

**RESOLUTION NO. 20180301-AHFC001**

**RESOLUTION AUTHORIZING THE ISSUANCE, SALE, AND DELIVERY OF MULTIFAMILY HOUSING GOVERNMENTAL REVENUE NOTE (NIGHTINGALE AT GOODNIGHT RANCH APARTMENTS) SERIES 2018; APPROVING AND AUTHORIZING THE EXECUTION AND DELIVERY OF RELATED DOCUMENTS; AUTHORIZING THE EXECUTION OF A GROUND LEASE; AUTHORIZING REPRESENTATIVES OF THE AUSTIN HOUSING FINANCE CORPORATION TO EXECUTE DOCUMENTS; AND APPROVING RELATED MATTERS.**

**WHEREAS**, Austin Housing Finance Corporation (the “Issuer”) has been duly created and organized pursuant to and in accordance with the provisions of the Texas Housing Finance Corporations Act, Chapter 394, Texas Local Government Code, as amended (the “Act”), 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 Issuer 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 Issuer (the “Board”) has determined to (i) authorize the issuance of the Issuer’s Multifamily Housing Governmental Revenue Note (Nightingale at Goodnight Ranch Apartments) Series 2018 (the “Note”), in one or more series in accordance with the terms of a Funding Loan Agreement (the “FLA”) by and among the Issuer Fiscal Agent named in the FLA (the “Fiscal Agent”) and Austin DMA Housing III, LLC (the “Borrower”), to obtain funds to finance the Project (defined below), in accordance with the Constitution and the Act and (ii) authorize the execution and delivery

of a ground lease (the "Ground Lease") by the Issuer, as lessor, and Austin DMA Housing III, LLC (the "Borrower"), a Texas limited liability company (defined below), as lessee, and approves AHFC Nightingale Non-Profit Corporation (previously created by the Issuer) to act as Managing Member of the Borrower; and

**WHEREAS**, the Issuer desires to use the proceeds of the Note to finance the costs of acquisition and construction of the residential rental project located in Austin, Texas (the "Project") containing units occupied by persons of low and moderate income, as determined by the Issuer, as required by Section 142(d) of the Internal Revenue Code of 1986, as amended, and to pay costs of issuance of the Note (if necessary); and

**WHEREAS**, the Issuer, the Fiscal Agent and the Borrower will execute and deliver a Project Loan Agreement (the "PLA") in which the Issuer will agree to lend funds to the Borrower to enable the Borrower to finance the Project; and

**WHEREAS**, the Issuer will assign its rights under the PLA to the Fiscal Agent pursuant to the FLA in order to secure repayment of the Note; and

**WHEREAS**, the Issuer, the Fiscal Agent and the Borrower will execute a Regulatory and Land Use Restriction Agreement (the "Regulatory Agreement") which will be filed of record in the real property records of Travis County, Texas; and

**WHEREAS**, the Issuer will execute an Assignment of Deed of Trust and Loan Documents (the "Assignment"); and

**WHEREAS**, the Issuer has further determined that the Issuer will deliver the Note to JPMorgan Chase Bank, N.A. or an affiliate thereof (the "Purchaser"); and

**WHEREAS**, the Board has examined proposed forms of the FLA, the PLA, the Regulatory Agreement, the Ground Lease and the Assignment 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 Note, 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 DIRECTORS OF THE AUSTIN  
HOUSING FINANCE CORPORATION:**

**Section 1.1 - Issuance, Execution and Delivery of the Note.** The issuance of the Note is authorized in accordance with the conditions in the FLA, and, upon execution and delivery of the FLA, the authorized representatives of the Issuer named in this Resolution each are authorized to execute and attest to the Note and to deliver the Note 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 Fiscal Agent for authentication (to the extent required in the FLA), and then to deliver the Note to the Purchaser. The maturity date for the Note will not exceed the latest date allowed under Texas law. The interest rate for the Note will not exceed

the maximum amount allowed under Texas law and the aggregate principal amount of Note will not exceed \$16,000,000 in the aggregate.

**Section 1.2 - Approval, Execution and Delivery of the FLA.** The form and substance of the FLA (including the form of Note therein) are approved in substantially final form, with such changes therein as may be approved by the authorized representatives of the Issuer named in this Resolution at the time of execution and delivery thereof, and the authorized representatives of the Issuer named in this Resolution each are authorized to execute and attest to (if required) the FLA and to deliver the FLA to the Fiscal Agent.

**Section 1.3 - Approval, Execution and Delivery of the PLA and Regulatory Agreement.** The form and substance of the PLA and the Regulatory Agreement are approved in substantially final form, with such changes therein as may be approved by the authorized representatives of the Issuer named in this Resolution at the time of execution and delivery thereof, and the authorized representatives of the Issuer named in this Resolution each are authorized to execute and attest (if required) the PLA and the Regulatory Agreement.

**Section 1.4 - Approval, Execution and Delivery of the Ground Lease.** The form and substance of the Ground Lease are approved in substantially final form, and the authorized representatives of the Issuer named in this Resolution each are authorized to execute and attest (if required) the Ground Lease, and to deliver the Ground Lease to the



Borrower. AHFC Nightingale Non-Profit Corporation is approved to act as Managing Member of the Borrower.

**Section 1.5 - Approval, Execution and Delivery of the Assignment.** The form and substance of the Assignment are approved in substantially final form, with such changes therein as may be approved by the authorized representatives of the Issuer named in this Resolution at the time of execution and delivery thereof, and the authorized representatives of the Issuer named in this Resolution each are authorized to execute and attest (if required) the Assignment.

**Section 1.6 - Execution and Delivery of Other Documents.** The authorized representatives of the Issuer named in this Resolution each are authorized to execute, attest to, and to affix the Issuer'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 Herein.** That all of the terms and provisions of each of the documents listed below as an exhibit shall be and are hereby incorporated into and made a part of this Resolution for all purposes:

- Exhibit A – Funding Loan Agreement**
- Exhibit B – Project Loan Agreement**
- Exhibit C - Regulatory Agreement**
- Exhibit D – Ground Lease**
- Exhibit E - Assignment**

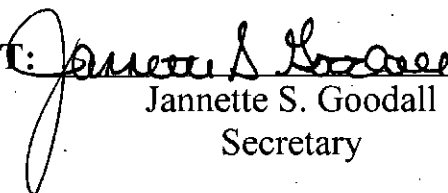
**Section 1.8 - Power to Revise Form of Documents.** The authorized representatives of the Issuer named in this Resolution each are authorized to approve such revisions in the form of the documents attached hereto as may be acceptable to such authorized representative or authorized representatives, following consultation with McCall, Parkhurst & Horton L.L.P., Bond Counsel to the Issuer, with such approval to be evidenced by the execution of such documents by the authorized representatives of the Issuer named in this Resolution.

**Section 1.9 - Authorized Representatives.** The President, Vice President, Treasurer, Secretary and Manager each is hereby named as an authorized representative of the Issuer, acting alone, for purposes of executing, attesting, affixing the Issuer's seal to, and delivering the documents and instruments referred to herein.

**Section 2.0 - Meeting.** The meeting at which this Resolution was adopted was held on March 1, 2018 and a quorum was present. Such meeting was held in accordance with the requirements of applicable law and Issuer's bylaws.

**ADOPTED:** March 1, 2018

**ATTEST:**

  
Jannette S. Goodall  
Secretary

**Exhibit A**  
**Funding Loan Agreement**

**FUNDING LOAN AGREEMENT**

**among**

**JPMORGAN CHASE BANK, N.A.,  
as Initial Funding Lender**

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

**and**

**BOKF, NA,  
as Fiscal Agent**

**Relating to**

**Nightingale at Goodnight Ranch Apartments  
Austin, Texas**

**Original Funding Loan Principal Amount: \$ \_\_\_\_\_**

**Dated as of March 1, 2018**

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**EXHIBIT A FORM OF GOVERNMENTAL NOTE**

**EXHIBIT B FORM OF NOTICE OF APPOINTMENT OF FUNDING LENDER  
REPRESENTATIVE**

**EXHIBIT C FORM OF TRANSFEREE REPRESENTATIONS LETTER**

**EXHIBIT D COST OF ISSUANCE REQUISITION**

**EXHIBIT E PROJECT LOAN FUND REQUISITION**

## FUNDING LOAN AGREEMENT

THIS FUNDING LOAN AGREEMENT (this "Funding Loan Agreement"), is made and entered into as of March 1, 2018, by and among JPMORGAN CHASE BANK, N.A., a national banking association (the "Initial Funding Lender"), the AUSTIN HOUSING FINANCE CORPORATION (the "Governmental Lender"), a housing finance corporation organized and existing under the laws of the State of Texas (the "State"), and BOKF, NA, a national banking association, organized and operating under the laws of the United States of America, having a corporate trust office in Fort Worth, Texas, as Fiscal Agent (the "Fiscal Agent"). Capitalized terms are defined in Section 1.01 of this Funding Loan Agreement.

### RECITALS

WHEREAS, pursuant to Chapter 394, as amended, Texas Local Government Code (collectively, the "Act") and the Project Loan Agreement dated as of March 1, 2018 (the "Project Loan Agreement") by and among the Governmental Lender, the Fiscal Agent and Austin DMA Housing III, LLC, a limited liability company duly organized and existing under the laws of the State of Texas (the "Borrower"), the Governmental Lender is agreeing to make a mortgage loan to the Borrower in the original principal amount of \$ \_\_\_\_\_ (the "Project Loan") to provide for the financing of the construction and equipping of a 174-unit low-income multifamily rental housing development located at the southwest quadrant of 5900 Merle Drive in Austin, Texas, which will be known as Nightingale at Goodnight Ranch Apartments (the "Project"); and

WHEREAS, the Governmental Lender is making the Project Loan to the Borrower with the proceeds received from the separate loan made to the Governmental Lender pursuant to this Funding Loan Agreement in the original principal amount of \$ \_\_\_\_\_ (the "Funding Loan" and together with the Project Loan, the "Loans"). The Funding Loan is being originated and funded by the Initial Funding Lender hereunder and is evidenced by the Multifamily Note dated the Delivery Date in the form attached hereto as Exhibit A (together with all riders and addenda thereto, the "Governmental Note") delivered by the Governmental Lender to the Initial Funding Lender; and

WHEREAS, the Initial Funding Lender, pursuant to the terms and subject to the conditions of this Funding Loan Agreement, the Construction Phase Financing Agreement, and the Construction Disbursement Agreement, has agreed to originate and fund the Funding Loan to the Governmental Lender, which proceeds of the Funding Loan will be used by the Governmental Lender to fund the Project Loan to the Borrower pursuant to the Project Loan Agreement. The Fiscal Agent and the Initial Funding Lender will administer the Loans during the Construction Phase in accordance with the Construction Phase Financing Agreement and the other Financing Documents; and

WHEREAS, the Borrower has agreed to use the proceeds of the Project Loan to finance the construction and equipping of the Project and to pay certain closing costs with respect to the Loans; and

WHEREAS, the Borrower's repayment obligations in respect of the Project Loan will be evidenced by a Project Note dated as of the Delivery Date (together with all riders and

modifications thereto, the "Project Note") delivered to the Governmental Lender, which Project Note will be endorsed (without recourse) by the Governmental Lender to the Fiscal Agent as security for the Funding Loan; and

WHEREAS, to secure the Borrower's obligations under the Project Note, the Borrower will execute and deliver to the Governmental Lender a Multifamily Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing (Leasehold) dated as of the date hereof (the "Security Instrument") with respect to the Project, which Security Instrument will be assigned by the Governmental Lender to the Fiscal Agent as security for the Funding Loan; and

WHEREAS, the Federal Home Loan Mortgage Corporation, a shareholder-owned government-sponsored enterprise ("**Freddie Mac**") has entered into a commitment with Bellwether Enterprise Real Estate Capital, LLC (the "**Freddie Mac Seller/Servicer**") dated \_\_\_\_\_, 2018 (the "**Freddie Mac Commitment**"), whereby Freddie Mac has committed, subject to the satisfaction of the Conditions to Conversion set forth in the Construction Phase Financing Agreement on or before the Forward Commitment Maturity Date, to facilitate the financing of the Project in the Permanent Phase by purchasing the Funding Loan from the Freddie Mac Seller/Servicer following the Conversion Date; and

WHEREAS, if the Conditions to Conversion are satisfied on or before the Forward Commitment Maturity Date as provided for in the Freddie Mac Commitment and the Construction Phase Financing Agreement, including, without limitation, that the outstanding principal balance of the Project Loan is paid down to the Actual Project Loan Amount, the Project Loan will convert from the Construction Phase to the Permanent Phase on the Conversion Date and, on such Conversion Date, the Initial Funding Lender shall deliver, and the Freddie Mac Seller/Servicer shall purchase, the Funding Loan, as evidenced by the Governmental Note. If the Conditions to Conversion are not satisfied on or before the Forward Commitment Maturity Date, the Project Loan will not convert from the Construction Phase to the Permanent Phase, and neither the Freddie Mac Seller/Servicer nor Freddie Mac will have any obligation with respect to the purchase of the Funding Loan and the Initial Funding Lender will remain the owner of the Funding Loan as the holder of the Governmental Note; and

WHEREAS, as a Condition to Conversion, the Project Note and the Security Instrument are required to be amended and restated and the Borrower is required to enter into a Continuing Covenant Agreement with the Freddie Mac Seller/Servicer (the "**Freddie Mac Continuing Covenant Agreement**"), in each case pursuant to the forms attached to the Construction Phase Financing Agreement; and

WHEREAS, if the Conditions to Conversion are satisfied and the Funding Loan is purchased by the Freddie Mac Seller/Servicer on the Conversion Date as set forth above, the Freddie Mac Seller/Servicer shall deliver the Funding Loan to Freddie Mac for purchase pursuant to the terms of the Freddie Mac Commitment and the Guide (such date of purchase by Freddie Mac being referred to as the "**Freddie Mac Purchase Date**"); and

WHEREAS, upon the occurrence of the Freddie Mac Purchase Date, the Freddie Mac Seller/Servicer will assign to Freddie Mac all of its rights and interest in the Funding Loan, the Governmental Note, this Funding Loan Agreement, the Freddie Mac Continuing Covenant

Agreement and the other Financing Documents. Bellwether Enterprise Real Estate Capital, LLC will act as Servicer for the Loans on behalf of Freddie Mac, as Funding Lender, on and after the Freddie Mac Purchase Date; and

WHEREAS, the Governmental Lender has determined that all things necessary to incur the Funding Loan and to execute and deliver the Governmental Note, when executed by the Governmental Lender and authenticated by the Fiscal Agent and issued in accordance with this Funding Loan Agreement, the valid, binding and legal obligation of the Governmental Lender and to constitute this Funding Loan Agreement a valid lien on the properties, interests, revenues and payments herein pledged to the payment of the principal of, Prepayment Premium, if any, and interest on, the Governmental Note, have been duly taken, and the creation, execution and delivery of this Funding Loan Agreement and the execution and delivery of the Governmental Note, subject to the terms of this Funding Loan Agreement, have been duly authorized by the Governmental Lender; and

WHEREAS, the Fiscal Agent has the power and authority to enter into this Funding Loan Agreement, including corporate trust powers to accept the trusts hereunder and to accept and assume its other responsibilities hereunder as Fiscal Agent as evidenced by its execution of this Funding Loan Agreement.

NOW, THEREFORE, in consideration of the premises and of the origination and funding of the Funding Loan by the Funding Lender, and for other good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto agree as follows:

## ARTICLE I

### DEFINITIONS

**Section 1.01 Definitions.** The terms used in this Funding Loan Agreement (except as herein otherwise expressly provided or unless the context otherwise requires) for all purposes of this Funding Loan Agreement and of any amendment or supplement hereto shall have the respective meanings specified below. Terms used herein not otherwise defined shall have the respective meanings set forth in the Project Loan Agreement.

“*Act*” means Chapter 394, as amended, Texas Local Government Code.

“*Actual Project Loan Amount*” has the meaning set forth in the Construction Phase Financing Agreement.

“*Administration Fund*” means the Administration Fund established by the Fiscal Agent pursuant to Section 4.01 hereof.

“*Assignment*” means the Assignment of Security Instrument dated as of the date hereof by the Governmental Lender assigning its interest in the Security Instrument to the Fiscal Agent.

“*Authorized Officer*” means (a) when used with respect to the Governmental Lender, the President, Vice President, Treasurer or Secretary of the Governmental Lender and such additional Person or Persons, if any, duly designated by the Governmental Lender in writing to act on its

behalf, (b) when used with respect to the Borrower, any officer, manager, or member of the general partner of the Borrower and such additional Person or Persons, if any, duly designated by the Borrower in writing to act on its behalf, (c) when used with respect to the Fiscal Agent, any authorized signatory of the Fiscal Agent, or any Person who is authorized in writing to take the action in question on behalf of the Fiscal Agent, (d) when used with respect to the Servicer, any Person or Persons duly designated by the Servicer in writing to act on its behalf, and (e) when used with respect to the Funding Lender Representative, any Person who is authorized in writing to take the action in question on behalf of the Funding Lender Representative.

*"Bankruptcy Code"* means Title 11 of the United States Code entitled "Bankruptcy," as now and hereafter in effect, or any successor federal statute.

*"Bond Counsel"* means (a) on the Delivery Date, the law firm or law firms delivering the approving opinion(s) with respect to the Governmental Note, or (b) any other firm of attorneys selected by the Governmental Lender that is experienced in matters relating to the issuance of obligations by states and their political subdivisions that is listed as municipal bond attorneys in The Bond Buyer's Municipal Marketplace and is acceptable to the Funding Lender Representative.

*"Borrower"* means Austin DMA Housing III, LLC, a limited liability company duly organized and existing under the laws of the State of Texas, or any of its permitted successors or assigns, as owner of the Project.

*"Borrower Equity Account"* means the Borrower Equity Account of the Project Loan Fund established by the Fiscal Agent as the Initial Funding Lender pursuant to Section 2.11 hereof. The Borrower Equity Account shall be comprised of the following subaccounts: (i) the LIHTC Subaccount, (ii) the Gap Loan Subaccount, and (iii) the Net Operating Income Subaccount.

*"Business Day"* means any day other than (a) a Saturday or a Sunday, or (b) a day on which (i) banking institutions in the City of New York or in the city in which the Principal Office of the Fiscal Agent is located are authorized or obligated by law or executive order to be closed or (ii) the New York Stock Exchange is closed.

*"Casualty Proceeds"* when used with respect to any insurance or condemnation award, means the proceeds from the insurance or condemnation award with respect to which that term is used remaining after payment of all reasonable expenses incurred in the collection of such insurance proceeds or condemnation award, including reasonable attorneys' fees.

*"Certificate of the Governmental Lender"* and *"Request of the Governmental Lender"* mean, respectively, a written certificate or request signed in the name of the Governmental Lender by an Authorized Officer of the Governmental Lender or such other Person as may be designated and authorized to sign for the Governmental Lender. Any such instrument and supporting opinions or representations, if any, may, but need not, be combined in a single instrument with any other instrument, opinion or representation, and the two or more so combined shall be read and construed as a single instrument.

*"Code"* means the Internal Revenue Code of 1986, as in effect on the Delivery Date or (except as otherwise referenced herein) as it may be amended to apply to obligations issued on the

Delivery Date, together with applicable Regulations and applicable public guidance published thereunder.

*"Comptroller"* means the Comptroller of Public Accounts of the State of Texas.

*"Conditions to Conversion"* has the meaning given to that term in the Construction Phase Financing Agreement.

*"Construction Disbursement Agreement"* means the Construction Disbursement Agreement dated as of the date hereof by and between the Borrower and the Initial Funding Lender, as the same may be amended, modified or supplemented from time to time.

*"Construction Phase"* means the construction phase of the Project Loan, which time period shall commence on the Delivery Date and remain in effect to, but not including, the Conversion Date.

*"Construction Phase Financing Agreement"* means the Construction Phase Financing Agreement dated as of the date hereof by and among the Initial Funding Lender, Freddie Mac, and the Freddie Mac Seller/Servicer, and acknowledged and agreed to by the Borrower, as the same may be amended, modified or supplemented from time to time.

*"Continuing Covenant Agreement"* means (i) prior to the Conversion Date, the Construction Disbursement Agreement, and (ii) from and after the Conversion Date, the Freddie Mac Continuing Covenant Agreement.

*"Conversion"* means conversion of the Project Loan from the Construction Phase to the Permanent Phase on the Conversion Date.

*"Conversion Date"* means the date the Freddie Mac Seller/Servicer purchases the Funding Loan from the Initial Funding Lender upon the satisfaction of the Conditions to Conversion, as such Conversion Date is specified by the Freddie Mac Seller/Servicer in the Notice of Conversion, which date shall be at least ten (10) days following the date on which the Notice of Conversion is delivered.

*"Cost," "Costs" or "Costs of the Project"* means costs paid with respect to the Project that (i) are properly chargeable to capital account (or would be so chargeable with a proper election by the Borrower or but for a proper election by the Borrower to deduct such costs) in accordance with general federal income tax principles and in accordance with Section 1.103-8(a)(1) of the Regulations, (ii) are paid with respect to a qualified residential rental project or projects within the meaning of Section 142(d) of the Code, (iii) are paid after the earlier of (A) 60 days prior to the date of a resolution of the Governmental Lender to reimburse costs of the Project with proceeds of the Loans or (B) the Delivery Date, and (iv) if the Costs of the Project were previously paid and are to be reimbursed with proceeds of the Loans such costs were (A) Costs of Issuance of the Governmental Note, (B) preliminary capital expenditures (within the meaning of Section 1.150-2(f)(2)) of the Regulations with respect to the Project (such as architectural, engineering and soil testing services) incurred before commencement of acquisition or construction of the Project that do not exceed twenty percent (20%) of the issue price of the Governmental Note (as defined in Section 1.148-1) of the Regulations, or (C) were capital expenditures with respect to the Project

that are reimbursed no later than eighteen (18) months after the later of the date the expenditure was paid or the date the Project is placed in service (but no later than three (3) years after the expenditure is paid); provided however, that if any portion of the Project is being constructed or developed by the Borrower or an affiliate (whether as a developer, a general contractor or a subcontractor), "Cost," "Costs" or "Costs of the Project" shall include only (a) the actual out-of-pocket costs incurred by the Borrower or such affiliate in developing or constructing the Project (or any portion thereof), (b) any reasonable fees for supervisory services actually rendered by the Borrower or such affiliate (but excluding any profit component) and (c) any overhead expenses incurred by the Borrower or such affiliate 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 acquisition, construction or development of the Project or payments received by such affiliate due to early completion of the Project (or any portion thereof).

"*Cost of Issuance Fund*" means the Cost of Issuance Fund established by the Fiscal Agent pursuant to Section 4.01 hereof.

"*Costs of Issuance*" means, as applicable, (i) the fees (excluding ongoing fees), costs and expenses of (a) the Governmental Lender, the Governmental Lender's counsel and the Governmental Lender's financial advisor, (b) Bond Counsel, (c) the Fiscal Agent and the Fiscal Agent's counsel, (d) the Initial Funding Lender and the Initial Funding Lender's counsel (e) the Freddie Mac Seller/Servicer and the Freddie Mac Seller/Servicer's counsel, (f) Freddie Mac and Freddie Mac's counsel, and (g) the Borrower's counsel attributable to the funding of the Loans and the Borrower's financial advisor, if any, and (ii) all other fees, costs and expenses directly associated with the Funding Loan and the Project Loan, including, without limitation, printing costs, costs of reproducing documents, filing and recording fees.

"*Costs of Issuance Deposit*" means the deposit to be made by the Borrower with the Fiscal Agent on the Delivery Date, which deposit shall equal [\$ \_\_\_\_] and shall be comprised of sources other than the proceeds of the Project Loan.

"*Default Rate*" means the lower of (i) the Interest Rate otherwise in effect notwithstanding the default, plus four percent (4%) per annum or (ii) the Maximum Interest Rate.

"*Delivery Date*" means March \_\_, 2018, the date of the funding of the Funding Loan and the delivery of the Governmental Note by the Governmental Lender to the Initial Funding Lender.

"*Determination of Taxability*" shall mean, (a) a determination by the Commissioner or any District Director of the Internal Revenue Service, (b) a private ruling or Technical Advice Memorandum issued by the National Office of the Internal Revenue Service in which Governmental Lender and Borrower were afforded the opportunity to participate, (c) a determination by any court of competent jurisdiction, or (d) the enactment of legislation to the effect that interest on the Governmental Note is includable in gross income for federal income tax purposes of the Funding Lender or any former Funding Lender (other than a Funding Lender who is a "substantial user" of the Project or a "related person" to such a "substantial user" (as such terms are defined in Section 147(a) of the Code)); provided, however, that no such Determination of Taxability under clause (a) or (c) shall not be deemed to have occurred if the Governmental

Lender (at the sole expense of the Borrower) or the Borrower is contesting such determination, has elected to contest such determination in good faith and is proceeding with all applicable dispatch to prosecute such contest until the earliest of (i) a final determination from which no appeal may be taken with respect to such determination, (ii) abandonment of such appeal by the Governmental Lender or the Borrower, as the case may be, or (iii) one year from the date of initial determination unless otherwise extended by the Funding Lender.

*"Electronic Notice"* means delivery of notice in a Word format or a Portable Document Format (PDF) by electronic mail to the electronic mail addresses listed in Section 11.04 hereof; provided, that if a sender receives notice that the electronic mail is undeliverable, notice must be sent as otherwise required by Section 11.04 hereof.

*"Equity Investor"* means, collectively, Boston Capital Direct Placement, A Limited Partnership, a Massachusetts limited partnership, its affiliates, successors and/or assigns, the investor member of the Borrower, and BCCC, Inc., a Massachusetts corporation, its affiliates, successors and/or assigns, the special member of the Borrower.

*"Event of Default"* or *"event of default"* means any of those events specified in and defined by the applicable provisions of Article VI hereof to constitute an event of default.

*"Extraordinary Fiscal Agent's Fees and Expenses"* means all those fees, expenses and disbursements earned or incurred by the Fiscal Agent as described under Section 7.06 hereof for Extraordinary Services, as set forth in a detailed invoice to the Borrower, the Servicer and the Funding Lender Representative.

*"Extraordinary Services"* means and includes, but not by way of limitation, services, actions and things carried out and all expenses incurred by the Fiscal Agent, in respect of or to prevent default under this Funding Loan Agreement or the Project Loan Documents, including any reasonable attorneys' or agents' fees and expenses and other litigation costs that are entitled to reimbursement under the terms of the Project Loan Agreement, and other actions taken and carried out by the Fiscal Agent which are not expressly set forth in this Funding Loan Agreement or the Project Loan Documents.

*"Fair Market Value"* means the price at which a willing buyer would purchase the investment from a willing seller in a bona fide, arm's length transaction (determined as of the date the contract to purchase or sell the investment becomes binding) if the investment is traded on an established securities market (within the meaning of Section 1273 of the Code) and, otherwise, the term *"Fair Market Value"* means the acquisition price in a bona fide arm's length transaction (as referenced above) if (a) the investment is a certificate of deposit that is acquired in accordance with applicable regulations under the Code, (b) the investment is an agreement with specifically negotiated withdrawal or reinvestment provisions and a specifically negotiated interest rate (for example, a guaranteed investment contract, a forward supply contract or other investment agreement) that is acquired in accordance with applicable regulations under the Code, (c) the investment is a United States Treasury Security--State and Local Government Series that is acquired in accordance with applicable regulations of the United States Bureau of Public Debt, or (d) any commingled investment fund in which the Governmental Lender and related parties do not



own more than a ten percent (10%) beneficial interest therein if the return paid by the fund is without regard to the source of investment.

*"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 to the effect that such action will not adversely affect the exclusion of interest on the Governmental Note from 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 Governmental Note).

*"Financing Documents"* means, collectively, this Funding Loan Agreement, the Governmental Note, the Tax Regulatory Agreement, the Tax Certificates, the Project Loan Documents and all other documents or instruments evidencing, securing or relating to the Loans.

*"Fiscal Agent"* means BOKF, NA, a national banking association, and its successors hereunder.

*"Forward Commitment Maturity Date"* means March 1, 2020, subject to extension by Freddie Mac as provided in the Construction Phase Financing Agreement.

*"Freddie Mac"* means the Federal Home Loan Mortgage Corporation, a shareholder-owned government-sponsored enterprise organized and existing under the laws of the United States of America, and its successors and assigns.

*"Freddie Mac Commitment"* means the commitment from Freddie Mac to the Freddie Mac Seller/Servicer pursuant to which Freddie Mac has agreed to purchase the Funding Loan following the Conversion Date, subject to the terms and conditions set forth therein, as such commitment may be amended, modified or supplemented from time to time.

*"Freddie Mac Continuing Covenant Agreement"* means the Continuing Covenant Agreement to be delivered on the Conversion Date in the form attached to the Construction Phase Financing Agreement by and between the Borrower and the Freddie Mac Seller/Servicer, as the same may be amended, modified or supplemented from time to time.

*"Freddie Mac Purchase Date"* means the date on which Freddie Mac purchases the Funding Loan from the Freddie Mac Seller/Servicer upon satisfaction of the conditions set forth in the Construction Phase Financing Agreement and the Freddie Mac Commitment.

*"Freddie Mac Seller/Servicer"* means Bellwether Enterprise Real Estate Capital, LLC, as Freddie Mac's seller/servicer under the Freddie Mac Commitment, or any of its successors or assigns under the Freddie Mac Commitment.

*"Funding Lender"* means any Person who is the holder of the Governmental Note.

*"Funding Lender Representative"* means the Funding Lender or any Person designated by the Funding Lender to act on behalf of the Funding Lender as provided in Section 11.05, or an assignee of such Person as provided in Section 11.05. The initial Funding Lender Representative shall be the Initial Funding Lender. The Freddie Mac Seller/Servicer shall become the Funding

Lender Representative upon the occurrence of the Conversion Date, and Freddie Mac shall become the Funding Lender Representative upon the occurrence of the Freddie Mac Purchase Date.

*"Funding Loan"* means the loan in the original principal amount of \$ \_\_\_\_\_ made to the Governmental Lender pursuant to this Funding Loan Agreement by the Initial Funding Lender.

*"Funding Loan Amortization Schedule"* means the Funding Loan Amortization Schedule attached as Schedule 1 to the Governmental Note (as may be replaced as provided in Section 2.01(c)).

*"Gap Loan"* means the loan in the aggregate principal amount of \$ \_\_\_\_\_ to be made by the Initial Funding Lender, as evidenced by the Gap Financing Note dated as of the Delivery Date from the Borrower to the Initial Funding Lender.

*"Government Obligations"* means investments meeting the requirements of clause (a) or (b) of the definition of "Qualified Investments" herein.

*"Governmental Lender"* means Austin Housing Finance Corporation, a housing finance corporation organized and existing under the laws of the State of Texas.

*"Governmental Lender Annual Fee"* means (i) \$ \_\_\_\_\_ on the Note closing date, and (ii) the annual amount payable January 1 of each year beginning January 1, 2019 to the Issuer for its ordinary monitoring fees and expenses under the Indenture in an amount equal to the greatest of (a) .0003 times the amount of Bonds Outstanding on January 1 of each year, (b) \$12 times the number of units in the Project, and (c) \$1,200 per year.

*"Governmental Lender Fee"* means the Governmental Lender's issuance fee to be paid at closing in the amount of 0.50% of the original principal amount of the Governmental Note.

*"Governmental Note"* means the Multifamily Note dated the Delivery Date, executed by the Governmental Lender and authenticated by the Fiscal Agent in favor of the Initial Funding Lender, in the form attached hereto as Exhibit A, as the same may be amended, restated, supplemented or otherwise modified from time to time, or any mortgage note executed in substitution therefor, as such substitute note may be amended, restated, supplemented or otherwise modified from time to time.

*"Guide"* means the Freddie Mac Multifamily Seller/Servicer Guide, as the same may be amended, modified or supplemented from time to time.

*"Initial Debt Service Deposit"* means an amount equal to the sum of (i) the interest payable on the Funding Loan, and (ii) the ongoing fees payable with respect to the Project Loan (as provided in Section 4.02 of the Project Loan Agreement), in each case for the period commencing on the Delivery Date to but not including the first day of the calendar month immediately succeeding the Delivery Date.

*"Initial Funding Lender"* means JPMorgan Chase Bank, N.A., as initial holder of the Governmental Note.

*"Initial Note"* means the initial Governmental Note registered by the Comptroller and subsequently canceled and replaced by a definitive Governmental Note pursuant to this Funding Loan Agreement.

*"Interest Payment Date"* means (i) the fifth day of each calendar month, commencing April 5, 2018, (ii) the date of any prepayment of the Funding Loan, but only with respect to the portion of the Funding Loan subject to prepayment, and (iii) the Maturity Date.

*"Interest Rate"* means, during the Construction Phase, a fixed rate of interest equal to [two and seventy five hundredths percent (2.75%) per annum], and, during the Permanent Phase, a fixed rate of interest equal to [four percent (4.00%) per annum]; provided in any event, during the continuance of any Event of Default hereunder, the Interest Rate shall be the Default Rate.

*"Investment Income"* means the earnings and profits derived from the investment of money pursuant to Section 4.08 hereof.

*"Loan Payment Fund"* means the Loan Payment Fund established by the Fiscal Agent pursuant to Section 4.01 hereof.

*"Loan Prepayment Fund"* means the Loan Prepayment Fund established by the Fiscal Agent pursuant to Section 4.01 hereof.

*"Maturity Date"* means the maturity date of the Funding Loan set forth in Section 2.01(b) hereof.

*"Maximum Interest Rate"* means the rate of interest which results in the maximum amount of interest allowed by applicable law.

*"Moody's"* means Moody's Investors Service, Inc., its successors and assigns, if such successors and assigns continue to perform the services of a securities rating agency.

*"Net Proceeds"* when used with respect to any insurance or condemnation award, means the proceeds from the insurance or condemnation award with respect to which that term is used remaining after payment of all reasonable expenses incurred in the collection of such insurance proceeds or condemnation award, including reasonable attorneys' fees.

*"Nonpurpose Investment"* means any "investment property," within the meaning of Section 148(b) of the Code, that is not a purpose investment acquired to carry out the governmental purpose of the Governmental Note.

*"Notes"* means, together, the Project Note and the Governmental Note.

*"Notice of Conversion"* means a written notice to be delivered not less than ten (10) days prior to the Conversion Date by the Freddie Mac Seller/Servicer to the Governmental Lender, the Fiscal Agent, the Borrower, the Initial Funding Lender and Freddie Mac (i) stating that the Conditions to Conversion have been satisfied on or before the Forward Commitment Maturity Date or, if any Condition to Conversion has not been satisfied on or before the Forward Commitment Maturity Date, stating that such Condition to Conversion has been waived in writing

by Freddie Mac (if a waiver is permitted and is granted by Freddie Mac, in its sole and absolute discretion) on or before the Forward Commitment Maturity Date, (ii) confirming the Conversion Date and (iii) providing for updated amortization schedules for the Project Note and the Governmental Note in the event the Borrower makes a Pre-Conversion Loan Equalization Payment at Conversion.

*"Ordinary Fiscal Agent's Fees and Expenses"* means the annual administration fee for the Fiscal Agent's ordinary fees and expenses in rendering its services under this Funding Loan Agreement during each twelve month period, which fee is equal to \$4,500.00 and shall be payable annually in advance on the Delivery Date and each anniversary thereafter.

*"Permanent Phase"* means the permanent phase of the Project Loan, which time period shall commence on the Conversion Date and remain in effect through the remaining term of the Project Loan.

*"Person"* means an individual, a corporation, a partnership, an association, a joint stock company, a joint venture, a trust, an unincorporated association, a limited liability company or a government or any agency or political subdivision thereof, or any other organization or entity (whether governmental or private).

*"Pledged Security"* shall have the meaning given to that term in Section 2.02 hereof.

*"Pre-Conversion Loan Equalization Payment"* means a prepayment of the Project Loan by the Borrower (and corresponding prepayment of the Funding Loan hereunder) prior to the Forward Commitment Maturity Date in order to equalize the principal amount of the Project Loan and the Funding Loan to the Actual Project Loan Amount.

*"Prepayment Premium"* means any premium payable hereunder in connection with a prepayment of the Funding Loan, which premium shall be in an amount equal to (i) during the Construction Phase, the amount of premium payable by the Borrower under Section 10 of the Project Note, and (ii) during the Permanent Phase, the amount of premium payable by the Borrower under Section 10 of the Project Note, in each case in connection with a prepayment of the Project Loan.

*"Principal Office of the Fiscal Agent"* means the office of the Fiscal Agent referenced in Section 11.04(a) hereof, or such other office or offices as the Fiscal Agent may designate in writing from time to time, or the office of any successor Fiscal Agent where it principally conducts its business of serving as Fiscal Agent under indentures pursuant to which municipal or governmental obligations are issued.

*"Project"* means, collectively, the Borrower's leasehold interest in the land and in the residential rental apartment units, and related fixtures, equipment, furnishings and site improvements to be known as Nightingale at Goodnight Ranch Apartments located in Austin, Texas, including the leasehold interest in the real estate described in the Security Instrument.

*"Project Account"* means the Project Account of the Project Loan Fund established by the Fiscal Agent pursuant to Section 2.11 hereof.

*"Project Loan"* means the loan made by the Governmental Lender to the Borrower pursuant to the Project Loan Agreement in the original principal amount of \$ \_\_\_\_\_, as evidenced by the Project Note.

*"Project Loan Agreement"* means the Project Loan Agreement dated as of the date hereof among the Borrower, the Governmental Lender and the Fiscal Agent, as amended, supplemented or restated from time to time.

*"Project Loan Documents"* means the Security Instrument, the Project Note, the Project Loan Agreement, the Tax Regulatory Agreement, the Assignment, the Continuing Covenant Agreement, any Subordination Agreement(s) and any and all other instruments and other documents evidencing, securing, or otherwise relating to the Project Loan or any portion thereof.

*"Project Loan Fund"* means the Project Loan Fund established by the Fiscal Agent pursuant to Section 2.11 hereof.

*"Project Note"* means the Multifamily Note dated the Delivery Date from the Borrower, including all riders and addenda thereto, evidencing the Borrower's obligation to repay the Project Loan, which Project Note will be delivered to the Governmental Lender and endorsed by the Governmental Lender to the Fiscal Agent as security for the Funding Loan, as the same will be amended and restated into the form attached to the Construction Phase Financing Agreement upon the occurrence of the Conversion Date, as the same may be further amended, restated, supplemented or otherwise modified from time to time, or any note executed in substitution therefor, as such substitute note may be amended, restated, supplemented or otherwise modified from time to time.

*"Qualified Investments"* means any of the following if and to the extent the same are at the time legal for investment of funds of the Governmental Lender: (a) direct and general obligations of the United States of America; (b) obligations of any agency or instrumentality of the United States of America the payment of the principal of and interest on which are unconditionally guaranteed by the full faith and credit of the United States of America; (c) senior debt obligations of Freddie Mac; (d) senior debt obligations of the Federal National Mortgage Association (and known as "Fannie Mae"); (e) demand deposits or time deposits with, or certificates of deposit issued by, the Fiscal Agent or its affiliates or any bank organized under the laws of the United States of America or any state or the District of Columbia which has combined capital, surplus and undivided profits of not less than \$50,000,000; provided that the Fiscal Agent or such other institution has been rated at least "VMIG-1"/"A-1+" by Moody's or S&P which deposits or certificates are fully insured by the Federal Deposit Insurance Corporation or collateralized pursuant to the requirements of the Office of the Comptroller of the Currency; (f) investment agreements with a bank or any insurance company or other financial institution which has a rating assigned by Moody's or S&P to its outstanding long-term unsecured debt which is the highest rating (as defined below) for long-term unsecured debt obligations assigned by Moody's or S&P, and which are approved by the Funding Lender Representative; (g) shares or units in any money market mutual fund rated "Aaa"/"AAA" by Moody's or S&P (or if a new rating scale is implemented, the equivalent rating category given by the Rating Agency for that general category of security) (including the Federated Treasury Obligations Fund, CUSIP No. 58145C836, to the extent rated "AAAm" by S&P, mutual funds of the Fiscal Agent or its affiliates or for which the

Fiscal Agent or an affiliate thereof serves as investment advisor or provides other services to such mutual fund receives reasonable compensation therefor) registered under the Investment Company Act of 1940, as amended, whose investment portfolio consists solely of (A) direct obligations of the government of the United States of America, or (B) tax exempt obligations; (h)(i) tax-exempt obligations rated in the highest short term rating category by Moody's or S&P, or (ii) shares of a tax-exempt municipal money market mutual fund or other collective investment fund registered under the federal Investment Company Act of 1940, whose shares are registered under the federal Securities Act of 1933, having assets of at least \$100,000,000, and having a rating of "Aaa"/"AAA" by Moody's or S&P (or if a new rating scale is implemented, the equivalent rating category given by the Rating Agency for that general category of security), for which at least 95% of the income paid to the holders on interest in such money market fund will be excludable from gross income under Section 103 of the Code, including money market funds for which the Fiscal Agent or its affiliates receive a fee for investment advisory or other services to the fund; or (i) any other investments approved in writing by the Funding Lender Representative. For purposes of this definition, the "highest rating" shall mean a rating of at least "VMIG-1"/"A-1+" for obligations with less than one year maturity; at least "Aaa"/"VMIG-1"/"AAA"/"A-1+" for obligations with a maturity of one year or greater but less than three years; and at least "Aaa"/"AAA" for obligations with a maturity of three years or greater. Qualified Investments must be limited to instruments that have a predetermined fixed-dollar amount of principal due at maturity that cannot vary or change and interest, if tied to an index, shall be tied to a single interest rate index plus a single fixed spread, if any, and move proportionately with such index.

*"Qualified Project Costs"* has the meaning given to such term in the Tax Regulatory Agreement.

*"Rating Agency"* means Moody's or S&P, as applicable, or any successor rating service thereof.

*"Rebate Analyst"* means a certified public accountant, financial analyst or bond counsel, or any firm of the foregoing, or financial institution (which may include the Fiscal Agent) experienced in making the arbitrage and rebate calculations required pursuant to Section 148 of the Code, selected and retained by the Borrower at the expense of the Borrower, with the prior written consent of the Governmental Lender, to make the rebate computations required under this Funding Loan Agreement and the Project Loan Agreement.

*"Rebate Fund"* means the Rebate Fund established by the Fiscal Agent pursuant to Section 4.01 hereof.

*"Rebate Year"* means each one-year period that ends at the close of business on the day in the calendar year that is selected by Borrower as indicated in the Tax Certificate. The first and last Rebate Years may be short periods. If no day is selected by Borrower before the earlier of the Maturity Date or the date that is five years after the Delivery Date, each Rebate Year ends on each anniversary of the Delivery Date and on the Maturity Date or date of earlier payment in full of the Governmental Note.

*“Regulations”* means, with respect to the Code, the relevant U.S. Treasury regulations and proposed, temporary and final regulations thereunder or any relevant successor provision to such regulations and proposed, temporary and final regulations.

*“Requisition”* means, with respect to the Project Loan Fund, the requisition in the form of **Exhibit E** to this Funding Loan Agreement required to be submitted in connection with disbursements from the Project Account and/or the Borrower Equity Account of the Project Loan Fund, and with respect to the Cost of Issuance Fund, the requisition in the form of **Exhibit D** to this Funding Loan Agreement required to be submitted in connection with disbursements from the Cost of Issuance Fund.

*“Resolution”* means the resolution adopted by the Governmental Lender on \_\_\_\_\_, 2018, authorizing the Funding Loan, the Project Loan and the execution and delivery of the Financing Documents to which it is a party.

*“Responsible Officer”* means any officer of the Fiscal Agent employed within or otherwise having regular responsibility in connection with the corporate trust department of the Fiscal Agent and the trusts created hereunder.

*“Revenue Fund”* means the Revenue Fund established by the Fiscal Agent pursuant to Section 4.01 hereof.

*“Revenues”* means (a) all payments made with respect to the Project Loan pursuant to the Project Loan Agreement, the Project Note or the Security Instrument, including but not limited to all casualty or other insurance benefits and condemnation awards paid in connection therewith and all payments obtained through the exercise of remedies under the Financing Documents, and (b) all money and securities held by the Fiscal Agent in the funds and accounts established pursuant to this Funding Loan Agreement (excluding money or securities designated for deposit into and held in the Cost of Issuance Fund, the Administration Fund and the Rebate Fund), together with all investment earnings thereon.

*“Security Instrument”* means the Multifamily Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing dated as of the date hereof, by the Borrower, granting a first priority mortgage and security interest in the Project to the Governmental Lender to secure the repayment of the Project Loan and related obligations, which Security Instrument has been assigned by the Governmental Lender to the Fiscal Agent pursuant to the Assignment as security for the Funding Loan, as the same will be amended and restated into the form attached to the Construction Phase Financing Agreement upon the occurrence of the Conversion Date, as the same may be further amended, supplemented or restated.

*“S&P”* means Standard & Poor’s Ratings Services, a Standard & Poor’s Financial Services LLC business, and its successors and assigns, if such successors and assigns continue to perform the services of a securities rating agency.

*“Servicer”* means any entity appointed by the Funding Lender Representative to service the Loans and any successor in such capacity as appointed by the Funding Lender Representative pursuant to Section 3.02 of the Project Loan Agreement. During the Construction Phase, the

Servicer shall be the Initial Funding Lender. During the Permanent Phase, the Servicer shall be the Freddie Mac Seller/Servicer.

*"State"* means the State of Texas.

*"Subordinate Loans"* shall have the meaning assigned to that term in the Construction Disbursement Agreement.

*"Subordination Agreement"* means any subordination or intercreditor agreement(s) entered into with respect to any subordinate financing related to the Project, as the same may be amended, supplemented or restated.

*"Tax Certificate"* means, together, the Federal Tax Exemption Certificates, each dated the Delivery Date, executed and delivered by the Governmental Lender and the Borrower.

*"Tax Regulatory Agreement"* means the Regulatory Agreement and Land Use Restriction Agreement dated March 1, 2018, by and among the Governmental Lender, the Fiscal Agent and the Borrower.

*"Transferee Representations Letter"* has the meaning set forth in Section 2.08 hereof.

*"Unassigned Rights"* means (a) all of the Governmental Lender's right, title and interest in and to all reimbursement, costs, expenses and indemnification, (b) all rights of the Governmental Lender to receive any rebate amount under Section 2.05 of the Project Loan Agreement, (c) all rights of the Governmental Lender to receive notices, reports and other statements and to make any determination and to grant any approval or consent to anything in this Funding Loan Agreement, the Project Loan Agreement, the Tax Regulatory Agreement and the loan documents requiring the determination, consent or approval of the Governmental Lender (but, as to the loan documents, only to the extent of the Governmental Lender's Reserved Rights, as defined therein), (d) all rights of the Governmental Lender to specifically enforce the representations, warranties, covenants and agreements of the Borrower set forth in the Tax Certificate and in the Tax Regulatory Agreement, (e) any and all rights, remedies and limitations of liability of the Governmental Lender set forth in this Funding Loan Agreement, the Project Loan Agreement, the Tax Regulatory Agreement and the loan documents, as applicable, regarding (1) the negotiability, registration and transfer of the Governmental Note, (2) the loss or destruction of the Governmental Note, (3) the limited liability of the Governmental Lender as provided in the Act, this Funding Loan Agreement, the Project Loan Agreement, the Tax Regulatory Agreement and the loan documents, (4) no liability of the Governmental Lender to third parties, and (5) no warranties of suitability or merchantability by the Governmental Lender, (f) all rights of the Governmental Lender in connection with any amendment to or modification of this Funding Loan Agreement, the Project Loan Agreement, the Tax Regulatory Agreement and the loan documents (but, as to the loan documents, only to the extent of the Governmental Lender's Unassigned Rights, as defined therein), and (g) any and all limitations of the Governmental Lender's liability and the Governmental Lender's disclaimers of warranties set forth in this Funding Loan Agreement, the Tax Regulatory Agreement or the Project Loan Agreement, and the Governmental Lender's right to inspect and audit the books, records and permits of the Borrower.

*"Window Period"* means the three (3) consecutive month period prior to the Maturity Date.



"Yield" of (a) an issue has the meaning set forth in Section 1.148-4 of the Regulations and, generally, is the discount rate that when used in computing the present value of all payments of principal and interest to be paid on the obligation produces an amount equal to the issue price of such issue and (b) any investment has the meaning set forth in Section 1.148-5 of the Regulations and, generally, is the discount rate that when used in computing the present value of all payments of principal and interest to be paid on the investment produces an amount equal to all payments for the investment.

**Section 1.02 Interpretation.** The words "hereof," "herein," "hereunder," and other words of similar import refer to this Funding Loan Agreement as a whole and not to any particular Article, Section or other subdivision. Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders. Words importing the singular number shall include the plural number and vice versa unless the context shall

otherwise indicate. All accounting terms not otherwise defined herein have the meanings assigned to them in accordance with generally accepted accounting principles as in effect from time to time. References to Articles, Sections, and other subdivisions of this Funding Loan Agreement are to the designated Articles, Sections and other subdivisions of this Funding Loan Agreement as originally executed. The headings of this Funding Loan Agreement are for convenience only and shall not define or limit the provisions hereof.

(End of Article I)

## ARTICLE II

### THE FUNDING LOAN

#### Section 2.01 *Terms.*

(a) The Funding Loan shall be originated and funded on the Delivery Date in the original principal amount of \$\_\_\_\_\_ and funded in the amount of \$\_\_\_\_\_ (which amount represents the par amount of the Funding Loan net of the Initial Debt Service Deposit of \$\_\_\_\_\_ and Costs of Issuance of the Funding Lender in the amount of \$\_\_\_\_\_) with such funds provided to the Governmental Lender by the Initial Funding Lender. The proceeds of the Funding Loan shall be deposited and disbursed in accordance with this Funding Loan Agreement. The Funding Loan shall be evidenced by the Governmental Note and shall bear interest and be paid in accordance with the payment terms set forth in the Governmental Note and this Funding Loan Agreement.

(b) The Funding Loan shall bear interest payable on each Interest Payment Date at the Interest Rate and shall mature on \_\_\_\_\_, \_\_\_\_\_, subject to scheduled monthly principal payments as provided in Section 2.01(c) below and optional and mandatory prepayment prior to maturity as provided in Article III hereof. During the Construction Phase, interest on the Funding Loan shall be computed on the basis of a 360-day year consisting of twelve 30-day months. During the Permanent Phase, interest on the Funding Loan shall be computed on the basis of a 360-day year payable for the actual number of days elapsed (including the first day but excluding the last day).

(c) The unpaid principal balance of the Funding Loan shall be paid on the dates and in the amounts set forth on the Funding Loan Amortization Schedule attached as Schedule 1 to the Governmental Note. If the twenty-four (24) month interest only period related to the Project Loan is extended for six (6) months as provided for in the Construction Disbursement Agreement, the Funding Loan Amortization Schedule shall automatically be extended to the first day of the month immediately succeeding the Conversion Date (with the succeeding principal installments remaining consistent with the original schedule but for them occurring on later dates). Additionally, in the event the outstanding amount of the Funding Loan on the Conversion Date is less than the starting principal amount set forth in the initial Funding Loan Amortization Schedule, a new Funding Loan Amortization Schedule will be generated on the Conversion Date at such lesser outstanding principal amount based on the parameters set forth in the Freddie Mac Commitment. In the event the initial Funding Loan Amortization Schedule is modified in accordance with this Section 2.01(c), a replacement Funding Loan Amortization Schedule will be provided by the Freddie Mac Seller/Servicer which will be attached to the Governmental Note on the Conversion Date. All unpaid principal and all accrued and unpaid interest outstanding under the Funding Loan shall be due and payable on the Maturity Date.

(d) Payment of principal of, Prepayment Premium, if any, and interest on the Funding Loan shall be paid by wire transfer in immediately available funds to an account within the United States of America designated by the Funding Lender (unless otherwise directed by the Funding Lender).

(e) Subject to Section 2.12 hereof, on or before the date fixed for payment, money shall be deposited with the Fiscal Agent to pay, and the Fiscal Agent is hereby authorized and directed to apply such money to the payment of, the Funding Loan, together with accrued interest thereon to the date of payment.

(f) In no contingency or event whatsoever shall the aggregate of all amounts deemed interest hereunder and charged or collected pursuant to the terms of this Funding Loan Agreement exceed the highest rate permissible under any law which a court of competent jurisdiction shall, in a final determination, deem applicable hereto. In the event that such court determines the Funding Lender has charged or received interest hereunder in excess of the highest applicable rate, the Funding Lender shall apply, in its sole discretion, and set off such excess interest received by the Funding Lender against other obligations due or to become due under the Financing Documents and such rate shall automatically be reduced to the maximum rate permitted by such law.

**Section 2.02 Pledged Security.** To secure the payment of the principal of, Prepayment Premium, if any, and interest on the Governmental Note according to its tenor and effect, and the performance and observance by the Governmental Lender of all the covenants expressed or implied herein and in the Governmental Note, and the payment and performance of all amounts and obligations by the Borrower under the Continuing Covenant Agreement, the Governmental Lender does hereby grant, bargain, sell, convey, pledge and assign a security interest, unto the Fiscal Agent, and its successors in such capacity and its and their assigns in and to the following (said property being herein referred to as the "**Pledged Security**") for the benefit of the Funding Lender:

(a) All right, title and interest of the Governmental Lender in and to all Revenues;

(b) All right, title and interest of the Governmental Lender in and to the Project Loan Agreement, the Project Note, the Security Instrument and the other Project Loan Documents (other than the Unassigned Rights), including all extensions and renewals of the terms thereof, if any, including, but without limiting the generality of the foregoing, the present and continuing right to receive, receipt for, collect or make claim for any of the money, income, revenues, issues, profits and other amounts payable or receivable thereunder (including all casualty insurance benefits or condemnation awards), whether payable under the above referenced documents or otherwise, to bring actions and proceedings thereunder or for the enforcement thereof, and to do any and all things which the Governmental Lender or any other Person is or may become entitled to do under said documents; and

(c) Except for funds, money or securities in the Cost of Issuance Fund, the Administration Fund and the Rebate Fund, all funds, money and securities and any and all other rights and interests in property whether tangible or intangible from time to time hereafter by delivery or by writing of any kind, conveyed, mortgaged, pledged, assigned or transferred as and for additional security hereunder for the Funding Loan by the Governmental Lender or by anyone on its behalf or with its written consent to the Fiscal Agent, which is hereby authorized to receive any and all such property at any and all times and to hold and apply the same subject to the terms hereof.

The foregoing notwithstanding, if the Governmental Lender or its successors or assigns shall pay or cause to be paid to the Funding Lender in full the principal, interest and Prepayment Premium, if any, to become due with respect to the Governmental Note at the times and in the manner provided in Article IX hereof, and if the Governmental Lender shall keep, perform and observe, or cause to be kept, performed and observed, all of its covenants, warranties and agreements contained herein, then these presents and the estate and rights hereby granted shall, at the option of the Governmental Lender, cease, terminate and be void, and thereupon the Fiscal Agent shall cancel and discharge the lien of this Funding Loan Agreement and execute and deliver to the Governmental Lender such instruments in writing as shall be requisite to satisfy the lien hereof, and, subject to the provisions of Sections 4.11 and 4.12 hereof and Article IX hereof, reconvey to the Governmental Lender the estate hereby conveyed, and assign and deliver to the Governmental Lender any property at the time subject to the lien of this Funding Loan Agreement which may then be in its possession, except for the Rebate Fund and cash held by the Fiscal Agent for the payment of interest on and principal of the Governmental Note; otherwise this Funding Loan Agreement to be and shall remain in full force and effect.

**Section 2.03 Limited Obligations.** (a) THE GOVERNMENTAL NOTE IS A SPECIAL, LIMITED OBLIGATION OF THE GOVERNMENTAL LENDER PAYABLE, AS TO PRINCIPAL, PREMIUM, IF ANY, AND INTEREST SOLELY FROM THE PLEDGED REVENUES AND OTHER FUNDS AND MONEYS AND SECURITY PLEDGED AND ASSIGNED HEREUNDER. THE GOVERNMENTAL NOTE SHALL CONSTITUTE A VALID CLAIM OF THE OWNER OR OWNERS THEREOF AGAINST THE PLEDGED REVENUES AND OTHER FUNDS AND MONEYS AND SECURITY PLEDGED AND ASSIGNED HEREUNDER, WHICH ARE PLEDGED TO SECURE THE PAYMENT OF THE PRINCIPAL OF AND INTEREST ON THE GOVERNMENTAL NOTE, AND WHICH SHALL BE USED FOR NO OTHER PURPOSE EXCEPT AS EXPRESSLY AUTHORIZED IN THIS FUNDING LOAN AGREEMENT. THE GOVERNMENTAL NOTE SHALL NOT BE A DEBT OR INDEBTEDNESS OF THE STATE OR ANY POLITICAL SUBDIVISION THEREOF, AND NEITHER THE STATE NOR ANY POLITICAL SUBDIVISION THEREOF SHALL BE LIABLE THEREON, NOR IN ANY EVENT SHALL THE GOVERNMENTAL NOTE BE PAYABLE OUT OF ANY FUNDS OR PROPERTIES OTHER THAN THOSE OF THE GOVERNMENTAL LENDER PLEDGED UNDER THIS FUNDING LOAN AGREEMENT. THE GOVERNMENTAL NOTE SHALL NOT CONSTITUTE AN INDEBTEDNESS OR A MULTIPLE FISCAL-YEAR FINANCIAL OBLIGATION WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY DEBT LIMITATION OR RESTRICTION. NEITHER THE STATE NOR ANY POLITICAL SUBDIVISION THEREOF (EXCEPT THE GOVERNMENTAL LENDER FROM THE SOURCES IDENTIFIED HEREIN) SHALL BE LIABLE FOR PAYMENT OF THE GOVERNMENTAL NOTE NOR IN ANY EVENT SHALL PRINCIPAL OF, PREMIUM, IF ANY, AND INTEREST ON THE GOVERNMENTAL NOTE BE PAYABLE OUT OF ANY FUNDS OR ASSETS OTHER THAN THOSE PLEDGED TO THAT PURPOSE BY THE GOVERNMENTAL LENDER HEREIN. THE GOVERNMENTAL LENDER HAS NO TAXING POWER.

(b) The Borrower hereby acknowledges that the Governmental Lender's sole source of money to repay the Funding Loan will be provided by the Revenues, together with investment income on certain funds and accounts held by the Fiscal Agent under the Project Loan Agreement, and hereby agrees that if the payments to be made hereunder shall ever prove insufficient to pay

all principal (or prepayment premium) and interest on the Funding Loan as the same shall become due (whether by maturity, prepayment, acceleration or otherwise), then upon notice from the Fiscal Agent, subject to the limitations in Section 4.06 of the Project Loan Agreement, the Borrower shall pay such amounts as are required from time to time to prevent any deficiency or default in the payment of such principal (or prepayment premium) or interest, including, but not limited to, any deficiency caused by acts, omissions, nonfeasance or malfeasance on the part of the Fiscal Agent, the Borrower, the Governmental Lender or any third party, subject to any right of reimbursement from the Fiscal Agent, the Governmental Lender or any such third party, as the case may be, therefor.

