Compliance with Indenture.** The Borrower acknowledges that it has received an executed copy of the Indenture, and accepts and agrees to the provisions thereof, including, without limitation, the provisions of Section 9.04 of the Indenture with respect to compensation and indemnification of the Trustee, and agrees that it will take all such actions as are required or contemplated of it under the Indenture to preserve and protect the rights of the Trustee, the Issuer and of the Holders thereunder and that it will not take any action which would cause a default or Event of Default thereunder. It is agreed by the Borrower and the Issuer that all redemption of Bonds prior to maturity shall be effected as provided in the Indenture. The Borrower hereby agrees that its interest in the Mortgaged Property and its rights hereunder are subject to and subordinated to the interest and rights of the Trustee under the Indenture and acknowledges that the Trustee has entered into the Indenture in reliance upon the assignment to the Trustee of the Issuer's rights under this Loan Agreement and the Borrower's provision of indemnity. The Borrower covenants that it will perform all of the Issuer's obligations and covenants under the Indenture to the extent that they can be performed by the Borrower thereunder. The Borrower further agrees that it will reimburse the Issuer for any expenses incurred in the administration of any of the foregoing agreements and this Loan Agreement and will hold the Issuer harmless from any liabilities thereunder. The Borrower further covenants that it will perform all of the duties and obligations of the Borrower that are set forth in the Indenture.

**Section 9.12. Usury; Total Interest.** This Loan Agreement is subject to the express condition, and it is agreed, that at no time shall Basic Loan Payments hereunder or under the other Bond Documents that are or are construed to be payments of interest on the unpaid principal amount of the Bonds reflect interest that is borne at a rate in excess of the maximum permitted by law. The Borrower shall not be obligated or required to pay, nor shall the Issuer be permitted to charge or collect, interest borne at a rate in excess of such maximum rate. If by the terms of this Loan Agreement or the other Bond Documents the Borrower is required to make such payments reflecting interest borne at a rate in excess of such maximum rate, such payments shall be deemed to be reduced immediately and automatically to reflect such maximum rate. This Loan Agreement is also subject to the condition that amounts paid hereunder representing late payment or penalty charges or the like shall only be payable to the extent permitted by law.

**Section 9.13. Survival.**

(a) The rights of the Trustee to payment under this Loan Agreement shall survive the Trustee's resignation or removal, the discharge of this Loan Agreement and defeasance of the Bonds.

(b) Notwithstanding anything in this Loan Agreement or any of the Bond Documents to the contrary, the rights, protections, indemnities and immunities afforded to the Trustee hereunder shall survive the resignation or removal of any such party and the payment in full or defeasance of the Bonds.

**Section 9.14. Tax Agreement Controls.** In any matter relating to the exclusion of interest on the Bonds from gross income for federal income tax purposes, the terms and provisions of the Tax

Agreement shall control in the event of any conflict between this Loan Agreement and the Tax Agreement.

**IN WITNESS WHEREOF**, the parties hereto have executed this Loan Agreement, all as of the day and year first above mentioned.

**AUSTIN HOUSING FINANCE CORPORATION**

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

Attest:

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

[Issuer Signature Page of Loan Agreement]

**MARSHALL AFFORDABLE PARTNERS, LTD.**

**By:** \_\_\_\_\_, its General Partner

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

[Borrower Signature Page of Loan Agreement]



\_\_\_\_\_

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

[Trustee Signature Page of Loan Agreement]

## **EXHIBIT A**

### **DESCRIPTION OF THE PROJECT**

The Project will consist of the acquisition, rehabilitation and equipping of economic development facilities of the Borrower to provide residential rental facilities for low and moderate income persons and to create or retain job opportunities, including the acquisition, rehabilitation, development, refurbishment, upgrade and equipping of a 100-unit residential rental development known as Marshall Apartments and located at 1157 Salina Street and 1401 East 12th Street Austin, Texas.

## EXHIBIT B

### FORM OF REQUISITION

Requisition No. \_\_\_\_\_ Date: \_\_\_\_\_

To: \_\_\_\_\_, as Trustee under the Trust Indenture dated as of \_\_\_\_\_, 2011 (the "Indenture"), relating to Austin Housing Finance Corporation Multifamily Housing Revenue Bonds (Marshall Apartments) Series 2011

Attention: Trust Department

The undersigned Borrower Representative designated pursuant to the terms of the aforesaid Indenture and a Loan Agreement of even date therewith (the "Agreement") relating to the Bonds identified above between Marshall Affordable Partners, Ltd., an Alabama limited partnership (the "Borrower"), and the Austin Housing Finance Corporation hereby requests that there be paid from the Project Fund the sum set forth below, and in that connection with respect to the use of the proceeds of the Bonds, I HEREBY CERTIFY, as follow:

An obligation in each of the amounts set forth below has been incurred in connection with the acquisition, rehabilitation and equipping of the Project, constitutes a Cost of the Project, and such obligation or amount represents a capital cost of the Project and not a cost of issuance of the Bonds.

Payee

Name and Address

Purpose

Amount

\$  
\$  
\$

Total

The Borrower hereby certifies that:

(1) the Project is free and clear of all liens and encumbrances except Permitted Encumbrances;

(2) all evidence, statements, and other writings required to be furnished under the terms of this Loan Agreement and the Indenture are true and omit no material fact, the omission of which may make them misleading;

(3) all moneys previously disbursed have been used solely to pay for costs allowed by the Agreement, and the Borrower has written evidence to support this item of warranty;

(4) none of the items for which payment is requested have formed the basis for any payment previously made from the Project Fund; and

(5) all bills for labor, materials, and fixtures used, or on hand and to be used, in the construction of the Project have been paid.

**MARSHALL AFFORDABLE PARTNERS, LTD.**

**By:** \_\_\_\_\_, its General Partner

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

**EXHIBIT C**

**FORM OF RELEASE CERTIFICATE**

for the Period Ended \_\_\_\_\_, 20\_\_

**AUSTIN HOUSING FINANCE CORPORATION**

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

**Multifamily Housing Revenue Bonds  
(Marshall Apartments),  
Series 2011**

I, \_\_\_\_\_, an authorized representative of Marshall Affordable Partners, Ltd., as “Borrower” for the above described Bonds (the “Bonds”), do hereby certify that (a) no Event of Default or Potential Default of which the Borrower has knowledge has occurred or is continuing, and (b) the Net Income Available for Debt Service and Debt Service Coverage Ratio calculations for the Marshall Apartments for the twelve months ending \_\_\_\_\_, as set forth below, are true and correct. Terms used herein as defined terms have the meanings provided in the Trust Indenture dated as of \_\_\_\_\_, 2011 with regard to the Bonds.

Series 2011:

Net Income Available for Debt Service

Divided by: Debt Service Factor:

Debt Service Coverage Ratio: \_\_\_\_\_

Dated \_\_\_\_\_

**MARSHALL AFFORDABLE PARTNERS, LTD.**

**By:** \_\_\_\_\_, its General Partner

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

**[With respect to Annual Evaluation Dates]**

The undersigned \_\_\_\_\_, certifies that (a) it has reviewed the audited financial \_\_\_\_\_ of the Borrower for the period ending \_\_\_\_\_, (b) the foregoing calculations of the Debt Service Coverage Ratios are correct, (c) the Net Cash Flow as of the last day of such Fiscal Year was \_\_\_\_\_ and (d) the percentage of Project Revenues paid to the Manager as fees under the Management Agreement with regard to such Fiscal Year was \_\_\_\_%.

**[INDEPENDENT CERTIFIED PUBLIC  
ACCOUNTANT]**

Dated: \_\_\_\_\_

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

..... SPACE ABOVE THIS LINE FOR RECORDER'S USE .....  
.....

After Recording Return To:

McCall, Parkhurst & Horton L.L.P.  
717 North Harwood, Suite 900  
Dallas, Texas 75201  
Attention: Mark A. Malveaux

## REGULATORY AND LAND USE RESTRICTION AGREEMENT

Among

AUSTIN HOUSING FINANCE CORPORATION,  
as Issuer,

\_\_\_\_\_,  
as Trustee,

and

MARSHALL AFFORDABLE PARTNERS, LTD.

as Owner

Dated as of \_\_\_\_\_, 2011

Relating to

\$\_\_\_\_\_  
AUSTIN HOUSING FINANCE CORPORATION  
MULTIFAMILY HOUSING REVENUE BONDS  
(MARSHALL APARTMENTS)  
SERIES 2011

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## REGULATORY AND LAND USE RESTRICTION AGREEMENT

THIS REGULATORY AND LAND USE RESTRICTION AGREEMENT (this "Agreement" or this "Regulatory Agreement") dated as of \_\_\_\_\_, 2011 is among the AUSTIN HOUSING FINANCE CORPORATION, a housing finance corporation duly organized and validly existing under the laws of the State of Texas (together with its successors and assigns, the "Issuer"), \_\_\_\_\_, a national banking association, as trustee (together with any successor or trustee under the Indenture (as defined below), and their respective successors and assigns, the "Trustee") under the hereinafter-defined Indenture, and MARSHALL AFFORDABLE PARTNERS, LTD., an Alabama limited partnership (together with its permitted successors and assigns, the "Owner"),

### WITNESSETH:

WHEREAS, pursuant to the Act (as hereinafter defined), the Issuer is authorized to issue one or more series of its revenue bonds and to loan the proceeds thereof to finance the acquisition, rehabilitation and equipping of residential rental housing for persons of low and moderate income; and

WHEREAS, the Owner has requested the assistance of the Issuer in financing a multifamily residential rental housing project located on the real property described in Exhibit A hereto (the "Project Site") and described in Exhibit B hereto (the "Project Facilities" and, together with the Project Site, the "Project" or "Development"), and, as a condition to such financial assistance, the Owner has agreed to enter into this Regulatory Agreement, setting forth certain restrictions with respect to the Project; and

WHEREAS, the Issuer has determined to assist in the financing of the Project by issuing Austin Housing Finance Corporation Multifamily Housing Revenue Bonds (Marshall Apartments) Series 2011 in the aggregate principal amount of \$\_\_\_\_\_ (the "Bonds"), and making a mortgage loan to the Owner of such principal amount, upon the terms and conditions set forth in the Loan Agreement (as hereinafter defined);

WHEREAS, in order for interest on the Bonds to be excluded from gross income for federal income tax purposes under the Internal Revenue Code of 1986, as amended (the "Code"), and the income tax regulations (including temporary, proposed and final regulations) and rulings with respect to the Code, and in order to comply with the requirements of the Act, relating to the Bonds, the use and operation of the Project must be restricted in certain respects; and

WHEREAS, the Issuer, the Trustee and the Owner have determined to enter into this Regulatory Agreement in order to set forth certain terms and conditions relating to the acquisition, rehabilitation, equipping and operation of the Project and in order to ensure that the Project will be acquired, constructed, equipped, 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 Owner hereby agree as follows:

Section 1. Definitions and Interpretation. In addition to terms defined above, capitalized terms shall have the respective meanings assigned to them in this Section 1 or the Indenture unless the context in which they are used clearly requires otherwise:

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

"Affiliated Party" means a partner of the Owner, a person whose relationship with the Owner would result in a disallowance of losses under section 267 or 707(b) of the Code or a person who, together with the Owner, is a member of the same controlled group of corporations (as defined in section 1563(a) of the Code, except that "more than 50 percent" shall be substituted for "at least 80 percent" each place it appears therein).

"Affordable Rents" means rent paid by a tenant of a residential unit in a multi-family residential development such that the gross monthly rent of the residential unit, after deduction of the monthly value of any in-kind services (including, without limitation, utilities) provided to a tenant, does not exceed 30% of the gross family monthly income of the tenant occupying such residential unit. This determination shall be made in accordance with procedures established by the Issuer and (a) at the time of initial occupancy of the residential unit and (b) at the time of each increase of the gross monthly rent with respect to such residential unit.

"Agreement" or "Regulatory Agreement" means this Regulatory and Land Use Restriction Agreement, as it may be amended from time to time.

"Anticipated Annual Income" means the anticipated annual income of a person (together with the anticipated annual income of all persons who intend to reside with such person in one Unit), as determined in accordance with Section 1.167(k)-3(b)(3) of the Regulations (prior to its withdrawal by T.D. 8473, April 27, 1993) or with such other Regulations as may be imposed pursuant to section 142(d) of the Code.

"Compliance Monitoring Report" means the certified residential rental housing program compliance report to be filed by the Owner with the Issuer and the Trustee pursuant to Section 4(b)(iv) hereof and the Loan Agreement with respect to the Project, in substantially the form attached hereto as Exhibit D, or in such other form as the Issuer may reasonably prescribe.

"Computation Date" means each Installment Computation Date and the Final Computation Date.

"Eligible Tenants" means persons of low and moderate income whose adjusted gross income, together with the adjusted gross income of all persons who intend to reside with those persons in one dwelling unit, did not for the preceding tax year exceed the maximum amount constituting moderate income under the Issuer's rules, resolutions relating to the issuance of bonds, or financing documents relating to the issuance of bonds, which as of the date hereof, is 80% of median family income.

"Favorable Opinion of Bond Counsel" means an opinion of Bond Counsel, addressed to the Issuer and the Trustee, to the effect that the action to be taken will not adversely affect the excludability of interest on the Bonds from gross income for federal tax purposes

"Final Computation Date" means the date the last Bond is discharged.

"Gross Proceeds" means any Proceeds and any Replacement Proceeds of the Bonds.

"Indenture" means the Trust Indenture of even date herewith by and between the Issuer and the Trustee, relating to the issuance of the Bonds, and any indenture supplemental thereto.

"Inducement Date" means \_\_\_\_\_.

"Installment Computation Date" means the last day of each Rebate Year commencing December 31, 2011, and the date on which the final payment in full of all Outstanding Bonds is made.

"Investment" has the meaning set forth in section 1.148-1(b) of the Regulations.

"Investment Proceeds" means any amounts actually or constructively received from investing Proceeds.

"Issue Price" means "issue price" as defined in sections 1273 and 1274 of the Code, unless otherwise provided in Sections 1.148-0 through 1.148-11 of the Regulations and, generally, is the aggregate initial offering price to the public (excluding bond houses, brokers and other intermediaries acting in the capacity of wholesalers or underwriters) at which a substantial amount of each maturity of Bonds is sold.

"Loan" means the loan to be made to the Owner pursuant to the the Mortgage and the Loan Agreement.

"Loan Agreement" means the Loan Agreement of even date herewith among the Issuer and the Owner, as it may be amended, modified, supplemented or restated from time to time to the extent permitted by the Indenture.

"Low-Income Tenants" means persons whose aggregate Anticipated Annual Income does not exceed 60% of the Median Gross Income for the Area. For purposes of this definition, the occupants of a Unit shall not be deemed to be Low-Income Tenants if all the occupants of such Unit at any time are "students", as defined in section 151(c)(4) of the Code, no one of whom is entitled to file a joint return under section 6013 of the Code.

"Low-Income Unit" means a Unit which is included as a Unit satisfying the requirements of the Set Aside.

"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 Housing and Urban Development, under Section 8 of the United States Housing Act of 1937, as amended (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.

"Net Proceeds" means any Net Sale Proceeds, Investment Proceeds and Transferred Proceeds of the Bonds.

"Net Sale Proceeds" means the Sale Proceeds of the Bonds less any such proceeds deposited into a Reasonably Required Reserve or Replacement Fund under section 148(d) of the Code.

"Nonpurpose Investments" means any "investment property," within the meaning of section 148(b) of the Code, acquired with the Gross Proceeds of the Bonds.

"Note" has the meaning set forth in the Loan Agreement.