**Section 2.04 Funding Loan Agreement Constitutes Contract.** In consideration of the origination and funding of the Funding Loan by the Initial Funding Lender, the provisions of this Funding Loan Agreement shall be part of the contract of the Governmental Lender with the Initial Funding Lender and any successors or assigns thereof in such capacity from time to time.

**Section 2.05 Form and Execution.**

(a) The Governmental Note shall be in substantially the form attached as Exhibit A, with such appropriate insertions, omissions, substitutions and other variations as are required or permitted by this Funding Loan Agreement. Except for the Initial Note which shall be numbered I 1, the Governmental Note shall be numbered consecutively from R 1 upwards.

The Initial Note, registered by the Comptroller, shall be identical to the form of Governmental Note attached as Exhibit A, except that the following paragraph shall be added as the second-to-last paragraph of the Initial Note and read as follows:

“THIS GOVERNMENTAL NOTE SHALL NOT BE VALID OR BECOME OBLIGATORY for any purpose or be entitled to any benefit or security under the Funding Loan Agreement unless the Comptroller’s Registration Certificate hereon has been executed by an authorized representative of the Texas Comptroller of Public Accounts.”

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

**“REGISTRATION CERTIFICATE  
OF COMPTROLLER OF PUBLIC ACCOUNTS**

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

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

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

\_\_\_\_\_  
Texas Comptroller of Public Accounts

(SEAL)”

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

(b) Each Governmental Note (including the Initial Note) shall be executed on behalf of the Governmental Lender by the manual or facsimile signature of an Authorized Officer of the Governmental Lender, and attested by the manual or facsimile signature of an Authorized Officer of the Governmental Lender, sealed with an impression or a facsimile of the seal of the Governmental Lender. Any facsimile signatures shall have the same force and effect as if said officers had manually signed the Governmental Note. Any reproduction of the official seal of the Governmental Lender on the Governmental Note shall have the same force and effect as if the official seal of the Governmental Lender had been impressed on the Governmental Note.

**Section 2.06 Authentication.** The Governmental Note shall not be valid or obligatory for any purpose or entitled to any security or benefit under this Funding Loan Agreement unless a certificate of authentication on the Governmental Note, substantially in the form set forth in **Exhibit A**, shall have been duly executed by an Authorized Officer of the Fiscal Agent; and such executed certificate of authentication upon the Governmental Note shall be conclusive evidence that the Governmental Note has been duly executed, registered, authenticated and delivered under this Funding Loan Agreement.

Except for the Initial Note, no Governmental Note shall be secured by, or be entitled to any lien, right or benefit under, this Funding Loan Agreement or be valid or obligatory for any purpose, unless there appears on such Governmental Note a certificate of authentication substantially in the form provided for herein, executed by the Fiscal Agent by manual signature, and such certificate upon the definitive Governmental Note shall be conclusive evidence, and the only evidence, that such definitive Governmental Note has been duly authenticated and delivered hereunder.

**Section 2.07 Mutilated, Lost, Stolen or Destroyed Governmental Note.** In the event the Governmental Note is mutilated, lost, stolen or destroyed, the Governmental Lender shall execute and the Fiscal Agent shall authenticate a new Governmental Note substantially in the form set forth in **Exhibit A** in exchange and substitution for and upon cancellation of the mutilated Governmental Note or in lieu of and in substitution for such lost, stolen or destroyed Governmental Note, upon payment by the Funding Lender of any applicable tax or governmental charge and the reasonable expenses and charges of the Governmental Lender and the Fiscal Agent in connection therewith, and in the case where the Governmental Note is lost, stolen or destroyed, the filing with the Fiscal Agent of evidence satisfactory to it that the Governmental Note was lost, stolen or destroyed, and of the ownership thereof, and furnishing the Governmental Lender and the Fiscal Agent with indemnity satisfactory to each of them. In the event where the Governmental Note

shall have matured, instead of delivering a new Governmental Note the Governmental Lender may pay the same without surrender thereof.

**Section 2.08 Registration; Transfer of Funding Loan; Transferee Representations Letter.**

(a) The Governmental Note shall be fully registered as to principal and interest in the manner and with any additional designation as the Fiscal Agent deems necessary for the purpose of identifying the registered owner thereof. The Governmental Note shall be transferable only on the registration books of the Fiscal Agent. The Fiscal Agent shall maintain books or other records showing the name and date of registration, address and employer identification number of the registered owner of the Governmental Note and any transfers of the Governmental Note as provided herein. The Governmental Note shall initially be registered to the Initial Funding Lender, upon the Conversion Date shall be registered to the Freddie Mac Seller/Servicer, and upon the Freddie Mac Purchase Date, shall be registered to Freddie Mac.

(b) The Fiscal Agent, on behalf of the Governmental Lender, shall provide for the registration of the Governmental Note and the registration of transfers thereof pursuant to Chapter 1203 of the Texas Government Code. In that regard, the Fiscal Agent shall maintain a register, which shall contain a record of every Governmental Note at any time authenticated hereunder, together with the name and address of the holder thereof, the date of authentication, the date of transfer or payment, and such other matters as may be deemed appropriate by the Fiscal Agent or the Governmental Lender. The Governmental Lender, the Fiscal Agent and any agent of the Governmental Lender or the Fiscal Agent may treat the person in whose name the Governmental Note is registered as the owner of the Governmental Note for the purpose of receiving payment of the Governmental Note and for all other purposes whatsoever whether or not the Governmental Note payments are overdue, and, to the extent permitted by law, neither the Governmental Lender, the Fiscal Agent nor any such agent shall be affected by notice to the contrary. The Funding Loan shall initially be registered to the Initial Funding Lender, and upon the Freddie Mac Purchase Date, shall be registered to Freddie Mac.

(c) The Funding Lender shall have the right to sell, assign or otherwise transfer in whole its interest in the Funding Loan or to grant a participation interest in the Funding Loan in a percentage of not less than twenty-five percent (25%) of the outstanding principal amount of the Funding Loan; provided that the Funding Loan may be transferred, or any participation interest therein granted, only to an institutional "accredited investor" (as defined in Rule 501(a)(1), (2), (3), (4), (7) or (8) of Regulation D promulgated under the Securities Act, but excluding entities described in Rule 501(a)(8) that admit equity owners described in Rule 501(a)(5) or Rule 501(a)(6)) (an "Accredited Investor") or a "qualified institutional buyer" as that term is defined under Rule 144A of the Securities Act (such "Accredited Investor" or "qualified institutional buyer" a "Qualified Transferee") that delivers, in each case, a letter to the Fiscal Agent substantially in the form attached hereto as **Exhibit C** setting forth certain representations with respect to such Qualified Transferee (the "Transferee Representations Letter"). Notwithstanding the preceding sentence, no Transferee Representations Letter shall be required for the Funding Lender Representative to (i) transfer the Funding Loan to any affiliate or other party related to the Funding Lender that is a Qualified Transferee or (ii) sell or transfer the Funding Loan to a special purpose entity, a trust or a custodial or similar pooling arrangement from which the Funding Loan

or securitized interests therein are not expected to be sold or transferred except to (x) owners or beneficial owners thereof that are Qualified Transferees or (y) in circumstances where secondary market credit enhancement is provided for such securitized interests resulting in a rating thereof of at least "A" or better. In connection with any sale, assignment or transfer of the Funding Loan, the Funding Lender shall give notice of such sale, assignment or transfer to the Fiscal Agent and the Fiscal Agent shall record such sale, assignment or transfer on its books or other records maintained for the registration of transfer of the Governmental Note.

**Section 2.09 [Reserved].**

**Section 2.10 *Funding Loan Closing Conditions; Delivery of Governmental Note.***

Closing of the Funding Loan on the Delivery Date shall be conditioned upon, and the Governmental Lender shall only execute and deliver to the Fiscal Agent, and the Fiscal Agent shall only authenticate the Governmental Note and deliver the Governmental Note to the Initial Funding Lender upon, satisfaction of the following conditions, in the sole discretion of Governmental Lender or the Initial Funding Lender, as applicable:

(a) receipt by the Fiscal Agent, the Initial Funding Lender and the Governmental Lender of executed counterparts of this Funding Loan Agreement, the Project Loan Agreement, the Tax Regulatory Agreement and the Tax Certificate;

(b) receipt by the Fiscal Agent, the Initial Funding Lender and the Governmental Lender of an opinion of Bond Counsel (or reliance letter) to the effect that the Governmental Lender is duly organized and existing under the laws of the State and has duly authorized, executed and delivered this Funding Loan Agreement, the Governmental Note and the other Financing Documents to which it is a party, and such documents are valid and binding special, limited obligations of the Governmental Lender enforceable in accordance with their terms subject to customary exceptions;

(c) the Initial Note registered by the Comptroller and an Opinion of the Attorney General of the State of Texas approving the Governmental Note;

(d) receipt by the Fiscal Agent of the proceeds of the Funding Loan from the original funding thereof by the Initial Funding Lender;

(e) the executed Project Note and an endorsement of the Project Note by the Governmental Lender in favor of the Fiscal Agent;

(f) receipt by the Fiscal Agent of a copy of the executed Security Instrument, the Assignment, the Construction Phase Financing Agreement and the Construction Disbursement Agreement;

(g) receipt by the Fiscal Agent, the Initial Funding Lender and the Governmental Lender of an opinion of counsel to the Borrower subject to customary qualifications and exceptions to the effect that the Borrower is duly organized and validly existing and in good standing under the laws of the state in which it has been organized and in good standing under the laws of each other state in which the Borrower transacts business and has full power and authority to enter into the Financing Documents to which it is a party, that its execution and delivery of and performance



of its covenants in such documents do not contravene law or any provision of any other documents to which it is a party or by which it or such property is bound or affected, and that all such agreements have been duly authorized, executed and delivered by the Borrower, and are legal, valid and binding obligations of the Borrower enforceable against the Borrower in accordance with their respective terms;

(h) receipt by the Fiscal Agent, the Initial Funding Lender and the Governmental Lender a customary approving opinion of Bond Counsel, including but not limited to an opinion to the effect that under existing law, the interest payable on the Governmental Note is excludable from gross income for federal income tax purposes (except with respect to interest on any portion of the Governmental Note during any period while such portion is held by a "substantial user" of the Development or a "related person" to such a "substantial user" within the meaning of Section 147(a) of the Code);

(i) receipt by the Fiscal Agent and the Initial Funding Lender of a certified copy of the Resolution;

(j) receipt by the Fiscal Agent of the written request and authorization to the Fiscal Agent by the Governmental Lender to authenticate and deliver the Governmental Note to the Initial Funding Lender upon funding to the Fiscal Agent of the full amount of the Funding Loan;

(k) receipt by the Fiscal Agent of the amounts specified in Section 2.11 of this Funding Loan Agreement and Section 3.03 of the Project Loan Agreement; and

(l) receipt by the Fiscal Agent and the Governmental Lender of a Transferee Representations Letter from the Initial Funding Lender substantially in the form attached hereto as Exhibit C.

**Section 2.11 Establishment of Project Loan Fund; Application of Funding Loan Proceeds and Other Money.**

(a) The Fiscal Agent shall establish at the Initial Funding Lender, maintain and hold in trust and there is hereby established with the Fiscal Agent a Project Loan Fund and therein a Project Account and a Borrower Equity Account. The Borrower Equity Account shall be comprised of the following subaccounts: (i) the LIHTC Subaccount, (ii) the Gap Loan Subaccount, and (iii) the Net Operating Income Subaccount. No amount shall be charged against the Project Loan Fund except as expressly provided in this Section 2.11 and Section 4.02 hereof.

(b) The proceeds of the Funding Loan in the amount of \$ \_\_\_\_\_ (which amount represents the par amount of the Funding Loan net of the Initial Debt Service Deposit of \$ \_\_\_\_\_ and Costs of Issuance of the Funding Lender in the amount of \$ \_\_\_\_\_) shall be delivered by the Initial Funding Lender to the Fiscal Agent on behalf of the Governmental Lender on the Delivery Date. The Fiscal Agent shall deposit such proceeds to the credit of the Project Account of the Project Loan Fund. Amounts in the Project Loan Fund shall be disbursed as provided in subparagraph (d) below, subject to the conditions set forth in Section 3.01 of the Project Loan Agreement. Upon the disbursement of all amounts in the Project Loan Fund, the Fiscal Agent shall close the Project Loan Fund.

(c) The Governmental Lender shall cause the Borrower to deliver from sources other than the Loans, to the Fiscal Agent, on the Delivery Date, (i) the Costs of Issuance Deposit for deposit to the credit of the Cost of Issuance Fund, (ii) the initial deposit of tax credit equity in the amount of \$\_\_\_\_\_ for deposit in the LIHTC Subaccount of the Borrower Equity Account, (iii) the initial deposit of Gap Loan proceeds in the amount of \$\_\_\_\_\_ for deposit in the Gap Loan Subaccount of the Borrower Equity Account, (iv) the initial deposit of net operating income in the amount of \$\_\_\_\_\_ for deposit in the Net Operating Income Subaccount of the Borrower Equity Account, and (v) to the Servicer the Initial Debt Service Deposit. The Fiscal Agent shall also deposit following the Delivery Date (i) in the LIHTC Subaccount of the Borrower Equity Account tax credit equity received from the Borrower, (ii) in the Gap Loan Subaccount of the Borrower Equity Account proceeds of the Gap Loan received from the Initial Funding Lender, and (iii) in the Net Operating Income Subaccount of the Borrower Equity Account net operating income received from the Borrower.

(d) Upon the making of the initial deposits described above in this Section 2.11, the Governmental Lender shall originate the Project Loan pursuant to the Project Loan Agreement and the Fiscal Agent shall make disbursements of amounts in the Project Loan Fund to the Borrower or otherwise as provided in Section 4.02 hereof.

**Section 2.12 *Direct Loan Payments to Funding Lender; Servicer Disbursement of Fees.***

(a) CONSTRUCTION PHASE LENDER WILL PAY INTEREST: Notwithstanding any provision in this Funding Loan Agreement to the contrary, during any period that a Servicer is engaged with respect to the Loans, the Governmental Lender and the Fiscal Agent agree that all payments of principal of, Prepayment Premium, if any, and interest on the Funding Loan and all fees due hereunder and under the Project Loan Agreement shall be paid by the Borrower to the Servicer; provided, however, the Fiscal Agent shall be responsible for making the debt service and fee payments (net of interest on the Funding Loan, which will be paid directly by the Initial Funding Lender) out of the Project Loan Fund as and to the extent required under Section 4.02 hereof during the Construction Phase. The Servicer shall remit all payments collected from the Borrower of principal of, Prepayment Premium, if any, and interest on the Funding Loan, together with other amounts due to the Funding Lender, directly to the Funding Lender (without payment through and with notice to the Fiscal Agent) per the instructions of the Funding Lender Representative. The Servicer shall be entitled to retain its Servicing Fee (if any) collected from the Borrower and shall remit the Governmental Lender Annual Fee to the Governmental Lender and shall remit the Ordinary Fiscal Agent's Fees and Expenses to the Fiscal Agent, together with any other amounts due to the Governmental Lender and the Fiscal Agent collected by the Servicer from the Borrower, in each case in accordance with their respective instructions. Any payment made in accordance with the provisions of this Section shall be accompanied by sufficient information to identify the source and proper application of such payment. The Servicer shall promptly notify the Fiscal Agent, the Funding Lender Representative and the Governmental Lender in writing of any failure of the Borrower to make any payment of principal of, Prepayment Premium, if any, and interest on the Funding Loan when due or to pay any fees due hereunder or under the Project Loan Agreement, and the Fiscal Agent and the Governmental Lender shall not be deemed to have any notice of such failure unless it has received such notice in writing.

(b) If the Governmental Note is sold or transferred as provided in Section 2.08, the Funding Lender Representative shall notify the Fiscal Agent and the Borrower in writing of the name and address of the transferee.

(c) So long as payments of principal of, Prepayment Premium, if any, and interest on the Governmental Note and all fees due hereunder and under the Project Loan Agreement are being made to the Servicer in accordance with this Section 2.12 and no Event of Default has occurred of which the Fiscal Agent has been given, or been deemed to have, notice thereof pursuant to this Funding Loan Agreement, the Fiscal Agent shall have no obligations to collect loan payments with respect to the Funding Loan, nor shall it be obligated to collect loan payments or fee payments pursuant to the Project Loan Agreement, except at the express written direction of the Funding Lender Representative; provided, however, the Fiscal Agent shall be responsible for making the debt service and fee payments out of the Project Loan Fund as required under Section 4.02 hereof during the Construction Phase. Notwithstanding the foregoing, the Funding Lender Representative may elect to have the Fiscal Agent collect and remit loan payments and fee payments hereunder and under the Project Loan Agreement upon written notice of such election to the Fiscal Agent, the Borrower and the Governmental Lender.

**Section 2.13 Conversion.** If the Notice of Conversion is issued in the timeframe required under the Construction Phase Financing Agreement, Conversion will occur on the Conversion Date indicated in such Notice of Conversion. If the Notice of Conversion is not so issued, Conversion will not occur, and neither the Freddie Mac Seller/Servicer nor Freddie Mac will have any obligations with respect to the purchase of the Funding Loan or otherwise with respect to the Loans or the Project.

(End of Article II)

## ARTICLE III

### REDEMPTION OF THE FUNDING LOAN

#### Section 3.01 *Redemption of the Funding Loan Prior to Maturity.*

(a) **Optional Prepayment.** The Funding Loan, together with accrued interest thereon, is subject to optional prepayment in whole upon optional prepayment of the Project Loan in accordance with the notice and other prepayment provisions set forth in the Project Note.

(b) **Mandatory Prepayment.** The Funding Loan, together with accrued interest thereon, and together with Prepayment Premium (to the extent payable under the Project Note), is subject to mandatory prepayment on any Business Day, in whole or in part as indicated below, at the earliest practicable date upon the occurrence of any of the following:

(i) in whole or in part, upon the occurrence of a mandatory prepayment of the Project Loan pursuant to the terms of the Project Note and receipt by the Fiscal Agent of a written direction by the Funding Lender Representative that the Funding Loan shall be subject to mandatory prepayment as a result thereof;

(ii) in part, on the Interest Payment Date next following the completion of the construction of the Project, to the extent amounts remaining in the Project Account are transferred to the Loan Prepayment Fund pursuant to Section 4.02(e) hereof;

(iii) in part, in the event the Borrower makes a Pre-Conversion Loan Equalization Payment, or elects to otherwise make a payment to satisfy the Conditions to Conversion to pay the Project Loan down to the Permanent Loan Commitment Amount; or

(iv) in whole, on or after the Forward Commitment Maturity Date, at the written direction of the Initial Funding Lender, if the Notice of Conversion is not issued by the Freddie Mac Seller/Servicer prior to the Forward Commitment Maturity Date.

Notwithstanding anything to the contrary in this Funding Loan Agreement, any prepayment of the Funding Loan in whole or part shall constitute a prepayment of the Governmental Note to the extent of prepayment.

**Section 3.02 *Notice of Prepayment.*** Notice of the intended prepayment of the Funding Loan shall be given by the Fiscal Agent by first class mail, postage prepaid, or by Electronic Notice or by overnight delivery service, to the Funding Lender. All such prepayment notices shall be given not less than ten (10) days (not less than thirty (30) days in the case of optional prepayment) nor more than sixty (60) days prior to the date fixed for prepayment. Notices of prepayment shall state (i) the prepayment date, (ii) the prepayment amount, and (iii) the place or places where amounts due upon such prepayment will be payable.

Notice of such prepayment shall also be sent by first class mail, postage prepaid, or by Electronic Notice or by overnight delivery service, to the Servicer, not later than the time of mailing of notices required by the first paragraph above, and in any event no later than

simultaneously with the mailing of notices required by the first paragraph above; provided, that neither failure to receive such notice nor any defect in any notice so mailed shall affect the sufficiency of the proceedings for the prepayment of the Funding Loan.

Notwithstanding the foregoing, in the event the Fiscal Agent is not collecting and remitting loan payments hereunder, the Fiscal Agent shall have no obligation to send prepayment notices pursuant to this Section 3.02. In such event, the Servicer will provide notice of any prepayments to the Fiscal Agent, other than scheduled prepayments pursuant to the Project Note.

(End of Article III)

## ARTICLE IV

### REVENUES AND FUNDS

**Section 4.01 *Pledge of Revenues and Assets; Establishment of Funds.*** The pledge and assignment of and the security interest granted in the Pledged Security pursuant to Section 2.02 hereof shall attach, be perfected and be valid and binding from and after the time of the closing of the Funding Loan and delivery of the Governmental Note by the Fiscal Agent or by any Person authorized by the Fiscal Agent to deliver the Governmental Note. The Pledged Security so pledged and then or thereafter received by the Fiscal Agent shall immediately be subject to the lien of such pledge and security interest without any physical delivery thereof or further act, and the lien of such pledge and security interest shall be valid and binding and prior to the claims of any and all parties having claims of any kind in tort, contract or otherwise against the Governmental Lender irrespective of whether such parties have notice thereof.

In addition to the Project Loan Fund established pursuant to Section 2.11 hereof, the Fiscal Agent shall establish at the Initial Funding Lender, maintain and hold in trust the following funds and accounts, each of which is hereby established and each of which shall be disbursed and applied only as herein authorized:

- (a) Revenue Fund;
- (b) Loan Payment Fund;
- (c) Loan Prepayment Fund;
- (d) Administration Fund;
- (e) Cost of Issuance Fund; and
- (f) Rebate Fund.

The funds and accounts established pursuant to Section 2.11 and this Section 4.01 shall be maintained in the corporate trust department of the Fiscal Agent as segregated trust accounts, separate and identifiable from all other funds held and/or administered by the Fiscal Agent. The Fiscal Agent shall, at the written direction of an Authorized Officer of the Governmental Lender, and may, in its discretion, establish such additional accounts within any Fund, and subaccounts within any of the accounts, as the Governmental Lender or the Fiscal Agent may deem necessary or useful for the purpose of identifying more precisely the sources of payments into and disbursements from that Fund and its accounts, or for the purpose of complying with the requirements of the Code relating to arbitrage, but the establishment of any such account or subaccount shall not alter or modify any of the requirements of this Funding Loan Agreement with respect to a deposit or use of money in the funds established hereunder, or result in commingling of funds not permitted hereunder.

#### **Section 4.02 *Project Loan Fund.***

(a) Deposit. The Fiscal Agent shall deposit the proceeds of the Funding Loan into the Project Account of the Project Loan Fund as provided in Section 2.11(b) hereof. The Fiscal Agent shall deposit the amounts set forth in Section 2.11(c) hereof into the applicable subaccounts of the Borrower Equity Account of the Project Loan Fund, as well as any additional amounts delivered from time to time to the Fiscal Agent and directed by the Borrower or Servicer to be deposited therein (excluding any proceeds of the Governmental Note), as provided in Section 2.11(c) hereof.

(b) Disbursements. Amounts on deposit in the Project Loan Fund shall be disbursed from time to time by the Fiscal Agent for the purpose of paying Costs of the Project. In addition, amounts in the Project Loan Fund shall be transferred to the Loan Prepayment Fund, the Rebate Fund and the Borrower at the times and in the manner provided in subsection (e) of this Section 4.02.

(c) Transfers and Requisitions. The Fiscal Agent shall make disbursements from the respective accounts of the Project Loan Fund for purposes described in subsection (b) of this Section 4.02 only upon the receipt of Requisitions signed by an Authorized Officer of the Borrower and countersigned by an Authorized Officer of the Servicer (signifying the consent to the Requisition by the Servicer, which shall be countersigned subject to and in accordance with the terms and conditions of the Construction Disbursement Agreement), and solely with respect to disbursements from the Gap Loan Subaccount of the Borrower Equity Account, countersigned by the Initial Funding Lender. The Fiscal Agent shall have no right or duty to determine whether any requested disbursement from the Project Loan Fund complies with the terms, conditions and provisions of the Construction Disbursement Agreement or the Freddie Mac Continuing Covenant Agreement. The countersignature of the Authorized Officer of the Servicer on a Requisition shall be deemed a certification and, insofar as the Fiscal Agent and the Governmental Lender are concerned, constitute conclusive evidence, that all of the terms, conditions and requirements of the Construction Disbursement Agreement applicable to such disbursement have been fully satisfied or waived. The Fiscal Agent shall, immediately upon each receipt of a completed Requisition signed by an Authorized Officer of the Borrower and countersigned by an Authorized Officer of the Servicer (and countersigned by the Initial Funding Lender with respect to a disbursement from the Gap Loan Subaccount of the Borrower Equity Account), initiate procedures with the provider of a Qualified Investment to make withdrawals as necessary to fund the Requisition.

Notwithstanding anything to the contrary contained herein, no signature of an Authorized Officer of the Borrower shall be required during any period in which an Event of Default has occurred and is then continuing under the Loans or any Financing Document (notice of which default has been given in writing by the Funding Lender Representative or the Servicer to the Fiscal Agent and the Governmental Lender, and the Fiscal Agent shall be entitled to conclusively rely on any such written notice as to the occurrence and continuation of such a default).

(d) If a Requisition signed by an Authorized Officer of the Borrower and countersigned by an Authorized Officer of the Servicer (and countersigned by the Initial Funding Lender with respect to a disbursement from the Gap Loan Subaccount of the Borrower Equity Account) or (as permitted hereunder) solely by an Authorized Officer of the Servicer, is received by the Fiscal Agent, the requested disbursement shall be paid by the Fiscal Agent as soon as practicable, but in no event later than three (3) Business Days following receipt thereof by the Fiscal Agent. Upon

final disbursement of all amounts on deposit in the Project Loan Fund, including all interest accrued therein, the Fiscal Agent shall close the Project Loan Fund.

(e) Immediately prior to any mandatory prepayment of the Funding Loan pursuant to Section 3.01(b)(i) hereof, any amount then remaining in the Project Loan Fund shall, at the written direction of the Funding Lender Representative, be transferred to the Loan Prepayment Fund to pay amounts due on the Funding Loan, if any. In addition, any amount remaining in the Project Account of the Project Loan Fund following completion of the construction of the Project in accordance with the Construction Disbursement Agreement, evidenced by an instrument signed by the Funding Lender Representative or the Servicer, shall be transferred to the Loan Prepayment Fund and used to prepay the Funding Loan in accordance with Section 3.01(b)(ii) hereof, unless the Fiscal Agent receives an opinion of Bond Counsel (which shall also be addressed to the Funding Lender Representative) to the effect that a use of such money for other than prepayment of the Funding Loan will not adversely affect the tax exempt status of the Governmental Note; provided, that any amounts in the Project Account of the Project Loan Fund in excess of the amount needed to fund the related prepayment of the Funding Loan shall be transferred to the Rebate Fund. In the event there are funds remaining in the Borrower Equity Account following completion of the construction of the Project in accordance with the Construction Disbursement Agreement and the Conversion Date has occurred, and provided no default by the Borrower exists under this Funding Loan Agreement or any Project Loan Document, such funds shall be promptly paid by the Fiscal Agent to the Borrower at the written direction of the Funding Lender Representative or the Servicer.

(f) Amounts on deposit in the Project Loan Fund shall be invested as provided in Section 4.08 hereof. All Investment Income on amounts on deposit in the Project Loan Fund shall be retained in and credited to and become a part of the amounts on deposit in the Project Loan Fund, and shall constitute part of any transfers required by subsection (b) or (e) of this Section 4.02.

#### **Section 4.03 *Application of Revenues.***

(a) All Revenues received by the Fiscal Agent shall be deposited by the Fiscal Agent, promptly upon receipt thereof, to the Revenue Fund, except (i) the proceeds of the Funding Loan received by the Fiscal Agent on the Delivery Date, which shall be applied in accordance with the provisions of Section 2.11 hereof; (ii) as otherwise specifically provided in subsection (c) of this Section 4.03 with respect to certain deposits into the Loan Prepayment Fund; (iii) with respect to Investment Income to the extent required under the terms hereof to be retained in the funds and accounts to which they are attributable; and (iv) with respect to amounts required to be transferred between funds and accounts as provided in this Article IV.

(b) Subject to Section 2.12 hereof, on each Interest Payment Date or any other date on which payment of principal of or interest on the Funding Loan becomes due and payable, the Fiscal Agent, out of money in the Revenue Fund, shall credit the following amounts to the following funds, but in the order and within the limitations hereinafter indicated with respect thereto, as follows:



**FIRST:** to the Loan Payment Fund, an amount equal to the principal of and interest due on the Funding Loan on such date (including scheduled principal pursuant to the Funding Loan Amortization Schedule); and

**SECOND:** to the Loan Prepayment Fund, an amount equal to the principal and interest due on the Funding Loan on such date with respect to a mandatory prepayment of all or a portion of the Funding Loan pursuant to Section 3.01(b) hereof (other any extraordinary mandatory prepayment as described in Section 4.03(c)(i) or (iii) below).

(c) Promptly upon receipt, the Fiscal Agent shall deposit directly to the Loan Prepayment Fund (i) Net Casualty Proceeds representing casualty insurance proceeds or condemnation awards paid as a prepayment of the Project Loan, such amount to be applied to provide for the extraordinary mandatory prepayment of all or a portion of the Funding Loan pursuant to Section 3.01(b)(i) hereof; (ii) funds paid to the Fiscal Agent to be applied to the optional prepayment of all or a portion of the Funding Loan pursuant to Section 3.01(a); and (iii) amounts transferred to the Loan Prepayment Fund from the Project Loan Fund pursuant to Section 4.02(e) hereof.

(d) Subject to Section 2.12 hereof, should the amount in the Loan Payment Fund be insufficient to pay the amount due on the Funding Loan on any given Interest Payment Date, the Fiscal Agent shall credit to the Loan Payment Fund the amount of such deficiency by charging the following funds and accounts in the following order of priority: (1) the Revenue Fund; and (2) the Loan Prepayment Fund, except no such charge to the Loan Prepayment Fund shall be made from money to be used to effect a prepayment for which notice of prepayment has been provided for hereunder.

**Section 4.04 Application of Loan Payment Fund.** Subject to Section 2.12 hereof, the Fiscal Agent shall charge the Loan Payment Fund, on each Interest Payment Date, an amount equal to the unpaid interest and principal due on the Funding Loan on such Interest Payment Date as provided in Section 4.03(a) and (b), and shall cause the same to be applied to the payment of such interest and principal when due. Any money remaining in the Loan Payment Fund on any Interest Payment Date after application as provided in the preceding sentence may, to the extent there shall exist any deficiency in the Loan Prepayment Fund to prepay the Funding Loan if called for prepayment on such Interest Payment Date, be transferred to the Loan Prepayment Fund to be applied for such purpose.

Any Investment Income on amounts on deposit in the Loan Payment Fund shall be deposited by the Fiscal Agent upon receipt thereof in the Revenue Fund.

No amount shall be charged against the Loan Payment Fund except as expressly provided in this Article IV and in Section 6.05 hereof.

**Section 4.05 Application of Loan Prepayment Fund.** Any money credited to the Loan Prepayment Fund shall be applied as set forth in Sections 4.03(b) and 4.03(c) hereof; provided, however, that to the extent any money credited to the Loan Prepayment Fund is in excess of the amount necessary to effect the prepayments described in Sections 4.03(b) and 4.03(c) hereof it shall be applied to make up any deficiency in the Loan Payment Fund on any Interest Payment

Date, to the extent money then available in accordance with Section 4.03(d) hereof in the Revenue Fund is insufficient to make up such deficiency; provided that no money to be used to effect a prepayment for which a conditional notice of prepayment, the conditions of which have been satisfied, or an unconditional notice of prepayment has been provided shall be so transferred to the Loan Payment Fund.

On or before each Interest Payment Date, any Investment Income on amounts on deposit in the Loan Prepayment Fund shall be credited by the Fiscal Agent to the Revenue Fund.

No amount shall be charged against the Loan Prepayment Fund except as expressly provided in this Article IV and in Section 6.05 hereof.

**Section 4.06 Administration Fund.** Subject to Section 2.12 hereof, the Fiscal Agent shall deposit into the Administration Fund, promptly upon receipt thereof, all amounts received from the Servicer (or the Borrower if no Servicer exists for the Loans) designated for deposit into such fund. Amounts in the Administration Fund shall be withdrawn or maintained, as appropriate, by the Fiscal Agent and used **FIRST**, to pay to the Fiscal Agent when due the Ordinary Fiscal Agent's Fees and Expenses and to pay to the Governmental Lender when due the Governmental Lender Annual Fee; **SECOND**, to pay when due the reasonable fees and expenses of a Rebate Analyst in connection with the computations relating to arbitrage rebate required under this Funding Loan Agreement and the Project Loan Agreement, upon receipt of an invoice from the Rebate Analyst; **THIRD**, to pay to the Fiscal Agent any Extraordinary Fiscal Agent's Fees and Expenses due and payable from time to time, as set forth in an invoice submitted to the Borrower and the Servicer; **FOURTH**, to pay to the Governmental Lender any extraordinary expenses it may incur in connection with the Loans or this Funding Loan Agreement from time to time, as set forth in an invoice submitted to the Fiscal Agent and the Servicer; **FIFTH**, to pay to the Funding Lender Representative any unpaid amounts due under the Continuing Covenant Agreement, as certified in writing by the Funding Lender Representative to the Fiscal Agent; **SIXTH**, to make up any deficiency in the Loan Prepayment Fund on any prepayment date of the Funding Loan, to the extent money then available in accordance with Section 4.03(d) hereof in the Loan Prepayment Fund is insufficient to prepay the Funding Loan scheduled for prepayment on such prepayment date; and **SEVENTH**, to transfer any remaining balance after application as aforesaid to the Revenue Fund.

In the event that the amounts on deposit in the Administration Fund are not equal to the amounts payable from the Administration Fund as provided in the preceding paragraph on any date on which such amounts are due and payable, the Fiscal Agent shall give notice to the Borrower and the Servicer of such deficiency and of the amount of such deficiency and request payment within two (2) Business Days to the Fiscal Agent of the amount of such deficiency. Upon payment by the Borrower or the Servicer of such deficiency, the amounts for which such deficiency was requested shall be paid by the Fiscal Agent.

On or before each Interest Payment Date, any Investment Income on amounts on deposit in the Administration Fund not needed to pay the foregoing amounts shall be credited by the Fiscal Agent to the Revenue Fund.

No amount shall be charged against the Administration Fund except as expressly provided in this Article IV and Section 6.05 hereof.

**Section 4.07 [Reserved].**

**Section 4.08 *Investment of Funds.*** The money held by the Fiscal Agent shall constitute trust funds for the purposes hereof. Any money attributable to each of the funds and accounts hereunder shall be, except as otherwise expressly provided herein, invested by the Fiscal Agent, at the written direction of the Borrower (or, in the case of the Rebate Fund, as provided in Section 5.07(b)), in Qualified Investments which mature or shall be subject to prepayment or withdrawal at par without penalty on or prior to the earlier of (i) six months from the date of investment and (ii) the date such money is needed; provided, that if the Fiscal Agent shall have entered into any investment agreement requiring investment of money in any fund or account hereunder in accordance with such investment agreement and if such investment agreement constitutes a Qualified Investment, such money shall be invested in accordance with such requirements. In the absence of written direction from the Borrower, the Fiscal Agent shall invest amounts on deposit in the funds and accounts established under this Funding Loan Agreement in investments of the type described in clause (g) of the definition of Qualified Investments. The Fiscal Agent will have no duty or obligation to determine if a Qualified Investment is permitted by applicable law. Such investments may be made through the investment or securities department of the Fiscal Agent. The Fiscal Agent is authorized to implement its cash investment system to assure cash on hand is invested. The Fiscal Agent may purchase from or sell to itself or an affiliate, as principal or agent, securities herein authorized. The Fiscal Agent shall be entitled to assume, absent receipt by the Fiscal Agent of written notice to the contrary, that any investment which at the time of purchase is a Qualified Investment remains a Qualified Investment thereafter.

Qualified Investments representing an investment of money attributable to any fund or account shall be deemed at all times to be a part of said fund or account, and, except as otherwise may be provided expressly in other Sections hereof, the interest thereon and any profit arising on the sale thereof shall be credited to the Revenue Fund, and any loss resulting on the sale thereof shall be charged against the Revenue Fund. Such investments shall be sold at the best price obtainable (at least par) whenever it shall be necessary so to do in order to provide money to make any transfer, withdrawal, payment or disbursement from said fund or account. In the case of any required transfer of money to another such fund or account, such investments may be transferred to that fund or account in lieu of the required money if permitted hereby as an investment of money in that fund or account. The Fiscal Agent shall not be liable or responsible for any loss resulting from any investment made in accordance herewith.

The Governmental Lender acknowledges that to the extent that regulations of the Comptroller of the Currency or other applicable regulatory agency grant the Governmental Lender the right to receive brokerage confirmations of the security transactions as they occur, to the extent permitted by law, the Governmental Lender specifically waives compliance with 12 C.F.R. 12 and hereby notifies the Fiscal Agent hereunder, that no brokerage confirmations need be sent relating to the security transactions as they occur.

In computing for any purpose hereunder the amount in any fund or account on any date, obligations so purchased shall be valued at Fair Market Value.

**Section 4.09 *[Reserved]*.**

**Section 4.10 *Accounting Records.*** The Fiscal Agent shall maintain accurate books and records for all funds and accounts established hereunder.

**Section 4.11 *Amounts Remaining in Funds.*** After full payment of the Funding Loan (or provision for payment thereof having been made in accordance with Section 9.01 hereof) and full payment of the fees, charges and expenses of the Governmental Lender, the Fiscal Agent, the Rebate Analyst, the Funding Lender and the Servicer and other amounts required to be paid hereunder or under any Project Loan Document, including, but not limited to, the Continuing Covenant Agreement (as certified in writing to the Fiscal Agent by the Governmental Lender with respect to amounts due to the Governmental Lender and by the Funding Lender Representative or the Servicer on its behalf with respect to amounts owed under the Continuing Covenant Agreement and by the Rebate Analyst with respect to amounts due to the Rebate Analyst), any amounts remaining in any fund or account hereunder other than the Rebate Fund shall be paid to the Borrower.

**Section 4.12 *Rebate Fund; Compliance with Tax Certificate.***

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

(b) The Fiscal Agent shall deposit or transfer to the credit of the account of the Rebate Fund each amount delivered to the Fiscal Agent by the Borrower for deposit thereto and each amount directed by the Borrower to be transferred thereto. The Fiscal Agent shall credit all earnings and debit all losses from the investment of money held for the account of the Rebate Fund to such fund. The Fiscal Agent shall furnish to the Borrower all information reasonably requested by the Borrower with respect to the Notes and investment of funds and accounts maintained by the Fiscal Agent hereunder.

(c) (i) Within 30 days after each Computation Date, the Fiscal Agent, on behalf of the Governmental Lender, shall withdraw from the Rebate Fund and pay to the United States of America the appropriate portion of the Rebate Amount (determined by the Rebate Analyst on behalf of the Borrower) in the installments, to the place and in the manner required by section 148(f) of the Code, the Regulations, and rulings thereunder as instructed by the Borrower or its legal counsel and as provided in subsection (iii) below. The Fiscal Agent shall have no obligation to pay any amounts required to be rebated pursuant to this Section other than from moneys held in the Funds created under this Funding Loan Agreement or from other moneys provided to it by the Borrower.

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

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

(d) The Fiscal Agent shall preserve all statements, forms, and explanations received from the Borrower or the Governmental Lender pursuant to this Section and all records of transactions in the Rebate Fund until six years after the discharge of the Notes.

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

(f) If at any time during the term of this Funding Loan Agreement the Borrower or the Governmental Lender desires to take any action which would otherwise be prohibited by the terms of this Section, such person shall be permitted to take such action if it shall first obtain and provide at the expense of the Borrower to the other persons named herein an opinion of Tax Counsel to the effect that such action shall not adversely affect the exclusion of interest on the Governmental Note from gross income of the owners of the Governmental Note for Federal income tax purposes and shall be in compliance with the laws of the State of Texas.

(g) Notwithstanding any provision of the Note documents or Funding Loan Documents, the Fiscal Agent shall not be liable or responsible for any method of calculation, or any calculation or determination which may be required in connection with or for the purpose of complying with Section 148 of the Code or any successor statute or any regulation, ruling, or other judicial or administrative interpretation thereof, including, without limitation, the calculation of amounts required to be paid the United States of America or the determination of the maximum amount which may be invested in Nonpurpose Investments having a higher yield than the yield on the Governmental Note, in connection with any such investments. The method of calculation, calculation and determination required by section 148 of the Code shall be accomplished by a Rebate Analyst engaged by the Borrower. The Fiscal Agent shall not be liable or responsible for the negligence or misconduct of the Rebate Analyst. The Fiscal Agent shall not be liable or responsible for monitoring the compliance by the Borrower or the Governmental Lender of any of

the requirements of Section 148 of the Code or any applicable regulation, ruling, or other judicial or administrative interpretation thereof (except for the administrative functions described in this Section and in this Funding Loan Agreement), it being acknowledged and agreed that the sole obligation of the Fiscal Agent in this regard shall be (i) to invest the moneys received by the Fiscal Agent pursuant to the written instructions of the Borrower in the specific investments identified by the Borrower or, in the absence of such identification, to make investments as otherwise provided herein and to disburse said moneys in accordance with the terms of this Funding Loan Agreement and (ii) to follow instructions contained in this Section and in this Funding Loan Agreement. The Fiscal Agent shall not be liable for the Governmental Note becoming "arbitrage bonds" within the meaning of the Code, as a result of investments it makes in compliance with the instructions it receives or pursuant to or in compliance with the terms of this Funding Loan Agreement.

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

**Section 4.13 Cost of Issuance Fund.** The Fiscal Agent shall use money on deposit to the credit of the Cost of Issuance Fund to pay the Costs of Issuance on the Delivery Date or as soon as practicable thereafter in accordance with a Requisition in the form of **Exhibit D** to be given to the Fiscal Agent by the Borrower on the Delivery Date, along with appropriate invoices for such expenses. Amounts in the Cost of Issuance Fund funded with proceeds of the Funding Loan, if any, shall be expended prior to the application of the Costs of Issuance Deposit. Investment Income on amounts on deposit in the Cost of Issuance Fund shall be retained in such fund. Amounts remaining on deposit in the Cost of Issuance Fund six (6) months after the Delivery Date shall (i) if such amounts derive from proceeds of the Funding Loan, be transferred to the Project Account of the Project Loan Fund and (ii) if such amounts derive from any other source, be transferred to the Borrower. Upon such final disbursement, the Fiscal Agent shall close the Cost of Issuance Fund.

**Section 4.14 Reports From the Fiscal Agent.** The Fiscal Agent shall, on or before the fifteenth (15th) day of each month, file with the Funding Lender Representative, the Servicer, the Governmental Lender (at its written request) and the Borrower a statement setting forth in respect of the preceding calendar month:

- (i) the amount withdrawn or transferred by it, and the amount deposited within or on account of each fund and account held by it under the provisions of this Funding Loan Agreement, including the amount of investment income on each fund and account;
- (ii) the amount on deposit with it at the end of such month to the credit of each fund and account;
- (iii) (iii) a brief description of all obligations held by it as an investment of money in each such fund and account; and
- (iv) any other information which the Funding Lender Representative or the Governmental Lender may reasonably request and to which the Fiscal Agent has access in the ordinary course of its operations.

Upon the written request of the Funding Lender, the Fiscal Agent, at the cost of the Borrower, shall provide a copy of such statement to Funding Lender. All records and files pertaining to the Pledged Security shall be open at all reasonable times to the inspection of the Governmental Lender and the Funding Lender Representative or the Servicer and their agents and representatives upon reasonable prior notice during normal business hours.

(End of Article IV)

## ARTICLE V

### GENERAL COVENANTS AND REPRESENTATIONS

**Section 5.01 *Payment of Principal and Interest.*** The Governmental Lender covenants that it will promptly pay or cause to be paid, but only from the sources identified herein, sufficient amounts to provide for the payment of the principal of, Prepayment Premium, if any, and interest on the Funding Loan at the place, on the dates and in the manner provided herein and in the Governmental Note, according to the true intent and meaning thereof.

**Section 5.02 *Performance of Covenants.*** The Governmental Lender covenants that it will faithfully perform at all times any and all of its covenants, undertakings, stipulations and provisions contained in this Funding Loan Agreement, in the Governmental Note and in all proceedings pertaining thereto.

**Section 5.03 *Instruments of Further Assurance.*** The Governmental Lender covenants that it will do, execute, acknowledge and deliver or cause to be done, executed, acknowledged and delivered, such supplements hereto, and such further acts, instruments and transfers as may be reasonably required for the better assuring, transferring, conveying, pledging, assigning and confirming unto the Fiscal Agent all and singular its interest in the property herein described and the revenues, receipts and other amounts pledged hereby to the payment of the principal of, Prepayment Premium, if any, and interest on the Funding Loan. Any and all interest in property hereafter acquired which is of any kind or nature herein provided to be and become subject to the lien hereof shall and without any further conveyance, assignment or act on the part of the Governmental Lender or the Fiscal Agent, become and be subject to the lien of this Funding Loan Agreement as fully and completely as though specifically described herein, but nothing in this sentence contained shall be deemed to modify or change the obligations of the Governmental Lender under this Section 5.03. The Governmental Lender covenants and agrees that, except as herein otherwise expressly provided, it has not and will not sell, convey, mortgage, encumber or otherwise dispose of any part of its interest in the Pledged Security or the revenues or receipts therefrom.

The Governmental Lender will promptly notify the Fiscal Agent, the Funding Lender Representative and the Servicer in writing of the occurrence of any of the following:

- (i) the submission of any claim or the initiation of any legal process, litigation or administrative or judicial investigation against the Governmental Lender with respect to the Loans;

(ii) any change in the location of the Governmental Lender's principal office or any change in the location of the Governmental Lender's books and records relating to the transactions contemplated hereby;

(iii) the occurrence of any default or Event of Default of which the Governmental Lender has actual knowledge;

(iv) the commencement of any proceedings or any proceedings instituted by or against the Governmental Lender in any federal, state or local court or before any governmental body or agency, or before any arbitration board, relating to the Notes; or

(v) the commencement of any proceedings by or against the Governmental Lender under any applicable bankruptcy, reorganization, liquidation, rehabilitation, insolvency or other similar law now or hereafter in effect or of any proceeding in which a receiver, liquidator, conservator, trustee or similar official shall have been, or may be, appointed or requested for the Governmental Lender or any of its assets relating to the Loans.

**Section 5.04 *Inspection of Project Books.*** The Governmental Lender covenants and agrees that all books and documents in its possession relating to the Project shall, upon reasonable prior notice, during normal business hours, be open to inspection and copying by such accountants or other agents as the Fiscal Agent or the Funding Lender Representative may from time to time reasonably designate.

**Section 5.05 *No Modification of Security; Additional Indebtedness.*** The Governmental Lender covenants to and for the benefit of the Funding Lender that it will not, without the prior written consent of the Funding Lender Representative, take any of the following actions:

(i) alter, modify or cancel, or agree to consent to alter, modify or cancel any agreement to which the Governmental Lender is a party, or which has been assigned to the Governmental Lender, and which relates to or affects the security for the Loans or the payment of any amount owed under the Financing Documents; or

(ii) create or suffer to be created any lien upon the Pledged Security or any part thereof other than the lien created hereby and by the Security Instrument, and by liens securing any of the Subordinate Loans (to the extent made subordinate to the lien of the Security Instrument).

**Section 5.06 *Damage, Destruction or Condemnation.*** Net Proceeds resulting from casualty to or condemnation of the Project shall be applied as provided in the Continuing Covenant Agreement and, to the extent consistent therewith, Section 3.01(b)(i) hereof.

**Section 5.07 *Tax Covenants.***

(a) ***Governmental Lender's Covenants.*** The Governmental Lender covenants to and for the benefit of the Funding Lender that it will:



(i) neither make or use nor cause to be made or used any investment or other use of the proceeds of the Funding Loan or the money and investments held in the funds and accounts in any manner which would cause the Governmental Note to be an "arbitrage bond" under Section 148 of the Code and the Regulations issued under Section 148 of the Code or which would otherwise cause the interest payable on the Governmental Note to be includable in gross income for federal income tax purposes;

(ii) enforce or cause to be enforced all obligations of the Borrower under the Tax Regulatory Agreement in accordance with its terms and seek to cause the Borrower to correct any violation of the Tax Regulatory Agreement within a reasonable period after it first discovers or becomes aware of any such violation;

(iii) not take or cause to be taken any other action or actions, or fail to take any action or actions, if the same would cause the interest payable on the Governmental Note to be includable in gross income for federal income tax purposes;

(iv) at all times do and perform all acts and things permitted by law and necessary or desirable in order to assure that interest paid by the Governmental Lender on the Funding Loan will be excluded from the gross income for federal income tax purposes, of the Funding Lender pursuant to the Code, except in the event where the Funding Lender is a "substantial user" of the facilities financed with the Loans or a "related person" within the meaning of the Code; and

(v) not take any action or permit or suffer any action to be taken if the result of the same would be to cause the Governmental Note to be "federally guaranteed" within the meaning of Section 149(b) of the Code and the Regulations.

In furtherance of the covenants in this Section 5.07, the Governmental Lender and the Borrower shall execute, deliver and comply with the provisions of the Tax Certificate, which is by this reference incorporated into this Funding Loan Agreement and made a part of this Funding Loan Agreement as if set forth in this Funding Loan Agreement in full, and by its acceptance of this Funding Loan Agreement the Fiscal Agent acknowledges receipt of the Tax Certificate and acknowledges its incorporation into this Funding Loan Agreement by this reference and agrees to comply with the terms specifically applicable to it.

(b) *Fiscal Agent's Covenants.* The Fiscal Agent agrees that it will invest funds held under this Funding Loan Agreement, as directed by the Borrower, in accordance with the covenants and terms of this Funding Loan Agreement and the Tax Certificate (this covenant shall extend through the term of the Funding Loan, to all funds and accounts created under this Funding Loan Agreement and all money on deposit to the credit of any such fund or account). The Fiscal Agent covenants to and for the benefit of the Funding Lender that, notwithstanding any other provisions of this Funding Loan Agreement or of any other Financing Document, it will not knowingly make or cause to be made any investment or other use of the money in the funds or accounts created hereunder which would cause the Governmental Note to be classified as an "arbitrage bond" within the meaning of Sections 103(b) and 148 of the Code or would cause the interest on the Governmental Note to be includable in gross income for federal income tax purposes; provided that, absent negligence or intentional misconduct the Fiscal Agent shall be

deemed to have complied with such requirements and shall have no liability to the extent it follows the written directions of the Borrower, the Governmental Lender, the Funding Lender Representative, Bond Counsel or the Rebate Analyst. This covenant shall extend, throughout the term of the Funding Loan, to all funds created under this Funding Loan Agreement and all money on deposit to the credit of any such fund. Pursuant to this covenant, with respect to the investments of the funds and accounts under this Funding Loan Agreement, the Fiscal Agent obligates itself to comply throughout the term of the Funding Loan with the requirements of Sections 103(b) and 148 of the Code; provided that the Fiscal Agent shall be deemed to have complied with such requirements and shall have no liability, absent negligence or intentional misconduct to the extent it follows the written directions of the Borrower, the Governmental Lender, Bond Counsel or the Rebate Analyst. The Fiscal Agent further covenants that should the Governmental Lender or the Borrower file with the Fiscal Agent (it being understood that neither the Governmental Lender nor the Borrower has an obligation to so file), or should the Fiscal Agent receive, an opinion of Bond Counsel to the effect that any proposed investment or other use of proceeds of the Funding Loan would cause the Governmental Note to become an "arbitrage bond," then the Fiscal Agent will comply with any written instructions of the Governmental Lender, the Borrower, the Funding Lender Representative or Bond Counsel regarding such investment (which shall, in any event, be a Qualified Investment) or use so as to prevent the Governmental Note from becoming an "arbitrage bond," and the Fiscal Agent will bear no liability to the Governmental Lender, the Borrower, the Funding Lender or the Funding Lender Representative for investments made in accordance with such instructions.

**Section 5.08 *Representations and Warranties of the Governmental Lender.*** The Governmental Lender hereby represents and warrants as follows:

(a) The Governmental Lender is a nonprofit corporation duly organized, validly existing and in good standing under the laws of the State.

(b) The Governmental Lender has all necessary power and authority to issue the Governmental Note and to execute and deliver this Funding Loan Agreement, the Project Loan Agreement and the other Financing Documents to which it is a party, and to perform its duties and discharge its obligations hereunder and thereunder.

(c) The revenues and assets pledged for the repayment of the Funding Loan are and will be free and clear of any pledge, lien or encumbrance prior to, or equal with, the pledge created by this Funding Loan Agreement, and all action on the part of the Governmental Lender to that end has been duly and validly taken.

(d) The Financing Documents to which the Governmental Lender is a party have been validly authorized, executed and delivered by the Governmental Lender, and assuming due authorization, execution and delivery by the other parties thereto, constitute valid and binding obligations of the Governmental Lender, enforceable against the Governmental Lender in accordance with their respective terms, except as enforceability may be limited by bankruptcy, insolvency, moratorium or other laws affecting creditors' rights generally and the application of equitable principles.

**Section 5.09      *Program Investment.*** The proceeds of the Note are to be used to finance the Project. With respect to the Note:

(a) At least 95 percent of all obligations acquired with the proceeds of the Note, by amount of cost outstanding, will be evidences of loans to a substantial number of persons representing the general public, loans to exempt persons, or loans to provide housing and related facilities, or any combination of the foregoing.

(b) At least 95 percent of all amounts received by the Governmental Lender with respect to the Note will be used for one or more of the following purposes: to make loans to provide housing, to pay the principal or interest or otherwise to service the debt on the Note; to reimburse the Governmental Lender or to pay for administrative costs of issuing such obligations; or to redeem or retire such Note of the Governmental Lender at the next earliest possible date of redemption.

(c) Any person or any related party, as defined in section 1.150-1 of the Treasury Regulations, as amended, from whom the Governmental Lender may acquire obligations, shall not, pursuant to an arrangement, formal or informal, purchase the Governmental Lender's Note in an amount related to the amount of the obligations to be acquired from such person by the Governmental Lender.

(d) The Governmental Lender does not waive the right to treat the Loan Agreement as a program investment

(End of Article V)

## ARTICLE VI

### DEFAULT PROVISIONS AND REMEDIES OF FISCAL AGENT AND FUNDING LENDER

**Section 6.01 *Events of Default.*** Each of the following shall be an event of default with respect to the Funding Loan (an "Event of Default") under this Funding Loan Agreement:

(a) failure to pay the principal of, Prepayment Premium, if any, or interest on the Funding Loan when due, whether on an Interest Payment Date, at the stated maturity thereof, by proceedings for prepayment thereof, by acceleration or otherwise; or

(b) failure to observe the covenants set forth in Section 5.05 hereof; or

(c) failure to observe or perform any of the covenants, agreements or conditions on the part of the Governmental Lender (other than those set forth in Sections 5.01 and 5.05 hereof) set forth in this Funding Loan Agreement or in the Governmental Note and the continuance thereof for a period of thirty (30) days (or such longer period, if any, as is specified herein for particular defaults) after written notice thereof to the Governmental Lender from the Fiscal Agent or the Funding Lender Representative specifying such default and requiring the same to be remedied; provided that if such default cannot be cured within such thirty (30) day period through the exercise of diligence and the Governmental Lender commences the required cure within such thirty (30) day period and continues the cure with diligence and the Governmental Lender reasonably anticipates that the default could be cured within sixty (60) days, the Governmental Lender shall have sixty (60) days following receipt of such notice to effect the cure; or

(d) receipt by the Fiscal Agent of written notice from the Funding Lender Representative of the occurrence of an "Event of Default" under the Project Loan Agreement or the Continuing Covenant Agreement.

The Fiscal Agent will promptly notify the Governmental Lender, the Servicer and the Funding Lender Representative after a Responsible Officer obtains written knowledge of the occurrence of an Event of Default.

### **Section 6.02 *Acceleration; Other Remedies Upon Event of Default.***

Upon the occurrence of an Event of Default, the Fiscal Agent shall, upon the written request of the Funding Lender Representative, by notice in writing delivered to the Governmental Lender, declare the principal of the Funding Loan, as evidenced by the Governmental Note, and the interest accrued thereon immediately due and payable, and interest shall continue to accrue thereon until such amounts are paid.

At any time after the Funding Loan shall have been so declared due and payable, and before any judgment or decree for the payment of the money due shall have been obtained or entered, the Fiscal Agent may, but only if directed in writing by the Funding Lender Representative, by written notice to the Governmental Lender and the Fiscal Agent, rescind and annul such declaration and its consequences if the Governmental Lender or the Borrower shall pay to or deposit with the Fiscal Agent a sum sufficient to pay all principal on the Funding Loan then due (other than solely

by reason of such declaration) and all unpaid installments of interest (if any) on the Funding Loan then due, with interest at the rate borne by the Governmental Note on such overdue principal and (to the extent legally enforceable) on such overdue installments of interest, and the reasonable fees and expenses of the Fiscal Agent (including its counsel) shall have been made good or cured or adequate provision shall have been made therefor, and all outstanding amounts then due and unpaid under the Financing Documents (collectively, the "Cure Amount") shall have been paid in full, and all other defaults hereunder shall have been made good or cured or waived in writing by the Funding Lender Representative; but no such rescission and annulment shall extend to or shall affect any subsequent default, nor shall it impair or exhaust any right or power consequent thereon.

Upon the occurrence and during the continuance of an Event of Default, the Fiscal Agent in its own name and as trustee of an express trust, on behalf and for the benefit and protection of the Funding Lender, may also proceed to protect and enforce any rights of the Fiscal Agent and, to the full extent that the Funding Lender itself might do, the rights of the Funding Lender under the laws of the State or under this Funding Loan Agreement by such of the following remedies as the Fiscal Agent shall deem most effectual to protect and enforce such rights; provided that, the Fiscal Agent may undertake any such remedy only upon the receipt of the prior written consent of the Funding Lender Representative (which consent may be given in the sole discretion of the Funding Lender Representative):

- (i) by mandamus or other suit, action or proceeding at law or in equity, to enforce the payment of the principal of, Prepayment Premium, if any, or interest on the Funding Loan and to require the Governmental Lender to carry out any covenants or agreements with or for the benefit of the Funding Lender and to perform its duties under the Act, this Funding Loan Agreement, the Project Loan Agreement or the Tax Regulatory Agreement (as applicable) to the extent permitted under the applicable provisions thereof;
- (ii) by pursuing any available remedies under the Project Loan Agreement, the Tax Regulatory Agreement or any other Financing Document;
- (iii) by realizing or causing to be realized through sale or otherwise upon the security pledged hereunder; and
- (iv) by action or suit in equity enjoin any acts or things that may be unlawful or in violation of the rights of the Funding Lender and execute any other papers and documents and do and perform any and all such acts and things as may be necessary or advisable in the opinion of the Fiscal Agent in order to have the claim of the Funding Lender against the Governmental Lender allowed in any bankruptcy or other proceeding.

No remedy by the terms of this Funding Loan Agreement conferred upon or reserved to the Fiscal Agent or to the Funding Lender is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative and shall be in addition to any other remedy given to the Fiscal Agent or the Funding Lender hereunder or under the Project Loan Agreement, the Tax Regulatory Agreement, the Continuing Covenant Agreement or any other Financing Document, as applicable, or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any Event of Default shall impair any such right or power or shall be construed to be a waiver of any such Event of Default or

acquiescence therein, and every such right and power may be exercised from time to time and as often as may be deemed expedient. No waiver of any Event of Default hereunder, whether by the Fiscal Agent or the Funding Lender, shall extend to or shall affect any subsequent default or event of default or shall impair any rights or remedies consequent thereto.

Upon the occurrence and during the continuance of an Event of Default under Section 6.01(c) hereof, the Borrower and the Equity Investor shall have the same rights to notice and cure as those conferred upon the Governmental Lender pursuant to Section 6.01(c) and this Section 6.02.

**Section 6.03 *Funding Lender Representative Control of Proceedings.*** If an Event of Default has occurred and is continuing, notwithstanding anything to the contrary herein, the Funding Lender Representative shall have the sole and exclusive right at any time to direct the time, method and place of conducting all proceedings to be taken in connection with the enforcement of the terms and conditions of this Funding Loan Agreement, or for the appointment of a receiver or any other proceedings hereunder, in accordance with the provisions of law and of this Funding Loan Agreement. In addition, the Funding Lender Representative shall have the sole and exclusive right at any time to directly enforce all rights and remedies hereunder and under the other Financing Documents with or without the involvement of the Fiscal Agent or the Governmental Lender (and in connection therewith the Fiscal Agent shall transfer or assign to the Funding Lender Representative all of its interest in the Pledged Security at the request of the Funding Lender Representative). In no event shall the exercise of any of the foregoing rights result in an acceleration of the Funding Loan without the express direction of the Funding Lender Representative.

**Section 6.04 *Waiver by Governmental Lender.*** Upon the occurrence of an Event of Default, to the extent that such right may then lawfully be waived, neither the Governmental Lender nor anyone claiming through or under it shall set up, claim or seek to take advantage of any appraisal, valuation, stay, extension or prepayment laws now or hereinafter in force, in order to prevent or hinder the enforcement of this Funding Loan Agreement; and the Governmental Lender, for itself and all who may claim through or under it, hereby waives, to the extent that it lawfully may do so, the benefit of all such laws and all right of appraisement and prepayment to which it may be entitled under the laws of the State and the United States of America.

**Section 6.05 *Application of Money After Default.*** All money collected by the Fiscal Agent at any time pursuant to this Article shall, except to the extent, if any, otherwise directed by a court of competent jurisdiction, be credited by the Fiscal Agent to the Revenue Fund. Such money so credited to the Revenue Fund and all other money from time to time credited to the Revenue Fund shall at all times be held, transferred, withdrawn and applied as prescribed by the provisions of Article IV hereof and this Section 6.05.

In the event that at any time the money credited to the Revenue Fund, the Loan Payment Fund and the Loan Prepayment Fund available for the payment of interest or principal then due with respect to the Governmental Note shall be insufficient for such payment, such money shall be applied as follows and in the following order of priority:

(a) For payment of all amounts due to the Fiscal Agent incurred in performance of its duties under this Funding Loan Agreement, including, without limitation, the payment of all reasonable fees and expenses of the Fiscal Agent incurred in exercising any remedies under this Funding Loan Agreement.

(b) To the extent directed in writing by the Funding Lender Representative, to the reimbursement of any unreimbursed advances made by or on behalf of the Funding Lender pursuant to the Continuing Covenant Agreement or the Security Instrument.

(c) Unless the full principal amount of the Funding Loan shall have become or have been declared due and payable:

**FIRST:** to the Funding Lender, all installments of interest then due on the Funding Loan in the order of the maturity of such installments; and

**SECOND:** to the Funding Lender, unpaid principal of and Prepayment Premium, if any, on the Funding Loan which shall have become due, whether at maturity or by call for prepayment, in the order in which they became due and payable.

(d) If the full principal amount of the Governmental Note shall have become or have been declared due and payable, to the Funding Lender for the payment of the principal of, Prepayment Premium, if any, and interest then due and unpaid on the Funding Loan without preference or priority of principal over interest or of interest over principal, or of any installment of interest over any other installment of interest.

**Section 6.06 Remedies Not Exclusive.** No right or remedy conferred upon or reserved to the Fiscal Agent, the Funding Lender or the Funding Lender Representative by the terms of this Funding Loan Agreement is intended to be exclusive of any other right or remedy, but each and every such remedy shall be cumulative and shall be in addition to every other right or remedy given to the Fiscal Agent, the Funding Lender or the Funding Lender Representative under this Funding Loan Agreement or existing at law or in equity or by statute (including the Act).

**Section 6.07 Fiscal Agent May Enforce Rights Without Governmental Note.** All rights of action and claims, including the right to file proof of claims, under this Funding Loan Agreement may be prosecuted and enforced by the Fiscal Agent at the written direction of the Funding Lender Representative without the possession of the Governmental Note or the production thereof in any trial or other proceedings relating thereto. Subject to the rights of the Funding Lender Representative to direct proceedings hereunder, any such suit or proceeding instituted by the Fiscal Agent shall be brought in its name as Fiscal Agent without the necessity of joining as plaintiffs or defendants any Funding Lender, and any recovery or judgment shall be for the benefit as provided herein of the Funding Lender.

**Section 6.08 [RESERVED].**

**Section 6.09 Termination of Proceedings.** In case the Fiscal Agent (at the direction of the Funding Lender Representative) or the Funding Lender Representative shall have proceeded to enforce any right under this Funding Loan Agreement by the appointment of a receiver, by entry or otherwise, and such proceedings shall have been discontinued or abandoned for any reason, or

shall have been determined adversely, then and in every such case the Governmental Lender, the Fiscal Agent, the Funding Lender Representative, the Borrower and the Funding Lender shall be restored to their former positions and rights hereunder with respect to the Pledged Security herein conveyed, and all rights, remedies and powers of the Fiscal Agent and the Funding Lender Representative shall continue as if no such proceedings had been taken.

**Section 6.10 *Waivers of Events of Default.*** The Fiscal Agent shall waive any Event of Default hereunder and its consequences and rescind any declaration of maturity of principal of and interest on the Funding Loan upon the written direction of the Funding Lender Representative. In case of any such waiver or rescission, or in case any proceeding taken by the Fiscal Agent on account of any such Event of Default shall have been discontinued or abandoned or determined adversely, then and in every such case the Governmental Lender, the Fiscal Agent, the Borrower, the Servicer, the Funding Lender Representative and the Funding Lender shall be restored to their former positions and rights hereunder, respectively, but no such waiver or rescission shall extend to any subsequent or other default, or impair any right consequent thereto.

**Section 6.11 *Interest on Unpaid Amounts and Default Rate for Nonpayment.*** In the event that principal of or interest payable on the Funding Loan is not paid when due, there shall be payable on the amount not timely paid, on each Interest Payment Date, interest at the Default Rate, to the extent permitted by law. Interest on the Funding Loan shall accrue at the Default Rate until the unpaid amount, together with interest thereon, shall have been paid in full.

**Section 6.12 *Assignment of Project Loan; Remedies Under the Project Loan.***

(a) The Funding Lender Representative shall have the right, with respect to the Project Loan, in its sole and absolute discretion, without directing the Fiscal Agent to effect an acceleration of the Funding Loan, to instruct the Fiscal Agent in writing to assign the Project Note, the Security Instrument and the other Financing Documents to the Funding Lender Representative, in which event the Fiscal Agent shall (a) endorse and deliver the Project Note to the Funding Lender Representative and assign (in recordable form) the Security Instrument, (b) execute and deliver to the Funding Lender Representative all documents prepared by the Funding Lender Representative necessary to assign (in recordable form) all other Project Loan Documents to the Funding Lender Representative and (c) execute all such documents prepared by the Funding Lender Representative as are necessary to legally and validly effectuate the assignments provided for in the preceding clauses (a) and (b). The Fiscal Agent's assignments to the Funding Lender Representative pursuant to this Section 6.12 shall be without recourse or warranty except that the Fiscal Agent shall represent and warrant in connection therewith (A) that the Fiscal Agent has not previously endorsed or assigned any such documents or instruments and (B) that the Fiscal Agent has the corporate authority to endorse and assign such documents and instruments and such endorsements and assignments have been duly authorized.

(b) The Funding Lender Representative shall have the right, in its own name or on behalf of the Governmental Lender or the Fiscal Agent, to declare any default and exercise any remedies under the Project Loan Agreement, the Project Note or the Security Instrument, whether or not the Governmental Note has been accelerated or declared due and payable by reason of an Event of Default or the occurrence of a mandatory prepayment.



**Section 6.13 Substitution.** Upon receipt of written notice from the Funding Lender Representative and the approval of the Governmental Lender as and to the extent permitted under the Tax Regulatory Agreement, the Fiscal Agent shall exchange the Project Note and the Security Instrument for a new Project Note and Security Instrument, evidencing and securing a new loan (the "New Project Loan"), which may be executed by a person other than the Borrower (the "New Borrower"), provided that if the Fiscal Agent, the Funding Lender or a nominee of the Fiscal Agent or the Funding Lender has acquired the Project through foreclosure, by accepting a deed in lieu of foreclosure or by comparable conversion of the Project, no approval from the Governmental Lender of such exchange shall be required. Prior to accepting a New Project Loan, the Fiscal Agent shall have received (i) written evidence that the New Borrower shall have executed and recorded a document substantially in the form of the Tax Regulatory Agreement (or executed and recorded an assumption of all of the Borrower's obligations under the Tax Regulatory Agreement) and that the Financing Documents have been modified as necessary to be applicable to the New Project Loan, and (ii) a Favorable Opinion of Bond Counsel, with respect to the effect that such exchange and modification, in and of itself, shall not affect the exclusion, from gross income, for federal income tax purposes of the interest payable on the Governmental Note.

(End of Article VI)

## ARTICLE VII

### CONCERNING THE FISCAL AGENT

**Section 7.01 *Standard of Care.*** The Fiscal Agent, prior to an Event of Default as defined in Section 6.01 hereof and after the curing or waiver of all such events which may have occurred, shall perform such duties and only such duties as are specifically set forth in this Funding Loan Agreement. The Fiscal Agent, during the existence of any such Event of Default (which shall not have been cured or waived), shall exercise such rights and powers vested in it by this Funding Loan Agreement and use the same degree of care and skill in its exercise as a prudent Person would exercise or use under similar circumstances in the conduct of such Person's own affairs.

No provision of this Funding Loan Agreement shall be construed to relieve the Fiscal Agent from liability for its breach of trust, own negligence or willful misconduct, except that:

(a) prior to an Event of Default hereunder, and after the curing or waiver of all such Events of Default which may have occurred:

(i) the duties and obligations of the Fiscal Agent shall be determined solely by the express provisions of this Funding Loan Agreement, and the Fiscal Agent shall not be liable except with regard to the performance of such duties and obligations as are specifically set forth in this Funding Loan Agreement; and

(ii) in the absence of bad faith on the part of the Fiscal Agent, the Fiscal Agent may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon any certificate or opinion furnished to the Fiscal Agent by the Person or Persons authorized to furnish the same;

(b) at all times, regardless of whether or not any such Event of Default shall exist:

(i) the Fiscal Agent shall not be liable for any error of judgment made in good faith by an officer or employee of the Fiscal Agent except for willful misconduct or negligence by the officer or employee of the Fiscal Agent as the case may be; and

(ii) the Fiscal Agent shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the Funding Lender Representative relating to the time, method and place of conducting any proceeding for any remedy available to the Fiscal Agent, or exercising any trust or power conferred upon the Fiscal Agent under this Funding Loan Agreement.

**Section 7.02 *Reliance Upon Documents.*** Except as otherwise provided in Section 7.01 hereof:

(a) the Fiscal Agent may rely upon the authenticity or truth of the statements and the correctness of the opinions expressed in, and shall be protected in acting upon any resolution, certificate, statement, instrument, opinion, report, notice, notarial seal, stamp, acknowledgment, verification, request, consent, order, bond, or other paper or document of the proper party or

parties, including any Electronic Notice as permitted hereunder or under the Project Loan Agreement;

(b) any notice, request, direction, election, order or demand of the Governmental Lender mentioned herein shall be sufficiently evidenced by an instrument signed in the name of the Governmental Lender by an Authorized Officer of the Governmental Lender (unless other evidence in respect thereof be herein specifically prescribed), and any resolution of the Governmental Lender may be evidenced to the Fiscal Agent by a copy of such resolution duly certified by an Authorized Officer of the Governmental Lender;

(c) any notice, request, certificate, statement, requisition, direction, election, order or demand of the Borrower mentioned herein shall be sufficiently evidenced by an instrument purporting to be signed in the name of the Borrower by any Authorized Officer of the Borrower (unless other evidence in respect thereof be herein specifically prescribed), and any resolution or certification of the Borrower may be evidenced to the Fiscal Agent by a copy of such resolution duly certified by a secretary or other authorized representative of the Borrower;

(d) any notice, request, certificate, statement, requisition, direction, election, order or demand of the Servicer mentioned herein shall be sufficiently evidenced by an instrument signed in the name of the Servicer by an Authorized Officer of the Servicer (unless other evidence in respect thereof be herein specifically prescribed);

(e) any notice, request, direction, election, order or demand of the Funding Lender Representative mentioned herein shall be sufficiently evidenced by an instrument purporting to be signed in the name of the Funding Lender Representative by any Authorized Officer of the Funding Lender Representative (unless other evidence in respect thereof be herein specifically prescribed);

(f) [Intentionally Omitted];

(g) [Intentionally Omitted];

(h) in the administration of the trusts of this Funding Loan Agreement, the Fiscal Agent may execute any of the trusts or powers hereby granted directly or through its agents, receivers or attorneys, and the Fiscal Agent may consult with counsel (who may be counsel for the Governmental Lender, the Servicer or the Funding Lender Representative) and the opinion or advice of such counsel shall be full and complete authorization and protection in respect of any action taken or permitted by it hereunder in good faith and in accordance with the opinion of such counsel;

(i) whenever in the administration of the trusts of this Funding Loan Agreement, the Fiscal Agent shall deem it necessary or desirable that a matter be proved or established prior to taking or permitting any action hereunder, such matters (unless other evidence in respect thereof be herein specifically prescribed), may in the absence of negligence or willful misconduct on the part of the Fiscal Agent, be deemed to be conclusively proved and established by a certificate of an officer or authorized agent of the Governmental Lender or the Borrower and such certificate shall in the absence of bad faith on the part of the Fiscal Agent be full warrant to the Fiscal Agent for any action taken or permitted by it under the provisions of this Funding Loan Agreement, but

in its discretion the Fiscal Agent may in lieu thereof accept other evidence of such matter or may require such further or additional evidence as it may deem reasonable;

(j) the recitals herein and in the Governmental Note (except the Fiscal Agent's certificate of authentication thereon) shall not be considered as made by or imposing any obligation or liability upon the Fiscal Agent. The Fiscal Agent makes no representations as to the value or condition of the Pledged Security or any part thereof, or as to the title of the Governmental Lender or the Borrower to the Pledged Security, or as to the security of this Funding Loan Agreement, or of the Governmental Note issued hereunder, and the Fiscal Agent shall incur no liability or responsibility in respect of any of such matters;

(k) the Fiscal Agent shall not be personally liable for debts contracted or liability for damages incurred in the management or operation of the Pledged Security except for its own willful misconduct or negligence; and every provision of this Funding Loan Agreement relating to the conduct or affecting the liability of or affording protection to the Fiscal Agent shall be subject to the provisions of this Section 7.02(k);

(l) the Fiscal Agent shall not be required to ascertain or inquire as to the performance or observance of any of the covenants or agreements (except to the extent they obligate the Fiscal Agent) herein or in any contracts or securities assigned or conveyed to or pledged with the Fiscal Agent hereunder, except Events of Default that are evident under Section 6.01(a) hereof. The Fiscal Agent shall not be required to take notice or be deemed to have notice or actual knowledge of any default or Event of Default specified in Section 6.01 hereof (except defaults under Section 6.01(a) hereof to the extent they are collecting loan payments hereunder) unless the Responsible Officer shall receive from the Governmental Lender or the Funding Lender Representative written notice stating that a default or Event of Default has occurred and specifying the same, and in the absence of such notice the Fiscal Agent may conclusively assume that there is no such default. Every provision contained in this Funding Loan Agreement or related instruments or in any such contract or security wherein the duty of the Fiscal Agent depends on the occurrence and continuance of such default shall be subject to the provisions of this Section 7.02(l);

(m) the Fiscal Agent shall be under no duty to confirm or verify any financial or other statements or reports or certificates furnished pursuant to any provisions hereof, except to the extent such statement or reports are furnished by or under the direction of the Fiscal Agent, and shall be under no other duty in respect of the same except to retain the same in its files and permit the inspection of the same at reasonable times by the Funding Lender; and

(n) the Fiscal Agent shall be under no obligation to exercise those rights or powers vested in it by this Funding Loan Agreement, other than such rights and powers which it shall be obliged to exercise in the ordinary course of its Fiscal Agent under the terms and provisions of this Funding Loan Agreement and as required by law, at the request or direction of the Funding Lender Representative pursuant to Section 6.03 hereof, unless the Funding Lender Representative shall have offered to the Fiscal Agent reasonable security or indemnity against the costs, expenses and liabilities which might be incurred by it in the compliance with such request or direction.

None of the provisions contained in this Funding Loan Agreement shall require the Fiscal Agent to expend or risk its own funds or otherwise incur personal financial liability in the performance of any of its duties or in the exercise of any of its rights or powers.

The Fiscal Agent is authorized and directed to execute in its capacity as Fiscal Agent, the Project Loan Agreement and the Tax Regulatory Agreement and shall have no responsibility or liability with respect to any information, statement or recital in any offering memorandum or other disclosure material prepared or distributed with respect to the delivery of the Governmental Note.

The Fiscal Agent or any of its affiliates may act as advisor or sponsor with respect to any Qualified Investments.

The Fiscal Agent agrees to accept and act upon Electronic Notice of written instructions and/or directions pursuant to this Funding Loan Agreement received and signed by Authorized Officers.

Any resolution, certification, notice, request, direction, election, order or demand delivered to the Fiscal Agent pursuant to this Section 7.02 shall remain in effect until the Fiscal Agent receives written notice to the contrary from the party that delivered such instrument accompanied by revised information for such party.

The Fiscal Agent shall have no responsibility for the value of any collateral or with respect to the perfection or priority of any security interest in any collateral except as otherwise provided in Section 7.17 hereof.

**Section 7.03 *Use of Proceeds.*** The Fiscal Agent shall not be accountable for the use or application of the Governmental Note authenticated or delivered hereunder or of the proceeds of the Funding Loan except as provided herein.

**Section 7.04 *[Reserved]*.**

**Section 7.05 *Trust Imposed.*** All money received by the Fiscal Agent shall, until used or applied as herein provided, be held in trust for the purposes for which it was received.

**Section 7.06 *Compensation of Fiscal Agent.*** The Fiscal Agent shall be entitled to its Ordinary Fiscal Agent's Fees and Expenses in connection with the services rendered by it in the execution of the trusts hereby created and in the exercise and performance of any of the powers and duties of the Fiscal Agent hereunder or under any Financing Document to the extent money is available therefor, in accordance with Section 4.06 hereof, exclusive of Extraordinary Services. The Fiscal Agent shall be entitled to Extraordinary Fiscal Agent's Fees and Expenses in connection with any Extraordinary Services performed consistent with the duties hereunder or under any of the Financing Documents; provided the Fiscal Agent shall not incur any Extraordinary Fiscal Agent's Fees and Expenses without the consent of the Funding Lender Representative. If any property, other than cash, shall at any time be held by the Fiscal Agent subject to this Funding Loan Agreement, or any supplement hereto, as security for the Funding Loan, the Fiscal Agent, if and to the extent authorized by a receivership, bankruptcy, or other court of competent jurisdiction or by the instrument subjecting such property to the provisions of this Funding Loan Agreement as such security for the Funding Loan, shall be entitled to make advances for the purpose of

preserving such property or of discharging tax liens or other liens or encumbrances thereon. Payment to the Fiscal Agent for its services and reimbursement to the Fiscal Agent for its expenses, disbursements, liabilities and advances, shall be limited to the sources described in the Project Loan Agreement and in Sections 4.06, 4.11 and 6.05 hereof. The Governmental Lender shall have no liability for Fiscal Agent's fees, costs or expenses.

THE BORROWER SHALL INDEMNIFY AND HOLD HARMLESS THE FISCAL AGENT AND ITS OFFICERS, DIRECTORS, OFFICIALS, EMPLOYEES, AGENTS, RECEIVERS, ATTORNEYS, ACCOUNTANTS, ADVISORS, CONSULTANTS AND SERVANTS, PAST, PRESENT OR FUTURE, FROM AND AGAINST (A) ANY AND ALL CLAIMS BY OR ON BEHALF OF ANY PERSON ARISING FROM ANY CAUSE WHATSOEVER IN CONNECTION WITH THIS FUNDING LOAN AGREEMENT OR TRANSACTIONS CONTEMPLATED HEREBY, THE PROJECT, OR THE DELIVERY OF THE GOVERNMENTAL NOTE OR THE LOANS; (B) ANY AND ALL CLAIMS ARISING FROM ANY ACT OR OMISSION OF THE BORROWER OR ANY OF ITS AGENTS, CONTRACTORS, SERVANTS, EMPLOYEES OR LICENSEES IN CONNECTION WITH THE PROJECT, OR THE DELIVERY OF THE GOVERNMENTAL NOTE OR THE LOANS; AND (C) ALL COSTS, COUNSEL FEES, EXPENSES OR LIABILITIES INCURRED IN CONNECTION WITH ANY SUCH CLAIM OR PROCEEDING BROUGHT THEREON; EXCEPT THAT THE BORROWER SHALL NOT BE REQUIRED TO INDEMNIFY ANY PERSON FOR DAMAGES FOUND BY A COURT OF COMPETENT JURISDICTION IN A FINAL JUDGMENT TO BE CAUSED BY THE NEGLIGENCE, WILLFUL MISCONDUCT OR UNLAWFUL ACTS OF SUCH PERSON OR WHICH ARISE FROM EVENTS OCCURRING AFTER THE BORROWER CEASES TO OWN THE PROJECT. IN THE EVENT THAT ANY ACTION OR PROCEEDING IS BROUGHT OR CLAIM MADE AGAINST THE FISCAL AGENT, OR ANY OF ITS OFFICERS, DIRECTORS, OFFICIALS, EMPLOYEES, AGENTS, RECEIVERS, ATTORNEYS, ACCOUNTANTS, ADVISORS, CONSULTANTS OR SERVANTS, WITH RESPECT TO WHICH INDEMNITY MAY BE SOUGHT HEREUNDER, THE BORROWER, UPON WRITTEN NOTICE THEREOF FROM THE INDEMNIFIED PARTY, SHALL ASSUME THE INVESTIGATION AND DEFENSE THEREOF, INCLUDING THE EMPLOYMENT OF COUNSEL AND THE PAYMENT OF ALL EXPENSES. THE INDEMNIFIED PARTY SHALL HAVE THE RIGHT TO APPROVE A SETTLEMENT TO WHICH IT IS A PARTY AND TO EMPLOY SEPARATE COUNSEL IN ANY SUCH ACTION OR PROCEEDINGS AND TO PARTICIPATE IN THE INVESTIGATION AND DEFENSE THEREOF, AND THE BORROWER SHALL PAY THE REASONABLE FEES AND EXPENSES OF SUCH SEPARATE COUNSEL. THE PROVISIONS OF THIS SECTION 7.06 SHALL SURVIVE THE TERMINATION OF THIS FUNDING LOAN AGREEMENT AND THE RESIGNATION OR REMOVAL OF THE FISCAL AGENT.

**Section 7.07 *Qualifications of Fiscal Agent.*** There shall at all times be a Fiscal Agent hereunder which shall be an association or a corporation organized and doing business under the laws of the United States of America or any state thereof, authorized under such laws to exercise corporate trust powers. Any successor Fiscal Agent shall have a combined capital and surplus of at least \$50,000,000 (or shall be a wholly-owned subsidiary of an association or corporation that has such combined capital and surplus), and be subject to supervision or examination by federal or state authority, or shall have been appointed by a court of competent jurisdiction pursuant to

Section 7.09 hereof. If such association or corporation publishes reports of condition at least annually, pursuant to law or to the requirements of any supervising or examining authority referred to above, then for the purposes of this Section 7.07, the combined capital and surplus of such association or corporation shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. In case at any time the Fiscal Agent shall cease to be eligible in accordance with the provisions of this Section 7.07 and another association or corporation is eligible, the Fiscal Agent shall resign immediately in the manner and with the effect specified in Section 7.09 hereof.

**Section 7.08 *Merger of Fiscal Agent.*** Any association or corporation into which the Fiscal Agent may be converted or merged, or with which it may be consolidated, or to which it may sell or transfer its corporate trust business and assets as a whole or substantially as a whole, or any association or corporation resulting from any such conversion, sale, merger, consolidation or transfer to which it is a party shall, ipso facto, be and become successor Fiscal Agent hereunder and vested with all the title to the whole property or Pledged Security and all the trusts, powers, discretions, immunities, privileges and all other matters as was its predecessor, without the execution or filing of any instruments or any further act, deed or conveyance on the part of any of the parties hereto, anything herein to the contrary notwithstanding, and shall also be and become successor Fiscal Agent in respect of the legal interest of the Fiscal Agent in the Loans.

**Section 7.09 *Resignation by the Fiscal Agent.*** The Fiscal Agent may at any time resign from the trusts hereby created by giving written notice to the Governmental Lender, the Borrower, the Servicer and the Funding Lender Representative. Such notice to the Governmental Lender, the Borrower, the Servicer and the Funding Lender Representative may be served personally or sent by certified mail or overnight delivery service. The resignation of the Fiscal Agent shall not be effective until a successor Fiscal Agent has been appointed as provided herein and such successor Fiscal Agent shall have agreed in writing to be bound by the duties and obligations of the Fiscal Agent hereunder.

**Section 7.10 *Removal of the Fiscal Agent.*** The Fiscal Agent may be removed at any time, either with or without cause, with the consent of the Funding Lender Representative (which consent of the Funding Lender Representative shall not be unreasonably withheld), by a written instrument signed by the Governmental Lender and delivered to the Fiscal Agent, the Servicer and the Borrower. The Fiscal Agent may also be removed by a written instrument signed by the Funding Lender Representative and delivered to the Fiscal Agent, the Servicer, the Governmental Lender and the Borrower. In each case written notice of such removal shall be given to the Servicer, the Borrower and to the Funding Lender. Any such removal shall take effect on the day specified in such written instrument(s), but the Fiscal Agent shall not be discharged from the trusts hereby created until a successor Fiscal Agent has been appointed and has accepted such appointment and has agreed in writing to be bound by the duties and obligations of the Fiscal Agent hereunder.

**Section 7.11 *Appointment of Successor Fiscal Agent.***

(a) In case at any time the Fiscal Agent shall resign or be removed, or be dissolved, or shall be in course of dissolution or liquidation, or otherwise become incapable of acting hereunder, or shall be adjudged a bankrupt or insolvent, or if a receiver of the Fiscal Agent or of its property

shall be appointed, or if a public supervisory office shall take charge or control of the Fiscal Agent or of its property or affairs, a vacancy shall forthwith and ipso facto be created in the office of such Fiscal Agent hereunder, and the Governmental Lender, with the written consent of the Funding Lender Representative, shall promptly appoint a successor Fiscal Agent. Any such appointment shall be made by a written instrument executed by an Authorized Officer of the Governmental Lender. If the Governmental Lender fails to appoint a successor Fiscal Agent within ten (10) days following the resignation or removal of the Fiscal Agent pursuant to Section 7.09 or Section 7.10 hereunder, as applicable, the Funding Lender Representative may appoint a successor Fiscal Agent.

(b) If, in a proper case, no appointment of a successor Fiscal Agent shall be made pursuant to subsection (a) of this Section 7.11 within sixty (60) days following delivery of all required notices of resignation given pursuant to Section 7.09 hereof or of removal of the Fiscal Agent pursuant to Section 7.10 hereof, the retiring Fiscal Agent may apply to any court of competent jurisdiction to appoint a successor Fiscal Agent. The court may thereupon, after such notice, if any, as such court may deem proper and prescribe, appoint a successor Fiscal Agent.

**Section 7.12 *Concerning Any Successor Fiscal Agent.*** Every successor Fiscal Agent appointed hereunder shall execute, acknowledge and deliver to its predecessor and also to the Governmental Lender a written instrument accepting such appointment hereunder, and thereupon such successor, without any further act, deed or conveyance, shall become fully vested with all the Pledged Security and the rights, powers, trusts, duties and obligations of its predecessor; but such predecessor shall, nevertheless, on the written request of the Governmental Lender, the Borrower or the Funding Lender Representative, or of its successor, and upon payment of all amounts due such predecessor, including but not limited to fees and expenses of counsel, execute and deliver such instruments as may be appropriate to transfer to such successor Fiscal Agent all the Pledged Security and the rights, powers and trusts of such predecessor hereunder; and every predecessor Fiscal Agent shall deliver all securities and money held by it as Fiscal Agent hereunder to its successor. Should any instrument in writing from the Governmental Lender be required by a successor Fiscal Agent for more fully and certainly vesting in such successor the Pledged Security and all rights, powers and duties hereby vested or intended to be vested in the predecessor, any and all such instruments in writing shall, on request, be executed, acknowledged and delivered by the Governmental Lender. The resignation of any Fiscal Agent and the instrument or instruments removing any Fiscal Agent and appointing a successor hereunder, together with all other instruments provided for in this Article, shall be filed and/or recorded by the successor Fiscal Agent in each recording office where this Funding Loan Agreement shall have been filed and/or recorded. Each successor Fiscal Agent shall mail notice by first class mail, postage prepaid, at least once within 30 days of such appointment, to the Funding Lender.

**Section 7.13 *Successor Fiscal Agent.*** In the event of a change in the office of Fiscal Agent, the predecessor Fiscal Agent which shall have resigned or shall have been removed shall cease to be Fiscal Agent with respect to the Governmental Note, and the successor Fiscal Agent shall become such Fiscal Agent.

**Section 7.14 *Appointment of Co-Fiscal Agent or Separate Fiscal Agent.*** It is the intent of the Governmental Lender and the Fiscal Agent that there shall be no violation of any law of any jurisdiction (including particularly the laws of the State) denying or restricting the right of banking



corporations or associations to transact business as Fiscal Agent in such jurisdiction. It is recognized that in case of litigation under or connected with this Funding Loan Agreement, the Project Loan Agreement or any of the other Financing Documents, and, in particular, in case of the enforcement of any remedies on default, or in case the Fiscal Agent deems that by reason of any present or future law of any jurisdiction it may not exercise any of the powers, rights or remedies herein or therein granted to the Fiscal Agent or hold title to the properties in trust, as herein granted, or take any other action which may be desirable or necessary in connection therewith, it may be necessary that the Fiscal Agent, with the consent of the Governmental Lender and the Funding Lender Representative, appoint an additional individual or institution as a co-fiscal agent or separate fiscal agent.

In the event that the Fiscal Agent appoints an additional individual or institution as a co-fiscal agent or separate fiscal agent, in the event of the incapacity or lack of authority of the Fiscal Agent, by reason of any present or future law of any jurisdiction, to exercise any of the rights, powers, trusts and remedies granted to the Fiscal Agent herein or to hold title to the Pledged Security or to take any other action that may be necessary or desirable in connection therewith, each and every remedy, power, right, obligation, claim, demand, cause of action, immunity, estate, title, interest and lien expressed or intended by this Funding Loan Agreement to be imposed upon, exercised by or vested in or conveyed to the Fiscal Agent with respect thereto shall be imposed upon, exercisable by and vest in such separate fiscal agent or co-fiscal agent, but only to the extent necessary to enable such co-fiscal agent or separate fiscal agent to exercise such powers, rights, trusts and remedies, and every covenant and obligation necessary to the exercise thereof by such co-fiscal agent or separate fiscal agent shall run to and be enforceable by either of them, subject to the remaining provisions of this Section 7.14. Such co-fiscal agent or separate fiscal agent shall deliver an instrument in writing acknowledging and accepting its appointment hereunder to the Governmental Lender and the Fiscal Agent.

Should any instrument in writing from the Governmental Lender be required by the co-fiscal agent or separate fiscal agent so appointed by the Fiscal Agent for more fully and certainly vesting in and confirming to him or it such properties, rights, powers, trusts, duties and obligations, any and all such instruments in writing shall, on request, be executed, acknowledged and delivered by the Governmental Lender, the Fiscal Agent and the Borrower. If the Governmental Lender shall fail to deliver the same within thirty (30) days of such request, the Fiscal Agent is hereby appointed attorney-in-fact for the Governmental Lender to execute, acknowledge and deliver such instruments in the Governmental Lender's name and stead. In case any co-fiscal agent or separate fiscal agent, or a successor to either, shall die, become incapable of acting, resign or be removed, all the estates, properties, rights, powers, trusts, duties and obligations of such co-fiscal agent or separate fiscal agent, so far as permitted by law, shall vest in and be exercised by the Fiscal Agent until the appointment of a new Fiscal Agent or successor to such co-fiscal agent or separate fiscal agent.

Every co-fiscal agent or separate fiscal agent shall, to the extent permitted by law, but to such extent only, be appointed subject to the following terms, namely:

(a) the Governmental Note shall be authenticated and delivered, and all rights, powers, trusts, duties and obligations by this Funding Loan Agreement conferred upon the Fiscal Agent in

respect of the custody, control or management of money, papers, securities and other personal property shall be exercised solely by the Fiscal Agent;

(b) all rights, powers, trusts, duties and obligations conferred or imposed upon the Fiscal Agent shall be conferred or imposed upon or exercised or performed by the Fiscal Agent, or by the Fiscal Agent and such co- fiscal agent, or separate fiscal agent jointly, as shall be provided in the instrument appointing such co- fiscal agent or separate fiscal agent, except to the extent that under the law of any jurisdiction in which any particular act or acts are to be performed the Fiscal Agent shall be incompetent or unqualified to perform such act or acts, in which event such act or acts shall be performed by such co- fiscal agent or separate fiscal agent;

(c) any request in writing by the Fiscal Agent to any co- fiscal agent or separate fiscal agent to take or to refrain from taking any action hereunder shall be sufficient warrant for the taking or the refraining from taking of such action by such co- fiscal agent or separate fiscal agent;

(d) any co- fiscal agent or separate fiscal agent to the extent permitted by law shall delegate to the Fiscal Agent the exercise of any right, power, trust, duty or obligation, discretionary or otherwise;

(e) the Fiscal Agent at any time by an instrument in writing with the concurrence of the Governmental Lender evidenced by a certified resolution may accept the resignation of or remove any co- fiscal agent or separate fiscal agent appointed under this Section 7.14 and in case an Event of Default shall have occurred and be continuing, the Fiscal Agent shall have power to accept the resignation of or remove any such co- fiscal agent or separate fiscal agent without the concurrence of the Governmental Lender, and upon the request of the Fiscal Agent, the Governmental Lender shall join with the Fiscal Agent in the execution, delivery and performance of all instruments and agreements necessary or proper to effectuate such resignation or removal. A successor to any co- fiscal agent or separate fiscal agent so resigned or removed may be appointed in the manner provided in this Section 7.14;

(f) no Fiscal Agent or co- fiscal agent hereunder shall be personally liable by reason of any act or omission of any other Fiscal Agent hereunder;

(g) any demand, request, direction, appointment, removal, notice, consent, waiver or other action in writing executed by the Funding Lender Representative and delivered to the Fiscal Agent shall be deemed to have been delivered to each such co- fiscal agent or separate fiscal agent; and

(h) any money, papers, securities or other items of personal property received by any such co- fiscal agent or separate fiscal agent hereunder shall forthwith, so far as may be permitted by law, be turned over to the Fiscal Agent.

The total compensation of the Fiscal Agent and any co fiscal agent or separate fiscal agent shall be as, and may not exceed the amount, provided in Section 7.06 hereof.

**Section 7.15 Notice of Certain Events.** The Fiscal Agent shall give written notice to the Governmental Lender, the Servicer and the Funding Lender Representative of any failure by the

Borrower to comply with the terms of the Tax Regulatory Agreement or any Determination of Taxability of which a Responsible Officer has actual knowledge.

**Section 7.16 *[Reserved]*.**

**Section 7.17 *Filing of Financing Statements.*** The Fiscal Agent shall, at the expense of the Borrower, file or record or cause to be filed or recorded all UCC continuation statements for the purpose of continuing without lapse the effectiveness of those financing statements which have been filed on or approximately on the Delivery Date in connection with the security for the Funding Loan pursuant to the authority of the UCC. Upon the filing of any such continuation statement the Fiscal Agent shall immediately notify the Governmental Lender, the Borrower, the Funding Lender Representative and the Servicer that the same has been done. If direction is given by the Servicer or the Funding Lender Representative, the Fiscal Agent shall file all continuation statements in accordance with such directions.

**Section 7.18 *USA Patriot Act Requirements of the Fiscal Agent.*** To help the government of the United States of America fight the funding of terrorism and money laundering activities, federal law requires all financial institutions to obtain, verify, and record information that identifies each person who opens an account. For a non-individual Person such as a business entity, a charity, a trust, or other legal entity, the Fiscal Agent may request documentation to verify such Person's formation and existence as a legal entity. The Fiscal Agent may also request financial statements, licenses, identification and authorization documents from individuals claiming authority to represent such Person or other relevant documentation.

(End of Article VII)

## ARTICLE VIII

### AMENDMENTS OF CERTAIN DOCUMENTS

**Section 8.01 *Amendments to this Funding Loan Agreement.*** Any of the terms of this Funding Loan Agreement and the Governmental Note may be amended or waived only by an instrument signed by the Fiscal Agent and the Governmental Lender, and with the prior written consent of the Funding Lender Representative.

**Section 8.02 *Amendments to Financing Documents Require Consent of Funding Lender Representative.*** Neither the Governmental Lender nor the Fiscal Agent shall consent to any amendment, change or modification of any Financing Document without the prior written consent of the Funding Lender Representative.

**Section 8.03 *Favorable Opinion of Bond Counsel Required.*** No amendment to this Funding Loan Agreement, the Governmental Note, the Project Loan Agreement, the Project Note, the Security Instrument or the Tax Regulatory Agreement shall become effective unless and until (i) the Funding Lender Representative shall have consented to the same in writing in its sole discretion and (ii) the Funding Lender Representative, the Governmental Lender and the Fiscal Agent shall have received, at the expense of the Borrower, (A) a Favorable Opinion of Bond Counsel and (B) an opinion of counsel acceptable to the Funding Lender Representative to the effect that any such proposed such amendment, change or modification is authorized and complies with the provisions of this Funding Loan Agreement and is a legal, valid and binding obligation of the parties thereto, subject to normal exceptions relating to bankruptcy, insolvency and equitable principles limitations.

(End of Article VIII)

## ARTICLE IX

### SATISFACTION AND DISCHARGE OF FUNDING LOAN AGREEMENT

**Section 9.01 *Discharge of Lien.*** If the Governmental Lender shall pay or cause to be paid to the Funding Lender the principal, interest and Prepayment Premium, if any, to become due with respect to the Funding Loan at the times and in the manner stipulated herein and in the Governmental Note, in any one or more of the following ways:

(a) by the payment of all unpaid principal of (including Prepayment Premium, if any) and interest on the Funding Loan; or

(b) after the Conversion Date (or, if the Conversion Date does not occur, the latest date on which Conversion was permitted to occur under the Construction Phase Financing Agreement) and prior to the Window Period, by the deposit to the account of the Fiscal Agent, in trust, of money or securities in the necessary amount to pay the principal, Prepayment Premium and interest to the Maturity Date; or

(c) by the delivery of the Governmental Note by the Funding Lender to the Fiscal Agent for cancellation;

and shall have paid all amounts due and owing under the other Financing Documents, and shall have paid all fees and expenses of and any other amounts due to the Fiscal Agent, the Servicer and the Rebate Analyst, and if the Governmental Lender shall keep, perform and observe all and singular the covenants and promises in the Governmental Note and in this Funding Loan Agreement expressed as to be kept, performed and observed by it or on its part, then these presents and the estates and rights hereby granted shall cease, determine and be void, and thereupon the Fiscal Agent shall cancel and discharge the lien of this Funding Loan Agreement and execute and deliver to the Governmental Lender such instruments in writing as shall be requisite to satisfy the lien hereof, and reconvey to the Governmental Lender the estate hereby conveyed, and assign and deliver to the Governmental Lender any interest in property at the time subject to the lien of this Funding Loan Agreement which may then be in its possession, except amounts held by the Fiscal Agent for the payment of principal of, interest and Prepayment Premium, if any, on the Governmental Note, the payment of any amounts owed to the United States of America pursuant to Section 4.12 hereof.

After the Conversion Date (or, if the Conversion Date does not occur, the latest date on which Conversion was permitted to occur under the Construction Phase Financing Agreement) and prior to the Window Period and subject to the satisfaction of the conditions set forth in Section 4.04(c) of the Project Loan Agreement, the Funding Loan shall, prior to the Maturity Date, be deemed to have been paid within the meaning and with the effect expressed in the first paragraph of this Section 9.01 based on a deposit of moneys or securities with the Fiscal Agent pursuant to Section 9.01(b) if, under circumstances which do not cause interest on the Governmental Note to become includable in the holders' gross income for purposes of federal income taxation, the following conditions shall have been fulfilled: (a) there shall be on deposit with the Fiscal Agent either money or noncallable and nonprepayable direct obligations of the United States of America (or other defeasance securities constituting Qualified Investments

approved in writing by the Funding Lender Representative) in an amount, together with anticipated earnings thereon (but not including any reinvestment of such earnings), which will be sufficient to pay, when due, the principal and interest due and to become due on the Funding Loan up to and on the Maturity Date; (b) the Fiscal Agent shall have received a verification report of a firm of certified public accountants or financial analyst reasonably acceptable to the Fiscal Agent and the Funding Lender Representative as to the adequacy of the amounts or securities so deposited to fully pay the Funding Loan; (c) the Fiscal Agent and the Funding Lender Representative shall have received a written opinion of nationally recognized counsel experienced in bankruptcy matters to the effect that if the Borrower, any general partner, member or guarantor of the Borrower, or the Governmental Lender were to become a debtor in a proceeding under the Bankruptcy Code (x) payment of such money to the Funding Lender would not constitute a voidable preference under Section 547 of the Bankruptcy Code and (y) the automatic stay provisions of Section 362(a) of the Bankruptcy Code would not prevent application of such money to the payment of the Funding Loan; (d) the Fiscal Agent and the Funding Lender Representative shall have received an opinion of Bond Counsel to the effect that the defeasance of the Funding Loan is in accordance with the provisions of the Funding Loan Agreement and that such defeasance will not adversely affect the exclusion of interest on the Governmental Note from gross income for federal income tax purposes; and (e) the Fiscal Agent shall have received written confirmation that all fees, expenses or reimbursement of any advances due to the Funding Lender and the Servicer under the Financing Documents have been fully paid.

**Section 9.02 Discharge of Liability on Funding Loan.** Upon the deposit with the Fiscal Agent, in trust, at or before maturity, of money or securities in the necessary amount (as provided in Section 9.01 above) to pay or prepay the Funding Loan (whether upon or prior to their maturity or the prepayment date of the Funding Loan) provided that, if the Funding Loan is to be prepaid prior to the maturity thereof, notice of such prepayment shall have been given as provided in Article III or provision satisfactory to the Fiscal Agent shall have been made for the giving of such notice, all liability of the Governmental Lender in respect of the Funding Loan shall cease, terminate and be completely discharged, except only that thereafter the Funding Lender shall be entitled to payment by the Governmental Lender, and the Governmental Lender shall remain liable for such payment, but only out of the money or securities deposited with the Fiscal Agent as aforesaid for their payment, subject, however, to the provisions of Section 9.03 hereof.

**Section 9.03 Payment of Funding Loan After Discharge of Funding Loan Agreement.** Notwithstanding any provisions of this Funding Loan Agreement, and subject to applicable unclaimed property laws of the State, any money deposited with the Fiscal Agent or any paying agent in trust for the payment of the principal of, interest or premium on the Governmental Note remaining unclaimed after the maturity or earlier payment date: to the extent permitted by applicable law, shall be paid to the Governmental Lender, whereupon all liability of the Governmental Lender and the Fiscal Agent with respect to such money shall cease, and the Funding Lender shall thereafter look solely to the Borrower for payment of any amounts then due. All money held by the Fiscal Agent and subject to this Section 9.03 shall be held uninvested and without liability for interest thereon.

(End of Article IX)

## ARTICLE X

### INTENTIONALLY OMITTED

## ARTICLE XI

### MISCELLANEOUS

**Section 11.01 *Servicing of the Loans.*** The Funding Lender Representative may appoint a Servicer (which may be the Funding Lender Representative if the Funding Lender Representative elects to service the Loans) to service the Loans as provided in Section 3.02 of the Project Loan Agreement.

**Section 11.02 *Limitation of Rights.*** With the exception of rights herein expressly conferred, nothing expressed or to be implied from this Funding Loan Agreement or the Governmental Note is intended or shall be construed to give to any Person other than the Parties hereto, the Funding Lender, the Funding Lender Representative, the Servicer and the Borrower, any legal or equitable right, remedy or claim under or in respect to this Funding Loan Agreement or any covenants, conditions and provisions hereof.

**Section 11.03 *Construction of Conflicts; Severability.*** Notwithstanding anything provided herein, or in any of the documents referred to herein, in the event that any contracts or other documents executed by the Borrower or any other arrangements agreed to by the Borrower in order to finance or refinance the Project with the proceeds of the Funding Loan, the interest on which is excluded from gross income for federal income tax purposes under Section 103(a) of the Code are inconsistent with the Project Loan Documents, then the Project Loan Documents shall be controlling in all respects. If any provision of this Funding Loan Agreement shall be held or deemed to be, or shall in fact be inoperative or unenforceable as applied in any particular case in any jurisdiction or jurisdictions or in all jurisdictions, or in all cases because it conflicts with any other provision or provisions hereof or any constitution, statute, rule of law or public policy, or for any other reason, such circumstances shall not have the effect of rendering the provision in question inoperative or unenforceable in any other case or circumstance, or of rendering any other provision or provisions herein contained invalid, inoperative, or unenforceable to any extent whatever.

The invalidity of any one or more phrases, sentences, clauses or sections in this Funding Loan Agreement contained, shall not affect the remaining portions of this Funding Loan Agreement, or any part thereof.

#### **Section 11.04 *Notices.***

(a) Whenever in this Funding Loan Agreement the giving of notice by mail or otherwise is required, the giving of such notice may be waived in writing by the Person entitled to receive such notice and in any such case the giving or receipt of such notice shall not be a condition precedent to the validity of any action taken in reliance upon such waiver.

Any notice, request, complaint, demand, communication or other paper required or permitted to be delivered to the Governmental Lender, the Fiscal Agent, the Funding Lender Representative,

the Borrower or the Servicer shall be sufficiently given and shall be deemed given (unless another form of notice shall be specifically set forth herein) on the Business Day following the date on which such notice or other communication shall have been delivered to a national overnight delivery service (receipt of which to be evidenced by a signed receipt from such overnight delivery service) addressed to the appropriate party at the addresses set forth below or as may be required or permitted by this Funding Loan Agreement by Electronic Notice. The Governmental Lender, the Fiscal Agent, the Funding Lender Representative, the Borrower or the Servicer may, by notice given as provided in this paragraph, designate any further or different address to which subsequent notices or other communication shall be sent.

The Governmental Lender: Austin Housing Finance Corporation  
1000 East 11<sup>th</sup> Street, 2<sup>nd</sup> Floor  
Austin, Texas 78702  
Attn: David Potter  
Telephone: (512) 974-3192

With copies to:

Greenberg Traurig LLP  
2101 L Street, N.W., Suite 1000  
Washington, DC 20037  
Attn: Bill Gehrig  
Telephone: (202) 331-3170

and to:

McCall, Parkhurst & Horton L.L.P.  
717 N. Harwood Street, Ninth Floor  
Dallas, Texas 75201  
Attn: Mark A. Malveaux  
Telephone: (214) 754-9224

The Fiscal Agent: BOKF, NA  
801 Cherry Street  
Suite 3325, Unit 27  
Fort Worth, Texas 76102  
Attn: Corporate Trust Department  
Telephone: 817-348-5797

With a copy to:

Naman, Howell, Smith & Lee, P.L.L.C.  
8310 Capital of Texas Hwy. N., Suite 490  
Austin, Texas 78731  
Attn: William C. "Cliff" Blount, Esq.

The Borrower:



Austin DMA Housing III, LLC  
c/o AHFC Nightingale Non-Profit Corporation  
1000 East 11<sup>th</sup> Street, 2<sup>nd</sup> Floor  
Austin, Texas 78702  
Attn: Mandy deMayo  
Telephone: (512) \_\_\_\_\_

With copies to:

DMA Development Company, LLC  
4101 Parkstone Heights Drive, Suite 310  
Austin, Texas 78746

and to:

Greenburg Traurig, LLP  
2102 L Street, N.W.  
Washington D.C. 20037  
Attn: William L. Gehrig  
Telephone: (202) 331 – 3170

and to:

Coats | Rose  
901 S. MoPac Expressway  
Building 1, Suite 500  
Austin, Texas 78746  
Attn: Scott Marks  
Telephone: (512) 684-3843

and to:

Boston Capital  
1 Boston Place  
Boston, MA 02108  
Attn: Asset Management (Nightingale at  
Goodnight Ranch)  
Telephone: (617) 624-8900

and to:

Holland & Knight  
10 Saint James Avenue, 11<sup>th</sup> Floor  
Boston, MA 02116  
Attn: Kristen Cassetta

Telephone: (617) 854-1454

Funding Lender  
Representative  
(as of Freddie Mac Purchase  
Date):

Federal Home Loan Mortgage Corporation  
8100 Jones Branch Drive, MS B4P  
McLean, Virginia 22102  
Attention: Multifamily Operations – Loan  
Accounting  
Email: mfla@freddiemac.com  
Telephone: (703) 714-4177

With a copy to;

Federal Home Loan Mortgage Corporation  
8200 Jones Branch Drive, MS 210  
McLean, Virginia 22102  
Attention: Managing Associate General Counsel –  
Multifamily Legal Division  
Email: joshua\_schonfeld@freddiemac.com  
Telephone: (703) 903-2000

Initial Funding Lender  
and Servicer:

JPMorgan Chase Bank, N.A.  
Community Development Group  
221 West 6<sup>th</sup> Street, Floor 2  
Austin, Texas 78701  
Attn: David H. Saling  
Telephone: (512) 479-2218

With a copy to:

Bellwether Enterprise Real Estate Capital, LLC  
511 North Akard Street, Suite 1508  
Dallas, Texas 75201  
Attn: Kevin Bowen  
Telephone: (214) 295-3828

A duplicate copy of each notice or other communication given hereunder by any party to the Servicer shall also be given to the Funding Lender Representative and by any party to the Funding Lender Representative to the Servicer.

The Fiscal Agent agrees to accept and act upon Electronic Notice of written instructions and/or directions pursuant to this Funding Loan Agreement submitted by Authorized Officers.

(b) The Fiscal Agent shall provide to the Funding Lender Representative and the Servicer (i) prompt notice of the occurrence of any Event of Default pursuant to Section 6.01 hereof and (ii) any written information or other written communication received by the Fiscal Agent hereunder within ten (10) Business Days of receiving a written request from the Funding Lender Representative and the Servicer for any such information or other communication.

**Section 11.05 *Funding Lender Representative.***

(a) The Initial Funding Lender is the initial Funding Lender Representative with respect to the Governmental Note. Upon the Conversion Date, the Freddie Mac Seller/Servicer shall become the Funding Lender Representative and upon the Freddie Mac Purchase Date, Freddie Mac shall become the Funding Lender Representative. The Funding Lender Representative shall be entitled to all the rights and privileges of the Funding Lender hereunder and under the other Financing Documents.

(b) The Funding Lender Representative may provide written notice to the Fiscal Agent designating particular individuals or Persons authorized to execute any consent, waiver, approval, direction or other instrument on behalf of the Funding Lender Representative, and such notice may be amended or rescinded by the Funding Lender Representative at any time by subsequent written notice. The Funding Lender Representative may be removed and a successor appointed by a written notice in the form of **Exhibit B** hereto given by the Funding Lender to the Fiscal Agent, the Governmental Lender, the Servicer and the Borrower. The removal and reappointment shall be effective immediately upon receipt of such notice by the Fiscal Agent. The Funding Lender may appoint any Person to act as Funding Lender Representative, including, without limitation, the Servicer. If, for any reason, a Funding Lender Representative resigns by written notice provided to the Fiscal Agent, the Funding Lender, the Governmental Lender, the Servicer and the Borrower, all references to Funding Lender Representative herein and in the other Financing Documents shall be deemed to refer to the Funding Lender until a successor Funding Lender Representative is appointed by the Funding Lender.

(c) Whenever pursuant to this Funding Loan Agreement or any other Financing Document, the Funding Lender Representative exercises any right given to it to approve or disapprove, any arrangement or term hereof, the decision of the Funding Lender Representative to approve or disapprove or to decide whether arrangements or terms are acceptable or not acceptable shall be in the sole discretion of the Funding Lender Representative, except as otherwise specifically indicated.

(d) Each Funding Lender, by their purchase or other acquisition of the Funding Loan, shall be deemed to have acknowledged and agreed to the provisions of this Funding Loan Agreement and the other Financing Documents with respect to the Funding Lender Representative and the rights and privileges thereof, including but not limited to the right to control all remedies in respect of the Governmental Note and the Loans.

**Section 11.06 *Payments Due on Non-Business Days.*** In any case where a date of payment with respect to the Funding Loan shall be a day other than a Business Day, then such payment need not be made on such date but may be made on the next succeeding Business Day with the same force and effect as if made on such date, and no interest shall accrue for the period after such date provided that payment is made on such next succeeding Business Day.

**Section 11.07 *Counterparts.*** This Funding Loan Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

**Section 11.08 *Laws Governing Funding Loan Agreement.*** The effect and meanings of this Funding Loan Agreement and the rights of all parties hereunder shall be governed by, and construed according to, the internal laws of the State without regard to conflicts of laws principles.

**Section 11.09 *No Recourse.*** No recourse under or upon any obligation, covenant or agreement contained in this Funding Loan Agreement or in the Governmental Note shall be had against any member, officer, commissioner, director or employee (past, present or future) of the Governmental Lender, either directly or through the Governmental Lender or its governing body or otherwise, for the payment for or to the Governmental Lender or any receiver thereof, or for or to the Funding Lender, or otherwise, of any sum that may be due and unpaid by the Governmental Lender or its governing body upon the Governmental Note. 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, officer, commissioner, director or employee, as such, to respond by reason of any act of omission on his/her part or otherwise, for the payment for or to the Funding Lender or otherwise of any sum that may remain due and unpaid with respect to the Funding Loan hereby secured is, by the acceptance hereof, expressly waived and released as a condition of and in consideration for the execution of this Funding Loan Agreement and the delivery of the Governmental Note.

**Section 11.10 *Successors and Assigns.*** All the covenants and representations contained in this Funding Loan Agreement by or on behalf of the parties hereto shall bind and inure to the benefit of their successors and assigns, whether so expressed or not.

(End of Article XI)

[Signature Pages Follow]

**IN WITNESS WHEREOF**, the Governmental Lender, the Initial Funding Lender and the Fiscal Agent have caused this Funding Loan Agreement to be executed and delivered by duly authorized officers thereof as of the day and year first written above.

AUSTIN HOUSING FINANCE CORPORATION

By: \_\_\_\_\_  
Rosie Truelove, Treasurer

Attest:

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

JPMORGAN CHASE BANK, N.A., a national  
banking association

By: \_\_\_\_\_  
David H. Saling  
Authorized Representative

**BOKF, NA, as Fiscal Agent**

By: \_\_\_\_\_  
Pamela M. Black, Senior Vice President

EXHIBIT A

FORM OF GOVERNMENTAL NOTE

THIS GOVERNMENTAL NOTE IS SUBJECT TO  
CERTAIN RESTRICTIONS ON TRANSFER AS SET FORTH IN THE  
FUNDING LOAN AGREEMENT.

AUSTIN HOUSING FINANCE CORPORATION  
MULTIFAMILY HOUSING GOVERNMENTAL REVENUE NOTE  
(NIGHTINGALE AT GOODNIGHT RANCH APARTMENTS)  
SERIES 2018

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

No. \_\_\_\_\_

INTEREST RATE

Prior to the Conversion Date  
at [2.75%] per annum; on and  
after the Conversion Date at  
[4.00%] per annum

DATED DATE  
March \_\_, 2018

MATURITY DATE  
\_\_\_\_\_,  
\_\_\_\_\_

FOR VALUE RECEIVED, the undersigned, Austin Housing Finance Corporation (the "**Obligor**"), promises to pay (but solely from the sources and in the manner provided for in the Funding Loan Agreement referenced below) to the order of JPMORGAN CHASE BANK, N.A., and its assigns, subject to Section 2.08(b) of the Funding Loan Agreement (as hereafter defined) (the "**Funding Lender**"), and its assigns, the principal sum of [\_\_\_\_\_] AND NO/100 Dollars (\$ \_\_\_\_\_), on \_\_\_\_\_, \_\_\_\_\_ (the "**Maturity Date**"), or earlier as provided herein, together with interest thereon at the rates, at the times, and in the amounts provided below, but solely from Pledged Security available for such purpose.