"Owner Representative" means any Person who at the time and from time to time may be designated as such, by written certificate furnished to the Issuer and the Trustee containing the specimen signature of such Person and signed on behalf of the Owner by the General Partner, which certificate may designate an alternate or alternates.

"Person" means any individual, entity, corporation, partnership, joint venture, association, joint-stock company, trust, unincorporated organization or government or any agency or political subdivision thereof.

"Proceeds" means any Sale Proceeds, Investment Proceeds and Transferred Proceeds of the Bonds.

"Project" means the Project Facilities and the Project Site.

"Project Costs" means, to the extent authorized by the Act, any and all costs incurred by the Owner with respect to the acquisition, construction, rehabilitation and equipping, as the case may be, of the Project, whether paid or incurred prior to or after the date of this Regulatory Agreement, including, without limitation, costs for site preparation, the planning of housing and improvements, the removal or demolition of existing structures, and all other work in connection therewith, and all costs of financing, including, without limitation, the cost of consultant, accounting and legal services, other expenses necessary or incident to determining the feasibility of the Project, contractor's and Owner's overhead and supervisor's fees and costs directly allocable to the Project, administrative and other expenses necessary or incident to the Project and the financing thereof.

"Project Facilities" means the multifamily housing set forth in Exhibit B hereto.

"Project 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.

"Qualified Project Costs" means the Project Costs incurred no earlier than 60 days prior to the Inducement Date (or which are qualifying preliminary expenditures) and no earlier than three years prior to the date reimbursed with Proceeds, but in no event shall such costs have been incurred with respect to a portion of the Project that is placed in service, within the meaning of Section 1.150-2 of the Regulations, earlier than 18 months prior to the date the related costs are reimbursed with Proceeds; provided that such costs are chargeable to a capital account with respect to the Project for Federal income tax and financial accounting purposes, or would be so chargeable either with a proper election by the Owner or but for the proper election by the Owner to deduct those amounts; provided, however, that, if any portion of the Project is being constructed by the Owner or an Affiliated Party (whether as a general contractor or a subcontractor), "Qualified Project Costs" shall include only (a) the actual out-of-pocket costs incurred by the Owner or such Affiliated Party in constructing the Project (or any portion thereof), (b) any reasonable fees for supervisory services actually rendered by the Owner or such Affiliated Party (but excluding any profit component) and (c) any overhead expenses incurred by the Owner or such Affiliated Party which are directly attributable to the work performed on the Project and shall not include, for example, intercompany profits resulting from members of an affiliated group (within the meaning of section 1504 of the Code) participating in the construction of the Project or payments received by such Affiliated Party due to early completion of the Project (or any portion thereof). Qualified Project Costs do not include Costs of Issuance.

"Qualified Project Period" means, with respect to the Project, the period beginning on the closing date and ending on the later of (i) the date which is 20 years after the closing date, (ii) the first date on which no tax-exempt bond issued with respect to the Project is outstanding, or (iii) the first date on which the Project no longer receives assistance under Section 8 of the United States Housing Act of 1937, as amended.

"Reasonably Required Reserve or Replacement Fund" means any fund described in section 148(d) of the Code, provided that the amount thereof allocable to the Bonds invested at a Yield materially higher than the Yield on the Bonds does not exceed 10% of the proceeds of the Bonds, within the meaning of section 148(d) of the Code, and does not exceed the size limitations in Section 1.148-2(f)(2)(ii) of the Regulations.

"Rebate Amount" has the meaning ascribed 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. In the case of any Spending Exception Issue, the "Rebate Amount" as of any Computation Date shall be limited to the "Rebate Amount" attributable to any Reasonably Required Reserve or Replacement Fund.

"Regulations" means the applicable proposed, temporary or final Income Tax 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.

"Replacement Proceeds" has the meaning set forth in Section 1.148-1(c) of the Regulations.

"Sale Proceeds" means any amounts actually or constructively received from the sale (or other disposition) of any Bond, 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 Bond and that is described in Section 1.148-4 of the Regulations.

"Set Aside" has the meaning assigned to such term in Section 2(i) hereof.

"Spending Exception Issue" means any issue of Bonds that meets either the six month exception or the 18-month exception set forth in section 1.148-7 of the Regulations.

"Stated Maturity," when used with respect to the Note or the Bonds or any installment of interest thereon, means any date specified in the Note or the Bonds as a fixed date on which the principal of the Loan or the Bonds or a portion thereof or such installment of interest is due and payable.

"Tax Letter of Representation" means the Owner's Tax Letter of Representation dated the Closing Date, executed by the Owner and addressed to the Issuer and Bond Counsel.

"Tenant Income Certification" means a certification as to income and other matters executed by the household members of each tenant in the Project, in substantially the form of Exhibit C attached hereto, or in such other form as reasonably may be required by the Issuer all in satisfaction of the requirements of Regulations Section 1.167(k)-3(b)(3) (prior to its withdrawal by T.D. 8473, April 27, 1993) and other regulations of the Issuer and as described in Section 4(b)(ii), including the Tenant Income Certification Form as set forth in Exhibit C.

"Transferred Proceeds" means, with respect to any portion of the Bonds that is a refunding issue, proceeds that have ceased to be proceeds of a refunded issue and are transferred proceeds of the refunding issue by reason of Section 1.148-9 of the Regulations.

"Unit" means a residential accommodation containing separate and complete facilities for living, sleeping, eating, cooking and sanitation located within the Project.

"Yield" means yield as determined in accordance with section 148(h) of the Code, and generally, is the yield which when used in computing the present worth of all payments of principal and interest to be paid on an obligation produces an amount equal to the Issue Price of such obligation.

Unless the context clearly requires otherwise, as used in this Regulatory Agreement, words of the masculine, feminine or neuter gender shall be construed to include each other gender, and words of the singular number shall be construed to include the plural number, and vice versa. This Regulatory Agreement and all the terms and provisions hereof shall be construed 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 shall 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 shall not in any way modify or restrict any of the terms or provisions hereof or be considered or given any effect in construing this Regulatory Agreement or any provisions hereof or in ascertaining intent, if any question of intent shall arise.

Section 1A. Acquisition, Rehabilitation and Equipping of the Project. The Owner hereby represents, as of the date hereof, covenants and agrees as follows:

- (a) The Owner has incurred, or will incur within six months after the Closing Date, a substantial binding obligation to commence the rehabilitation of the Project, pursuant to which the Owner is or will be obligated to expend at least 5 percent of the Sale Proceeds of the Bonds.
- (b) The Owner's reasonable expectations respecting the total cost of the acquisition, rehabilitation and equipping of the Project are accurately set forth in the Tax Letter of Representation.
- (c) The Owner has commenced or will commence the acquisition, rehabilitation and equipping of the Project and will proceed with due diligence to complete the same.
- (d) The Owner reasonably expects to expend not less than 85 percent of the Sale Proceeds of the Bonds for Project Costs prior to the date that is three years after the Closing Date.
- (e) The statements made in the various certificates delivered by the Owner to the Issuer, Bond Counsel and/or the Trustee are true and correct in all material respects.
- (f) The Owner will submit, or cause to be submitted, to the Trustee, on or before the date of each disbursement of Proceeds of the Bonds from the Project Fund, if any, held by the Trustee under the Indenture, a requisition in substantially the form required by the Loan Agreement, duly executed by an Owner Representative and certifying that the full amount of such

disbursement will be applied to pay or to reimburse the Owner for the payment of Project Costs and that, after taking into account the proposed disbursement, the aggregate disbursements from the Acquisition Fund will have been applied to pay or to reimburse the Owner for the payment of Qualified Project Costs in an amount equal to 95 percent or more of the aggregate disbursements from such fund.

(g) [Reserved].

(h) The Owner (and any Affiliated Party) will not take or omit to take, as is applicable, any action if such action or omission would in any way cause the Proceeds of the Bonds to be applied in a manner contrary to the requirements of the Indenture, the Loan Agreement or this Regulatory Agreement. The Owner 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 Owner and the Project.

Section 2. Tax-Exempt Status of the Bonds. The Owner shall not take any action or omit to take any action which, if taken or omitted, respectively, would adversely affect the excludability of interest on the Bonds from the gross income of the holders of the Bonds, as defined in section 61 of the Code, for federal income tax purposes. With the intent not to limit the generality of the foregoing, the Owner covenants and agrees that prior to the final maturity of the Bonds, unless it has received and filed with the Issuer and Trustee a Favorable Opinion of Bond Counsel to the effect that failure to comply with any such covenant or agreement, in whole or in part, will not adversely affect the exclusion from gross income for Federal income tax purposes of interest paid or payable on the Bonds:

(a) The Owner's use of the Net Proceeds of the Bonds shall at all times satisfy the following requirements:

(i) At least 95 percent of the Net Proceeds of the Bonds shall be used to pay Qualified Project Costs that are costs of a "qualified residential rental project" (within the meaning of sections 142(a)(7), 142(d) and 145(d) of the Code and section 1.103-8(b)(4) of the Regulations) and property that is "functionally related and subordinate" thereto (within the meaning of Sections 1.103-8(a)(3) and 1.103-8(b)(4)(iii) of the Regulations), all of which costs shall be properly chargeable to the Project's capital account or would be so chargeable either with a proper election by the Owner or but for a proper election by the Owner to deduct such amounts.

(ii) Reserved.

(iii) Reserved.

(iv) The Owner covenants and agrees that the Costs of Issuance financed with the proceeds of the Bonds shall not exceed 2 percent of the Sale Proceeds.

(v) The Owner shall not use or permit the use of any Net Proceeds of the Bonds or any income from the investment thereof to provide any airplane, skybox, or other private luxury box, any facility primarily used for gambling, or any store the principal business of which is the sale of alcoholic beverages for consumption off premises.

(b) The Owner shall not take any action or omit to take any action with respect to the Gross Proceeds of the Bonds which, if taken or omitted, respectively, would cause any Bond to be classified as an "arbitrage bond" within the meaning of section 148 of the Code.

(c) Except as provided in the Indenture and the Mortgage Loan Documents, the Owner shall 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 Loan Agreement relating to the Bonds, shall not establish any segregated reserve or similar fund for such purpose and shall not prepay any such amounts in advance of the redemption date of an equal principal amount of Bonds, unless prior to taking any action described in this subsection (c), the Owner has obtained and delivered to the Trustee a Favorable Opinion of Bond Counsel.

(d) The Owner shall 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 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 or as provided in the No-Arbitrage Certificate dated the Closing Date delivered by the Issuer with respect to the Bonds.

(e) Except to the extent permitted by section 149(b) of the Code, neither the Issuer nor the Owner shall take or omit to take any action which would cause the Bonds to be "federally guaranteed" within the meaning of section 149(b) of the Code.

(f) (i) Unless the Owner delivers a Favorable Opinion of Bond Counsel that the Owner does not need to comply with this subsection, the Owner shall cause to be delivered, to the Trustee, within 25 days after each Computation Date:

(A) a statement of the Rebate Amount as of such Computation Date; and

(B) (1) 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% of the Rebate Amount as of such Installment Computation Date, less any "previous rebate payments" made to the United States (as that term is used in the Regulations), or (2) 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 as of such Final Computation Date, less any "previous rebate payments" made to the United States (as that term is used in the Regulations); and

(C) an Internal Revenue Service Form 8038-T properly signed and completed as of such Computation Date.

The foregoing notwithstanding, the Owner shall not be required to deliver the foregoing to the Trustee if the Owner certifies that the Bonds are excepted from the requirements of section 148(f) of the Code.



(ii) If the Owner shall discover or be notified as of any date:

(A) that any amount required to be paid to the United States pursuant to this Section and the Indenture has not been paid as required; or

(B) that any payment paid to the United States pursuant to this Section the Indenture shall have failed to satisfy any requirement of the Regulations (whether or not such failure shall be due to any default by the Owner or the Trustee),

the Owner shall

(X) deliver to the Trustee (for deposit to the Rebate Fund) and cause the Trustee to pay to the United States from the Rebate Fund (I) the Rebate Amount that the Owner failed to pay, plus any interest, specified in the Regulations, if such correction payment is delivered to and received by the Trustee within 175 days after such discovery or notice, or (II) if such correction payment is not delivered to and received by the Trustee within 175 day after such discovery or notice, the amount determined in accordance with clause (I) of this subparagraph (X) plus the 50 percent penalty required by the Regulations; and

(Y) deliver to the Trustee an Internal Revenue Service Form 8038-T properly signed and completed as of such date.

(iii) The Owner shall retain all of its accounting records relating to the funds established under the Indenture and all calculations made in preparing the statements described in this Section for at least six years after the date the last Bond is discharged.

(iv) The Owner agrees to pay all of the reasonable and actual fees and expenses of the Rebate Analyst, charged at rates substantially similar to the rate by such party for work of this type which may be Bond Counsel, a certified public accountant and any other necessary consultant employed by the Owner or the Trustee in connection with computing the Rebate Amount.

(g) The Owner covenants and agrees that 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 within the meaning of section 149(g)(3)(A)(ii) of the Code, and the Owner reasonably expects that at least 85 percent of the spendable Proceeds of the Bonds will be used to carry out the governmental purposes of such issue of Bonds within the three-year period beginning on the Closing Date.

(h) The Owner hereby covenants and agrees that the Project will be operated as a "qualified residential rental project" within the meaning of sections 142(a)(7), 142(d), 145(d) of the Code and section 1.103-8(b)(4) of the Regulations, on a continuous basis during the longer of the Qualified Project Period or the period during which any Bond remains outstanding, to the end

that the interest on the Bonds shall be excluded from gross income for federal income tax purposes. In particular, the Owner covenants and agrees, and will cause the Manager to covenant and agree for the longer of the Qualified Project Period or the period during which any Bonds remain outstanding, as follows:

(i) The Project qualifies as residential rental property and will be owned, managed and operated at all times during the term specified above as a qualified residential rental project comprised of residential dwelling units and facilities functionally related and subordinate thereto, in accordance with section 142(d) of the Code;

(ii) The Project will consist of one building or structure or several proximate and interrelated buildings or structures, each of which will be a discrete edifice or other man-made construction consisting of an independent foundation, outer walls and a roof, and all of which (A) will be located on a single tract of land or two or more parcels of land that are contiguous (i.e., their boundaries meet at one or more points) except for the interposition of a road, street, stream or similar property, (B) are owned by the same person for Federal tax purposes, and (C) were financed pursuant to a common plan;

(iii) Substantially all of the Project will consist of similarly constructed Units together with functionally related and subordinate facilities for use by Project tenants, such as swimming pools, other recreational facilities, parking areas, heating and cooling equipment, trash disposal equipment, units for resident managers, security personnel or maintenance personnel and other facilities that are reasonably required for the Project;

(iv) Each Unit in the Project 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 will be separate and distinct from other Units;

(v) Each Unit in the Project will be rented or available for rental on a continuous basis to members of the general public at all times during the term specified above (unless occupied by or reserved for a resident manager, security personnel or maintenance personnel) and that the Owner will not give preference in renting Project Units to any particular class or group of persons, other than Low-Income Tenants as provided herein;

(vi) At no time during the term specified above will any Unit in any building or structure in the Project which contains fewer than five Units be occupied by the Owner;

(vii) At no time during the term specified above will any of the Units in the Project be utilized on a transient basis by being leased or rented for a period of less than thirty days or by being used as a hotel, motel, dormitory, fraternity house, sorority house, rooming house, hospital, sanitarium, nursing home, rest home, trailer park or trailer court;

(viii) The land and the facilities will be functionally related and subordinate to the Units comprising the Project and will be of size and character which is commensurate with the size and number of such Units; and

(i) The Owner hereby represents, covenants and agrees, continuously during the Qualified Project Period, as follows:

(i) Forty percent 40% of the Units (except for manager, security personnel and maintenance units that are reasonably required for the Project) (the "Set Aside") within the Project (and any other building which is comprised of similarly constructed Units, will be owned by the Owner for federal income tax purposes, will be located on the same or contiguous tract that is not separated from the Project except by a road, street, stream, or similar property, and is financed by the Bonds) that are available for occupancy, including expiration or lawful termination of an existing lease, shall be occupied or held vacant and available for occupancy at all times by Low-Income Tenants at Affordable Rents. For the purposes of this subparagraph (i), a vacant Unit which 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 shall be redetermined.