This Multifamily Revenue Note (this "**Note**") is being delivered pursuant to that certain Funding Loan Agreement dated as of March 1, 2018 (together with any and all amendments, modifications, supplements and restatements, the "**Funding Loan Agreement**"), among the Funding Lender, the Obligor and BOKF, NA, (the "**Fiscal Agent**"), pursuant to which the Obligor has incurred a loan in the original principal amount of \$ \_\_\_\_\_ (the "**Funding Loan**"), and this Note is entitled to the benefits of the Funding Loan Agreement and is subject to the terms, conditions and provisions thereof. The Obligor is using the proceeds of the Funding Loan to make a loan to Austin DMA Housing III, LLC (the "**Borrower**") pursuant to the Project Loan Agreement dated as of March 1, 2018 (the "**Project Loan Agreement**"), among the Obligor, the Borrower and the Fiscal Agent.

THIS NOTE IS BEING ISSUED UNDER THE PROVISIONS OF THE TEXAS HOUSING FINANCE CORPORATION ACT, CHAPTER 394, TEXAS LOCAL GOVERNMENT CODE, AS AMENDED. THIS NOTE AND THE ISSUE OF WHICH IT FORMS A PART ARE NOT GENERAL OBLIGATIONS OF THE OBLIGOR, BUT ARE



LIMITED OBLIGATIONS PAYABLE SOLELY FROM THE MONEYS AND PROPERTIES  
PLEDGED FOR PAYMENT THEREOF.

1. **Defined Terms.** As used in this Note, (i) the term "Funding Lender" means the holder of this Note, and (ii) the term "Indebtedness" means the principal of, premium, if any, and interest on or any other amounts due at any time under this Note or the Funding Loan Agreement. "Event of Default" and other capitalized terms used but not defined in this Note shall have the meanings given to such term in the Funding Loan Agreement.

2. **Payments of Principal and Interest.** The Obligor shall pay (but solely from the sources and in the manner provided for in the Funding Loan Agreement) on the first calendar day of each month commencing May 5, 2018, interest as it accrues on this Note at the rates set forth above (or such higher rate of interest borne by the Funding Loan upon any default) (the "**Interest Rate**") on the outstanding principal balance of this Note, and shall also pay interest on this Note at the applicable interest rate set forth above, on the date of any optional or mandatory prepayment or acceleration of all or part of the Funding Loan pursuant to the Funding Loan Agreement, in an amount equal to the accrued and unpaid interest to the date of prepayment on the portion of this Note subject to prepayment (each such date for payment an "**Interest Payment Date**"). If the date for payment of principal of, premium, if any, or interest on this Note shall be a day which is not a Business Day, then the date for such payment shall be the next succeeding day which is a Business Day, and payment on such later date shall have the same force and effect as if made on the nominal date of payment.

The Obligor shall pay (but solely from the sources and in the manner provided for in the Funding Loan Agreement) the outstanding principal of this Note in full on \_\_\_\_\_, \_\_\_\_ (the "**Maturity Date**") and in monthly installments on each date set forth on the Funding Loan Amortization Schedule attached as Schedule 1 hereto in an amount equal to the corresponding amounts set forth thereon, or at such earlier times and in such amounts as may be required, in the event of an optional or mandatory prepayment or acceleration of the Funding Loan pursuant to the Funding Loan Agreement. The outstanding principal hereof is subject to acceleration at the time or times and under the terms and conditions, and with notice, if any, as provided under the Funding Loan Agreement.

3. **Prepayment; Prepayment Premium.** This Note is subject to prepayment as specified in the Funding Loan Agreement. Prepayment Premium shall be payable as specified in the Funding Loan Agreement.

4. **Forbearance.** Any forbearance by the Funding Lender in exercising any right or remedy under this Note or any other document evidencing or securing the Funding Loan or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of that or any other right or remedy. The acceptance by the Funding Lender of any payment after the due date of such payment, or in an amount which is less than the required payment, shall not be a waiver of the Funding Lender's right to require prompt payment when due of all other payments or to exercise any right or remedy with respect to any failure to make prompt payment. Enforcement by the Funding Lender of any security for the obligations under this Note shall not constitute an election by the Funding Lender of remedies so as to preclude the exercise of any other right or remedy available to the Funding Lender.

5. **Waivers.** Except as otherwise expressly provided in the Funding Loan Agreement and the Project Loan Agreement, presentment, demand, notice of dishonor, protest, notice of acceleration, notice of intent to demand or accelerate payment or maturity, presentment for payment, notice of nonpayment, grace and diligence in collecting the Indebtedness are waived by the Obligor and all endorsers and guarantors of this Note and all other third-party obligors.

6. **Loan Charges.** Neither this Note nor any of the other Financing Documents will be construed to create a contract for the use, forbearance, or detention of money requiring payment of interest at a rate greater than the rate of interest which results in the maximum amount of interest allowed by applicable law (the "**Maximum Interest Rate**"). If any applicable law limiting the amount of interest or other charges permitted to be collected from Obligor in connection with the Funding Loan is interpreted so that any interest or other charge provided for in any Financing Document, whether considered separately or together with other charges provided for in any other Financing Document, violates that law, and Obligor is entitled to the benefit of that law, that interest or charge is hereby reduced to the extent necessary to eliminate that violation. The amounts, if any, previously paid to Funding Lender in excess of the permitted amounts will be applied by Funding Lender to reduce the unpaid principal balance of this Note. For the purpose of determining whether any applicable law limiting the amount of interest or other charges permitted to be collected from Obligor has been violated, all indebtedness that constitutes interest, as well as all other charges made in connection with the indebtedness that constitute interest, will be deemed to be allocated and spread ratably over the stated term of this Note. Unless otherwise required by applicable law, such allocation and spreading will be effected in such a manner that the rate of interest so computed is uniform throughout the stated term of this Note.

7. **Governing Law.** This Note shall be governed by the internal law of the State of Texas.

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

9. **Address for Payment.** All payments due under this Note shall be payable at the principal office of the Funding Lender as designated by the Funding Lender in writing to the Fiscal Agent and the Servicer.

10. **Default Rate.** So long as (a) any monthly installment under this Note remains past due, or (b) any other Event of Default has occurred and is continuing, interest under this Note shall accrue on the unpaid principal balance from the earlier of the due date of the first unpaid monthly installment or the occurrence of such other Event of Default, as applicable, at a rate (the "**Default Rate**") equal to the lesser of (i) the Interest Rate, as applicable, otherwise in effect notwithstanding the default plus four percent (4%) per annum or (ii) the Maximum Interest Rate. If the unpaid principal balance and all accrued interest are not paid in full on the Maturity Date, the unpaid principal balance and all accrued interest shall bear interest from the Maturity Date at the lesser of the Default Rate or the Maximum Interest Rate.

11. **Limited Obligation.** THIS NOTE IS A SPECIAL, LIMITED OBLIGATION OF THE GOVERNMENTAL LENDER PAYABLE, AS TO PRINCIPAL, PREMIUM, IF ANY, AND INTEREST SOLELY FROM THE PLEDGED REVENUES AND OTHER

FUNDS AND MONEYS AND SECURITY PLEDGED AND ASSIGNED UNDER THE FUNDING LOAN AGREEMENT. THIS NOTE SHALL CONSTITUTE A VALID CLAIM OF THE OWNER OR OWNERS THEREOF AGAINST THE PLEDGED REVENUES AND OTHER FUNDS AND MONEYS AND SECURITY PLEDGED AND ASSIGNED UNDER THE FUNDING LOAN AGREEMENT, WHICH ARE PLEDGED TO SECURE THE PAYMENT OF THE PRINCIPAL OF AND INTEREST ON THIS NOTE, AND WHICH SHALL BE USED FOR NO OTHER PURPOSE EXCEPT AS EXPRESSLY AUTHORIZED IN THE FUNDING LOAN AGREEMENT. THIS NOTE SHALL NOT BE A DEBT OR INDEBTEDNESS OF THE STATE OR ANY POLITICAL SUBDIVISION THEREOF, AND NEITHER THE STATE NOR ANY POLITICAL SUBDIVISION THEREOF SHALL BE LIABLE THEREON, NOR IN ANY EVENT SHALL THIS NOTE BE PAYABLE OUT OF ANY FUNDS OR PROPERTIES OTHER THAN THOSE OF THE GOVERNMENTAL LENDER PLEDGED UNDER THE FUNDING LOAN AGREEMENT. THIS NOTE SHALL NOT CONSTITUTE AN INDEBTEDNESS OR A MULTIPLE FISCAL-YEAR FINANCIAL OBLIGATION WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY DEBT LIMITATION OR RESTRICTION. NEITHER THE STATE NOR ANY POLITICAL SUBDIVISION THEREOF (EXCEPT THE GOVERNMENTAL LENDER FROM THE SOURCES IDENTIFIED IN THE FUNDING LOAN AGREEMENT) SHALL BE LIABLE FOR PAYMENT OF THIS NOTE NOR IN ANY EVENT SHALL PRINCIPAL OF, PREMIUM, IF ANY, AND INTEREST ON THIS NOTE BE PAYABLE OUT OF ANY FUNDS OR ASSETS OTHER THAN THOSE PLEDGED TO THAT PURPOSE BY THE GOVERNMENTAL LENDER UNDER THE FUNDING LOAN AGREEMENT. THE GOVERNMENTAL LENDER HAS NO TAXING POWER.

NO DIRECTOR, OFFICER, AGENT, EMPLOYEE OR ATTORNEY OF THE OBLIGOR, INCLUDING ANY PERSON EXECUTING THE FUNDING LOAN AGREEMENT OR THIS NOTE, SHALL BE LIABLE PERSONALLY ON THIS NOTE OR FOR ANY REASON RELATING TO THE ISSUANCE OF THIS NOTE. NO RECOURSE SHALL BE HAD FOR THE PAYMENT OF THE PRINCIPAL OF OR THE INTEREST ON THIS NOTE, OR FOR ANY CLAIM BASED ON THIS NOTE, OR OTHERWISE IN RESPECT OF THIS NOTE, OR BASED ON OR IN RESPECT OF THE FUNDING LOAN AGREEMENT OR ANY SUPPLEMENTS AND AMENDMENTS THERETO, AGAINST ANY MEMBER, COMMISSIONER, OFFICER, EMPLOYEE OR AGENT, AS SUCH, OF THE OBLIGOR OR ANY SUCCESSOR, WHETHER BY VIRTUE OF ANY CONSTITUTION, STATUTE OR RULE OF LAW, OR BY THE ENFORCEMENT OF ANY ASSESSMENT OR PENALTY OR OTHERWISE, ALL SUCH LIABILITY BEING, BY THE ACCEPTANCE OF THIS NOTE AND AS PART OF THE CONSIDERATION FOR THE ISSUE OF THIS NOTE, EXPRESSLY WAIVED AND RELEASED.

12. **Funding Loan Agreement Controlling.** The terms of this Note are subject in all respects to the terms of the Funding Loan Agreement. If there is a conflict between the provisions of this Note and the Funding Loan Agreement, the Funding Loan Agreement shall control. IN WITNESS WHEREOF, the Austin Housing Finance Corporation has caused this Note to be executed in its name by the manual or facsimile signature of its Chair and its corporate seal (or a

facsimile thereof) to be impressed or imprinted hereon and attested by the manual or facsimile signature of its Executive Director.

[Signature page follows]

IN WITNESS WHEREOF, the Obligor has caused this Note to be duly executed by the manual or facsimile signature of its authorized representative and attested by the manual or facsimile signature of its authorized representative.

**AUSTIN HOUSING FINANCE  
CORPORATION**

By \_\_\_\_\_  
Rose Truelove, Treasurer

**ATTEST:**

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

## **CERTIFICATE OF AUTHENTICATION**

This Note is issued under the provisions of and described in the within-mentioned Funding Loan Agreement.

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

**BOKF, NA**

By \_\_\_\_\_  
Pamela M. Black, Senior Vice President

**EXHIBIT B**

**FORM OF NOTICE OF APPOINTMENT  
OF FUNDING LENDER REPRESENTATIVE**

BOKF, NA  
801 Cherry Street, Suite 3325, Unit 27  
Fort Worth, Texas 76102  
Attn: Corporate Trust Department

AUSTIN DMA HOUSING III, LLC  
c/o AHFC Nightingale Non-Profit Corporation  
1000 East 11<sup>th</sup> Street, 2<sup>nd</sup> Floor  
Austin, Texas 78702

AUSTIN HOUSING FINANCE CORPORATION  
1000 East 11<sup>th</sup> Street, 2<sup>nd</sup> Floor  
Austin, Texas 78702  
Attn: David Potter

JPMORGAN CHASE BANK, N.A.  
221 West Sixth Street, First Floor  
Austin, Texas 78767

Re: Nightingale at Goodnight Ranch Apartments

Ladies and Gentlemen:

The undersigned is the holder (the "**Funding Lender**") of the Multifamily Note dated March \_\_, 2018 (the "**Governmental Note**") delivered pursuant to the Funding Loan Agreement dated as of March 1, 2018 (the "**Funding Loan Agreement**"), among JPMorgan Chase Bank, N.A., in its capacity as Initial Funding Lender (the "**Initial Funding Lender**"), Austin Housing Finance Corporation (the "**Governmental Lender**") and BOKF, NA, (the "**Fiscal Agent**"). Pursuant to Section 11.05 of the Funding Loan Agreement, you are hereby notified that, effective immediately upon receipt of this notice by the Fiscal Agent, the Funding Lender Representative appointed under Section 11.05 of the Funding Loan Agreement shall be \_\_\_\_\_. [The person or entity previously appointed as Funding Lender Representative shall upon the effectiveness of this notice no longer have any further rights or obligations as Funding Lender Representative.]

The following individual or individuals shall have the authority to execute any consent, waiver, approval, direction or other instrument on behalf of the Funding Lender Representative and the signature(s) set forth next to his/her (their) name(s) is (are) his/her (their) true and correct signature(s).

NAME

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SIGNATURE

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Additional individuals may be given such authority by written notice to you from the Funding Lender Representative or from the Funding Lender.

This notice is dated as of the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

**JPMORGAN CHASE BANK, N.A.**, a national  
banking association

By: \_\_\_\_\_  
David H. Saling, Authorized Representative



## EXHIBIT C

### FORM OF TRANSFeree REPRESENTATIONS LETTER

[To be prepared on letterhead of transferee]

[Date]

AUSTIN HOUSING FINANCE CORPORATION  
1000 East 11<sup>th</sup> Street, 2<sup>nd</sup> Floor  
Austin, Texas 78702  
Attn: David Potter

BOKF, NA  
801 Cherry Street, Suite 3325, Unit 27  
Fort Worth, Texas 76102  
Attn: Corporate Trust Department

**Re:** Nightingale at Goodnight Ranch Apartments

Ladies and Gentlemen:

The undersigned (the "Funding Lender") hereby acknowledges receipt of the Multifamily Note dated March \_\_, 2018 (the "Governmental Note") delivered pursuant to the Funding Loan Agreement dated as of March 1, 2018 (the "Funding Loan Agreement"), among JPMorgan Chase Bank, N.A., in its capacity as Initial Funding Lender (the "Initial Funding Lender"), the Austin Housing Finance Corporation (the "Governmental Lender") and BOKF, NA, (the "Fiscal Agent"). Capitalized terms used herein and not otherwise defined have the meanings given to such terms in the Funding Loan Agreement.

In connection with the [origination/purchase] of the Funding Loan by the Funding Lender, the Funding Lender hereby makes the following representations upon which you may rely:

1. The Funding Lender has authority to [originate/purchase] the Funding Loan and to execute this letter, and any other instruments and documents required to be executed by the Funding Lender in connection with the [origination/purchase] of the Funding Loan.

2. The Funding Lender is an "accredited investor" under Regulation D of the Securities Act of 1933 (the "Act") or a "qualified institutional buyer" under Rule 144(a) of said Act (such "accredited investor" or "qualified institutional buyer", a "Qualified Transferee"), and therefore, has sufficient knowledge and experience in financial and business matters, including purchase and ownership of municipal and other tax-exempt obligations, to be able to evaluate the risks and merits of the investment represented by the Funding Loan.

3. The Funding Lender acknowledges that it is [originating/purchasing] the Funding Loan for investment for its own account and not with a present view toward resale or the distribution thereof (except as set forth below), in that it does not now intend to resell or otherwise dispose of all or any part of its interests in the Funding Loan (except as set forth below); provided,

however, that the Funding Lender may, notwithstanding the foregoing and the terms of Paragraph 4 below, (i) transfer the Funding Loan to any affiliate or other party related to the Funding Lender that is a Qualified Transferee or (ii) sell or transfer the Funding Loan to a special purpose entity, a trust or a custodial or similar pooling arrangement from which the Funding Loan or securitized interests therein are not expected to be sold except to (x) owners or beneficial owners thereof that are Qualified Transferees or (y) in circumstances where secondary market credit enhancement is provided for such securitized interests resulting in a rating thereof of at least "A" or better [INSERT FOR SELLER/SERVICER PURCHASER LETTER;; provided, further, however, the Funding Lender has originated and funded the Funding Loan with the expectation that the Funding Loan will be sold to the Federal Home Loan Mortgage Corporation ("Freddie Mac") pursuant to the commitment dated \_\_\_\_\_, 2018 (the "Freddie Mac Commitment")].

4. In addition to the right to sell or transfer the Funding Loan as set forth in Paragraph 3 above, the Funding Lender further acknowledges its right to sell or transfer the Funding Loan, subject, as required under the Funding Loan Agreement, to the delivery to the Fiscal Agent of a transferee representations letter from the transferee to substantially the same effect as this Transferee Representations Letter or in such other form authorized by the Funding Loan Agreement with no revisions except as may be approved in writing by the Governmental Lender.

5. The Funding Lender understands that the Governmental Note is not registered under the Act and that such registration is not legally required as of the date hereof; and further understands that the Governmental Note (a) is not being registered or otherwise qualified for sale under the "Blue Sky" laws and regulations of any state, (b) will not be listed in any stock or other securities exchange, (c) will not carry a rating from any rating service and (d) will be delivered in a form which may not be readily marketable.

6. The Funding Lender understands that (a) the Funding Loan is not secured by any pledge of any moneys received or to be received from taxation by the State of Texas or any political subdivision thereof and that the Governmental Lender has no taxing power, (b) the Funding Loan does not and will not represent or constitute a general obligation or a pledge of the faith and credit of the Governmental Lender, the State of Texas or any political subdivision thereof; and (c) the liability of the Governmental Lender with respect to the Funding Loan is limited to the Pledged Security as set forth in the Funding Loan Agreement.

7. The Funding Lender has either been supplied with or been given access to information, including financial statements and other financial information, which it considers necessary to make an informed decision in connection with the [origination/purchase] of the Funding Loan. The Funding Lender has not relied upon the Governmental Lender for any information in connection with its purchase of the Funding Loan.

8. The Funding Lender has made its own inquiry and analysis with respect to the Funding Loan and the security therefor, and other material factors affecting the security and payment of the Funding Loan. The Funding Lender is aware that the business of the Borrower involves certain economic variables and risks that could adversely affect the security for the Funding Loan.

All agreements, representations and warranties made herein shall survive the execution and delivery of this letter agreement and, notwithstanding any investigation heretofore or hereafter, shall continue in full force and effect.

**JPMORGAN CHASE BANK, N.A.**, a national  
banking association

By: \_\_\_\_\_  
David H. Saling, Authorized Representative

## EXHIBIT D

### COSTS OF ISSUANCE REQUISITION (Cost of Issuance Fund)

BOKF, NA, as Fiscal Agent

Re: Nightingale at Goodnight Ranch Apartments

Fiscal Agent:

You are requested to disburse funds from the Cost of Issuance Fund pursuant to Section 4.13 of the Funding Loan Agreement in the amount(s), to the person(s) and for the purpose(s) set forth in this requisition (the "**Requisition**"). The terms used in this requisition shall have the meaning given to those terms in the Funding Loan Agreement (the "**Funding Loan Agreement**"), dated as of March 1, 2018, by and among JPMorgan Chase Bank, N.A., in its capacity as Initial Funding Lender (the "**Initial Funding Lender**"), Austin Housing Finance Corporation and BOKF, NA, doing business as Bank of Texas, as Fiscal Agent, securing the Multifamily Mortgage Revenue Note (Funding Loan) dated March \_\_, 2018 (the "**Governmental Note**").

REQUISITION NO.:

PAYMENT DUE TO:

AMOUNT TO BE DISBURSED: \$

The Borrower has attached hereto a copy of each Payee's Form W-9 or Form W-8, as applicable (unless previously provided). The Borrower further acknowledges the Fiscal Agent cannot process such disbursement request until the Fiscal Agent is in receipt of a valid Form W-9 or Form W-8, as applicable, in accordance with Internal Revenue Service regulations and the Foreign Account Tax Compliance Act.

The undersigned, on behalf of Austin DMA Housing III, LLC, a limited liability company duly organized and existing under the laws of the State of Texas (the "**Borrower**"), certifies that:

(a) the expenditures for which money is requisitioned by this Requisition represent proper charges against the Cost of Issuance Fund, have not been included in any previous requisition and are set forth in the Schedule attached to this Requisition, with invoices attached for any sums for which reimbursement is requested;

(b) the money requisitioned is not greater than those necessary to meet obligations due and payable or to reimburse the applicable party for funds actually advanced for Costs of Issuance; and

(c) after taking into account the proposed disbursement, no more than two percent of the sales proceeds of the Governmental Note will have been disbursed for Cost of Issuance.

Attached to this Requisition is a Schedule, together with copies of invoices or bills of sale covering all items for which payment is being requested.

Date of Requisition: \_\_\_\_\_

AUSTIN DMA HOUSING III, LLC,  
a Texas limited liability company

By: AHFC Nightingale Non-Profit Corporation,  
a Texas nonprofit corporation, its  
managing member

By: \_\_\_\_\_  
Rosie Truelove, Vice President

## EXHIBIT E

### PROJECT LOAN FUND REQUISITION (Project Loan Fund)

BOKF, NA, as Fiscal Agent

Re: Nightingale at Goodnight Ranch Apartments

Fiscal Agent:

You are requested to disburse funds from the Cost of Issuance Fund pursuant to Section 4.13 of the Funding Loan Agreement in the amount(s), to the person(s) and for the purpose(s) set forth in this Requisition (the "**Requisition**"). The terms used in this requisition shall have the meaning given to those terms in the Funding Loan Agreement (the "**Funding Loan Agreement**"), dated as of March 1, 2018, by and among JPMorgan Chase Bank, N.A., in its capacity as Initial Funding Lender (the "**Initial Funding Lender**"), Austin Housing Finance Corporation and BOKF, NA, doing business as Bank of Texas, as Fiscal Agent, securing the Multifamily Mortgage Revenue Note (Funding Loan) dated March \_\_, 2018 (the "**Governmental Note**").

REQUISITION NO.:

PAYMENT DUE TO:

AMOUNT(S) TO BE DISBURSED:

\$ \_\_\_\_\_ from the Project Account

\$ \_\_\_\_\_ from the LIHTC Subaccount of the Borrower Equity Account

\$ \_\_\_\_\_ from the Gap Loan Subaccount of the Borrower Equity Account

\$ \_\_\_\_\_ from the Net Operating Income Subaccount of the Borrower Equity Account

The Borrower has attached hereto a copy of each Payee's Form W-9 or Form W-8, as applicable (unless previously provided). The Borrower further acknowledges the Fiscal Agent cannot process such disbursement request until the Fiscal Agent is in receipt of a valid Form W-9 or Form W-8, as applicable, in accordance with Internal Revenue Service regulations and the Foreign Account Tax Compliance Act.

Included in the attached Schedule is the requisition for the disbursement of proceeds of the Austin Housing Finance Corporation Multifamily Housing Governmental Revenue Note (Nightingale at Goodnight Ranch Apartments) Series 2018 to be made on or about the date of the requested disbursement of funds pursuant to this Requisition.

The undersigned Borrower hereby represents and warrants that the following information and certifications provided in connection with this Requisition are true and correct as of the date

hereof and authorizes Servicer to submit this Requisition to the Fiscal Agent on behalf of Borrower:

1. Purposes for which disbursement is requested are specified in the **attached Schedule**.
2. Party or parties to whom the disbursements shall be made are specified in the **attached Schedule** (may be the undersigned in the case of reimbursement for advances and payments made or cost incurred for work done by the undersigned); provided, that no reimbursement shall be made for advances and payments made prior to \_\_\_\_\_, 20\_\_).
3. The undersigned certifies that to the Fiscal Agent, and for the benefit of the Governmental Lender, that:
  - a. the conditions precedent to disbursement set forth in the Construction Disbursement Agreement have been satisfied;
  - b. the disbursement requested pursuant to this Requisition will be used solely to pay a cost or costs allowable under the Funding Loan Agreement and the Construction Disbursement Agreement;
  - c. none of the items for which disbursement is requested pursuant to this Requisition has formed the basis for any disbursement previously made from the Project Loan Fund or under the Gap Loan and all such items have been properly recorded in Borrower's books and are set forth on the Schedule attached hereto, along with paid invoices attached for any sum for which reimbursement is requested and invoices or bills of sales for all other items;
  - d. all labor and materials for which disbursements have been requested have been incorporated into the Project in accordance with reasonable and standard building practices, the Construction Disbursement Agreement and all applicable laws, ordinances, rules and regulations of any governmental authority having jurisdiction over the Project;
  - e. the materials, supplies and equipment furnished or installed for the Improvements are not subject to any lien or security interest or that the funds to be disbursed pursuant to this Requisition are to be used to satisfy any such lien or security interest;
  - f. all of the funds being requisitioned are being used in compliance with all tax covenants set forth in the Funding Loan Agreement, the Project Loan Agreement, the Tax Regulatory Agreement, the Tax Certificates, and the documents related to the Gap Loan (the "Gap Loan Documents") including that none of the proceeds of the Funding Loan or the Gap Loan (including investment earnings thereon) will be used to provide an airplane, a skybox or any other private luxury box, any facility primarily used for gambling,

health club facility or any store the principal business of which is the sale of alcoholic beverages for consumption off premises;

- g. the Borrower's representations, warranties and expectations set forth in the Borrower's Tax Certificate are reaffirmed and restated, and have been continuously complied with since the execution of the Project Loan Agreement, and the same are true, correct and complete on the date hereof;
- h. with respect to amounts from the Project Account, not less than 95% of the sum of:
  - (A) the amounts requisitioned by this Requisition; plus
  - (B) all amounts previously requisitioned and disbursed from the Project Account of the Project Loan Fund;

have been or will be applied by Borrower to pay the Costs of the Project;

- i. Borrower is not in default under the Project Loan Agreement, the Construction Disbursement Agreement or any other Project Loan Document to which it is a party and nothing has occurred to the knowledge of Borrower that would prevent the performance of its obligations under such documents;
- j. no amounts being requisitioned hereby will be used to pay, or reimburse, any Costs of Issuance incurred in connection with the delivery of the Governmental Note; and
- k. Funds deposited with Borrower for further disbursement to third parties shall be paid to such third parties by check dated the date of such deposit and Borrower reasonably expects such funds will be disbursed from its account within five Business Days of such deposit.

[Following items may not be required for Initial Disbursement]

- 4. Estimated costs of completing the uncompleted Repairs (as defined in the Continuing Covenant Agreement) as of the date of this Requisition: \_\_\_\_\_.
- 5. Percent of the Repairs completed as of the date this request: \_\_\_\_\_ %



IN WITNESS WHEREOF, the undersigned has executed this Requisition as of the day and date first above written.

Date: \_\_\_\_\_

AUSTIN DMA HOUSING III, LLC,  
a Texas limited liability company

By: AHFC Nightingale Non-Profit Corporation, a  
Texas nonprofit corporation, its managing  
member

By: \_\_\_\_\_  
Rosie Truelove, Vice President

**APPROVED:**

**JPMORGAN CHASE BANK, N.A.**, a national  
banking association

By: \_\_\_\_\_  
Name: David H. Saling  
Title: Authorized Representative

**APPROVED WITH RESPECT TO DISBURSEMENTS FROM THE GAP LOAN  
SUBACCOUNT OF THE BORROWER EQUITY ACCOUNT:**

**JPMORGAN CHASE BANK, N.A.**, a national  
banking association

By: \_\_\_\_\_  
Name: David H. Saling  
Title: Authorized Representative

**Exhibit B**

**Project Loan Agreement**

**PROJECT LOAN AGREEMENT**

among

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

**BOKF, NA,  
as Fiscal Agent**

and

**AUSTIN DMA HOUSING III, LLC,  
as Borrower**

Relating to

**Nightingale at Goodnight Ranch Apartments  
Austin, Texas**

**Original Project Loan Principal Amount: \$ \_\_\_\_\_**

**Dated as of March 1, 2018**

**All of the right, title and interest of the Austin Housing Finance Corporation (except for its Unassigned Rights) in and to this Project Loan Agreement are being assigned to BOKF, NA, as Fiscal Agent, as security for the Funding Loan made pursuant to that certain Funding Loan Agreement dated as of March 1, 2018, by and among the Governmental Lender, the Initial Funding Lender named therein and the Fiscal Agent.**

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## PROJECT LOAN AGREEMENT

**THIS PROJECT LOAN AGREEMENT** (this "**Project Loan Agreement**") is made and entered into as of March 1, 2018, by and among the **Austin Housing Finance Corporation** (the "**Governmental Lender**"), a housing finance corporation organized and existing under the laws of the State of Texas (the "**State**"), **BOKF, NA**, a national banking association, duly organized and existing under the laws of the United States (together with any successor Fiscal Agents appointed under the Funding Loan Agreement, the "**Fiscal Agent**"), and **Austin DMA Housing III, LLC**, a limited liability company duly organized and existing under the laws of the State of Texas (together with its successors and assigns permitted hereunder, the "**Borrower**").

### RECITALS

**WHEREAS**, pursuant to Chapter 394, as amended, Texas Local Government Code (the "**Act**") and this Project Loan Agreement, the Governmental Lender is agreeing to make a mortgage loan to the Borrower in the original principal amount of \$ \_\_\_\_\_ (the "**Project Loan**") to provide for the financing of a 174-unit low-income multifamily rental housing development located at 5900 Merle Drive in Austin, Texas and known as the Nightingale at Goodnight Ranch Apartments (the "**Project**").

**WHEREAS**, the Governmental Lender is making the Project Loan to the Borrower with the proceeds received from the loan in the original principal amount of \$ \_\_\_\_\_ (the "**Funding Loan**" and together with the Project Loan, the "**Loans**") made to the Governmental Lender pursuant to the Funding Loan Agreement (the "**Funding Loan Agreement**"), by and among JPMorgan Chase Bank, N.A., a national banking association, in its capacity as Initial Funding Lender (the "**Initial Funding Lender**"), the Governmental Lender and the Fiscal Agent. The Funding Loan is being originated and funded by the Initial Funding Lender and is evidenced by the Governmental Lender's Multifamily Note dated as of the Delivery Date (together with all riders and addenda thereto, the "**Governmental Note**") delivered by the Governmental Lender to the Initial Funding Lender.

**WHEREAS**, the Initial Funding Lender, pursuant to the terms and subject to the conditions of the Funding Loan Agreement, the Construction Phase Financing Agreement and the Construction Disbursement Agreement, has agreed to originate and fund the Funding Loan to the Governmental Lender, which proceeds of the Funding Loan will be used by the Governmental Lender to fund the Project Loan to the Borrower pursuant to this Project Loan Agreement. The Initial Funding Lender will administer the Loans during the Construction Phase in accordance with the Financing Documents.

**WHEREAS**, the Borrower has agreed to use the proceeds of the Project Loan to finance the acquisition and construction of the Project and to pay certain Costs of Issuance with respect to the Loans.

**WHEREAS**, the Borrower's repayment obligations in respect of the Project Loan will be evidenced by a Multifamily Note dated as of the Delivery Date (together with all riders and modifications thereto, the "**Project Note**") delivered to the Governmental Lender, which Project

Note will be endorsed by the Governmental Lender to the Fiscal Agent as security for the Funding Loan.

**WHEREAS**, to secure the Borrower's obligations under the Project Note, the Borrower will execute and deliver to the Governmental Lender a Multifamily Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing (Leasehold) dated as of the date hereof (the "**Security Instrument**") with respect to the Project, which Security Instrument will be assigned by the Governmental Lender to the Fiscal Agent as security for the Funding Loan.

**WHEREAS**, the Federal Home Loan Mortgage Corporation, a shareholder-owned government-sponsored enterprise ("**Freddie Mac**") has entered into a commitment with Bellwether Enterprise Real Estate Capital, LLC (the "**Freddie Mac Seller/Servicer**") dated \_\_\_\_\_, 2018 (the "**Freddie Mac Commitment**"), whereby Freddie Mac has committed, subject to the satisfaction of the Conditions to Conversion set forth in the Construction Phase Financing Agreement on or before the Forward Commitment Maturity Date, to facilitate the financing of the Project in the Permanent Phase by purchasing the Funding Loan from the Freddie Mac Seller/Servicer following the Conversion Date.

**WHEREAS**, if the Conditions to Conversion are satisfied on or before the Forward Commitment Maturity Date as provided for in the Freddie Mac Commitment and the Construction Phase Financing Agreement, the Project Loan will convert from the Construction Phase to the Permanent Phase on the Conversion Date and, on such Conversion Date, the Initial Funding Lender shall deliver, and the Freddie Mac Seller/Servicer shall purchase, the Funding Loan, as evidenced by the Governmental Note. If the Conditions to Conversion are not satisfied on or before the Forward Commitment Maturity Date, the Project Loan will not convert from the Construction Phase to the Permanent Phase, and neither the Freddie Mac Seller/Servicer nor Freddie Mac will have any obligation with respect to the purchase of the Funding Loan and the Initial Funding Lender will remain the owner of the Funding Loan as the holder of the Governmental Note.

**WHEREAS**, as a Condition to Conversion, the Project Note and the Security Instrument are required to be amended and restated and the Borrower is required to enter into a Continuing Covenant Agreement with the Freddie Mac Seller/Servicer (the "**Freddie Mac Continuing Covenant Agreement**"), in each case pursuant to the forms attached to the Construction Phase Financing Agreement.

**WHEREAS**, if the Conditions to Conversion are satisfied and the Funding Loan is purchased by the Freddie Mac Seller/Servicer on the Conversion Date as set forth above, the Freddie Mac Seller/Servicer shall deliver the Funding Loan to Freddie Mac for purchase pursuant to the terms of the Freddie Mac Commitment and the Guide (such date of purchase by Freddie Mac being referred to as the "**Freddie Mac Purchase Date**").

**WHEREAS**, upon the occurrence of the Freddie Mac Purchase Date, the Freddie Mac Seller/Servicer will assign to Freddie Mac all of its rights and interest in the Funding Loan, the Governmental Note, the Funding Loan Agreement, the Freddie Mac Continuing Covenant Agreement and the other Financing Documents. Bellwether Enterprise Real Estate Capital, LLC



will act as Servicer for the Loans on behalf of Freddie Mac, as the "**Funding Lender**," on and after the Freddie Mac Funding Date.

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

## **ARTICLE I**

### **DEFINITIONS**

**Section 1.01 Definitions.** All words and phrases (except for Event of Default) defined in the Funding Loan Agreement and the Continuing Covenant Agreement shall have the same meanings for the purposes of this Project Loan Agreement. In addition to the words and phrases defined in the Funding Loan Agreement and elsewhere herein, the following words and phrases shall have the following meanings:

**"Equity Investor"** means, collectively, Boston Capital Direct Placement, A Limited Partnership, a Massachusetts limited partnership, its affiliates, successors and/or assigns, the investor member of the Borrower, and BCCC, Inc., a Massachusetts corporation, its affiliates, successors and/or assigns, the special member of the Borrower.

**"Event of Default"** means any of those events specified in and defined by the applicable provisions of Article VII hereof to constitute an event of default.

**"Fee Component"** means the regular, ongoing fees due from time to time to the Governmental Lender, Fiscal Agent and the Rebate Analyst, if any, expressed as a flat, fixed amount or in terms of a percentage of the unpaid principal amount of the Funding Loan on an annual basis.

**"Loan Servicing and Disbursement Agreement"** means the Loan Servicing and Disbursement Agreement of even date herewith, between the Initial Funding Lender and Borrower.

**"Project Loan Agreement"** means this Project Loan Agreement, together with any amendments hereto.

**"Project Loan Amortization Schedule"** means the Project Loan Amortization Schedule attached as Schedule 1 to the Project Note on the Conversion Date.

**"Project Loan Payment"** means each payment of the Project Loan on each Project Loan Payment Date pursuant to the Project Note and this Project Loan Agreement.

**"Project Loan Payment Date"** means (A) the fifth day of each calendar month, commencing May 5, 2018, or (B) any other date on which the Project Loan is prepaid or paid, whether at scheduled maturity or upon prepayment or acceleration of the maturity thereof; provided, however, that if a Project Loan Payment Date is not a Business Day, payment shall be made on the first Business Day following such Project Loan Payment Date.

**"Servicing Fee"** means, during the Permanent Phase, the ordinary fee payable to the Servicer in connection with the servicing of the Project Loan and the Funding Loan payable monthly in an amount equal to one twelfth of \_\_\_\_\_% of the outstanding principal balance of the Project Loan, computed on the basis of a 360-day year of twelve (12) thirty (30) day months.

**"Taxes"** means all taxes, water rents, sewer rents, assessments and other governmental or municipal or public or private dues, fees, charges and levies and any liens (including federal tax liens) which are or may be levied, imposed or assessed upon the Project or any part thereof, or upon any leases pertaining thereto, or upon the rents, issues, income or profits thereof, whether any or all of the aforementioned be levied directly or indirectly or as excise taxes or as income taxes.

**Section 1.02 Interpretation.** Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders. Words importing the singular number shall include the plural number and vice versa unless the context shall otherwise indicate. Words importing persons include firms, partnerships, limited liability companies, joint ventures, associations and corporations. References to Articles, Sections and other subdivisions of this Project Loan Agreement are the Articles, sections and other subdivisions of this Project Loan Agreement as originally executed.

The terms "herein," "hereunder," "hereby," "hereto," "hereof" and any similar terms refer to this Project Loan Agreement; the term "heretofore" means before the date of execution of this Project Loan Agreement; and the term "hereafter" means after the date of execution of this Project Loan Agreement.

(End of Article I)

## ARTICLE II

### REPRESENTATIONS, WARRANTIES AND COVENANTS

#### **Section 2.01 *Representations, Warranties and Covenants of the Governmental Lender.***

The Governmental Lender makes the following representations, warranties and covenants for the benefit of the Borrower, the Fiscal Agent, the Funding Lender and the Servicer:

(a) The Governmental Lender is a nonprofit housing finance corporation duly organized, validly existing and in good standing under the laws of the State.

(b) The Governmental Lender has all necessary power and authority to incur the indebtedness of the Funding Loan evidenced by the Governmental Note and to make the Project Loan from the proceeds thereof, and to execute, and deliver this Project Loan Agreement, the Funding Loan Agreement, and the other Financing Documents to which it is a party, and to perform its duties and discharge its obligations hereunder and thereunder.

(c) The Governmental Lender has taken all action on its part to incur the Funding Loan evidenced by the Governmental Note and make the Project Loan from the proceeds thereof and for the sale, execution and delivery thereof.

(d) Each of the Financing Documents to which the Governmental Lender is a party has been duly and validly authorized, executed and delivered by the Governmental Lender and, assuming due authorization, execution and delivery by the other parties thereto, constitutes the legal, valid and binding obligation of the Governmental Lender, enforceable against the Governmental Lender in accordance with its respective terms, except as enforceability may be limited by bankruptcy, insolvency, moratorium or other laws affecting creditors' rights generally and the application of equitable principles.

(e) The Governmental Lender has complied with the provisions of the laws of the State, including, but not limited to, the Act, which are prerequisites to the consummation of the transactions on the part of the Governmental Lender described or contemplated in the Financing Documents. The execution and delivery of the Governmental Note and the Financing Documents to which the Governmental Lender is a party, the consummation of the transactions on the part of the Governmental Lender contemplated thereby and the fulfillment of or compliance with the terms and conditions thereof do not conflict with or result in the breach of any of the terms, conditions or provisions of any agreement or instrument or judgment, order or decree to which the Governmental Lender is now a party or by which it is bound, nor do they constitute a default under any of the foregoing or result in the creation or imposition of any prohibited lien, charge or encumbrance of any nature upon any property or assets of the Governmental Lender under the terms of any instrument or agreement.

(f) No authorization, consent, approval, order, registration, declaration or withholding of objection on the part of, or filing of or with any governmental authority, other than those already obtained, is required for the due execution and delivery by the Governmental Lender of, and performance by the Governmental Lender of its obligations under, the Financing Documents.

(g) There is no action, suit, proceeding, inquiry or investigation pending or, to the knowledge of the Governmental Lender, threatened against the Governmental Lender by or before any court, governmental agency or public board or body, nor, to the Governmental Lender's knowledge, is there any basis therefor, which (i) affects or questions the existence or the territorial jurisdiction of the Governmental Lender or the title to office of any member of the governing body of the Governmental Lender; (ii) affects or seeks to prohibit, restrain or enjoin the execution and delivery of any Financing Documents or the issuance, sale, execution or delivery of the Governmental Note; (iii) affects or questions the validity or enforceability of the Governmental Note or any Financing Document; (iv) questions the tax-exempt status of the Governmental Note; or (v) questions the power or authority of the Governmental Lender to perform its obligations under the Governmental Note or any Financing Document, or to carry out the transactions contemplated by the Governmental Note and the Financing Documents.

(h) No officer or other official of the Governmental Lender has any personal financial interest in the Project or the Borrower or in the transactions contemplated by this Project Loan Agreement.

(i) Upon the discovery by the Governmental Lender of any noncompliance by the Borrower with this Project Loan Agreement, the Tax Certificates or the Tax Regulatory Agreement, the Governmental Lender will promptly notify the Fiscal Agent, the Servicer and the Funding Lender Representative of such noncompliance and will, subject to the provisions of Article VII hereof, promptly institute action, or cause the Fiscal Agent to institute action, to correct such noncompliance, will diligently pursue such action and will attempt to correct such noncompliance within sixty (60) days after such discovery, subject to the provisions of the Funding Loan Agreement, this Project Loan Agreement, the Tax Certificates and the Tax Regulatory Agreement.

(j) The Governmental Lender will, at the expense of the Borrower, take such action or actions from time to time, including amendment of this Project Loan Agreement, as may be necessary, as stated in an opinion of Bond Counsel acceptable to the Governmental Lender, 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 of Section 142(d) of the Code and the Regulations promulgated thereunder. The Governmental Lender will not take, or permit to be taken on its behalf, any action that would adversely affect the exclusion of interest on the Governmental Note from gross income for federal income tax purposes, and it will take, at the sole cost and expense of the Borrower, such action as may be necessary to continue such exclusion of interest on the Governmental Note from gross income for federal income tax purposes.

It is expressly acknowledged that the Governmental Lender makes no representation as to the financial position or business condition of the Borrower and does not represent or warrant as to any of the statements, materials (financial or otherwise), representations or certifications furnished or to be made and furnished by the Borrower in connection with the issuance, sale, execution and delivery of the Governmental Note, or as to the correctness, completeness or accuracy of such statements.

**Section 2.02 Representations, Warranties and Covenants of the Borrower.** The Borrower makes the following representations, warranties and covenants, all of which, together with the other representations and agreements of the Borrower contained in this Project Loan Agreement, are relied upon by the Governmental Lender, the Funding Lender, the Servicer and the Fiscal Agent and serve as a basis for the undertakings of the Governmental Lender, the Servicer and the Fiscal Agent contained in this Project Loan Agreement:

(a) The Borrower is a limited liability company duly organized, validly existing and in good standing under the laws of the state in which it has been organized and is duly qualified to conduct its business under the laws of the State and in every other state in which the nature of its business requires such qualification, has full legal right, power and authority to enter into this Project Loan Agreement and the other Financing Documents, and to carry out and consummate all transactions contemplated hereby and by the other Financing Documents, and by proper action has duly authorized the execution, delivery and performance of this Project Loan Agreement and the other Financing Documents. All corporate managing members, if any, of the Borrower are duly organized and in good standing under the laws of their respective states of organization and are duly qualified to transact business in the State as either domestic or foreign corporations, as applicable. All of Borrower's managing members, if any, are duly formed and in good standing under the laws of their respective states of formation and, to the extent required by the laws of the State, are duly qualified to transact business in the State as either domestic or foreign partnerships or limited liability companies, as applicable.

(b) The Borrower has the legal right, power and authority to (i) own its properties and assets, including, but not limited to, the Project, (ii) to carry on its business as now being conducted and the Borrower contemplates it to be conducted with respect to the Project and (iii) execute and deliver, carry out its obligations under, and close the transactions provided for in, the Financing Documents to which it is a party.

(c) Each of the Financing Documents to which the Borrower is a party has been duly authorized, executed and delivered by the Borrower and, assuming due authorization, execution and delivery by the other parties thereto, constitutes the legal, valid and binding obligation of the Borrower, enforceable against the Borrower in accordance with its respective terms, except as enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium and other laws affecting the rights of creditors generally and general principles of equity.

(d) No authorization, consent, approval, order, registration, declaration or withholding of objection on the part of, or filing of or with any governmental authority, other than those already obtained or those necessary to be obtained during the course of construction of the Project, is required for the due execution and delivery or approval, as the case may be, by the Borrower of, and the performance by the Borrower of its obligations under, the Financing Documents.

(e) None of the execution and delivery of the Financing Documents to which the Borrower is a party, the consummation of the transactions provided for in the Financing Documents, or the Borrower's fulfillment of or compliance with the terms and conditions of the Financing Documents (i) violates or will violate any law, rule or regulation of any governmental agency or body having jurisdiction over the Borrower, or any of its activities or properties, or any

judgment, order, writ, injunction or decree to which the Borrower is subject, or any of the organizational or other governing documents of the Borrower, (ii) conflicts or will conflict with any agreement, instrument or license to which the Borrower is now a party or by which it or any of its properties or assets is bound or results or will result in a breach of, or constitutes or will constitute a default (with due notice or the passage of time or both) under, any such agreement, instrument or license, (iii) contravenes or will contravene any such law, rule or regulation or any such judgment, order, writ, injunction or decree, or (iv) result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the Borrower, except for any lien, charge or encumbrance permitted under the terms of the Financing Documents.

(f) There is no action, suit, proceeding, inquiry or investigation pending or, to the Borrower's knowledge, threatened against or affecting the Borrower or any of its properties (including, without limitation, the Project), which, if adversely determined, would (i) impair the right of the Borrower to carry on its business substantially as now conducted and as contemplated by the Financing Documents, (ii) adversely affect the financial condition of the Borrower, (iii) prohibit, restrain or enjoin the making of the Funding Loan or the Project Loan or the execution and delivery of any of the Financing Documents, (iv) adversely affect the validity or enforceability of any of the Financing Documents, or (v) adversely affect the exclusion from gross income for federal income tax purposes of interest on the Governmental Note.

(g) The Project and the operation of the Project (in the manner contemplated by the Financing Documents) conform and, following completion of the construction of the Project, will continue to conform in all material respects with the requirements of the Act as well as all applicable zoning, planning, building and environmental laws, ordinances and regulations of governmental authorities having jurisdiction over the Project.

(h) The Borrower has filed or caused to be filed all federal, state and local tax returns which 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 is not in default in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any agreement or instrument to which it is a party which default would materially adversely affect the transactions contemplated by the Financing Documents or the operations of the Borrower or the enforceability of the Financing Documents to which the Borrower is a party or the ability of the Borrower to perform all obligations thereunder.

(j) The Borrower agrees to pay all costs of maintenance and repair, all Taxes and assessments, insurance premiums (including public liability insurance and insurance against damage to or destruction of the Project) concerning or in any way related to the Project, or any part thereof, and any expenses or renewals thereof, and any other governmental charges and impositions whatsoever, foreseen or unforeseen, and all utility and other charges and assessments concerning or in any way related to the Project.

(k) If the Borrower is a partnership, all of the partnership interests in the Borrower are validly issued and are fully registered, if required, with the applicable governmental authorities and/or agencies, and there are no outstanding options or rights to purchase or acquire those interests. If the Borrower is a limited liability company, all of the ownership interests in the Borrower are validly issued and are fully registered, if required, with the applicable governmental authorities and/or agencies, and there are no outstanding options or rights to purchase or acquire those interests, except as disclosed in the Operating Agreement. Nothing in this Project Loan Agreement shall prevent the Borrower from issuing additional partnership interests or ownership interests if such units are issued in accordance with all applicable securities laws.

(l) The representations and warranties of the Borrower contained in the Tax Certificate and Tax Regulatory Agreement are true and accurate in all material respects.

(m) The information, statements or reports furnished in writing to the Governmental Lender, the Servicer and the Funding Lender Representative by the Borrower in connection with this Project Loan Agreement or the consummation of the transactions contemplated hereby do not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements contained therein, in light of the circumstances under which they were made, not misleading; and the representations and warranties of the Borrower and the statements, information and descriptions contained in the Borrower's closing certificates, as of the Delivery Date, are true and correct in all material respects, do not contain any untrue statement of a material fact, and do not omit to state a material fact necessary to make the representations, warranties, statements, information and descriptions contained therein, in the light of the circumstances under which they were made, not misleading; and any estimates or assumptions contained in any certificate of the Borrower delivered as of the Delivery Date are reasonable.

(n) To the knowledge of the Borrower, no commissioner, member, officer or employee of the Governmental Lender has been or is in any manner interested, directly or indirectly, in that person's own name or in the name of any other person, in the Financing Documents, the Borrower or the Project, in any contract for property or materials to be furnished or used in connection with the Project, or in any aspect of the transactions contemplated by the Financing Documents.

(o) Except for the purchase option set forth in the Ground Lease, the Borrower intends to hold the Project for its own account and has no current plans to sell, and has not entered into any agreement, to sell all or any portion of the Project.

(p) The Project is located wholly within the boundaries of the City of Austin, Texas.

(q) The Borrower shall make no changes to the Project or to the operation thereof which would affect the qualification of the Project under the Act or impair the exclusion from gross income for federal income tax purposes of the interest on the Governmental Note. The Borrower shall operate the Project as required by the Tax Regulatory Agreement.

(r) The Funding Loan Agreement has been submitted to the Borrower for examination, and the Borrower, by execution of this Project Loan Agreement, acknowledges and agrees that it has participated in the drafting of the Funding Loan Agreement and that it is bound

by, shall adhere to the provisions of, covenants and agrees to perform all obligations required of the Borrower pursuant to, and shall have the rights set forth by the applicable terms and conditions of, the Funding Loan Agreement.

(s) The Borrower will have a leasehold interest in the land and improvements comprising the Project, subject only to liens permitted under the Security Instrument.

(t) The Borrower acknowledges that (i) it understands the nature and structure of the transactions relating to the financing of the Project, (ii) it is familiar with the provisions of all of the documents and instruments relating to the financing, (iii) it understands the risks inherent in such transactions, including without limitation the risk of loss of the Project, and (iv) it has not relied on the Governmental Lender, the Fiscal Agent, Freddie Mac, the Funding Lender, the Funding Lender Representative or the Servicer for any guidance or expertise in analyzing the financial or other consequences of the transactions contemplated by the Financing Documents or otherwise relied on the Governmental Lender, the Fiscal Agent, Freddie Mac, the Funding Lender, the Funding Lender Representative or the Servicer in any manner.

(u) To the extent the Project Loan is to be treated as a "program investment" as defined in Treasury Regulation Section 1.148-1(b), the Borrower (or any "related person," as such term is used in Section 147(a) of the Code) shall not purchase the Governmental Note in an amount related to the amount of the Project Loan.

(v) All representations and warranties of the Borrower in any Financing Document are incorporated herein by reference for the benefit of the Governmental Lender and the Fiscal Agent as if fully set forth herein.

**Section 2.03 *Representations and Warranties of the Fiscal Agent.*** The Fiscal Agent makes the following representations and warranties for the benefit of the Governmental Lender, the Borrower, the Funding Lender and the Servicer:

(a) The Fiscal Agent is a national banking association, duly organized and existing under the laws of the United States. The Fiscal Agent is duly authorized to act as a fiduciary and to execute the trust created by the Funding Loan Agreement, and meets the qualifications to act as Fiscal Agent under the Funding Loan Agreement.

(b) The Fiscal Agent has complied with the provisions of law which are prerequisite to the consummation of, and has all necessary power (including trust powers) and authority (i) to execute and deliver this Project Loan Agreement and the other Financing Documents to which it is a party, (ii) to perform its obligations under this Project Loan Agreement and the other Financing Documents to which it is a party, and (iii) to consummate the transactions contemplated by this Project Loan Agreement and the other Financing Documents to which it is a party.

(c) The Fiscal Agent has duly authorized (i) the execution and delivery of this Project Loan Agreement and the other Financing Documents to which it is a party, (ii) the performance by the Fiscal Agent of its obligations under this Project Loan Agreement and the other Financing Documents to which it is a party, and (iii) the actions of the Fiscal Agent contemplated by this Project Loan Agreement and the other Financing Documents to which it is a party.



(d) Each of the Financing Documents to which the Fiscal Agent is a party has been duly executed and delivered by the Fiscal Agent and, assuming due authorization, execution and delivery by the other parties thereto, constitutes a valid and binding obligation of the Fiscal Agent, enforceable against the Fiscal Agent in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting the rights of creditors generally and by general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

(e) The Fiscal Agent meets the qualifications to act as Fiscal Agent under the Funding Loan Agreement.

(f) The Fiscal Agent has complied with the provisions of law which are prerequisites to the consummation of the transactions on the part of the Fiscal Agent described or contemplated in the Financing Documents.

(g) No approval, permit, consent, authorization or order of any court, governmental agency or public board or body not already obtained is required to be obtained by the Fiscal Agent as a prerequisite to (i) the execution and delivery of this Project Loan Agreement and the other Financing Documents to which the Fiscal Agent is a party, (ii) the authentication or delivery of the Governmental Note, (iii) the performance by the Fiscal Agent of its obligations under this Project Loan Agreement and the other Financing Documents to which it is a party, or (iv) the consummation of the transactions contemplated by this Project Loan Agreement and the other Financing Documents to which the Fiscal Agent is a party.

(h) The Fiscal Agent makes no representation or warranty relating to compliance with any federal or state securities laws.

**Section 2.04 Arbitrage and Rebate Fund Calculations.** The Borrower shall (a) take or cause to be taken all actions necessary or appropriate in order to fully and timely comply with Section 4.12 of the Funding Loan Agreement, and (b) if required to do so under Section 4.12 of the Funding Loan Agreement, select at the Borrower's expense, a Rebate Analyst reasonably acceptable to the Governmental Lender for the purpose of making any and all calculations required under Section 4.12 of the Funding Loan Agreement. The Borrower shall cause the Rebate Analyst to provide such calculations to the Fiscal Agent and the Governmental Lender at such times and with such directions as are necessary to comply fully with the arbitrage and rebate requirements set forth in the Funding Loan Agreement and to comply fully with Section 148 of the Code, including the timely payment of any arbitrage rebate owed.

**Section 2.05 Tax Covenants.** The Borrower covenants to take such action as is required of it so that the Governmental Lender Note are, and to refrain from any action which would cause the Governmental Lender Note to not be, obligations described in Section 103 of the Code, the interest on which is not includable in the "gross income" of the holder (other than the income of a "substantial user" of the Project or a "related person" within the meaning of Section 147(a) of the Tax Code) for purposes of federal income taxation. In particular, but not by way of limitation thereof, the Borrower covenants as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

such elections, on behalf of the Governmental Lender, which may be permitted by the Code as are consistent with the purpose for the issuance of the Governmental Lender Note.

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

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

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

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

(u) Annual Report. The Borrower shall, to the extent permitted by applicable law, provide to the Governmental Lender (no later than July 15, 2018), the information required for the Governmental Lender to complete its annual report to the Texas Department of Housing and Community Affairs as required by Section 394.027 of the Act.

*(End of Article II)*

## ARTICLE III

### THE PROJECT LOAN

**Section 3.01 *Conditions to Funding the Project Loan.*** On the Delivery Date, the Governmental Lender shall cause the proceeds of the Funding Loan to be deposited with the Fiscal Agent (in an account located at the Initial Funding Lender) in accordance with Section 2.11 of the Funding Loan Agreement and Section 3.03 hereof. The Fiscal Agent shall use such proceeds as provided in Article II of the Funding Loan Agreement to make the Project Loan, provided that no such disbursements of proceeds shall be made until the following conditions have been met:

(a) The Borrower shall have executed and delivered to the Governmental Lender the Project Note and the Governmental Lender shall have endorsed (without recourse) the Project Note to the Fiscal Agent;

(b) The Security Instrument and the Assignment, with only such changes therein as shall be approved in writing by Funding Lender Representative, shall have been executed and delivered by the Borrower and the Governmental Lender, respectively, and delivered to the title company for recording in the appropriate office for officially recording real estate documents in the jurisdiction in which the Project is located (the "**Recorder's Office**");

(c) The Tax Regulatory Agreement shall have been executed and delivered by the parties thereto and shall have been delivered to the title company for recording in the Recorder's Office, and the Fiscal Agent shall have received evidence satisfactory to it of such delivery;

(d) All other Financing Documents not listed above shall have been executed and delivered by all parties thereto and delivered to the Fiscal Agent; and

(e) The Borrower shall have delivered to the Fiscal Agent, the Governmental Lender, the Funding Lender Representative and the Servicer a certificate confirming, as of the Delivery Date, the matters set forth in Section 2.02 hereof and an opinion of its counsel or other counsel satisfactory to the Fiscal Agent, the Governmental Lender, Bond Counsel, the Funding Lender Representative, Freddie Mac and the Servicer.

### **Section 3.02 *Terms of the Project Loan; Servicing.***

(a) The Project Loan shall (i) be evidenced by the Project Note; (ii) be secured by the Security Instrument; (iii) be in the original principal amount of \$ \_\_\_\_\_; (iv) bear interest as provided in the Project Note; (v) provide for principal and interest payments in accordance with the Project Note; and (vi) be subject to optional and mandatory prepayment at the times, in the manner and on the terms, and have such other terms and provisions, as provided herein and in the Project Note.

(b) The Funding Lender Representative may appoint a Servicer to service the Loans for all or a portion of the term of the Loans. The initial Servicer of the Loans is the Initial Funding Lender. On the Freddie Mac Purchase Date, the Freddie Mac Seller/Servicer shall become the Servicer and shall service the Loans as required by the Freddie Mac Commitment and the Guide. The Funding Lender Representative may remove a Servicer or appoint a replacement Servicer, in

its discretion, by written notice provided to the Governmental Lender, the Fiscal Agent and the Borrower. Any successor Servicer shall signify its acceptance of the duties and obligations imposed upon it by the Funding Loan Agreement and this Project Loan Agreement by executing such instrument(s) as shall be acceptable to the Funding Lender Representative, a copy of which shall be provided to the parties hereto.