(ii) The Owner shall maintain complete and accurate records pertaining to Low-Income Tenants and file all documents as required by section 142(d) of the Code and this Agreement, including Tenant Income Certifications attached as Exhibit C hereto.

(iii) No tenant qualifying as a Low-Income Tenant shall be denied continued occupancy of a Unit in the Project because, after admission, such tenant's Anticipated Annual Income increases to exceed the qualifying limit for Low-Income Tenants; provided, however, that, should a Low-Income Tenant's Anticipated 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 this Section, the next available Unit of comparable or smaller size must be rented to (or held vacant and available for immediate occupancy by) a Low-Income Tenant and such new Low-Income Tenant will then constitute a portion of the Set Aside requirement of paragraph (i) of this Section; and provided, further, that, until such next available Unit is rented to a tenant who is a Low-Income Tenant, the former Low-Income Tenant who has ceased to qualify as such shall be deemed to continue to be a Low-Income Tenant for purposes of the requirement of subparagraph (i) of this Section 2(i).

The parties hereto recognize that the requirements stated in Section 2(h) shall continue in effect until the termination of the Qualified Project Period or until no Bonds remain outstanding, whichever occurs later, and the requirements in this Section 2(i) shall continue in effect until the termination of the Qualified Project Period.

(j) The Owner further covenants and agrees to prepare and submit to the Trustee, no more than 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 shall be in recordable form. The Issuer need not affirmatively consent to the termination of the covenants.

(k) 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 Owner in order to establish the existence of any fact or statement of affairs solely within the knowledge of the Owner, and which is required to be noticed, represented or certified

by the Owner hereunder or in connection with any filings, representations or certifications required to be made by the Owner in connection with the issuance and delivery of the Bonds.

(l) The Owner shall provide to the Trustee a certificate certifying (i) within 90 days thereof, the date on which ten percent (10%) of the Units are occupied; and (ii) within 90 days thereof, the date on which fifty percent (50%) of the Units are occupied.

Section 3. Modification of Tax Covenants. Subsequent to the issuance of the Bonds and prior to their payment in full (or provision for the payment thereof having been made in accordance with the provisions of the Indenture), this Agreement may not be amended, changed, modified, altered or terminated except as permitted in Section 19 and by the Indenture. Anything contained in this Agreement or the Indenture to the contrary notwithstanding, the Issuer, the Trustee and the Owner hereby agree upon the written request of one of the parties hereto, to amend this Agreement and, if appropriate, the Indenture and the Loan Agreement, to the extent required, in the opinion of Bond Counsel, in order for interest on the Bonds, to remain excludable from gross income for federal income tax purposes. The party requesting such amendment shall notify the other parties to this Agreement in writing of the proposed amendment and send a copy of such requested amendment to Bond Counsel. After review of such proposed amendment, Bond Counsel shall render to the Trustee, the Owner and the Issuer an opinion to the effect that such amendments are necessary and sufficient in order to enable compliance with the provisions of the Code such that the interest on the Bonds will remain excludable from gross income for purposes of Federal income taxation. The Owner shall pay all necessary fees and expenses incurred with respect to such amendment, including necessary reasonable and actual attorney's fees and expenses incurred by Bond Counsel in rendering such opinion. The Owner, the Issuer and, where applicable, the Trustee pursuant to written instructions from the Issuer, shall execute, deliver and, if applicable, the Owner shall file of record, any and all documents and instruments, including without limitation, an amendment to this Regulatory Agreement, necessary to effectuate the intent of this Section, and the Owner and the Issuer hereby appoint the Trustee as their true and lawful attorney-in-fact to execute, deliver and, if applicable, file of record on behalf of the Owner or the Issuer, as is applicable, any such document or instrument (in such form as may be approved by and upon instruction of Bond Counsel) if either the Owner or the Issuer defaults in the performance of its obligation under this Section; provided, however, that the Trustee shall take no action under this Section without first notifying the Owner or the Issuer, as is applicable, in writing of its intention to take such action and providing the Owner or the Issuer, as is applicable, ten (10) business days after such notice to comply with the requirements of this Section.

Section 4. Residential Development. The Issuer and the Owner hereby recognize and declare their understanding and intent that the Project is to be owned, managed and operated as a "residential development," as such term is defined in Section 394.003(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 Qualified Project Period or for as long as any portion of the Bonds remains outstanding and unpaid, whichever is longer.

(a) The Owner hereby represents, as of the date hereof, and covenants and agrees for the term of this Regulatory Agreement that substantially all (at least 90%) of the Project dwelling units shall be rented to Eligible Tenants and that the Owner shall not rent or lease any unit in the Project to a person not an Eligible Tenant if such rental would cause less than 90% of the dwelling units in the Project to be rented to Eligible Tenants.

(b) The Owner hereby represents, covenants and agrees as follows:

(i) To assure that 40% of the occupied Units in the Project are occupied at all times by Low Income Tenants at Affordable Rents;

(ii) To obtain a Tenant Income Certification from each tenant in the Project not later than the date of such tenant's initial occupancy of a Unit in the Project 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 following the end of the Qualified Project Period;

(iii) To obtain from each tenant in the Project, at the time of execution of the lease pertaining to the Unit occupied by such tenant, a written certification, acknowledgment and acceptance that (A) such lease is subordinate to the Mortgage and this Regulatory Agreement, (B) all statements made in the Tenant Income Certification submitted by such tenant are accurate, (C) the family income and eligibility requirements of this Agreement and the Loan Agreement are substantial and material obligations of tenancy in the Project, (D) such tenant will comply promptly with all requests for information with respect to such requirements from the Owner, the Trustee and the Issuer, and (E) 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 Project;

(iv) To cause to be prepared and submitted to the Issuer and the Trustee on the first day of the Qualified Project Period, and thereafter by the tenth calendar day of each March, June, September, and December, or a quarterly schedule as determined by the Issuer, a certified Compliance Monitoring Report and Occupancy Summary in a form attached hereto as Exhibit D or at the reasonable request of the Issuer in such other form provided by the Issuer from time to time;

(v) To the extent legally permissible to permit any duly authorized representative of the Issuer or the Trustee (without any obligation to do so) to inspect the books and records of the Owner pertaining to the Project or the incomes of Project 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; and

(vi) The Owner will obtain a Tenant Income Certification from each tenant at least annually after the tenant's initial occupancy or as otherwise directed by the Issuer in writing.

Section 5. [Reserved].

Section 6. Consideration. The Issuer has issued the Bonds to provide funds to make the Loan to finance the Project, all for the purpose, among others, of inducing the Owner to acquire, rehabilitate, equip and operate the Project. In consideration of the issuance of the Bonds by the Issuer, the Owner has entered into this Regulatory Agreement and has agreed to restrict the uses to which this Project can be put on the terms and conditions set forth herein.

Section 7. Reliance. The Issuer, the Trustee and the Owner 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 from gross income for purposes of Federal income taxation of the interest on the Bonds. In performing their duties and obligations hereunder, the Issuer and the Trustee may rely upon statements and certificates of the Low-Income Tenants and the Owner and upon audits of the books and records of the Owner pertaining to the Project. In addition, the Issuer, the Owner and the Trustee may consult with counsel, and the opinion of such counsel shall be full and complete authorization and protection in respect of any action taken or suffered by the Issuer, the Owner or the Trustee hereunder in good faith and in conformity with such opinion. In determining whether any default by the Owner exists under this Regulatory Agreement, the Trustee shall not be required to conduct any investigation into or review of the operations or records of the Owner and may rely on any written report, notice or certificate delivered to the Trustee by any Person retained to review the Owner's compliance with this Regulatory Agreement or by the Owner 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 8. Project in Austin, Texas. The Owner hereby represents that the Project is located entirely within Austin, Texas.

Section 9. Sale or Transfer of the Project. The Owner covenants and agrees not to sell, transfer or otherwise dispose of the Project prior to the expiration of the Qualified Project Period or the date on which the Bonds have been paid in full, whichever is later, without (i) complying with any applicable provisions of the Mortgage Loan Documents and (ii) obtaining the prior written consent of the Issuer. Such consent of the Issuer shall not be unreasonably withheld or delayed and shall be given if all conditions to the sale set forth in this Regulatory Agreement are met or are waived in writing by the Issuer, including (1) there is delivered to the Trustee and the Issuer a written Opinion of Counsel 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 Owner under the Mortgage Loan Documents and this Regulatory Agreement 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, (2) the Issuer receives a Favorable Opinion of Bond Counsel, which opinion shall be furnished at the expense of the Owner or the transferee, regarding such sale, transfer or disposition, (3) the proposed purchaser or assignee executes any document reasonably requested by the Issuer with respect to assuming the obligations of the Owner under this Agreement and the Loan Agreement, and (4) the Issuer shall not have any reason to believe that the 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 Project, including but not limited to the Loan Agreement, the Mortgage and this Agreement. The Owner hereby expressly stipulates and agrees that any sale, transfer or other disposition of the Project in violation of this subsection shall be ineffective to relieve the Owner of its obligations under this Agreement. Upon any sale, transfer or other disposition of the Project in compliance with this Agreement, the Owner so selling, transferring or otherwise disposing of the Project shall have no further liability for obligations under the Loan Agreement arising after the date of such disposition. The foregoing notwithstanding, the duties and obligations of the Owner as set forth in the Mortgage Loan Documents with respect to matters arising prior to the date of such sale, transfer or other disposition shall not terminate upon the sale, transfer or other disposition of the Project. The foregoing restrictions on transfer shall not apply to foreclosures, deeds in lieu of foreclosure, transfer by exercise of the power of sale or other similar transfer. Any such sale or transfer shall be subject to the Issuer's Multifamily Rules.

Section 10. Term. This Regulatory Agreement and all and each of the provisions hereof shall become effective upon its execution and delivery, shall remain in full force and effect for the periods provided herein and, except as otherwise provided in this Section, shall terminate in its entirety at the end

of the Qualified Project 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 Loan Agreement and defeasance or termination of the Indenture.

The terms of this Regulatory Agreement notwithstanding, this Regulatory Agreement shall terminate, without the requirement of any consent by the Issuer and 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 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 exercise of the power of sale, 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 which meets the requirements of the Code set forth in Sections 1A through 4 of this Regulatory Agreement and the Act. The provisions of the preceding sentence shall cease to apply and the requirements referred to therein shall 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 exercise of power of sale or similar event, the Owner or any related person (within the meaning of Section 1.103-10(e) of the Regulations) obtains an ownership interest in the Project for tax purposes. The Issuer shall not be required to consent to termination of this Regulatory Agreement for any reason other than those specified above.

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 shall not be necessary or a prerequisite to the termination of this Agreement in accordance with its terms. All costs, including reasonable and actual fees and expenses of the Issuer and the Trustee, incurred in connection with the termination of this Regulatory Agreement shall be paid by the Owner and its successors in interest.

Section 11. Covenants To Run With the Land. The Owner hereby subjects the Project (including the Project Site) to the covenants, reservations and restrictions set forth in this Regulatory Agreement. The Issuer, the Trustee and the Owner hereby declare their express intent that the covenants, reservations and restrictions set forth herein shall be deemed covenants running with the land and shall pass to and be binding upon the Owner's successors in title to the Project; provided, however, that upon the termination of this Agreement said covenants, reservations and restrictions shall expire. Each and every contract, deed or other instrument hereafter executed covering or conveying the Project or any portion thereof shall 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 instruments.

No breach of any of the provisions of this Regulatory Agreement shall 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 Project or any portion thereof.

Section 12. Burden and Benefit. The Issuer, the Trustee and the Owner hereby declare their understanding and intent that the burden of the covenants set forth herein touch and concern the land in that the Owner's legal interest in the Project is rendered less valuable thereby. The Issuer, the Trustee and the Owner 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 Project by Low-Income

Tenants, the intended beneficiaries of such covenants, reservations and restrictions, and by furthering the public purposes for which the Bonds were issued.

Section 13. Uniformity; Common Plan. The covenants, reservations and restrictions hereof shall apply uniformly to the entire Project in order to establish and carry out a common plan for the use, development and improvement of the Project Site.

Section 14. Default; Enforcement. If the Owner defaults in the performance or observance of any covenant, agreement or obligation of the Owner set forth in this Regulatory Agreement, and if such default remains uncured for a period of 60 days after written notice thereof shall have been given by the Issuer or the Trustee to the Owner in accordance with the Indenture, then the Trustee, acting on its own behalf or on behalf of the Issuer, provided a responsible officer of the Trustee actually knows of such default, shall declare an "Event of Default" to have occurred hereunder; provided, further, however, that, if the default stated in the notice is of such a nature that it cannot be corrected within 60 days, such default shall not constitute an Event of Default hereunder so long as (i) the Owner institutes corrective action within said 60 days and diligently pursues such action until the default is corrected and (ii) in the opinion of Bond Counsel, the failure to cure said default within 60 days will not adversely affect the tax-exempt status of interest on the Bonds. The Issuer and the Trustee agree that a cure of any Event of Default made or tendered by any partner or member of Owner shall be deemed to be a cure by the Owner and shall be accepted or rejected on the same basis as if tendered by Owner.

Following the declaration of an Event of Default hereunder, the Trustee, subject to being indemnified to its satisfaction with respect to the costs and expenses of any proceeding, or the Issuer may, at its option, take any one or more of the following steps:

- (i) by mandamus or other suit, action or proceeding for specific performance, including injunctive relief, require the Owner 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;
- (ii) have access to and inspect, examine and make copies of all of the books and records of the Owner pertaining to the Project; and
- (iii) take such other action at law or in equity as may appear necessary or desirable to enforce the obligations, covenants and agreements of the Owner hereunder.

The Owner hereby agrees that specific enforcement of the Owner'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 Owner herein, and the Owner therefore agrees to the imposition of the remedy of specific performance against it in the case of any Event of Default by the Owner hereunder.

All rights and remedies herein given or granted to the Issuer and the Trustee are cumulative, nonexclusive and in addition to any and all rights and remedies that the Issuer and the Trustee 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 shall to the extent that it has actual knowledge thereof, give written notice to the Trustee that a violation of this Regulatory Agreement has occurred.



Section 15. The Trustee. The Trustee shall act as specifically provided herein and in the Indenture. Subject to the right of the Trustee to be indemnified as provided in the Indenture, the Trustee shall 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 shall 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 shall be subject to the provisions of the Indenture, including, without limitation, the provisions of Article IX thereof, which are incorporated by reference herein. The incorporated provisions of the Indenture are intended to survive the retirement of the Bonds, discharge of the Loan, termination of the Loan Agreement and defeasance or termination of the Indenture.

Neither the Trustee nor any of its officers, directors or employees shall be liable for any action taken or omitted to be taken by it or them hereunder or in connection herewith except for its or their own gross negligence, bad faith, fraud or willful misconduct. No provision of this Regulatory Agreement shall require the Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of its duties hereunder, in the exercise of any of its rights or powers if it shall have reasonable grounds for believing that the payment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it.