(c) During any period that the Servicer services the Loans, the Borrower shall make all payments in connection with the Project Loan to the Servicer, and the Servicer will (i) retain (as applicable) the allocable portion of the monthly Servicing Fee for its own account, (ii) remit to the Funding Lender all payments of principal of, Prepayment Premium, if any, and interest due with respect to the Funding Loan, together, with any other amounts due to the Funding Lender, (iii) remit to the Fiscal Agent the Ordinary Fiscal Agent's Fees and Expenses, together with any other amounts due to the Fiscal Agent, and (iv) remit to the Governmental Lender any amounts due to the Governmental Lender. During a period in which there is no Servicer, all notices to be sent to the Servicer shall be sent to the Funding Lender Representative (to the extent not already provided) and all amounts to be paid to the Servicer by the Borrower shall be paid directly to the Fiscal Agent (unless otherwise directed by the Funding Lender Representative).

(d) The Governmental Lender, the Fiscal Agent and the Borrower hereby acknowledge and agree that (i) the Funding Lender Representative has appointed the Servicer to service and administer the Project Loan, (ii) the selection or removal of any Servicer is in the sole and absolute discretion of the Funding Lender Representative; and (iii) none of the Governmental Lender, the Fiscal Agent or the Borrower shall terminate or attempt to terminate any Servicer as the servicer for the Project Loan or appoint or attempt to appoint a substitute servicer for the Project Loan. The Governmental Lender, the Fiscal Agent and the Borrower further hereby acknowledge and agree with respect to the Servicer during the Permanent Phase that: (i) the Guide is subject to amendment without the consent of the Fiscal Agent, the Governmental Lender or the Borrower; and (ii) none of the Fiscal Agent, the Governmental Lender or the Borrower shall have any rights under, or be a third party beneficiary of, the Guide.

**Section 3.03 Initial Deposits.** On the Delivery Date, proceeds of the Funding Loan in the amount of \$\_\_\_\_\_ .00 (which amount represents the par amount of the Funding Loan net of the Initial Debt Service Deposit of \$\_\_\_\_\_ and Costs of Issuance of the Funding Lender in the amount of \$\_\_\_\_\_) shall be deposited in the Project Account of the Project Loan Fund and \$\_\_\_\_\_ shall be transferred from the Project Account for deposit to the Cost of Issuance Fund. The Borrower will deposit with the Fiscal Agent the sum of (i) \$\_\_\_\_\_ for credit to the Cost of Issuance Fund; and (ii) the initial deposit of tax credit equity in the amount of \$\_\_\_\_\_ for credit to the LIHTC Subaccount of the Borrower Equity Account, (iii) the initial deposit of Gap Loan proceeds in the amount of \$\_\_\_\_\_ for credit to the Gap Loan Subaccount of the Borrower Equity Account, (iv) the initial deposit of net operating income in the amount of \$\_\_\_\_\_ for credit to the Net Operating Income Subaccount of the Borrower Equity Account. The Borrower will deposit with the Servicer the sum of \$\_\_\_\_\_ as the Initial Debt Service Deposit. Subject to the conditions listed in Section 3.01 hereof, amounts on deposit in the Project Loan Fund are to be disbursed to the Borrower or otherwise as provided in Section 2.11(d) of the Funding Loan Agreement.

The Governmental Lender does not make any warranty, either express or implied, that the proceeds of the Funding Loan will be sufficient to pay all of the costs of the acquisition, construction and equipping of the Project. The Borrower agrees that if the Borrower should pay any cost relating to the acquisition, construction and equipping of the Project, the Borrower shall not be entitled to any reimbursement therefor from the Governmental Lender. In the event such proceeds are insufficient to pay such amounts in full, the Borrower agrees to pay such insufficiency. To the extent that amounts in the Cost of Issuance Fund from the above-mentioned sources are insufficient to pay all Costs of Issuance, the Borrower shall cause the payment of such additional Costs of Issuance to be made on its behalf as such amounts become due.

**Section 3.04 *Pledge and Assignment to Fiscal Agent.*** The parties hereto acknowledge, and the Borrower consents to, the pledge and assignment by the Governmental Lender to the Fiscal Agent pursuant to the Funding Loan Agreement of all of the Governmental Lender's right, title and interest in this Project Loan Agreement (excluding the Unassigned Rights), the Project Loan, the Project Note, the Security Instrument, the other Project Loan Documents and the Revenues as security for the payment of the principal of, Prepayment Premium, if any, and interest on the Governmental Note and the payment of any other amounts due under the Financing Documents.

**Section 3.05 *Investment of Funds.*** Except as otherwise provided in the Funding Loan Agreement, any money held as a part of any fund or account established under the Funding Loan Agreement shall be invested or reinvested by the Fiscal Agent in Qualified Investments in accordance with Section 4.08 of the Funding Loan Agreement.

**Section 3.06 *Damage; Destruction and Eminent Domain.*** If, prior to payment in full of the Project Loan, the Project or any portion thereof is destroyed or damaged in whole or in part by fire or other casualty, or title to, or the temporary use of, the Project or any portion thereof shall have been taken by the exercise of the power of eminent domain, and the Governmental Lender, the Borrower, the Fiscal Agent or the Servicer receives Net Proceeds from insurance or any condemnation award in connection therewith, such Net Proceeds shall be utilized as provided in the Project Loan Documents and the Funding Loan Agreement.

**Section 3.07 *Enforcement of Financing Documents.*** The Fiscal Agent or the Funding Lender Representative may enforce and take all reasonable steps, actions and the proceedings necessary for the enforcement of all terms, covenants and conditions of the Funding Loan Agreement and the other Financing Documents as and to the extent set forth herein and therein.

(End of Article III)

## ARTICLE IV

### LOAN PAYMENTS

#### **Section 4.01 *Payments Under the Project Note; Independent Obligation of Borrower.***

(a) **Payment Obligations.** The Borrower agrees to repay the Project Loan on each Project Loan Payment Date as provided in the Project Note, and in all instances at the times and in the amounts necessary to enable the Fiscal Agent, on behalf of the Governmental Lender, or the Servicer, to pay all amounts payable with respect to the Funding Loan, when due, whether at maturity or upon prepayment (with premium, if applicable), acceleration, redemption, or otherwise. To ensure such timely payment during the Permanent Phase, the Servicer shall collect from the Borrower, and the Borrower shall provide to the Servicer the foregoing payments not less than two (2) Business Days prior to each respective Project Loan Payment Date.

The obligation of the Borrower to make the payments set forth in this Article IV shall be an independent obligation of the Borrower, separate from its obligation to make payments under the Project Note, provided that in all events payments made by the Borrower under and pursuant to the Project Note shall be credited against the Borrower's obligations hereunder on a dollar for dollar basis. If for any reason the Project Note or any provision of the Project Note shall be held invalid or unenforceable against the Borrower by any court of competent jurisdiction, the Project Note or such provision of the Project Note shall be deemed to be the obligation of the Borrower pursuant to this Project Loan Agreement to the full extent permitted by law and such holding shall not invalidate or render unenforceable any of the provisions of this Article IV and shall not serve to discharge any of the Borrower's payment obligations hereunder or eliminate the credit against such obligations to the extent of payments made under the Project Note.

(b) **Obligations Unconditional; No Set-Off.** The obligation of the Borrower to repay the Project Loan, to perform all of its obligations under the Project Loan Documents, to provide indemnification pursuant to Section 6.01 hereof, to pay costs, expenses and charges pursuant to Section 4.02 hereof and to make any and all other payments required by this Project Loan Agreement, the Funding Loan Agreement or any other documents contemplated by this Project Loan Agreement or by the Project Loan Documents shall, subject to the limitations set forth in Section 4.06 hereof, be absolute and unconditional, and shall be paid or performed without notice or demand, and without abatement, deduction, set-off, counterclaim, recoupment or defense or any right of termination or cancellation arising from any circumstance whatsoever, whether now existing or hereafter arising, and irrespective of whether the Borrower's title to the Project or to any part thereof is defective or nonexistent, and notwithstanding any damage due to loss, theft or destruction of the Project or any part thereof, any failure of consideration or frustration of commercial purpose, the taking by eminent domain of title to or of the right of temporary use of all or any part of the Project, legal curtailment of the Borrower's use thereof, the eviction or constructive eviction of the Borrower, any change in the tax or other laws of the United States of America, the State or any political subdivision thereof, any change in the Governmental Lender's legal organization or status, or any default of the Governmental Lender or the Fiscal Agent hereunder or under any other Financing Document, and regardless of the invalidity of any action of the Governmental Lender or the invalidity of any portion of this Project Loan Agreement.



(c) **Payments from Borrower to Fiscal Agent or Servicer.** Each payment by the Borrower hereunder or under the Project Note shall be made in immediately available funds to the Servicer on each Project Loan Payment Date or such other date when such payment is due; provided, however, such Project Loan Payment shall be made directly to the Fiscal Agent if there is no Servicer or if the Borrower is so directed in writing by the Funding Lender Representative. Each such payment shall be made to the Fiscal Agent or the Servicer, as applicable, by deposit to such account as the Fiscal Agent or the Servicer may designate by written notice to the Borrower. Whenever any Project Loan Payment or any other payment under this Project Loan Agreement or under the Project Note shall be stated to be due on a day that is not a Business Day, such payment shall be made on the first Business Day immediately thereafter.

**Section 4.02 *Additional Payments Under the Project Note and this Project Loan Agreement.***

(a) In addition to the payments set forth in Section 4.01 hereof, payments to be made by the Borrower under the Project Note include certain money to be paid in respect of, among others, the Fee Component, the Servicing Fee, and amounts required to be deposited pursuant to the Continuing Covenant Agreement and the other Project Loan Documents, as set forth in subsection (b) of this Section 4.02. To the extent that any portion of the Fee Component, the Servicing Fee, and amounts required to be deposited pursuant to the Continuing Covenant Agreement and the other Project Loan Documents remain due and owing at any time, such amounts remaining due and owing shall be payable from money on deposit in the Administration Fund as provided in Section 4.06 of the Funding Loan Agreement or from other money of the Borrower, to the extent that money in the Administration Fund is insufficient for such purposes. All other fees and expenses shall be payable from money of the Borrower as provided in subsection (b) of this Section 4.02.

(b) In addition to the funding of the initial deposits required of the Borrower described in Section 3.03, the Borrower shall pay (or cause to be paid by the Servicer or the Fiscal Agent (to the extent paid from money on deposit in the Administration Fund or the Cost of Issuance Fund, as applicable)), in consideration of the funding of the Project Loan, the following fees, expenses and other money payable in connection with the Loans:

(i) On the Delivery Date, from money on deposit in the Cost of Issuance Fund or, to the extent such money is insufficient for such purpose, from other money of the Borrower, to Freddie Mac, all third party and out-of-pocket expenses of Freddie Mac (including but not limited to the fees and expenses of counsel to Freddie Mac) in connection with the Loans.

(ii) On the Delivery Date, from money on deposit in the Cost of Issuance Fund or, to the extent such money is insufficient for such purpose, from other money of the Borrower, to Freddie Mac, all third party and out of pocket expenses of Freddie Mac (including but not limited to the fees and expenses of counsel to Freddie Mac) in connection with the Loans.

(iii) On the Delivery Date, from money on deposit in the Cost of Issuance Fund or, to the extent such money is insufficient for such purpose, from other money of the

Borrower, to the Governmental Lender, together with all third party and out-of-pocket expenses of the Governmental Lender (including but not limited to the fees and expenses of Bond Counsel and counsel to the Governmental Lender) in connection with the Loans and the issuance of the Governmental Note.

(iv) On the Delivery Date, from money on deposit in the Cost of Issuance Fund or, to the extent such money is insufficient for such purpose, from other money of the Borrower, to the Freddie Mac Seller/Servicer, its commitment fees and application fees, together with all third party and out-of-pocket expenses of the Freddie Mac Seller/Servicer (including but not limited to the fees and expenses of counsel to the Freddie Mac Seller/Servicer, if any) in connection with the Loans.

(v) On the Delivery Date, from money on deposit in the Cost of Issuance Fund or, to the extent such money is insufficient for such purpose, from other money of the Borrower, to the Fiscal Agent, an acceptance fee in an amount equal to \$1,000, together with all third party and out-of-pocket expenses of the Fiscal Agent (including but not limited to the fees and expenses of counsel to the Fiscal Agent) in connection with the Loans and the issuance of the Governmental Note.

(vi) To the Fiscal Agent, the Ordinary Fiscal Agent's Fees and Expenses and the Extraordinary Fiscal Agent's Fees and Expenses when due from time to time.

(vii) To the Rebate Analyst, the reasonable fees and expenses of such Rebate Analyst in connection with the computations relating to arbitrage rebate required under the Funding Loan Agreement and this Project Loan Agreement when due from time to time.

(viii) To the Funding Lender Representative, any amount due and owing the Funding Lender Representative from time to time but unpaid under the Continuing Covenant Agreement.

(ix) To the Servicer, the amount of any portion of the Servicing Fee remaining unpaid and any fees, costs and expenses of the Servicer as provided in the Continuing Covenant Agreement.

(x) To the Servicer, the amounts required to be deposited in respect of reserves and impounds required under the Continuing Covenant Agreement and the other Project Loan Documents.

(xi) If the Fiscal Agent is collecting and remitting loan payments under the Funding Loan Agreement, to the Fiscal Agent, within two (2) Business Days of receipt from the Fiscal Agent of a notice of deficiency in the Administration Fund as provided in Section 4.06 of the Funding Loan Agreement, the amount of any such deficiency in the Administration Fund.

**Section 4.03 *Payments to Rebate Fund.*** The Borrower shall pay when due to the Fiscal Agent at the Principal Office of the Fiscal Agent any amount required to be deposited in the Rebate Fund in accordance with Section 4.12 of the Funding Loan Agreement.

#### **Section 4.04 *Prepayment.***

(a) **Optional Prepayment of the Project Loan.** The Borrower shall have the option to prepay the Project Loan in whole or, during the Construction Phase, in part, together with all accrued and unpaid interest thereon, as provided in the Project Note.

(b) **Mandatory Prepayment of the Project Loan.** The Borrower shall be required to prepay all or a portion of the outstanding principal balance of the Project Loan, together with accrued interest thereon, and together with any Prepayment Premium due under the Project Note, as provided in the Project Note (including, without limitation, that Borrower shall be required to prepay the Project Note down to the amount of the Actual Project Loan Amount as a Condition to Conversion). Additionally, the Borrower shall be required to prepay all or a portion of the outstanding principal balance of the Project Loan, together with accrued interest thereon, and together with any Prepayment Premium due under the Project Note, in connection with the following:

(i) in part, in the event the Borrower elects to make a Pre-Conversion Loan Equalization Payment; and

(ii) in whole, on or after the Forward Commitment Maturity Date, at the written direction of the Initial Funding Lender, if the Notice of Conversion is not issued by the Freddie Mac Seller/Servicer prior to the Forward Commitment Maturity Date.

(c) **Defeasance of the Funding Loan.** In addition, after the Conversion Date and prior to the Window Period, the Borrower may cause a defeasance of the Funding Loan resulting in a release of the Pledged Security by satisfying the conditions set forth hereunder and in Article IX of the Funding Loan Agreement. In connection therewith, the Borrower will give written notice (a "Defeasance Notice") to the Funding Lender Representative, the Servicer, the Governmental Lender and the Fiscal Agent of the date the Borrower desires to defease the Funding Loan (the "Defeasance Date"). The Defeasance Date may not be more than 60 calendar days, nor less than 30 calendar days, after the delivery of the Defeasance Notice. In connection with the delivery of the Defeasance Notice, the Borrower shall cause to be paid to the Funding Lender Representative the Defeasance Fee set forth in the Continuing Covenant Agreement. In addition to, and not in limitation of any other provisions of this Project Loan Agreement, the Borrower shall pay all fees, costs and expenses in connection with any defeasance whether or not such defeasance occurs. Following such defeasance in accordance with the terms and conditions hereof and the Funding Loan Agreement, the Project Loan shall be deemed paid in full, and the Borrower shall be entitled to the release of the Security Instrument, the Pledged Security and other security provided by it for the Project Loan, subject to the terms and conditions hereof and the other Financing Documents.

**Section 4.05 *Borrower's Obligations Upon Prepayment.*** In the event of any prepayment, the Borrower will timely pay, or cause to be paid through the Servicer, an amount equal to the principal amount of the Funding Loan or portion thereof called for prepayment, together with interest accrued to the prepayment date and Prepayment Premium, if any. In addition, the Borrower will timely pay all fees, costs and expenses associated with any prepayment of the Funding Loan.

#### **Section 4.06 *Limits on Personal Liability.***

Except as otherwise set forth in the Project Note and this Section 4.06 below, the obligations of the Borrower under this Project Loan Agreement and the other Financing Documents are non-recourse liabilities of the Borrower which shall be enforced only against the Project and other property of the Borrower encumbered by the Financing Documents and not personally against the Borrower or any partner and/or member of the Borrower or any successor or assign of the Borrower. However, nothing in this Section 4.06 shall limit the right of the Governmental Lender, the Fiscal Agent, the Servicer or the Funding Lender Representative to proceed against the Borrower to recover any fees owing to any of them or any actual out-of-pocket expenses (including but not limited to actual out-of-pocket attorneys' fees incurred by any of them) incurred by any of them in connection with the enforcement of any rights under this Project Loan Agreement or the other Financing Documents. Nothing in this Section 4.06 shall limit any right that the Servicer or the Funding Lender Representative may have to enforce the Project Note, the Security Instrument, or any other Financing Document in accordance with their terms.

Notwithstanding anything contained in any other provision of this Project Loan Agreement to the contrary (but subject to the provisions of Section 7.07 hereof), the following obligations of the Borrower shall be and remain the joint and several full recourse obligations of the Borrower and each of the Borrower's general partner or managing member: (i) the Borrower's obligations to the Governmental Lender and the Fiscal Agent under subsections (b)(iii), (b)(v), (b)(vi) and (b)(vii) of Section 4.02 hereof; (ii) the Borrower's obligations under Sections 2.05 and 6.01 of this Project Loan Agreement; (iii) the Borrower's obligation to pay any and all rebate amounts that may be or become owing with respect to the Funding Loan and fees and expenses of the Rebate Analyst as provided in Sections 2.04 and 4.03 of this Project Loan Agreement and the Tax Certificate; and (iv) the Borrower's obligation to pay legal fees and expenses under Section 7.04 hereof.

(End of Article IV)

## ARTICLE V

### SPECIAL COVENANTS OF BORROWER

**Section 5.01 *Performance of Obligations.*** The Borrower shall keep and faithfully perform all of its covenants and undertakings contained herein and in the Financing Documents, including, without limitation, its obligations to make all payments set forth herein and therein in the amounts, at the times and in the manner set forth herein and therein.

**Section 5.02 *Compliance With Applicable Laws.*** All work performed in connection with the Project shall be performed in strict compliance with all applicable federal, state, county and municipal laws, ordinances, rules and regulations now in force or that may be enacted hereafter.

**Section 5.03 *Funding Loan Agreement Provisions.*** The execution of this Project Loan Agreement shall constitute conclusive evidence of approval of the Funding Loan Agreement by the Borrower. Whenever the Funding Loan Agreement by its terms imposes a duty or obligation upon the Borrower, such duty or obligation shall be binding upon the Borrower to the same extent as if the Borrower were an express party to the Funding Loan Agreement, and the Borrower shall carry out and perform all of its obligations under the Funding Loan Agreement as fully as if the Borrower were a party to the Funding Loan Agreement.

**Section 5.04 *Allocations.*** Notwithstanding anything to the contrary set forth in any of the documents evidencing or securing the Governmental Note (the "Tax Exempt Obligation"), all of the proceeds of the Tax Exempt Obligation shall, for federal income tax purposes, be (1) allocated on a pro rata basis to each building in the Project and the land on which it is located and (2) used exclusively to pay costs of the construction of the Project which are includable in the aggregate basis of any building and the land on which the building is located (the "Eligible Costs") in a manner such that each building satisfies the requirements of Section 42(h)(4)(B) of the Code. Accordingly, none of the proceeds of the Tax Exempt Obligations will be deemed to have been used to pay any of the Costs of Issuance in connection with the delivery of the Governmental Note, or to fund any reserve account or Project fund account to be used to pay Eligible Costs.

**Section 5.05 *Borrower to Maintain Its Existence; Certification of No Default.***

(a) The Borrower agrees to maintain its existence and maintain its current legal status with authority to own and operate the Project.

(b) In addition to performing all other similar requirements under the Financing Documents to which the Borrower is a party, the Borrower shall, within 30 days after the end of each calendar year, render to the best of its knowledge, to the Fiscal Agent a certificate executed by an Authorized Officer of the Borrower to the effect that the Borrower is not, as of the date of such certificate, in default of any of its covenants, agreements, representations or warranties under any of the Financing Documents to which the Borrower is a party and that, to the best of the Borrower's knowledge, after reasonable investigation, there has occurred no default or Event of Default (as such terms are defined in each respective Financing Document) under any of the Financing Documents.

**Section 5.06 *Borrower to Remain Qualified in State and Appoint Agent.*** The Borrower will remain duly qualified to transact business in the State and will maintain an agent in the State on whom service of process may be made in connection with any actions against the Borrower.

**Section 5.07 *Sale or Other Transfer of Project.*** The Borrower may convey and transfer the Project only upon strict compliance with the provisions of the Financing Documents, and upon receipt of the prior written consent of the Governmental Lender and the Funding Lender Representative (to the extent such consent is required by the Financing Documents).

**Section 5.08 *Right to Perform Borrower's Obligations.*** In the event the Borrower fails to perform any of its obligations under this Project Loan Agreement, the Governmental Lender, the Fiscal Agent, the Servicer and/or the Funding Lender Representative, after giving requisite notice, if any, and subject to Section 5.05 of the Funding Loan Agreement, may, but shall be under no obligation to, perform such obligation and pay all costs related thereto, and all such costs so advanced shall become an additional obligation of the Borrower hereunder, payable on demand and if not paid on demand with interest thereon at the default rate of interest payable under the Project Loan Documents from the date such costs were first paid by the Governmental Lender, the Fiscal Agent, the Servicer and/or the Funding Lender Representative, as applicable.

**Section 5.09 *Notice of Certain Events.*** The Borrower shall promptly advise the Governmental Lender, the Fiscal Agent, the Funding Lender Representative and the Servicer in writing of the occurrence of any Event of Default hereunder or any event which, with the passage of time or service of notice or both, would constitute an Event of Default, specifying the nature and period of existence of such event and the actions being taken or proposed to be taken with respect thereto.

**Section 5.10 *Survival of Covenants.*** The provisions of Sections 2.05, 4.02, 4.03, 6.01 and 7.04 hereof shall survive the expiration or earlier termination of this Project Loan Agreement and, with regard to the Fiscal Agent, the resignation or removal of the Fiscal Agent.

**Section 5.11 *Access to Project; Records.*** Subject to reasonable notice and the rights of tenants at the Project, the Governmental Lender, the Fiscal Agent, the Servicer and the Funding Lender Representative, and the respective duly authorized agents of each, shall have the right (but not any duty or obligation) at all reasonable times and during normal business hours: (a) to enter the Project and any other location containing the records relating to the Borrower, the Project, the Loans and the Borrower's compliance with the terms and conditions of the Financing Documents; (b) to inspect and audit any and all of the Borrower's records or accounts pertaining to the Borrower, the Project, the Loans and the Borrower's compliance with the terms and conditions of the Financing Documents; and (c) to require the Borrower, at the Borrower's sole expense, (i) to furnish such documents to the Governmental Lender, the Fiscal Agent, the Servicer and the Funding Lender Representative, as the Governmental Lender, the Fiscal Agent, the Servicer or the Funding Lender Representative, as the case may be, from time to time, deems reasonably necessary in order to determine that the provisions of the Financing Documents have been complied with and (ii) to make copies of any records that the Governmental Lender, the Fiscal Agent, the Servicer or the Funding Lender Representative or the respective duly authorized agents of each, may reasonably require. The Borrower shall make available to the Governmental Lender, the Fiscal Agent, the Servicer and the Funding Lender Representative, such information concerning the

Project, the Security Instrument and the Financing Documents as any of them may reasonably request.

**Section 5.12 Tax Regulatory Agreement.** The covenants of the Borrower in the Tax Regulatory Agreement shall be deemed to constitute covenants of the Borrower running with the land and an equitable servitude for the benefit of the Governmental Lender and the Funding Lender and shall be binding upon any owners of the Project until such time as such restrictions expire as provided in the Tax Regulatory Agreement. The Borrower covenants to file of record the Tax Regulatory Agreement and such other documents, and to take such other steps as are necessary in order to assure that the restrictions contained in the Tax Regulatory Agreement will, subject to the terms of the Tax Regulatory Agreement, be binding upon all owners of the Project. The Borrower covenants to include such restrictions or a reference to such restrictions in any documents transferring any interest in the Project to another to the end that such transferee has notice of, and is bound by, the Tax Regulatory Agreement. Subject to the provisions of Section 7.06 of this Project Loan Agreement, the Governmental Lender and the Fiscal Agent shall have the right to seek specific performance of or injunctive relief to enforce the requirements of any covenants of the Borrower contained in the Tax Regulatory Agreement.

**Section 5.13 Damage, Destruction and Condemnation.** If prior to full payment of the Funding Loan (or provision for payment of the Funding Loan in accordance with the provisions of the Funding Loan Agreement), without limiting the terms and requirements of the Project Loan Documents, the Project or any portion of it 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 of it shall be taken under the exercise of the power of eminent domain by any governmental body or by any person, firm or corporation acting under governmental authority, or shall be transferred pursuant to an agreement or settlement in lieu of eminent domain proceedings, the Borrower shall nevertheless be obligated to continue to pay the amounts specified in this Project Loan Agreement and in the Project Note to the extent the Project Loan is not prepaid in full in accordance with the terms of the Project Loan Documents.

**Section 5.14 Obligation of the Borrower To Construct the Project.** Subject to and in accordance with the terms and provisions of the Project Loan Documents, the Borrower shall proceed with reasonable dispatch (and in no event later than required under the Financing Documents) to complete the construction, development and equipping of the Project as required by the Financing Documents. If amounts on deposit in the Project Loan Fund designated for the Project and available to be disbursed to the Borrower are not sufficient to pay the costs of such acquisition, construction, development and equipping, the Borrower shall pay such additional costs from its own funds. The Borrower shall not be entitled to any reimbursement from the Governmental Lender, the Fiscal Agent, the Servicer, the Funding Lender Representative or the Funding Lender in respect of any such additional costs or to any diminution or abatement in the repayment of the Project Loan. None of the Fiscal Agent, the Governmental Lender, the Funding Lender, the Funding Lender Representative or the Servicer makes any representation or warranty, either express or implied, that money, if any, which will be paid into the Project Loan Fund or otherwise made available to the Borrower will be sufficient to complete the Project, and none of the Fiscal Agent, the Governmental Lender, the Funding Lender, the Funding Lender Representative or the Servicer shall be liable to the Borrower or any other person if for any reason the Project is not completed.

**Section 5.15 *Filing of Financing Statements.*** The Borrower shall file or record or cause to be filed or recorded on or prior to the Delivery Date and provide copies of all such filings to the Fiscal Agent, all Uniform Commercial Code financing statements which are required to be filed or recorded in order fully to protect and preserve the security interests relating to the priority of the Project Loan, the Funding Loan, the Pledged Security and the Security Instrument, and the rights and powers of the Governmental Lender, the Fiscal Agent and the Funding Lender in connection with such security interests. The Borrower shall cooperate with the Fiscal Agent in connection with the filing of any continuation statements for the purpose of continuing without lapse the effectiveness of such financing statements.

(End of Article V)



## ARTICLE VI

### INDEMNIFICATION

#### Section 6.01 *INDEMNIFICATION.*

(a) **INDEMNIFIED LOSSES.** TO THE FULLEST EXTENT PERMITTED BY LAW, THE BORROWER AGREES TO INDEMNIFY, HOLD HARMLESS AND DEFEND THE GOVERNMENTAL LENDER, THE FISCAL AGENT, THE SERVICER, THE FUNDING LENDER AND EACH OF THEIR RESPECTIVE OFFICERS, GOVERNING COMMISSIONERS, MEMBERS, DIRECTORS, OFFICIALS, EMPLOYEES, ATTORNEYS AND AGENTS (COLLECTIVELY, THE "INDEMNIFIED PARTIES"), AGAINST ANY AND ALL LOSSES, DAMAGES (INCLUDING, BUT NOT LIMITED TO, CONSEQUENTIAL AND PUNITIVE 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 (COLLECTIVELY, "LOSSES"), TO THE EXTENT ARISING, DIRECTLY OR INDIRECTLY, OUT OF OR BASED UPON OR IN ANY WAY RELATING TO:

(i) ANY BREACH BY THE BORROWER OF ITS OBLIGATIONS UNDER THE FINANCING DOCUMENTS OR THE EXECUTION, AMENDMENT, RESTRUCTURING OR ENFORCEMENT THEREOF, OR IN CONNECTION WITH TRANSACTIONS CONTEMPLATED THEREBY, INCLUDING THE ISSUANCE, SALE, TRANSFER OR RESALE OF THE GOVERNMENTAL NOTE;

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

(iii) ANY ACCIDENT, INJURY TO, OR DEATH OF PERSONS OR LOSS OF OR DAMAGE TO PROPERTY OCCURRING IN, ON OR ABOUT THE PROJECT OR ANY PART THEREOF;

(iv) ANY LIEN (OTHER THAN LIENS PERMITTED UNDER THE CONTINUING COVENANT AGREEMENT) OR CHARGE UPON PAYMENTS BY THE BORROWER TO THE GOVERNMENTAL LENDER, THE FISCAL

AGENT OR THE SERVICER HEREUNDER, OR ANY TAXES (INCLUDING, WITHOUT LIMITATION, ALL AD VALOREM TAXES AND SALES TAXES), ASSESSMENTS, IMPOSITIONS AND OTHER CHARGES IMPOSED ON THE GOVERNMENTAL LENDER OR THE FISCAL AGENT IN RESPECT OF ANY PORTION OF THE PROJECT (OTHER THAN INCOME AND SIMILAR TAXES ON FEES RECEIVED OR EARNED IN CONNECTION THEREWITH);

(v) ANY VIOLATION OF ANY ENVIRONMENTAL LAW, RULE OR REGULATION WITH RESPECT TO, OR THE RELEASE OF ANY HAZARDOUS MATERIALS FROM, THE PROJECT OR ANY PART THEREOF;

(vi) [RESERVED];

(vii) THE ENFORCEMENT OF, OR ANY ACTION TAKEN BY THE GOVERNMENTAL LENDER, THE FISCAL AGENT OR THE FUNDING LENDER REPRESENTATIVE RELATED TO REMEDIES UNDER THIS PROJECT LOAN AGREEMENT, THE FUNDING LOAN AGREEMENT OR ANY OTHER FINANCING DOCUMENT;

(viii) ANY UNTRUE STATEMENT OF A MATERIAL FACT OR ALLEGED UNTRUE STATEMENT OF A MATERIAL FACT BY THE BORROWER CONTAINED IN ANY OFFERING STATEMENT OR DOCUMENT FOR THE GOVERNMENTAL NOTE OR ANY OF THE FINANCING DOCUMENTS TO WHICH THE BORROWER IS A PARTY, OR ANY OMISSION OR ALLEGED OMISSION BY THE BORROWER OF A MATERIAL FACT FROM ANY OFFERING STATEMENT OR DOCUMENT FOR THE GOVERNMENTAL NOTE NECESSARY TO BE STATED THEREIN IN ORDER TO MAKE THE STATEMENTS MADE THEREIN BY THE BORROWER, IN THE LIGHT OF THE CIRCUMSTANCES UNDER WHICH THEY WERE MADE, NOT MISLEADING;

(ix) ANY DECLARATION OF TAXABILITY OF INTEREST ON THE GOVERNMENTAL NOTE OR ALLEGATIONS (OR REGULATORY INQUIRY) THAT INTEREST ON THE GOVERNMENTAL NOTE IS INCLUDABLE IN GROSS INCOME FOR FEDERAL INCOME TAX PURPOSES;

(x) ANY AUDIT OR INQUIRY BY THE INTERNAL REVENUE SERVICE WITH RESPECT TO THE PROJECT AND/OR THE TAX-EXEMPT STATUS OF THE GOVERNMENTAL NOTE; OR

(xi) THE FISCAL AGENT'S ACCEPTANCE OR ADMINISTRATION OF THE TRUST OF THE FUNDING LOAN AGREEMENT, OR THE EXERCISE OR PERFORMANCE OF ANY OF ITS POWERS OR DUTIES THEREUNDER OR UNDER ANY OF THE DOCUMENTS RELATING TO THE GOVERNMENTAL NOTE TO WHICH IT IS A PARTY;

EXCEPT (A) IN THE CASE OF THE FOREGOING INDEMNIFICATION OF THE FISCAL AGENT, OR ANY OF ITS RESPECTIVE OFFICERS, COMMISSIONERS,

MEMBERS, DIRECTORS, OFFICIALS, EMPLOYEES, ATTORNEYS AND AGENTS, TO THE EXTENT SUCH LOSSES ARE CAUSED BY THE NEGLIGENCE, UNLAWFUL ACTS OR WILLFUL MISCONDUCT OF SUCH INDEMNIFIED PARTY; OR (B) IN THE CASE OF THE FOREGOING INDEMNIFICATION OF THE SERVICER, THE FUNDING LENDER OR THE GOVERNMENTAL LENDER OR ANY OF THEIR RESPECTIVE OFFICERS, COMMISSIONERS, MEMBERS, DIRECTORS, OFFICIALS, EMPLOYEES, ATTORNEYS AND AGENTS, TO THE EXTENT SUCH LOSSES ARE CAUSED BY THE WILLFUL MISCONDUCT OF SUCH INDEMNIFIED PARTY.

(b) PROCEDURES. 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 SUCH INDEMNIFIED PARTY, SHALL ASSUME THE INVESTIGATION AND DEFENSE THEREOF, INCLUDING THE EMPLOYMENT OF COUNSEL SELECTED OR APPROVED 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 SUCH 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 TO PARTICIPATE IN THE INVESTIGATION AND DEFENSE THEREOF. THE BORROWER SHALL PAY THE REASONABLE FEES AND EXPENSES OF SUCH SEPARATE COUNSEL; PROVIDED, HOWEVER, THAT SUCH INDEMNIFIED PARTY MAY EMPLOY SEPARATE COUNSEL AT THE EXPENSE OF THE BORROWER ONLY IF, IN SUCH INDEMNIFIED PARTY'S GOOD FAITH 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.

(c) BORROWER TO REMAIN OBLIGATED. NOTWITHSTANDING ANY TRANSFER OF THE PROJECT TO ANOTHER OWNER IN ACCORDANCE WITH THE PROVISIONS OF THIS PROJECT LOAN AGREEMENT, THE SECURITY INSTRUMENT AND THE REGULATORY AGREEMENT, THE BORROWER SHALL REMAIN OBLIGATED TO INDEMNIFY EACH INDEMNIFIED PARTY PURSUANT TO THIS SECTION 6.01 FOR LOSSES WITH RESPECT TO ANY CLAIMS BASED ON ACTIONS OR EVENTS OCCURRING PRIOR TO THE DATE OF SUCH TRANSFER UNLESS (I) SUCH SUBSEQUENT OWNER ASSUMED IN WRITING AT THE TIME OF SUCH TRANSFER ALL OBLIGATIONS OF THE BORROWER UNDER THIS SECTION 6.01 (INCLUDING OBLIGATIONS UNDER THIS SECTION 6.01 FOR LOSSES WITH RESPECT TO ANY CLAIMS BASED ON ACTIONS OR EVENTS OCCURRING PRIOR TO THE DATE OF SUCH TRANSFER) AND (II) ANY SUCH TRANSFER IS IN COMPLIANCE WITH THE REQUIREMENTS OF THE FINANCING DOCUMENTS.

(d) SURVIVAL. THE PROVISIONS OF THIS SECTION 6.01 SHALL SURVIVE THE TERMINATION OF THIS PROJECT LOAN AGREEMENT.

**Section 6.02 *Limitation With Respect to the Funding Lender.*** Notwithstanding anything in this Project Loan Agreement to the contrary, in the event that the Funding Lender (or its nominee) shall become the owner of the Project as a result of a foreclosure or a deed in lieu of foreclosure, or comparable conversion of the Project Loan, the Funding Lender (or its nominee) shall not be liable for any breach or default of any prior owner of the Project under this Project Loan Agreement and shall only be responsible for defaults and obligations incurred or occurring during the period that the Funding Lender (or its nominee) is the owner of the Project. Accordingly, during any period that the Funding Lender (or its nominee) owns the Project and that this Article VI is applicable to the Funding Lender (or its nominee), the Funding Lender's (or its nominee's) obligations under this Article VI shall be limited to acts and omissions of the Funding Lender (or its nominee) occurring during the period of the Funding Lender's (or its nominee's) ownership of the Project.

(End of Article VI)

## ARTICLE VII

### EVENTS OF DEFAULT AND REMEDIES

**Section 7.01 *Events of Default.*** The following shall be “**Events of Default**” under this Project Loan Agreement, and the term “Event of Default” shall mean, whenever it is used in this Project Loan Agreement, one or all of the following events:

(a) Any representation or warranty made by the Borrower in the Financing Documents or any certificate, statement, data or information furnished by the Borrower in connection therewith or included by the Borrower in its application to the Governmental Lender for assistance proves at any time to have been incorrect when made in any material respect;

(b) Failure by the Borrower to pay any amounts due under this Project Loan Agreement, the Project Note or the Security Instrument at the times and in the amounts required by this Project Loan Agreement, the Project Note and the Security Instrument, as applicable;

(c) The Borrower shall fail to observe or perform any other term, covenant, condition or agreement (after taking into account any applicable cure period) set forth in this Project Loan Agreement, which failure continues for a period of 30 days after notice of such failure by the Governmental Lender, the Fiscal Agent or the Funding Lender Representative to the Borrower and Equity Investor (unless such default cannot with due diligence be cured within 30 days but can be cured within a reasonable period and will not, in the Funding Lender Representative’s sole discretion, adversely affect the Funding Lender or result in impairment of this Project Loan Agreement or any other Financing Document, in which case no Event of Default shall be deemed to exist so long as Borrower or the Equity Investor shall have commenced to cure the default or Event of Default within 30 days after receipt of notice, and thereafter diligently and continuously prosecutes such cure to completion); provided, however, no such notice or grace periods shall apply in the case of any such failure which could, in the Funding Lender Representative’s judgment, absent immediate exercise by the Funding Lender Representative of a right or remedy under this Agreement, result in harm to the Funding Lender, impairment of this Project Loan Agreement or any other Financing Document (any cure offered by the Equity Investor shall be accepted or rejected as if tendered by the Borrower);

(d) The occurrence of an event of default under the Continuing Covenant Agreement or the Security Instrument (after taking into account any applicable cure period thereunder) shall at the discretion of the Funding Lender Representative constitute an Event of Default under this Project Loan Agreement but only if the Fiscal Agent is provided written notice by the Funding Lender Representative that an Event of Default has occurred under such Financing Document and the Fiscal Agent is instructed by the Funding Lender Representative that such default constitutes an Event of Default hereunder; and

(e) The occurrence of an Event of Default hereunder shall in the discretion of the Funding Lender Representative constitute a default under the other Financing Documents.

Nothing contained in this Section 7.01 is intended to amend or modify any of the provisions of the Financing Documents or to bind the Governmental Lender, the Fiscal Agent, the Servicer

or the Funding Lender Representative to any notice and cure periods other than as expressly set forth in the Financing Documents.

**Section 7.02 Remedies on Default.** Subject to Section 7.06 hereof, whenever any Event of Default hereunder shall have occurred and be continuing, the Funding Lender (or the Fiscal Agent at the direction of the Funding Lender), may take any one or more of the following remedial steps:

(a) The Funding Lender (or the Fiscal Agent at the direction of the Funding Lender) may take such action, without notice or demand, as the Funding Lender deems advisable to protect and enforce its rights against the Borrower and in and to the Project, including declaring the Project Loan to be immediately due and payable (including, without limitation, the principal of, Prepayment Premium, if any, and interest on and all other amounts due on the Project Note to be immediately due and payable).

(b) The Funding Lender (or the Fiscal Agent at the direction of the Funding Lender) may, without being required to give any notice (other than to the Governmental Lender or the Fiscal Agent, as applicable), except as provided herein, pursue all remedies of a creditor under the laws of the State, as supplemented and amended, or any other applicable laws.

(c) The Funding Lender (or the Fiscal Agent at the direction of the Funding Lender) may take whatever action at law or in equity may appear necessary or desirable to collect the payments under this Project Loan Agreement then due and thereafter to become due, or to enforce performance and observance of any obligation, agreement or covenant of the Borrower under this Project Loan Agreement.

In addition, subject to Section 7.06 hereof, the Governmental Lender and the Fiscal Agent may pursue remedies with respect to the Unassigned Rights.

Any amounts collected pursuant to Article IV hereof and any other amounts which would be applicable to payment of principal of and interest and any premium on the Funding Loan collected pursuant to action taken under this Section 7.02 shall be applied in accordance with the provisions of the Funding Loan Agreement.

**Section 7.03 No Remedy Exclusive.** Upon the occurrence of an Event of Default, all or any one or more of the rights, powers, privileges and other remedies available against the Borrower hereunder or under the Financing Documents or otherwise at law or in equity may be exercised by the Funding Lender (or the Fiscal Agent at the direction of the Funding Lender), at any time and from time to time, whether or not the Funding Lender has accelerated the Project Loan, and whether or not the Funding Lender shall have commenced any foreclosure proceeding or other action for the enforcement of its rights and remedies under any of the Financing Documents. No remedy conferred upon or reserved to the Funding Lender or the Fiscal Agent by this Project Loan Agreement is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Project Loan Agreement or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any Event of Default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power

may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Funding Lender (or the Fiscal Agent at the direction of the Funding Lender) 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 expressly required by this Project Loan Agreement.

**Section 7.04 *Agreement to Pay Attorneys' Fees and Expenses.*** In the event the Borrower shall default under any of the provisions of this Project Loan Agreement or any other Project Loan Documents and the Governmental Lender, the Fiscal Agent, the Servicer or the Funding Lender Representative shall employ attorneys or incur other expenses for the collection of loan payments or the enforcement of performance or observance of any obligation or agreement on the part of the Borrower contained in this Project Loan Agreement or in the Project Note or any other Project Loan Documents, the Borrower shall on demand therefor reimburse the reasonable fees of such attorneys and such other expenses so incurred.

**Section 7.05 *No Additional Waiver Implied by One Waiver.*** In the event any agreement contained in this Project Loan Agreement shall be breached by any party and thereafter waived by the other parties, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

**Section 7.06 *Control of Proceedings.***

(a) If an Event of Default has occurred and is continuing, notwithstanding anything to the contrary herein, the Funding Lender Representative shall have the sole and exclusive right at any time to direct the time, method and place of conducting all proceedings to be taken in connection with the enforcement of the terms and conditions of this Project Loan Agreement, or for the appointment of a receiver or any other proceedings hereunder, in accordance with the provisions of law and of this Project Loan Agreement. In addition, the Funding Lender Representative shall have the sole and exclusive right at any time to directly enforce all rights and remedies hereunder and under the other Financing Documents with or without the involvement of the Fiscal Agent or the Governmental Lender. In no event shall the exercise of any of the foregoing rights result in an acceleration of the Project Loan without the express direction of the Funding Lender Representative.

(b) The Governmental Lender and the Fiscal Agent covenant that they will not, without the prior written consent of the Funding Lender Representative, take any of the following actions:

- (i) prosecute any action with respect to a lien on the Project; or
- (ii) initiate or take any action which may have the effect, directly or indirectly, of impairing the ability of the Borrower to timely pay the principal of, interest on, or other amounts due under, the Project Loan; or
- (iii) interfere with or attempt to influence the exercise by the Funding Lender Representative of any of its rights under the Financing Documents upon the occurrence of any event of default by the Borrower under the Financing Documents; or

(iv) take any action to accelerate or otherwise enforce payment or seek other remedies with respect to the Project Loan or the Funding Loan.

(c) Notwithstanding Sections 7.06(a) and 7.06(b) hereof, the Governmental Lender or the Fiscal Agent may:

(i) specifically enforce the tax covenants of the Borrower specified in Sections 2.04 and 2.05 hereof or seek injunctive relief against acts which may be in violation thereof;

(ii) specifically enforce the Tax Regulatory Agreement or seek injunctive relief against acts which may be in violation of the Tax Regulatory Agreement or are otherwise inconsistent with the operation of the Project in accordance with applicable requirements of the Code and State law (but in neither the case of subsection (c)(i) above or this subsection (c)(ii) may the Governmental Lender or the Fiscal Agent seek any form of monetary damages from the Borrower in connection with such enforcement).

In addition, notwithstanding Section 7.06(a) and 7.06(b) hereof, the Governmental Lender and the Fiscal Agent may seek specific performance of the other Unassigned Rights (provided no monetary damages are sought), and nothing herein shall be construed to limit the rights of the Governmental Lender, the Fiscal Agent or any Indemnified Party related to the Governmental Lender or the Fiscal Agent under Section 6.01 (each a "**Related Indemnified Party**") to enforce their respective rights against the Borrower under Sections 4.02, 4.03, 6.01 and 7.04 hereof, provided that no obligation of the Borrower to the Governmental Lender, the Fiscal Agent or any Related Indemnified Party under such sections shall be secured by or in any manner constitute a lien on, or security interest in, the Project, whether in favor of the Governmental Lender, the Fiscal Agent or any Related Indemnified Party, and all such obligations are and shall be subordinate in priority, in right to payment and in all other respects to all other obligations, liens, rights (including without limitation the right to payment) and interests arising or created under the Financing Documents (except for the Fiscal Agent's right to receive payment of reasonable fees and expenses pursuant to Section 6.05(a) of the Funding Loan Agreement after an event of default with respect to the Funding Loan, which reasonable fees and expenses of the Fiscal Agent shall be payable as provided thereunder). Accordingly, none of the Governmental Lender, the Fiscal Agent or any Related Indemnified Party shall have the right to enforce any monetary obligation arising under such sections other than directly against the Borrower, without recourse to the Project. In addition, any such enforcement must not cause the Borrower to file a petition seeking reorganization, arrangement, adjustment or composition of or in respect of the Borrower under any applicable liquidation, insolvency, bankruptcy, construction, composition, reorganization, conservation or other similar law in effect now or in the future.

**Section 7.07 Assumption of Obligations.** In the event that the Fiscal Agent or the Funding Lender or their respective assignee or designee shall become the legal or beneficial owner of the Project by foreclosure or deed in lieu of foreclosure, such party shall succeed to the rights and the obligations of the Borrower under this Project Loan Agreement, the Project Note, the Tax Regulatory Agreement, and any other Financing Documents to which the Borrower is a party or with respect to which it is a third-party beneficiary. Such assumption shall be effective from and after the effective date of such acquisition and shall be made with the benefit of the limitations of liability set forth therein and without any liability for the prior acts of the Borrower.



(End of Article VII)

## ARTICLE VIII

### MISCELLANEOUS

#### **Section 8.01 *Notices.***

(a) Whenever in this Project Loan Agreement the giving of notice by mail or otherwise is required, the giving of such notice may be waived in writing by the person entitled to receive such notice and in any such case the giving or receipt of such notice shall not be a condition precedent to the validity of any action taken in reliance upon such waiver.

Any notice, request, complaint, demand, communication or other paper required or permitted to be delivered to the Governmental Lender, the Fiscal Agent, the Funding Lender Representative, the Equity Investor, the Borrower (with copies to DMA Development Company, LLC and to Coats/Rose) or the Servicer shall be sufficiently given and shall be deemed given (unless another form of notice shall be specifically set forth herein) on the Business Day following the date on which such notice or other communication shall have been delivered to a national overnight delivery service (receipt of which to be evidenced by a signed receipt from such overnight delivery service) addressed to the appropriate party at the addresses set forth in Section 11.04 of the Funding Loan Agreement or as required or permitted by this Project Loan Agreement by Electronic Notice. The Governmental Lender, the Fiscal Agent, the Funding Lender Representative, the Equity Investor, the Borrower or the Servicer may, by notice given as provided in this paragraph, designate any further or different address to which subsequent notices or other communication shall be sent.

A duplicate copy of each notice or other communication given hereunder by any party to the Servicer shall also be given to the Funding Lender Representative and a duplicate copy of each notice or other communication given hereunder by any party to the Funding Lender Representative shall be given to the Servicer.

The Fiscal Agent agrees to accept and act upon Electronic Notice of written instructions and/or directions pursuant to this Project Loan Agreement.

(b) The Fiscal Agent shall provide to the Funding Lender Representative and the Servicer (i) prompt notice of the occurrence of any Event of Default hereunder and (ii) any written information or other communication received by the Fiscal Agent hereunder within ten (10) Business Days of receiving a written request from the Funding Lender Representative for any such information or other communication.

**Section 8.02 *Concerning Successors and Assigns.*** All covenants, agreements, representations and warranties made herein and in the certificates delivered pursuant hereto shall survive the financing herein contemplated and shall continue in full force and effect so long as the obligations hereunder are outstanding. Whenever in this Project Loan Agreement any of the parties hereto is referred to, such reference shall be deemed to include the successors and assigns of such party; and all covenants, promises and agreements by or on behalf of the Borrower which are contained in this Project Loan Agreement shall bind its successors and assigns and inure to the

benefit of the successors and assigns of the Governmental Lender, the Fiscal Agent, the Servicer, the Funding Lender and the Funding Lender Representative, as applicable.

**Section 8.03 *Governing Law.*** This Project Loan Agreement and the Exhibits attached hereto shall be construed in accordance with and governed by the internal laws of the State and, where applicable, the laws of the United States of America.

**Section 8.04 *Modifications in Writing.*** Modification or the waiver of any provisions of this Project Loan Agreement or consent to any departure by the parties therefrom, shall in no event be effective unless the same shall be in writing approved by the parties hereto and shall require the prior written consent of the Funding Lender Representative and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. No notice to or demand on the Borrower in any case shall entitle it to any other or further notice or demand in the same circumstances.

**Section 8.05 *Further Assurances and Corrective Instruments.*** The Governmental Lender, the Fiscal Agent and the Borrower agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required (including such supplements or further instruments requested by the Funding Lender Representative) for correcting any inadequate or incorrect description of the performance of this Project Loan Agreement.

**Section 8.06 *Captions.*** The section headings contained herein are for reference purposes only and shall not in any way affect the meaning or interpretation of this Project Loan Agreement.

**Section 8.07 *Severability.*** The invalidity or unenforceability of any provision of this Project Loan Agreement shall not affect the validity of any other provision, and all other provisions shall remain in full force and effect.

**Section 8.08 *Counterparts.*** This Project Loan Agreement may be signed in any number of counterparts with the same effect as if the signatures thereto and hereto were upon the same instrument.

**Section 8.09 *Amounts Remaining in Loan Payment Fund or Other Funds.*** It is agreed by the parties hereto that any amounts remaining in the Loan Payment Fund or other funds and accounts established under the Funding Loan Agreement upon expiration or sooner termination of the term hereof (and the repayment in full of the Project Loan and all other amounts owing under the Project Loan Documents), shall be paid in accordance with the Funding Loan Agreement.

**Section 8.10 *Effective Date and Term.*** This Project Loan Agreement shall become effective upon its execution and delivery by the parties hereto, shall be effective and remain in full force from the date hereof, and, subject to the provisions hereof, shall expire on such date as the Funding Loan Agreement shall terminate.

**Section 8.11 *Cross References.*** Any reference in this Project Loan Agreement to an "Exhibit," an "Article," a "Section," a "Subsection" or a "Paragraph" shall, unless otherwise explicitly provided, be construed as referring, respectively, to an exhibit attached to this Project Loan Agreement, an article of this Project Loan Agreement, a section of this Project Loan

Agreement, a subsection of the section of this Project Loan Agreement in which the reference appears and a paragraph of the subsection within this Project Loan Agreement in which the reference appears. All exhibits attached to or referred to in this Project Loan Agreement are incorporated by reference into this Project Loan Agreement.

**Section 8.12 *Funding Lender Representative and Servicer as Third-Party Beneficiaries.*** The parties hereto agree and acknowledge that the Funding Lender Representative and the Servicer are third party beneficiaries of this Project Loan Agreement.

**Section 8.13 *Reserved.***

**Section 8.14 *Non-Liability of Governmental Lender.*** The Governmental Lender shall not be obligated to pay the principal (or Prepayment Premium) of or interest on the Funding Loan, except from Revenues and other money and assets received by the Fiscal Agent on behalf of the Governmental Lender pursuant to this Project Loan Agreement. Neither the faith and credit nor the taxing power of the State or any political subdivision thereof, nor the faith and credit of the Governmental Lender or any member is pledged to the payment of the principal (or prepayment premium) or interest on the Funding Loan. The Governmental Lender shall not be liable for any costs, expenses, losses, damages, claims or actions, of any conceivable kind on any conceivable theory, under or by reason of or in connection with this Project Loan Agreement, the Funding Loan or the Funding Loan Agreement, except only to the extent amounts are received for the payment thereof from the Borrower under this Project Loan Agreement.

The Borrower hereby acknowledges that the Governmental Lender's sole source of money to repay the Funding Loan will be provided by the Revenues, together with investment income on certain funds and accounts held by the Fiscal Agent under the Funding Loan Agreement, and hereby agrees that if the payments to be made hereunder shall ever prove insufficient to pay all principal (or prepayment premium) and interest on the Funding Loan as the same shall become due (whether by maturity, prepayment, acceleration or otherwise), then upon notice from Servicer (or the Fiscal Agent if the Fiscal Agent is then collecting payments from the Borrower), the Borrower shall pay such amounts as are required from time to time to prevent any deficiency or default in the payment of such principal (or prepayment premium) or interest, including, but not limited to, any deficiency caused by acts, omissions, nonfeasance or malfeasance on the part of the Fiscal Agent, the Borrower, the Governmental Lender or any third party, subject to any right of reimbursement from the Fiscal Agent, the Governmental Lender or any such third party, as the case may be, therefor.

**Section 8.15 *No Liability of Officers.*** No recourse under or upon any obligation, covenant, or agreement or in the Governmental Note, or under any judgment obtained against the Governmental Lender, or by the enforcement of any assessment or by any legal or equitable proceeding by virtue of any constitution or statute or otherwise or under any circumstances, shall be had against any incorporator, member, director, commissioner, employee, agent or officer, as such, past, present, or future, of the Governmental Lender, either directly or through the Governmental Lender, or otherwise, for the payment for or to the Governmental Lender or any receiver thereof, or for or to the Funding Lender, of any sum that may be due and unpaid by the Governmental Lender upon the Funding Loan. 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

incorporator, member, director, commissioner, employee, agent or officer, as such, to respond by reason of any act or omission on his or her part or otherwise, for the payment for or to the Governmental Lender or any receiver thereof, or for or to the Funding Lender, of any sum that may remain due and unpaid upon the Funding Loan, is hereby expressly waived and released as a condition of and consideration for the execution of this Project Loan Agreement and the issuance of the Governmental Note.

**Section 8.16 *Capacity of the Fiscal Agent.*** The Fiscal Agent is entering into this Project Loan Agreement solely in its capacity as Fiscal Agent and shall be entitled to the rights, protections, limitations from liability and immunities afforded it as Fiscal Agent under the Funding Loan Agreement. The Fiscal Agent shall be responsible only for the duties of the Fiscal Agent expressly set forth herein and in the Funding Loan Agreement.

**Section 8.17 *Reliance.*** The representations, covenants, agreements and warranties set forth in this Project Loan Agreement may be relied upon by the Governmental Lender, the Fiscal Agent, Bond Counsel, the Servicer, the Funding Lender and the Funding Lender Representative. In performing their duties and obligations under this Project Loan Agreement and under the Funding Loan Agreement, the Governmental Lender and the Fiscal Agent may rely upon statements and certificates of the Borrower, upon certificates of tenants believed to be genuine and to have been executed by the proper person or persons, and upon audits of the books and records of the Borrower pertaining to occupancy of the Project. In addition, the Governmental Lender and the Fiscal Agent 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 Governmental Lender or the Fiscal Agent under this Project Loan Agreement and under the Funding Loan Agreement in good faith and in conformity with the opinion of such counsel. It is expressly understood and agreed by the parties to this Project Loan Agreement (other than the Governmental Lender) that:

(a) the Governmental Lender may rely conclusively on the truth and accuracy of any certificate, opinion, notice or other instrument furnished to the Governmental Lender by the Fiscal Agent, the Funding Lender or the Borrower as to the existence of a fact or state of affairs required under this Project Loan Agreement to be noticed by the Governmental Lender;

(b) the Governmental Lender shall not be under any obligation to perform any record keeping or to provide any legal service, it being understood that such services shall be performed or caused to be performed by the Fiscal Agent, the Funding Lender Representative, the Servicer or the Borrower, as applicable; and

(c) none of the provisions of this Project Loan Agreement shall require the Governmental Lender or the Fiscal Agent to expend or risk its own funds (apart from the proceeds of Funding Loan issued under the Funding Loan Agreement) or otherwise endure financial liability in the performance of any of its duties or in the exercise of any of its rights under this Project Loan Agreement, unless it shall first have been adequately indemnified to its satisfaction against the costs, expenses and liabilities which may be incurred by taking any such action.

(End of Article VIII)

IN WITNESS WHEREOF, the parties hereto have executed this Project Loan Agreement and to be attested, all as of the date first set forth above.

**ATTEST:**

**AUSTIN HOUSING FINANCE  
CORPORATION**

\_\_\_\_\_  
Secretary

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

[GOVERNMENTAL LENDER'S SIGNATURE PAGE TO NIGHTINGALE AT GOODNIGHT RANCH  
APARTMENTS PROJECT LOAN AGREEMENT]

**BOKF, NA**

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

**Name: Pamela M. Black**

**Title: Senior Vice President**

**[FISCAL AGENT'S SIGNATURE PAGE TO NIGHTINGALE AT GOODNIGHT RANCH PROJECT LOAN  
AGREEMENT]**

*HOU 408749770v1*

**BORROWER,**

AUSTIN DMA HOUSING III, LLC, a Texas  
limited liability company

By: AHFC Nightingale Non-Profit Corporation, a  
Texas nonprofit corporation, its managing  
member

By: \_\_\_\_\_  
Rosie Truelove, Vice President

[BORROWER'S SIGNATURE PAGE TO NIGHTINGALE AT GOODNIGHT RANCH APARTMENTS PROJECT  
LOAN AGREEMENT]

HOU 408749770v1



**Exhibit C**

**Regulatory Agreement**

**EXHIBIT C**

.....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,

BOKF, NA,  
as Fiscal Agent,

and

AUSTIN DMA HOUSING III, LLC  
as Owner

Dated as of March 1, 2018

Relating to

§  
AUSTIN HOUSING FINANCE CORPORATION  
MULTIFAMILY HOUSING GOVERNMENTAL REVENUE NOTE  
(NIGHTINGALE AT GOODNIGHT RANCH APARTMENTS)  
SERIES 2018

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## REGULATORY AND LAND USE RESTRICTION AGREEMENT

THIS REGULATORY AND LAND USE RESTRICTION AGREEMENT (as the same may be amended, modified or supplemented, this "Agreement" or this "Regulatory Agreement") dated as of March 1, 2018, among the Austin Housing Finance Corporation, a public non-profit housing finance corporation organized and existing under the laws of the State of Texas (together with its successors and assigns, the "Issuer"), BOKF, NA, a national banking association organized and existing under the laws of the United States of America, as Fiscal Agent (together with any successor or Fiscal Agent under the Funding Loan Agreement (as defined below) and their respective successors and assigns, the "Fiscal Agent") under the hereinafter-defined Funding Loan Agreement, and Austin DMA Housing III, LLC, a limited liability company organized and existing under the laws of the State of Texas (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, construction 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 affordable housing project located on the real property described in Exhibit A hereto (the "Project Site") and described in Exhibit B hereto (the "Project Facilities" 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 its Multifamily Housing Governmental Revenue Note (Nightingale at Goodnight Ranch Apartments) Series 2018 in the original aggregate principal amount of \$ \_\_\_\_\_ (the "Note"), and making a loan to the Owner of proceeds of the Note upon the terms and conditions set forth in the Loan Agreement (as hereinafter defined);

WHEREAS, in order for interest on the Note to be excluded from gross income for federal income tax purposes under the Internal Revenue Code of 1986, as amended (the "Code"), and the federal income tax regulations (including temporary and final regulations) and rulings with respect to the Code, and in order to comply with the requirements of the Act, relating to the Note, the use and operation of the Project must be restricted in certain respects; and

WHEREAS, the Issuer, the Fiscal Agent and the Owner have determined to enter into this Regulatory Agreement in order to set forth certain terms and conditions relating to the acquisition, construction, ground leasing, 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, and intending to be legally bound hereby, the Issuer, the Fiscal Agent 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 Funding Loan Agreement 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 member 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).

"Agreement" or "Regulatory Agreement" means this Regulatory and Land Use Restriction Agreement, as it may be amended, modified or supplemented 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.

"Bond Closing Date" means the date of delivery of the Note.

"Compliance Monitoring Report" means the certified residential affordable housing program compliance report to be filed by the Owner with the Issuer 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 debt, or financing documents relating to the issuance of debt, 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 Fiscal Agent, to the effect that the action to be taken will not adversely affect the excludability of interest on the Note from gross income for federal income tax purposes.

"Final Computation Date" means the date the last Bond is discharged.

"Gross Proceeds" means any Proceeds and any Replacement Proceeds of the Note.

"Funding Loan Agreement" means the Funding Loan Agreement of even date herewith by and between the Issuer, the Fiscal Agent and the Owner, relating to the issuance of the Note, and any supplements thereto.

"Inducement Date" means \_\_\_\_\_, 2018.

"Installment Computation Date" means the last day of each fifth year, commencing January 31, 2023, and the date on which the final payment in full of the Outstanding Note 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 the Note is sold.

"Loan" means the loan to be made to the Owner pursuant to the Loan Agreement.

"Loan Agreement" means the Project Loan Agreement of even date herewith among the Issuer, Fiscal Agent and Owner related to the Note as may be amended, modified, supplemented or restated from time to time.

"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 Note.

"Net Sale Proceeds" means the Sale Proceeds of the Note 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 Note.

"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 Fiscal Agent containing the specimen signature of such Person and signed on behalf of the Owner by the managing member, 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 Issuer or political subdivision thereof.

"Proceeds" means any Sale Proceeds, Investment Proceeds and Transferred Proceeds of the Note.

"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 of 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; provided, however, the parties hereto acknowledge and agree that owner holds a leasehold interest in the real property described in Exhibit A, and not the fee estate.

"Project Facilities" means the multifamily affordable housing complex 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; provided however, that parties hereto acknowledge and agree that Owner holds a leasehold interest in the real property described in Exhibit A, and not the fee estate.

"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 3 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 Bond Closing Date and ending on the later of (i) the date which is 15 years after the Bond 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 Note invested at a Yield materially higher than the Yield on the Note does not exceed 10% of the proceeds of the Note, 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 Note that meets either the 6-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 any installment of interest thereon, means any date specified in the Note as a fixed date on which the principal of the Note or a portion thereof or such installment of interest is due and payable.

"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 Note 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, Construction 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 6 months after the Bond Closing Date, a substantial binding obligation to commence the construction of Project Facilities, pursuant to which the Owner is or will be obligated to expend at least 5 % of the Sale Proceeds of the Note.
- (b) The Owner's reasonable expectations respecting the total cost of the acquisition, ground leasing, construction and equipping of the Project are accurately set forth in the Tax Certificate and any attachments thereto.
- (c) The Owner has commenced or will commence the acquisition, ground leasing, construction 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 % of the Sale Proceeds of the Note for Project Costs prior to the date that is 3 years after the Bond Closing Date.
- (e) The statements made in the various certificates delivered by the Owner to the Issuer, Bond Counsel and/or the Fiscal Agent are true and correct in all material respects.
- (f) The Owner will submit, or cause to be submitted, to the Fiscal Agent, on or before the date of each disbursement of Proceeds of the Note from the Project Fund, if any, held by the Fiscal Agent under the Funding Loan Agreement, a requisition in substantially the form required by the reimbursement documents, 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 Project 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% or more of the aggregate disbursements from such fund.
- (g) 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 Note to be applied in a manner contrary to the requirements of the Funding Loan Agreement, 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 Note. 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 Note from the gross income (as defined in section 61 of the Code) of the holders of the Note 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 Note, unless it has received and filed with the Issuer and the Fiscal Agent 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 Note:

(a) The Owner's use of the Net Proceeds of the Note shall at all times satisfy the following requirements:

(i) At least 95% of the Net Proceeds of the Note 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) Less than 25% of the Net Proceeds of the Note actually expended will be used, directly or indirectly, for the acquisition of land or an interest therein. Notwithstanding the immediately preceding sentence no portion of the Net Proceeds of the Note will be used, directly or indirectly, for the acquisition of land or an interest therein to be used for farming purposes.

(iii) No portion of the Net Proceeds of the Note will be used for the acquisition of any existing property or an interest therein unless (i) the first use of such property is pursuant to such acquisition or (ii) the rehabilitation expenditures with respect to any building and the equipment therefor equal or exceed 15% of the cost of acquiring such building financed with the proceeds of the Note (with respect to structures other than buildings, this clause shall be applied by substituting 100% for 15%). For purposes of the preceding sentence, the term "rehabilitation expenditures" shall have the meaning set forth in section 147(d)(3) of the Code.

(iv) The Owner covenants and agrees that the Costs of Issuance financed with the proceeds of the Note shall not exceed 2% of the Sale Proceeds.

(v) The Owner shall not use or permit the use of any Net Proceeds of the Note 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 Note 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 Funding Loan Agreement and the Loan Agreement, 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 Note, 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 the Note, unless prior to taking any action described in this subsection (c), the Owner has obtained and delivered to the Fiscal Agent a Favorable Opinion of Bond Counsel.

(d) The Owner shall not, at any time prior to the final maturity of the Note, direct or permit the Fiscal Agent to invest Gross Proceeds of the Note 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 Note to Stated Maturity, except as permitted by section 148 of the Code or as provided in the Tax Certificate.

(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 Note to be "federally guaranteed" within the meaning of section 149(b) of the Code.

(f) (i) Unless the Owner delivers to the Issuer, the Fiscal Agent and the Bondholder Representative a Favorable Opinion of Bond Counsel that the Owner does not need to comply with this Section 2(f), the Owner shall cause to be delivered, to the Fiscal Agent, within 25 days after each Computation Date:

(A) a statement of the Rebate Amount, if any, 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) if a Rebate amount is due, 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 Fiscal Agent if the Owner certifies that the Note is 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 2(f)(ii) and the Funding Loan Agreement has not been paid as required; or

(B) that any payment paid to the United States pursuant to this Section and the Funding Loan Agreement 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 Fiscal Agent), the Owner shall

(X) deliver to the Fiscal Agent (for deposit to the Rebate Fund) and cause the Fiscal Agent 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 Fiscal Agent within 175 days after such discovery or notice, or (II) if such correction payment is not delivered to and received by the Fiscal Agent within 175 day after such discovery or

notice, the amount determined in accordance with clause (I) of this subparagraph (X) plus the 50% penalty required by the Regulations; and

(Y) deliver to the Fiscal Agent 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 Funding Loan Agreement and all calculations made in preparing the statements described in this Section 2(f) for at least 6 years after the date the last Bond is discharged.

(iv) The Owner agrees to pay all of the reasonable and actual fees and out-of-pocket 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 in connection with computing the Rebate Amount.

(g) The Owner covenants and agrees that not more than 50% of the Proceeds of the Note 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% of the spendable Proceeds of the Note will be used to carry out the governmental purposes of such issue of Note within the 3-year period beginning on the Bond Closing Date.

(h) The Owner hereby covenants and agrees that 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 Note shall be excluded from gross income for federal income tax purposes. In particular, the Owner covenants and agrees, and will cause the managing member of the Owner to covenant and agree for the longer of the Qualified Project Period or the period during which any Note remains outstanding, as follows:

(i) The Project Facilities qualify 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 Facilities 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);

(vi) The Owner will operate and lease the Project in a manner that is consistent with housing policy governing nondiscrimination, as evidenced by rules or regulations of the Department of Housing and Urban Development (HUD), which generally provide that no discrimination can be made on the basis of race, color, religion, sex, national origin, age, familial status, disability and handicap (see HUD handbook 4350.03, or its successor);

(vii) At no time during the term specified above will any Unit in any building or structure in the Project which contains fewer than 5 Units be occupied by the Owner;

(viii) 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 30 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;

(ix) 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 Note) 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. 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 the Set Aside, 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 2(i); 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) and 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 Fiscal Agent, 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 Fiscal Agent 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 Note.

(l) The Owner shall provide to the Fiscal Agent, a certificate certifying (i) within 90 days thereof, the date on which 10% of the Units in the Project are occupied; and (ii) within 90 days thereof, the date on which 50% of the Units in each Project are occupied.

**Section 3. Modification of Tax Covenants.** Subsequent to the issuance of the Note and prior to their payment in full (or provision for the payment thereof having been made in accordance with the provisions of the Funding Loan Agreement), this Agreement may not be amended, changed, modified, altered or terminated except as permitted in Section 19 and by the Funding Loan Agreement. Anything contained in this Agreement or the Funding Loan Agreement to the contrary notwithstanding, the Issuer, the Fiscal Agent and the Owner, hereby agree upon the written request of one of the parties hereto, to amend this Agreement and, if appropriate, the Funding Loan Agreement and the Loan Agreement, to the extent required, in the written opinion of Bond Counsel delivered to the Issuer, the Owner and the Fiscal Agent, in order for interest on the Note 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 Fiscal Agent, 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 Note 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 Fiscal Agent 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 3, and the Owner and the Issuer hereby appoint the Fiscal Agent 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 3; provided, however, that the Fiscal Agent shall take no action under this Section 3 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, 10 Business Days after delivery of such notice to comply with the requirements of this Section 3.

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 Note 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 at least 90% of the Units shall be rented to Eligible Tenants and that the Owner shall not rent or lease any Unit to a person not an Eligible Tenant if such rental would cause less than 90% of the Units to be rented to Eligible Tenants.

(b) The Owner hereby represents, covenants and agrees as follows:

(i) To assure that 40% of the occupied Units at the Project are occupied at all times by Low Income Tenants;

(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 3 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 Fiscal Agent 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 on the 1<sup>st</sup> day of the Qualified Project Period, and thereafter by the 20<sup>th</sup> calendar day of each April, July, October, and January, 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 Fiscal Agent (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 Note to provide funds to make the Loan to finance the Project, all for the purpose, among others, of inducing the Owner to acquire the Project Site by ground lease, construct, equip and operate the Project. In consideration of the issuance of the Note 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 Fiscal Agent 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 Note, and in the excludability from gross income for purposes of federal income taxation of the interest on the Note. In performing their duties and obligations hereunder, the Issuer and the Fiscal Agent 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 Fiscal Agent 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 Fiscal Agent hereunder in good faith and in conformity with such opinion. In determining whether any default by the Owner exists under this Regulatory Agreement, the Fiscal Agent 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 Fiscal Agent 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 the City of 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 Note have been paid in full, whichever is later, without (i) complying with any applicable provisions of the Loan Agreement and this Regulatory Agreement, 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 the Loan Agreement and this Regulatory Agreement are met or are waived in writing by the Issuer, including (1) there is delivered to the Fiscal Agent and the Issuer a written Opinion of Counsel satisfactory to the Fiscal Agent and the Issuer, addressed to the Fiscal Agent and the Issuer concluding that the transferee has duly assumed all of the rights and obligations of the Owner under the Loan Agreement (to the extent still in effect) 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 Fiscal Agent and 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 the Loan Agreement (to the extent still in effect) and this Regulatory 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 (to the extent still in effect) and this Regulatory 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 or this Regulatory Agreement arising after the date of such disposition. The foregoing notwithstanding, the duties and obligations of the Owner as set forth in the Loan Agreement and this Regulatory Agreement 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.

The Owner shall not change or cause to be changed the managing member of the Owner (or cause the Owner to have more than one managing member) without the prior written consent of the President, Vice President or Treasurer of the Issuer, which consent shall not be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, the managing member of the Owner may be removed and replaced by any partner or member of the Owner or any of its affiliates, in accordance with the Owner's operating agreement, as it may be amended from time to time, and subject to the satisfaction of the requirements of the Loan Agreement.

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 10, 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 Note, discharge of the Loan, termination of the Loan Agreement and defeasance or termination of the Funding Loan Agreement.

The terms of this Regulatory Agreement to the contrary and notwithstanding, this Regulatory Agreement, the Loan Agreement and the Funding Loan Agreement shall terminate, without the requirement of any consent by the Issuer and the Fiscal Agent, 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 Bond Closing Date which prevents the Issuer or the Fiscal Agent 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 Note is 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 federal income 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 Fiscal Agent, 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 to the covenants, reservations and restrictions set forth in this Regulatory Agreement. The Issuer, the Fiscal Agent 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 Fiscal Agent 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 Fiscal Agent 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 Note was 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 Fiscal Agent to the Owner in accordance with the Funding Loan Agreement, then the Fiscal Agent, acting on its own behalf or on behalf of the Issuer, provided a responsible officer of the Fiscal Agent 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 written opinion of Bond Counsel delivered to the Fiscal Agent, the failure to cure said default within 60 days will not adversely affect the exclusion from gross income of interest on the Note for federal income tax purposes. The Issuer and the Fiscal Agent agree that a cure of any Event of Default made or tendered by any partner or member of Owner, or a guarantor of any of Owner's obligations, 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 Fiscal Agent, 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 Fiscal Agent 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 Fiscal Agent 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 Fiscal Agent are cumulative, nonexclusive and in addition to any and all rights and remedies that the Issuer and the Fiscal Agent 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 14, 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 Fiscal Agent and the the Owner that a violation of this Regulatory Agreement has occurred.

Section 15. The Fiscal Agent. The Fiscal Agent shall act as specifically provided herein and in the Funding Loan Agreement. No implied covenants shall be read into this Agreement against the Fiscal Agent. Subject to the right of the Fiscal Agent to be indemnified as provided in the Funding Loan Agreement, the Fiscal Agent 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 Fiscal Agent. The Fiscal Agent is entering into this Regulatory Agreement solely in its capacity as Fiscal Agent under the Funding Loan Agreement, and the duties, powers, rights and obligations of the Fiscal Agent in acting hereunder shall be subject to the provisions of the Funding Loan Agreement, including, without limitation, the provisions of Article 9 thereof, which are incorporated by reference herein. The incorporated provisions of the Funding Loan Agreement are intended to survive the retirement of the Note, discharge of the Mortgage, termination of the Loan Agreement and defeasance or termination of the Funding Loan Agreement.

Neither the Fiscal Agent 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 Fiscal Agent 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 Fiscal Agent shall examine all documents prepared by the Owner and furnished to the Fiscal Agent to determine whether such documents conform on their face to the requirements of this Regulatory Agreement (which shall not require the Fiscal Agent to determine compliance with the covenants herein). The Fiscal Agent shall notify the Issuer and the Owner in writing if the Fiscal Agent does not receive any document from the Owner 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 Fiscal Agent 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 Fiscal Agent

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 Fiscal Agent 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 or redemption of the Note and notwithstanding a discharge of the Funding Loan Agreement, throughout the term of this Regulatory Agreement, the Owner shall continue to pay to the Issuer and the Fiscal Agent reimbursement for all fees and expenses actually incurred thereby required to be paid to the Issuer and the Fiscal Agent 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 Fiscal Agent's rights, duties, powers and obligations hereunder are governed in their entirety by the terms and provisions of this Agreement and the Funding Loan Agreement.

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, Texas and only upon receipt by the Issuer, the Owner and the Fiscal Agent of a Favorable Opinion of Bond Counsel regarding such amendment.

Section 20. Notices. Any notice required to be given hereunder to the Issuer and the Fiscal Agent, or the Owner shall be given in the manner and to the address as set forth in the Funding Loan Agreement.

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 may authorize the Owner to take on behalf of the Issuer actions required or permitted to be taken by it hereunder, or under the Funding Loan Agreement 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 Funding Loan Agreement and the Loan Agreement. In addition, to the extent allowed by law, the Issuer may authorize the Owner to exercise, on behalf of the Issuer, any election with respect to the Note pursuant to the Code or the Regulations, and in such case, the Issuer will cooperate with the Owner and execute any form of statement required by the Code or the Regulations required to effectuate any such election. Any authorization by the Issuer under this Section 23 shall be in writing.

Section 24. Freddie Mac Rider. Attached as Exhibit E is the authorized form of the Freddie Mac Rider.

[EXECUTION PAGES FOLLOW]

IN WITNESS WHEREOF, the Issuer, the Fiscal Agent 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: Rosie Truelove

Title: Treasurer

DRAFT

**BOKF, NA, as Fiscal Agent**

By: \_\_\_\_\_  
Name: Pamela M. Black  
Title: Senior Vice President

DRAFT

**BORROWER,**

AUSTIN DMA HOUSING III, LLC, a Texas  
limited liability company

By: AHFC Nightingale Non-Profit Corporation, a  
Texas nonprofit corporation, its managing  
member

By: \_\_\_\_\_  
Rosie Truelove, Vice President

DRAFT

ACKNOWLEDGMENT

STATE OF TEXAS

COUNTY OF TRAVIS

§  
§  
§

This Regulatory Agreement was acknowledged before me on \_\_\_\_\_, 2018, by Rosie Truelove, Treasurer of Austin Housing Finance Corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

\_\_\_\_\_  
Notary Public Signature

My Commission expires: \_\_\_\_\_

(Personalized Seal)

DRAFT



ACKNOWLEDGMENT

STATE OF TEXAS

COUNTY OF DALLAS

§  
§  
§

This instrument was acknowledged before me on \_\_\_\_\_, 2018, by Pamela M. Black,  
Senior Vice President of BOKF, NA.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

\_\_\_\_\_  
Notary Public Signature

My Commission expires: \_\_\_\_\_

(Personalized Seal)

DRAFT

REGULATORY AND LAND USE RESTRICTION AGREEMENT

*Notary Page*

ACKNOWLEDGMENT

STATE OF \_\_\_\_\_

§  
§  
§

COUNTY OF \_\_\_\_\_

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_, 2018, by Rosie Trulove, Vice President of AHFC Nightingale Non-Profit Corporation, the managing member of Austin DMA Housing III, LLC, a Texas limited liability company.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

\_\_\_\_\_  
Notary Public Signature

My Commission expires: \_\_\_\_\_

(Personalized Seal)

DRAFT

**EXHIBIT A**

Legal Description for Title Commitment attached on next page

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**EXHIBIT B**

**PROJECT AND OWNER**

Owner: Austin DMA Housing III, LLC  
Project Site: 5900 Merle Drive, Austin, Texas  
Project Facilities 174 units of multifamily rental housing.

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**EXHIBIT C**

**TENANT INCOME CERTIFICATION**

Austin Housing Finance Corporation  
Multifamily Housing Governmental Revenue Note  
(Nightingale at Goodnight Ranch Apartments)  
Series 2018

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# INCOME CERTIFICATION

☐ Initial Certification ☐ Recertification ☐ Other\* \_\_\_\_\_

Effective Date: \_\_\_\_\_  
 Move-in Date: \_\_\_\_\_ (MM/DD/YYYY)  
 \*Transfer from Unit: \_\_\_\_\_

## PART I - DEVELOPMENT DATA

Property: \_\_\_\_\_ County: \_\_\_\_\_ BIN #: \_\_\_\_\_  
 Name: AHFC# \_\_\_\_\_ Unit Number: \_\_\_\_\_ # Bedrooms: \_\_\_\_\_

## PART II - HOUSEHOLD COMPOSITION

HH Mbr #	Last Name	First Name & Middle Initial	Relationship to Head of Household	Date of Birth (MM/DD/YYYY)	Student Status (circle one)	Last 4 digits of Social Security Number
1			HEAD		FT/PT/NA	
2					FT/PT/NA	
3					FT/PT/NA	
4					FT/PT/NA	
5					FT/PT/NA	
6					FT/PT/NA	
7					FT/PT/NA	

## PART III - GROSS ANNUAL INCOME (USE ANNUAL AMOUNTS)

HH Mbr #	(A) Employment or Wages	(B) Soc. Security/Pensions	(C) Public Assistance	(D) Other Income
TOTALS	\$	\$	\$	\$
Add totals from (A) through (D) above				TOTAL INCOME (E): \$

## PART IV - INCOME FROM ASSETS

HH Mbr #	(F) Type of Asset	(G) C/I	(H) Cash Value of Asset	(I) Annual Income from Asset
TOTALS:			\$	\$

Enter Column (H) Total \_\_\_\_\_ Passbook Rate \_\_\_\_\_  
 If over \$5000 \$ \_\_\_\_\_ X .06% (effective 2/1/2015) = (J) Imputed Income \$ \_\_\_\_\_

Enter the greater of the total of column I, or J: imputed income TOTAL INCOME FROM ASSETS (K): \$ \_\_\_\_\_

(L) Total Annual Household Income from all Sources [Add (E) + (K)] \$ \_\_\_\_\_

## HOUSEHOLD CERTIFICATION & SIGNATURES

The information on this form will be used to determine maximum income eligibility. I/we have provided for each person(s) set forth in Part II acceptable verification of current anticipated annual income. I/we agree to notify the landlord immediately upon any member of the household moving out of the unit or any new member moving in. I/we agree to notify the landlord immediately upon any member becoming a full time student.

Under penalties of perjury, I/we certify that the information presented in this Certification is true and accurate to the best of my/our knowledge and belief. The undersigned further understands that providing false representations herein constitutes an act of fraud. False, misleading or incomplete information may result in the termination of the lease agreement.

Signature \_\_\_\_\_ (Date) \_\_\_\_\_ Signature \_\_\_\_\_ (Date) \_\_\_\_\_  
 Signature \_\_\_\_\_ (Date) \_\_\_\_\_ Signature \_\_\_\_\_ (Date) \_\_\_\_\_

### PART V. DETERMINATION OF INCOME ELIGIBILITY

**TOTAL ANNUAL HOUSEHOLD INCOME**

FROM ALL SOURCES:

From item (L) on page 1 \$ \_\_\_\_\_

Mark the program(s) listed below for which this household's income will be counted toward the property's occupancy requirements.

<input type="checkbox"/> HTC or Exchange	<input type="checkbox"/> 30%	<input type="checkbox"/> 40%	<input type="checkbox"/> 50%	<input type="checkbox"/> 60%	<input type="checkbox"/> OI***	
<input type="checkbox"/> TCAP	<input type="checkbox"/> 30%	<input type="checkbox"/> 40%	<input type="checkbox"/> 50%	<input type="checkbox"/> 60%	<input type="checkbox"/> OI***	
<input type="checkbox"/> HOME	<input type="checkbox"/> 30%	<input type="checkbox"/> 40%	<input type="checkbox"/> 50%	<input type="checkbox"/> 60%	<input type="checkbox"/> 80%	<input type="checkbox"/> OI***
<input type="checkbox"/> BOND	<input type="checkbox"/> 30%	<input type="checkbox"/> 50%	<input type="checkbox"/> 60%	<input type="checkbox"/> 80%	<input type="checkbox"/> OI***	<input type="checkbox"/> ET
<input type="checkbox"/> HTF	<input type="checkbox"/> ELI	<input type="checkbox"/> VLI	<input type="checkbox"/> LI	<input type="checkbox"/> OI***		
<input type="checkbox"/> NSP	<input type="checkbox"/> 30%	<input type="checkbox"/> 40%	<input type="checkbox"/> 50%	<input type="checkbox"/> 60%	<input type="checkbox"/> 80%	<input type="checkbox"/> 120%
<input type="checkbox"/> CDBG	<input type="checkbox"/> 30%	<input type="checkbox"/> 40%	<input type="checkbox"/> 50%	<input type="checkbox"/> 60%	<input type="checkbox"/> 80%	<input type="checkbox"/> 120%
<input type="checkbox"/> Other _____	<input type="checkbox"/>					

\*\*\* Upon Recertification household was determined to be over income (OI) according to eligibility requirements of the programs marked above.

### PART VI. RENT

A. Tenant Paid Rent: \$ \_\_\_\_\_

B. Utility Allowance: \$ \_\_\_\_\_

C. Rent Assistance: \$ \_\_\_\_\_

D. Other non-optional charges and mandatory fees: \$ \_\_\_\_\_

E. Gross Rent For Unit (See Instructions): \$ \_\_\_\_\_ / \_\_\_\_\_

Mark the program(s) listed below for which this household's rent will be counted toward the property's occupancy requirements.

<input type="checkbox"/> HTC or Exchange	<input type="checkbox"/> 30%	<input type="checkbox"/> 40%	<input type="checkbox"/> 50%	<input type="checkbox"/> 60%
<input type="checkbox"/> TCAP	<input type="checkbox"/> 30%	<input type="checkbox"/> 40%	<input type="checkbox"/> 50%	<input type="checkbox"/> 60%
<input type="checkbox"/> HOME	<input type="checkbox"/> Low HOME	<input type="checkbox"/> High HOME		
<input type="checkbox"/> BOND	<input type="checkbox"/> 30%	<input type="checkbox"/> 50%	<input type="checkbox"/> 60%	<input type="checkbox"/> 80%
<input type="checkbox"/> HTF	<input type="checkbox"/> 30%	<input type="checkbox"/> 50%	<input type="checkbox"/> 60%	<input type="checkbox"/> 80%
<input type="checkbox"/> NSP	<input type="checkbox"/> 30%	<input type="checkbox"/> 40%	<input type="checkbox"/> Low HOME	<input type="checkbox"/> High HOME
<input type="checkbox"/> CDBG	<input type="checkbox"/> 30%	<input type="checkbox"/> 40%	<input type="checkbox"/> Low HOME	<input type="checkbox"/> High HOME
<input type="checkbox"/> Other _____	<input type="checkbox"/>			

### PART VII. STUDENT STATUS (HTC, TCAP, Exchange, and BOND only)

ARE ALL OCCUPANTS FULL TIME STUDENTS?

☐ Yes ☐ No

If yes, Enter student explanation\*  
(also attach documentation)

Enter 1-5

\*Student Explanation:

1. TANF assistance
2. Job Training Program
3. Single parent/dependent child
4. Married/joint return
5. Previous Foster Care

### SIGNATURE OF OWNER/REPRESENTATIVE

Based on the representations herein and upon the proofs and documentation required to be submitted, the individual(s) named in Part II of this Tenant Income Certification is/are eligible under the provisions of program's rules, regulations and the Land Use Restriction Agreement (if applicable), to live in a unit in this Project.

SIGNATURE OF OWNER/REPRESENTATIVE \_\_\_\_\_

DATE \_\_\_\_\_

## Supplement to the Income Certification

Unit #: \_\_\_\_\_ Date: \_\_\_\_\_

See below for Ethnicity, Race, and Other codes that characterize household composition. Enter both Ethnicity and Race codes for each household member, if applicable. Also indicate if an individual in the household is elderly and/or disabled.

HH Mbr #	Sex— Enter M or F	Age	Ethnicity	Race	Elderly Enter Y or N	Disabled Enter Y or N
1						
2						
3						
4						
5						
6						
7						

The AHFC requests this information in order to comply with HUD's required reporting requirements. Although AHFC would appreciate receiving this information, you may choose not to furnish it. You may not be discriminated against on the basis of this information, or on whether or not you choose to furnish it. If you do not wish to furnish this information, please initial below.

**RESIDENT/APPLICANT:** I do not wish to furnish information regarding ethnicity, race, sex, age and other household composition.  
(Initials) \_\_\_\_\_

The following Ethnicity codes should be used:	The following Race codes should be used:
A Hispanic	A White
B Not Hispanic	B Black/African American
	C Asian
	D American Indian/Alaska Native
	E Native Hawaiian/Other Pacific Islander
	F American Indian/Alaska Native & White
	G Asian & White
	H Black/African American & White
	I American Indian/Alaska Native & Black/African American
	J Other Multi Racial

### DEFINITIONS

#### Ethnic categories:

- A. Hispanic — A person of Cuban, Mexican, Puerto Rican, South or Central American, or other Spanish culture or origin, regardless of race. Terms such as "Latino" or "Spanish Origin" apply to this category.
- B. Not Hispanic — A person not of Cuban, Mexican, Puerto Rican, South or Central American, or other Spanish culture or origin, regardless of race.

#### Racial categories:

- A. White — A person having origins in any of the original peoples of Europe, the Middle East, or North Africa.
- B. Black/African American — A person having origins in any of the black racial groups of Africa. Terms such as "Haitian" or "Negro" apply to this category.
- C. Asian — A person having origins in any of the original peoples of the Far East, Southeast Asia, or the Indian subcontinent including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand, and Vietnam.
- D. American Indian/Alaskan Native — A person having origins in any of the original peoples of North and South America (including Central America), and who maintains tribal affiliation or community attachment.
- E. Native Hawaiian/Other Pacific Islander — A person having origins in any of the original peoples of Hawaii, Guam, Samoa, or other Pacific Islands.

Note: The remaining racial categories (F-J) are multi racial categories made up of combinations of the single race categories defined above (A-E). If the appropriate multi-racial category is not listed, use the "Other Multi Racial" (J) category.

#### Disabled:

- A physical or mental impairment which substantially limits one or more major life activities; a record of such an impairment; or being regarded as having such an impairment. For a definition of "physical or mental impairment" and other terms used in this definition, please see 24 CFR 100.201.

"Handicap" does not include current, illegal use of or addiction to a controlled substance.



## EXHIBIT D

### COMPLIANCE MONITORING REPORT

TO: Austin Housing Finance Corporation  
1000 E. 11<sup>th</sup> Street  
Austin, Texas 78702  
Attention: Program Manager

Austin Housing Finance Corporation  
Multifamily Housing Governmental Revenue Note  
(Nightingale at Goodnight Ranch Apartments)  
Series 2018

Austin DMA Housing III, LLC (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 Nightingale at Goodnight Ranch Apartments (the "Project").
3. The Project was financed, in substantial part, as a result of the loan of the proceeds of the Note.
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 [\_\_\_\_], 2018, among the Owner, Austin Housing Finance Corporation (the "Issuer"), and \_\_\_\_\_, as Fiscal Agent (the "Fiscal Agent"); and (2) the Project Loan Agreement, dated as of [\_\_\_\_], 2018, among the Owner, the Fiscal Agent, and the Issuer (the "Loan Agreement"). The Regulatory Agreement was executed, delivered, and recorded against the Project in connection with the issuance of the Note. 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 Bond Closing Date (\_\_\_\_, 2018) and ending on the later of (i) the date which is 15 years after the Bond 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 Bond Closing Date and continuing throughout the remainder of the Qualified Project Period 40% of the units at each Project Facility shall at all times be rented to and occupied by Low Income Tenants.

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 Compliance Monitoring Report has less than all of the units in the Project been occupied by or, if vacant, been last occupied by Low Income Tenants, provided that any vacant units must have been last occupied by Low Income Tenants.
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 Note.
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 Note, such knowledge should be detailed here:)
11. The Owner has not transferred any interest in the Project since the date of submission of the Compliance Monitoring Report last submitted to the Fiscal Agent 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 Compliance Monitoring Report. The information contained thereon is, to the best knowledge of the Owner (based upon information supplied by tenants of the Project), true and accurate.

**BORROWER,**

AUSTIN DMA HOUSING III, LLC, a Texas limited liability company

By: AHFC Nightingale Non-Profit Corporation, a Texas nonprofit corporation, its managing member

By: Rosie Truelove, Vice President

DRAFT

## EXHIBIT E

### FREDDIE MAC RIDER

This Freddie Mac Rider (the "Rider") is attached to and forms a part of the [NAME OF LURA] (the "Regulatory Agreement"), dated as of \_\_\_\_\_, 1, 20\_\_\_\_, by and among [NAME OF GOVERNMENTAL LENDER] (the "Governmental Lender"), [NAME OF FISCAL AGENT], as fiscal agent (together with any successor in such capacity, the "Fiscal Agent"), and [NAME OF BORROWER], (together with any successor to its rights, duties and obligations hereunder and as owner of the Project identified herein, the "Borrower").

1. Definitions. Terms used in this Rider as defined terms shall have the meanings given those terms in the Regulatory Agreement and the Funding Loan Agreement. In addition, the following terms shall have the following meanings:

**"Freddie Mac"** means the Federal Home Loan Mortgage Corporation, a shareholder-owned government-sponsored enterprise organized and existing under the laws of the United States.

**"Funding Lender"** means the holder of the Governmental Note, initially [FREDDIE MAC SELLER/SERVICER] and on the Freddie Mac Purchase Date, Freddie Mac, and any successors or assigns thereof.

**"Funding Loan Agreement"** means the Funding Loan Agreement dated as of \_\_\_\_\_, 1, 20\_\_\_\_, by and among the Governmental Lender, the Initial Funding Lender set forth therein and the Fiscal Agent, as such Funding Loan Agreement may from time to time be amended or supplemented.

**"Governmental Note"** means the Multifamily Note dated [\_\_\_\_\_] delivered by the Governmental Lender pursuant to the Funding Loan Agreement.

**"Project Loan"** means the loan to the Borrower pursuant to the Project Loan Documents, which Project Loan is to be assigned to the Fiscal Agent.

**"Project Loan Agreement"** means the Project Loan Agreement dated as of \_\_\_\_\_, 1, 20\_\_\_\_, among the Borrower, the Governmental Lender and the Fiscal Agent, as such Financing Agreement may from time to time be amended or supplemented.

**"Project Loan Documents"** means the Security Instrument, the Project Note, the Project Loan Agreement, the Tax Regulatory Agreement, the Assignment, the Continuing Covenant Agreement, any Subordination Agreement(s) and any and all other instruments and other documents evidencing, securing, or otherwise relating to the Project Loan or any portion thereof.

**"Project Note"** means the Project Note, including applicable addenda, to be executed by the Borrower in favor of the Governmental Lender, evidencing the Borrower's financial obligations under the Project Loan, and to be endorsed by the Governmental

Lender, without recourse, to the order of the Fiscal Agent, as the same may be amended, modified, supplemented or restated from time to time.

**"Security Instrument"** means the [NAME OF SECURITY INSTRUMENT], together with all riders thereto, securing the Project Note, to be executed by the Borrower with respect to the Project, as it may be amended, modified, supplemented or restated from time to time.

**"Servicer"** means [NAME OF SERVICER], or any successor Servicer selected by Freddie Mac.

2. Applicability. The provisions of this Rider shall amend and supplement the provisions of, and in the event of a conflict shall supersede the conflicting provisions of, the Regulatory Agreement.

3. Indemnification. Inasmuch as the covenants, reservations and restrictions of the Regulatory Agreement run with the land, the indemnification obligations of the Borrower contained in the Regulatory Agreement will be deemed applicable to any successor in interest to the Borrower, but, it is acknowledged and agreed, notwithstanding any other provision of the Regulatory Agreement to the contrary, that neither the Funding Lender nor any successor in interest to the Funding Lender will assume or take subject to any liability for the indemnification obligations of the Borrower for acts or omissions of the Borrower prior to any transfer of title to Freddie Mac, whether by foreclosure, deed in lieu of foreclosure or comparable conversion of the Project Loan. The Borrower shall remain liable under the indemnification provisions for its acts and omissions prior to any transfer of title to the Funding Lender. The Funding Lender shall indemnify the Governmental Lender following acquisition of the Project by the Funding Lender, by foreclosure, deed in lieu of foreclosure or comparable conversion of the Project Loan, during, and only during, any ensuing period that the Funding Lender owns and operates the Project, provided that the Funding Lender's liability shall be strictly limited to acts and omissions of the Funding Lender occurring during the period of ownership and operation of the Project by the Funding Lender. The Funding Lender shall have no indemnification obligations with respect to the Governmental Note or the Project Loan Documents. The Borrower shall remain liable under the Regulatory Agreement for its actions and omissions prior to any transfer of title to the Funding Lender.

4. Sale or Transfer. Restrictions on sale or transfer of the Project or of any interest in the Borrower, Governmental Lender and/or Fiscal Agent consents, transferee agreements, transferee criteria and requirements, opinion requirements, assumption fees, transfer fees, penalties and the like shall not apply to any transfer of title to the Project to the Funding Lender or to a third party by foreclosure, deed in lieu of foreclosure or comparable conversion of the Project Loan or to any subsequent transfer by the Funding Lender following foreclosure, deed-in-lieu of foreclosure or comparable conversion of the Project Loan. No transfer of the Project shall operate to release the Borrower from its obligations under the Regulatory Agreement. Nothing contained in the Regulatory Agreement shall affect any provision of the Security Instrument or any of the other Project Loan Documents that requires the Borrower to obtain the consent of the Funding Lender as a precondition to sale, transfer or other disposition of, or any direct or indirect interest in, the Project or of any direct or indirect interest in the Borrower, excluding transfers permitted

by the Security Instrument. No covenant obligating the Borrower to obtain an agreement from any transferee to abide by all requirements and restrictions of the Regulatory Agreement shall have any applicability to a transfer to the Funding Lender upon foreclosure, deed-in-lieu of foreclosure or comparable conversion of the Project Loan by the Funding Lender, or to any subsequent transfer by the Funding Lender following foreclosure, deed-in-lieu of foreclosure or comparable conversion of the Project Loan.

5. Enforcement. Notwithstanding anything contained in the Regulatory Agreement to the contrary: (i) the occurrence of an event of default under the Regulatory Agreement shall not, under any circumstances whatsoever, be deemed or constitute a default under the Project Loan Documents, except as may be otherwise specified in the Project Loan Documents; and (ii) the occurrence of an event of default under the Regulatory Agreement shall not impair, defeat or render invalid the lien of the Security Instrument. No person other than the Funding Lender shall have the right to (a) declare the principal balance of the Project Note to be immediately due and payable or (b) commence foreclosure or other like action with respect to the Security Instrument. The Governmental Lender and the Fiscal Agent acknowledge and agree that the exercise of any rights and remedies under the Regulatory Agreement is subject to the provisions of the Project Loan Documents.

6. Notice of Violations. Promptly upon determining that a violation of the Regulatory Agreement has occurred, the Governmental Lender or the Fiscal Agent shall, by notice in writing to the Borrower, the Servicer and the Funding Lender, inform the Borrower, the Servicer and the Funding Lender that such violation has occurred, the nature of the violation and that the violation has been cured or has not been cured, but is curable within a reasonable period of time, or is incurable; notwithstanding the occurrence of such violation, neither the Governmental Lender nor the Fiscal Agent shall have, and each of them acknowledge that they shall not have, any right to cause or direct acceleration of the Project Loan, to enforce the Project Note or to foreclose on the Security Instrument.

7. Amendments. The Regulatory Agreement shall not be amended without the prior written consent of the Funding Lender.

8. Fees; Penalties. The Funding Lender shall not be liable for the payment of any compensation or any accrued unpaid fees, costs, expenses or penalties otherwise owed by the Borrower or any subsequent owner of the Project prior to the date of acquisition of the Project by the Funding Lender, whether such acquisition is by foreclosure, deed-in-lieu of foreclosure or comparable conversion of the Project Loan.

9. Subordination. The terms, covenants and restrictions of the Regulatory Agreement, other than those set forth in Sections [ ] through [ ] [*list section(s) related to affordability restrictions*], are and shall at all times remain subject and subordinate, in all respects, to the liens, rights and interests created under the Project Loan Documents.

10. Third-Party Beneficiary. The parties to the Regulatory Agreement recognize and agree that the terms of the Regulatory Agreement and the enforcement of those terms are essential to the security of the Funding Lender and are entered into for the benefit of various parties, including the Funding Lender. The Funding Lender shall accordingly have contractual rights in

the Regulatory Agreement and shall be entitled (but not obligated) to enforce, separately or jointly with the Governmental Lender and/or the Fiscal Agent, or to cause the Governmental Lender or the Fiscal Agent to enforce, the terms of the Regulatory Agreement. In addition, the Funding Lender is intended to be and shall be a third-party beneficiary of the Regulatory Agreement.

11. Notices. Copies of all notices under the Regulatory Agreement shall be sent to the Servicer at the address set forth below or to such other address as the Servicer may from time to time designate:

[NAME OF SERVICER]

[Street]

[City, State and Zip]

Attention: \_\_\_\_\_

Facsimile: ( ) - \_\_\_\_\_

Telephone: ( ) - \_\_\_\_\_

Any notice to be given to Freddie Mac shall be sent to Freddie Mac at the address set forth below or to such other address as Freddie Mac may from time to time designate:

Federal Home Loan Mortgage Corporation

8100 Jones Branch Drive, MS B4P

McLean, Virginia 22102

Attention:

Multifamily Operations - Loan Accounting

Email:

mfla@freddiemac.com

Telephone: (703) 714-4177

with a copy to:

Federal Home Loan Mortgage Corporation

8200 Jones Branch Drive, MS 210

McLean, Virginia 22102

Attention:

Managing Associate General Counsel -

Multifamily Legal Division

Email:

joshua\_schonfeld@freddiemac.com

Telephone:

(703) 903-2000

**Exhibit D**

**Ground Lease**



**GROUND LEASE**

between

**AUSTIN HOUSING FINANCE CORPORATION,  
as Landlord**

and

**AUSTIN DMA HOUSING III, LLC,  
as Tenant**

**Dated as of March 1, 2018**

# GROUND LEASE

between

AUSTIN HOUSING FINANCE CORPORATION, as Landlord

and

AUSTIN DMA HOUSING III, LLC, as Tenant

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#### **Addenda and Exhibits**

Exhibit A	Description of Land
Exhibit B	Schedule of Permitted Encumbrances
Exhibit C	Notice Addresses

## **GROUND LEASE**

This Ground Lease (the "**Lease**") is dated as of March 1, 2018 (and effective March 15, 2018), by and between the undersigned parties: **AUSTIN HOUSING FINANCE CORPORATION**, a Texas housing finance corporation established under Section 394 of the Texas Local Governmental Code, as amended, having an address at 1000 East 11<sup>th</sup> Street, Suite 200, Austin, Texas 78702, as landlord ("**Landlord**"), and **AUSTIN DMA HOUSING III, LLC**, a Texas limited liability company, having an address at 4101 Parkstone Heights, Suite 310, Austin, Texas 78746, as tenant ("**Tenant**").

## **RECITALS**

**WHEREAS**, Landlord is a housing finance corporation established under the laws of the State of Texas, with its offices in the City of Austin, Texas, and is the owner of certain Land (as defined herein) all of which Landlord has agreed to lease under the terms and conditions hereof to Tenant for Tenant's construction and operation of a rental project ("**Project**") to be comprised of 174 rental units (the "**Units**"); and

**WHEREAS**, Tenant and Landlord intend that 141 of the Units shall be rented to Residents (hereinafter defined) whose incomes do not exceed sixty percent of the area median income so as to qualify the Units for Low Income Housing Tax Credits as defined in Section 42 of the Code (as defined herein), and that certain of such Units will be subject to additional restrictions (the "**Restricted Units**"); and

**WHEREAS**, Landlord and Tenant desire to enter into this Lease on the terms and conditions set forth herein;

**NOW THEREFORE, IN CONSIDERATION** of the covenants and agreements of the parties hereto, as are hereinafter set forth, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged by each party hereto, Landlord hereby leases to Tenant and Tenant hereby leases from Landlord all of that tract of land in the City of Austin, Texas, which is described in Exhibit A attached hereto, together with any and all rights, alleys, right of ways, privileges, appurtenances, easements, and advantages, to the same belonging or in any way appertaining, (collectively, the "**Land**");

**SUBJECT TO THE OPERATION AND EFFECT** of the Permitted Encumbrances,

**TO HAVE AND TO HOLD** the Land unto Tenant, its successors and permitted assigns, for the purposes and term of years set forth herein,

**ON THE TERMS AND SUBJECT TO THE CONDITIONS** which are hereinafter set forth:

## **SECTION 1. DEFINITIONS.**

1.1 Specific. As used herein, the following terms have the following meanings:

**"Additional Rent"** has the meaning given to it in Section 4.1.2.

**"Administrative Member"** means DMA Nightingale, LLC, a Texas limited liability company, together with its successors and assigns

**"Annual Rent"** has the meaning given to it in paragraph 4.1.1.

**"Bankruptcy"** shall be deemed, for any Person, to have occurred either

(a) if and when such Person (i) applies for or consents to the appointment of a receiver, trustee or liquidator of such Person or of all or a substantial part of its assets, (ii) files a voluntary petition in bankruptcy or admits in writing its inability to pay its debts as they come due, (iii) makes an assignment for the benefit of its creditors, (iv) files a petition or an answer seeking a reorganization or an arrangement with its creditors or seeks to take advantage of any insolvency law, (v) performs any other act of bankruptcy, or (vi) files an answer admitting the material allegations of a petition filed against such Person in any bankruptcy, reorganization or insolvency proceeding; or

(b) if (i) an order, judgment or decree is entered by any court of competent jurisdiction adjudicating such Person a bankrupt or an insolvent, approving a petition seeking such an adjudication, or reorganization, or appointing a receiver, trustee or liquidator of such Person or of all or a substantial part of its assets, or (ii) there otherwise commences with respect to such Person or any of its assets any proceeding under any bankruptcy, reorganization, arrangement, insolvency, readjustment, receivership or similar law, and if such order, judgment, decree or proceeding continues unstayed for any period of ninety (90) consecutive days after the expiration of any stay thereof.

**"Bill of Sale"** has the meaning given it in paragraph 20.2.

**"CBLP Diminution"** has the meaning given to it in Section 20.1(a).

**"City"** means the City of Austin, Texas.

**"Code"** means the Internal Revenue Code of 1986, as amended.

**"Commencement Date"** has the meaning given it in paragraph 3.1.1.

**"Compliance Period"** means the fifteen year tax credit compliance period under Section 42 of the Code.

**"Construction Completion Date"** has the meaning given it in paragraph 9.1.3.

**"Conveyance Documents"** shall have the meaning given it in paragraph 20.2.

**"Depository"** means a federally-insured bank or trust company designated by Landlord having a capital of not less than \$50,000,000 and having its main office in Texas, or if no such bank or trust company is willing to act as such, Landlord. For purposes of this Lease, (a) a bank or trust company qualified as aforesaid shall be deemed willing to act as Depository hereunder if in connection therewith it employs its customary form of escrow agreement which does not contain provisions inconsistent with those of this Lease, and agrees to undertake the duties provided for herein, and (b) no such bank or trust company shall be deemed willing to act as Depository if Landlord gives written notice to Tenant and Investor Member that no bank or trust company with qualifications as aforesaid to which it has applied is willing to act as Depository, and neither Tenant nor Investor Member, within thirty (30) days after being given such notice, designates as Depository a bank or trust company having such qualifications and willing to act as such.

**"Environmental Laws"** shall mean any and all federal, state, or local statutes, laws, rules, regulations, ordinances, orders, codes, determinations, decrees, or rules of common law pertaining to health, safety, or the environment now or at any time hereafter in effect and any judicial or administrative interpretation thereof (including, but not limited to, any judicial or administrative order, consent decree or judgment relating to the environment or Hazardous Materials (as hereafter defined), or exposure to Hazardous Materials) including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, the Superfund Amendments and Reauthorization Act of 1986, as amended, the Resource, Conservation and Recovery Act of 1976, as amended, the Clean Air Act, as amended, the Federal Water Pollution Control Act, as amended, the Oil Pollution Act of 1990, as amended, the Safe Drinking Water Act, as amended, the Hazardous Materials Transportation Act, as amended, the Toxic Substances Control Act, as amended, and any other environmental or health conservation or protection laws.

**"Equipment"** means all apparatus, machinery, devices, fixtures, appurtenances, equipment and personal property owned by Tenant now or hereafter located on or within the Premises or the Improvements and necessary or desirable for the proper operation and maintenance of the Premises or the Improvements (other than moveable equipment belonging to any third parties or belonging to any Resident of a Unit), including but not limited to any and all awnings, shades, screens and blinds; asphalt, vinyl, composition and other floor, wall and ceiling coverings; partitions, doors and hardware; elevators, escalators and hoists; heating, plumbing and ventilating apparatus; gas, electric and steam fixtures; chutes, ducts and tanks; oil burners, furnaces, heaters, incinerators and boilers; air-cooling and air-conditioning equipment; washroom, toilet and lavatory fixtures and equipment; engines, pumps, dynamos, motors, generators, electrical wiring and equipment; tools, building supplies, lobby decorations and window washing hoists and equipment; garage equipment, security systems, and gardening and landscaping equipment; swimming pool, recreational furniture and equipment; refrigerators, dishwashers, disposals, ranges, washers, dryers, and other kitchen appliances and all additions thereto and replacements thereof.

**"Event of Default"** has the meaning given it in subsection 15.1.

**"Fee Estate"** means the fee simple estate in the Premises, subject to the operation and effect of this Lease.



**"Force Majeure"** means any (a) strike, lock-out or other labor troubles, (b) governmental restrictions or limitations, (c) failure or shortage of electrical power, gas, water, fuel oil, or other utility or service, (d) riot, war, insurrection or other national or local emergency, (e) accident, flood, fire or other casualty, (f) adverse weather conditions resulting in cessation of work on the Project for in excess of one (1) week, (g) other act of God, (h) inability to obtain a building permit or a certificate of occupancy, or (i) other cause similar or dissimilar to any of the foregoing and beyond the reasonable control of the Person in question.

**"Ground Lease Assignment"** has the meaning given it in paragraph 20.2.

**"Hazardous Materials"** means any pollutants, contaminants or industrial, toxic, hazardous or extremely hazardous chemicals, wastes, materials or substances, and in such amounts, which are defined, determined, classified or identified as such in any Environmental Law or in any judicial or administrative interpretation of any Environmental Law, including, without limitation, oil, petroleum, petroleum by-products, friable asbestos, polychlorinated biphenyls and urea formaldehyde, excluding, within legal limits, household cleaners, lawn products and pesticides.

**"Holdover Rent"** has the meaning given it in paragraph 3.3.2.

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

**"ILP Diminution"** has the meaning given to it in Section 20.1(a).

**"Improvements"** means any and all buildings, structures, alterations, improvements, fixtures, and non-movable Equipment now located or at any time in the future located on or in the Premises, and all subsequent alterations, additions, and/or replacements thereto and/or thereof.

**"Independent Appraiser"** has the meaning given to it in Section 20(b).

**"Insurance Requirements"** has the meaning given it in paragraph 5.2.1.

**"Investor Member"** means Boston Capital Direct Placement, A Limited Partnership, a Massachusetts limited partnership, and any entity which succeeds to its interest as an investor member in the Tenant.

**"Investor Members"** means the Investor Member and Special Investor Member.

**"Landlord"** means Landlord and its successors and assigns as owner of the Fee Estate.

**"Landlord Event of Default"** shall have the meaning given it in paragraph 15.5.

**"Landlord's Related Parties"** shall have the meaning given it in paragraph 7.5.4.

**"Land Records"** means the Official Public Records of Real Property of Travis County, Texas.

**"Lease Year"** means (a) the period commencing on the Commencement Date and terminating on the first (1st) anniversary of the last day of the calendar month containing the Commencement Date, and (b) each successive period of twelve (12) calendar months thereafter during the Term.

**"Leasehold Estate"** means the leasehold estate in the Premises held by Tenant under this Lease.

**"Leasehold Mortgagee"** means any Permitted Leasehold Mortgagee holding a Mortgage against the Leasehold Estate.

**"Leasing Consideration Payment"** has the meaning given to it in paragraph 4.1.1.

**"Legal Requirements"** has the meaning given to it in paragraph 5.2.1.

**"LIHTC/Bond/Additional Housing Requirements"** means (i) applicable Low Income Housing Tax Credits requirements as found in Section 42 of the Code, and as required by the Texas Department of Housing and Community Affairs for the appropriate extended use period, (ii) the applicable tax-exempt bond-related requirements as found in Section 142(d) and related sections of the Code, (iii) the affordable housing requirements set forth in the Landlord's Special Warranty Deed for the Land, (iv) the affordable housing requirements set forth in the restrictive covenants relating to the subordinate loans made by Austin Housing Finance Corporation for the benefit of the Project, and (v) and other applicable affordable housing requirements with respect to the Project.

**"LURA"** has the meaning given to it in paragraph 8.1.

**"Managing Member"** means AHFC Nightingale Non-Profit Corporation, a Texas non-profit corporation, and any entity which succeeds to its interest as a managing member in the Tenant.

**"Mortgage"** means any mortgage or deed of trust at any time encumbering any or all of Tenant's leasehold interest in the Property, and any other security interest therein existing at any time under any other form of security instrument or arrangement used from time to time in the locality of the Property (including but not limited to any such other form of security arrangement arising under any deed of trust, sale-and-leaseback documents, lease-and-leaseback documents, security deed or conditional deed, or any financing statement, security agreement or other documentation used pursuant to the Uniform Commercial Code – Secured Transactions, or any successor or similar statute), provided that such mortgage, deed of trust or other form of security instrument, and an instrument evidencing any such other form of security arrangement, has been recorded among the Land Records or in such other place as is, under applicable law, required for such instrument to give constructive notice of the matters set forth therein. Notwithstanding anything to the contrary which may be construed hereunder, all Mortgages are subordinated in all respects to this Lease.

**"Mortgagee"** means the Person secured by a Mortgage.

**"New Tenant"** has the meaning given to it in paragraph 8.3.

**"Operating Agreement"** means that certain Amended and Restated Operating Agreement of Austin DMA Housing III, LLC, as amended.

**"Operating Expenses"** has the meaning given it in paragraph 6.4.1.

**"Option"** has the meaning given it in paragraph 20.1.

**"Option Exercise Notice"** has the meaning given it in paragraph 20.1.

**"Partial Taking"** has the meaning given it in paragraph 13.4.

**"Permitted Encumbrances"** means any and all instruments and matters of record or in fact on the date hereof, including but not limited to the instruments and matters listed in a schedule attached hereto as Exhibit B and matters permitted under paragraph 9.1.10 herein, and including without limitation, the LURA, any liens or encumbrances securing any construction and/or permanent loans made to the Tenant, at Tenant's request, in connection with the Project and matters permitted by Permitted Leasehold Mortgagees of such loans.

**"Permitted Leasehold Mortgage"** has the meaning given to it in paragraph 9.1.10.

**"Permitted Leasehold Mortgagee"** means the Person owed indebtedness the repayment of which is secured by a Permitted Leasehold Mortgage.

**"Person"** means a natural person, a trustee, a corporation, a partnership, a limited liability company and any other form of legal entity.

**"Plans and Specifications"** has the meaning given it in paragraph 9.1.1.

**"Premises"** mean the Land, together with all Improvements and Equipment now or hereafter thereon; provided, that if at any time any portion of the Premises becomes no longer subject to this Lease, "Premises" shall mean so much thereof as remains subject to this Lease.

**"Property"** means the Premises, the Improvements and the Equipment.

**"Purchase Price"** has the meaning given in paragraph 20.1.

**"Rent"** means the Leasing Consideration Payment, all Annual Rent, and all Additional Rent.

**"Resident"** means a person occupying a Unit in the Project pursuant to a Tenancy Agreement.

**"Restoration"** means the repair, restoration or rebuilding of any or all of the Property after any damage thereto or destruction thereof, with such alterations or additions thereto as are made by Tenant in accordance with this Lease, together with any temporary repairs or improvements made to protect the Property pending the completion of such work.

**"Special Investor Member"** means BCCC, Inc., a Massachusetts corporation, together with its successors and assigns.

"**Taxes**" has the meaning given it in subsection 6.1.

"**TDHCA**" means the Texas Department of Housing and Community Affairs or a successor state department.

"**Tenancy Agreement**" means the form of lease agreement between the Tenant and a Resident under the terms of which a Resident is entitled to enjoy possession of a Unit in the Project.

"**Tenant**" means Tenant and its successors and permitted assigns as holder of the Leasehold Estate.

"**Tenant's Property**" has the meaning given it in paragraph 20.1.

"**Tenant's Related Parties**" has the meaning given it in paragraph 7.5.4.

"**Term**" has the meaning given it in paragraph 3.1.1.

"**Termination Date**" has the meaning given it in paragraph 3.1.1.

"**Total Taking**" has the meaning given to it in paragraph 13.3.

"**Transfer**" has the meaning given it in paragraph 14.1.

1.2 General. Any other term to which meaning is expressly given in this Lease shall have such meaning.

1.3 Construction. Any Rent or any other amount paid hereunder shall be construed as made by Tenant solely for the use of the Premises, as Tenant shall be deemed to own the Improvements and the Equipment for all purposes. Any covenants contained herein made by the Tenant regarding the Improvements and the Equipment shall be construed solely to protect Landlord from liability in connection with the Improvements and the Equipment.

**SECTION 2. TITLE.** Tenant and Landlord hereby acknowledge that the Fee Estate upon which the Improvements are to be constructed and operated is held exclusively by Landlord.