The Trustee shall examine all documents prepared by the Borrower and furnished to the Trustee to determine whether such documents conform on their face to the requirements of this Regulatory Agreement. The Trustee shall notify the Issuer and Borrower in writing if the Trustee does not receive any document from the Borrower at the time required under this Regulatory Agreement or if such document does not conform on its face to the requirements of this Regulatory Agreement. The Trustee may conclusively rely on and shall be protected in acting or omitting to act in good faith upon the certificates and other writings, which conform to the requirements of this Regulatory Agreement, as the Trustee may receive in connection with the administration of its obligation hereunder and has no duty or obligation to make an independent investigation with respect thereto.

Section 16. Recording and Filing. The Owner shall cause this Regulatory Agreement, and all amendments and supplements hereto and thereto, to be recorded and filed in the real property records of Travis County, Texas and in such other places as the Issuer or the Trustee may reasonably request. The Owner shall pay all fees and charges incurred in connection with any such recording. This Agreement is subject to and subordinate to all matters of record as of the date hereof.

Section 17. Reimbursement of Expenses. Notwithstanding any prepayment of the Loan and notwithstanding a discharge of the Indenture, throughout the term of this Regulatory Agreement, the Owner shall continue to pay to the Issuer and the Trustee reimbursement for all fees and expenses actually incurred thereby required to be paid to the Issuer and the Trustee by the Owner pursuant to the Loan Agreement.

Section 18. Governing Law. This Regulatory Agreement shall be governed by the laws of the State (other than in respect of conflicts of laws). The Trustee's rights, duties, powers and obligations hereunder are governed in their entirety by the terms and provisions of this Agreement and the Indenture.

Section 19. Amendments. Subject to the provisions of Section 3 hereof, this Regulatory Agreement shall be amended only by a written instrument executed by the parties hereto, or their successors in title and duly recorded in the real property records of Travis County, and only upon receipt by the Issuer, the Owner and the Trustee of a Favorable Opinion of Bond Counsel regarding such amendment.

Section 20. Notices. Any notice required to be given hereunder to the Issuer, the Trustee or the Owner shall be given in the manner and to the address as set forth in the Indenture.

Section 21. Severability. If any provision of this Regulatory Agreement shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining portions hereof shall not in any way be affected or impaired thereby.

Section 22. Multiple Counterparts. This Regulatory Agreement may be simultaneously executed in multiple counterparts, all of which shall constitute one and the same instrument, and each of which shall be deemed to be an original.

Section 23. Authorization to Act for Issuer. To the extent allowed by law, the Issuer hereby authorizes the Owner to take on behalf of the Issuer all actions required or permitted to be taken by it hereunder, or under the Indenture and the Loan 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 Loan Agreement. In addition, the Issuer hereby authorizes the Owner to exercise, on behalf of the Issuer, any election with respect to the Bonds pursuant to the Code or the Regulations, and the Issuer will cooperate with the Owner and execute any form of statement required by the Code or the Regulations to perfect any such election.

Section 24. Liability of Owner. The liability of the Owner under this Regulatory Agreement is limited to the extent provided in the Loan Agreement.

Section 25. Third-Party Beneficiary. The parties to this Agreement confirm that the Significant Bondholder is a third-party beneficiary to the rights and benefits of this Agreement.

*[EXECUTION PAGES FOLLOW]*

IN WITNESS WHEREOF, the Issuer, the Trustee and the Owner have executed this Regulatory Agreement by duly authorized representatives, all as of the date first above written.

AUSTIN HOUSING FINANCE CORPORATION

By: \_\_\_\_\_  
Name: Elizabeth A. Spencer  
Title: Treasurer

Attest:

By: \_\_\_\_\_  
Name: Shirley Gentry  
Title: Secretary

\_\_\_\_\_,  
as Trustee

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

**Marshall Affordable Partners, Ltd.**

By: \_\_\_\_\_, its General Partner

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

ACKNOWLEDGMENT

STATE OF TEXAS

§

§

COUNTY OF TRAVIS

§

This instrument was acknowledged before me on \_\_\_\_\_, 2011, by \_\_\_\_\_ of Austin Housing Finance Corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

\_\_\_\_\_  
Notary Public Signature

(Personalized Seal)

ACKNOWLEDGMENT

STATE OF \_\_\_\_\_

§

§

COUNTY OF \_\_\_\_\_

§

This instrument was acknowledged before me on \_\_\_\_\_, 2011, by \_\_\_\_\_, authorized signatory of \_\_\_\_\_.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

\_\_\_\_\_  
Notary Public Signature

(Personalized Seal)

ACKNOWLEDGMENT

STATE OF TEXAS

§  
§  
§

COUNTY OF \_\_\_\_\_

This instrument was acknowledged before me on \_\_\_\_\_, 2011, by \_\_\_\_\_, \_\_\_\_\_, the \_\_\_\_\_ of \_\_\_\_\_, the general partner of Marshall Affordable Partners, Ltd., an Alabama limited partnership.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

\_\_\_\_\_  
Notary Public Signature

(Personalized Seal)  
Authorized Officer\_\_\_\_\_ the



## EXHIBIT A

Legal Description Attached.

## EXHIBIT B

### PROJECT AND OWNER

Owner: MARSHALL AFFORDABLE PARTNERS, LTD.

Project: Marshall Apartments (1157 Salina Street and 1401 East 12th Street Austin, Texas)

Units: 24 one bedroom units, 36 two bedroom units, 24 three bedroom units and 16 four bedroom units

## EXHIBIT C

### TENANT INCOME CERTIFICATION

Austin Housing Finance Corporation  
Multifamily Housing Revenue Bonds  
(Marshall Apartments)  
Series 2011

#### VERIFICATION OF INCOME

RE:

Apartment Number: \_\_\_\_\_ Building Number: \_\_\_\_\_ Square footage: \_\_\_\_\_

Number of Bedrooms: \_\_\_\_\_ Initial Monthly Rent: \$ \_\_\_\_\_

I/We, the undersigned, being first duly sworn, state that I/we have read and answered fully and truthfully each of the following questions for all persons who are to occupy the unit in the above apartment development for which application is made, all of whom are listed below:

1. Name of Members of the Household		2. Relationship to Head of Household		3. Age		4. Social Security Number		5. Place of Employment
		Head						
		Spouse						

6. The anticipated income of all the above persons during the 12-month period beginning on the later of the date on which (a) the above persons first occupy the apartment or sign a lease with respect to the apartment or (b) such annual period commencing on the anniversary date of such date of first occupancy or the signing of a lease, including income described in (a) below, but excluding all income described in (b) below, is \$\_\_\_\_\_.

(a) The amount set forth above includes all of the following income (unless such income is described in (b) below):

(i) all wages and salaries, overtime pay, commissions, fees, tips and bonuses and other compensation for personal services, before payroll deductions;

(ii) net annual income from the operation of a business or profession or from the rental of real or personal property (without deducting expenditures for business expansion or amortization or capital indebtedness). (An allowance for depreciation of assets used in a business or profession may be deducted, based on straight-line depreciation, as provided in Internal Revenue Service regulations. Include any withdrawal of cash or assets from the operation of a business or profession, except to the extent the withdrawal is reimbursement of cash or assets invested in the operation by the above persons);

(iii) interest and dividends (include all income from assets as set forth in item 7(b) below and include any withdrawal of cash or assets from an investment, except to the extent the withdrawal is reimbursement of cash or assets invested by the above persons);

(iv) the full amount of periodic payments received from social security, annuities, insurance policies, retirement funds, pensions, disability or death benefits and other similar types of periodic receipts, including a lump-sum payment for the delayed start of a periodic payment;

(v) payments in lieu of earnings, such as unemployment and disability compensation, workers' compensation and severance pay;

(vi) any welfare assistance: if the welfare assistance payment includes an amount specifically designated for shelter and utilities that is subject to adjustment by the welfare assistance agency in accordance with the actual cost of shelter and utilities, include as income (a) the amount of the allowance or grant exclusive of the amount specifically designated for shelter or utilities, plus (b) the maximum amount that the welfare assistance agency could in fact allow the above persons for shelter and utilities. (If the welfare assistance is ratably reduced from the standard of need by applying a percentage, the amount calculated under clause (b) shall be the amount resulting from one application of the percentage);

(vii) periodic and determinable allowances, such as alimony and child support payments and regular contributions and gifts received from persons not residing in the dwelling;

(viii) all regular pay, special pay and allowances of a member of the Armed Forces (whether or not living in the dwelling) who is the head of the household, spouse or other household member whose dependents are residing in the unit; and

(ix) any earned income tax credit to the extent it exceeds income tax liability.

(b) The following income is excluded from the amount set forth above:

(i) Income from employment of children (including foster children) under the age of 18 years;

(ii) Payment received for the care of foster children;

(iii) Lump-sum additions to household assets, such as inheritances, insurance payments (including payments under health and accident insurance and workers' compensation), capital gains and settlement for personal or property losses;

(iv) Amounts received by the household that are specifically for, or in reimbursement of, the cost of medical expenses for any household member;

(v) Income of a live-in aide;

(vi) Amounts of education scholarships paid directly to the student or to the educational institution, and amounts paid by the government to a veteran, for use in meeting the costs of tuition, fees, books, equipment, materials, supplies, transportation and miscellaneous personal expenses of the student. Any amount of such scholarship or payment to a veteran not used for the above purposes that is available for subsistence is to be included in income;

(vii) The special pay to a household member serving in the Armed Forces who is exposed to hostile fire;

(viii) (a) Amounts received under training programs funded by Housing and Urban Development ("HUD");

(b) Amounts received by a disabled person that are disregarded for a limited time for purposes of Supplemental Security Income eligibility and benefits because they are set aside for use under a Plan to Attain Self-Sufficiency ("PASS");

(c) Amounts received by a participant in other publicly assisted programs which are specifically for or in reimbursement of out-of-pocket expenses incurred (special equipment, clothing, transportation, child care, etc.) and which are made solely to allow participation in a specific program;

(ix) Temporary, nonrecurring or sporadic income (including gifts); or

(x) Amounts specifically excluded by any other federal statute from consideration as income for purposes of determining eligibility or benefits under a category of assistance programs that includes assistance under the United States Housing Act of 1937.

7. If any of the persons described in column 1 above (or any person whose income or contributions were included in item 6) has any savings, stocks, bonds, equity in real property or other form of capital investment (excluding interests in Indian trust lands, but including the value of any assets disposed of for less than fair market value (including a disposition in trust, but not in a foreclosure or bankruptcy sale) during the previous two years), provide:

(a) the total value of all such assets owned by all such persons:

\$\_\_\_\_\_; and

(b) the amount of income expected to be derived from such assets in the 12-month period commencing this date: \$\_\_\_\_\_.

8. (a) Will all of the persons listed in column 1 above be or have they been full-time students during five calendar months of this calendar year at an educational institution (other than a correspondence school) with regular faculty and students?

Yes \_\_\_ No

(b) (Complete only if the answer to Question 8(a) is "Yes.") Is any such person (other than nonresident aliens) married and eligible to file a joint federal income tax return?

Yes \_\_\_ No

We acknowledge that all of the above information is relevant to the status under federal income tax law of the interest on bonds issued to finance construction of the apartment building for which application is being made. We consent to the disclosure of such information to the issuer of such bonds, the holders of such bonds, any trustee acting on their behalf and any authorized agent of the Treasury Department or Internal Revenue Service.

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

\_\_\_\_\_  
Head of Household

\_\_\_\_\_  
Spouse

STATE OF TEXAS §

§

COUNTY OF \_\_\_\_\_ §

Subscribed, sworn to and acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2011.

\_\_\_\_\_  
Notary Public of the State of Texas

(Notary Seal)

NOTE TO PROJECT OWNER: A vacant unit previously occupied by individuals or a family of very low income may be treated as occupied by individuals or a family of very low income until reoccupied (other than for a period of 31 consecutive days or less), at which time the character of the unit shall be redetermined.

FOR COMPLETION BY PROJECT OWNER ONLY:

I. Calculation of eligible income:

- (A) Enter amount entered for entire household in 6 above: \$ \_\_\_\_\_
- (B) If the amount entered in 7(a) above is greater than \$5,000, enter:
- (i) the product of the amount entered in 7(a) above multiplied by the current passbook savings rate as determined by HUD: \$ \_\_\_\_\_
- (ii) the amount entered in 7(b) above: \$ \_\_\_\_\_
- (iii) line (i) minus line (ii) (if less than \$0, enter \$0): \$ \_\_\_\_\_
- (C) TOTAL ELIGIBLE INCOME (line I(A) plus line I(B)(iii)): \$ \_\_\_\_\_

II. Qualification as individuals or a family of low income:

- (A) Is the amount entered in line 1(c) less than 60% of Median Income for the Area<sup>??</sup> with adjustments for smaller and larger families?
- Yes \_\_\_\_ No \_\_\_\_
- (B) (i) If line II(A) is "No," then the household does not qualify as individuals or a family of low income; skip to item III.
- (ii) If line II(A) above is "Yes" and 8(a) above is "No," then the household qualifies as individuals or a family of low income; skip to item III.
- (iii) If line II(A) above is "Yes" and 8(b) above is "Yes," then the household qualifies as individuals or a family of low income; skip to item III;
- (iv) If neither (ii) nor (iii) is applicable, then the household does not qualify as individuals or a family of low income.

---

1 "Median income for the Area" means the area median gross income as determined by the Secretary of the Treasury in a manner consistent with determinations of lower-income families and area median gross income under Section 8 of the United States Housing Act of 1937, including adjustments for family size or, if programs under Section 8 are terminated, area median gross income determined under the method in effect immediately before such termination.

III. (Check one)

The household does not qualify as individuals or a family of low income.

The household qualifies as individuals or a family of low income.

IV. Number of apartment unit assigned:  
(enter here and on page 1)

V. Method used to verify applicant's income:

\_\_\_\_ Employer income verification

\_\_\_\_ Copies of tax returns

\_\_\_\_ Other (\_\_\_\_\_)

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

**Marshall Affordable Partners, Ltd.**

By: \_\_\_\_\_, its General Partner

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



EXHIBIT D

**COMPLIANCE MONITORING REPORT**

TO: Austin Housing Finance Corporation  
1000 East Eleventh Street, Suite 200  
Austin, Texas 78702  
Attention: Bond Finance Manager

Austin Housing Finance Corporation  
Multifamily Housing Revenue Bonds  
(Marshall Apartments)  
Series 2011

\_\_\_\_\_ (the "Owner"), hereby represents and warrants that:

1. A review of the activities of the Owner during the period of \_\_\_\_\_ through \_\_\_\_\_ and of then Owner's performance under the Loan Agreement has been made under the supervision of the undersigned.
2. The Owner owns Marshall Apartments (the "Project").
3. The Project was financed, in substantial part, as a result of the indirect loan of the proceeds of the Bonds.
4. The undersigned and the Owner have read and are thoroughly familiar with the provisions of (1) the Regulatory Agreement and Land Use Restriction Agreement (the "Regulatory Agreement"), dated as of \_\_\_\_\_, 2011, among the Owner, Austin Housing Finance Corporation (the "Issuer") and \_\_\_\_\_, as Trustee (the "Trustee"); and (2) the Loan Agreement, dated as of \_\_\_\_\_, 2011, among the Owner, the Trustee and the Issuer (the "Loan Agreement"). The Regulatory Agreement was executed, delivered, and recorded against the Project in connection with the issuance of the Bonds. Hereinafter, unless otherwise expressly provided herein or unless the context requires otherwise, the capitalized terms used but not defined herein shall have the meanings assigned to such terms in the Regulatory Agreement.
5. The Project's Qualified Project Period with respect to the project, the period beginning on the closing date and ending on the later of (i) the date which is 20 years after the closing date, (ii) the first date on which no tax-exempt bond issued with respect to the Project is outstanding, or (iii) the first date on which the Project no longer receives assistance under Section 8 of the United States Housing Act of 1937, as amended.
6. Commencing on the Closing Date and continuing throughout the remainder of the Qualified Project Period 40% of the units of the Project shall at all times be rented to and occupied by Low Income Tenants at Affordable Rents.
7. As of the date of this Certificate, the following percentages of completed residential units in the Project (i) are occupied by Low Income Tenants or (ii) are currently vacant and being held available for such occupancy and have been so held continuously since the date a Low Income Tenant vacated such unit, as indicated:

Occupied by Low Income Tenants: \_\_\_\_\_ percent

Held vacant for occupancy  
continuously since last  
occupied by Low Income  
Tenant: \_\_\_\_\_ percent

8. At no time since the date of filing of the last Continuing Program Compliance Certificate has less than all of the units in the Project been occupied by or, if vacant, been last occupied by Low Income Tenants at Affordable Rents.
9. To the best knowledge of the undersigned, after due inquiry, all Units were rented or available for rental on a continuous basis during the immediately preceding year to members of the general public, and the Owner is not now and has not been in default under the terms of the above-referenced Regulatory Agreement and, to the best knowledge of the undersigned, no Determination of Taxability has occurred with respect to the Bonds.
10. (If the Owner is in default under the terms of the Regulatory Agreement or the Owner has actual knowledge of a Determination of Taxability with respect to the Bonds, such knowledge should be detailed here: )
11. The Owner has not transferred any interest in the Project since the date of submission of the Continuing Program Compliance Certificate last submitted to the Trustee and the Issuer with respect to the Project. (If the Owner has transferred any interest in the Project, such transfer should be detailed here:)

Attached is a separate sheet (the "Occupancy Summary") listing, among other items, the percentage of units which are occupied by Low Income Tenants and which became Low Income Units since the filing of the last Continuing Program Compliance Certificate. The information contained thereon is, to the best knowledge of the Owner (based upon information supplied by tenants of the Project), true and accurate.