**SECTION 3. TERM.**

3.1 Length

3.1.1 Original Term. This Lease shall be for a term ("**Term**") commencing on March 15, 2018 ("**Commencement Date**"), and (b) terminating at 11:59 o'clock P.M. on the day immediately before the ninety-ninth (99th) anniversary of the first (1st) day of the first (1st) full calendar month following the Commencement Date (March 31, 2117 (the "**Termination Date**"), except that if the date of such termination is hereafter advanced to an earlier date or postponed pursuant to any provision of this Lease, or by express, written agreement of the parties hereto (and only with the written consent of the Managing Member, Investor Member, Permitted Leasehold Mortgagee and Administrative Member), or by operation of law, the date to which it

is advanced or postponed shall thereafter be the "**Termination Date**" for all purposes of this Lease). Nothing in this Lease shall be deemed in any way to extend or permit the extension of the Term beyond the ninety-ninth (99th) anniversary, anything in this Lease to the contrary notwithstanding.

3.1.2 Confirmation of Commencement and Termination. Landlord and Tenant shall upon either's prior written request therefor, within fifteen (15) days after, respectively, (a) the commencement of the Term, and (b) the expiration of the Term or any earlier termination of this Lease by action of law or in any other manner, confirm in writing by instrument in recordable form that, respectively, such commencement or such termination has occurred, setting forth therein the Commencement Date and the Termination Date.

### 3.2 Surrender.

3.2.1 Tenant shall, at its expense, at the expiration of the Term or any earlier termination of this Lease, subject to the terms of paragraph 3.4, (a) peaceably leave, quit and surrender the Premises promptly yield up to Landlord the Property in a condition similar to a like property of a similar age, subject to reasonable ordinary wear and tear, and damage by casualty, subject to Section 12, excepted, and broom clean, (b) remove therefrom Tenant's personal property that is not part of the Property or otherwise owned by Landlord or a Resident, and (c) repair any damage to the Property caused by such removal, all subject to the rights of Residents in possession of Units under Tenancy Agreements with Tenant. Upon such expiration or termination, the Premises, Improvements and Equipment, or any portion thereof so terminated, shall become the sole property of Landlord at no cost to Landlord, and shall be free of all liens and encumbrances (other than the Permitted Encumbrances and such other encumbrances which may be granted from time to time in accordance with the terms hereof).

3.2.2 Upon such expiration or termination (whether by reason of an Event of Default or otherwise), (a) neither Tenant nor its representatives shall thereafter have any right at law or in equity in or to any or all of the Property (including the Units and the rest of the Improvements) or to repossess any of same, or in, to or under this Lease, and Landlord shall automatically be deemed immediately thereupon to have succeeded to all of the same, free and clear of the right, title or interest therein of any creditor of Tenant or any other Person whatsoever (but subject to the rights of any Person then holding any lien, right, title or interest in or to the Fee Estate, the Leasehold Estate, or the Property), and (b) Tenant hereby waives any and all rights of redemption which it may otherwise hold under any applicable law

### 3.3 Holding Over.

3.3.1 Nothing in this Lease shall be deemed in any way to permit Tenant to use or occupy the Premises after the expiration of the Term or any earlier termination of this Lease. If and only if Tenant continues to occupy the Premises after such expiration or termination after obtaining Landlord's express, written consent thereto,

(a) such occupancy shall (unless the parties hereto otherwise agree in writing) be deemed to be under a month-to-month tenancy, which shall continue until either party hereto notifies the other in writing, by at least thirty (30) days before the end of any calendar month,

that the party giving such notice elects to terminate such tenancy at the end of such calendar month, in which event such tenancy shall so terminate;

(b) subject to the provisions of subparagraph 3.3.1(c), but anything in the remaining provisions of this Section to the contrary notwithstanding, the rent payable with respect to each such monthly period shall equal the Additional Rent payable under Section 4; and

(c) such month-to-month tenancy shall be on the same terms and subject to the same conditions as those set forth in this Lease, except that if Landlord gives Tenant, by at least thirty (30) days before the end of any calendar month during such month-to-month tenancy, written notice that such terms and conditions (including any thereof relating to the amount and payment of Rent) shall, after such month, be modified in any manner specified in such notice, then such tenancy shall, after such month, be on the said terms and subject to the said conditions, as so modified.

3.3.2 If Tenant continues to occupy the Premises after the expiration of the Term or any earlier termination of this Lease without having obtained Landlord's express, written consent thereto, then without altering or impairing any of Landlord's rights under this Lease or applicable law, (a) Tenant hereby agrees to pay to Landlord immediately on demand by Landlord as holdover rental ("**Holdover Rent**") for the Premises, for each calendar month or portion thereof after such expiration of the Term or such earlier termination of this Lease, as aforesaid, until Tenant surrenders possession of the Premises to Landlord, a sum equaling the allocable monthly Additional Rent plus Fifty and 00/100 Dollars (\$50.00) per each day of such holdover occupancy, and (b) Tenant shall surrender possession of the Premises to Landlord immediately on Landlord's having demanded the same. Nothing in this Lease shall be deemed in any way to give Tenant any right to remain in possession of the Premises after such expiration or termination, regardless of whether Tenant has paid any such Holdover Rent to Landlord, without Landlord's express written approval.

3.4 Title to and Alterations of Improvements. At all times during the Term of this Lease, legal and beneficial title to the Improvements and the Equipment shall be vested in the Tenant and during the Term, to the extent permitted by applicable law, Tenant alone shall be entitled to all of the tax attributes of ownership, including, without limitation, the right to claim depreciation or cost recovery deductions and the right to claim the low-income housing tax credit described in Section 42 of the Code, if applicable, and Tenant shall have the right to amortize capital costs and to claim any other federal or state tax benefits attributable to the Property.

#### **SECTION 4. RENT.**

4.1 Amount. As rent for the Premises, Tenant shall pay to Landlord:

4.1.1 Rent. Landlord hereby acknowledges the receipt of the payment of One Million Nine Hundred Fifty Thousand and 00/100 Dollars (\$1,950,000.00), representing the payment in full of 100% of the rent due for the entire Term of the Lease (the "**Leasing Consideration Payment**"). Accordingly, no annual rent ("**Annual Rent**") shall be due under this Lease.

4.1.2 Additional Rent. Additional rent ("**Additional Rent**") in the amount of any payment referred to as such in this Lease which accrues while this Lease is in effect (which Additional Rent shall include any and all charges or other amounts which Tenant is obligated to pay under this Lease, including, but not limited to, costs of taxes, insurance and public utility charges, other than the Leasing Consideration Payment). Such Additional Rent, unless required to be paid sooner hereunder, shall be due and payable within 30 days of Landlord's written demand therefor.

4.2 Tax on Lease. If federal, state or local law now or hereafter imposes any tax, payment in lieu of tax, assessment, levy or other charge (other than any income tax) directly or indirectly upon (a) Landlord with respect to this Lease or the value thereof, (b) Tenant's use or occupancy of the Premises, (c) the Rent, or (d) this transaction, Tenant shall pay the amount thereof as Additional Rent to Landlord upon demand unless Tenant is prohibited by law from doing so, provided Tenant shall not be obligated to pay any tax which is solely attributable to Landlord's ownership interest as owner of the Land.

4.3 Security Deposit. None.

4.4 Net Lease. Other than as is expressly set forth in this Lease (and except for Landlord's legal fees, third-party consultants retained by Landlord and Landlord's own costs), all costs, expenses, liabilities, charges or other deductions whatsoever with respect to the Premises and the construction, ownership, leasing, operation, maintenance, repair, rebuilding, use, occupation of, or conveyance of any or all of Tenant's Leasehold Estate shall be the sole responsibility of and payable by Tenant, including, but not limited to any reasonable cost, expenses, liabilities, charges or other sums incurred by Landlord in connection with this Lease that are Tenant's responsibility pursuant to the terms of this Lease; all of which costs, expenses, liabilities and charges shall be deemed Additional Rent hereunder.

4.5 Condition of the Premises. **TENANT ACKNOWLEDGES AND AGREES THAT THE PREMISES SHALL BE LEASED TO TENANT AND TENANT SHALL ACCEPT THE PREMISES, "AS IS, WHERE IS, AND WITH ALL FAULTS." LANDLORD HEREBY EXPRESSLY DISCLAIMS ANY AND ALL REPRESENTATIONS AND WARRANTIES OF ANY KIND OR CHARACTER, EXPRESS OR IMPLIED, WITH RESPECT TO THE PREMISES. WITHOUT LIMITING THE GENERALITY OF THE PRECEDING SENTENCE OR ANY OTHER DISCLAIMER SET FORTH HEREIN, LANDLORD AND TENANT HEREBY AGREE THAT LANDLORD HAS NOT MADE AND IS NOT MAKING ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, WRITTEN OR ORAL, AS TO (A) THE NATURE OR CONDITION, PHYSICAL OR OTHERWISE, OF THE PREMISES OR ANY ASPECT THEREOF, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OF HABITABILITY, SUITABILITY, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR USE OR PURPOSE; (B) THE SOIL CONDITIONS, DRAINAGE CONDITIONS, TOPOGRAPHICAL FEATURES, ACCESS TO PUBLIC RIGHTS-OF-WAY, AVAILABILITY OF UTILITIES OR OTHER CONDITIONS OR CIRCUMSTANCES WHICH AFFECT OR MAY AFFECT THE PREMISES OR ANY USE TO WHICH TENANT MAY PUT THE PREMISES; (C) ANY CONDITIONS AT OR WHICH AFFECT OR MAY AFFECT THE**

PREMISES WITH RESPECT TO ANY PARTICULAR PURPOSE, USE, DEVELOPMENT POTENTIAL OR OTHERWISE; (D) ANY ENVIRONMENTAL, GEOLOGICAL, METEOROLOGICAL, STRUCTURAL OR OTHER CONDITION OR HAZARD OR THE ABSENCE THEREOF; HERETOFORE, NOW, OR HEREAFTER AFFECTING IN ANY MANNER THE PREMISES, INCLUDING, BUT NOT LIMITED TO, THE ABSENCE OF ASBESTOS, LEAD PAINT, OR ANY OTHER HAZARDOUS MATERIALS ON, IN, UNDER OR ADJACENT TO THE PREMISES, AND (E) THE COMPLIANCE OF THE PREMISES OR THE OPERATION OR USE OF THE PREMISES WITH ANY APPLICABLE RESTRICTIVE COVENANTS, OR ANY LEGAL REQUIREMENTS (INCLUDING SPECIFICALLY, WITHOUT LIMITATION, ANY ZONING LAWS OR REGULATIONS, ANY BUILDING CODES, ANY ENVIRONMENTAL LAWS, AND THE AMERICANS WITH DISABILITIES ACT OF 1990, ALL AS AMENDED FROM TIME TO TIME).

#### **SECTION 5. USE OF PROPERTY.**

5.1 Nature of Use. Tenant shall throughout the Term use and operate the Property only for residential rental apartments and related uses, including the construction, development, operation, marketing for lease, and leasing of the Units, in each case in a manner which satisfies the requirements of this Lease.

5.2 Compliance with Law and Covenants. Tenant, throughout the Term and at its sole expense, in its development, construction, possession, operation, leasing and all other uses of the Premises, the Units, the Improvements, and the Equipment:

5.2.1 shall comply promptly and fully with (a) all applicable laws, ordinances, notices, orders, rules, regulations and requirements of all federal, state and municipal governments and all departments, commissions, boards and officers thereof, including all applicable LIHTC/Bond/Additional Housing Requirements (all of which are hereinafter referred to collectively as "**Legal Requirements**"); and (b) all requirements imposed by any policy of insurance required by Section 7 to be maintained by Tenant (all of which are hereinafter referred to collectively as "**Insurance Requirements**"); and (c) the provisions of the other Permitted Encumbrances, all if and to the extent that any of the Legal Requirements, the Insurance Requirements or the said provisions relate to any or all of the Premises, the Improvements, the Equipment, the fixtures and equipment upon the Premises, or the use or manner of use thereof, whether any of the foregoing are foreseen or unforeseen, or are ordinary or extraordinary;

5.2.2 (without limiting the generality of the foregoing provisions of this subsection) shall keep in force throughout the Term all licenses, consents and permits required from time to time by all applicable Legal Requirements to permit the Property to be used in accordance with this Lease;

5.2.3 shall pay or cause to be paid before past due all personal property taxes, income taxes, license fees and other taxes or special assessments assessed, levied or imposed upon Tenant or any other Person (other than Landlord) in connection with the operation of the Project or its use thereof;



5.2.4 shall not take or fail to take any action, as the result of which action or failure to act Landlord's estate, right, title or interest in and to any or all of the Premises or the rest of the Property might be impaired; and

5.2.5 shall not (either with or without negligence) (a) knowingly cause or permit the escape, disposal or release of any Hazardous Materials, or (b) knowingly allow the storage or use Hazardous Materials in any manner not sanctioned by law or by the highest standards prevailing in the industry for the storage and use of such substances or materials, or (c) knowingly allow any Hazardous Materials to be brought onto the Property except to use in the ordinary course of Tenant's business or by Residents for use within the Units in quantities permitted under the Legal Requirements. If any Permitted Leasehold Mortgagee or governmental agency reasonably requires testing to ascertain whether or not there has been any release of Hazardous Materials on the Premises while this Lease is in effect, then the reasonable costs thereof paid by Landlord shall be reimbursed by Tenant to Landlord upon demand as Additional Rent if such requirement applies to the Premises. Tenant shall execute affidavits, representations and the like from time to time at Landlord's reasonable request concerning Tenant's best knowledge and belief regarding the presence of Hazardous Materials on the Premises.

### 5.3 Restrictions Applicable to Units.

5.3.1 Tenant shall comply with the restrictive covenants contained in any land use restrictions that are now or hereafter recorded in the Land Records and pertain to the Property, including, without limitation, the EURA, the restrictive covenants in the Landlord's Special Warranty Deed for the Land and the restrictive covenants relating to the bonds issued by Austin Housing Finance Corporation and the loan made to the Tenant from the bond proceeds, the subordinate loan made by Texas Department of Housing and Community Affairs to the Tenant, and the subordinate loan made by Austin Housing Finance Corporation to the Tenant.

5.3.2 Tenant shall comply with the provisions of the Legal Requirements prohibiting discrimination in housing on the grounds of race, color, creed, national origin, sex, marital status, sexual orientation, or a physical or mental handicap, including, but not limited to, Title VI of the Civil Rights Act of 1964 (Public Law 88-352) and Title VIII of the Civil Rights Act of 1968 (Public Law 90-284) and the Fair Housing Act (42 U.S.C. §§3601-3620).

5.3.3 The Restricted Units are subjected to and benefited by the terms and conditions of the LIHTC/Bond/Additional Housing Requirements. All LIHTC/Bond Housing/Additional Requirements and this Section 5 with respect to applicable Restricted Units shall be binding upon Landlord and Tenant and each of their respective successors and assigns, except for, to the extent permitted by applicable Legal Requirements, any entity which succeeds to Tenant's interest in the Premises by foreclosure or an instrument in lieu of foreclosure. The Landlord (in its capacity as Landlord) shall have no control or participation in the control or operation of the Property and shall not be entitled to any benefits from or uses thereof except for the Rent required hereunder.

5.3.4 Notwithstanding anything to the contrary contained in this Lease, following foreclosure by any Permitted Leasehold Mortgagee or assignment of the Leasehold

Estate in lieu of such foreclosure, the use restrictions contained in this Section 5.3 shall be terminated and of no further force and effect to the extent permitted by applicable Legal Requirements.

## **SECTION 6. TAXES AND OPERATING EXPENSES.**

6.1 Tenant to Pay. Tenant (a) shall bear the full expense of any and all real property, personal property or other taxes, including any and all PILOT Payments, if applicable, city, county, metropolitan district charges or other state or local assessments, charges or fees levied against any or all of the Premises, the Units, the other Improvements and the Equipment, whether against the Fee Estate or the Leasehold Estate therein, or the condominium association, if any, and payable with respect to any calendar or tax year or other period falling wholly or partly within the Term, including but not limited to any assessments or fees levied against the Units pursuant to any Permitted Encumbrances (all of which are hereinafter referred to collectively as "Taxes"), except that if any such tax, charge or assessment is levied with respect to a period beginning before the Commencement Date or ending after the Termination Date, Tenant shall bear the full expense of only that percentage thereof equaling the percentage of such period falling within the Term; (b) shall pay the same before past due and before any penalty is incurred for late payment thereof; and (c) shall deliver to Landlord the receipted bill for such Taxes within ten (10) days after Landlord requests it from Tenant in writing. Tenant shall not be required to pay any income taxes otherwise chargeable to the Landlord. Landlord hereby agrees, as owner of the Premises, to use its best efforts to maintain any existing or future ad valorem tax exemption under the Texas Tax Code for the Premises.

6.2 Delivery of Bills and Notices. Each party hereto shall deliver to the other, promptly after such party's receipt thereof, the originals or accurate copies of any and all bills for Taxes and notices of assessments or reassessments made or to be made for the purpose of levying any Taxes. If the Premises are not now treated as a separate tax lot by the assessing authority, Landlord shall use its reasonable efforts promptly hereafter to have the Premises so treated.

6.3 Tenant Proceedings to Contest; Indemnification of Landlord. Tenant may, without postponing payment thereof, as aforesaid, bring proceedings to contest any Legal Requirement and to contest the validity or the amount of any Taxes, or to recover any amount thereof paid by Tenant, provided that prior thereto Tenant notifies Landlord in writing that Tenant intends to take such action. Tenant shall indemnify and hold harmless Landlord against and from any expense arising out of any such action. Landlord shall, upon written request by Tenant, cooperate with Tenant in taking any such action, provided that Tenant indemnifies and holds harmless Landlord against and from any expense or liability arising out of such cooperation.

6.3.1 Property Tax Exemption. The Property is anticipated to qualify for exemption from all state and local government real estate taxes. Tenant and Landlord, and/or Landlord's successors, will use best efforts to entitle the Property to qualify for the exemption from state and local government real estate taxes. Landlord agrees not to take any action within its reasonable control which would jeopardize the property tax exemption, and further agrees to take such commercially reasonable action as Tenant or Investor Member may request (at

Tenant's expense) to preserve such real estate taxes, unless such action is otherwise prohibited by law.

#### 6.4 Operating Expenses.

6.4.1 Tenant's Obligations. Subject to Tenant's legal rights to dispute expenses, Tenant will pay (or cause to be paid) directly to the providers of such services all costs and expenses attributable to or incurred in connection with the development, construction and rehabilitation, completion, marketing, leasing, maintenance, management and occupancy of the Premises, including the Improvements (collectively, "**Operating Expenses**"), including without limitation (a) all energy sources for the Improvements, such as propane, butane, natural gas, steam, electricity, solar energy and fuel oil; (b) all water, sewer and trash disposal services; (c) all maintenance, repair, replacement and rebuilding of the Improvements including, without limitation, all Equipment; (d) all landscaping, maintenance, repair and striping of all parking areas; (e) all insurance premiums relating to the Premises and the Improvements, including fire and extended coverage, public liability insurance, rental insurance and all risk insurance; and (f) the cost and expenses of all capital improvements or repairs (whether structural or non-structural) required to maintain the Improvements in good order and repair, including but not limited to any required by any governmental or quasi-governmental authority having jurisdiction over the Premises or the Improvements.

6.4.2 Permits and Licenses. Tenant shall also procure, or cause to be procured, at Tenant's sole cost and expense, any and all necessary permits, licenses, or other authorizations required for the lawful and proper installation and maintenance upon the Premises of wires, cables, pipes, conduits, tubes, fiber optics and other equipment and appliances for use in supplying any such service to the Improvements and upon the Premises. Landlord, upon request of Tenant, and at the sole expense and liability of Tenant, will join with Tenant in any application required for obtaining or continuing any such services.

6.5 Right to Pay Taxes and Senior Mortgage. Any Permitted Leasehold Mortgagee, Investor Member or Administrative Member shall have the right (but not the obligation) to pay any taxes payable by Landlord or Tenant with respect to the Premises, and to cure any monetary or non-monetary default by Landlord or Tenant under any Mortgage (excluding, with respect to a Permitted Leasehold Mortgagee, such Permitted Leasehold Mortgagee's Permitted Leasehold Mortgage) or other encumbrance on the Premises which has priority over the Lease, but only to the extent permitted by such Permitted Leasehold Mortgagee's Permitted Leasehold Mortgage; and if a Permitted Leasehold Mortgagee or Investor Member or Administrative Member do so pay or cure, Landlord or Tenant, as applicable, agrees that it will reimburse the Permitted Leasehold Mortgagee, Investor Member or Administrative Member, as applicable, for the amount thereof promptly following request by such Permitted Leasehold Mortgagee, Investor Member or Administrative Member, as applicable, therefor unless the Landlord or Tenant is protesting such taxes in good faith.

### SECTION 7. INSURANCE AND INDEMNIFICATION.

7.1 Insurance to be Maintained by Tenant. Tenant shall maintain at its expense throughout the Term the insurance specified in the Operating Agreement, as the same may be

reasonably modified from time to time due to changes in such insurance, as customarily provided for projects similar in scope and size to the Project, subject to Landlord's approval. Nothing in this subsection 7.1 is intended, nor shall be construed, to relieve Tenant from compliance with all of the insurance requirements imposed upon Tenant under each Permitted Leasehold Mortgage. All insurance coverages shall have waiver of subrogation provisions reasonably acceptable to Landlord and Tenant. Approval, disapproval or failure to act by Landlord regarding any insurance applied by Tenant shall not relieve Tenant of full responsibility or liability for damages or accidents as set forth in this Lease. Neither shall the bankruptcy, insolvency or denial of liability by the insurance company exonerate Tenant from any such liability.

7.2 Insureds. Each such policy shall name Tenant as the insured, and shall name as additional insureds thereunder (a) Landlord, and (b) any Permitted Leasehold Mortgagee. Landlord's entitlement to proceeds from Tenant's insurance policies is subordinate to the rights of all Permitted Leasehold Mortgagees under all Permitted Leasehold Mortgages.

7.3 Insurer. All insurance required and all renewals of insurance shall be issued by companies of recognized responsibility licensed to issue such policies and otherwise transact business in the State of Texas. All insurance policies will expressly provide that such policies will not be canceled or altered without thirty (30) days' prior written notice to Landlord, and any other named insured thereunder, in the case of "All Risk" coverage insurance, and to Landlord, and all other named insureds thereunder, in the case of general liability insurance. Such insurance will, to the extent obtainable, provide that no act or omission of Tenant which would otherwise result in forfeiture or reduction of the insurance will affect or limit the obligation of the insurance company to pay the amount of any loss sustained; and will, to the extent obtainable, contain a waiver by the insurer of its rights of subrogation against Landlord. Upon Landlord's request a duplicate policy or a certificate of such policy shall be delivered to Landlord.

7.4 Evidence. Tenant shall deliver to Landlord no later than thirty (30) days after the Commencement Date a certificate of insurance or a signed duplicate copy of each such policy, and upon Landlord's request, Tenant shall deliver to Landlord a certificate of insurance or a signed duplicate copy of a replacement policy therefor. All public liability, property damage liability, and casualty policies maintained by Tenant will be written as primary policies, not contributing with and not in excess of coverage that Landlord may carry.

7.5 Indemnification of Landlord.

**7.5.1 TENANT SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS LANDLORD FROM THIRD PARTY CLAIMS NOT ATTRIBUTABLE TO LANDLORD'S OR ANY OF LANDLORD'S RELATED PARTIES' ACTION OR INACTION AND AGAINST AND FROM ANY AND ALL LIABILITY, CLAIM OF LIABILITY OR REASONABLE EXPENSE INCURRED BY LANDLORD AND ARISING OUT OF OR IN ANY WAY CONNECTED WITH (A) THE DEVELOPMENT, CONSTRUCTION, USE, OCCUPANCY, CONDUCT, OPERATION OR MANAGEMENT OF THE PROPERTY DURING THE TERM, OR (B) ANY WORK OR THING WHATSOEVER DONE OR NOT DONE ON THE PROPERTY DURING THE TERM OR ARISING OUT OF ANY FAILURE OF TENANT'S COVENANTS OR**

WARRANTIES IN SECTION 9.1.9, OR (C) ANY BREACH OR DEFAULT BY TENANT IN PERFORMING ANY OF ITS OBLIGATIONS UNDER THIS LEASE OR APPLICABLE LAW, OR (D) ANY NEGLIGENT, INTENTIONALLY TORTIOUS OR OTHER ACT OR OMISSION OF TENANT OR ANY OF TENANT'S RELATED PARTIES DURING THE TERM, OR (E) ANY INJURY TO OR DEATH OF ANY PERSON, OR DAMAGE TO ANY PROPERTY, OCCURRING ON THE PROPERTY DURING THE TERM OR (F) ANY DEFAULT OR BREACH BY TENANT OF ANY PERMITTED LEASEHOLD MORTGAGE, AND FROM AND AGAINST ALL REASONABLE EXPENSES AND LIABILITIES INCURRED IN CONNECTION WITH ANY SUCH CLAIM OR ANY ACTION OR PROCEEDING BROUGHT THEREON (INCLUDING BUT NOT LIMITED TO THE REASONABLE FEES OF ATTORNEYS, INVESTIGATORS AND EXPERTS), ALL REGARDLESS OF WHETHER SUCH CLAIM IS ASSERTED DURING OR AFTER THE EXPIRATION OF THE TERM OR ANY EARLIER TERMINATION OF THIS LEASE BUT EXCLUDING, HOWEVER, THE PORTION OF ANY LIABILITY, CLAIM OF LIABILITY OR EXPENSE CAUSED WHOLLY AND DIRECTLY BY LANDLORD OR ANY OF LANDLORD'S RELATED PARTIES. THIS SUBSECTION 7.5.1 SHALL SURVIVE THE TERMINATION OF THIS LEASE. SPECIFICALLY, AND NOT BY WAY OF LIMITATION OF ANY OTHER PROVISION HEREUNDER, TENANT SHALL INDEMNIFY LANDLORD FOR ANY LOSS SUFFERED BY LANDLORD UPON A REPURCHASE OF THE LAND BY THE GRANTOR PURSUANT TO EXHIBIT C OF THE LANDLORD'S SPECIAL WARRANTY DEED FOR THE LAND.

7.5.2 TENANT AGREES THAT LANDLORD SHALL NOT BE LIABLE FOR ANY DAMAGE OR LIABILITY OF ANY KIND OR FOR ANY INJURY TO OR DEATH OF PERSONS OR DAMAGE TO PROPERTY OF TENANT OR ANY OTHER PERSON FROM ANY CAUSE WHATSOEVER BY REASON OF ANY WORK, LABOR OR MATERIALS PERFORMED OR DELIVERED TO, OR CONNECTED TO THE USE, OCCUPANCY, OR ENJOYMENT OF THE PREMISES BY TENANT OR ANY PERSON ON THE PREMISES OR HOLDING ALL OR ANY PART OF THE PREMISES UNDER TENANT. TENANT DOES HEREBY INDEMNIFY AND SAVE HARMLESS LANDLORD FROM ALL CLAIMS, ACTIONS, DEMANDS, COSTS AND REASONABLE EXPENSES AND LIABILITY WHATSOEVER, INCLUDING REASONABLE ATTORNEYS' FEES, ON ACCOUNT OF ANY SUCH REAL OR CLAIMED DAMAGE OR LIABILITY SUSTAINED BY THIRD PARTIES AND FROM ALL LIENS, CLAIMS AND DEMANDS OCCURRING IN OR AT THE PREMISES, OR ARISING OUT OF THE CONSTRUCTION, USE, OCCUPANCY OR ENJOYMENT OF THE PREMISES AND ITS FACILITIES, OR ANY REPAIRS OR ALTERATIONS WHICH TENANT MAY MAKE UPON THE PREMISES, OR OCCASIONED IN WHOLE OR IN PART BY ANY ACT OR OMISSION OF TENANT OR ANY OF TENANT'S RELATED PARTIES, OTHER THAN THE PORTION OF CLAIMS, ACTIONS, DEMANDS, COSTS AND EXPENSES AND LIABILITIES ARISING DIRECTLY AND SOLELY FROM THE ACTS OR OMISSIONS OF LANDLORD OR ANY OF LANDLORD'S RELATED PARTIES.

7.5.3 TENANT HEREBY WAIVES AND RELEASES ANY CLAIM AGAINST LANDLORD FOR INJURY TO OR DEATH OF ANY PERSON AND ANY

**PROPERTY DAMAGE ARISING OUT OF OR ATTRIBUTABLE TO ANY CRIMINAL ACTIVITY IN OR ABOUT THE PREMISES, SPECIFICALLY INCLUDING, BUT NOT LIMITED TO, VANDALISM, THEFT, BURGLARY, ROBBERY, RAPE, MURDER OR ASSAULT.**

**7.5.4 TENANT HEREBY AGREES TO INDEMNIFY, PROTECT, DEFEND AND HOLD LANDLORD AND LANDLORD'S RELATED PARTIES HARMLESS FROM ANY AND ALL CLAIMS, CAUSES OF ACTIONS AND SUITS FOR INJURY TO OR DEATH OF ANY OF TENANT'S RELATED PARTIES OR RESIDENTS OF THE UNITS RESULTING FROM CRIMINAL ACTIVITIES IN OR ABOUT THE PREMISES, INCLUDING ALL COSTS, REASONABLE ATTORNEYS' FEES AND EXPENSES INCURRED. TENANT SHALL DEFEND ANY SUCH CLAIM, CAUSE OF ACTION OR SUIT MADE OR BROUGHT AGAINST LANDLORD OR LANDLORD'S RELATED PARTIES AT TENANT'S SOLE REASONABLE EXPENSE, BY COUNSEL REASONABLY SATISFACTORY TO LANDLORD. AS USED HEREIN, "LANDLORD'S RELATED PARTIES" SHALL MEAN AND REFER TO LANDLORD'S OFFICERS, DIRECTORS, AFFILIATES, AGENTS, CONTRACTORS, VOLUNTEERS AND EMPLOYEES, AND THEIR RESPECTIVE HEIRS AND PERSONAL REPRESENTATIVES, SUCCESSORS AND ASSIGNS. AS USED HEREIN, "TENANT'S RELATED PARTIES" SHALL MEAN TENANT'S AGENTS, CONTRACTORS, EMPLOYEES, PATRONS, BUSINESS INVITEES AND GUESTS. NOTWITHSTANDING ANYTHING TO THE CONTRARY SET FORTH IN THIS SECTION 7.5.4, TENANT SHALL HAVE NO OBLIGATION TO INDEMNIFY LANDLORD PURSUANT TO THIS SECTION 7.5.4 IF SUCH LIABILITY ARISES DIRECTLY OR INDIRECTLY FROM THE ACTS OR OMISSIONS OF LANDLORD OR ANY OF LANDLORD'S RELATED PARTIES.**

**7.5.5 SUBJECT TO THE LIMITATIONS SET FORTH BELOW, TENANT HEREBY AGREES TO INDEMNIFY LANDLORD AND HOLD LANDLORD HARMLESS FROM AND AGAINST ANY AND ALL LOSS, DAMAGES, LIABILITIES, REASONABLE EXPENSE AND COST INCLUDING, WITHOUT LIMITATION, REASONABLE ATTORNEYS' FEES, PAID, INCURRED OR SUFFERED BY LANDLORD AS A DIRECT OR INDIRECT RESULT OF THE PRESENCE ON OR UNDER, OR THE ESCAPE, SEEPAGE, LEAKAGE, SPILLAGE, EMISSION, DISCHARGE, MIGRATION OR RELEASE FROM THE PROPERTY OF ANY HAZARDOUS MATERIALS. THE FOREGOING INDEMNITY SHALL BE LIMITED TO MATTERS THAT ARE NOT CAUSED BY ACTS OF GOD AND NOT CAUSED BY LANDLORD OR ANY OF LANDLORD'S RELATED PARTIES. THE FOREGOING SHALL NOT BE CONSTRUED TO LIMIT THE LIABILITY OF THE TENANT FOR SUCH MATTERS WHICH OCCUR DURING THE TERM, BUT WHICH ARE DISCOVERED SUBSEQUENT TO THE EXPIRATION OF THE TERM.**

**7.5.6 Notwithstanding anything in this Section 7.5 or in Section 4.5 to the contrary, in no event shall Tenant be liable to Landlord hereunder for (i) any Hazardous Materials contamination or conditions existing prior to the commencement of this Lease, unless any Legal Requirement imposes such liability, (ii) any item caused by the Landlord or any of Landlord's Related Parties, (iii) any environmental contamination migrating onto the Land from**

adjacent property, except to the extent such migration is exacerbated by Tenant, and (iv) any item caused by any managing member of the Tenant so long as the managing member of Tenant is an Affiliate of Landlord.

7.6 Increase in Risk. Tenant:

7.6.1 shall not do or permit to be done any act or thing as a result of which either (a) any policy of insurance of any kind covering any or all of the Property or any liability of Landlord in connection therewith becomes void or suspended and such insurance policy is not replaced, or (b) the insurance risk under any such policy would (in the opinion of the insurer thereunder) be made materially greater and action is not taken to address the risk; and

7.6.2 if such insurance is maintained by Landlord, Tenant shall pay as Additional Rent the amount of any increase in any premium for such insurance resulting from any breach of such covenant, within ten (10) business days after Landlord notifies Tenant in writing of such increase.

7.7 Insurance Proceeds and Condemnation Awards. Landlord and the Tenant hereby agree that any and all property insurance proceeds and/or condemnation awards received by the Tenant or Landlord in connection with the Property shall be treated as set forth in the most senior Permitted Leasehold Mortgage.

**SECTION 8. PERMITTED LEASEHOLD MORTGAGE REQUIREMENTS.**

8.1 Future Fee Estate Mortgages. Other than Permitted Encumbrances and restrictive covenants comprising a Land Use Restriction Agreement ("LURA") required by TDHCA, the Landlord (pursuant to the Landlord's Special Warranty Deed for the Land) or Austin Housing Finance Corporation as issuer of tax-exempt bonds under Section 142(d) of the Internal Revenue Code or as lender of two subordinate loans made with respect to the Property), Landlord shall not consent to any future mortgages or permit any future liens, or encumbrances against the Fee Estate or Premises, or otherwise pledge, subordinate, assign or otherwise dispose of the Fee Estate or Premises, without the prior written consent of Tenant, Investor Member and all Permitted Leasehold Mortgagees. To the extent a future mortgage on the Fee Estate is permitted hereunder, such mortgage shall expressly provide that it is subordinate and subject to the Tenant's interest under this Lease. Additionally, the Tenant shall not subordinate its interest in the Leasehold Estate to any future mortgage of the Fee Estate obtained by Landlord.

8.2 Nonmerger. This Lease shall not terminate as to any Permitted Leasehold Mortgagee because of any conveyance of Tenant's interest in the Leasehold Estate to Landlord or of the Landlord's interest hereunder to the Tenant. Accordingly, if the Leasehold Estate and the Fee Estate are commonly held, then they shall remain separate and distinct estates. They shall not merge without the prior written consent from all Permitted Leasehold Mortgagees and Investor Member.

8.3 Foreclosure Rights of Permitted Leasehold Mortgagee. Upon foreclosure or assignment in lieu of foreclosure of the Leasehold Estate, the most senior Permitted Leasehold Mortgagee shall have the right to acquire the Lease in its own name or the name of a nominee without consent or approval of Landlord. In the event that Tenant's interest in the Leasehold

Estate is acquired by any Permitted Leasehold Mortgagee, or its nominee, then such Permitted Leasehold Mortgagee, or its nominee, shall also have the right to further assign or sublet the Leasehold Estate to a third party with the consent of Landlord.

Foreclosure of any Permitted Leasehold Mortgage, or any sale thereunder, whether by judicial proceedings or by virtue of any power contained in the Permitted Leasehold Mortgage, or in lieu of, foreclosure or other appropriate proceedings in the nature thereof, shall not require the consent of Landlord or constitute a breach of any provision of, or a default under, the Lease, and upon such foreclosure, sale or conveyance, Landlord shall recognize the purchaser or other transferee in connection therewith as the Tenant under the Lease (the "New Tenant"). Following such foreclosure, sale or conveyance in lieu thereof, the New Tenant shall have the right to further assign or sublet the Leasehold Estate to a third party with the consent of Landlord.

8.4 Obligations of New Tenant. The New Tenant shall only be personally obligated for performance of obligations under the Lease commencing as set forth in Section 21.20 hereof and ending as of the date of any permitted assignment of the Lease to a successor Tenant. New Tenant shall take the Leasehold Estate subject to the agreements, covenants, conditions and terms of this Lease on the part of Tenant to be kept, observed and performed, subject to the foregoing subsection.

8.5 Voluntary Surrender. Notwithstanding anything set forth in this Lease to the contrary, Landlord shall not accept a voluntary surrender of the Lease at any time during which the Leasehold Estate (1) is encumbered by a Permitted Leasehold Mortgage; or (2) prior to the expiration of the Compliance Period or (3) prior to such time as Investor Member is no longer a member of the Tenant.

## **SECTION 9. IMPROVEMENTS TO PREMISES.**

### **9.1 Construction, Renovation or Rehabilitation of Improvements.**

9.1.1 Plans and Specifications. Landlord authorizes Tenant, at Tenant's sole cost and expense, to construct Improvements on the Premises, provided that Tenant hereby obligates itself to undertake any construction of the Project substantially in accordance with plans and specifications (collectively, "**Plans and Specifications**") previously submitted to and approved by Landlord.

9.1.2 Amendments to Plans and Specifications. Tenant shall take no action to effectuate any material amendments, modifications or any other alterations to the Plans and Specifications that are not permitted by the Permitted Leasehold Mortgagee.

9.1.3 Completion Schedule. Subject to Force Majeure delays, Tenant shall no later than the date which is thirty (30) months after the Commencement Date (the "**Construction Completion Date**"), construct the Improvements as herein provided to the extent required for Tenant to be issued a permanent, unconditional certificate of occupancy therefor or temporary occupancy permits subject to punch list items that do not interfere with occupancy of the Units by the Residents. Failure of Tenant to complete construction/rehabilitation of the Improvements and make such Improvements available for occupancy as contemplated hereunder by the Construction Completion Date shall constitute a default by Tenant hereunder; provided,



however, that Landlord shall give Tenant, any Permitted Leasehold Mortgagee, Investor Member and Administrative Member 90 days written notice and opportunity to cure such failure (and any additional time as provided by this Lease) prior to exercising any remedy under this Lease, and a cure of such failure shall cure such default.

9.1.4 Intentionally Omitted.

9.1.5 Utilities. Prior to the commencement of any construction, renovation or rehabilitation activities involving excavation activities by Tenant, Tenant shall contact all appropriate utility agencies for the purpose of verifying the location, depth and nature of all utilities affecting the Premises and any areas bordering upon the Premises.

9.1.6 Safety. Tenant shall comply in all respects with the reasonable overall safety programs promulgated by Landlord and any governmental or quasi-governmental agency, from time to time, which are applicable to the Premises.

9.1.7 Post Completion Alterations. Except in the event of an emergency, as required for life-safety purposes or in the course of ordinary maintenance and repair (including capital repairs and replacements) of the Premises, Tenant shall not make any material post-completion alteration, improvement or addition to the Premises having a cost greater than \$100,000.00, or demolish any substantial portion thereof, without first presenting to Landlord complete plans and specifications (to the extent having been prepared) therefor and obtaining Landlord's written consent thereto (which consent shall not unreasonably be withheld so long as, in Landlord's reasonable judgment such alteration, improvement, addition or demolition will not violate applicable Legal Requirements or this Lease, or materially impair the value of the Property and Tenant's ability to perform in accordance with the terms of this Lease). Tenant shall make no post-completion alterations to the Premises until Tenant has procured, as applicable, required permits and authorizations required by the applicable governmental authorities and, if required, consents from Permitted Leasehold Mortgagees. Any post-completion improvements made to the Premises by either party hereto shall be made only in good and workmanlike manner using new materials of the same quality as the original Improvements and in accordance with all applicable building codes and other laws.

9.1.8 Intentionally Omitted.

9.1.9 Covenants and Warranties. Tenant covenants and warrants to Landlord that material and equipment furnished in connection with the construction of the Improvements, or any alteration, renovation or addition thereto, undertaken in accordance with paragraph 9.1.7, will be done in a good and workmanlike manner and of a quality consistent with industry standards and practices and substantially in accordance the Plans and Specifications, that all construction work associated with the construction of Improvements will be free from any material defect in workmanship and materials, and that such construction work will comply in all material respects with the requirements of the approved Plans and Specifications. All construction work not conforming to these requirements, including substitutions, shall be considered defective. Tenant's covenant excludes any damage to the extent directly caused by the gross negligence, violations of laws, or misfeasance by Landlord or any of Landlord's Related Parties, and normal wear and tear under normal usage. If required by Landlord, pursuant

to written notice from Landlord to Tenant, Tenant shall within twenty (20) days thereafter, furnish reasonably satisfactory evidence as to the kind and quality of materials and equipment. Without limiting the indemnification provisions of subsection 7.5, but intending to elaborate thereon, Tenant shall defend, indemnify and hold harmless Landlord against and from any and all liability, claim of liability or reasonable expense arising directly or indirectly, wholly or in part out of any failure of Tenant's warranties hereunder to be true, complete and accurate in all material respects. This paragraph 9.1.9 shall survive the termination of this Lease for a period of twelve (12) months.

9.1.10 Permitted Leasehold Mortgages.

(a) Landlord acknowledges and agrees that it will not be possible for the Tenant to construct the Improvements without obtaining a loan or loans from one or more Persons in order to finance the construction of said Improvements and the development and operation of the Project. Therefore, Landlord hereby covenants and agrees that the Landlord's interest in this Lease and its Fee Estate are and shall be subject to, subordinate and inferior to any and all loans (interim, permanent, "cash flow", "soft" or refinancings thereof) obtained by the Tenant for the purpose of financing the construction of the Improvements and the development and operation of the Project, and to the lien of any Mortgages evidencing any such loans (such Mortgages, together with assignments of rents and leases, security agreements, and other collateral or security documents or instruments required by the Permitted Leasehold Mortgagee(s) providing such financing, all other documents governing, securing, and/or evidencing the loan secured by the applicable Mortgage, and all renewals, extensions, modifications, consolidations, replacements, assignments and refinancings thereof, collectively a "Permitted Leasehold Mortgage"), and to all advances made or hereafter to be made upon the security of such Permitted Leasehold Mortgages. Landlord shall, at Tenant's request, join in, execute and/or deliver any and all Permitted Leasehold Mortgages as may be required by such Permitted Leasehold Mortgagees in order to subject and subordinate the Landlord's interest in this Lease and its Fee Estate, or to otherwise consent to or facilitate the subordination or encumbrance of the Tenant's interest in the Lease and the Property, to the lien of the Permitted Leasehold Mortgages, and upon Tenant's request, Landlord shall join in, execute and/or deliver any and all such further instruments or assurances as any such Permitted Leasehold Mortgagees may reasonably deem necessary to evidence or confirm the subordination of this Lease, or the encumbrance of the Landlord's interest herein and the Fee Estate, to the lien of the Permitted Leasehold Mortgages. Provided, however, and notwithstanding anything contained herein to the contrary, Landlord shall not be required to suffer, incur, accept or assume any personal liability for any such financing, loans or indebtedness, or any costs or expenses thereof, or any other indebtedness or liability of Tenant thereunder, and any Permitted Leasehold Mortgage and other collateral or security documents or instruments of any nature whatsoever which the Landlord may be called upon to join in, execute and/or deliver under and pursuant to this section, shall expressly exculpate Landlord from and against any and all such personal liability.

Neither Tenant nor any successor in interest to the Premises or any part thereof shall, without the prior written consent of Landlord in each instance, which consent may be withheld in Landlord's sole discretion, engage in any financing or any other transaction creating any mortgage or other encumbrance or lien upon the Premises, whether by express

agreement or operation of law, or suffer any encumbrance or lien to be made on or attached to the Premises, except for the Permitted Leasehold Mortgages.

(b) Landlord agrees to accept payment or performance by Permitted Leasehold Mortgagee as though Tenant had done the same.

(c) Landlord agrees that, for so long as the Permitted Leasehold Mortgage remains a Permitted Encumbrance, the following provisions shall apply:

(i) There shall be no cancellation, surrender, or modification of this Lease by joint action of Landlord and Tenant, without the prior written consent of Permitted Leasehold Mortgagee, provided such consent is not unreasonably withheld, delayed or conditioned; and

(ii) Without confirming any right of Landlord to terminate this Lease other than as expressly set forth in this Lease, if Landlord elects to terminate this Lease due to an Event of Default of Tenant, after the expiration of all applicable notice and cure periods, by delivery to Tenant and the Permitted Leasehold Mortgagee of a written notice of termination, then Permitted Leasehold Mortgagee shall have the right to nullify any such notice of termination within ninety (90) days after receipt of Landlord's notice of termination by either (1) curing such Event of Default; or (2) commencing to cure or cause to be cured any then-existing Event of Default of Tenant, and promptly initiating action to acquire or sell Tenant's interest in this Lease by foreclosure of the Permitted Leasehold Mortgage or otherwise and prosecuting the same to completion with due diligence and without any interruption.

(d) Permitted Leasehold Mortgagee shall not be obligated or required to cure a default or an Event of Default of Tenant that is uniquely specific to Tenant, such as bankruptcy, and Landlord shall not terminate this Lease, provided Permitted Leasehold Mortgagee has cured any other non-specific default or Event of Default of Tenant, and Landlord enters into a new lease on substantially the same terms and conditions with the same priorities with Permitted Leasehold Mortgagee.

(e) Permitted Leasehold Mortgagee shall have the right to assume this Lease as Tenant in its own name or in the name of a nominee upon foreclosure or assignment in lieu of foreclosure of the Permitted Leasehold Mortgage.

(f) Permitted Leasehold Mortgagee shall not be liable hereunder unless and until Permitted Leasehold Mortgagee expressly assumes such liability in writing. Furthermore, no assumption of liability hereunder shall be inferred from Permitted Leasehold Mortgagee's foreclosure or other appropriate proceedings in lieu thereof.

(g) Except as permitted pursuant to this Section 9.1.10, neither Tenant nor any successor in interest to the Premises or any part thereof shall engage in any transaction creating any encumbrance or lien upon the Premises, whether by express agreement or operation of law, or suffer any encumbrance or lien to be made on or attached to the Premises, except as approved with the prior written consent of Landlord in each instance, which consent may be withheld in Landlord's sole discretion (any Mortgage consented to by Landlord, as

aforesaid, is also hereinafter referred to singularly as a Permitted Leasehold Mortgage), and except for an inchoate lien for taxes or municipal obligations, utility and access easements, restrictions required by Section 42 of the Code, the LURA, other encumbrances incurred in the ordinary course of business of the Tenant, and Permitted Encumbrances.

## 9.2 Mechanic's or Other Liens.

9.2.1 Tenant shall: (a) within sixty (60) days after it is filed or claimed, have released (by bonding, insuring over, or otherwise) any mechanics', materialman's or other lien filed or claimed against any or all of the Premises, or Property, by reason of labor or materials provided for or about any or all of the Premises, the Units, or the Improvements or the Property during the Term, or otherwise arising out of Tenant's use or occupancy of any or all of the Premises, the Units, or the Improvements or the Property, and (b) defend, indemnify and hold harmless Landlord against and from any and all liability, claim of liability or reasonable expense (including but not limited to that of reasonable attorneys' fees) incurred by Landlord on account of any such lien or claim other than such liens arising out of the actions of the Landlord or any of Landlord's Related Parties.

9.2.2 Nothing in this Lease shall be deemed in any way (a) to constitute Landlord's consent or request, express or implied, that any contractor, subcontractor, laborer or materialman provide any labor or materials for any alteration, addition, improvement or repair to any or all of the Property, if doing so would give rise to the filing of any mechanics' or materialmen's lien against any or all of the Property or Landlord's estate or interest therein or (b) to give Tenant any right, power or authority to contract for or permit to be furnished any service or materials, if doing so would give rise to the filing of any mechanics' or materialmen's lien against any or all of the Property or Landlord's estate or interest therein, or (c) to evidence Landlord's consent that the Property be subjected to any such mechanic's or materialman's lien.

9.2.3 Right to Contest Certain Claims. Notwithstanding the provisions of Sections 9.2.1 or 9.2.2 of this Lease to the contrary, Tenant shall not be in default for failure to comply with any Legal Requirement or to pay or discharge any tax, assessment, fine, claim, or mechanic's or materialman's lien asserted against the Property if, and so long as (a) Tenant shall have notified Landlord of same within ten (10) business days of obtaining knowledge thereof; (b) Tenant shall diligently and in good faith contest the same by appropriate legal proceedings which shall cooperate to prevent the enforcement or collection of the same and the sale of the Property or any part thereof, to satisfy the same; and (c) Tenant complies with all requirements under the most senior Permitted Leasehold Mortgage necessary to avoid a default thereunder. Upon the discharge and/or dismissal of all tax assessments, fines and liens covered by this Section 9.2.3, Landlord shall return any unexpended funds delivered to it by Tenant to fulfill its obligations under this Section 9.2.3.

9.3 Fixtures. Any and all improvements, repairs, alterations and all other property attached to or otherwise installed as a fixture within the Premises by Landlord or Tenant shall, immediately on the completion of their installation, become part of the Property and, except as replaced in accordance with Section 10 hereof, remain with the Property at the expiration or earlier termination of this Lease, except that any machinery, equipment or fixtures installed by Tenant at no expense to Landlord and used in the conduct of Tenant's trade or business (rather

than to service the Premises, the Units or the Property generally) and not part of the Equipment shall remain Tenant's property, and may be removed from the Premises by Tenant at the end of the Term (and any damage to the Property caused by such removal shall be repaired at Tenant's expense).

9.4 Joinder. Without limiting Landlord's obligations under any other provision of this Lease, Landlord shall, promptly at Tenant's request and expense at any time during the Term (and provided that Landlord thereby assumes no liability or obligation), join in any and all applications for building permits, subdivision plat approvals or certificates of dedication thereon, public works or other agreements and permits for sewer, water or other utility services, other instruments of dedication or other permits or approvals, the granting of or entry into which by any governmental or quasi-governmental authority having jurisdiction over the Property is necessary to permit (a) the subdivision, development, improvement, use and occupancy of the Property for the purposes permitted by this Lease, without violating applicable law; and (b) the dedication to the City of Austin, the applicable utility providers, and/or the State of Texas after the Commencement Date of such title to or easements for utility, roadway and slope or storm drainage areas or facilities as are, in Tenant's opinion, necessary or desirable in connection therewith. Subject to the provisions of subsection 9.1, Landlord shall, at no expense to Landlord, use its reasonable efforts to cooperate with Tenant in Tenant's efforts to obtain such final approval and recordation.

9.5 Signs. Tenant shall have the right to erect from time to time about the Property, in accordance with applicable law, such signs as it desires, (or as required by the most senior Permitted Leasehold Mortgage and/or Investor Member); and provided that any such sign has been approved by all architectural review committees having jurisdiction over any portion of the Property pursuant to any Permitted Encumbrance. Moreover, Tenant shall erect from time to time, at Tenant's expense, and upon the request of Landlord, about the Property, in accordance with applicable law, such signs as Landlord reasonably desires in order to advise the public of Landlord's participation in the Project, if applicable.

9.6 Tenant Control. Notwithstanding anything to the contrary herein, the Landlord shall have no control over the construction and rehabilitation of the Improvements.

## **SECTION 10. REPAIRS AND MAINTENANCE.**

10.1 Repairs. Tenant shall, throughout the Term and at its expense, use commercially reasonable efforts to:

10.1.1 take good care of the Property and keep it in good order and condition; and

10.1.2 promptly make any and all repairs, ordinary or extraordinary, foreseen or unforeseen, to the Property (including but not limited to the landscaping thereon) as are necessary to maintain it in good condition, subject to ordinary wear and tear and casualty (including but not limited to any and all such repairs to the plumbing, heating, ventilating, air-conditioning, electrical and other systems for the furnishing of utilities or services to the Property), and replace or renew the same where necessary (using replacements at least equal in

quality and usefulness to the original improvements, equipment or things so replaced), and Landlord shall have no obligation hereunder as to the same

10.2 Maintenance. Tenant shall use commercially reasonable efforts to keep and maintain all of the Property in a clean and orderly condition, free of accumulation of dirt, rubbish, snow and ice, and shall keep all grass, ground cover and other plantings mown, weeded and trimmed.

## **SECTION 11. LANDLORD'S RIGHT OF ENTRY.**

11.1 Inspection and Repair. Subject to the rights of any Resident under a Tenancy Agreement, Landlord and its authorized representatives shall be entitled to enter the Project and Units and the rest of the Property at any time during Tenant's business hours and at any other reasonable time after giving Tenant at least two (2) business days' written notice of Landlord's intention to take such action, to (a) inspect the Property, and (b) with the prior written consent of the Permitted Leasehold Mortgagees (except in connection with repairs for life and/or safety issues, in which case prompt notice shall be provided to the Permitted Leasehold Mortgagees), and subject to the rights of any Resident under a Tenancy Agreement, Landlord and its authorized representatives shall be entitled to make any repairs thereto and/or take any other action therein which is required by Legal Requirements, or which Landlord is permitted to make by any provision of this Lease, after giving Tenant at least two (2) business days' written notice of Landlord's intention to take such action and allowing Tenant reasonable time to take the appropriate action (in any situation in which, due to an emergency or otherwise, the health, welfare or safety of the Residents or physical condition of the Project and Units or any other part of the Property would be unreasonably jeopardized unless Landlord were to take such action immediately, Landlord shall give only such notice, if any, to Tenant as is reasonable under the circumstances, and may enter the same at any time). Nothing in this Section shall be deemed to impose any duty upon Landlord to make any such repair or take any such action, and Landlord's performance thereof shall not constitute a waiver of Landlord's right hereunder to have Tenant perform such work. Landlord may, while taking any such action upon the Property, store therein any and all necessary materials, tools and equipment, and Tenant shall have no liability to Landlord for any damage to or destruction of any such materials, tools and equipment, except if and to the extent that such damage or destruction is proximately caused by the gross negligence or intentional conduct of Tenant or its agents and employees. Landlord shall not in any event be liable to Tenant for any inconvenience, annoyance, disturbance, loss of business or other damage sustained by Tenant by reason of the making of such repairs or the taking of such action, or on account of the bringing of materials, supplies and equipment onto the Property during the course thereof (except if and to the extent is proximately caused by the gross negligence or intentional conduct of Landlord or any Landlord Related Party), and Tenant's obligations under the provisions of this Lease shall not be affected thereby. In exercising its rights under this subsection 11.1, Landlord shall use reasonable efforts not to cause or allow any interference or disruption of Tenant's work or Tenant's use, operation or enjoyment of the Property, or that of any Resident, except in the event of an emergency.

11.2 Exhibiting the Premises. Landlord and its business invitees may from time to time, after giving at least two (2) business days' written notice thereof to Tenant, and subject to the rights of any Resident under a Tenancy Agreement, enter the Project and the Units and the

rest of the Property during Tenant's normal business hours to exhibit the Premises for purposes of (a) pledging or assigning any or all of Landlord's right, title and interest in and to the Premises or under this Lease (to the extent permitted hereunder), (b) during the last twenty-four (24) months of the Term (or at any time after Landlord or Tenant has exercised any right to terminate this Lease which it holds hereunder), leasing the Premises to any prospective tenant thereof, and (c) exhibiting the same to any governmental and/or quasi-governmental authorities or other third-parties which may have an interest in developments similar to the Property or similarly financed or for any other business purpose; provided that in doing so Landlord and each such invitee observes all reasonable safety standards and procedures which Tenant may require. In exercising its rights under this subsection 11.2, Landlord shall use its good faith, reasonable efforts to minimize any interference or disruption of Tenant's work or Tenant's use or operation of the Property, or that of any Resident.

## **SECTION 12. FIRE AND OTHER CASUALTIES.**

### **12.1 Where Cost of Restoration Exceeds Specified Sum.**

12.1.1 Subject to the provisions of Sections 12.2 and 12.4 hereof, if any or all of the Property is damaged or destroyed, Tenant shall (a) immediately notify Landlord thereof if the cost of Restoration on account thereof equals or exceeds Two Hundred Thousand and 00/100 Dollars (\$200,000.00), and (b) provided that insurance proceeds are available to Tenant and are adequate for such purposes and regardless of the dollar amount of such damage or loss (and regardless of whether the cost of Restoration is less than or greater than Two Hundred Thousand and 00/100 Dollars (\$200,000.00)), commence and complete Restoration with reasonable diligence at Tenant's expense as nearly as possible to the Property's value, condition and character immediately before such damage or destruction, to the extent that insurance proceeds are made available to Tenant by the Permitted Leasehold Mortgagee. After expiration of the Compliance Period pursuant to Section 42 of the Code, such Restoration shall be in accordance with plans and specifications therefor which shall have been approved in writing by Landlord, such approval not to be unreasonably delayed, withheld or conditioned.

12.1.2 Subject to the provisions of Sections 12.1.1 and 12.4 hereof, all insurance proceeds (other than any proceeds which are separately paid on account of any damage to or destruction of Tenant's personal property, inventory or work-in-process, all of which shall be paid to Tenant) payable as a result of such casualty under policies of insurance held by or for the account of Tenant pursuant to Section 7 against such casualty and received by Tenant (less such reasonable attorneys' fees or other expenses as are incurred by the Landlord or Tenant in the collection thereof, which shall be paid out of such proceeds), shall be paid to the most senior Permitted Leasehold Mortgagee or a trustee it designates, to be used in accordance with the applicable Permitted Leasehold Mortgage. Upon receipt by Landlord of evidence satisfactory that such Restoration has been completed and the cost thereof paid in full, and that no mechanics', materialmens' or similar lien for labor or materials supplied in connection therewith may attach to the Property, the balance, if any, of such proceeds shall be paid to Tenant or as it may direct. In the case of a casualty, this Lease shall continue, unless Tenant and Landlord agree to terminate this Lease with the prior written consent of the Permitted Leasehold Mortgagee, Investor Member and Administrative Member.

12.2 Application of Proceeds on Termination. Anything in this Lease to the contrary notwithstanding, upon the expiration or earlier termination of this Lease before such Restoration is completed free and clear of any such liens, any insurance proceeds not theretofore applied to the cost of such Restoration or disbursed to Permitted Leasehold Mortgagees (the most senior Permitted Leasehold Mortgagee being entitled to proceeds first) shall be paid to Tenant to the extent permitted by the Permitted Leasehold Mortgages, then to Landlord.

12.3 No Termination. Except as provided in Section 12.1.2 and Section 12.6, no total or partial damage to or destruction of any or all of the Property shall entitle Tenant or Landlord to surrender or terminate this Lease, or shall relieve Tenant from its liability hereunder to pay in full the Rent, any Additional Rent and all other sums and charges which are otherwise payable by Tenant hereunder, or from any of its other obligations hereunder, and Tenant hereby waives any right now or hereafter conferred upon it by statute or otherwise, on account of any such damage or destruction, to surrender this Lease, to quit or surrender any or all of the Property, or to have any suspension, diminution, abatement or reduction of the Rent or any Additional Rent or other sum payable by Tenant hereunder (except that, if and to the extent that Landlord has, on account of any such Rent or other sum, received for its own account the proceeds of any rent insurance pursuant to the provisions of this Lease, Tenant shall be entitled to a credit (or refund) therefor against its obligations hereunder to pay Rent and other sums, by applying such credit toward any unpaid installments of Rent in the order in which they fall due hereunder).