**Marshall Affordable Partners, Ltd.**

By: \_\_\_\_\_, its General Partner

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

OCCUPANCY SUMMARY  
AS OF \_\_\_\_\_

Austin Housing Finance Corporation  
Multifamily Housing Revenue Bonds  
(Marshall Apartments)  
Series 2011

PROJECT NAME: MARSHALL APARTMENTS

PROJECT LOCATION: 1157 Salina Street and 1401 East 12<sup>th</sup> Street Austin, Texas

I.D.#:

Page \_\_ of

TOTAL NO. UNITS: \_\_\_\_ REQ'D NO. LOW INCOME UNITS:

TOTAL UNITS OCCUPIED:

TOTAL LOW INCOME OCCUPIED:

(PERCENTAGE: %)

PREPARED AND SUBMITTED BY:

\_\_\_\_\_

Phone: \_\_\_\_\_

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

Number of Low Income Tenants commencing occupancy this month/quarter:

Number of Low Income Tenants whose Adjusted Income exceeded 140% of the applicable income limit  
for a Low Income Tenant of the same family size this month/quarter:

Number of Low Income Tenants terminating occupancy this month/quarter:

For Period \_\_\_\_\_ through \_\_\_\_\_.

## Exhibit D

The Issuer was incorporated in 1979 as a public nonprofit corporation in accordance with the Act following adoption of an approving ordinance by the Austin City Council (the "City Council"). The Issuer is authorized pursuant to the Act to (a) make loans to any person to provide financing for residential developments located within the City of Austin, Travis County, Texas (the "City"), as determined by the Issuer; (b) issue its revenue bonds for the purpose of obtaining money to make such loans and provide such financing, to establish necessary reserve funds and to pay administrative costs and other costs incurred in connection with the issuance of such bonds; and (c) pledge all or any part of the revenues, receipts or resources of the Issuer, including the revenues and receipts to be received by the Issuer from or in connection with such loans and to mortgage, pledge or grant security interests in such loans or other property of the Issuer in order to secure the payment of the principal or redemption price of or the interest on such bonds. The Issuer has no taxing power and receives no appropriations from the State. The Issuer has not participated in the preparation of this Official Statement and, except for the information under the captions "THE ISSUER" and "ABSENCE OF LITIGATION — The Issuer," has not provided any of the information contained in this Official Statement.

Neither the State nor any political corporation or subdivision of the State, including the City, is liable for the payment of the principal of, premium of, if any, or interest on the Bonds. Such entities are prohibited from making payments with respect to the Bonds.

The Austin City Council serves as the Board of Directors (the "Board") of the Issuer.

In regards to private activity volume cap bonds, the Issuer's operations are solely the issuance of these bonds and the lending of the bond proceeds. All administrative functions to be performed in connection with the Bonds and the Project are contracted to be performed by the various other parties to the Indenture, the Loan Agreement, and the Mortgage. The Issuer will not have any involvement in the management or operation of the Project, which will be the sole responsibility of the Borrower.

The Issuer has previously issued bonds for the purpose of financing other properties for other borrowers which are payable from revenues received from such other borrowers. Revenue bonds issued by the Issuer for other borrowers have been, and may be, in default as to principal or interest. The source of payment for other bonds previously issued by the Issuer for other borrowers is separate and distinct from the source of payment for the Bonds, and accordingly, any default by any such other borrower with respect to any of such other bonds is not considered a material fact with respect to the payment of the Bonds.

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BOND PURCHASE AGREEMENT

by and among

MERCHANT CAPITAL, L.L.C.

AUSTIN HOUSING FINANCE CORPORATION

and

MARSHALL AFFORDABLE PARTNERS, LTD.

Dated \_\_\_\_\_, 2011

Relating to:

Austin Housing Finance Corporation

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

Multifamily Housing Revenue Bonds

(Marshall Apartments)

Series 2011

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## **BOND PURCHASE AGREEMENT**

Merchant Capital, L.L.C. (the "Underwriter"), on its own behalf and not as your fiduciary, hereby offers to enter into the following agreement with Austin Housing Finance Corporation (the "Issuer") and Marshall Affordable Partners, Ltd. (the "Borrower"), for the sale by the Issuer on behalf of the Borrower and the purchase by the Underwriter of the Bonds described below. Upon your acceptance of this offer and your execution and delivery of this Agreement, this Agreement will be binding upon each of the Issuer, the Borrower and the Underwriter. This offer is made subject to its acceptance, evidenced by your execution and delivery of this Agreement by the Issuer and the Borrower to the Underwriter, at or prior to 5:00 p.m., eastern time, on the date hereof, and will expire if not so accepted at or prior to such time (or such later time as the Underwriter may agree in writing).

**Section 1. Definitions.** The capitalized terms used in this Agreement have the meanings assigned to them in the Glossary of Terms attached as Exhibit A hereto or as defined in the Trust Indenture.

**Section 2. Purchase and Sale.**

2.1 Subject to the terms and conditions set forth in this Agreement, the Underwriter will purchase all (but not less than all) of the Bonds identified in Item 1 in Exhibit B attached hereto for a total purchase price equal to the aggregate purchase price set forth as Item 2 on Exhibit B attached hereto.

2.2 The Bonds will (i) be issued pursuant to the Trust Indenture and (ii) have the payment related terms (that is, the dated date, maturity date, interest rate, interest payment dates, and redemption provisions) set forth in Item 3 of Exhibit B attached hereto, and will otherwise correspond to the description thereof contained in the Official Statement.

**Section 3. Offering of Bonds.** The Underwriter will make a bona fide public offering of the Bonds in a manner consistent with applicable federal and state securities laws.

**Section 4. Official Statement; Disclosure Matters.**

4.1 The Issuer, only with respect to the description of the Issuer, and the Borrower each hereby (a) confirms its authorization or ratification of the use by the Underwriter of the Preliminary Official Statement in the marketing of the Bonds and (b) authorizes the Underwriter to prepare, use and distribute (at the expense of the Borrower) the Official Statement in final form in connection with the offering and sale of the Bonds.

4.2 The Issuer and the Borrower each agrees to the extent permitted by applicable law to cooperate (at the cost and expense of the Borrower) with the Underwriter so as to enable the Underwriter to comply with the requirements of Rule 15c2-12 (the "Rule") of the Securities and Exchange Commission of the United States (the "SEC") promulgated under the Securities Exchange Act of 1934, and any other rules of the SEC and the Municipal Securities Rulemaking Board (the "MSRB"), in connection with the offer and sale of the Bonds.

4.3 The Issuer hereby represents that the information in the Official Statement under the captions "THE ISSUER" and "LITIGATION – Issuer" and the Borrower hereby represents that the remaining information (other than information under the captions "THE BONDS – Book-Entry Only System," "THE ISSUER" and "UNDERWRITING" in the Official Statement is fair and accurate and does not contain any untrue statement of a material fact and does not omit to state a material fact necessary in order to make the statements contained therein, in the light of the circumstances under which

they were made, not misleading. The Issuer has not participated in the preparation of the Official Statement and makes no representations with respect thereto except as expressly set forth in the preceding sentence.

4.4 The Issuer and the Borrower will, at the expense of the Borrower, supply to the Underwriter, within the earlier of (a) seven business days from the date of this Agreement or (b) sufficient time to accompany any confirmation requesting payment which the Underwriter might send to its customers with respect to the Bonds, sufficient quantities of the Official Statement to enable the Underwriter (1) to send a single copy of the Official Statement to any potential customer upon request until the earlier of (x) 90 days from the End of the Underwriting Period (as defined in paragraph 4.5 below) or (y) the time when the Official Statement is available to any person from the MSRB, but in no case less than 25 days following the End of the Underwriting Period and (2) to comply with any applicable rules of the MSRB. The Underwriter agrees to promptly file the Official Statement electronically with the MSRB.

4.5 During the period commencing on the date of this Agreement and ending on the earlier of (a) 90 days from the End of the Underwriting Period or (b) the time when the Official Statement is available to any person from the MSRB, but in no case less than 25 days following the End of the Underwriting Period (the "Update Period"), if any event shall occur which would cause the Official Statement to contain any untrue statement of a material fact or to omit to state any material fact necessary to make the statements therein, in the light of the circumstance under which they were made, not misleading, and in the judgment of the Underwriter, such event requires the preparation and publication of a supplement or amendment to the Official Statement, the Issuer and the Borrower will, at the expense of the Borrower, prepare or cooperate in the preparation of such supplement or amendment to the Official Statement in a form approved by the Underwriter and furnish or cooperate in the furnishing to the Underwriter (at the expense of the Borrower) a reasonable number of copies of an amendment of, or a supplement to, the Official Statement so that, as amended or supplemented, it will not contain any untrue statement of a material fact or omit to state a material fact that is necessary to make the statements made therein, in light of the circumstances under which they were made, not misleading. If the Official Statement is so supplemented or amended prior to the Closing, the approval by the Underwriter of a supplement or amendment to the Official Statement shall not preclude the Underwriter from thereafter terminating this Agreement in accordance with the provisions of Section 12(d) hereof. The "End of the Underwriting Period" means the later of the delivery of the Bonds by the Issuer to the Underwriter or when the Underwriter no longer retains (directly or as a syndicate member) an unsold balance of the Bonds for sale to the public; provided, that the "End of the Underwriting Period" shall be deemed to be the Closing Date, unless the Underwriter otherwise notifies the Issuer in writing prior to such date that there is an unsold balance of the Bonds, in which case the End of the Underwriting Period shall be deemed to be extended for 30 days. The deemed End of the Underwriting Period may be extended for two additional periods of 30 days each upon receipt of an additional written notification from the Underwriter and the Borrower containing the same information as required in the initial written notice.

4.6 If, during the Update Period, the Issuer becomes aware of any event relating to the Issuer which would cause the Official Statement to contain any untrue statement of a material fact or omit to state any material fact necessary to make the statements therein with respect to the Issuer, in the light of the circumstance under which they were made, not misleading, the Issuer will promptly notify the Underwriter of such event.

4.7 If, during the Update Period, the Borrower becomes aware of any event which would cause the Official Statement to contain any untrue statement of a material fact or to omit to state any material fact necessary to make the statements therein, in the light of the circumstances under which they



were made, not misleading, the Borrower will promptly notify the Underwriter and the Issuer of such event.

4.8 The Borrower represents and warrants to the Underwriter and the Issuer that none of the Borrower or any affiliates thereof are in default under any undertakings with respect to continuing disclosure requirements designed to comply with the Rule in connection with any issue of municipal securities.

**Section 5. Closing.** The Closing will take place at the time on the date set forth in Item 4 of Exhibit B or at such other time or on such other date as might have been mutually agreed upon by the Issuer, the Borrower and the Underwriter.

**Section 6. Representations of the Issuer.**

6.1 The Issuer hereby makes the following representations to the Underwriter:

(a) The Issuer is duly organized and existing under and pursuant to the laws of the State of Texas.

(b) The Issuer has, and as of the Closing Date will have, full legal right, power and authority to (i) execute and deliver the Issuer Documents, (ii) assist in the preparation of the Official Statement, and (iii) otherwise consummate the transactions contemplated by the Issuer Documents.

(c) The Issuer has duly authorized the (i) execution and delivery of the Issuer Documents, (ii) performance by the Issuer of its obligations contained in the Issuer Documents, (iii) use and distribution of the Official Statement and (iv) consummation by the Issuer of all of the transactions contemplated on the part of the Issuer by the Issuer Documents and the Official Statement.

(d) This Agreement and the other Issuer Documents are, and, when executed and delivered by the Issuer and the other parties thereto, will be, the legal, valid and binding obligations of the Issuer, enforceable in accordance with their respective terms, except to the extent that enforcement thereof may be limited by bankruptcy, insolvency or other similar laws affecting creditors' rights generally, or by the exercise of judicial discretion in accordance with general principles of equity.

(e) To the best of the Issuer's knowledge, all consents, approvals, orders or authorizations of, notices to, or filings, registrations or declarations with any governmental authority, board, agency, commission or body having jurisdiction which are required on behalf of the Issuer for the execution and delivery by the Issuer of the Issuer Documents or the consummation by the Issuer of the transactions contemplated hereby or thereby, have been obtained or will be obtained prior to Closing.

(f) The execution and delivery by the Issuer of the Issuer Documents, and the consummation by the Issuer of the transactions contemplated hereby and thereby are not prohibited by, do not violate any provision of, and will not result in the breach of or default under (i) the Act or any organizational documents of the Issuer, (ii) to the Issuer's knowledge, any applicable law, rule, regulation, judgment, decree, order or other requirement to which the Issuer is subject, or (iii) to the Issuer's knowledge any contract, indenture, agreement, mortgage, lease,

note, commitment or other obligation or instrument to which the Issuer is a party or by which the Issuer or its properties is bound.

(g) To the Issuer's knowledge, there is no legal action, suit, proceeding, investigation or inquiry at law or in equity, before or by any court, agency, arbitrator, public board or body or other entity or person, pending or threatened against or affecting the Issuer or its officials, in their respective capacities as such, nor, to the knowledge of the Issuer, any basis therefor, (i) which would restrain or enjoin the issuance or delivery of the Bonds or the collection of revenues pledged under the Trust Indenture or (ii) which would in any way contest or affect the organization or existence of the Issuer or the entitlement of any officers of the Issuer to their respective offices or (iii) which would contest or have a material and adverse effect upon (A) the due performance by the Issuer of the transactions contemplated by the Official Statement or the Issuer Documents or (B) the validity or enforceability of the Bonds, the Issuer Documents or any other agreement or instrument to which the Issuer is a party and that is used or contemplated for use in the consummation of the transactions contemplated hereby and thereby, or (iv) which would contest the exclusion from gross income for federal income tax purposes of the interest on the Bonds or (v) which contests in any way the completeness or accuracy of the Official Statement.

(h) Other than the Issuer Documents, the Issuer has not entered into any contract or arrangement that might give rise to any lien or encumbrance on the revenues or other assets, properties, funds or interests pledged pursuant to the Indenture except to the extent that real or personal property taxes may be a lien against the Project property.

(i) The Issuer has not knowingly taken or, to its knowledge, omitted to take on or prior to the date hereof any action, that would adversely affect the excludability from gross income for federal income tax purposes of the interest on the Bonds.

(j) The Issuer has not been notified of any listing or proposed listing by the Internal Revenue Service to the effect that the Issuer is an issuer whose arbitrage certifications may not be relied upon.

(k) On the Closing Date, each of the representations and warranties of the Issuer contained in the Issuer Documents and all other documents executed by the Issuer in connection with the Bonds shall be true, correct and complete.

6.2 Any certificate signed by any official of the Issuer and delivered to the Underwriter in connection with the delivery of the Bonds will be deemed to be a representation and warranty by the Issuer to the Underwriter as to the statements made therein.

6.3 It is understood that the representations and covenants of the Issuer contained in this Section 6 and elsewhere in this Agreement shall not create any general obligation or liability of the Issuer, and that any obligation or liability of the Issuer hereunder or under the Issuer Documents is payable solely out of the revenues and other income pledged therefor and that no officer or employee of the Issuer shall be personally liable for any such obligation or liability. It is further understood and agreed that the Issuer makes no representations, except as set forth in paragraph 4.4 above, as to the Preliminary Official Statement and the Official Statement or as to (i) the financial condition, results of operation, business or prospects of the Borrower, (ii) any statements (financial or otherwise), representations, documents or certification provided or to be provided by the Borrower in connection with the offer or sale of the Bonds, or (iii) the correctness, completeness or accuracy of such statements, representations, documents or certifications.

**Section 7. Representations and Warranties of the Borrower.**

7.1 The Borrower hereby makes the following representations and warranties to the Underwriter, all of which will continue in effect subsequent to the purchase of the Bonds:

(a) The Borrower is a limited partnership duly organized and existing under and pursuant to the constitution and the laws of the State of Alabama and is qualified to own its properties and conduct its business in the State of Texas.

(b) The Borrower has, and as of the Closing Date will have, full legal right, power and authority to (i) execute and deliver the Borrower Documents, (ii) assist in the preparation of the Official Statement, and (iii) otherwise consummate the transactions contemplated by the Borrower Documents.

(c) The Borrower has duly authorized the (i) execution and delivery of the Borrower Documents, (ii) performance by the Borrower of the obligations contained in the Borrower Documents, (iii) preparation of the Official Statement and (iv) consummation by the Borrower of all of the transactions contemplated by the Borrower Documents.

(d) This Agreement and the Borrower Documents are, and, when executed and delivered by the Borrower and the other parties thereto, the Borrower Documents will be, the legal, valid and binding obligations of the Borrower, enforceable in accordance with their respective terms, except to the extent that enforcement thereof may be limited by bankruptcy, insolvency or other similar laws affecting creditors' rights generally, or by the exercise of judicial discretion in accordance with general principles of equity.

(e) To the best of the Borrower's knowledge, all consents, approvals, orders or authorizations of, notices to, or filings, registrations or declarations with any governmental authority, board, agency, commission or body having jurisdiction which are required on behalf of the Borrower for the execution and delivery by the Borrower of the Borrower Documents or the consummation by the Borrower of the transactions contemplated hereby or thereby, have been obtained or will be obtained prior to Closing.

(f) The execution and delivery by the Borrower of the Borrower Documents and the consummation by the Borrower of the transactions contemplated hereby and thereby are not prohibited by, do not violate any provision of, and will not result in the breach of or default under (i) the organizational documents of the Borrower, (ii) to the best of the Borrower's knowledge, any applicable law, rule, regulation, judgment, decree, order or other requirement to which the Borrower is subject, or (iii) any contract, indenture, agreement, mortgage, lease, note, commitment or other obligation or instrument to which the Borrower is a party or by which the Borrower or its properties is bound.

(g) There is no legal action, suit, proceeding, investigation or inquiry at law or in equity, before or by any court, agency, arbitrator, public board or body or other entity or person, pending or threatened against or affecting the Borrower or any member of the Borrower, in their respective capacities as such, nor, to the best knowledge of the Borrower, any basis therefor, (i) which would restrain or enjoin the issuance or delivery of the Bonds or the collection of revenues pledged under or pursuant to the Borrower Documents or (ii) which would in any way contest or affect the organization or existence of the Borrower or the entitlement of the manager of the Borrower to its position or (iii) which would contest or have a material and adverse effect upon (A) the due performance by the Borrower of the transactions contemplated by the Official

Statement or the Borrower Documents, (B) the validity or enforceability of the Bonds, the Borrower Documents or any other agreement or instrument to which the Borrower is a party and that is used or contemplated for use in the consummation of the transactions contemplated hereby and thereby, (C) the exclusion from gross income for federal income tax purposes of the interest on the Bonds or (D) the financial condition or operations of the Borrower, or (iv) which contests in any way the completeness or accuracy of the Official Statement. The Borrower is not subject to any judgment, decree or order entered in any lawsuit or proceeding brought against it that would have such an effect.

(h) On the Closing Date, the Borrower shall not have granted any interests in or rights or options to sell the Bonds to any other party.

(i) All permits (including building permits), licenses and authorizations necessary for the ownership and operation of the Project in the manner contemplated by the Official Statement and each of the Borrower Documents have been obtained or will be obtained, and said ownership and operation are not, to the best knowledge of the Borrower, in conflict with any zoning or similar ordinance applicable to the Project. The Project conforms to all material environmental regulations known to the Borrower.

(j) The Borrower has not taken or omitted to take on or prior to the date hereof any action that would adversely affect the exclusion from gross income for federal income tax purposes of the interest on the Bonds.

(k) On the Closing Date, each of the representations and warranties of the Borrower contained in the Borrower Documents and all other documents executed by the Borrower in connection with the Bonds shall be true, correct and complete.

7.2 Each of the representations and warranties set forth in this section will survive the Closing.

7.3 Any certificate signed by any manager of the Borrower and delivered to the Underwriter in connection with the delivery of the Bonds will be deemed to be a representation and warranty by the Borrower to the Underwriter as to the statements made therein.

## **Section 8. Covenants of the Issuer.**

8.1 The Issuer hereby makes the following covenants with the Underwriter:

(a) Prior to the Closing, the Issuer will not supplement or amend the Official Statement or cause the Official Statement to be amended or supplemented without providing reasonable notice of such proposed supplement or amendment to the Underwriter. Neither the receipt by the Underwriter of notice of a proposed supplement or amendment nor the consent by the Underwriter to such supplement or amendment shall abrogate the Underwriter's rights under Section 12(d) hereof.

(b) Prior to the Closing, the Issuer will not amend, terminate or rescind, and will not agree to any amendment, termination or rescission of the Issuer Documents without the prior written consent of the Underwriter.

(c) Prior to the Closing, except as provided in the Issuer Documents, the Issuer will not create, assume or guarantee any indebtedness payable from, or pledge or otherwise encumber,

the revenues, assets, properties, funds or interests which will be pledged pursuant to the Trust Indenture, including, without limitation, the Bonds or the Bond Documents.

(d) The Issuer will not take any action which will in any way cause the proceeds of the Bonds to be applied in a manner other than as provided in the Trust Indenture and described in the Official Statement or which would cause the interest on the Bonds to be includable in the gross income of the holders thereof for federal income tax purposes.

(e) Prior to the Closing, the Issuer will obtain, as advised by Bond Counsel, all governmental consents, approvals, orders or authorizations of any governmental authority or agency that would constitute a condition precedent to the performance by it of obligations under the Issuer Documents and the Bonds.

(f) The Issuer will reasonably cooperate with the Underwriter upon request, without cost to the Issuer, in the qualification of the Bonds for offering and sale and the determination of their eligibility for investment under the laws of such jurisdictions as the Underwriter may designate; provided that the foregoing shall not require the Issuer to expend its own funds, execute a general consent to service of process or to qualify as a foreign corporation in connection with such qualification in any foreign jurisdiction.

## **Section 9. Covenants of the Borrower.**

9.1 The Borrower hereby makes the following covenants with the Underwriter and the Issuer:

(a) The Borrower will not supplement or amend the Official Statement or cause the Official Statement to be supplemented or amended without providing reasonable notice of such proposed supplement or amendment to the Underwriter. It is understood that, in the event the Official Statement is amended or supplemented in such a way as to have, in the reasonable judgment of the Underwriter, a material and adverse effect upon the ability of the Underwriter to sell the Bonds at the contemplated offering price, the Underwriter shall have the right, pursuant to Section 12(d) hereof, to terminate this Agreement without liability. Neither the receipt by the Underwriter of notice of a proposed supplement or amendment nor the consent by the Underwriter to such supplement or amendment shall abrogate the Underwriter's rights under Section 12(d) hereof.

(b) Prior to the Closing, the Borrower will not amend, terminate or rescind, and will not agree to any amendment, termination or rescission of the Borrower Documents without the prior written consent of the Underwriter.

(c) Prior to the Closing, except as provided in the Borrower Documents, the Borrower will not create, assume or guarantee any indebtedness payable from, or pledge or otherwise encumber, the revenues, assets, properties, funds or interests which will be pledged pursuant to the Trust Indenture, including, without limitation, the Bonds or the Bond Documents.

(d) The Borrower will cooperate with the Issuer to cause the Bonds to be delivered to the address and at the time specified by the Underwriter in conjunction with the Closing.

(e) The Borrower will not take or omit to take any action which will in any way cause the proceeds of the Bonds, or other moneys on deposit in any fund or account in connection with the Bonds, to be applied in a manner other than as provided in the Trust Indenture and

described in the Official Statement or which would cause the interest on the Bonds to be includable in the gross income of the holders thereof for federal income tax purposes.

(f) The Borrower will cooperate with the Underwriter in the qualification of the Bonds for offering and sale and the determination of their eligibility for investment under the laws of such jurisdictions as the Underwriter may designate.

(g) The Borrower shall cause to be included in any instrument transferring any interest in the Project (except the Loan Documents) specific reference to the covenants, conditions and restrictions contained in the Loan Agreement.

(h) The Borrower agrees to cause the necessary amount to be paid to the Trustee on the Closing Date for deposit in the Costs of Issuance Fund as set forth in the Trust Indenture to pay costs of issuance not payable from amounts available under the Loan.

#### **Section 10. Conditions of Closing.**

10.1 The obligations of the Underwriter to consummate at the Closing the transactions contemplated hereby are subject to receipt by the Underwriter of the items described in Section 10.2 hereof and to the satisfaction of the following conditions:

(a) The Underwriter will not have discovered any material error, misstatement or omission in the representations and warranties made in this Agreement, which representations and warranties will be deemed to have been made again at and as of the time of the Closing and will then be true in all material respects.

(b) The Issuer and the Borrower will have performed and complied with all agreements and conditions required by this Agreement to be performed or complied with by such respective parties at or prior to Closing.

(c) The Bonds, the Transaction Documents and the Official Statement shall each have been executed and delivered by each of the parties thereto, shall be in full force and effect on and as of the Closing Date and shall not have been amended, modified or supplemented prior to the Closing except as may have been agreed to in writing by the Underwriter and no event of default shall exist under any such documents.

(d) The Rating Agency shall have published and not withdrawn a rating with respect to the Series 2011 Bonds of at least "\_\_\_\_" and such rating shall be in effect on the Closing Date, the document delivered at the Closing shall satisfy the conditions to the continuance of such rating and no action shall have been taken or threatened with a view to the suspension or withdrawal of such ratings as of the Closing.

(e) The Underwriter will have received orders for all of the Bonds (or such amount of the Bonds as is acceptable to the Underwriter), and such orders will not have been withdrawn at the time of the Closing.

(f) Counsel to the purchasers acquiring the Bonds from the Underwriter will have reviewed and approved the documents in connection with the Bonds, if required by such purchasers.

10.2 In addition to the conditions set forth in Section 10.1, the obligations of the Underwriter to consummate at the Closing the transactions contemplated hereby are subject to receipt by the Underwriter of the following items:

(a) An approving opinion of McCall, Parkhurst & Horton L.L.P., as Bond Counsel dated the Closing Date and addressed to or with a reliance letter to the Underwriter and the Issuer, together with a supplemental opinion of McCall, Parkhurst & Horton L.L.P., as Bond Counsel, satisfactory in form and substance to the Underwriter, dated the Closing Date and addressed to the Underwriter, substantially in the form attached hereto as Exhibit C.

(b) An opinion or opinions of Hobson, Balch & Bingham and \_\_\_\_\_, counsel to the Borrower, satisfactory in form and substance to the Underwriter, dated the Closing Date and addressed to the Underwriter, the Issuer, the Trustee and Bond Counsel, substantially in the form attached hereto as Exhibit E.

(c) An opinion of \_\_\_\_\_, counsel to the Issuer, satisfactory in form and substance to the Underwriter, dated the Closing Date and addressed to the Underwriter, the Issuer, the Trustee and Bond Counsel, substantially in the form attached hereto as Exhibit D.

(d) An opinion of Peck, Shaffer & Williams LLP, counsel to the Underwriter, satisfactory in form and substance to the Underwriter, substantially in the form attached hereto as Exhibit G.

(e) A certificate of the Issuer, dated the Closing Date and signed by an authorized official or officer of the Issuer, to the effect that (i) each of the Issuer's representations contained herein and in all other Issuer Documents, which representations will be deemed to have been made again at and as of the time of Closing, are true and correct in all material respects; (ii) the Issuer has performed and complied with all agreements and conditions required by this Agreement to be performed or complied with by it at or prior to the Closing; and (iii) such other matters as the Underwriter may request.

(f) A certificate of the Issuer, dated the Closing Date and signed by an authorized officer of the Issuer, in form and substance satisfactory to the Issuer, Underwriter and Bond Counsel, respecting certain tax matters as may be reasonably required by Bond Counsel to enable it to give its opinion.

(g) A certificate of the Borrower, dated the Closing Date and signed by its president, to the effect that (i) each of the Borrower's representations and warranties contained herein and in all Borrower Documents, which representations and warranties will be deemed to have been made again at and as of the time of Closing, are true and correct in all material respects; (ii) the Borrower has performed and complied with all agreements and conditions required by this Agreement to be performed or complied with by it at or prior to the Closing; (iii) since the date of the Official Statement and except as set forth therein, there has not been any material adverse change in its operations, financial or otherwise; and (iv) such other matters as the Underwriter may request.

(h) A certificate of the Borrower, dated the Closing Date and signed by its president, in form and substance satisfactory to the Underwriter and Bond Counsel, respecting certain tax matters as may be reasonably required by Bond Counsel to enable it to give its opinion.

(i) A certificate of the Trustee, dated the Closing Date and signed by an authorized officer of the Trustee, in form and substance satisfactory to the Underwriter.

(j) A certificate of the Issuer, dated the Closing Date and signed by an authorized official or officer of the Issuer, to the effect that the information regarding the Issuer contained in the Official Statement under the headings "THE ISSUER" and "LITIGATION - Issuer" is true and correct in all material respects.

(k) Certified copies of the Borrower's organizational documents and resolutions or actions of its members (if applicable) authorizing the execution and delivery of the Borrower Documents.

(l) Certified copies of the General Partner's organizational documents and resolutions or actions of its board of directors authorizing the actions required by the General Partner in connection with the Borrower's execution of the Borrower Documents.

(m) Current certificates of existence or good standing of the Borrower and the General Partner.

(n) Copies of the proposed forms of management agreement and residency agreement to be used by the Borrower.

(o) A certificate of the Manager as to the information describing the Manager in the Official Statement and its authority to enter into the Management Agreement.