12.4 Rights of the Parties Under the Loan Documents. Notwithstanding anything herein to the contrary, for so long as any Permitted Leasehold Mortgages are in effect, the most senior Permitted Leasehold Mortgage shall control the use and application of all casualty proceeds relating to the Property.

12.5 Notice. The Landlord will provide reasonable prior notice to Permitted Leasehold Mortgagees, Investor Member and Tenant of any proceeding for adjustment or adjudication of any insurance or condemnation claim involving the Premises and will permit the Permitted Leasehold Mortgagees and Tenant to participate therein as interested parties at each respective party's choosing.

12.6 Termination upon Non-Restoration. Notwithstanding anything in this Lease to the contrary, following a casualty, the Lease may be terminated by Tenant, with the prior written consent of the Permitted Leasehold Mortgagee, Investor Member and Administrative Member, if such casualty prevents the use and operation of Property as a low-income or moderate-income development under Section 42 of the Code and in accordance with the LURA or if the insurance proceeds made available to Tenant are insufficient to restore the Property to a condition substantially similar to the conditions existing prior to such casualty.

## **SECTION 13. CONDEMNATION.**

13.1 Notice of Taking. Forthwith upon receipt by either Landlord or Tenant of notice of the institution of any proceedings for the taking or condemnation of all or a portion of the Property or Improvements by the government of the United States, State of Texas, County of Travis, City of Austin or any other governmental authority, or any corporation under the right of eminent domain (a "Taking"), the party receiving such notice shall promptly give notice thereof



to the other, and such other party may also appear in such proceeding and be represented by counsel, who may be counsel for the party receiving such notice.

13.2 Condemnation Awards. Subject to Section 13.8 hereof, Tenant's share of any condemnation award shall be no less than the total condemnation award less the value of Landlord's remainder interest in the Premises, considered as if unimproved but encumbered by this Lease and the Permitted Leasehold Mortgages. To the extent that Tenant is entitled to any condemnation award, it shall be paid to the most senior Permitted Leasehold Mortgagee to be used in accordance with the applicable Permitted Leasehold Mortgage, with any remaining balance being paid directly to Tenant.

13.3 Total Taking. Subject to the provisions of Section 13.8 herein, in the event of a permanent Taking of the entire Fee Estate, the Property or of the entire Leasehold Estate hereunder (a "**Total Taking**"), this Lease shall thereupon terminate as of the effective date of such Total Taking, without liability or further recourse to the parties, provided that any outstanding Rent payable or obligations owed by the Tenant to the Landlord as of the date of said Total Taking shall be paid or otherwise carried out in full, with due credit given for any prepayment of Rent.

13.4 Partial Taking. Subject to the provisions of Section 13.6 and Section 13.8 herein, in the event of a permanent Taking of less than the entire Property (a "**Partial Taking**"), this Lease shall continue unless Tenant and Landlord shall agree to terminate the Lease with the prior written consent of the Permitted Leasehold Mortgagee, Investor Member and Administrative Member. Any condemnation award shall be paid to the most senior Permitted Leasehold Mortgagee or a trustee it designates to be used in accordance with the applicable Permitted Leasehold Mortgage. Any remainder shall be disbursed to the most senior Permitted Leasehold Mortgagee to the extent required by its loan documents and any excess to Tenant.

13.5 Notice. The Landlord will provide reasonable prior notice to Permitted Leasehold Mortgagees, Investor Member and Tenant of any proceeding for adjustment or adjudication of any insurance or condemnation claim involving the Property and will permit the Permitted Leasehold Mortgagees, Investor Member and Tenant to participate therein as interested parties.

13.6 Termination upon Non-Restoration. Following a Partial Taking, the Lease may be terminated by Tenant, with the prior written consent of the Permitted Leasehold Mortgagee, Investor Member and Administrative Member, if such Partial Taking (a) prevents the use and operation of Property as a low-income or moderate-income development under Section 42 of the Code and in accordance with the terms of the LURA, (b) if the proceeds made available to Tenant are insufficient to restore the Improvements to a condition substantially similar to the conditions existing prior to such Partial Taking, or (c) Tenant reasonably determines that the continued use and occupancy of the remainder of the Property by Tenant cannot be made to be economically viable and structurally sound based upon the amount of eminent domain proceeds and, at Tenant's option, any other funds of Tenant as are demonstrably available for the purpose of paying for such Restoration.

13.7 No Waiver. No provisions in this Lease shall limit the rights of either Landlord or Tenant to seek compensation from a condemning authority as provided by statute, common law, the State of Texas or the United States Constitution.

13.8 Rights of the Parties Under the Loan Documents. Notwithstanding anything herein to the contrary, for so long as any Permitted Leasehold Mortgages are in effect the most senior Permitted Leasehold Mortgage shall control the use and application of all condemnation proceeds relating to the Property and, as applicable, the operation of the Lease termination provisions hereunder. In any event, the Tenant and the Permitted Leasehold Mortgagee shall participate in all settlements.

#### **SECTION 14. ASSIGNMENT AND SUBLETTING.**

14.1 Limits on Transfers. Subject to the provisions of this Lease, Tenant hereby acknowledges that Landlord has entered into this Lease because of Tenant's financial strength, goodwill, ability and expertise, and that, accordingly, this Lease is one which is personal to Tenant, and Tenant agrees for itself and its successor and assigns in interest hereunder that it will not, other than by the terms of the Permitted Leasehold Mortgage and leases made in accordance with Section 21.17 herein, (a) assign this Lease or any of its rights under this Lease as to all or any portion of the Premises, the Units, the rest of the Improvements, the Equipment or the Property generally, or (b) make or permit any voluntary total or partial sale, lease, assignment, conveyance, mortgage, pledge, encumbrance or other transfer of any or all of the Premises, the Units, the rest of the Improvements, the Equipment or the Property or the occupancy or use thereof, other than in accordance with LIHTC/Bond/Additional Housing Requirements and this Lease (each of which is hereinafter referred to as a "Transfer") without first obtaining Landlord's express written consent thereto by an instrument which makes specific reference to this paragraph 14.1 and is executed by Landlord (which consent will not be unreasonably withheld, delayed or conditioned). Further, notwithstanding anything to the contrary herein, the Landlord shall not transfer, encumber or otherwise dispose of the Fee Estate or the Property or any interest therein without the consent of the Tenant, Investor Member, the Permitted Leasehold Mortgagee and Administrative Member.

14.2 Permitted Transfers. Notwithstanding anything to the contrary set forth elsewhere in this Lease, any transfer or pledge of the interest of Managing Member, Administrative Member, Investor Member or any other member of Tenant, in accordance with the terms of the Operating Agreement or the Permitted Leasehold Mortgages, shall be a permitted Transfer hereunder and shall not require Landlord's consent. Any transfer, in whole or in part, of the Property or the Leasehold Estate (a) in accordance with the Operating Agreement or any Permitted Leasehold Mortgage, or any other transfers permitted thereunder, (b) in accordance with any Land Use Regulatory Agreement between TDHCA and Tenant, or Landlord and Tenant, including without limitation, the LURA, (c) in the ordinary course of business including, without limitation, any residential lease and any utility and access easement, (d) required by LIHTC/Bond/Additional Housing Requirements, and/or (e) any right of first refusal under Section 42(i)(7) of the Code or otherwise given to the Landlord, shall be a permitted transfer hereunder and shall not require Landlord's consent. For the avoidance of doubt, (i) Landlord approves the admission of the Investor Member as investor member of Tenant, (ii) Landlord's consent shall not be required for the transfer of any Investor Member interest in Tenant, the

transfer of Administrative Member's interest in Tenant, the admission of any new investor member into Tenant, or transfers of interests within Investor Member, and (iii) Landlord acknowledges the right under the Operating Agreement of an Investor Member to remove the managing member of Tenant and to designate a substitute managing member of Tenant in accordance with the terms of the Operating Agreement or pursuant to the terms of any pledge or security agreement between the managing member and an Investor Member without Landlord's consent. Further notwithstanding anything to the contrary herein, during the Term of this Lease, the Landlord shall not transfer, encumber or otherwise dispose of the Premises or any interest therein without the written consent of Tenant, Investor Member, the Permitted Leasehold Mortgagee and Administrative Member.

14.3 Effect on Obligations. Except as set forth in this Lease, no such Transfer shall alter or impair the obligations hereunder of Tenant or any other Person constituting Tenant or holding any interest hereunder before any such Transfer.

14.4 Benefit and Burden. Subject to the foregoing provisions of this Section, this Lease shall be binding on and inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors and assigns in interest hereunder.

## **SECTION 15. DEFAULT.**

15.1 As used in this Lease, and subject to the expiration of all notice and cure periods herein set forth, including without limitation those set forth in paragraph 15.2 below, each of the following events shall constitute an "Event of Default"

15.1.1 if Tenant fails (a) to pay any Rent, Additional Rent or other sum which it is obligated to pay under this Lease, when and as it is due and payable hereunder and after demand therefor, or (b) to perform any of its obligations under this Lease; or

15.1.2 Intentionally deleted; or

15.1.3 if Tenant's Bankruptcy occurs and such Bankruptcy is not consented to or acquiesced in by Managing Member or Administrative Member; or

15.1.4 Intentionally deleted.

15.1.5 if Tenant fails to abide by LIHTC/Bond/Additional Housing Requirements and Legal Requirements, and such failure is not cured during any applicable cure period or such longer period of time as provided by the applicable authority; or

15.1.6 if Tenant fails to comply in all respects with Tenant's obligations under any instrument, lease, Mortgage (other than a Permitted Leasehold Mortgage) or other agreement to which Landlord is a party, and a copy of which has been provided to Tenant, and for which a default under this Lease would constitute a default under such instrument, lease, Mortgage or other agreement, which failure is not cured by Tenant within any permissible cure period provided herein or in such instrument, lease, mortgage or other agreement.

15.2 Notice to Tenant; Opportunity to Cure. Anything in this Section to the contrary notwithstanding, if an Event of Default occurs, Landlord shall not exercise any right or remedy on account thereof which it holds under this Lease or applicable law unless and until Landlord shall so notify Tenant, Administrative Member, Investor Member and all Permitted Leasehold Mortgagees in writing. Each shall have the right to cure such Event of Default, and Landlord shall not terminate this Lease for Tenant's default unless and until Landlord has given all Permitted Leasehold Mortgagees, the Investor Member and Administrative Member written notice of such Event of Default and 60 days in addition to any applicable cure period given Tenant in which to cure it. If it cannot be reasonably cured within 60 days, each Permitted Leasehold Mortgagee, Investor Member and Administrative Member shall have such additional time as it shall reasonably require (not to exceed 120 days unless delay is due to Force Majeure), so long as a Permitted Leasehold Mortgagee or Investor Member or Administrative Member is proceeding with reasonable diligence. Landlord agrees to accept any such cure by Investor Member, Administrative Member or Permitted Leasehold Mortgagee as if made by Tenant.

15.3 Landlord's Rights on Event of Default

15.3.1 If an Event of Default occurs and continues beyond applicable notice and cure periods, Landlord may (subject to the other provisions of this Lease, including without limitation, subsections 9.1.3 and 15.2) take any or all of the following actions:

(a) subject to any Tenancy Agreements, Legal Requirements, and LIHTC/Bond/Additional Housing Requirements, reenter and repossess any or all of the Premises and any or all Improvements thereon and additions thereto; and/or

(b) declare any remaining unpaid balance of the Rent for the remainder of the Term to be due and payable immediately, and collect such balance in any manner not inconsistent with applicable law; provided that if Landlord elects to relet any or all of the Premises following such acceleration of Rent, the provisions of subparagraph 15.3.1(d) shall be applicable to the rights of Landlord and Tenant. Accelerated payments payable hereunder shall not constitute a penalty or forfeiture or liquidated damages, but shall merely constitute payment of Rent; and/or

(c) if the Event of Default occurs after the expiration of the Property's initial 15-year tax-credit compliance period, terminate this Lease by giving written notice of such termination to Tenant (and as otherwise required in accordance with the other provisions of this Lease), which termination shall be effective as of the date of such notice or any later date therefor specified by Landlord therein (provided, that without limiting the generality of the foregoing provisions of this subparagraph 15.3.1(c), Landlord shall not be deemed to have accepted any abandonment or surrender by Tenant of any or all of the Premises or Tenant's Leasehold Estate under this Lease unless Landlord has so advised Tenant expressly and in writing, regardless of whether Landlord has reentered or relet any or all of the Premises or exercised any or all of Landlord's other rights under this Section or applicable law); and, on the date specified in such notice, Tenant's right to possession of the Property will cease and the Leasehold Estate conveyed by this Lease upon Tenant shall revert in Landlord, provided, however, such reversion of the Leasehold Estate and the reentry by Landlord shall be subject to

and limited by and shall not defeat, render invalid or limit in any way the lien of any Permitted Leasehold Mortgage or any provision of LIHTC Housing Requirements; and/or

(d) in Landlord's own name (but either (i) as agent for Tenant, if this Lease has not then been terminated, or (ii) for the benefit of Tenant, if this Lease has then been terminated), relet any or all of the Premises, with or without any additional premises, for any or all of the remainder of the Term (or, if this Lease has then been terminated, for any or all of the period which would, but for such termination, have constituted the remainder of the Term) or for a period exceeding such remainder, on such terms and subject to such conditions as are acceptable to Landlord in its sole discretion (including but not limited to the alteration of any or all of the Premises in any manner which, in Landlord's judgment, is necessary or desirable as a condition to or otherwise in connection with such reletting, and the allowance of one or more concessions or "free-rent" or reduced-rent periods), and collect and receive the rents therefor. Anything in this Lease or applicable law to the contrary notwithstanding, (i) Landlord shall not have any duty or obligation to relet any or all of the Premises as the result of any Event of Default, or any liability to Tenant or any other Person for any failure to do so or to collect any rent or other sum due from any such reletting; (ii) Tenant shall have no right in or to any surplus which may be derived by Landlord from any such reletting, if the proceeds of such reletting exceed any Rent, if any, installment thereof or other sum owed by Tenant to Landlord hereunder; and (iii) Tenant's liability hereunder shall not be diminished or affected by any such failure to relet or the giving of any such initial or other concessions or "free-rent" or reduced rent periods in the event of any such reletting. In the event of any such reletting, Tenant shall pay to Landlord, at the times and in the manner specified by Section 4, both (i) the installments of Rent accruing during such remainder (or, if this Lease has then been terminated, damages equaling the respective amounts of such installments of Rent which would have accrued during such remainder, had this Lease not been terminated), less any monies received by Landlord with respect to such remainder from such reletting of any or all of the Premises, plus (ii) the reasonable cost to Landlord of any such reletting (including but not limited to any reasonable attorneys' fees, leasing or brokerage commissions, repair or improvement expenses and the expense of any other actions taken in connection with such reletting), plus (iii) any other sums for which Tenant is liable under paragraph 15.3.4 (and Tenant hereby waives any and all rights which it may have under applicable law, the exercise of which would be inconsistent with this subparagraph 15.3.1(d)); and/or

(e) enforce any one or more of LIHTC/Bond/Additional Housing Requirements or Legal Requirements; and/or

(f) cure such Event of Default in any other manner; and/or

(g) pursue any combination of such remedies and/or any other right or remedy available to Landlord on account of such Event of Default under this Lease and/or at law or in equity.

15.3.2 No such expiration or termination of this Lease, or summary dispossession proceedings, abandonment, reletting, bankruptcy, re-entry by Landlord or vacancy, shall relieve Tenant of any of its liabilities and obligations under this Lease (whether or not any or all of the Premises are relet), that arose during the Term of this Lease, and Tenant shall remain liable to

Landlord for all damages resulting from any Event of Default, including but not limited to any damage resulting from the breach by Tenant of any of its obligations under this Lease to pay Rent and any other sums which Tenant is obligated to pay hereunder.

15.3.3 If any or all of the Premises are relet by Landlord for any or all of the unexpired Term of this Lease, the amount of rent reserved upon such reletting shall be deemed to be the fair and reasonable rental value for the part or the whole of the Premises so relet during the term of the reletting.

15.3.4 If an Event of Default exists, Tenant shall, immediately on its receipt of a written demand therefor from Landlord, reimburse Landlord for (a) all reasonable expenses (including but not limited to any and all reasonable repossession costs, management expenses, operating expenses, legal expenses and reasonable attorneys' fees) incurred by Landlord (i) in curing or seeking to cure any Event of Default and/or (ii) in exercising or seeking to exercise any of Landlord's rights and remedies under this Lease and/or at law or in equity on account of any Event of Default, and/or (iii) otherwise arising out of any Event of Default, and/or (iv) (regardless of whether it constitutes an Event of Default) in connection with any action, proceeding or matter of the types referred to in paragraphs 15.1.2 and 15.1.3, plus (b) interest on all such expenses, at the lesser of prime rate (as reported by the Wall Street Journal's bank survey) plus four percent (4%) or the highest rate then permitted on account thereof by applicable law, all of which expenses and interest shall be Additional Rent and shall be payable by Tenant immediately on demand therefor by Landlord.

15.3.5 Tenant hereby expressly waives, so far as permitted by law and only if an Event of Default has occurred and is continuing, the service of any notice of intention to re-enter provided for in any statute, and except as is herein otherwise provided, Tenant, for itself, also waives any and all right of redemption or re-entry or repossession in case Tenant is dispossessed by a judgment or warrant of any court or judge or in case of re-entry or repossession by Landlord or in case of any expiration or termination of this Lease. The terms "enter," "re-enter," "entry" or "re-entry" as used in this Lease are not restricted to their technical legal meanings. **BECAUSE THE PREMISES ARE LOCATED IN THE STATE OF TEXAS, TENANT EXPRESSLY WAIVES ANY AND ALL RIGHTS AND REMEDIES IT MAY HAVE, AND ANY DUTIES, LIABILITIES OR OBLIGATIONS LANDLORD MAY HAVE, ARISING OUT OF OR IN CONNECTION WITH SECTION 93.002 OF THE TEXAS PROPERTY CODE, AS IT MAY BE AMENDED OR SUPERSEDED FROM TIME TO TIME, PERTAINING TO THE INTERRUPTION OF UTILITIES, REMOVAL OF PROPERTY AND THE EXCLUSION OF A COMMERCIAL TENANT, WHICH STATUTE SHALL BE OF NO FORCE AND EFFECT.**

15.3.6 Notwithstanding anything contained in this Lease to the contrary, Landlord agrees that at any time a Permitted Leasehold Mortgage(s) encumbers the Property, Landlord shall not exercise any of its remedies under the Lease, other than to specifically enforce the Tenant's obligation to comply with Section 5 and Section 7.5 hereof, and the Lease shall not be terminated without the prior written consent of the applicable Permitted Leasehold Mortgagee(s).

15.3.7 Notwithstanding anything contained in this Lease to the contrary, Landlord agrees that it will not exercise any of its remedies under this Lease, other than to specifically enforce Tenant's obligations to comply with Section 5 and Section 7.5 hereof, at any time that Landlord or any of its affiliates directly or indirectly controls the managing member of Tenant and (i) the managing member wrongfully withdrew or was removed from Tenant as managing member, or (ii) Tenant's managing member is in default under the Operating Agreement.

#### 15.4 Intentionally Omitted.

15.5 Landlord Event of Default. Landlord shall be deemed in default of its obligations under this Lease if Landlord shall fail to perform, in a timely manner in accordance with the terms of this Lease, any obligation under this Lease required to be performed by Landlord, or if any Landlord representation made herein is false in any material respect, or if Landlord is the subject of a bankruptcy action under Section 365(h)(A)(i) of Chapter 11 of the U.S. Bankruptcy Code or its successor statute (each a "**Landlord Event of Default**"). If such Landlord Event of Default shall continue for sixty (60) days after written notice of such failure from Tenant or such additional period as may be reasonably required to cure such failure, if the same may not be reasonably cured within sixty (60) days so long as Landlord commences such cure within thirty (30) days after notice thereof and thereafter diligently prosecutes the same to completion, but in any event such cure must be completed to Tenant's reasonable satisfaction within one hundred twenty (120) days of Tenant's notice to Landlord subject to the parties' mutual agreement to extend such time period and subject to delays caused directly by Force Majeure and matters outside the reasonable control of Landlord so long as Landlord has acted diligently, with dispatch, and in good faith to prevent or shorten any such delays. In no event shall Landlord be entitled to any cure period for any failure to repay the Rent under the terms and conditions set forth in Section 4.1.1 herein. If Landlord fails to complete such cure as provided above, then subject to the provisions of any Permitted Leasehold Mortgage, Tenant shall thereupon be entitled to exercise any and all remedies available to Tenant for such default under this Lease or at law or in equity. Without waiving or limiting any other remedies available to Tenant, upon such default by Landlord (and subject to the notice and cure rights of Landlord), Tenant shall be entitled (but not obligated) to perform or cause such obligations to be so performed on behalf of Landlord, and Landlord shall reimburse Tenant for its reasonable third party out-of-pocket costs and expenses incurred by Tenant in doing so, which amount shall be due within sixty (60) days of Landlord's receipt of a written statement of the costs and expenses so incurred by Tenant. In the event Landlord or a creditor thereof files a petition for relief naming Landlord as a debtor under Title 11 of the United States Code, Landlord hereby acknowledges and agrees that Tenant's possessory interest under this Lease and ownership of the Improvements are unique interests and cannot be converted into a cash claim under Section 363 of Title 11 of the United States Code unless Tenant expressly consents to the same.

### **SECTION 16. ESTOPPEL CERTIFICATE; SHORT FORM.**

16.1 Estoppel Certificate. Each party hereto shall, at any time and from time to time within ten (10) days after being requested to do so by the other party, an Investor Member and/or any Permitted Leasehold Mortgagee in writing, execute, acknowledge, and address and deliver to the requesting party (or, at the latter's request, to any existing or prospective Mortgagee,

transferee or other assignee of the requesting party's interest in the Property or under this Lease which acquires such interest in accordance with this Lease) a certificate in recordable form,

16.1.1 certifying (a) that this Lease is unmodified and in full force and effect (or, if there has been any modification thereof, that it is in full force and effect as so modified, stating therein the nature of such modification); (b) that Tenant has accepted possession of the Premises, and the date on which the Term commenced; (c) as to the dates to which Rent and other charges arising hereunder have been paid; (d) as to the amount of any prepaid Rent or any credit due to Tenant hereunder; (e) as to whether, to the best of such party's knowledge, information and belief, the requesting party is then in default in performing any of its obligations hereunder (and, if so, specifying the nature of each such default); and (f) as to any other fact or condition reasonably requested by the requesting party; and

16.1.2 acknowledging and agreeing that any statement contained in such certificate may be relied upon by the requesting party and any such other addressee.

16.2 Short form. The parties hereto shall, at the request of Landlord, Tenant or any Permitted Leasehold Mortgagee, execute, acknowledge and deliver simultaneously with the execution of this Lease or at any time hereafter, in recordable form, a short form thereof (in form and substance satisfactory to each party hereto in its reasonable judgment) for recordation among the said Land Records at the expense of the Person so requesting.

## **SECTION 17. CONDITION OF TITLE AND PROJECT.**

17.1 Limited Warranties. Tenant hereby acknowledges that it has examined the Premises, the title thereto, zoning which may be applicable thereto, if any, the municipal parking ordinance, the streets, sidewalks, parking areas, curbs and access ways adjoining them, any surface and subsurface conditions thereof, and the present uses and nonuses thereof, if any, and that it accepts each of them in its present condition or state, without restriction, representation, covenant or (except as is set forth in subsection 17.2) warranty, express or implied, in fact or at law, by Landlord or any other Person, and without recourse to Landlord, as to any appurtenances thereto, the nature, condition or usability thereof, or the uses to which any or all of the Property may be put.

17.2 Quiet Enjoyment. Landlord hereby

17.2.1 represents, warrants, covenants and agrees that, at the time of the execution and delivery of this Lease by the parties hereto, it (a) is the owner of the Fee Estate, subject to the operation and effect of and only of the Permitted Encumbrances, and that it has no knowledge of any claim or demand contesting or impairing its interests in the Fee Estate, and (b) has the full right, power and authority to enter into this Lease and thereby to lease the Premises; and

17.2.2 warrants that Tenant will have quiet and peaceful possession of the Premises during the Term so long as all of Tenant's obligations hereunder are timely performed, except if and to the extent that such possession is terminated pursuant to Sections 12 or 13 or any other provision of this Lease.



17.3 Limitation on Liability. Nothing in this Lease shall be deemed to impose on Landlord any liability on account of any act or failure to act by any Person other than Landlord (or, where expressly so provided herein, Landlord's agents and employees). Notwithstanding anything to the contrary in this Lease, Tenant shall not be liable under this Lease except to the extent of its ownership interest in the Property.

17.4 Title to Personal Property. Landlord hereby waives any landlord's lien it might hold, statutory, constitutional, contractual or otherwise, in any personal property owned or leased by Tenant and now or hereafter located in the Premises. If so requested by Tenant, Landlord shall execute a waiver of any right, title or interest or right to seize any of Tenant's personal property on the Premises that may be subject to a lien or security interest in favor of Permitted Leasehold Mortgagee or a seller of Tenant's personal property or creditor holding a security interest in such personal property.

## **SECTION 18. INTENTIONALLY OMITTED**

**SECTION 19. NOTICES.** Any notice, demand, consent, approval, request or other communication or document to be provided hereunder to Landlord or Tenant (a) shall be in writing, and (b) shall be deemed to have been provided on the earlier of (i) (1) five (5) business days after being sent as certified mail with the United States Postal Service, postage prepaid, return receipt requested, or (2) the next business day after having been deposited (in time for delivery by such service on such business day) with Federal Express or another national courier service, signature requested upon delivery, or (3) (if such party's receipt thereof is acknowledged in writing) upon having been sent by telefax or another means of immediate electronic communication, in each case to the address of such party set forth hereinabove or to such other address in the United States of America as such party may designate from time to time by notice to each other party hereto, or (ii) (if such party's receipt thereof is acknowledged in writing) its having been given by hand or other actual delivery to such party.

Any notice required or permitted to be given under this Lease shall be deemed given if provided in accordance with the foregoing paragraph of this Section 19, and addressed as indicated on Exhibit C attached hereto and made a part hereof; provided, however, that any party may change its address for notice purposes by timely notice to the other party.

Landlord shall forward copies of any notices, demands, consents, approvals, requests and other communication and documents (other than Rent and other periodic billing notices) that are sent to Tenant to the Permitted Leasehold Mortgagee, Investor Member and Administrative Member. No notice given by Landlord shall be effective against a Permitted Leasehold Mortgagee or an Investor Member or Administrative Member unless Landlord has given a copy of the notice to such Permitted Leasehold Mortgagee or Investor Member or Administrative Member.

## **SECTION 20. PURCHASE OPTION.**

20.1 Tenant hereby grants Landlord the right (the "**Option**") to purchase all of the Property owned by the Tenant at the time of purchase, including without limitation Tenant's Leasehold Estate (collectively, the "**Tenant's Property**"), (i) on any date thirty (30) days after Landlord delivers written notice to Tenant, Investor Member, Administrative Member and the

Permitted Leasehold Mortgagees of Landlord's intent to exercise the Option (the "**Option Exercise Notice**"), and (ii) upon the Tenant's receipt of the Purchase Price (as defined below). The "**Purchase Price**" for the Tenant's Property pursuant to the Option shall be set forth hereinbelow:

(a) **Price Formula.** An amount, determined by Tenant's accountants, equal to the greater of (i) the fair market value of the Tenant's Property as determined in accordance with Section 20.1(b) below, or (ii) an amount sufficient to ensure receipt by Investor Member from the proceeds of the sale of the Property (when distributed pursuant to liquidation provisions in the Operating Agreement) of an amount not less than an amount equal to any unpaid obligations to which Investor Member and Special Member are entitled under the Operating Agreement (including, but not limited to, an amount equal to any exit taxes, any unpaid loans (and any accrued interest thereon) made to Tenant by Investor Member or its affiliates, any unpaid credit adjusters pursuant to the Operating Agreement, and any accrued but unpaid Asset Management Fee (as defined in the Operating Agreement)), plus (iii) if the Option is exercised during the Compliance Period, an amount (determined on an after-tax basis) equal to the diminution of economic value to Investor Member as a result of the purchase of the Tenant's Property by the Landlord during the Compliance Period (the "**ILP Diminution**"), which shall include without limitation (A) all capital contributions of Investor Member under the Operating Agreement which shall not be returned by the members or Tenant, (B) the outstanding balance of all loans (and any accrued interest thereon) made to Tenant by Investor Member or its affiliates and the Permitted Leasehold Mortgagees, which will not otherwise be repaid at the time of the purchase, (C) the amount of any projected tax credits, as described in the Operating Agreement, and depreciation deductions and other federal, state and local tax benefits, which, as a result of the purchase will not be available to Investor Member over the course of the 15-year compliance period applicable to the Project under Section 42 of the Code and the amount of any Tax Credits, as defined in the Operating Agreement, depreciation deductions and other federal, state and local tax benefits which will be recaptured from, or disallowed with respect to, Investor Member as a result of the purchase, (D) all costs and penalties incurred by Investor Member with respect to the tax credits already received (including the costs of any recapture bonds), and (E) the present value and the anticipated cash flow payable to Investor Member using a discounted rate of 10% over the course of the 15-year compliance period applicable to the Project under Section 42 of the Code, and (F) all costs and expenses incurred by or on behalf of Investor Member with respect to (1) its admission to Tenant, (2) its activities with respect to Tenant prior to the Landlord's purchase of the Tenant's Property under this Option, and (3) an amount to distribute to Tenant's members sufficient to enable the members to pay, on an after-tax basis, after any and all taxes imposed on such distribution, the taxes projected to be imposed on the members as a result of the sale pursuant to the Option; plus (iv) if the Option is exercised during the Compliance Period, the diminution of economic value to Administrative Member as a result of the purchase of Tenant's Property by Landlord during the Compliance Period (the "**CBLP Diminution**"), which shall include without limitation (A) all capital contributions of Administrative Member under the Operating Agreement, (B) all outstanding loans made to Tenant by Administrative Member or Guarantor (as defined in the Operating Agreement), including without limitation, any Operating Deficit Loans (as such terms are defined in the Operating Agreement) and any earned deferred portion of the Development Fee (as defined in the Operating Agreement and that is due to Administrative Member's affiliate that is serving or served as the developer), that are subject to

repayment under the terms of the Operating Agreement and which will not be repaid at the time of the purchase, (C) the present value of the anticipated Net Cash Flow (as defined in the Operating Agreement) and fees payable to Administrative Member and its affiliates pursuant to the terms of the Operating Agreement using a 10% discount rate, and (D) all reasonable costs and expenses incurred by or on behalf of Administrative Member with respect to (A) its admission to Tenant, and (B) its activities with respect to Tenant prior to Landlord's purchase of Tenant's Property under this Purchase Option. The calculation of any ILP Diminution and CBLP Diminution shall be determined by the accountants to the Tenant and shall be approved by Investor Member and shall include the value of Special Member's interest using the formulas above, if applicable. All payments of ILP Diminution and the CBLP Diminution shall be paid directly by Landlord to Investor Member and Administrative Member, as applicable.

(b). Fair market value of the Tenant's Property for purposes of Section 20.1 shall be calculated as follows: As soon as practicable following the delivery of the Option Exercise Notice, the Landlord and the Tenant shall select a mutually acceptable Independent Appraiser (as defined below). In the event that the parties are unable to agree upon an Independent Appraiser within fifteen (15) business days following the date of delivery of the Option Exercise Notice, the Landlord and the Tenant each shall select an Independent Appraiser within the next succeeding five (5) business days. If either party fails to select an Independent Appraiser within such time period, the determination of the other Independent Appraiser shall control. If the difference between the Appraised Fair Market Values set forth in the two appraisals is not more than ten percent (10%) of the Appraised Fair Market Value set forth in the lower of the two appraisals, the fair market value for purposes of this Section shall be the average of the two appraisals. If the difference between the two appraisals is greater than ten percent (10%) of the lower of the two appraisals, then the two Independent Appraisers shall jointly select a third Independent Appraiser whose determination of Appraised Fair Market Value shall be deemed to be binding on all parties as long as the third determination is between the other two determinations. If the third determination is either lower or higher than both of the other two appraisals, then the average of all three appraisals shall be the Appraised Fair Market Value for purposes of Section 20.1. The Landlord and the Tenant shall each pay one-half of the fees and expenses of any Independent Appraiser(s) selected pursuant to this Section 20.1. For purposes of the foregoing, the term "**Independent Appraiser**" means a firm which is generally qualified to render opinions as to the fair market value of assets such as those owned by the Tenant, which is mutually acceptable to the Landlord and the Tenant and which satisfies the following criteria:

- (i) such firm is not a Partner, or an Affiliate (as such terms are defined in the Operating Agreement) of the Landlord or the Tenant;
- (ii) such firm (or a predecessor in interest to the assets and business of such firm) has been in business for at least five (5) years, and at least one of the principals of such firm has been in the active business of appraising substantially similar assets for at least ten (10) years;
- (iii) such firm has regularly rendered appraisals of substantially similar assets for at least five (5) years on behalf of a reasonable number of unrelated clients, so as to demonstrate reasonable market acceptance of the valuation opinions of such a firm;

3

(iv) one or more of the principals or appraisers of such firm are members in good standing of an appropriate professional association or group which establishes and maintains professional standards for its members; and

(v) such firm renders an appraisal to the Tenant only after entering into a contract that specifies the compensation payable for such appraisal.

20.2 Upon determination of the Purchase Price, Tenant and Landlord, shall enter into a written contract for the purchase and sale of the Tenant's Property in accordance with the terms of this Lease and containing such other terms and conditions as are standard and customary for similar commercial transactions in the geographic area in which the Property is located, providing for a closing not later than the date specified in the Option Exercise Notice or thirty (30) days after the Purchase Price has been determined, whichever is later. In the absence of any such contract, this Lease shall be specifically enforceable upon the exercise of the Option. The purchase and sale hereunder shall be closed through a deed-and-money escrow with the title insurer of Tenant's interest in the Property or another mutually acceptable title company. Tenant's right, title, and interest in the Tenant's Property shall be conveyed by an assignment of Lease ("**Ground Lease Assignment**") and a blanket conveyance, bill of sale, an assignment agreement (the "**Bill of Sale**" and together with the Ground Lease Assignment, the "**Conveyance Documents**"). Upon closing, the Tenant shall deliver to Landlord, along with the Conveyance Documents, a Texas form Owner's Title Policy dated as of the close of escrow, in the amount of the Purchase Price, subject to the liens, encumbrances and other exceptions then affecting the title. Landlord shall be responsible for all costs including, but not limited to, transfer taxes, title policy premiums and recording costs. Rents, insurance, taxes, debt service then due and payable and other costs and revenues then prepaid or accrued, as the case may be, shall be apportioned as of midnight of the day preceding the closing of title, except that rents shall be apportioned as of the date of actual collection thereof (which obligation shall survive the closing).

20.3 In consideration of the Option granted hereunder at the Purchase Price specified herein, Landlord hereby agrees that the Ground Lease Assignment granting the Tenant's interest in the Property to Landlord shall contain a covenant running with the land, restricting the use of the Property to low-income housing to the extent required by any document of record. Such covenant shall include a provision requiring Landlord to pay any and all costs, including attorneys' fees, incurred by Tenant and/or Investor Member in enforcing or attempting to enforce such use restrictions, and to pay any and all damages incurred by Tenant and/or Investor Member from any delay in or lack of enforceability of the same. All provisions relating to such use restrictions contained the Ground Lease Assignment and in this Lease (but not the LURA and other pre-existing restrictions required by any Legal Requirements) shall be subject and subordinate to any third-party liens of Permitted Leasehold Mortgages encumbering the Tenant's Property.

20.4 In the absence of a Ground Lease Assignment conforming to the requirements of this Lease, the provisions of this Lease shall run with the land. In the event that the Option is not exercised, or the sale pursuant thereto is not consummated, then, upon conveyance of the Tenant's Property to anyone other than Landlord, the foregoing provisions shall terminate and have no further force or effect.

20.5 Notwithstanding any term to the contrary contained herein, the Option granted in this Section 20 shall be subordinate, in all respects, to the Mortgages held by the Permitted Leasehold Mortgagees.

## **SECTION 21: GENERAL.**

21.1 Effectiveness. This Lease shall become effective on and only on its execution and delivery by each party hereto.

21.2 Complete Understanding. This Lease represents the complete understanding between the parties hereto as to the subject matter hereof, the Premises, the Units, the rest of the Improvements, the Equipment, or the rest of the Property, and the rights and obligations of the parties hereto as to the same, and supersedes all prior negotiations, representations, guaranties, warranties, promises, statements or agreements, either written or oral, between the parties hereto as to the same. No inducements, representations, understandings or agreements have been made or relied upon in the making of this Lease, except those specifically set forth in this Lease. Neither party hereto has any right to rely on any other prior or contemporaneous representation made by anyone concerning this Lease which is not set forth herein.

21.3 Amendment. This Lease may be amended, modified, restated or supplemented by and only by an instrument executed and delivered by each party hereto, and only with the prior written consent of any Permitted Leasehold Mortgagee, Investor Member, the Managing Member and Administrative Member. Any amendment, modification, change, cancellation, waiver or termination shall not bind Permitted Leasehold Mortgagees or its successors and assigns unless made with such Permitted Leasehold Mortgagee's consent.

21.4 Waiver. No party hereto shall be deemed to have waived the exercise of any right which it holds hereunder unless such waiver is made expressly and in writing (and, without limiting the generality of the foregoing, no delay or omission by any party hereto in exercising any such right shall be deemed a waiver of its future exercise). No such waiver made in any instance involving the exercise of any such right shall be deemed a waiver as to any other such instance, or any other such right. Without limiting the generality of the foregoing, no action taken or not taken by Landlord under this Section or any other provision of this Lease (including but not limited to Landlord's acceptance of the payment of Rent if an Event of Default exists) shall operate as a waiver of any right to be paid a late charge or of any other right or remedy which Landlord would otherwise have against Tenant on account of such Event of Default under this Lease or applicable law (Tenant hereby acknowledging that, in the interest of maintenance of good relations between Landlord and Tenant, there may be instances in which Landlord chooses not immediately to exercise some or all of its rights if an Event of Default exists).

21.5 Applicable Law. This Lease shall be given effect and construed by application of the law of the State of Texas, and any action or proceeding arising hereunder shall be brought in the courts of the State of Texas; provided, that if any such action or proceeding arises under the Constitution, laws or treaties of the United States of America, or if there is a diversity of citizenship between the parties thereto, so that it is to be brought in a United States District Court, it shall be brought in the United States District Court for the Northern District of Texas, or any successor federal court having original jurisdiction.

21.6 Consent. Except as otherwise herein provided, when a party hereto is required to provide its consent or approval, such consent or approval (or the denial of such consent or approval, as the case may be) shall not be unreasonably withheld or conditioned and shall be given within a reasonable time after its receipt of the request therefor, taking into consideration the circumstances of the request. Any requirement of consent from Administrative Member set forth herein shall only be applicable during such time as Administrative Member has guaranty liability to Investor Member or Permitted Leasehold Mortgagee, and such guaranty liability is related to the Project.

21.7 Time of Essence. Time shall be of the essence of this Lease, except that, whenever the last day for the exercise of any right or the discharge of any obligation hereunder falls on a Saturday, Sunday or statutory holiday, the party having such right or obligation shall have until 5:00 p.m. local time on the next succeeding day which is not a Saturday, Sunday or statutory holiday to exercise such right or discharge such obligation.

21.8 Headings. The headings of the Sections, subsections, paragraphs and subparagraphs hereof are provided herein for and only for convenience of reference, and shall not be considered in construing their contents.

21.9 Construction. As used herein, all references made (a) in the neuter, masculine or feminine gender shall be deemed to have been made in all such genders, (b) in the singular or plural number shall be deemed to have been made, respectively, in the plural or singular number as well, and (c) to any Section, subsection, paragraph or subparagraph shall be deemed, unless otherwise expressly indicated, to have been made to such Section, subsection, paragraph or subparagraph of this Lease. The parties agree that when interpreting this Lease there shall be no presumption against any party on account of the fact that such party caused the drafting of this Lease.

21.10 Exhibits. Each writing or plat referred to herein as being attached hereto as an exhibit or otherwise designated herein as an exhibit hereto is hereby made a part hereof.

21.11 Severability. No determination by any court, governmental or administrative body or agency or otherwise that any provision of this Lease or any amendment hereof is invalid or unenforceable in any instance shall affect the validity or enforceability of (a) any other such provision, or (b) such provision in any circumstance not controlled by such determination. Each such provision shall remain valid and enforceable to the fullest extent allowed by, and shall be construed wherever possible as being consistent with, applicable law.

21.12 Disclaimer of Partnership Status. Nothing in this Lease shall be deemed in any way to create between the parties hereto any relationship of partnership, joint venture or association, and the parties hereto hereby disclaim the existence of any such relationship.

21.13 Commissions. Each party hereto hereby represents and warrants to the other that, in connection with the leasing of the Premises hereunder, the party so representing and warranting has not dealt with any real estate broker, agent or finder, and there is no commission, charge or other compensation due on account thereof. Each party hereto shall defend, indemnify

and hold harmless the other against and from any liability, claim of liability or expense arising out of any inaccuracy in such party's representation.

21.14 Prevailing Party. In the event either party hereunder initiates judicial action against the other in order to enforce the terms, covenants and provisions of this Lease, the non-prevailing party in such judicial action shall reimburse the prevailing party in such judicial action for all reasonable expenses, fees, costs, including reasonable attorneys' fees incurred by the prevailing party in connection with such judicial action.

21.15 Limited Third Party Rights. Notwithstanding anything to the contrary set forth elsewhere in this Lease, Investor Member and each Permitted Leasehold Mortgagee shall be deemed a third-party beneficiary of the provisions of this Lease that reference Investor Member and/or the Permitted Leasehold Mortgagees. The foregoing rights of Investor Member and each Permitted Leasehold Mortgagee to be a third-party beneficiary under this Lease shall be the only right (express or implied) of Investor Member and each Permitted Leasehold Mortgagee to be a third-party beneficiary under this Lease.

21.16 Intentionally Omitted.

21.17 Subleases. Tenant may, without Landlord's consent, sublease the Units to residential subtenants as their dwellings. Landlord shall not disturb the possession, interest, or quiet enjoyment of any subtenant. Any sublease is subordinate to this Lease, the Permitted Leasehold Mortgage and any new lease entered into between the Landlord and Permitted Leasehold Mortgagees. The Landlord agrees to enter into a reasonable non-disturbance agreement with the sub-tenants. In connection with any subletting right, the subtenants will be required to attorn to the Permitted Leasehold Mortgagees if the Permitted Leasehold Mortgagees foreclose and become the owner of the Leasehold Estate.

21.18 Intentionally Omitted

21.19 Tenant's Rights, Generally. Upon and during the continuation of an event of default under, and subject to, any documents relating to the Property, any Permitted Leasehold Mortgagee and/or Investor Member may exercise all of Tenant's rights under this Lease, subject to the terms hereof.

21.20 No Personal Liability. No Permitted Leasehold Mortgagee or its designee or affiliate shall have any liability under this Lease for acts or omissions taking place prior to the date it acquires record title to Tenant's interest and becomes Tenant under this Lease. Any liability to Landlord or Landlord's successors and assigns shall be limited to the value of each Permitted Leasehold Mortgagee's or its designee's or affiliate's respective interest in the Leasehold Estate. If a Permitted Leasehold Mortgagee or its designee or affiliate shall succeed to the interest of the Tenant under the Lease, whether as a purchaser at a foreclosure sale or by the acceptance of a deed-in-lieu of foreclosure, such Permitted Leasehold Mortgagee, designee or affiliate shall (a) not be liable for any act or omission of Tenant and (b) be released from all liability prior to the date such Permitted Leasehold Mortgagee or its designee or affiliate succeeds to the interest of Tenant, such release being automatic with no further action required by any party.

21.21 Memorandum of Ground Lease. The Parties shall execute, for recording purposes, a memorandum of ground lease in conformity with the law and practice of the State of Texas, and the same shall be placed of record at Tenant's expense. If requested by Landlord, Tenant shall, upon termination of this Lease as provided herein, execute and deliver to Landlord an appropriate release, in form proper for recording, of Tenant's interest in the Property.

21.22 Landlord Not Entitled to Proceeds. Landlord shall not be entitled to share in the proceeds of any loan obtained as a result of any financing or refinancing undertaken by Tenant that is secured by a Permitted Leasehold Mortgage.

21.23 No Subordination of Leasehold Estate. Except as otherwise provided in this Lease, at no time shall Tenant's Leasehold Estate, or Tenant's interest in this Lease, be subordinated in any manner to the interest of any Mortgagee with a security interest in the Fee Estate.

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IN WITNESS WHEREOF, each party hereto has executed this Lease or caused it to be executed on its behalf by its duly authorized representatives, the day and year first above written.

**LANDLORD:**

**AUSTIN HOUSING FINANCE CORPORATION**

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

**TENANT:**

**AUSTIN DMA HOUSING III, LLC,**  
a Texas limited liability company

By: AHFC Nightingale Non-Profit Corporation,  
a Texas nonprofit corporation,  
Its: Managing Member

By: \_\_\_\_\_  
Name: Rosie Truelove  
Title: Vice President

STATE OF TEXAS

COUNTY OF TRAVIS

I HEREBY CERTIFY that on or about this \_\_\_\_ day of March, 2018, before me, a Notary Public for the state aforesaid, personally appeared \_\_\_\_\_, known to me or satisfactorily proven to be the person whose name is subscribed to the foregoing Ground Lease, who acknowledged that she is the \_\_\_\_\_ of Austin Housing Finance Corporation; that she has been duly authorized to execute, and has executed, such instrument on its behalf for the purposes therein set forth; and that the same is its act and deed.

IN WITNESS WHEREOF, I have set my hand and Notarial Seal, the day and year first above written.

\_\_\_\_\_  
Notary Public

My commission expires on \_\_\_\_\_

STATE OF TEXAS

COUNTY OF TRAVIS

I HEREBY CERTIFY that on or about this \_\_\_\_ day of March, 2018, before me, a Notary Public for the state aforesaid, personally appeared Rosie Truelove, known to me or satisfactorily proven to be the person whose name is subscribed to the foregoing Ground Lease, who acknowledged that she is the Vice President of AHFC Nightingale Non-Profit Corporation, a Texas nonprofit corporation, the managing member of Austin DMA Housing III, LLC, a Texas limited liability company; that he has been duly authorized to execute, and has executed, such instrument on its behalf for the purposes therein set forth; and that the same is its act and deed.

IN WITNESS WHEREOF, I have set my hand and Notarial Seal, the day and year first above written.

\_\_\_\_\_  
Notary Public

My commission expires on \_\_\_\_\_

**EXHIBIT A**

**Description of Land**

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## **EXHIBIT B**

### **Schedule of Permitted Encumbrances**

1. Construction and Permanent Leasehold Deed of Trust, Security Agreement, Assignment of Leases and Rents and Fixture Filing dated as of March 1, 2018 and filed for record on March \_\_, 2018, recorded under Document No. \_\_\_\_\_ of the Official Public Records of Travis County, Texas, executed by Austin DMA Housing III, LLC, to [Randall B. Durant], Trustee, and all terms, conditions and stipulations contained therein, including any additional indebtedness secured thereby, securing the payment of one promissory note of even date in the principal amount of \$ \_\_\_\_\_, payable to JPMorgan Chase Bank, N.A.
2. Construction Leasehold Deed of Trust, Security Agreement, Assignment of Leases and Rents and Fixture Filing dated as of March 1, 2018 and filed for record on March \_\_, 2018, recorded under Document No. \_\_\_\_\_ of the Official Public Records of Travis County, Texas, executed by Austin DMA Housing III, LLC, to [Randall B. Durant], Trustee, and all terms, conditions and stipulations contained therein, including any additional indebtedness secured thereby, securing the payment of one promissory note of even date in the principal amount of \$ \_\_\_\_\_, payable to JPMorgan Chase Bank, N.A.
3. Leasehold Deed of Trust, Security Agreement, and Financing Statement dated March \_\_, 2018 and filed for record on March \_\_, 2018, recorded under Document No. \_\_\_\_\_ of the Official Public Records of Travis County, Texas, executed by Austin DMA Housing III, LLC, to Rosie Truelove, Trustee, and all terms, conditions and stipulations contained therein, including any additional indebtedness secured thereby, securing the payment of one promissory note of even date in the principal amount of \$2,000,000.00, payable to Austin Housing Finance Corporation.
4. Leasehold Deed of Trust, Security Agreement, Assignment of Leases and Rents, Financing Statement and Fixture Filing (Breakage Fee) dated as of March \_\_, 2018 and filed for record on March \_\_, 2018, recorded under Document No. \_\_\_\_\_ of the Official Public Records of Travis County, Texas, executed by Austin DMA Housing III, LLC, to [Gary S. Farmer], trustee, and all terms, for the benefit of \_\_\_\_\_, conditions and stipulations contained therein, including any additional indebtedness secured thereby, securing the payment of one promissory note of even date in the maximum principal amount of \$ \_\_\_\_\_, payable to \_\_\_\_\_.
5. Regulatory and Land Use Restriction Agreement by and among Austin Housing Finance Corporation, Austin DMA Housing III, LLC and BOKF, NA dated as of March 1, 2018 and filed for record on March \_\_, 2018, recorded under Document No. \_\_\_\_\_ of the Official Public Records of Travis County, Texas.

6. Restrictive Covenant Running with the Land dated March \_\_, 2018 and filed for record on March \_\_, 2018, recorded under Document No. \_\_\_\_\_ of the Official Public Records of Travis County, Texas, executed by Austin DMA Housing III, LLC for the benefit of AHFC Nightingale Non-Profit Corporation relating to Residential Housing Development Assistance Program Loan Agreement dated as of March \_\_, 2018 between Austin DMA Housing III, LLC and AHFC Nightingale Non-Profit Corporation.
7. Restrictive Covenant Running with the Land dated March \_\_, 2018 and filed for record on March \_\_, 2018, recorded under Document No. \_\_\_\_\_ of the Official Public Records of Travis County, Texas, executed by Austin DMA Housing III, LLC for the benefit of Austin Housing Finance Corporation relating to Residential Housing Development Assistance Program Loan Agreement dated as of March \_\_, 2018 between Austin DMA Housing III, LLC and Austin Housing Finance Corporation.

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**EXHIBIT C**

**Notice Addresses**

**Landlord:**

Austin Housing Finance Corporation  
1000 East 11<sup>th</sup> Street  
Austin, Texas 78702  
Attn: Mandy DeMayo  
Telephone: (512) 974-3100

**With a copy to:**

William L. Gehrig  
Greenberg Traurig, LLP  
2101 L Street, NW  
Suite 1000  
Washington, DC 20037  
Telephone: (202) 331-3170

**Tenant:**

Austin DMA Housing III, LLC  
4101 Parkstone Heights Drive  
Suite 310  
Austin, Texas 78746  
Attention: Diana McIver  
Telephone: (512) 328-3232

**With a copy to:**

AHFC Nightingale Non-Profit Corporation (Managing Member)  
1000 East 11<sup>th</sup> Street  
Austin, Texas 78702  
Attn: Mandy DeMayo  
Telephone: (512) 974-3100

**With a copy to:**

William L. Gehrig  
Greenberg Traurig, LLP  
2101 L Street, NW  
Suite 1000  
Washington, DC 20037  
Telephone: (202) 331-3170

With a copy to:

Scott Marks  
Coats Rose  
901 S. Mopac Expressway  
Building 1, Suite 500  
Austin, Texas 78746  
Telephone: (512) 684-3843

Investor Member:

Boston Capital Direct Placement, A Limited Partnership  
c/o Boston Capital Partners, Inc.  
One Boston Place, 21st Floor  
Boston, MA 02108  
Attention: Asset Management (Nightingale at Goodnight Ranch)

With a copy to:

Kristen Cassetta  
Holland & Knight LLP  
10 Saint James Avenue  
11th Floor  
Boston, MA 02116  
Telephone: (617) 573-5875

Eric Lavin  
Holland & Knight LLP  
10 Saint James Avenue  
11th Floor  
Boston, MA 02116  
Telephone: (617) 305-2171

Christine R. Piraino  
Holland & Knight LLP  
200 South Orange Avenue  
Suite 2600  
Orlando, FL 32801  
Telephone: (407) 244-5149

Permitted Leasehold Mortgagee:

JPMorgan Chase Bank, N.A.  
Community Development Group  
221 West 6<sup>th</sup> Street, Floor 2  
Austin, Texas 78701  
Attention: David H. Saling  
Telephone: (512) 479-2218

With a copy to:

Greenberg Traurig, LLP  
1000 Louisiana Street  
Suite 1700  
Houston, TX 77002  
Attn: Wayne Yaffee  
Telephone: (713) 374-3655

With a copy to:

BOKF, NA (Fiscal Agent)  
801 Cherry Street  
Suite 3325, Unit 27  
Fort Worth, Texas 76102  
Attn: Pamela M. Black, CCTS, Senior Vice President  
Telephone: (817) 348-5797

With a copy to:

Naman, Howell, Smith & Lee, PLLC  
8310 Capital Texas Hwy. N., Suite 490  
Austin, Texas 78731  
Attn: William C. "Cliff" Blount, Esq.  
Telephone: (512) 807-2454

With a copy to:



Administrative Member:

DMA Nightingale, LLC  
4101 Parkstone Heights Drive, Suite 310  
Austin, Texas 78746

With a copy to:

Coats Rose  
901 South Mopac Expressway  
Building 1, Suite 500  
Austin, Texas 78746  
Attn: Scott Marks  
Telephone: (512) 684-3843

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## **Exhibit E**

### **Assignment**

[Nightingale at Goodnight Ranch Apartments]

**PREPARED BY, AND AFTER  
RECORDING RETURN TO:**

Greenberg Traurig LLP  
1000 Louisiana, Suite 1800  
Houston, Texas 77002  
Attention: Wayne A. Yaffee, Esq.

**ASSIGNMENT OF DEED OF TRUST AND LOAN DOCUMENTS**

**KNOW ALL PERSONS BY THESE PRESENTS:**

That **AUSTIN HOUSING FINANCE CORPORATION**, a housing finance corporation organized and existing under the laws of the State of Texas (herein designated as the "Assignor"), is made as of March 1, 2018, to be effective as of the date of delivery of the Loan Agreement (defined in Schedule 2), for and in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, does by these presents assign to the "Assignee" designated on Schedule 1 attached hereto (herein designated as the "Assignee") without recourse, warranty or representation of Assignor and excluding the Unassigned Rights of Assignor as provided in the Funding Loan Agreement among JPMorgan Chase Bank, N.A., Assignor, and Assignee dated as of March 1, 2018, to be effective as of the date of delivery of the Loan Agreement all of the Assignor's right, title and interest in and to, subject to the reserved rights stated therein, (i) the instruments ("Assigned Instruments") described on Schedule 1 attached hereto, and (ii) all other documents, instruments, rights and privileges described on Schedule 2 attached hereto to the extent Assignor has an interest in the same.

TOGETHER with the Note described in the Assigned Instruments, and the money due and to become due thereon, with the interest thereon. TO HAVE AND TO HOLD the same unto the said Assignee forever, subject only to all the provisions contained therein, AND the said Assignor hereby constitutes and appoints the Assignee as the Assignor's true and lawful attorney, irrevocable in law or in equity, in the Assignor's name, place and stead, but at Borrower's cost and expense, to have, use and take all lawful ways and means for the recovery of all of the said money and interest; and in case of payment, to discharge the same as fully as the Assignor might or could if these presents were not made.

In all references herein to any parties, persons, entities or corporations the use of any particular gender on the plural or singular number is intended to include the appropriate gender or number as the text of the within instrument may require.

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**IN WITNESS WHEREOF**, the said Assignor has hereunto set its hand or caused these presents to be signed by its proper corporate officer as of the date first set forth above:

**AUSTIN HOUSING FINANCE CORPORATION**

By: \_\_\_\_\_  
Rosie Truelove, Treasurer

**STATE OF TEXAS     §**  
                                  **§**  
**COUNTY OF TRAVIS   §**

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_, 2018, by Rosie Truelove, Treasurer of **AUSTIN HOUSING FINANCE CORPORATION**, a housing finance corporation organized and existing under the laws of the State of Texas, on behalf of said corporation.

\_\_\_\_\_  
**NOTARY PUBLIC, State of Texas**

SCHEDULE 1  
TO  
ASSIGNMENT OF DEED OF TRUST AND LOAN DOCUMENTS

"ASSIGNEE" (AND ADDRESS):

BOKF, NA  
801 Cherry Street  
Suite 3325, Unit 27  
Fort Worth, Texas 76102  
Attn: Pamela Black, Senior VP

ASSIGNED INSTRUMENTS:

1. Project Note by AUSTIN DMA HOUSING III, LLC, a Texas limited liability company ("Borrower"), to Assignor made as of March \_\_, 2018, in the original principal sum of [\$15,896,000.00].
2. Multifamily Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing (Leasehold), is made as of March 1, 2018, to be effective as of the date of delivery of the Project Loan Agreement from Borrower for the benefit of Assignor, which Instrument was recorded as Clerk's File No. \_\_\_\_\_ on \_\_\_\_\_, 2018 in the office of the County Clerk of Travis County, Texas and which encumbers the leasehold interest in the real property (and improvements thereon) which is particularly described in the Exhibit A attached thereto.

SCHEDULE 2  
TO  
ASSIGNMENT OF DEED OF TRUST AND LOAN DOCUMENTS

Each of the following are made as of March 1, 2018, to be effective as of the date of delivery of the Loan Agreement (as hereinafter defined).

1. The Project Loan Agreement among Assignor, the Fiscal Agent named therein, and Borrower (the "Loan Agreement").
2. Payment and Performance Guaranty from DMA Development, LLC and Diana McIver.
3. Collateral Assignment of Rights to Tax Credits and Ownership Interests.
4. Environmental and Indemnity Agreement.
5. Any and all other Project Loan Documents or Financing Documents (each as defined in the Loan Agreement) in connection with the transaction whereby proceeds of the Assignor's Multifamily Housing Governmental Revenue Note (Nightingale at Goodnight Ranch Apartments) Series 2018 in the amount of [\$15,896,000.00] have been loaned by Assignor to Borrower.

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