(p) Consent letters, in form and substance satisfactory to the Underwriter, from \_\_\_\_\_ with respect to the Appraisal, and \_\_\_\_\_ with respect to the Property Condition Assessment and the Phase I Environmental Assessment with respect to the Project.

(q) The Mortgagee Title Insurance Policy as required by the Loan Agreement.

(r) Certificates of Insurance evidencing the insurance required by the Loan Agreement.

(s) Copies of all fidelity bonds required by the Loan Agreement and the Mortgage.

(t) Certified survey of the Project.

(u) Such additional legal opinions, certificates, instruments and other documents as the Underwriter may reasonably deem necessary to evidence the truth and accuracy as of the Closing Date of the respective representations and warranties of the Issuer and the Borrower herein contained and of the Official Statement, and to evidence compliance by the Issuer and the Borrower with this Agreement and all applicable legal requirements, and the due performance and satisfaction by the Issuer and the Borrower at or prior to such time of all agreements then to be performed and all conditions then to be satisfied by the Issuer and the Borrower.

10.3 If any of the conditions set forth in Section 10.1 or 10.2 have not been met on the Closing Date, the Underwriter may, at its sole option, terminate this Agreement or proceed to Closing upon waiving any rights under this Agreement with respect to any such condition. If this Agreement is



terminated pursuant to this Section, no party will have any rights or obligations to any other, except as provided in Section 13.

**Section 11. Actions and Events at the Closing.** The following events will take place at the Closing:

(a) The Issuer will cause the Trustee to deliver the Bonds to the Underwriter, at the place set forth in Item 4 in Exhibit B. The Bonds so delivered will be in the form required by the Trust Indenture, duly authenticated by the Trustee, and will be fully registered in the name of CEDE & Co., as nominee of The Depository Trust Company, New York, New York.

(b) The Issuer and the Borrower, as applicable, will deliver or cause to be delivered to the Underwriter at the place set forth in Item 4 in Exhibit B, or at such other place or places as the Issuer, the Borrower and the Underwriter may mutually agree upon, the materials described in Section 10.1 and Section 10.2.

(c) The Underwriter will deliver to the Trustee, for the account of the Issuer, a wire, payable in immediately available funds, in an amount equal to the purchase price of the Bonds as set forth in Item 2 of Exhibit B.

**Section 12. Termination of Agreement.** The Underwriter may terminate this Agreement, without liability therefor, by notifying the Issuer and the Borrower at any time prior to the Closing, if:

(a) Legislative, executive or regulatory action or a court decision which, in the reasonable judgment of the Underwriter, casts sufficient doubt on the legality of obligations such as the Bonds or the exclusion of interest on obligations such as the Bonds from gross income for federal income tax purposes, so as to impair materially the marketability of the Bonds;

(b) Any action by the Securities and Exchange Commission or a court which would require any registration under the Securities Act, in connection with the issuance, placement or sale of the Bonds, or qualification of the Trust Indenture under the Trust Indenture Act of 1939, as amended;

(c) Any general suspension of trading in securities on the New York Stock Exchange or the establishment by the New York Stock Exchange, by the Securities and Exchange Commission, by any federal or state agency or by the decision of any court, of any limitation on prices for such trading, or any outbreak of hostilities or occurrence of any other national or international calamity or crisis, the effect of which on the financial markets of the United States shall be such as to make it impracticable for the Underwriter to proceed with the purchase and offering of the Bonds at the interest rates approved by the Issuer in its ordinance authorizing the Bonds;

(d) Any event or condition which, in the reasonable judgment of the Underwriter, (i) renders untrue or incorrect, in any material respect as of the time to which the same purports to relate, the information contained in the Official Statement, or (ii) requires that information not reflected in the Official Statement should be reflected therein in order to make the statements and information contained therein not misleading in any material respect as of such time, or (iii) has a material adverse effect upon the marketability of the Bonds, or (iv) would materially and adversely affect the ability of the Underwriter to enforce contracts for the sale of the Bonds; or

(e) The rating of the Bonds shall have been downgraded or withdrawn by the Rating Agency.

**Section 13. Fees and Expenses.**

13.1 The Borrower shall pay to the Underwriter a fee in the amount of \$\_\_\_\_\_ (\_\_\_\_%) of the principal amount of the Bonds), payable in immediately available funds on the Closing Date.

13.2 The Borrower shall pay the costs of issuance of the Bonds, including all expenses incident to the performance of the Underwriter's obligations hereunder, including, but not limited to, (i) the cost of the preparation, printing or other reproduction of this Agreement, the preliminary and final Official Statement, the Trust Indenture and the other Bond Documents in reasonable quantities for distribution; (ii) the cost of engraving, reproducing and signing the definitive Bonds; (iii) the reasonable fees and disbursements of all applicable legal counsel, including Bond Counsel, Trustee's Counsel (if any), Issuer's Counsel and Underwriter's Counsel; (iv) the initial fees and costs of paying the Trustee and all paying agents, transfer agents and registrars; (v) the fees and expenses of the Issuer; (vi) CUSIP fees; (ix) the cost of qualifying the Bonds for sale in various states chosen by the Underwriter and the cost of preparing or printing any Preliminary Blue Sky Survey and any Legal Investment Survey to be used in connection with such sale; (xii) the fees and expenses of the Rating Agency; (xiii) the fees and expenses of the experts retained by the Borrower with respect to the acquisition, rehabilitation and financing of the Project; (xiv) the cost of the mortgagee's title policy and all recording and filing fees; (xv) the reasonable fees and expenses of any counsel retained by the purchasers of the Bonds; and (xvi) all other applicable fees of professionals hired in conjunction with the issuance of the Bonds.

13.3 The Underwriter will pay all expenses (other than those described in Section 13.2) incurred by the Underwriter in connection with its public offering and sale of the Bonds.

13.4 In the event that the Issuer, the Borrower or the Underwriter shall have paid obligations of the other as set forth in this Section, appropriate adjustments will promptly be made.

13.5 The Borrower shall indemnify the Issuer and the Underwriter with respect to the foregoing costs and expenses in the event that the purchase provided for herein is not consummated unless, insofar as indemnification of the Underwriter is concerned, such purchase is prevented at the Closing Date by the Underwriter's default.

**Section 14. Indemnification.**

14.1 The Borrower will indemnify and hold harmless the Issuer and the Underwriter against any losses, claims, expenses (including, without limitation, to the extent permitted by law, reasonable attorneys' fees and expenses actually incurred), damages or liabilities, causes of action (whether in contract, tort or otherwise), suits, claims, demands and judgments of any kind, character and nature (collectively referred to herein as the "Liabilities"), joint or several, to which the Issuer or the Underwriter may be threatened or become subject, caused by or directly or indirectly arising from or in any way relating to (i) the Bonds, the Project, the loan of the proceeds of the Bonds, this Agreement or any document related to the Bonds, the Project or the loan of the proceeds of the Bonds or any transaction or agreement, written or oral, pertaining to the foregoing, (ii) any untrue statement or alleged untrue statement of any material fact contained in the Official Statement, or any amendment or supplement thereto so long as the Borrower shall have participated in or agreed to any such amendment or supplement, or (iii) the omission or alleged omission to state in the Official Statement a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading. This indemnification provision shall not be construed as a

limitation on any other liability which the Borrower may otherwise have to any indemnified person, provided that in no event shall the Borrower be obligated for double indemnification. Notwithstanding the foregoing, the Borrower shall not be required to indemnify the Indemnified Parties for the negligence or willful misconduct of any Indemnified Party other than the Issuer, or for the gross negligence or willful misconduct of the Issuer.

14.2 The indemnity agreements in paragraph 14.1 of this Section shall be in addition to any liability which any indemnifying party may otherwise have and shall extend on the same terms and conditions to each partner, principal, official, officer, attorney or employee of such party and to each person, if any, who controls (as such term is used in Section 15 of the Securities Act of 1933 and Section 20 of the Securities Exchange Act of 1934, as amended) such party (the Issuer, the Underwriter, and all of the foregoing indemnified parties being referred to individually as an "Indemnified Party" and collectively as the "Indemnified Parties"); provided, however, that an indemnifying party under paragraph 14.1 of this Section shall not be liable to the Underwriter under this Section to the extent that any such Liabilities arise out of or are based upon an untrue statement or alleged untrue statement or omission or alleged omission made in reliance upon and in conformity with information furnished by the Underwriter expressly for use in the Official Statement; and provided further that no indemnifying party hereunder shall be liable for any settlement effected by an Indemnified Party without the written consent of the indemnifying party (which consent shall not be unreasonably withheld).

14.3 Promptly after receipt by an Indemnified Party under paragraph 14.1 of this Section of notice of the commencement of any action against such Indemnified Party in respect of which indemnity or reimbursement may be sought against any indemnifying party under any such paragraph, such Indemnified Party will notify the indemnifying party in writing of the commencement thereof; provided that any delay or failure to give such notification shall be of no effect except to the extent that the indemnifying party is prejudiced thereby.

14.4 In case any action, claim or proceeding, as to which the indemnifying party is to provide indemnification hereunder, shall be brought against the Indemnified Party and the Indemnified Party notifies the indemnifying party of the commencement thereof, the indemnifying party may, or if so requested by the Indemnified Party shall, participate therein or assume the defense thereof, with counsel reasonably satisfactory to the Indemnified Party; provided that, except as provided below, the indemnifying party shall not be liable for the expenses of more than one separate counsel representing the Indemnified Parties in the action, claim or proceeding.

14.5 If the indemnifying party shall not have employed counsel to have charge of the defense of the action, claim or proceeding, or if any Indemnified Party shall have concluded reasonably that there may be a defense available to it or to any other Indemnified Party which is different from or in addition to those available to the indemnifying party or to any other Indemnified Party (hereinafter referred to as a "separate defense"), (i) the indemnifying party shall not have the right to direct the defense of the action, claim or proceeding on behalf of the Indemnified Party, and (ii) legal and other expenses incurred by the Indemnified Party (including without limitation, to the extent permitted by law, reasonable attorney's fees and expenses actually incurred) shall be borne by the indemnifying party; provided, that an indemnifying party shall not be liable for the expenses of more than one additional separate counsel for each Indemnified Party with respect to such separate defenses. For the purpose of this paragraph, an Indemnified Party shall be deemed to have concluded reasonably that a separate defense is available to it or any other Indemnified Party if (a) such Indemnified Party shall have requested an unqualified written opinion from Independent Counsel to the effect that a separate defense exists, and such Independent Counsel shall have delivered such opinion to the Indemnified Party within ten (10) days after such request or (b) the indemnifying party agrees that a separate defense is so available. For purposes of this paragraph, Independent Counsel shall mean any attorney, or firm or association of attorneys, duly

admitted to practice law before the supreme court of any state and not a full-time employee of any Indemnified Party. Nothing contained in this paragraph 14.5 will preclude any Indemnified Party, at its own expense, from retaining additional counsel to represent such party in any action with respect to which indemnity may be sought from the Borrower hereunder. Notwithstanding anything to the contrary, the Issuer may employ its own counsel (whether one or more separate counsel) in any manner it deems appropriate and the Borrower shall indemnify the Issuer for all costs of such counsel.

14.6 In order to provide for just and equitable contribution in circumstances in which the indemnity provided for in paragraph 14.1 or 14.2 of this Section 14 is for any reason held to be unavailable, the Borrower and the Indemnified Party (other than the Issuer) shall contribute proportionately to the aggregate Liabilities to which the Borrower and the Indemnified Party (other than the Issuer) may be subject, so that the Indemnified Party (other than the Issuer) is responsible for that portion represented by the percentage that the fees paid by the Borrower to the Indemnified Party (other than the Issuer) in connection with the issuance and administration of the Bonds bears to the aggregate offering price of the Bonds, with the Borrower responsible for the balance; provided, however, that in no case shall the Indemnified Party be responsible for any amount in excess of the fees paid by the Borrower to the Indemnified Party in connection with the issuance and administration of the Bonds.

14.7 The Indemnified Parties, other than the Underwriter and the Issuer, shall be considered to be third-party beneficiaries of this Agreement for purpose of this Section 14. The provisions of this Section 14 will be in addition to all liability which the Borrower may otherwise have and shall survive any termination of this Agreement, the offering and sale of the Bonds and the payment or provisions for payment of the Bonds.

**Section 15. No Pecuniary Liability of Issuer.** No provision, covenant, or agreement contained in this Agreement, and no obligation herein imposed upon the Issuer, or the breach thereof, shall constitute an indebtedness of the Issuer, the City of Austin, the County of Travis or the State of Texas or any political subdivision thereof within the meaning of any Texas Constitutional provision or statutory limitation or shall constitute or give rise to a pecuniary liability of the Issuer, the City of Austin, County of Travis or the State of Texas or any political subdivision thereof or a charge against its general credit or taxing powers. In making the agreements, provisions and covenants set forth in this Agreement, the Issuer has not obligated itself, except to the extent that the Issuer is authorized to act pursuant to Texas law and except with respect to the Trust Estate, as defined in the Indenture. The Issuer and any of its officials, officers, directors, employees, members or agents shall have no monetary liability arising out of the obligations of the Issuer hereunder or in connection with any covenant, representation or warranty made by the Issuer herein, and neither the Issuer nor its officials shall be obligated to pay any amounts in connection with the transactions contemplated hereby other than from revenues or moneys received from the Borrower.

**Section 16. Limitation of Liability.** Notwithstanding any provision herein to the contrary, none of any member, officer, director, partner, agent or employee of the Issuer or the Borrower, including any person executing this Agreement, shall bear any liability as a result of any failure of the Issuer or the Borrower to perform the obligations of each, respectively, set forth in this Agreement.

**Section 17. Miscellaneous.**

17.1 All notices, demands and formal actions hereunder will be in writing and mailed, telecopied or delivered to the following address or such other address as either of the parties shall specify:

If to the Underwriter:	Merchant Capital, L.L.C. 2660 EastChase Lane, Suite 400 Lakeview Center Montgomery, AL 36117-6886 Attention: John B. Rucker, III
If to the Issuer:	Austin Housing Finance Corporation P.O. Box 1088 Austin, TX 78767-1088 Attention: Multifamily Bond Financing Program
If to the Borrower:	Marshall Affordable Partners, Ltd. c/o Summit Asset Management, LLC 105 Tallapoosa Street, Suite 300 Montgomery, AL 36104 Attention: Tom Champion

17.2 This Agreement will inure to the benefit of and be binding upon the parties hereto and their successors and assigns and, except as provided in Sections 14, 18 and 19, will not confer any rights upon any other person. The terms "successor" and "assigns" will not include any Underwriter of any of the Bonds from the Underwriter merely because of such purchase.

17.3 This Agreement may not be assigned by any of the parties hereto prior to the Closing.

17.4 If any provision of this Agreement is held or deemed to be or is, in fact, inoperative, invalid or unenforceable as applied in any particular case in any jurisdiction or jurisdictions, or in all jurisdictions because it conflicts with any provision of any constitution, statute, rule of public policy, or any other reason, such circumstances will not have the effect of rendering the provision in question inoperative or unenforceable in any other case or circumstance or of rendering any other provision or provisions of this Agreement invalid, inoperative or unenforceable to any extent whatever.

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

17.6 This Agreement may be executed in several counterparts, each of which will be regarded as an original and all of which will constitute one and the same document.

**[SIGNATURE PAGE OF UNDERWRITER]**

If the foregoing is in accordance with your understanding, please sign and return to us two counterparts hereof and, upon the acceptance hereof by the Issuer and the Borrower, this Agreement and such acceptance shall constitute the binding agreement among us as to the matters set forth above.

Very truly yours,

**MERCHANT CAPITAL, L.L.C.**

By: \_\_\_\_\_  
Executive Vice President

**[SIGNATURE PAGE OF ISSUER]**

Accepted as of the date first above written:

**AUSTIN HOUSING FINANCE  
CORPORATION**, as Issuer

By:

\_\_\_\_\_  
Treasurer

**[SIGNATURE PAGE OF BORROWER]**

**MARSHALL AFFORDABLE PARTNERS, LTD.**

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

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

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

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



## **EXHIBIT A**

### **GLOSSARY OF TERMS**

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

"Agreement" means this Bond Purchase Agreement, as amended from time to time.

"Bond Documents" means this Agreement, the Trust Indenture, the Loan Agreement, the Regulatory Agreement, the Tax Certificate, the Continuing Disclosure Agreement and other applicable documents related to the issuance and sale of the Bonds as amended from time to time.

"Borrower" means Marshall Affordable Partners, Ltd., a Texas limited partnership.

"Borrower Documents" means the Transaction Documents to which the Borrower is a party.

"Closing" means the proceeding at which the actions described in Section 11 are performed.

"Closing Date" means the date on which the Closing takes place, expected to be \_\_\_\_\_, 2011.

"Code" means the Internal Revenue Code of 1986, as amended, and all applicable regulations promulgated thereunder.

"Continuing Disclosure Agreement" means the Continuing Disclosure Agreement dated as of \_\_\_\_\_, 2011 between the Borrower and the Trustee, as Dissemination Agent.

"Issuer" means Austin Housing Finance Corporation.

"Issuer Documents" means the Transaction Documents to which the Issuer is a party.

"Loan" means the loan in the maximum principal amount of \$\_\_\_\_\_ to be made by the Issuer to the Borrower pursuant to the Loan Documents to provide financing for the Project.

"Loan Agreement" means the Loan Agreement dated as of \_\_\_\_\_, 2011, among the Issuer, the Borrower and the Trustee, as amended from time to time.

"Loan Documents" means the Note, the Security Instrument, and other documents and instruments required to be executed and delivered in connection with the closing of the Loan.

"Note" means the Multifamily Promissory Note from the Borrower to the Issuer, evidencing the obligation to repay the Loan.

"Official Statement" means the final Official Statement relating to the Bonds (including the cover page and appendices).

"Preliminary Official Statement" means the Preliminary Official Statement relating to the Bonds (including the cover page and appendices), dated \_\_\_\_\_, 2011.

"Project" means Marshall Apartments, a 100-unit residential multifamily rental housing facility to be acquired and renovated by the Borrower in Austin, Texas.

"Regulatory Agreement" means the Regulatory and Land Use Restriction Agreement dated as of \_\_\_\_\_, 2011, among the Issuer, the Borrower, and the Trustee, as amended from time to time.

"Security Instrument" means the [Mortgage, Assignment of Rents and Security Agreement], dated as of \_\_\_\_\_, 2011 from the Borrower for the benefit of the Trustee.

"Tax Certificate" means the [Tax Letter of Representations and No-Arbitrage Certificate] dated as of \_\_\_\_\_, 2011 and effective as of the Closing Date by and among the Issuer, the Borrower and the Trustee.

"Transaction Documents" means the Bond Documents and the Loan Documents.

"Trust Indenture" means the Trust Indenture dated as of \_\_\_\_\_, 2011 between the Trustee and the Issuer, as amended from time to time.

"Trustee" means \_\_\_\_\_, or a successor thereto, as Trustee under the Trust Indenture.

"Underwriter" means Merchant Capital, L.L.C.

"Update Period" means the Update Period as defined in Section 4.5 hereof.

## **EXHIBIT B**

### **TERMS OF BONDS**

#### **Item**

1. Title of Bonds: Austin Housing Finance Corporation \$\_\_\_\_\_ Multifamily Housing Revenue Bonds (Marshall Apartments) Series 2011
2. Purchase Price:
3.
  - (a) Date of the Bonds: \_\_\_\_\_, 2011
  - (b) Interest Payment Dates: as described in the Official Statement.
  - (c) Aggregate Principal Amount: \$\_\_\_\_\_
  - (d) Maturity and Interest Rate: See Schedule I
  - (e) Redemption Provisions: as described in the Official Statement.
4.
  - (a) Time of Closing: 12:00 noon, central time
  - (b) Date of Closing: \_\_\_\_\_, 2011, or such other date as may be approved by the Underwriter
  - (c) Place of Closing: Offices of McCall, Parkhurst & Horton L.L.P.
  - (d) Delivery of Bonds: The Trustee, as agent for The Depository Trust Company, New York, New York

**SCHEDULE I**

**MATURITIES, PRINCIPAL AMOUNTS, INTEREST RATES AND PURCHASE PRICES**

<b>Maturity Date</b>	<b>Principal Amount</b>	<b>Interest Rate</b>	<b>Price</b>
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(Plus Accrued Interest)

## EXHIBIT C

### FORM OF SUPPLEMENTAL OPINION OF BOND COUNSEL

\_\_\_\_\_, 2011

City of Austin  
Austin, Texas

\_\_\_\_\_, as Trustee  
\_\_\_\_\_

Merchant Capital, L.L.C.  
Montgomery, Alabama

Re: [BOND CAPTION]

Ladies and Gentlemen:

On this day we have rendered our opinion as bond counsel with respect to the Bonds. In delivering our opinion, we have relied upon representations of Marshall Affordable Partners, Ltd. a Texas limited partnership (the "Borrower") and the Austin Housing Finance Corporation (the "Issuer") contained in the Loan Agreement, among the Issuer, \_\_\_\_\_ (the "Trustee") and the Borrower, dated as of \_\_\_\_\_, 2011 (the "Loan Agreement"), the Trust Indenture between the Issuer and the Trustee, dated as of \_\_\_\_\_, 2011 (the "Indenture"), the Bond Purchase Agreement among Merchant Capital, L.L.C. (the "Underwriter"), the Borrower and the Issuer, dated \_\_\_\_\_, 2011 (the "Bond Purchase Agreement"), the Regulatory Agreement among the Borrower, the Trustee and the Issuer, dated as of \_\_\_\_\_, 2011 (the "Regulatory Agreement"), and in the certified transcript of proceedings and other certificates of officers furnished to us, including the tax covenants and representations of the Borrower and the Issuer (the "Tax Covenants"), without undertaking to verify the same by independent investigation.

We have examined a certified transcript of proceedings relating to the issuance of the Bonds and certain documents, including certain information in the Official Statement dated \_\_\_\_\_, 2011 (the "Official Statement") relating to the Bonds under the captions "THE BONDS" (excluding the information set forth under the subcaptions "Book-Entry Only System and Revision of Book Entry-Only System" therein), and "SECURITY AND SOURCES OF PAYMENT FOR THE BONDS" and "TAX MATTERS," and in Appendices A, B and C to the Official Statement.

Based on our review of the foregoing and the material recited in our approving opinion delivered on this date, we are of the opinion that:

1. The Bonds are not subject to the registration requirements of the Securities Act of 1933, as amended, and the Indenture is not subject to the qualification requirements of the Trust Indenture Act of 1939, as amended.
2. The information and statements in the Official Statement under the captions set forth above, insofar as such information and statements constitute a summary of the Bonds, the Loan Agreement, the Indenture, the Regulatory Agreement and our opinion concerning certain tax matters are a fair summary of such documents and a fair summary of our opinion concerning certain tax matters.

Based solely upon the knowledge of the attorneys in our Firm who have participated in conferences and discussions relating to the issuance of the Bonds, and without any independent investigation or verification of any facts or acceptance of any engagement or duty to undertake any investigation or verification of any facts and without assuming any responsibility for the accuracy, completeness or fairness of the statements contained in the Official Statement (except as set forth in Paragraph 2 above), we are not aware of any facts which lead us to the legal conclusion that the Official Statement (except for information set forth under the captions "THE BONDS – Book-Entry-Only System and – Revision of Book-Entry-Only System", "THE BORROWER AND THE PROJECT," "APPRAISAL," "FORWARD-LOOKING STATEMENTS," "RISK FACTORS AND INVESTMENT CONSIDERATIONS," "LITIGATION," "RATING," "UNDERWRITING," and "CONTINUING DISCLOSURE," APPENDIX D – PRO FORMA FINANCIAL PROJECTIONS, APPENDIX E – HISTORICAL FINANCIAL STATEMENT and except for financial or statistical data contained within the Official Statement, as to which we make no representations) (i) as of its date contained and as of the date hereof contains any untrue statement of a material fact or (ii) as of its date omitted and as of the date hereof omits any material fact required to be stated or necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading. We note, however, that determinations of materiality and omissions involve complex questions of fact and business circumstances which, on a case by case basis, are not subject to certain predictions of legal outcome. In addition, there are inherent limitations on the ability of an attorney to predict future findings on such questions of fact and business circumstances.

The opinions set forth in Paragraphs 1 and 2 above and the statement made in the immediately preceding paragraph (the "Statement") express the professional judgment of the attorneys participating in the transaction as to the legal issues addressed herein. By rendering such opinions and by making such Statement, the undersigned does not become an insurer or guarantor of that expression of professional judgment or of the transaction opined upon. Nor does the rendering of those opinions or the making of such Statement guarantee the outcome of any legal dispute that may arise out of the transaction.

We express no opinion with respect to the laws of any jurisdiction other than the federal laws of the United States of America. This opinion letter is based upon such laws as are in effect on the date hereof and we expressly disclaim any undertaking to advise you of any subsequent changes therein.

This opinion letter is being furnished to you for your sole use only in connection with this transaction, and no other party is entitled to rely on it without our written consent.

Very truly yours,

## **EXHIBIT D**

### **FORM OF OPINION OF COUNSEL TO THE ISSUER**

[Closing Date]

Austin Housing Finance Corporation  
Austin, Texas

Merchant Capital L.L.C.  
Montgomery, Alabama

McCall, Parkhurst & Horton L.L.P.  
Austin, Texas

\_\_\_\_\_  
\_\_\_\_\_

[TRUSTEE]

[BOND CAPTION]

[After appropriate introductory language, the opinion shall state substantially as follows:]

1. The Issuer is a housing finance corporation under Chapter 394 of the Texas, Local Government Code, as amended, with full right, power and authority (i) to adopt the Resolution, (ii) to execute, deliver and perform the Issuer Documents (as such term is defined in the Bond Purchase Agreement (the "Bond Purchase Agreement") by and among Merchant Capital, L.L.C., as Underwriter, the Issuer and Marshall Affordable Partners, Ltd., a Texas limited partnership, as borrower, (iii) to issue, sell and deliver the Bonds, (iv) to assign to the Trustee the rights assigned to the Trustee pursuant to the Indenture, and (v) to carry out and consummate all other transactions contemplated by each of the aforesaid documents.

2. The proceedings, including the adoption of the Resolution, which have been taken by the Issuer relating to the authorization, issuance and delivery of the Bonds and the authorization, execution and delivery of the Issuer Documents have been taken in accordance with the laws of the State of Texas and are valid and binding upon the Issuer.

3. The officers of the Issuer are the duly elected, qualified and acting officers of the Issuer.

4. The execution, delivery and performance by the Issuer of the Bonds and the Issuer Documents and the taking of all other actions and the execution, delivery and performance of all other documents required to consummate the transactions contemplated thereby have been duly authorized by all required action on the part of the Issuer.

5. Each of the Issuer Documents has been duly executed and delivered by the Issuer and each constitutes a valid, binding and enforceable obligation of the Issuer, except as such enforcement may be limited by bankruptcy, insolvency, moratorium, reorganization and other similar laws affecting the rights of creditors generally and further subject to judicial limitations on right to specific performance.

6. Neither the Issuer's execution, delivery and performance of the Issuer Documents nor the Issuer's adoption of the Resolution, and compliance therewith, nor the consummation of the transactions contemplated thereby or the use of the proceeds of the Bonds to make the Loan,

or the assignment by the Issuer to the Trustee of the rights assigned by the Issuer to the Trustee pursuant to the Indenture conflict with or constitute a breach of or default under, or will conflict with or constitute a breach of or default under, any term or provision of the constitution of the State of Texas or any statute, administrative rule or regulation, judgment, decree, order, license, permit, agreement or instrument to which the Issuer is subject or by which the Issuer or any of its property is bound.

7. There is no action, suit, proceeding, inquiry or investigation by or before any court, governmental agency, public board or body pending or, to the best of my knowledge, threatened against the Issuer (nor is there any basis therefor), which (i) affects or questions the existence of the Issuer, the title to office of any officer or member of the Issuer or the territorial jurisdiction of the Issuer, (ii) affects or seeks to prohibit, restrain or enjoin the issuance, sale or delivery of the Bonds, (iii) affects or questions the validity or enforceability of the Bonds, the Resolution or the Issuer Documents, (iv) questions the tax-exempt status of the Bonds, or (v) questions the powers of the Issuer to carry out the transactions contemplated by the Resolution or the Issuer Documents.

We hereby consent to the reference to us on the cover and under the caption "APPROVAL OF LEGAL MATTERS" in the Official Statement.

Very truly yours,



**EXHIBIT E**  
**FORM OF OPINION OF BORROWER'S COUNSEL**

[TO BE PROVIDED]

## **EXHIBIT F**

### **FORM OF OPINION OF UNDERWRITER'S COUNSEL**

[Closing Date]

Merchant Capital, L.L.C.  
Montgomery, Alabama

AUSTIN HOUSING FINANCE CORPORATION  
\$ \_\_\_\_\_  
MULTIFAMILY HOUSING REVENUE BONDS  
(MARSHALL APARTMENTS) SERIES 2011

We have acted as counsel to Merchant Capital, L.L.C. (the "Underwriter") in connection with the issuance of the above-captioned bonds (the "Bonds"), issued pursuant to a Trust Indenture, dated as of \_\_\_\_\_, 2011 (the "Indenture"), between the Austin Housing Finance Corporation (the "Issuer") and \_\_\_\_\_, as trustee (the "Trustee"). As such counsel, we have reviewed such records, certificates, opinions and documents as we have deemed necessary or appropriate for the purpose of this opinion. Upon the basis of such examination, we are of the opinion that under the existing laws, the Bonds may be offered and sold without registration under the Securities Act of 1933, as amended, and the Indenture is not required to be qualified under the Trust Indenture Act of 1939, as amended.

In connection with the preparation of the Official Statement (the "Official Statement") used in connection with the initial issuance and sale of the Bonds on the date hereof, we have reviewed generally information furnished to us by, and have participated in conferences with, representatives of the Issuer; McCall, Parkhurst & Horton L.L.P., Bond Counsel; Marshall Affordable Partners, Ltd., an Alabama limited partnership (the "Borrower"); \_\_\_\_\_, Borrower's Counsel and its local counsel \_\_\_\_\_; the Trustee and the Underwriter. We also have reviewed the documents relating to the Bonds described in the Official Statement and other documents and records relating to the issuance and sale of the Bonds. In addition, we have relied upon certificates of officials of the Issuer and the Borrower. However, we have not independently verified any factual matters in connection with or apart from the aforementioned review and conferences and, accordingly, we do not express any view or belief as to matters that might have been disclosed by independent verification.

Although we have made no independent investigation or verification of the accuracy, correctness, fairness or completeness of, and do not assume any responsibility for, the information included in the Official Statement (subject to the qualifications set forth herein), no information came to the attention of the attorneys in our firm rendering legal services in connection with the issuance of the Bonds which causes us to believe that the Official Statement (except for the financial statement, financial, statistical and numerical information, forecasts, estimates, assumptions and expressions of opinion, as to which we express no view), as of its date contained, or as of the date of this opinion contains, any untrue statement of a material fact or omitted to state any material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading.

Respectfully submitted,